

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**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 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4, 15/22, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding recent cases of alleged human rights violations, including denial of medical attention while in detention, in relation to the lèse majesté law in the Kingdom of Thailand, as summarized below.

According to the information received:

Mr. Ampon Tangnoppakul, a 61 year old Thai national, was arrested on 3 August 2010 for sending four SMS messages in May 2010 considered offensive to the monarchy, and charged under article 14(2) and (3) of the Computer Crimes Act and article 112 of the Thai Penal Code. Allegedly, the messages were sent to an official working for the then Prime Minister Abhisit Vejjajiva.

It was reported that on 3 August 2010, a group of 15 police officers raided Mr. Ampon Tangnoppakul's house and arrested him. He was reportedly detained for 63 days in pre-trial detention before he was granted bail on 4 October 2010. Allegedly Mr. Ampon Tangnoppakul was unable to access proper treatment during this pre-trial detention period.

On 18 January 2011, Mr. Ampon Tangnoppakul was formally charged by the prosecutor with violations of the Penal Code and the Computer Crimes Act. He has been incarcerated since then, the court refusing bail on the basis of the gravity of his crime and the possibility of flight. His trial took place on 23 and then resumed from 27 to 30 September 2011.

Throughout, Mr. Ampon Tangnoppakul maintained his innocence, claiming that he did not know how to send SMS messages, and that the number from which the message was sent to the aforementioned Government official was not his own number. The prosecutor rejected Mr. Ampon Tangnoppakul's claim, and argued that the International Mobile Equipment Identity (IMEI) number of the cell phone that sent the messages to the Government official belonged to Mr. Ampon Tangnoppakul. The court found Mr. Ampon Tangnoppakul guilty.

On 23 November 2011, Mr. Ampon Tangnoppakul was convicted and sentenced to a total of 20 years imprisonment.

In addition, we would like to refer your Excellency's Government to the case of Ms. Daranee Charnchoengskilpakul, a campaigner for former Prime Minister Thaksin Shinawatra. Ms. Daranee Charnchoengskilpakul was arrested after delivering a speech at a rally in Bangkok which criticized the manner by which the change of Government was brought about in 2006, as well as the role of the Monarchy. Ms. Daranee Charnchoengskilpakul was the subject of a joint urgent appeal sent to your Excellency's Government on 31 July 2009 by the Chair of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. We acknowledge receipt of the response provided by your Excellency's Government on 19 November 2009.

According to new information received, Ms. Daranee Charnchoengskilpakul is currently serving an eighteen-year sentence for an alleged *lèse majesté* violation. Ms. Daranee Charnchoengskilpakul suffers from severe jaw disease and has also reportedly been denied of necessary medical treatment.

In this context, we would like to inform your Excellency's Government that we have continued to receive reports on the use of the *lèse majesté* law to restrict the right to freedom of opinion and expression in the Kingdom of Thailand. Serious concern is expressed that the aforementioned cases are not isolated, and that individuals are increasingly being prosecuted under Thailand's *lèse majesté* law, thereby curtailing the right of all individuals to seek, receive and impart information and ideas of all kinds in the Kingdom of Thailand. Furthermore, the harassment faced by these individuals and the harsh prison sentences handed down if convicted under article 112 and/or the 2007

Computer Crimes Act exert a chilling effect on freedom of expression throughout Thai society.

Moreover, we wish to express grave concern about the conviction and sentence of Mr. Ampon Tangnoppakul as his sentence is the longest sentence to date for alleged violations of article 112 of the Penal Code and the 2007 Computer Crimes Act. We are also concerned about reports regarding the weak nature of the evidence presented against him, and the extenuating circumstances of his health and old age. We are particularly concerned that in addition to his mouth cancer, Mr. Ampon Tangnoppakul has reportedly contemplated suicide following the passing of his sentence.

We would like to recall the obligation of your Excellency's Government to fully guarantee the right of all individuals to freedom of opinion and expression, as stipulated in article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a Party. While we note that the right to freedom of expression may be restricted in very limited and exceptional circumstances, any such restriction must satisfy the following, cumulative criteria:

- (1) it must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency);
- (2) it must pursue one of the purposes set out in article 19, paragraph 3, of the ICCPR, namely (i) to protect the rights or reputations of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); and
- (3) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality) (A/HRC/17/27, para.24).

Moreover, when a State imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself, and the relation between right and restriction and between norm and exception must not be reversed (General Comment No.34 of the Human Rights Committee, para. 21).

We note that article 112 of the Penal Code, which stipulates that "*whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years,*" does not meet the first criterion mentioned above, as there is no definition of what constitutes "defamation" or "insult". The lack of clarity and ambiguity of the law mean that the right to freedom of expression can be arbitrarily or unduly restricted, and promote self-censorship.

In addition, we would like to reiterate our concern that the punishment of imprisonment of up to twenty years to Mr. Ampon Tangnoppakul for violating the lèse

majesté law is gravely disproportionate. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has on numerous occasions urged all States to decriminalize defamation (see inter alia A/HRC/14/23 paras. 82 and 83, A/HRC/14/23/Add.2, A/HRC/7/14 paras. 39 to 43, and A/HRC/4/27 paras. 44 to 57). Therefore, we urge your Excellency's Government to ensure that the rule of law is applied in a non-discriminatory and proportional manner consistent with upholding basic human rights, including freedom of expression.

Moreover, with respect to Mr. Ampon Tangnoppakul's deteriorating health conditions and the alleged denial of medical treatment of Ms. Daranee Charnchoengskilpakul, we would like to recall the obligation of your Excellency's Government to fully guarantee the right to health under article 10 of the ICCPR which provides that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person', as well as article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. The right to medical care in prisons should be engaged under the prohibition of cruel, inhuman or degrading treatment. "Article 10, paragraph 1, imposes on States a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, [...] (persons deprived of their liberty) may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment." (General Comment No. 21 of the human rights Committee, paragraph 3).

We would also like to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which states that, "States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services..." (para.34).

In this context, we would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed" (approved by the Economic and Social Council by resolutions 663 C (XXIV) of

31 July 1957 and 2076 (LXII) of 13 May 1977). In addition, we would like to note the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (Principle 9).

We urge your Excellency’s Government to take all necessary measures to guarantee the right to health, safety, and appropriate medical care to Mr. Ampon Tangnoppakul and Ms. Daranee Charnchoengskilpakul while in detention.

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:

1. Are the facts alleged in the above summary of the case accurate?
2. 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.
3. Please provide details of how your Excellency’s Government is ensuring that Mr. Ampon Tangnoppakul and Ms. Daranee Charnchoengskilpakul have access to health services available while in detention without discrimination on the grounds of his legal status.

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.

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opinion and expression

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