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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of human rights defender and magazine editor Mr. Somyot Prueksakasemsuk, who is in the process of standing trial on charges of lèse majesté since 21 November 2011 through to 4 May 2012. Mr. **Somyot Prueksakasemsuk** is a labour rights activist and is affiliated with the Democratic Alliance of Trade Unions. He was the editor of Voice of the Oppressed (Voice of Taksin) and he is also an activist for the right to freedom of association in Thailand.

Mr. Somyot Prueksakasemsuk was the subject of a previous communication sent to your Excellency's Government on 10 June 2011, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders. We appreciate the response sent by your Excellency's Government on 24 June 2011, which stated that the action taken by Thai authorities was to follow due process of law and that the reason of the court's rejection regarding the request for bail was on the ground to prevent Mr. Somyot Prueksakasemsuk from fleeing the country.

According to new information received:

On 30 April 2011, Mr. Somyot Prueksakasemsuk was arrested at Aranyaprathet district, Sa Kaeo Province, and charged with contravening the lèse majesté law or Section 112 of the Thai Criminal Code, which states that “whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.”

Mr. Somyot Prueksakasemsuk’s arrest came only five days after he held a press conference in Bangkok launching a campaign to collect 10,000 signatures to petition for a parliamentary review of Section 112 of the Criminal Code, which allegedly in the opinion of Mr. Somyot Prueksakasemsuk, contradicts democratic and human rights principles.

It is further reported that according to a document produced by the Public Prosecutor, Mr. Somyot Prueksakasemsuk permitted two articles that made negative references to the monarchy to be published in his magazine. The penalty for Section 112 of the Thai Criminal Code is between three to fifteen years of imprisonment for each count. As a result of the two articles, he is reportedly facing two counts of charges which could carry a maximum of 30 years of imprisonment if found guilty.

Mr. Somyot Prueksakasemsuk was reportedly detained in Bangkok Special Prison and transferred to Sa Kaeo Provincial Court on 12 November 2011. On 1 November 2011, his fourth bail request was denied.

It is reported that the first day of the trial was on 21 November 2011. It is further reported that the rest of the hearings involving the prosecution witnesses will take place on 19 December 2011, 16 January 2012, and 13 February 2012 in the provinces of Sa Kaeo, Petchabun, Nakorn Sawan, and Songkla, respectively, while the defence witnesses will be called to appear before Bangkok Criminal Court on 18-20 April 2012, 24-26 April 2012, and 1-4 May 2012. The lawyer for Mr. Somyot Prueksakasemsuk lodged a request to the court to hold the first part of the trial, from 21 November 2011 until 13 February 2012, in Bangkok, but it was rejected.

The witnesses to come before the hearings of 21 November 2011 (Sa Kaeo), 19 December 2011 (Petchabun), 16 January 2012 (Nakorn Sawan), and 13 February 2012 (Songkla) are to be different and according to the information received, the trial will be heard by different judges since they can only work in their assigned area. It is unsure whether the prosecutor will travel to these locations or not, or if the prosecutor will be different according to the location.

It is further reported that the different geographical venues of the hearings for the prosecution witnesses will also place an undue burden on Mr. Somyot Prueksakasemsuk and his family. This may also allegedly prevent the full presence and participation of independent trial observers, including journalists.

Concerns are expressed about the psychological integrity of Mr. Somyot Prueksakasemsuk. Serious concerns are expressed that the detention of Mr. Somyot

Prueksakasemsuk may be directly related to his work in defence of human rights and his legitimate exercise of his right to freedom of opinion and expression, and in particular due to his campaign to abolish Section 112 of the Thai Criminal Code. Concerns are also expressed that due to the fact that the application for bail continues to be denied until the conclusion of the trial, Mr. Somyot Prueksakasemsuk will have to be in detention for over a year before a verdict is reached, since the trial is expected to last until at least 4 May 2012 and the verdict is expected a month after the end of the trial.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. Somyot Prueksakasemsuk.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Somyot Prueksakasemsuk is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (and articles 9 and 14 of the International Covenant on Civil and Political Rights).

With respect to the fact that the trial hearings will be heard by different judges according to the different locations, we would like to stress that the requirement of competence, independence and impartiality of a tribunal pursuant to article 14, paragraph 1, of the ICCPR is an absolute right that is not subject to any exception. The change in the composition in the panel of judges cast doubts about the respect of this right.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Somyot Prueksakasemsuk are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Somyot Prueksakasemsuk in compliance with the aforementioned international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of this case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Somyot Prueksakasemsuk?
3. Why is the hearing of prosecution and defence witnesses scheduled to take place in different locations and heard by different judges?
4. Please provide information concerning the legal grounds for the arrest and detention of Mr. Somyot Prueksakasemsuk and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
5. Please indicate what measures have been taken to ensure that the legitimate right to defend human rights peacefully is respected and that the physical and

psychological integrity of those exercising this right is guaranteed and respected.

6. Please indicate how the lèse majesté legislation is compatible with international human rights standards.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders