



No. 52101/ 553

PERMANENT MISSION OF THAILAND
GENEVA

๗ October B.E. 2560 (2017)

Dear Sirs and Madam,

With reference to your joint letter Ref. AL THA 3/2017 dated 10 April 2017 requesting the Royal Thai Government to provide information on the lawsuits against members of the Khon Rak Ban Keod Group, employees of the Thai Public Broadcasting Service (Thai PBS), and a 15-year old student, and the Permanent Mission's letter No. 52101/294 dated 19 April 2017 informing that the said case had been forwarded to the relevant agencies, I have the honour to transmit herewith a response, as received from the Ministry of Justice, the Royal Thai Police, the Office of Attorney-General, and Loei Provincial Hall 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. Michael K. Addo,
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises;
- Mr. John H. Knox,
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- Mr. David Kaye,
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- Ms. Annalisa Ciampi,
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;
Office of the United Nations High Commissioner for Human Rights,

GENEVA.

**Clarification by the Royal Thai Government in response to the Special Rapporteurs'
Joint Communication regarding the Khon Rak Ban Keod Group (KRBKG),
employees of the Thai Public Broadcasting Service (Thai PBS) and a 15-year old student**

1. With reference to the Special Procedures' joint communication dated 10 April 2017, the Royal Thai Government wishes to provide information and clarification regarding the allegations of a judicial harassment through criminal and civil defamation lawsuits by Tungkom Limited (TKL) against six members of the Khon Rak Ban Keod group (KRBKG), Thai Public Broadcasting Service (Thai PBS) and their employees, and a 15-year old student, as follows:

Additional information on the allegations

2. With regard to the case between TKL and KRBKG, after the Loei Court had dismissed the case on 30 March 2016, on 14 February 2017, the Court of Appeal Region IV confirmed the judgment of the Loei Court and reaffirmed that "right to freedom of opinion in good faith and peaceful manner is guaranteed under the law." The Court also ordered TKL to compensate the lawyer fees to the KRBKG for 300,000 Baht (USD 9,000). Moreover, since TKL has not lodged an appeal to the Supreme Court within one month from the date of the delivery of the Appeal Court's judgment, the case is now final according to Section 216 of the Criminal Procedure Code.
3. The case of the second criminal defamation complaint against the 15 year-old student is still in the investigation process of the Minburi District Police and, in case the concerned authority decides to file the case against him, pending to the approval of the Director of the Juvenile Observation and Protection Centre of the student's jurisdiction, in accordance with Section 99 of the Juvenile and Family Court and Juvenile and Family Case Procedures Act 2010.

Criminal and civil defamation offences under Thailand's jurisprudence

4. Thailand views that the issue on repealing criminal defamation provision should be done with great caution and careful consideration as it could deny a legitimate and good faith claim of those sincerely believe they have been wronged or violated.
5. Thailand is aware of the benefits of having in place measures to limit sanctions of civil defamation lawsuit. Nonetheless, Thailand is of the view that the crafting of legislation such as on Anti-Strategic Lawsuit Against Public Participation (Anti-SLAPP) for early termination of invalid and abusive lawsuits must recognize and balance the rights of both litigants between the right to access to the court for redress and the right to freedom of opinion and expression.

6. At present, Thailand has indirect measures to thwart any frivolous civil cases by imposing the incremental court fees for cases with computable monetary value claim. As in the case of the TKL against KRBKG, the court can order the losing party to pay the lawyer fee to the other party. In addition, recently all six members of the KRBKG have been exercising their rights by bringing civil charges against TKL for the company's wrongful act. The case is now under the court proceeding.

Freedom of expression in Thailand

7. Section 34 of the Constitution of the Kingdom of Thailand of 2017 guarantees people's right to freedom of opinion and expression in oral, in writing, in print, publicizing, or by any other means. According to the Constitution, any restrictions for exercising of the right must be provided by law for the protection of national security in order to protect rights and freedom of others, to maintain public order and good morals, or of public health.
8. With regard to the restrictions to protect rights and freedom of others, it should be read together with Section 32 of the Constitution which recognizes the right to privacy, dignity, reputation and family of the person.
9. Specifically, under Thailand's jurisprudence, the criminal and civil defamation law, either simple defamation or libel (published false statement), aims to protect people's legitimate interest, reputation, or not to be placed in contempt or hatred by others while maintaining the balance with the provisions to also safeguard those accused of defamation who act in good faith including defense such as proven truth or fair comment on any person or thing subjected to public criticism.
10. This underlying principle is evident in the courts' reasoning in both the civil defamation lawsuit against six KRBKG members and the criminal defamation lawsuit against Thai PBS and their employees. The courts also dismissed the claims of TKL on these grounds.

Safeguard of human rights defenders and media

11. Thailand recognizes the valuable contribution of human rights defenders and media to the promotion, respect, and protection of human rights and fundamental freedoms. The Government is fully aware of its duty to ensure that human rights defenders and media can carry out their work in a safe and enabling environment. Human rights defenders, both women and men, are not being targeted.
12. In 2016, the Rights and Liberties Protection Department under the Ministry of Justice took an important first step to collaborate with civil society partners and the OHCHR Regional Office in Bangkok in developing the 'Handbook to Protect Human Rights Defenders'. The Royal Thai Government looks forward to working closely with civil

society partners and all stakeholders to develop further details of the handbook to close the remaining gaps and ensure its practicality.

13. Human rights defenders and media have also been included as a target group specifically in the 'Draft 4th National Human Rights Plan', underscoring the Government's recognition of the roles of human rights defenders in the promotion of human rights.
14. Proactively, on 7 March 2017, the Internal Security Operations Command (ISOC) Region 4 announced the withdrawal of defamation lawsuits against three human rights defenders / activists, [REDACTED] and [REDACTED]. Subsequently, the case was officially terminated on 14 September 2017. This progress was welcome by many human rights organizations as an effort toward creation of safe and enabling environment for human rights defenders in Thailand.

Freedom of the press in Thailand

15. Rights to freedom of expression and freedom of press are guaranteed under the Thai Constitution in line with international laws especially Article 19 of the ICCPR. Thailand recognizes these rights as an enabler of all other human rights and part of bedrock of our democracy. Any restrictions of freedom of expression and freedom of the press will be done through the "three-part test" of **legality, legitimacy and proportionality** with the aims to protect the national security, public orders and good morals.
16. Thailand is presently undergoing a comprehensive process of media reform: press, broadcast and online. **The Draft Protection and Promotion of Media Rights, Freedom, Ethics and Professional Standards**, drafted through consultation with various stakeholders and learning from best practices of many countries, is being reviewed by the Media Reform Committee of the National Reform Steering Assembly (NRSA) before being submitted to the Cabinet and the National Legislative Assembly respectively.
17. The key elements of the draft Act are to protect and promote freedom of the press while ensuring that people's right to privacy is respected both online and offline.

Executive measures to minimize the risks of future violations

18. On 13 December 2016, the Government issued an announcement stated in the **National Council for Peace and Order's order 72/2559**, as a result of the complaints on environmental problems caused by the gold mining operations, **suspending relevant state agencies from licensing gold exploration and mining and from extension of existing gold mining concession as well as ordering the gold mining operators to stop operation from 1 January 2017 pending further resolution of the National Mining Commission.**

19. In addition to the suspension of gold mining operation, the gold mining companies have responsibilities to restore the area in accordance with the measures for protection and restoration of the environmental impact set in their environmental impact assessment reports.
20. In general, the Royal Thai Government recognizes the urgent need to step up the efforts on the issue of business and human rights. We are trying to promote human rights principles in the business sector and raise awareness among all relevant stakeholders (including the public) so as to ensure the respect of human rights and minimize the risks of possible violation.

Guiding Principles on Business and Human Rights

21. Thailand supported the adoption of the **UNGP at the Human Rights Council (HRC)** in 2011. We also cosponsored several HRC resolutions on the said issue, including the one in its 32nd Session in June 2016 on Business and Human Rights – Improving accountability and access to remedy.
22. Currently, the Ministry of Justice (MOJ) has set up a **National Committee** designated to move forward business and human rights agenda. The issue will also be articulated in the draft 4th National Human Rights Plan (2019-2023). The MOJ is working with relevant agencies to conduct a baseline study by this year with a plan to start the process of drafting a **national action plan (NAP)** for business and human rights and hope to get the first draft by the first half of next year.
23. On 31 May 2017, at the Seminar on Driving Forward the UNGP in Thailand, attended by the Chair and Member of the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Thai Prime Minister reaffirmed strong political will for the promotion of the UNGP. He also witnessed the signing of Declaration on Cooperation to Promote the UNGP by relevant ministries, business chambers, the National Human Rights Commission, and the UN Global Compact Network Thailand.

