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**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 16/4.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning the **law of lèse majesté**.

The 2007 Constitution of Thailand, and indeed all seventeen versions of the Constitution since 1932, contain the clause, "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. "Article 112 of the Criminal Code 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'".

I am concerned about the manner in which the provision is applied, the frequency with which it is invoked, the severity of the punishments received, the absence of exemptions on constitutional or legal grounds and the force it exerts over the judicial system. Unlike regular defamation cases, which can only be initiated by a damaged party, lèse majesté complaints can be made by anyone in Thailand, which has resulted in a sharp increase of cases in the last years.

I have received information that from 2003 to November 2012, about 58 cases under lèse majesté have been documented, although according to certain sources there may be more cases registered under this provision.

I am also concerned that Article 14 of the Computer Crime Act, passed shortly before the 2007 general elections in Thailand, has also contributed to an increase in the number of charges. Article 14 of the Computer Crime Act states that, "If any person commits any offence of the following acts he shall be subject to imprisonment of not more than five years or a fine of not more than one hundred thousand baht or both."

In light of the above-mentioned concerns, I would like to draw the attention of your Excellency's Government to information I have received regarding cases of lèse majesté, including that of 13 females and 45 males.

According to information received:

Cases related to verbal, written or physical expression deemed offensive under article 112 of the Criminal Code:

It is alleged that on 13 July 2012, Ms. **Thitinant Kaewchantrant**, a 63-year-old New Zealand resident made an improper gesture towards an image of His Majesty the King outside the Constitution Court at a time when the court was about to make a ruling on the constitutionality of the Charter Amendment bill (The bill to amend Section 291 of the Constitution contravenes Section 68). Ms. Kaewchantrant reportedly has a history of mental illness, and was admitted to the Galaya Rajanagarindra Institute on the same day.

On 19 July, 2012, she was stopped from boarding a flight to Auckland, New Zealand.

In April 2010 Ms. **Nattakarn Sakuldarachard** had expressed her opinion on a web board with the nickname "Kanthoop". Consequently, she was publically accused of intending to overthrow the monarchy by Manager Online, a newspaper; with her real identity and photos exposed.

On 25 October 2011, Ms. Nattakarn Sakuldarachard received a warrant from the National Police Bureau to summon her to Bang Khen Police Station to question her under lèse majesté provisions. On 10 February, 2012, the police informed "Kanthoop" that the meeting has been postponed, without giving any new deadline.

Mr. **Surapak Phuchaisang**, a programmer and owner of a computer software development company, Viva-Solution which provided services to both government agencies and major corporations, was accused of having used email and his Facebook page from 4-16 May 2011 to display messages deemed insulting to the monarchy. On September 3 2011, he was charged under article 112 of the Criminal Code and article 14(3) of the Computer Crime Act, arrested from his office and detained at Bangkok Remand Prison without bail granted.

Mr. **Chanin Klaiklueng**, a staff member at the Military Air Force of Thailand was accused by his colleagues on 4 November 2010 of posting comments offending the King 24 times on Facebook. At present, he is suspended from work.

In relation to this case, on 10 June 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders sent a communication to

your Excellency's Government, expressing their concerns regarding the use of lèse majesté law to restrict the right to freedom of opinion and expression in Thailand in conjunction with other laws such as the Computer Crimes Act which inhibit dialogue on important issues in the country. A preliminary response from the Permanent Mission of Thailand in Geneva was received on 24 June 2011.

It is claimed that the trial, which was held on 14 July 2011 was conducted in a secretive manner with only the defendant and his lawyers allowed to attend.

On 3 August 2010, Mr. **Ampon Tangnoppakul** was arrested and detained in prison for 63 days for allegedly sending four short text messages to the personal secretary of former Prime Minister Abhisit Vejjajiva, containing insulting contents directed at the Queen. It was reported that during this pre-trial detention period, he was unable to access proper treatment for health conditions. On 18 January, 2011, Mr. Tangnoppakul was officially charged under article 112 of the Criminal Code and article 14(2) and 14(3) of the Computer Crime Act by the public prosecutor and on 23 November 2011 was convicted by the Court of First Instance. The court found him guilty on 4 counts, resulting in a 20 year-imprisonment. In a police complaint, Mr Tangnoppakul was identified as belonging to the United Front for Democracy against Dictatorship (UDD).

