

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA
THA 10/2014:

12 September 2014

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the charges against Ms. **Pornpen Khongkachonkiet** and Mr. **Somchai Homla-or**, human rights defenders based in Bangkok, Thailand.

These allegations take place in a context of restrictions to multiple rights and fundamental guarantees, including restrictions to the right to freedom of opinion and expression, against human rights defenders and political opponents in Thailand following the military coup on 22 May 2014. An urgent appeal was sent to your Excellency's Government on 28 May 2014 concerning allegations on the suspension of constitutional guarantees, detention of senior political leaders and others, including closure of multiple media outlets in Thailand. We take note of the response sent by your Excellency's Government on 13 June 2014. Following this, two Allegation Letters were sent to your Excellency's Government on 19 and 22 August 2014 respectively, expressing concerns in relation to an arrest warrant and revocation of the national passport, reportedly for the legitimate exercise of the right to freedom of expression and opinion and allegations of arbitrary arrest, torture and other ill-treatment in custody of political opponents. We look forward to the response of your Excellency's Government to these communications.

Ms. Khongkachonkiet is currently the Director of Cross Cultural Foundation (CrCF), while Mr. Homla-or is the President of the organization. CrCF works to provide legal aid and litigation services to victim of human rights violations in Southern Thailand. Both are currently members of the National Human Rights Commission's subcommittee on civil and political rights.

According to the information received:

On 2 May 2014, CrCF published an open letter to the Fourth Regional Army Commander calling for an investigation into an allegation that, in late April, Thai security forces had severely beaten a man in the course of his detention and interrogation on suspicion of being involved in bombing incidents in Yala Province. It is alleged that the timing of the publication of the open letter was motivated by expression of concern from the family of this person regarding his safety in detention. CrCF regularly engages in similar advocacy on behalf of alleged victims of torture and ill-treatment in detention.

While CrCF took actions for the above-mentioned case, it is alleged that Ms. Khongkachonkiet was attending the review of the Thailand initial report by the United Nations Committee against Torture and was disseminating and translating information about the Committee's work to the local media and human rights groups in Thailand.

On 20 May 2014, the same day that the Thai Army declared the martial law nationwide, the Task Force 41 filed a criminal complaint with the police against CrCF for damaging the reputation of the army by publishing the open letter on the allegations of torture. It is alleged that the complaint was filed in order to intimidate Ms. Khongkachonkiet and CrCF, as well as to deter them from undertaking similar advocacy in the future.

It is alleged that in early June 2014, CrCF received a letter from the Deputy Commander from the Fourth Division of the Internal Security Operation Command, dated 28 May, detailing the army's internal investigation on the torture allegation and arguing that these were false allegations. This letter also had a police daily report attached, indicating that the military filed the informal complaint against CrCF for damaging the reputation of the Task Force 41. It is reported that a report was attached to the letter. The report reflected the details of the open letter of CrCF and informed that Ms. Khongkachonkiet was the author of the letter and that she "is currently in Geneva and will be talking about this allegation during the CAT session".

On 15 July 2014, the UN Committee against Torture issued a letter to the Government of Thailand, raising concerns about the allegations that the complaint was filed to intimidate Ms. Khongkachonkiat and that this could be related to her and CrCF's activities in monitoring and documenting cases of torture and ill-treatment.

Furthermore, it is alleged that on 22 August 2014, Ms. Khongkachonkiet was on a panel on the martial law in an event organised by local civil society in Pattani Province. It is reported that during the event, she criticized the martial law and

stressed that the peace process in Southern Thailand requires the lifting of the martial law.

It is alleged that two days later, on 24 August, Ms. Khongkachonkiet received a summoned letter from the Yala Muang District Police Station dated on 8 August, requesting her to meet with a police investigator at the Yala Muang District Police Station on 25 August 2014. A similar letter from Yala Police Station was also sent to the office location of CrCF, addressing the organization as a legal entity. The letter was also dated 8 August 2014, summoning CrCF to meet with a police investigator on 25 August 2014. Because Mr. Homla-or had previously been acting on behalf of CrCF concerning legal matters as the President, the letter implicitly required him to report to the Yala Muang District Police Station.

After the police postponed the initially agreed date of 14 September 2014 to report to the police station, Ms. Khongkachonkiet and Mr. Homla-or are waiting for the new date.

We have serious concerns about the criminal complaint allegedly filed against Ms. Khongkachomkiet and Mr. Homla-or, reportedly on motives related to her and CrCF's activities in monitoring and documenting cases of torture and ill-treatment and to the exercise of the right of freedom of opinion and expression. We would like to stress our concerns regarding the use of the judicial proceedings, imposing criminal sanctions, on cases related to defamation. We reiterate the importance and urgency of measures taken to preserve the security and integrity of both individuals if arrested.

We would also like to draw the attention of your Excellency's Government to the letter that was sent on 15 July 2014 by the Special Rapporteur on reprisals under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, regarding the intimidation of Ms. Khongkachonkiet after the submission of an alternative report on cases of torture and ill-treatment to the UN Committee Against Torture during the examination of Thailand's initial report in May 2014.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues brought forth by the situation described above.

The allegations mentioned above appear to be in contravention with the right to freedom of opinion and expression. 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 party. The ICCPR guarantees under article 19 the right to freedom of expression, which includes the right to impart information.

The UN Human Rights Committee, which monitors state compliance with the ICCPR, has expressed its concern at the misuse of defamation laws to criminalize freedom of expression and has said that such laws should never be used when expression is made without malice and in the public interest. The Committee stressed that no criminal sanctions should be imposed on cases related to defamation and that civil or administrative sanctions should not exert a chilling effect on freedom of expression and opinion. Moreover, any limitation imposed on the right to freedom of expression and opinion must be consistent with the provisions of the ICCPR. Furthermore, we would like to refer to article 1 of the UN Declaration on Human Rights Defenders, which articulates universal standards for the protection of those working to protect human rights.

We also recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-state actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all states to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or who have cooperated with the United Nations, its representatives and mechanisms in the field of human rights [...]” (OP 3).

Additionally, we would like to draw your Excellency’s Government to UN General Assembly Resolution 68/156, para. 10, which “[u]rges States, as an important element in preventing and combating torture and other cruel, inhuman or degrading treatment or punishment, to ensure that no authority or official orders, applies, permits or tolerates any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with any national or international monitoring or preventive body active in the prevention and combating of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of

the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details on the charges and any criminal proceedings against Ms. Pornpen Khongkachonkiet and Mr. Somchai Homla-or, including for the publication of information and opinions and in performance of their work as human rights defenders.
3. Please provide information on measures taken or to be taken, in order to ensure that no criminal sanctions are 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 the ICCPR.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment