

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL THA 3/2017

10 April 2017

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/22, 28/11, 34/27, 32/32, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **judicial harassment, through civil and criminal defamation lawsuits, against members of the the Khon Rak Ban Keod group (KRBKG), employees of the Thai Public Broadcasting Service (Thai PBS), and a 15-year old student**, representing undue restrictions on the exercise of their rights to freedom of expression and freedom of association, in the area of environmental and human rights.

Khon Rak Ban Keod Group (KRBKG, "People who love their homeland") is a local network of environmental activists based in six villages that has been campaigning against the environmental and health impacts of copper-gold mines in their communities. The villagers of Na Nong Bong belong to the KRBKG and have been actively campaigning against a gold mining company in their district, owned by Tungkum Limited (TKL) since 2004. Blood samples that were drawn of local villagers in 2009, revealed the presence of high levels of toxic metals, reportedly due to the activities of the mining company. Furthermore, water, soil and farmland in the community are contaminated with heavy metals.

The KRBKG was the subject of a previous communication (THA 5/2014) concerning allegations of attacks and threats against their members and villagers of Na Nong Bong. We thank your Excellency's Government for the reply of 9 September 2014, but remain concerned at the situation based on the new information received.

According to the information received:

Civil defamation lawsuit by TKL against six members of the KRBKG

On 29 May 2015, the mining company Tungsum Limited (TKL) filed civil defamation charges against six members of the KRBKG: Mr. Surapun Rujichaiyawat; Ms. Viron Rujichaiyawat; Mr. Konglai Phakmee; Mr. Samai Pakmee; Ms. Pornthip Hongchai; and Ms. Mol Khunna, for having erected signs protesting against mining operation at Na Nong Bong village in Loei Province. The Loei Provincial Court admitted the complaint and proceeded with the hearings in February 2016.

On 30 March 2016, the court dismissed the charges on the ground that the villagers had been directly affected by the mining company's activities and that there were therefore no grounds for the defamation case, as the villagers had acted in good faith in their protests. The case is currently pending before appeal. The villagers may face up to 50 million Thai Baht (approximately USD 14 million) in compensation for alleged reputational damage.

Criminal defamation lawsuit by TKL against a 15 year-old student

In November and December 2015, TKL filed two criminal defamation complaints against a 15 year-old student who narrated a Thai PBS news clip aired on 1 September 2015. In the news clip, the student alleged that the activities of TKL gold mine had an adverse environmental impact on six villages surrounding the mine; that as a result of those activities, the river had been contaminated; and that the villagers could not use water for drinking and for household consumption.

On 2 June 2016, the Juvenile Observation and Protection Office dropped one of the complaints. The second complaint remains under investigation by the Minburi District Police in Bangkok. If convicted, the student risks up to two years' imprisonment.

Criminal defamation lawsuit by TKL against Thai PBS and their employees

On 12 November 2015, the TKL filed a criminal defamation charge against Thai PBS and some of its current and former employees: Ms. Wirada Saelim; Mr. Somchai Suwanbun; Mr. Korkhet Chantalertluk; and Mr. Yothin Sitthibodeekul, for the referred news clip aired on 1 September 2015. The Bangkok Criminal Court scheduled the merit hearing on 1 and 25 July 2016, but dismissed the complaint on 16 November 2016 on the ground that Thai PBS and its journalists had acted professionally and relied on credible sources, and that the natural resources and environment were matters within the public interest, according to Section 329 (3) of the Thai Criminal Code. However, this decision is currently pending appeal.

In addition, it is reported that in the past seven years, TKL has brought at least 19 criminal and civil defamation lawsuits against 33 villagers involved in protests against the mining activities of the company in their local environment.

We express concern at the use of criminal and civil defamation lawsuits against human rights defenders, civil society groups and journalists, which appear to be aimed at intimidating and restricting their human rights activities and their exercise of the right to freedom of expression and freedom of association. We are further concerned that this form of judicial harassment may have a chilling effect on public debate, human rights advocacy, access to information and awareness raising about environmental and human rights implications of business activities in Thailand. We reiterate our concerns at the existence of criminal defamation provisions in Thai legislation.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex**, attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

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 or comment you may have on the above-mentioned allegations.
2. Please provide information about measures that have been taken, notably by the Rights and Liberties Protection Department, to ensure that the freedom of expression of human rights defenders concerned in this case, as well as other human rights defenders and young activists, are able to develop their skills and competences in matters related to human rights protection, and are able to operate in a safe and enabling environment without acts of harassment of any sort.
3. Please explain measures taken or to be taken to ensure that media in Thailand can operate in an independent, safe and enabling environment without fear of acts of intimidation and harassment of any kind.
4. Please provide information about measures taken to repeal defamation provisions, and limit the sanctions for civil defamation, so as to ensure that they do not exert a chilling effect on freedom of expression and the right to information.
5. Please indicate which measures, including legislation and policies, the Government has put in place to prevent, investigate and redress human rights violations related to the activities of business enterprises operating in the country and what steps is the Government taking to ensure that victims have access to effective remedy, in keeping with the Guiding Principles on Business and Human Rights?

We would appreciate receiving a response within 60 days.

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(s) responsible for 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.

Michael K. Addo

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we would like to appeal to your Excellency's Government to take all necessary steps to secure the rights to freedom of opinion and expression and freedom of association in accordance with fundamental principles as set forth in articles 19 and 21 of the International Covenant on Civil and Political Rights, acceded to by Thailand on 29 October 1996. Article 19(3) sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law.

We would like to remind your Excellency's Government that criminal sanction, in particular imprisonment for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of expression, and recommend states to decriminalize defamation (CCPR/C/GC/34).

We would also like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/4) in 2011. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. They recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

Finally, 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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. Article 6 (para. b and c) of the Declaration provides that everyone has the right to publish, impart or disseminate views, information and knowledge on all human rights and fundamental freedoms, as well as to hold opinions on the observance of all human rights and fundamental freedoms and to draw public attention to those matters.