



No. 52101/561

PERMANENT MISSION OF THAILAND
GENEVA

22 October B.E. 2561 (2018)

Dear Sirs,

With reference to your joint urgent appeal Ref. UA THA 4/2017 dated 30 June 2017 requesting the Royal Thai Government to provide information regarding the alleged acts of intimidation against Mr. Maitree Chamroensuksakul, a citizen journalist and founder of the Rak Lahu group, and the Permanent Mission's letter No. 52101/440 dated 7 July 2017 informing that the said case had been forwarded to the relevant agencies in Thailand, I have the honour to transmit herewith a response, as received from the Royal Thai Police, the Ministry of Justice and the Ministry of Social Development and Human Security and compiled by the Ministry of Foreign Affairs of Thailand. I hope that the clarification provided will help address your concern on this matter.

In reassuring you of Thailand's continued commitment to cooperating with all Special Procedures under the Human Rights Council to promote and protect the human rights of all people, I remain,

Yours sincerely,

(Sek Wannamethee)

Ambassador and Permanent Representative

Mr. Clement Nyaletsossi Voule,
Special Rapporteur on the rights to freedom of peaceful assembly and of association;
Mr. Michel Forst,
Special Rapporteur on the situation of human rights defenders;
Mr. Fernand de Varennes RP, Doyen,
Special Rapporteur on minority issues;
Office of the United Nations High Commissioner for Human Rights,
GENEVA.

**Clarification by the Royal Thai Government
regarding the case of Mr. Maitree Chamroensuksakul
in response to (1) the Joint Communication from Special Procedures and
(2) the Report of the UN Secretary General on ‘Cooperation with the United Nations,
its representatives and mechanisms in the field of human rights’ (A/HRC/39/41)**

1. The Royal Thai Government adheres to its duty stipulated in the 2017 Constitution of the Kingdom of Thailand to grant access and deliver justice in an unbiased, non-discriminated and timely manner to all. The cases of Mr. Chaiyaphum Pasae and Mr. Maitree Chamroensuksakul have received close attention from the Royal Thai Police.

Information on the factual basis of the charges

2. According to the police files, the car owned by Mr. Pasae, driven by Mr. Pasae’s friend with Mr. Pasae as a passenger, was stopped by the officers at a permanent checkpoint on the way to Chiang Dao District on 17 March 2017. The car search yielded 2,800 methamphetamine pills hidden in the air filter. The possession of narcotic drugs was against the Narcotics Act B.E. 2522 (1979), which provided a legal base for a legitimate arrest. However, Mr. Pasae showed signs of resistance and was therefore brought to the area near the back of the car by the officers. Mr. Pasae then grabbed a knife from the car trunk and aimed at the officers. The officers tried to take control of the situation by shooting a warning shot, taking away the knife and making Mr. Pasae lie down. Mr. Pasae rolled away from the officer’s grasp, took an explosive from the car trunk and attempted an escape by attempting to throw the explosive at the pursuing officers. One of the officers therefore fired a shot at Mr. Pasae, causing his death. This reflects that the death of Mr. Pasae does not stem from his capacity as a human rights defender, but rather on the basis of the officer’ self-defense against his attempt to kill the officials in the exercise of their function.

3. Following the incident, the Na Wai Provincial Police Station initiated an investigation into Mr. Pasae’s possession of methamphetamine for the purpose of disposal and his attempt to kill the military officers in the exercise of their function. Additionally, a postmortem examination for the death of Mr. Pasae and the case against a military officer who allegedly shot Mr. Pasae on an account of carrying out his duty were also initiated.

4. On the case concerning the possession of methamphetamine for the purpose of disposal, the police had conducted intensive investigation and inquired the information from Mr. Chamroensuksakul, whom Mr. Pasae shared a close relationship with since the former played a part in his education and livelihood since 8 years old.

5. Mr. Chamroensuksakul informed the police that Mr. Pasae bought the car in mid-2016 but Mr. Chamroensuksakul did not have any knowledge on the source of money nor the person whom Mr. Pasae bought the car from. The police therefore delved into Mr. Pasae’s financial status and found a decent amount of money circulated in his bank account during January – mid March 2017, which was considered a high amount for a high school student who did not have any occupation or job.

6. The police conducted further investigation which led to the arrest and criminal charges against 3 individuals, which are [REDACTED] and [REDACTED] on the charge of complicity between 2 or more persons to commit a drug-related offence.

