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Minister of Justice
404 Chaeng Watthana Rd,
Thung Song Hong Sub-district, Lak Si District,
Bangkok 10210

14 June 2024

Dear Minister of Justice,

RE: REQUEST TO BRING AN END TO THE ABUSE OF THE JUDICIAL PROCESS AND ARBITRARY DETENTION OF HUMAN RIGHTS DEFENDERS, ACTIVISTS AND PROTESTERS, AND TO INVESTIGATE THE DEATH IN CUSTODY OF NETIPORN 'BUNG' SANESANGKHOM

We, the undersigned organizations, write this open letter to request you take urgent and immediate steps to end the ongoing abuse of the judicial process and apparent arbitrary detention of human rights defenders, activists and protesters in Thailand, solely because of their exercise of their right to peaceful protest.

Our organizations remain concerned that, in contravention of Thailand's obligations under international human rights law and standards, the Thai authorities are initiating criminal proceedings against individuals solely because they have exercised their rights to freedom of expression and peaceful assembly, leading to their being convicted and often sentenced to imprisonment as a result. The ongoing abuse of the judicial process extends to systematically denying human rights defenders, activists and protesters temporary release on bail.

We also request a prompt, thorough, transparent, independent, impartial and effective investigation into the circumstances of the death in custody of activist Netiporn 'Bung' Sanesangkhom on 14 May 2024 (see below), while she was arbitrarily detained. We urge the government to provide redress as appropriate for the loss of her life. Netiporn carried out two lengthy hunger-strikes prior to her death to protest against the restrictive environment preventing pro-democracy activists and human rights defenders from exercising their rights, and against the abuse of the judicial process to target, silence and detain activists, protesters and human rights defenders, including herself.¹

We call on the Thai government to take the opportunity provided by its candidature for membership of the United Nations Human Rights Council between 2025 and 2027 to demonstrate its commitment to upholding and protecting human rights in line with international human rights law. With respect to this, we further urge the government to take immediate steps to address the concerns outlined below and ensure Thailand's compliance with its international human rights obligations to protect the rights to freedom of expression, peaceful assembly and association, and other human rights, and create a safe and enabling environment for human rights defenders to exercise and defend their own rights as well as those of others.

¹Thai Lawyers for Human Rights, บั้ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชันสูตรพลิกศพต่อในวันพรุ่งนี้, 14 May 2024, <https://tlhr2014.com/archives/66964>

ABUSE OF THE JUDICIAL PROCESS

Since mass protests calling for political and social reforms started in 2020, the Thai authorities have targeted human rights defenders, activists and protesters solely for their participation in peaceful protests or for expressing their opinions, often with protracted criminal proceedings that lead to criminal and civil sanctions.

According to statistics gathered by Thai Lawyers for Human Rights (TLHR), between July 2020 and May 2024, the authorities initiated criminal proceedings against at least 1,954 individuals in 1,296 cases, including 286 young persons under 18 years old, for participating in peaceful protests or expressing their opinions online and offline.² At least 424 persons, including children, face charges under the Criminal Code for offences related to “security”, carrying lengthy prison terms upon conviction. In this connection, Thai authorities have initiated proceedings against at least 272 persons for *lèse-majesté* (Article 112) and 152 persons for sedition (Article 116).³ In addition, at least 202 people were charged under the Computer Crimes Act (CCA) in connection with to their online expressions.⁴

At the time of writing, trials were still ongoing in at least 729 cases, and at least 717 individuals are facing potential sentences linked to their exercise of their rights to freedom of expression and peaceful assembly.⁵ Courts have handed down prison sentences, with some individual notably being sentenced to up to 50 years for *lèse-majesté* offences.⁶

