



No. 52101/ 365

**PERMANENT MISSION OF THAILAND
GENEVA**

25 May 2012

Dear Mr. La Rue, Mr. Grover and Mr. Méndez

Further to the letter of the Permanent Mission of Thailand No. 52101/224 dated 4 April 2012 sending clarification in response to your joint communication on the cases of Mr. Amphon Tangnoppakul and Ms. Daranee Charnchoengskilpakul, I have the honour to forward herewith additional clarifications addressing your concerns on these two cases.

It is our hope that the clarification will provide information on the issues raised in your joint communication. Particularly in the case of Mr. Tangnoppakul, the Royal Thai Government is deeply saddened by his death. Indeed it is regrettable that certain individuals or groups have made attempts to use his death to gain publicity for their own political gains.

I also take this opportunity to highlight that the lèse-majesté law is part of Thailand's Criminal Code, which also contains general provisions on defamation and libel of private individuals. The law gives protection to the rights or reputation

Mr. Frank La Rue,
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
Mr. Anand Grover,
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
Mr. Juan Méndez,
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;
Special Procedures Branch,
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Palais des Nations,
1211 GENEVA.

Fax: 022 917 9006

Reference: UA G/SO 214 (67-17) Health (2002-7) G/SO 214 (53-24) THA 10/2011

Enclosure.

 **OHCHR REGISTRY**

29 MAY 2012

Recipients :..... *S.P.D. (Encl)*

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of the King, the Queen, the Heir-Apparent, or the Regent in a similar way libel law does for commoners. Its aim should not be misinterpreted as curbing people's rights to freedom of opinion and expression nor the legitimate exercise of academic freedom including debates about the monarchy as an institution.

Lastly, the Permanent Mission of Thailand stands ready to continue our engagement on the issue of lèse-majesté law with all relevant Special Procedures mandate holders.

Sincerely yours,



(Pisanu Chanvitan)
Ambassador
Permanent Representative

**Additional Clarification by the Royal Thai Government
regarding the cases of
Mr. Ampon Tangnoppakul and
Ms. Daranee Charnchoengsilpakul
in relation to the lèse-majesté law in Thailand**

Mr. Ampon Tangnoppakul

1) Please provide the full details of the charges against Mr. Ampon Tangnoppakul, and how they are compatible with the international norms and standards of the right to freedom of opinion and expression.

Mr. Ampon Tangnoppakul was found guilty by the Criminal Court on four counts of sending text messages from his mobile phone to the same person four times, which were deemed offensive to and insulting the Queen under Section 112 of the Thai Penal Code. During the course of the trial, he has been accorded due process as provided by the Thai Criminal Procedure Code including the right to fair trial, due opportunity to contest the charges and assistance from his lawyer, as well as the right to appeal. The text messages he sent contained extremely rude and offensive language in reference to the Queen which clearly reflected his intention to insult Her Majesty. Judging from all the evidence and testimonies, the Court found him guilty and sentenced him to five years' imprisonment for each charge, in line with Section 91 of the Thai Penal Code, which stipulates that "if it appears that any offender has committed several distinct and different offences, the Court may inflict upon such offender the punishment prescribed for each offence". This is an international legal principle that has been applied in most countries.

With regard to the issue of proportionality of the offence, it must be noted that Section 112 carries the punishment of imprisonment of three to fifteen years. The 5-year imprisonment sentence for each count is only 2 years above the minimum sentence under Section 112. Considering his intention and the gravity of the offence, the sentence of five years' imprisonment for each charge is not at all disproportionately severe for the offence. The allegation that the verdict of the Thai Court is gravely disproportionate reflects an imperfect understanding of the circumstances of the case and could be regarded as contempt of the Thai Court of Justice. On the issue of Mr. Tangnoppakul's age and illness, since the law must be equally enforced upon all citizens, the circumstances of Mr. Tangnoppakul's health and old age cannot be used as an excuse to exempt him from legal punishment.

Regarding the right to freedom of opinion and expression, articles 17 and 19 of the ICCPR provide everyone with the right to be protected by the law against unlawful attacks on one's honour and reputation. The offence of *lèse-majesté* can therefore be regarded as an action that can be subjected to legal prosecution under international standards.

2) Please provide details on how to ensure that Mr. Ampon Tangnoppakul has access to health services available while in detention without discrimination on the grounds of his legal status.

The Department of Corrections attaches highest importance to its obligation to implement relevant international human rights norms and instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under the Penitentiary Act B.E. 2479 (1936), in each prison there is a nursing home providing basic medical treatment for prisoners. Sick prisoners can request medical treatment free of charge, and those who require medical treatment exceeding the capacities of the prison will be transferred to a nearby public hospital or the Medical Correctional Institution or the Police General Hospital.

In the case of Mr. Tangnoppakul, as with other prisoners with health problems, Mr. Tangnoppakul was continuously provided with standard medical treatment for his illness in the Corrections Department Hospital, staffed by specialists in various medical fields. Unfortunately, his health condition had been deteriorating when it was found that he had liver cancer. While being treated, he was also allowed to leave the corrections facility to receive chemotherapy at the MRI Centre five times last year and twice this year. Mr. Tangnoppakul died of cancer on 8 May 2012 at the Bangkok Remand Prison Hospital. While deeply saddened by his death, the Royal Thai Government would like to affirm that Mr. Tangnoppakul had received the necessary medical treatment on a non-discriminatory basis regardless of his offence. The final report of his autopsy including a tissue sample examination and toxicology testing is expected to be released in due course.

Ms. Daranee Charnchoengsilpakul

Ms. Daranee Charnchoengsilpakul, is currently serving an eighteen-year sentence for an alleged *lèse-majesté* violation. She suffers from severe jaw disease and has also reportedly been denied necessary medical treatment.

Prior to her conviction, Ms. Daranee Charnchoengsilpakul had a car accident in November 2007 which caused her to have a jaw joint problem. While in custody at the Central Female Prison, she received medical treatment many times from the Correctional Hospital, including several times to address her jaw joint pain. She was later admitted to the Police General Hospital on 3 December 2009 following the results of a CT scan which showed that Ms. Charnchoengsilpakul had a severe jaw disease. Treatment was then provided by medical doctors at the Police General Hospital. As from 2010, she has seen doctors regularly for jaw joint and overall physical check up and to receive the necessary medication, including preparation for an operation recommended by the doctors to alleviate the severe jaw disease. However, hospital records reveal that she herself has since postponed the necessary operation several times in the expectation that she might be released on bail.

It can thus be said that Ms. Charnchoengsilpakul has already received all necessary medical treatment and has been ensured the right to health through accessing healthcare services in accordance with international human rights obligations and standards.

Ministry of Foreign Affairs of Thailand
17 May 2012

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