7. Although the house search and arrest of [REDACTED] house took place on 29 May 2017, coincidentally following the day that Mr. Chamroensuksakul met with Mr. Michel Forst, the UN Special Rapporteur on the situation of human rights defenders, during an academic visit in Bangkok, the arrest and search were legitimate and unrelated to the said meeting, as the warrants had been granted by the competent court in accordance with the law.

8. From the facts and evidences surrounding the case, it can be deduced that Mr. Pasae was guilty of the possession of methamphetamine for the purpose of disposal, illegal possession of explosives and unauthorized possession of a firearm in public areas without warrant. However, his death terminated criminal charges and legal proceedings to be made against him.

9. On 24 April 2018, the Chiang Mai Provincial Court ruled that only [REDACTED] is a co-principal in the commission of the crime and is guilty of the charge of possession of methamphetamine for the purpose of disposal. The court sentenced [REDACTED] with life imprisonment and fine of 1,500,000 baht while acquitted other defendants including [REDACTED]. The court later reduced the prison sentence and fine in half due to [REDACTED]'s plea of guilty.

10. On 6 June 2018, the Chiang Mai Provincial Court concluded that Mr. Pasae was killed by military officer's bullet but did not rule whether or not Mr. Pasae possessed drugs or a hand grenade as the case is only to find the cause of his death. Nevertheless, the court will submit the case report to a public prosecutor who will decide whether the military officer who killed Mr. Pasae will be indicted or not.

Witness protection and possible redress for Mr. Chamroensuksakul

11. On 25 May 2017, Mr. Chamroensuksakul reported to the police, claiming he was threatened by 2 men to stop any movements on Mr. Pasae's case. At night, he allegedly heard noises near his house but did not see anyone. In the morning, a bullet was said to be found on the toilet outside the house but could not be shown to the police since Mr. Chamroensuksakul claimed to throw it away after taking the photos. The police advised Mr. Chamroensuksakul to lodge a complaint at the police station for further investigation and legal proceedings, to which Mr. Chamroensuksakul declined but asked that the facts of the incident be recorded in the police daily report.

12. The police further inquired the circumstances of the incident from the assistant village headman and village leader. He informed the police that he had no knowledge of the incident, never received any reports from Mr. Chamroensuksakul and did not know identity of culprits if any.

13. According to the Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act B.E. 2544 (2001), an injured person whose life, body or mind has been injured due to a criminal offence committed by other persons where he or she has not been involved in the commission of such criminal offence is eligible to request for damages under the conditions stipulated under the Act. Should Mr. Chamroensuksakul's claims be proven true and meet the requirement therein, he is eligible to receive damages from the Government as an injured person and is required to file the application within one year of reckoning of the offense against him. In addition, should there be proven threats against Mr. Chamroensuksakul, he is also eligible to file an application for redress money from the Justice Fund.

14. Considering Mr. Chamroensuksakul was one of the individuals giving testimony to the police on the relationship with Mr. Pasae and observing the crime scene after the incident, Mr. Chamroensuksakul is therefore a circumstantial witness in this case and is entitled for witness protection under the Witness Protection Act B.E. 2546 (2003). The National Human Rights Commission (NHRC) also brought a complaint concerning threats against Mr. Chamroensuksakul to the Office of the Witness Protection under the Rights and Liberties Protection Department of the Ministry of Justice. On 3 May 2017, the Office contacted Mr. Chamroensuksakul for initial inquiry in accordance to its procedure. However, Mr. Chamroensuksakul declined to further testify as witness for relevant criminal cases and declined to be put under witness protection program. Still, he was advised to get in touch with the police or the Office of the Witness Protection to apply for witness protection should he ever feel unsafe or threatened due to the fact that he gave a testimony to the police.

The well-being of Mr. Pasae's family

15. After the incident, the Department of Children and Youth (DCY) of the Ministry of Social Development and Human Security conducted a visit to Mr. Pasae's family and Mr. Chamroensuksakul to inquire on their welfare and to provide any assistance should both families require from the government.

16. From the meeting with [REDACTED] DCY found that [REDACTED] currently lived with her new husband and a [REDACTED] in Chiang Dao District, Chiang Mai Province. The family received no threats or intimidation after Mr. Pasae's demise and lived a safe and normal life. Should the family feel unsafe or threatened by the incident concerning Mr. Pasae's demise, they were advised to file an application for witness protection to the Office of the Witness Protection of the Rights and Liberties Protection Department of the Ministry of Justice.