With regard to the case, on 6 January, 2012, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication expressing their concerns regarding human rights violations including the denial of medical attention while in detention, in relation to the lèse majesté law in Thailand. We acknowledge receipt of a response from your Excellency's Government dated 25 May 2012.

Mr. Tangnoppakul initially appealed the ruling, but later changed his mind and pleaded guilty in April 2012 in order to request a royal pardon. However, during the process Mr. Tangnoppakul suffered from abdominal pain and died in the prison's hospital on 8 May 2012.

On 17 December 2010, a company called "Country Group" filed a complaint stating that Mr. **Ibrahim Fahad A. Alsubaie** posted on the chat room of his company website about the health condition of the King that allegedly led to the fall of the stock market in Bangkok. He was charged under article 112 of the Criminal Code and article 14(2) and 14(3) of the Computer Crime Act. On 28 March 2012, the Court sentenced him to 3 year imprisonment, but reduced the sentence to 2 year imprisonment due to his cooperation with the prosecution. He is on the appeal process at the present.

Mr. **Thanthawut Taweewarodomkul**, a web designer, was accused of being the administrator of the UDD website, which had published lèse majesté statements. On 1 April 2010, Mr. Thantawut Taweewarodomkul was arrested after being accused of being the administrator of UDD website. Subsequently, the two computers used by the defendant to commit the offences were seized as evidence. On 15 March 2011, the Court ruled that the accused was found guilty under Section 112 of the Criminal Code and Sections 14(3) and 15 of the Computer-related Crime Act and sentenced him to 13 years of imprisonment.

In relation to this case, on 10 June 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders sent a communication to your Excellency's Government, expressing their concerns regarding the use of lèse majesté law to restrict the right to freedom of opinion and expression in Thailand in conjunction with other laws such as the Computer Crimes Act which inhibit dialogue on important issues in the country. A preliminary response from the Permanent Mission of Thailand in Geneva was received on 24 June 2011.

Mr. **Yotwarit Chooklom**, also known as “Jeng Dokjik”, a former Assistant Secretary to the Deputy Minister of Interior is alleged to have delivered a public statement on Phan Fa Lee Lat Bridge, Ratchadamnern road, which was considered as an insult to the King. It is alleged that on 2 August 2011, Mr. Yotwarit decided to confess his guilt under 112 of the Criminal Code, which he is understood to have retrieved at a later stage and defend the case. Mr. Yotwarit was requested to invite 20 witnesses to defend the case on 27-28 November and 11-12 December 2012.

In 2010, Mr. **Suchart Nakbangsai**, also known as Warawut Thanangkorn a 2nd generation of UDD core leader was accused of giving a public speech on 14 October 2008 during the UDD's rally at the Royal Ground (Sanam Luang), allegedly with the intention to defame and insult the Queen. On 24 November 2010, the Court sentenced him to 6 year imprisonment because he committed offences under article 112 of the Criminal Code. The sentence was reduced to 3 years due to his confession. On 24 August 2012, after serving 1 year and 10 month jail term, he was released under the royal pardon.

Mr. **Weera Musikkapong** a Thai politician and a government spokesperson of Prime Minister Seni Pramroj, and one of the leaders of the UDD was charged with 2 cases (on 13 July 1986, and 6 May 2007, respectively) under article 112 of the Criminal Code, but was given a Royal Pardon.

In 2010, Ms. **Parichat Wangdee** was accused of using the pseudonym “Ton Chan” on the internet, disseminating false statements through computer network in the manner which could damage others or the country's security or create panic among the people. She was charged under article 14(3) of the Computer Crime Act. Later on the charge was rejected by a prosecutor.

On 15 June 2008, Ms. **Ratchapin Juncharoen** refused to stand up for the royal anthem prior to a movie at Major Cineplex Ratchayothin. Instead, she put both of her feet on the chair in front of her pointing towards the screen and shouted vulgar words. It is reported that she has mental illness. On 19 October, 2009, she was sentenced to three years in prison. The defendant cooperated and pleaded guilty, after which her sentence was reduced by half to one year and six months. According to investigation reports, doctors from Srithanya hospital and Trang hospital who were the defendant's psychiatrists have testified that the defendant had Schizophrenia and that the defendant had been paranoid and emotionally unstable.

The sentence included a condition that the defendant would report to the Probation Service once every two months for a period of one year so that probation officers could provide help and support if necessary. The defendant was also required to seek treatment for her mental conditions from a public healthcare institution for one year or as long as it is required.

