Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to draw the attention of your Government to information we have received regarding the charges against Mr. Alan Morison and Ms. Chutima Sidasathian, journalists based in Phuket, Thailand.

Mr. Alan Morison is the editor of *Phuketwan*, a news outlet based in Phuket, Thailand. Ms. Chutima Sidasathian is a journalist working for *Phuketwan*.

According to the information received:

Mr. Morison and Ms Sidasathian have been closely monitoring and reporting on the situation of the Rohingya people travelling to the coast of Thailand by boat. They initially learnt about the situation of the Rohingya people during an interview in 2008 with the Royal Thai Navy that later supplied them with photographs of Rohingya people being apprehended. Since then, they have been investigating the situation, reporting on the Thai military’s alleged involvement in pushbacks of the Rohingya people to the sea.

On 18 December 2013, a captain acting on behalf of the Royal Thai Navy filed criminal defamation charges against Mr. Morison and Ms. Sidasathian for damaging the Navy’s reputation and for breaching the Computer Crimes Act. The charges are based on a paragraph taken from a report published by Reuters on 17 July 2013.¹ A part of the report was published by online media, including

Phuketwan on the same day. The paragraph replicated by Phuketwan implicates
the Royal Thai Navy in profiting from systematic smuggling.2

On the same day, Mr. Morison and Ms. Sidasathian reported to the Phuket police
to hear the charges brought against them.

On 17 April 2014, Mr. Morison and Ms. Sidasathian were formally charged with
defamation and violation of Section 14 the Computer Crimes Act. Reportedly,
they could face up to seven years of imprisonment and/or fines amounting to
100,000 baht (about 3,000 USD). They paid the bail and were released from
custody after being held for five hours in detention.

Mr. Morison and Ms. Sidasathian are reportedly due to appear in Court for
another preliminary hearing on 26 May 2014. The trial is expected to be
scheduled within the next few months.

We express grave concern at the allegations of the use of defamation laws, in
particular the Computer Crimes Act, to restrict the right to freedom of opinion and
expression of journalists in the Kingdom of Thailand. We would like to stress our
concerns regarding the use of the judicial proceedings, imposing criminal sanctions, on
cases related to defamation. We are also concerned with the use of civil or administrative
sanctions, for defamation and/or in application of the Computer Crimes Act should which
can exert a chilling effect on freedom of expression and opinion.

While we do not wish to prejudge the accuracy of these allegations, we would like
to recall that freedom of opinion and freedom of expression are essential for any society
and constitute the foundation stone for every free and democratic society. In particular,
we would like to refer to your Excellency’s Government to 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.”

In particular, we would like to draw your Excellency’s Government’s attention to
the principle of proportionality of the sentences and penalties imposed in the application
of legislation which provides restriction to the right to freedom of expression, including
on defamation. Paragraph 3 of Article 19 of the ICCPR lays down specific conditions and
it is only subject to these conditions that restrictions may be imposed: the restrictions
must be “provided by law”; they may only be imposed for one of the grounds set out in
subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of
necessity and proportionality. Restrictions are not allowed on grounds not specified in
paragraph 3, even if such grounds would justify restrictions to other rights protected in
the Covenant. Restrictions must be applied only for those purposes for which they were
prescribed and must be directly related to the specific need on which they are predicated.

Moreover, we would like to refer to the General Comment no.34 of the Human Rights Committee (CCPR/C/GC/34), which emphasizes that States parties should ensure that legislative and administrative frameworks for the regulation of the media are consistent with the provisions of paragraph 3 of the CCPR and that the legislation, including defamation laws must be crafted with care to ensure that they comply with paragraph 3 of the ICCPR, and that they do not serve, in practice, to stifle freedom of expression.

We would like to stress that 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. In particular, we would like to refer again to the General Comment no.34 of the Human Rights Committee (CCPR/C/GC/34), which emphasizes that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, desacato, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.” (para.38)

The Human Rights Committee added that “In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. (…) States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” (para. 47)

We also take the opportunity 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, which inter alia stressed that 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.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally
Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

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 summary of the case accurate?

2. Please provide information on the charges and criminal proceedings against Mr. Morison and Ms. Sidasathian for the publication of information in performance of their work as journalists.

3. Please provide information on measures taken or to be taken, in order to ensure that criminal sanctions are not imposed on cases related to defamation and that civil or administrative sanctions do not exert a chilling effect on freedom of expression and opinion, and that any limitation imposed on the right to freedom of expression and opinion are consistent with the provisions of paragraph 3 of the ICCPR.
4. Please provide information on measures taken or to be taken, in order to repeal criminal defamation laws in Thailand and to put the legislation in conformity with Thailand’s obligations under international human rights instruments, namely the International Covenant on Civil and Political Rights.

We 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, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders