

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; 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; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE: UA
THA 2/2015:

19 February 2015

Excellency,

We have the honour to address you in our capacity as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; 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; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pursuant to Human Rights Council resolutions 26/22, 19/10, 22/9, 25/2, 24/5, 25/18, 26/12, and 27/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning, the **killings of Mr. Pitan Thongpanang, Mr. Somsuk Kohkrang and Mr. Chai Bunthonglek; the attempted killing of Mr. Suwit Jeh-Soh and his family; the temporary incommunicado detention of Mr. Pianrat Boonrit; and threats made against environmental and land rights defenders and community members.**

Killings of environmental and land rights defenders have previously been the subjects of joint allegation letters sent to your Excellency's Government on 9 January 2013 (THA 1/2013) and 2 April 2013 (THA 3/2013). We acknowledge the receipt of the responses from your Excellency's Government to these communications on 20 March 2013 and 2 July 2013.

The case of Mr. Pitan Thongpanang

According to the information received:

Mr. Pitan Thongpanang, aged 45, had been leading a campaign against the P&S BarteMining Co. Ltd, which have been operating Barite mine in Nonpitan District, Nakhon Si Thammarat Province since 2009. The mine has reportedly encroached into the land of Mr. Thongpanang's community in Tap Nam Tao Village. As a result of the mine, the water way was obstructed and holes were dug around the community, making it difficult for the community members to commute. In 2012, the company started to file legal suits against the community members, including Mr. Thongpanang, alleging that they have trespassed onto the company's land. In 2009, Mr. Thongpanang together with 50 community members filed a lawsuit against the company with Nakhon Si Thammarat Administrative Court to seek an injunction against the mining operation. As a result of his role as a lead plaintiff in the case, Mr. Thongpanang received a number of threats allegedly from the Kamnan (sub-district chief) who operated a company which provided transportation to the mine. On 28 October 2013, Mr. Thongpanang and his father, who is also actively involved in the campaign, received a death threat from a man associated with the company. Both individuals filed a police report at Nonpitan District Police Station.

In May 2014, the Nakhon Si Thammarat Administrative Court issued an injunction to temporarily halt the mine operation until eight measures are taken by the company in response to environmental concerns raised by the community. As the lead plaintiff, Mr. Thongpanang had been coordinating with the Lawyers' Council of Thailand (LCT).

Sources indicate that after the court issued the injunction, a bounty was issued for Mr. Thongpanang for a sum of 500,000 Thai Baht (approximately 15,000 USD) by individuals associated with the company.

There were reportedly pressures made by the Kamnan, District Chief, and the Provincial Internal Security Operational Command for Mr. Thongpanang to request the Administrative Court to withdraw the injunction since it could put his security at risk.

On 17 November 2014, at the reconciliation forum between the community and the company organized by Nakhon Si Thammarat Internal Security Operational Command (ISOC), Colonel Charnvit Pinmanee, ISOC Deputy Commander, reportedly concluded that Mr. Thongpanang should request the Administrative Court to withdraw the decision. The Nonpitan District Chief had also reportedly urged him to do the same.

On 30 November 2014, at approximately 5p.m., Mr. Thongpanang was driving home on his motorcycle after he met with the villagers to collect donations to pay for the LCT lawyer's travel cost to the community. When he arrived at a junction approximately one kilometer from his home, he was shot two times by an unknown armed man. Mr. Thongpanang died at the scene.

After Mr. Thongpanang's death, additional threats have reportedly been made to other community members. Due to fear for their safety, some community members had relocated from the area. Police officers from Nakhon Si Thammarat provincial police office have since been deployed to provide protection to the community. However, they are stationed 15 kilometers from the community and there is a concern that they would not be able to assist the members in the community in a timely manner, should an incident arise.

The case of Mr. Somsuk Kohkrang

According to the information received:

Mr. Somsuk Kohkrang, aged 47, was a land rights activist in Muang District, Krabi Province. He was a local community leader who had been campaigning on behalf of the landless farmers in Muang District and Play Phraya District (a neighboring district to Muang with similar land disputes) since 2009. Mr. Kohkrang had challenged the legality of the land owned by Saha Industry Palm Oil Co. Ltd. by petitioning provincial authorities to revoke the titles given to the company. He also demanded the Agricultural Land Reform Office to distribute the land to the poor and landless farmers. Since 1981, the Saha Industry Palm Oil Co. Ltd. allegedly had illegally occupied and grew palm oil trees in the 13,000 Rai (around 8,000 acres) of land. The company had reportedly filed civil and criminal suits against other human rights defenders working with Mr. Kohkrang.

Since January 2013, around 120 poor and landless farmers living in Muang district entered and started to cultivate parts of the land allegedly occupied by Saha Palm Co. Ltd. After the military coup d'état, on 14 June 2014, a local military officer informed members of the community living on the disputed land in Muang and Play Phraya Districts that all parties involved in the land disputes would have to vacate the land so that local authorities could conduct the land

survey. On 2 August 2014, military officers came to Muang District to further demand the villagers to leave the disputed land. Around 90 people had moved out of the land from Muang District, while other 30 people continued to stay on the land, including Mr. Kohkrang. On 15 September 2014, a joint operation of 800 officers from the Royal Thai Police, military and Department of Forestry forced the villagers in Play Phraya District to leave and demolished their houses and other properties.

On 3 December 2014, at approximately 1 p.m., Mr. Kohkrang was traveling on his way home with his wife on a motorcycle from Muang District when he was shot two times by an unknown armed man. Members of the community rushed Mr. Kohkrang to the hospital, but he died on the way.

The case of Mr. Suwit Jeh-Soh

According to the information received:

Mr. Suwit Jeh-Soh, aged 43, is a community activist and a school director in Phattalung Province. Mr. Suwit has been leading the villagers of his community in Mueng Ta Kau Village, Pa Bon District, Phattalung Province, to campaign against the construction of a water reservoir in Pa Bon District. The project was proposed by the Royal Irrigation Department in 1991, but was recently approved, with the construction to take place between 2014 and 2016.

In 1995, the villagers of Mueng Ta Kua village formed a community network called “People's Network to Protect Ton Sa Tor Watershed” to oppose the construction project on the grounds that the Department failed to consult the community and allow them to participate in the decision making. They are also concerned by potential negative environmental impacts of the reservoir on wildlife and marine life in the Ton Sa Tor Waterfall forest in the village. The community network leaders also used Mr. Suwit's house as a meeting venue to discuss their activities.

In December 2014, Mr. Suwit led the community network People's Network to Protect Ton Sa Tor Watershed to submit a petition to call for an end to the construction plan to several authorities, including the National Human Rights Commission of Thailand, the National Council of Peace and Order, the Pa Bon District Chief and the Nong Thong Tambon Administrative Office.

On 10 December 2014, the community network hung up banners in their village which opposed the construction of the water reservoir and called for community members to protect the Ton Sa Tor Waterfall forest. The next day, all of the banners had been destroyed by unknown individuals.

On 25 December 2014, the community network organized a public forum at a mosque in Mueng Ta Kau village to raise awareness among the villagers about the impacts of the project and of the public hearing procedures concerning the environmental and health impact assessments required under the 2007 Constitution of the Kingdom of Thailand. Academics and representatives from villages in other provinces affected by similar construction projects were invited as speakers. Mr. Suwit moderated the public forum which approximately 230 villagers attended.

On 29 December 2014 at 12.30 a.m., Mr. Suwit's house in Mueng Ta Kau Village was attacked by unknown armed individuals with multiple rounds of gunfire. Mr. Suwit, his wife and their two children were sleeping inside the house at the time of the attack, however, no one was injured.

An investigation by the Pan Bon District police found seven bullet holes in the front door and fifteen M-16 cartridges were found by the police. The shots were fired at three different heights, indicating the assailant's intention to kill or seriously injure Mr. Suwit and his family. It is alleged that the police officers suspect the attack could be a result of Mr. Suwit's activities to oppose the construction of the water reservoir.

Mr. Suwit filed a complaint to the Pa Bon District police station the same day. He met with the Superintendent of Police at the station and requested him to allocate police officers to improve the security and to increase the police patrolling in Mueng Ta Kau village. The police patrolling started the following day, but ended on 6 February 2015.

The case of Mr. Chai Bunthonglek

According to the information received:

Mr. Chai Bunthonglek, aged 61, was a community land rights activist from the Khlong Sai Pattana Community in Chaiburi District, Surat Thani Province and an active member of the Southern Peasants' Federation of Thailand (SPFT), a network formed in 2008 to campaign for the right to agricultural land in the communities in Chaiburi District, Surat Thani Province and other areas in the region.

He had campaigned for community land rights in an ongoing dispute with the palm oil company Jiew Kang Jue Pattana Co. Ltd. The Agricultural Land Reform Office (ARLO) claims to rightfully own the land and sued the Jiew Kang Jue Pattana Co. Ltd. for illegal land encroachment in 2007. The ARLO won the case

in the first instance and appeal courts. Until the dispute is resolved, the government has granted the Khlong Sai Pattana community full entitlement to the land in question. Despite these rulings and the ARLO's decision, the company remains in occupation and continues to mount pressure on the community members to cede the land.

The Khlong Sai Pattana Community regularly receives threats and intimidation and several of the community members have been killed over the past five years. On 19 November 2012 at approximately 7 a.m., Ms. Montha Chukaew and Ms. Pranee Boonrat, members of the SPFT were shot and killed by unknown individuals while they were on their way to a local market. These killings were the subject of an Allegation Letter to your Excellency's government on 9 January 2013 (THA 1/2013).

On 8 November 2013, unidentified men fired shots in the air allegedly to intimidate members of the community. On 16 August 2014, about fifty soldiers carried out searches of eight houses belonging to members of the Khlong Sai Pattana Community. These searches were conducted without any court warrant.

On 11 February 2015 at around 6.30 p.m., Mr. Bunthonglek was shot and killed in his own home in Chaiburi, Surat Thani by two unidentified armed men. Reportedly, the two men came to his residence on a Honda motorcycle without a license plate. After asking for Mr. Bunthonglek, one of them allegedly shot him. Mr. Bunthonglek died at the scene.

The case of Mr. Pianrat Boonrit

According to the information received:

Mr. Pianrat Boonrit is a prominent land rights activist from the Premsub community in Chaiburi District, Surat Thani Province, and is the President of SPFT. He has been advocating for the community currently in dispute with Thaibuanthong Oil Palm Company over the land. It is reported that in 2009 the community was granted temporary permission to stay in the area by, the then, Mr. Abhisit Vejjajiva Government.

On 1 February 2015, Mr. Boonrit received a letter from the Surat Thani Provincial Army summoning him to present himself on 3 February 2015 at 10 a.m. in order to attend an "attitude adjustment camp" for three days. The summons stated that the Surat Thani army command was acting in compliance with the National Council for Peace and Order (NCPO) "in order to create a good environment conducive to returning happiness to the Thai people."

Mr. Boonrit complied with the summons received and presented himself at the Vibhavadi Rangsit Military Camp, Surat Thani Province on 3 February 2015. Upon arrival around 10a.m., he was detained and transferred to the Surat Thani Army central prison. He was reportedly not informed of how long he would be detained. He was temporarily held incommunicado. His family was not allowed to see him during this period.

At approximately 5.30 p.m. on 3 February 2015, members of the armed forces travelling in two military vehicles arrived at the Premsub community. They reportedly informed the villagers that they were under urgent orders to control the area and ordered them to leave the site. The military officers also reportedly threatened a villager with arrest and interrogation at a military camp if he took pictures of the military operation.

On 5 February 2015, Mr. Boonrit was released from detention. Before his release, he was forced to sign an agreement that he would meet with the community to convince them to leave the area. He was reportedly threatened that should he fail this condition, he would again be detained for seven days under martial law.

As of 16 February 2015, the residents of the Premsub community have not been able to return to their home. The soldiers from the Vibhavadi Rangsit Military Camp have threatened them that they would be arrested should they try to enter the community area.

Grave concern is expressed regarding the killings of Messrs. Pitan Thongpanang, Somsuk Kohkrang and Chai Bunthonglek and the attempted killing of Mr. Suwit Jeh-Soh and his family and that these events may be directly linked to their legitimate and peaceful activities in the defense of human rights. Further concern is expressed regarding the temporary incommunicado detention of Mr. Pianrat Boonrit and the threats made against environmental and land rights defenders as well as community members. Additional concern is expressed regarding the safety, physical and psychological security of persons working on issues related to environmental and land rights.

In this context, we refer to the rights to life, freedom of expression, peaceful assembly and freedom of association, enshrined in articles 6, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Government of Thailand in 1996, and articles 3, 19 and 20 of the Universal Declaration of Human Rights (UDHR).

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, 2, 5, 6 and 12.

In this regard, we would like to highlight Human Rights Council Resolution 24/5, which reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including, inter alia, human rights defenders seeking to exercise or to promote these rights.

Moreover, we would like to refer your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council under resolution 1989/65.

Finally, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

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 the full details of any investigations which have been undertaken in relation to the killings of Messrs. Pitan Thongpanang, Somsuk Kohkrang and Chai Bunthonglek. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
2. Please provide details on the measures that have been taken to provide security to the family members and community members working with Mr. Pitan Thongpanang, Mr. Somsuk Kohkrang and Mr. Chai Bunthonglek following their killings.

3. Please provide information why police officers are not being stationed closer to Mr. Thongpanang's community.

4. Please indicate what protection measures were provided to Mr. Pitan Thongpanang after he had reported a death threat to the police in October 2013.

5. Please provide information on the legal basis of the decision made by local authorities and ISOC deputy commander which pressured Mr. Pitan Thongpanang to request the Administrative Court to withdraw the injunction.

6. Please provide details on the measures that have been taken to provide security to Mr. Suwit Jeh-Soh and his family following the attack of his home. Please also indicate the reason for the discontinuation of the police patrols on 6 February 2015 in Mueng Ta Kau village.

7. Please provide information concerning the legal grounds for the temporary detention of Mr. Pianrat Boonrit. Please also indicate how these measures are compatible with international norms and standards.

8. Please provide information on the progress of the investigation into the killings of Ms. Montha Chukaew and Ms. Pranee Boonrat, members the Southern Peasants' Federation of Thailand (SPFT), in 2012, which were the subject of an Allegation Letter to your Excellency's government on 9 January 2013 (THA 1/2013).

9. Given that many environmental rights and land rights defenders in Thailand have been attacked and killed in the recent years, please indicate what measures have been taken to ensure that anyone working on environmental and land rights issues can conduct their peaceful and legitimate activities in a safe and enabling environment without fear for their safety.

10. Please indicate whether compensation will be provided to the victims or their families.

11. Please indicate what the Government is doing to implement the UN Guiding Principles on Business and Human Rights and how will these events inform their implementation?

12. Please indicate which measures, including policies, legislation, regulations and adjudication, the Government has put in place to prevent, investigate, punish and redress human rights abuses related to the activities of business enterprises within its territory and/or jurisdiction?

13. Please indicate if the Government has provided any guidance to business enterprises operating in Thailand on their expected human rights due diligence process? Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights 17-21).

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.

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