Mr. **Sondhi Limthongkul**, who has a large stake in Thai media and leader of the right-wing People's Alliance for Democracy (PAD) is alleged to have made a public speech in July 2008 during a PAD rally. It is claimed that the speech cited insulting statements made by another individual to the Monarchy. Mr. Limthongkul was charged under article 112 of the Criminal Code. On 26 September 2012, the Criminal Court dismissed the charge of lèse majesté. The court ruled that Mr. Sondhi had no intention of violating the law in his 2008 comments.

In December 2006, Mr. **Oliver Jufer**, a Swiss national, was arrested after spray-painting posters of King Bhumibol Adulyadej in the northern city of Chiang Mai. The court ruled that he was guilty on 5 counts under article 112 of the Criminal Code and gave him a 20 year imprisonment. Having confessed, his sentence was reduced by half. Mr. Oliver is believed to be the first foreigner ever imprisoned for the offence. He was granted a royal pardon in 2007.

On 14 June 2006, Mr. **Robert R**, a Norwegian national is alleged to have shouted words deemed to offend the King. On 17 May, 2007, the court ruled that Mr. Robert R. is guilty under article 112 and sentenced him to 4 year imprisonment. Due to his confession, his jail term was subsequently reduced by half. However, because Mr. Robert R. requested a royal pardon, and due to his support to the Royal Chaipattana Foundation, as well as his medical condition, the Court ruled that, according to his age, his punishment would be suspended for 1 year.

According to reports, a number of other individuals, including Ms. **Tassaporn Rattanawongsa**, Ms. **Theeranan Wiphuchanin**, Ms. **Noppawan Tangudomsuk**, Mr. **Surachai Danwattananusorn**, Ms. **Boonyuen Prasertying**, Ms. **Kannikar Tangphanit**, Mr. **Nattapon Wattanamongkol**, Prof. **Rangsan**

Sangsuk, Mr. Anthony Chai, Mr. Chotisak On-soong, Mr. Jonathan Head, Mr. Nikom Udomdech, Ms. Daranee Chancherngsilpakul, Mr. Jakrapob Penkair and **Mr. Suriyan Kokpuey** have all been charged for written, verbal or physical expression deemed offensive to lèse majesté under article 112 of the Criminal Code and/or Computer Crime Act.

Distribution of materials deemed offensive to lèse majesté:

On 13 December 2011, **Mr. Kritthi Raruk-luedet**, an independent blogger who collects historical books online was summoned for inquiry to the Technology Crime Suppress Division (TCSD), which allegedly took place at the same period that **Mr. Chalerm Yoobamrung**, the Deputy Prime Minister, declared a policy against lèse majesté offenses online. It is understood that he was released thereafter.

On 15 September 2011, **Mr. Wiset Phishitlumken** was arrested for distributing illegal information threatening national security under lèse majesté law (article 112 of the Criminal Code, and article 14(3) and article 14 (5) of the Computer Crime Act). It is understood that he was released on bail and the case is currently under investigation.

On 24 May 2011, **Mr. Joe Gordon**, a Thai-American dual citizen, was arrested under lese majeste laws after being accused of being the administrator of a blog called "Baht Diaw" and the owner of the pseudonym "Sin Sae-Jiw". It is alleged that **Mr. Gordon** posted excerpts from a banned book "The King Never Smiles", and translated a critical biography of Thailand's King Bhumibol Adulyadej while he was living in the U.S.

He pleaded guilty in October 2011 in an attempt to gain a lenient sentence. He was released from Bangkok's Remand prison on 10 July 2012 as a result of a royal pardon.

On 6 August 2011, **Mr. Norawes Yospiyasation**, a blogger who copied and pasted an article on MySpace, a blog service provided by Hotmail, was accused of an offence under laws relating to lèse majesté. Furthermore, prior to his arrest his name and other personal data were published in a web board for condemnation. He is currently on bail with the case still under investigation.

On 19 March 2011, **Mr. Satien Rattanawong** was arrested for selling VCDs and DVDs in areas where UDD was staging a protest. He was accused of selling VCDs and DVDs containing images and texts that were allegedly inappropriate for the public audience, as they may sabotage the reputation and honor of the King. On 12 May, 2011, the Court ruled that he committed a crime under article 112 and on 4 July 2011, the Court sentenced him to 6 year imprisonment and fined him for 100,000 Baht. It is reported that following his confession his sentence was reduced by half to 3 year imprisonment and a 50,000 Baht fine.