17. [REDACTED]

The well-being of Mr. Chamroensuksakul's family

18. After the arrest of [REDACTED] under drugs-related charge, Mr. Chamroensuksakul decided to move his family and [REDACTED] to Muang District, Chiang Mai, due to fears of possible threats from his role in seeking clarification on Mr. Pasae's demise.

19. On the arrest of [REDACTED] the family has sought necessary legal aid from the Ministry of Justice, who has filed an application for provisional release for [REDACTED] to the Court of Justice.

20. DCY also learned that the three children had not entered school but been home-schooled by Mr. Chamroensuksakul. Mr. Chamroensuksakul informed DCY that he planned to enroll them for the next academic year and that the children were seeing a psychologist due to the incident. Mr. Chamroensuksakul was advised to find a suitable residence which would benefit the children's education. DCY also offered to assist Mr. Chamroensuksakul in school enrollment upon request and was under deliberation to grant financial aid to his family.

Thailand's policies and measures to safeguard human rights defenders

21. The Government adheres to its commitment to honor and protect human rights of all persons and recognizes the significant contribution of human rights defenders to the promotion and protection of human rights. It is also acknowledged that their activities could make them targets of threats, unlawful intimidation and reprisals. The Government has thus introduced mechanisms to ensure a safe and enabling environment in which human rights defenders can perform their roles legitimately without being targeted.

22. In 2016, the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice - in collaboration with civil society organizations and the OHCHR Regional Office in Bangkok - published the "Handbook to Protect Human Rights Defenders" and distributed to the public, especially to human rights defenders working in field operations. The Government had also cooperated with all stakeholders and partners to develop further details of the handbook to ensure its practicality.

23. In addition, RLPD conducted a workshop on human rights defender protection framework, with a view to categorizing the security status of human rights defenders and proposing a suitable level of protection to safeguard each group against harm. The workshop came to the categorization of human right defender security status into 4 groups; (1) Black group: human rights defenders who fall to death reprisals, whom their family should be eligible for compensation and receive close follow-up of their welfare by government officers; (2) Red group: human rights defenders who receive serious threats but not life-threatening; (3) Orange group: human rights defenders who are targeted by lawsuits; (4) Grey group: human rights defenders who are at risk of receiving intimidation/ reprisals.

24. RLPD has also established a working group to develop protection measures for human rights defenders whose work expose them to a risk of receiving threats, intimidation and reprisals. The names of these human rights defenders will be compiled in the list called "White List". Members from both government and civil society organizations work closely to issue and improve practical measures on the protection of this risk group aligning with relevant international standards.

25. Moreover, RLPD has improved its complaint receiving form. It now includes issues concerning the work of human rights defenders.

26. RLPD has conducted field trips to monitor the situation of human rights defenders in various provinces with relevant organizations, including OHCHR and Protection International.

27. The Government is currently working on the amendment of Witness Protection Act B.E. 2546 (2003) to enhance legal framework and measures on witness safeguard and protection. The draft Act was open to public consultation. The opinions received on the draft were presented in the report for law amendment consideration, ensuring that public opinions are taken into consideration of the lawmakers.

28. The National Human Rights Commission (NHRC) is expected to be a key player in the safeguard and protection of human rights according to the Organic Act on National Human Rights Commission, which came into force on 13 December 2017. The Act specifically empowers NHRC to bring cases and complaints to the court on behalf of victims of human rights violations if the victims are unable to do so.

29. Human rights defenders are included in the draft 4th National Human Rights Plan (2019 – 2023) to ensure that they will be safeguarded against intimidation, reprisals or any unlawful acts, as well as to reaffirm the Government's determination in protecting, respecting and honoring human rights.

30. In addition, the draft Prevention and Suppression of Torture and Enforced Disappearance Act has been revised and recently resubmitted to the Cabinet for its due consideration. In the meantime, the Government has set up the 'Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance' as a mechanism in response to the Prime Minister's instruction. Chaired by the Minister of Justice, the Committee has a mandate to issue policies, work plans and measures on torture and enforced disappearance prevention as well as to receive and conduct fact-finding on the complaints and provide assistance and remedies to affected persons. The Committee is supported by four sub-committees on (1) follow-up and monitoring, (2) assistance and remedy, (3) prevention and training, and (4) case screening.

Ministry of Foreign Affairs of Thailand
September 2018