

No. 52101/105



PERMANENT MISSION OF THAILAND
GENEVA

8 May B.E. 2566 (2023)

Dear Sir and Madams,

With reference to your joint communication ref. AL THA 4/2022 dated 19 December 2022 seeking additional information on the cases of Mr. Sunai Phasuk and Ms. Waraporn Utairangsee and to my letter No. 52101/2 dated 3 January 2023 acknowledging receipt of your letter, I have the honour to transmit herewith the response of the said cases, as received from the Ministry of Justice (Rights and Liberties Protection Department), the Office of the Attorney General and the Ministry of Digital Economy and Society, which was compiled by the Ministry of Foreign Affairs. I hope that the response will provide you a clarification of the alleged cases.

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,

(Suphatra Srimaitreephithak)

Ambassador and Permanent Representative

Ms. Mary Lawlor,

Special Rapporteur on the situation of human rights defender;

Ms. Irene Khan,

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

Mr. Balakrishnan Rajagopal,

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context;

Ms. Margaret Satterthwaite,

Special Rapporteur on the independence of judges and lawyers,

Office of the United Nations High Commissioner for Human Rights,

GENEVA.

**Thailand's response to the joint communication ref. AL THA 4/2022
dated 19 December 2022**

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

- As a party to the **International Covenant on Civil and Political Rights (ICCPR)**, Thailand reiterates its commitments under its international obligations to protect human rights and assures that its citizens enjoy their rights to freedom of expression so long as the exercise of such rights is within the bounds of the law. Article 19(3) of the ICCPR also states that the right to freedom of expression **carries with it duties and responsibilities** particularly in relation to the reputation of others and to the protection of public order and national security.
- **Freedom of expression** is guaranteed by the Thai constitution and the exercise of such rights must be within the bounds of the law.
- Any person who might feel that their rights are violated or reputation are affected as a result of the exercise of fundamental freedoms by others are entitled to file a police report or bring a lawsuit or to defend themselves in the Court. It is also normal legal procedure in any country that once a formal complaint or a report is filed, **responsible authorities are under duty to investigate such allegations** – the purpose of which is to deliver justice and fairness to both sides. The initiation of investigation process **does not prejudge the outcome or final decision on the case.**
- It is also important to note that **neither Mr. Phasuk nor Ms. Utairangsee has been indicted or prosecuted.**

2. Please clarify the grounding for an investigation by MDES into Mr. Sunai Phasuk's act of spreading "fake news" on a case that has been reported as a credible case of assault by a police officer by the National Interim Mechanisms on Torture and Enforced Disappearances.

- Decision-making process of the Ministry of Digital Economy and Society (MDES)'s Anti-Fake News Center to investigate allegations of fake news or false information follows principles and **step-by-step procedure.**
- Upon receiving notification or information of possible fake news from member of the general public, the Center will analyse such information **independently, fairly and objectively, taking into consideration privacy of those affected by the alleged fake news, rights to freedom of expression, and possible conflict of interests.**
- The Center also **works with various partners** including private sector and members of the media in making sure that the process of verifying facts is conducted thoroughly.

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- Once facts are verified, MDES will **clarify and release facts countering fake content**, without releasing the identity of those spreading such false information/fake news.
- In the case of Mr. Phasuk, Cyber Crime Investigation Bureau (CCIB) issued a **witness summon to** (not pressed a charge against) Mr. Sunai Phasuk, relating to his Twitter message as well as its reference to (retweeted of) other's message involving the case of alleged physical assault against a protestor at Din Deang Police Station in October 2021.
- It should also be noted that **summoning of witnesses of either side does not prejudice the outcome of the case or investigation**. This is all in fact in a **stage of investigation**, which involves collecting of evidences and information. Since the summoning until now, **no charges have been pressed against Mr. Phasuk**.
- Furthermore, the case of alleged physical assault against a protestor is still under investigation and it is a **different case** that is considered separately from the case of alleged computer-related offence in question, under which Mr. Phasuk was called as a witness.

3. **Please provide information on the legal and factual basis for the investigation against Ms. Utairangsee for pursuing justice and reparations for the effected indigenous villagers in her capacity as lawyer for the Sub-Committee on Human Rights for the Lawyers Council of Thailand. Please explain whether and how these measures are compatible with international human rights norms.**

- First of all, **Thailand does not use the term “indigenous”** as the context is not applicable to the country. Nevertheless, we accord full legal recognition and non-discriminatory treatment for all ethnic groups in the country and are committed to enhancing the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and related treaties, including the International Convention on Elimination of Racial Discrimination (CERD). We also continue to promote a practical approach for the realization of the rights of people belonging to ethnic groups.
- Regarding the question on legal and factual basis for the investigation against Ms. Utairangsee, it is again important to note that the investigation process **does not prejudice** the outcome or final decision of the case. The process **is intended to deliver justice** for both sides. In fact, Ms. Utairangsee **has not been charged** by the police. **Nor** has the case been forwarded to the Provincial Public Prosecutor.

4. **Please indicate what measures have been taken to ensure that human rights defenders, legal professionals, civil society actors and political activists can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.**

- Thailand acknowledges **the important role human rights defenders** (including legal professionals, civil society actors and political activists advocating for

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promotion and protection of human rights) can play and contribute to the Government's efforts in promotion and protection of human rights.

- Human rights defenders have been highlighted as **one of the priority groups** under both the 5th **National Human Rights Plan** as well as **the 2nd National Action Plan on Business and Human Rights**.
- The Government supports the role of human rights defenders through the **on-going efforts to further create a safe and enabling working environment** for them. These include (1) **the amendment of the Witness Protection Act** which came into force in November 2022, broadening the definition of witness to include persons who provides information or testimony to the authorities regarding violations of criminal law and providing various measures to protect them; (2) **the Anti-SLAPP Bill** which aims to help protect citizens reporting cases of corruption or abuse of power from intimidation lawsuits; (3) **the Justice Fund/Legal assistance** which provides legal advice, mediation, protection, and legal assistance to all including human rights defenders with an aim to promote equal access to justice for all; (4) **awareness-raising activities** aiming to promote the role of human rights defenders and their important work; and (5) a study conducted by the Rights and Liberties Protection Department, in cooperation with the UNDP on **possible measures** to further protect human rights defenders, including the development of ANTI-SLAPP measures and laws.