On 10 March 2011, Mr. **Akechai Hongkangwarn**, was arrested and charged under article 112 of the Criminal Code for possessing 100 illegal VCDs, a CD writer and 10 Wikileaks documents. It is alleged that he was arrested for possessing banned VCDs, believed to be copies of the Australian ABC programme on the Thai monarchy. On 17 March 2011, Akechai was bailed with the trial now ongoing at the Court of First Instance. The next hearing of witnesses for the defendant is scheduled to take place on 22 February 2013.

On 12 August, 2009, Mr. **Hamdan Al-idreese**, along with other unknown persons, was charged under provisions of lèse majesté for allegedly placing 2 banners, containing statements about violent incidents in the three provinces in the south of Thailand together with portraits of the Queen on a pedestrian bridge.

On 14 January 2009, Mr. **Suwicha Takor** was arrested for posting a video clip on Youtube, allegedly offensive to the King, the Queen and other members of the royal family. He was charged under article 8 of the Constitution, and inter-alia under article 112 of the Criminal Code, and article 14(2) and 16(1) of the Computer Crime Act.

In connection with Mr. Takor's case, on 6 April, 2009, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention sent a communication to your Excellency's Government, expressing their concerns on the arrest, detention, and imprisonment of Mr. Suwicha which might represent a direct attempt to stifle freedom of expression in Thailand. Responses to the communication were received on 30 April 2009 and 7 July 2009 from your Excellency's Government. On 28 June, 2010, Mr. Takor was released after a royal pardon.

On 22 September 2003, it is claimed that Mr. **Bandit Arniya** distributed leaflets reflecting his opinions which were deemed offensive under the lèse majesté law. The distribution of leaflets was allegedly made in an academic seminar organized by the Election Commission and Office of the Constitutional Court. On 24 November 2004, he was arrested and charged under article 112 of the Criminal Code. On 23 March, 2006, the Court of First Instance ruled that his comment expressed in the seminar and the content of the leaflets were against article 112 and sentenced him to four years in prison. The case is currently before the Supreme Court.

According to reports, a number of other individuals, including Mr. **Kochi Tagahachi**; Mr. **Somchit Wiriyasathabadee**; Mr. **Satit Laemkla**; Mr. **Harry Nicolaides**; Mr. **Wanchai Sae-ton**; Mr. **Weera Musikkapong**; Mr. **Wipas Raksakulthai**; Mrs. **Bundinee Sutsukon**; Mr. **Watchara Pholnawee**; Mr. **Wipas Raksakulthai**; Mr. **Tarit Pengdit** and Mr. **Robert Amsterdam** have all been charged for distribution of materials deemed offensive under lèse majesté, under article 112 of the Criminal Code and/or Computer Crime Act. In connection with

Mr. Nicolaidès' case, on 31 July 2009, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders sent a communication to your Excellency's Government. A response to this communication was received on 19 November 2009.

Persons charged for acts under lèse majesté resulting from actions of others:

On 30 April 2011, Mr. **Somyot Pruksakasemsuk**, an editor at the Voice of Thaksin magazine (now called Red Power), a political publication opposed to the Government led by Abhisit Vejjajiva was arrested under a warrant on lèse majesté complaint by the Department of Special Investigation (DSI). It is alleged that he was arrested because of two articles published in the Voice of Thaksin, which were deemed offensive under article 112 of the Criminal Code.

The articles were written under the pen name "Jit Polachan", which Mr. Pruksakasemsuk claimed was used by Mr. Jakrapob Penkae, a close aide of the ousted former premier Thaksin Shinawatra. Until now, there has been no charge pressed against Mr. Penkae.

In May 2, 2011, the Criminal Court denied Mr. Pruksakasemsuk's first bail request, citing that his alleged offences affected national security and the revered monarchy, and that he might flee the country. So far, Somyot has been denied request for bail around ten times with the last request for bail submitted in early September 2012. Throughout his detention period, Mr. Pruksakasemsuk has been suffering hypertension and gout with no proper or regular access to medical check-up and blood test.

On 10 June, 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders sent a communication to your Excellency's Government, expressing their concerns regarding the use of lèse majesté law to restrict the right to freedom of opinion and expression in Thailand in conjunction with other laws, such as the Computer Crimes Act which inhibit dialogue on important issues in the country. A preliminary response from the Permanent Mission of Thailand in Geneva was received on 24 June 2011.