UN human rights bodies and independent experts have raised concerns about the use of criminal provisions to criminalize the legitimate exercise of the right to freedom of expression, including with respect to their use in Thailand, due to their incompatibility with international human rights law.⁷ The UN Human Rights Committee, for example, has held that “imprisonment is never an appropriate penalty” for defamation-related offences⁸ and has expressed concern over criminal provisions, including sedition and *lèse-majesté* under the Criminal Code and the CCA.⁹ The restrictive, overbroad, ambiguous or imprecise language of these criminal provisions fails to narrow down the scope of the punishable offences in question with a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from conduct that is not criminally proscribed. As such, these criminal provisions fail to meet the requirements of international law with respect to the principle of legality; the limited and narrowly defined legitimate fundamental public interests allowed under international human rights law (namely, for the protection of the fundamental rights and freedoms of others, national security, public safety, public order, public health or public morals); necessity; proportionality; non-arbitrariness and non-discrimination.¹⁰ As a result, these criminal provisions give officials wide discretion to unduly limit the rights to freedom of expression and peaceful assembly in the name of public security, order and health, and allow for the imposition of lengthy prison terms.

Regardless of whether criminal proceedings lead to prosecution, imprisonment or fines, their use may have the effect of further undermining the enjoyment of defendants’ rights. Individuals are required to commit time and other resources to defend themselves against unwarranted charges. Children and young people are particularly impacted by abuse of the judicial process which may result in stigma and compromise their ability to fully enjoy their right to education.¹¹

² Thai Lawyers for Human Rights, พฤษภาคม 2567: จำนวนผู้ถูกดำเนินคดีทางการเมืองยอดรวม 1,954 คน ใน 1,296 คดี, 5 June 2024, <https://tlhr2014.com/archives/67575>

³ Thai Lawyers for Human Rights, พฤษภาคม 2567: จำนวนผู้ถูกดำเนินคดีทางการเมืองยอดรวม 1,954 คน ใน 1,296 คดี (previously cited).

⁴ Thai Lawyers for Human Rights, พฤษภาคม 2567: จำนวนผู้ถูกดำเนินคดีทางการเมืองยอดรวม 1,954 คน ใน 1,296 คดี (previously cited).

⁵ Information documented by Thai Lawyers for Human Rights

⁶ See Amnesty International, “Thailand: 87-year prison sentence handed in harshest *lèse-majesté* conviction,” 19 January 2021, <https://www.amnesty.org/en/latest/press-release/2021/01/thailand-87-prison-sentence-lese-majeste> and Guardian, “Man jailed for record 50 years for criticising Thai monarchy” 18 January 2024, <https://www.theguardian.com/world/2024/jan/18/man-jailed-for-record-50-years-for-criticising-thai-monarchy#:~:text=A%20Thai%20man%20has%20been,a%20legal%20rights%20group%20said>.

⁷ UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, 25 April 2017, UN Doc. CCPR/C/THA/CO/2, paras 35-38, <https://www.ohchr.org/en/documents/concluding-observations/ccprcthaco2-concluding-observations-second-periodic-report> (‘2017 Concluding Observations’)

⁸ International Covenant on Civil and Political Rights, Article 19; Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, 12 September 2011, UN Doc. CCPR/C/GC/34, paras 30, 38 and 47, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁹ UN Human Rights Committee, 2017 Concluding Observations (previously cited).

¹⁰ For further analysis of the laws against international human rights law and standards, see: ICJ, Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Thailand, April 2021, Part III, <https://www.icj.org/wp-content/uploads/2021/06/Thailand-Dictating-the-Internet-FoE-Publication-2021-ENG.pdf>

¹¹ Amnesty International Thailand, ‘แอมเนสตี้-ศูนย์ทนาย’ ดำเนินคดีของเด็กและเยาวชน 3 ปี สร้าง 7 ผลกระทบ นนช 6 ข้อ ก. ยุติธรรม, 21 พฤศจิกายน 2566, <https://www.amnesty.org.th/latest/news/1190>

ARBITRARY DETENTION

According to TLHR, as of 6 June 2024, at least 43 individuals involved in protests were in detention, 19 of whom had been sentenced to imprisonment and 24 of whom were still in pre-trial detention.¹² Of the 24 people, 17 were charged with *lèse-majesté* offences.¹³ The Thai authorities repeatedly held prominent protesters in detention and denied them temporary release on bail.¹⁴

Under international human rights law and standards guaranteeing the right to liberty and the presumption of innocence, there is a presumption that people charged with a criminal offence will not be detained while awaiting trial.¹⁵ The UN Human Rights Committee has held that a defendant may only be detained pending trial in exceptional circumstances where the authorities must demonstrate that their deprivation of liberty pending trial is both necessary and proportionate, for example, in cases where there is substantial reason to believe that if released, the individual would abscond or commit a serious offence or interfere with the investigation or obstruct the course of justice.¹⁶ In addition, pre-trial detention should not be mandatory for all defendants charged with a particular crime, nor should it be ordered for a period based on the potential sentence for the crime charged rather than on a determination of necessity.¹⁷

Further, the UN Working Group on Arbitrary Detention (UNWGAD) has repeatedly and consistently found Thailand's detention of individuals solely as a result of their peaceful exercise of their right to freedom of expression, including under *lèse-majesté* provisions and article 14 of the Computer Crimes Act, to be arbitrary.¹⁸ The UNWGAD has expressed grave concern at a pattern of arbitrary detention resulting in serious harm to society by causing a chilling effect and leading individuals to "[refrain] from debates on matters of public interest in order to avoid prosecution." It has called on the Thai authorities to release individuals arbitrarily detained in violation of Thailand's human rights obligations, including the right to liberty, the right to a fair trial and the right to freedom of opinion and expression under Articles 3, 8, 9, 10 and 19 of the Universal Declaration of Human Rights and Article 2, 9, 14 and 19 the International Covenant on Civil and Political Rights (ICCPR), by which Thailand is bound as a State party.¹⁹

The United Nations Human Rights Committee²⁰ and UN Special Procedures,²¹ as well as governments during the Universal Periodic Reviews²², have made further recommendations to the Thai government to stop arbitrarily detaining individuals and imposing excessive restrictions on the legitimate exercise of the rights to freedom of expression and peaceful assembly.

¹² Thai Lawyers for Human Rights, รายชื่อผู้ต้องขังทางการเมือง 2567, 6 June 2024, <https://tlhr2014.com/archives/63015>

¹³ Thai Lawyers for Human Rights, รายชื่อผู้ต้องขังทางการเมือง 2567 (previously cited).

¹⁴ This pattern of arbitrary detention through the denial of bail has been ongoing since 2021. See, for example, Amnesty International, Urgent Action: Peaceful protestors may face 100+ years in prison, 24 March 2021, Index: ASA 39/3891/2021, <https://www.amnesty.org/fr/wp-content/uploads/2021/05/ASA3938912021ENGLISH.pdf>; and Amnesty International, Thailand: Immediately drop unjustified charges against protest leader, 24 September 2021, <https://www.amnesty.org/en/latest/news/2021/09/amnesty-thailand-protest-leader-arrest/>; Thai Lawyers for Human Rights, The expanding universe of legal persecutions: Examining various developments following the #19Sept protest (Part 2), 29 June 2021, <https://tlhr2014.com/en/archives/31397>

¹⁵ Human Rights Committee, General Comment No. 35 on Article 9: Liberty and security of person, 16 December 2014, UN Doc. CCPR/C/GC/35, <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person>, para 38.

¹⁶ Human Rights Committee, General Comment No. 35 on Article 9: Liberty and security of person (previously cited).

¹⁷ Human Rights Committee, General Comment No. 35 on Article 9: Liberty and security of person (previously cited).

¹⁸ See the UN Working Group on Arbitrary Detention (UNWGAD), Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session, 28 August–1 September 2023, 23 October 2023, UN Doc. A/HRC/WGAD/2023/49, para 61(a). The UNWGAD also referred to its opinions No. 35/2012, No. 41/2014, No. 43/2015, No. 44/2016 and No. 51/2017, which made the same assessment.

¹⁹ UNWGAD, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session, 28 August–1 September 2023, para 71-72 (previously cited).

²⁰ UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, 25 April 2017, UN Doc. CCPR/C/THA/CO/2, <https://documents.un.org/doc/undoc/gen/g17/099/90/pdf/g1709990.pdf?token=co1x9EVLWuVMLTDQbb&fe=true>, para 25-26.

