

(COPY)

Enclosure 2

7/4

URGENT

No. 52101/ 223



PERMANENT MISSION OF THAILAND
GENEVA

4 April 2012

Dear Mr. Sow, Ms. Knaul, Mr. La Rue, Ms. Sekaggya,

I wish to refer to your joint communication dated 20 December 2011 sending an urgent appeal on the case of Mr. Somyot Prueksakasemsuk, who was also the subject of a previous communication dated 10 June 2011 and our subsequent response dated 24 June 2011. In particular, the urgent appeal sought an explanation on the compatibility between the lèse-majesté law in Thailand and Article 19 of the International Covenant on Civil and Political Rights.

I have the honour to forward herewith the clarification by the Royal Thai Government which addresses many points raised in your communication, particularly the legal aspects of the lèse-majesté law and the context relating to its enforcement in Thailand. It is our hope that the clarification will be duly reflected in the reports of all relevant Special Procedures mandate holders.

Mr. El Hadji Malick Sow,
Chair-Rapporteur of the Working Group on Arbitrary Detention;
Ms. Gabriela Knaul,
Special Rapporteur on the independence of judges and lawyers;
Mr. Frank La Rue,
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression;
Ms. Margaret Sekaggya,
Special Rapporteur on the situation of human rights defenders;
Office of the High Commissioner for Human Rights,
Palais des Nations, CH-1211,
GENEVA.

Fax: 022 917 9006

File No.: G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO (3-3-16)

THA 9/2011

Enclosure.

8
14

Lastly, the Permanent Mission of Thailand stands ready to continue our engagement in this regard with all of the relevant Special Procedures mandate holders.

Sincerely yours,



4/4/12

(Pisanu Chanvitan)

Ambassador

Permanent Representative

๒๐๑๒
๔ ๑๒ ๒ ๕๕

๒๐๑๒
๒๐๑๒
๔ ๒๑ ๒ ๕๕

Clarification by the Royal Thai Government regarding the lèse-majesté law in Thailand in response to the comments in the joint letter of the Special Rapporteurs

1) **The lèse-majesté law does not meet the criteria establishing the international standard - that the restriction of freedom of expression must be provided by law, which is clear and accessible to everyone. Section 122 of the Penal Code has no definition of what constitutes “defamation” or “insult”. The lack of clarity and ambiguity of the law means that the right to freedom of expression can be arbitrary or unduly restricted, and promote self-censorship.**

The Thai Penal Code provides for the definition of “defamation” in Section 326 of Chapter 3 on the Offence of Defamation under Title XI Offences against Liberty and Reputation, which states that *“Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation.”* This is the definition of defamation against an ordinary person which has also been used to define defamation in lèse-majesté offences. This definition is easily accessible and is widely known by everyone. Moreover, the court’s rulings on the lèse-majesté cases have also been used by the police and prosecutors as criteria to consider what constitutes defamation or insult in the course of legal proceedings.

2) **Any restriction sought to be justified on ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use of threat of force. Clarification is needed in regard to the demonstrable effect of the lèse-majesté law to protect the country’s existence.**

The Thai monarchy has a long history dating back to ancient times. The status of the Thai monarchy’s relationship to Thai society is different from that of other constitutional monarchies. This is due to the institution’s direct involvement in and contributions to Thailand’s nation building.

Throughout his entire life, His Majesty King Bhumibol Adulyadej has tirelessly dedicated himself to the well being of the Thai people. There is a special bond between the King and the people through his visits to every part of the country in which the King typically met with local villagers and discussed their needs and problems. These trips and the knowledge gained resulted in more than 4,000 royally-initiated development projects aimed at providing for basic needs and infrastructure so that people are better able to help themselves attain a better quality of life. The royal projects have benefited people across all regions of the country, in particular reaching out to previously inaccessible and remote areas inhabited by marginalized populations, often deemed sensitive in security terms. His Majesty the King’s numerous speeches and reflections have also provided valuable guidance to the state authorities and ordinary Thai people. The King’s tireless work over 60 years in the throne and his embodiment of virtue and espousal of righteousness has *earned* him utmost respect from the Thai people not only as the Head of State, but also **the Soul of the Nation**. Through his reign, the institution of the monarchy and its role have thus become an integral part of the national psyche, with the King being called a “father” whom the Thai people most love and respect. The close bonds between the Thai monarchy and the people of Thailand are genuine and unique in present day circumstances.

Hence, it is not only the King himself but also the feeling of Thais towards their King that has a demonstrable effect on national stability. Any threats or attacks against their beloved King tend to hurt the feeling of most Thais since they feel as if it is their own parent that is being attacked. Views or unfair criticisms that are disrespectful of the monarchy, or which advocate hatred or hostile feelings towards the institution, can generate spontaneous actions from the silent

10
14

expression without limit and responsibility, as well accountability, especially in regard to the monarchy, could cause the country to disintegrate into factions. Such is the imminent threat to national unity and stability and indeed national existence. The lèse-majesté law is therefore legitimate and indispensable for national security in this respect. It has even greater justification in addressing situations intentionally created by those seeking to overthrow the monarchy. Indeed, the law aims not only to protect the monarchy but also to safeguard order, peace and stability of the nation.

3) The punishment of imprisonment of up to fifteen years for violating the lèse-majesté law is disproportionate. All public figures including heads of State are legitimately subject to criticism and political opposition. The fact that the King himself is not averse to criticism could be seen as adding weight to the suggestion that these laws should be reformed or revoked, since they would appear to have limited utility.

The King himself is not averse to criticism, but the Thai people are more sensitive in so far as the monarchy is concerned. The lèse-majesté law thus exists as the result of a societal consensus or an expression of popular will. The fact that most Thais want to protect the monarch, their "father", from any threat or harm has provided the basis of a provision which appears in every Thai Constitution. Section 8 of the present Thai Constitution states that "*The person of the King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action.*" This provision is the effect of Thai culture and ethics which are deeply rooted in the Thai society. In connection with the Constitution derives the lèse-majesté law as part of the Thai Penal Code. Arising from the exalted status of the monarchy that is tied to national security as described above, the lèse-majesté law falls into specific offences relating to the security of the Kingdom. Thailand considers defamation against its monarch to be a more serious offence than defamation against an ordinary person since it is not just harmful to the person insulted but to the whole society. Actions constituting lèse-majesté have repercussions not only on the most revered institution, but on public order and morals. It is therefore reasonable to impose more severe punishment on such an offence.

Due to the close bonds between the King and the people, it is quite natural that the people would wish to protect their King. Such public feeling has recently grown even stronger given the emergence of a perceived threat to undermine and overthrow the monarchy. Furthermore, the abolition of the lèse-majesté law would also entail amending Section 8 of the Constitution mentioned above. The Thai Government has already made clear that in the ongoing process of constitutional amendment, the Section concerning the monarchy in the Constitution will remain untouched. As it is not the wish of the majority of the people, the Government has also made clear that it will not initiate any move to amend or review the lèse-majesté law.

For Thais, the lèse-majesté law has extensive utility as it aims to protect the King who is the symbol of the existence of the nation. The suggestion that the lèse-majesté law should be reformed or revoked due to its "limited utility" unfortunately reflects an imperfect understanding of the ethical and cultural norms underlying Thai society.

In conclusion, the reasons above clearly demonstrate that the lèse-majesté law is consistent with Article 19 of the International Covenant on Civil and Political Rights (ICCPR). It satisfies the criteria for a restriction of freedom of expression on the basis of the principles of predictability and transparency; legitimacy; and necessity and proportionality.

Additional clarification

Issues that have arisen regarding the lèse-majesté law lie not in any fundamental problem with the law itself, but the abuse of the law for political gain in the political conflicts which have been ongoing in Thailand for the past few years. Efforts have been made to curb such abuse. First, the Royal Thai Police has set up a committee to provide a safeguard in screening cases. Currently, lèse-majesté cases are being considered not by line police officials, but by the said committee established to ensure that each case is not politically motivated before instituting prosecution. As a result, many charges have been dismissed for lack of substantial evidence.

Second, an advisory committee under the Ministry of Justice has been set up to consider, give advice and provide recommendations to police and prosecutors concerning the manner in which these cases are handled, with respect for the rights of those charged. The committee eventually hopes to put in place a reliable process with better coordination and more discretion in handling the lèse-majesté cases, with a view to minimizing the number of cases that go to the court.

Third, when the case makes it to the court, the court will consider "intent" as the basis for its deliberation. A number of lèse-majesté cases have been dropped in the court since it found no intention on the part of defendants. However, if the court found that the defendant had intent to defame or insult, the court will have to use its discretion -- based on the nature and intention behind the commission of offences, level of violence, and effect on security, peace and order of the country -- to impose a penalty that is not disproportionately severe for the offence.

Fourth, regarding the recommendations of the Truth for Reconciliation Commission (TRC) that concern lèse-majesté, those recommendations did not touch on the repeal of the law, but rather the improvement of its enforcement and the importance to hold the monarchy above political conflict. This confirms that in the TRC's view the repeal of the lèse-majesté law is not an issue **since it will adversely affect the national reconciliation process**. The Government has taken up the TRC's advice by setting up a committee to coordinate with the TRC in the implementation of its recommendations. It is worth noting that since the new Government assumed office in July 2011, there has been a decline in the number of prosecutions on lèse-majesté cases.

Fifth, a person who intentionally commits a lèse-majesté offence will be prosecuted in accordance with the Thai law without exception. Indeed, the law must be respected. However, the Thai Government can affirm that any person charged with lèse-majesté offences are 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 legal counsel. They are also entitled to the right to appeal and seek a royal pardon from the King. This affirmation has also been reflected by way of Thailand's acceptance of UPR recommendations concerning the rights of lèse-majesté defendants.

Lastly, it should be noted that there has been an on-going lively public debate on the lèse-majesté law. This illustrates the fact that the law does not aim to restrict the legitimate right of all persons to freedom of opinion and expression. **Criticism of the law itself is not regarded as an act of lèse-majesté**. This shows the openness of the Thai society. The lèse-majesté law is nevertheless a highly sensitive issue that concerns the stability and unity of the nation. This matter is regarded as part of Thailand's domestic affairs, for which the Thai people will find an appropriate approach through such public debate. The fact that the monarchy should be left above politics is the prerequisite in addressing this challenge. And the solution of this matter will depend **solely on the decision of the Thai people**.