On 22 July 2011, the public prosecutor pressed two charges under lèse majesté against Mr. Pruksakasemsuk and conducted trial in several provinces of Thailand including Sa Kaeo (November 21, 2011), Petchabun (December 19, 2011), Nakorn Sawan (January 16, 2011) and Songkla (February 13, 2012). It is reported that despite the fact that all prosecution witnesses work and live in Bangkok, the court ordered the hearings to take place in the provinces based on the witnesses' house registration. Such practice has been criticised for hindering the full presence and participation of trial observers, diplomatic corps as well as journalists which may have undermined his right to a fair trial.

On 20 December, 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights defenders sent a communication to your Excellency's Government, expressing their concerns regarding the psychological integrity of Mr. Pruksakasemsuk, and that his detention may be directly related to his work in defending human rights and the legitimate exercise of his right to freedom of opinion and expression. Concerns were also expressed regarding the continued denial to his several bail requests until the conclusion of the trial as he would spend over a year in detention before a verdict is reached. Responses to this communication were received from your Excellency's Government on 4 April 2012, 25 May 2012 and 29 June 2012.

On 16 February 2012, Mr. Pruksakasemsuk requested from the Court of Appeal temporary release after his son went on fast for 112 hours. The bail was again refused on 21 February, 2012. On 24 April 2012, Mr. Karom, Mr. Pruksakasemsuk's counsel, submitted a request to the Criminal Court asking it to direct the Constitutional Court to rule on the constitutionality of Article 112.

Since the Criminal Court did not honour the request, on 27 April 2012, Mr. Karom submitted a request directly to the Constitutional Court. On 10 October, 2012, The Constitutional Court ruled unanimously that article 112 of the Criminal is not contrary to article 8, 3 (2), 29, 45(1), and 45(2) of the Constitution.

The Constitutional Court ruled that article 112 of the Criminal Code is a provision which supplements article 8 of the Constitution in order to give it an effective implementation. Therefore, there is no ground to allege that it is in contrary to Section 8 of the Constitution.

Furthermore, the Constitutional Court ruled that the principle of article 112 of the Criminal Code is in line with the protection to the king, as the institution and the head of the state of Thailand and that a provision of penalty for offenders is needed in order to maintain public order and good morals of the people in accordance with the rule of law.

It is pertinent to note that on 16 October 2012, the Working Group on Arbitrary Detention adopted an opinion on Mr. Pruksakasemsuk's case noting that the deprivation of liberty of Mr. Somyot Pruksakasemsuk was in contravention of article 10 of the Universal Declaration of Human Rights (UDHR) and article 19(2) of the (International Covenant on Civil and Political Rights (ICCPR), is arbitrary, and falls in category II of the categories applicable to the cases submitted by the Working Groups.

As a result of the opinion rendered, the Working Group requested the Government to take the necessary steps to remedy the situation of Somyot and bring it into

conformity with the standards and principles set forth in the ICCPR. Furthermore, the Working Group believed that, taking into account all circumstances of the case, the adequate remedy would be to release Mr. Somyot Pruksakasemsuk and accord him an enforceable right to compensation pursuant to Article 9(5) of the ICCPR".

Another case where a person was charged for acts under *lèse majesté* resulting from actions of others is that of Ms. **Chiranuch Premchaiporn**.

Persons charged for acts under lèse majesté for verbal, written, or physical expression deemed offensive to lèse majesté in academic sphere:

Mr. **Somsak Jiemtheerasakul**, a well-known history professor at the Faculty of Art, Thammasart University, who has raised the question of the role of monarchy in modern Thai politics is a former leader of the student movements of the 1970's. He was one of 18 students who were arrested on 6 October 1976 after the brutal crackdown in Thammasat University. He has also advocated for the abolishment of article 112 of the Criminal Code.

On 24 April 2011, he released a statement during a press conference at Thammasart University about the threats he has received, which he claimed were primarily due to the fact that he posted two open letters to Princess Chulabhorn, the youngest daughter of King Bhumibol. The letters were posted on his Facebook page after the Princess's interview on a public TV programme where she talked about political conflict in Thailand.