²¹ See recent examples of such communications from UN Special Rapporteurs at UN Special Procedures, Joint allegation letter, 13 March 2024, UN Doc. AL THA 3/2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28802>; and UN Special Procedures, Joint allegation letter, 5 May 2023, UN Doc. AL THA 2/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28064>

²² Thailand received at least four recommendations on arbitrary arrest and detention of activists during the Universal Periodic Review in 2021. See United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Thailand, 21 December 2021, UN Doc. A/HRC/49/17, recommendation 52.47 by Mexico ("Decriminalize freedom of expression and peaceful assembly and avoid the detention of minors for exercising these rights"), recommendation 52.52 by Austria ("Guarantee the rights to freedom of expression and assembly and stop targeting civilians engaging in peaceful protests under criminal charges entailing punishment with exorbitant prison terms"), recommendation 52.60 by Sweden ("Amend article 112 of the criminal code on royal defamation to bring it into line with Thailand's international human rights obligations under the International Covenant on Civil and Political Rights and, as an intermediate step, remove mandatory minimum prison terms for violations of that provision") and recommendation 52.83 by Ireland ("End arbitrary detentions, arrests and any acts of harassment against political actors and civil society, including human rights defenders").

DEATH IN CUSTODY

Netiporn 'Bung' Sanesangkhom, a 28-year-old woman activist, was among those who were denied bail and was held in arbitrary detention twice due to her peaceful activism. Netiporn faced seven criminal charges because of her involvement in the protest movement, including one charge of *lèse-majesté* which stemmed from peacefully conducting a public opinion poll on 8 February 2022 about road traffic controls imposed during royal motorcades.²³

She was initially granted temporary release pending her trial, but on 3 May 2022, the Southern Bangkok Criminal Court revoked bail and remanded her in custody in the *lèse-majesté* case mentioned above because Netiporn had continued to take part in peaceful assemblies and had violated a bail condition requiring her to refrain from “joining a protest that causes public disorder”.²⁴ She then went on her first hunger strike until she was temporarily released on 4 August 2022.²⁵

More recently, in a separate case, on 26 January 2024, Netiporn was sentenced to one month’s imprisonment for contempt of court.²⁶ In late February 2024, her detention was then extended, as the Bangkok Criminal Court revoked bail and remanded her in custody for the same aforementioned *lèse-majesté* case against her, which was still pending.²⁷ Starting on 27 January 2024, she went on her second hunger strike, this time for more than 65 days, to protest her detention and the detention of other activists.²⁸ Eventually, she reportedly suffered a cardiac arrest on 14 May 2024 and passed away, while in the Central Women’s Correctional Institute Hospital.²⁹

Under international human rights law and standards, the Thai authorities must respect, protect, and fulfill the right to life of everyone under their jurisdiction, including people in detention. There is a presumption of State liability for arbitrary deprivation of life that arises in connection with custodial deaths. Such presumption may be rebutted only when the State is exonerated of any liability through a prompt, thorough, effective, independent, impartial and transparent investigation into the circumstances and causes of such a death, which is an essential requirement to uphold the right to life.³⁰

Thailand is further obligated under international human rights law to provide medical care for everyone deprived of their liberty. Thailand is a State Party to the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights has stated that governments must respect the right to health by ensuring equal access to health services for all persons, including prisoners.³¹ The 1990 UN Basic Principles for the Treatment of Prisoners stipulate that prisoners should have access to the same health services as the general population in a country without discrimination.³² Additionally, the revised 2015 UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) restate that right and mandate prompt access to medical attention in urgent cases and the transfer of prisoners requiring specialized treatment or surgery to appropriate facilities, which can also be civil hospitals if needed.³³

RECOMMENDATIONS

The abuse of the judicial process and the arbitrary detention of human rights defenders, activists and protesters constitute violations of Thailand’s obligations under international human rights law, as would any failure to effectively investigate the custodial death of Netiporn ‘Bung’ Sanesangkhom. The Thai government must act to uphold its commitments to protect human rights and ensure the rights to freedom of expression, peaceful assembly, liberty and security of person, due

²³ Thai Lawyers for Human Rights, บุ่ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชั้นอุทธรณ์คดีต่อในวันพรุ่งนี้ (previously cited).

²⁴ Thai Lawyers for Human Rights, ศาลสั่งถอนประกัน “ไบปอ – เนติพร” ผู้ต้องหา ม.112 คดีทำโหลยขบวนเสด็จ ซึ่งสร้างความวุ่นวายกับกลุ่มผู้ชุมนุมอื่น ผิดเงื่อนไขประกัน, 5 May 2022, <https://tlhr2014.com/archives/43235>

²⁵ Thai Lawyers for Human Rights, บุ่ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชั้นอุทธรณ์คดีต่อในวันพรุ่งนี้ (previously cited).

²⁶ Thai Lawyers for Human Rights, บุ่ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชั้นอุทธรณ์คดีต่อในวันพรุ่งนี้ (previously cited).

²⁷ Thai Lawyers for Human Rights, บุ่ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชั้นอุทธรณ์คดีต่อในวันพรุ่งนี้ (previously cited).

²⁸ Thai Lawyers for Human Rights, บุ่ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชั้นอุทธรณ์คดีต่อในวันพรุ่งนี้ (previously cited).

²⁹ Thai Lawyers for Human Rights, บุ่ง เนติพร เสียชีวิตระหว่างการควบคุมตัวของ จนท.ราชทัณฑ์ รอชั้นอุทธรณ์คดีต่อในวันพรุ่งนี้ (previously cited).

³⁰ International Covenant on Civil and Political Rights, Article 6(1); the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), and its companion document, the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). See also: Amnesty International, Thailand: Tragic death of detained activist must be ‘wake-up call’, 14 May 2024, <https://www.amnesty.org/en/latest/news/2024/05/thailand-tragic-death-of-detained-activist-must-be-wake-up-call/>

³¹ International Covenant on Economic, Social and Cultural Rights (CESCR), Article 12. See also CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 34.

³² Basic Principles for the Treatment of Prisoners, Rule No. 9.

³³ United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules No. 24 and 27.

process guarantee, and the right to life, among other rights, are respected. The Thai authorities need to take immediate steps outlined below to address the concerns raised in this letter and to demonstrate their adherence to their international human rights obligations, with a view to fostering an environment where human rights are fully respected and protected. These actions are essential to comply with the ICCPR and other international standards.

To end the abuse of the judicial process and the arbitrary detention of human rights defenders and activists, we call on the Thai authorities to:

- Respect, protect and fulfil the rights of everyone, including of children and other young people, to freedom of expression, association and peaceful assembly;
- Conduct a thorough review of the bail process to align it with international human rights law and standards, ensuring that detention in connection with the legitimate exercise of human rights is arbitrary and unlawful, and pre-trial detention be the exception rather than the rule;
- Immediately and unconditionally release individuals from arbitrary detention, drop criminal investigations and prosecutions and quash convictions related solely to their exercise of their rights to freedom of expression and peaceful assembly;
- Repeal or amend laws used to stifle peaceful dissent, including by bringing the *lèse-majesté* (Article 112) and sedition (Article 116) provisions and the CCA in line with international human rights law and standards on freedom of expression, as recommended by the Human Rights Council's Special Procedures and the UN Human Rights Committee; and
- Establish regular, structured dialogue with civil society organizations to address concerns referred to in this letter and involve them in relevant policy-making processes.

To address the concerns around the death in custody of Netiporn, take the following actions:

- Conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the circumstances and cause of Netiporn's death, in line with international human rights law and standards, including in the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), to establish accountability and prevent future occurrences;
- Provide appropriate forms of remedy, including compensation and other forms of reparations, as warranted in line with international law; and
- Ensure the right to health for all detainees, as a minimum as mandated by the Nelson Mandela Rules, including by providing prompt access to medical attention and necessary specialized treatment or surgery as needed.

The undersigned organizations remain committed to working with relevant government agencies to provide any additional information you may need in order to fulfill these recommendations.

LIST OF UNDERSIGNED ORGANIZATIONS

1. Amnesty International
2. Asian Forum for Human Rights and Development (FORUM-ASIA)
3. Cross-Cultural Foundation (CrCF)
4. Fortify Rights
5. International Commission of Jurists (ICJ)
6. Organizations within the framework of the Observatory for the Protection of Human Rights Defenders, including:
 - a. International Federation for Human Rights (FIDH);
 - b. World Organisation Against Torture (OMCT)
7. Thai Lawyers for Human Rights (TLHR)