On 27 April 2011, an arrest warrant was filed by the police based on a complaint submitted by the Royal Thai Army's legal division, which was rejected. It is understood that on 2 May 2011, a programme on Channel 9, a television station owned by the Army, broadcast a photo of Mr. Somsak and accused him of being an anti-monarchist who wants to overthrow the monarchy. It is claimed that he has since been receiving threats by phone mentioning that the Thai security authorities are closely monitoring his movements and are ready to arrest him as soon as they receive a court order.

On 10 June 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders sent a communication to your Excellency's Government, expressing their concerns regarding the use of *lèse majesté* law to restrict the right to freedom of opinion and expression in Thailand in conjunction with other laws such as the Computer Crimes Act which inhibit dialogue on important issues in the country. A response to this communication was received from your Excellency's Government on 26 June 2006. The case is currently under investigation by the police.

On 10 August 2011, Mr. **Surapot Taweesak**, a philosophy academic, also known as "Nak Prachaya Chai Khob (the Fringe Philosopher)", was accused of

committing offences under article 112 of the Criminal Code and Computer Crime Act for posting two comments under an article entitled “How do we place the institution of monarchy in Thai politics and society?” The article was claimed to have been written by Mr. Somsak Jiemteerasakul. It is understood that Mr Surapot agreed with the eight recommendations proposed by the article and added an additional comment on the role of the King.

On 2 December 2011, a police station in Rot Et Province summoned him to inform him about the charge under article 112 of the Criminal Code and article 14 (3) of the Computer Crime Act. On 15 March 2012, Mr. Surapot and his lawyer went to the police station to testify against the charge by explaining his intention in posting the comments and to prove that he is innocent. He also provided a list of witnesses.

According to reports, a number of other individuals, including Mr. **Sulak Sivaraksa** and Ms. **Boonsong Chaisingkananont** have been charged for acts resulting from verbal, written or physical expression deemed offensive under lèse majesté in academic sphere.

I would also like to point out that in the case of Mr. Surapak Phuchaisang and Mr. Suwicha Takor, requests for bail have been consistently denied.

Serious concern is expressed that the above-mentioned 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 exerts a chilling effect on freedom of expression throughout Thai society.

Concerns regarding the use of lèse majesté law to restrict the right to freedom of opinion and expression in the Kingdom of Thailand have been expressed to your Excellency’s Government by Special Procedures mandate holders on numerous occasions. While acknowledging receipt of the replies received from your Excellency’s Government, I would like to stress my continuing concern regarding the existence and use of lèse majesté law in conjunction with other laws, such as the Computer Crimes Act of 2007, which inhibit dialogue on important issues in the country.

While I do not wish to prejudge the accuracy of these allegations, I wish to remind your Excellency’s Government of its obligation 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 (ICCPR), to which Thailand is a party, 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.”

Moreover, I would like to draw your Excellency's Government's attention to the principle of proportionality of the sentences that the above-mentioned individuals had been or could be convicted of. In this respect, criminal sanctions, in particular imprisonment, for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of opinion and expression. Furthermore, with regard to defamation laws, I would like to reiterate the recommendations made in the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2000/63, para.52 and E/CN.4/2001/64, para.48), which urged all States to review their defamation laws in order to ensure that they do not restrict the right to freedom of expression and to bring them in line with their international human rights obligations. The reports *inter alia* state that defamation laws should comply with the following minimum standards:

- The repeal of criminal defamation laws in favour of civil laws should be considered, in accordance with relevant international standards;
- The State, objects such as flags or symbols, government bodies, and public authorities of all kinds should be prevented from bringing defamation actions;
- Defamation laws should reflect the importance of open debate about matters of public concern, and the principle that public figures are required to accept a greater degree of criticism than private citizens; in particular, laws which provide special protection for public figures, such as *desacato* laws, should be repealed;
- The plaintiff should bear the burden of proving the falsity of any statements of fact on matters of public concern;
- No one should be liable under defamation law for the expression of an opinion;
- It should be a defence, in relation to a statement on a matter of public concern, to show that publication was reasonable in all the circumstances; and
- Civil sanctions for defamation should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?

2. Please indicate how the provisions contained in article 112 of the Criminal Code and article 14 of the Computer Crime Act are compatible with Thailand's obligations under international human rights instruments, in particular with the International Covenant on Civil and Political Rights, which Thailand ratified on 29 October 1996.
3. Please also provide information on any steps taken or intended to be taken, in order to repeal criminal defamation laws in Thailand.

I would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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