

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA THA 3/2019

6 March 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 35/15, 34/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged enforced disappearance and extrajudicial, summary, or arbitrary executions in late 2018 of **Mr. Surachai Danwattananusorn, Mr Chatchan Bubphawan, and Mr Kraidej Luelert**. These three men are political activists affiliated with the United Front for Democracy against Dictatorship (UDD), a political movement affiliated with the Pheu Thai Party. We also wish to bring to your attention information on a fourth man, **Mr. Itthipol Sukpan**, also affiliated with the UDD, who reportedly disappeared in 2016.

Furthermore, we would like to bring to your attention information received concerning recent amendments to the draft Bill on Suppression and Prevention of Torture and Enforced Disappearance that appears to fall short of international standards.

Mr. **Surachai Danwattananusorn** (also known as Surachai Sae-dang), age 75, is a prominent political activist. He was a member of the now defunct Communist Party of Thailand. In 2009, he set up a political group called the "Power of Democracy of Dang Siam Network" while the other two political activists, **Mr. Chatchawan Bubphawan** (also known as Comrade Phu Chanah), age 54, and **Mr. Kraidej Luelert** (also known as Comrade Kasalong), age 47, were his followers and close friends.

Mr. **Surachai Danwattananusorn** was charged under the law of lèse majesté (article 112 of the Criminal Code) along with several other individuals. They were the subject of communication ref. no THA 13/2012 sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 2012. We thank you for your reply received on 26 December 2012 but remain concerned regarding

the continued existence and use of lèse majesté legislation which curtails the exercise of the right to freedom of expression, in contravention with international human rights norms.

According to the information received:

Mr. Bubphawan, Mr. Luelert and Mr. Danwattananusorn

From 2009 to 2010, the three activists participated in protests organized by the UDD in Bangkok and Pattaya city. In April and May 2010, mass scale demonstrations were organized by the UDD in central Bangkok, calling for the then Government led by the Democrat Party to dissolve the parliament and hold a general election. Mr. Bubphawan served as the security guard of the UDD during the protest. In May 2010, there were clashes during the protests and the Royal Thai Army used excessive force against some protestors - more than 90 people were killed including eight soldiers. Many UDD activists were arrested and prosecuted in relation to their involvement in the demonstration.

In 2011, Mr. Danwattananusorn was imprisoned under article 112 of the Criminal Code (lese-majeste law) but was released by the Royal Pardon in 2013. Later, in 2014, Mr. Danwattananusorn and Mr. Bubphawan were charged by the Royal Thai Police under the 1947 Firearms, Ammunition, Explosives, Fireworks and Imitation of Firearms Act of possession of illegal weapons and involvement in the UDD demonstrations in 2009 and 2010. Mr. Danwattananusorn faced an additional charge under Article 116 (sedition) and Article 209 (Participating in secret association) under the Criminal Code for playing a leading role in the protest in 2009 in Pattaya and in 2010 in Bangkok.

The three activists fled to Lao People's Democratic Republic (PDR) in May 2014 after the military assumed power and the establishment of the National Council for Peace and Order (NCPO) military council. On 13 June 2014, Mr. Danwattananusorn was summoned under NCPO Order No. 57/2014 and Mr. Bubphawan was summoned under the NCPO Order No. 61/2014. The orders required them to report to the NCPO but both did not present themselves. As a result, in June 2014, the Bangkok Military Court approved arrest warrants against both activists for violating the Orders. These warrants remain active.

From August 2014 to 2018, the three activists ran an underground podcast programme called “Patiroob Prated Thai” (Thailand’s Reformation) criticising the military and the monarchy. The majority of the audience were reportedly Thai nationals who were sympathetic to the UDD. The podcast program was published twice per month on YouTube.

The three activists were last in contact with persons associated with them on the 12 December 2018 after they recorded a podcast for this programme. They decided to leave their home in Vientiane Province's Tha Ngon area in the Lao PDR out of fear for their safety in connection with a visit to the Lao PDR on 13 December 2018 by the Prime Minister of Thailand and the Head of the NCPO.

Persons associated with the three men have lost contact with them since 12 December 2018. On 22 December 2018, a contact for the three men visited their home. He found the door unlocked and nobody in the house. The van that Mr. Danwattananusorn regularly used was parked on the premises and his belongings were untouched, including his manual sphygmomanometer (blood pressure monitor) which he always carried with him during his travels.

On 27 and 29 December 2018, the bodies of two unidentified men were found on the banks of the Mekong River bordering Thailand and Lao PDR in Nakorn Phanom Province in Northeast Thailand. The men appeared to have been killed in the same manner – handcuffed and strangled with a rope. Their bodies were then reportedly disemboweled, stuffed with concrete, wrapped in a net and sacking and dumped into the Mekong River.

On 22 January 2019, the official report of a DNA test from the Institute of Forensic Medicine at Bangkok's Police Hospital indicated that the DNA samples collected from the family members of Mr. Bubphawan and Mr. Luelert matched the bodies that had been discovered.

On 24 January 2019, the Deputy Police Commissioner of the Royal Thai Police announced that the Royal Thai Police will conduct an investigation and will submit the two cases to the Provincial Criminal Court for post-mortem inquests. He denied allegation of enforced disappearances and killing of the three activists.

Mr. Danwattananusorn's whereabouts, remain unknown. The Deputy Police Commissioner of the Royal Thai Police informed the public on 24 January 2019 that according to intelligence sources Mr. Danwattananusorn is still alive. It is unclear where the investigation into his disappearance currently stands. Unofficial information has been received indicating another body was found near Tha Champa village cluster in the Lao PDR. On 25 February 2019, persons associated with him filed a complaint to Tha Uthane District Police Station in Nakhon Phanom Province to investigate his disappearance.

Given the active arrests warrants and their involvement with the UDD, it is believed Thai officials may be responsible for the killing of Mr. Bubphawan and Mr. Luelert and the disappearance and possible killing of Mr. Danwattananusorn

Mr. Itthipol Sukpan

In 2016, Mr. **Itthipol Sukpan**, a political activists also affiliated with UDD who also lived in exile in the Lao PDR, went missing there and his whereabouts remain unknown.

Mr. Ittipon Sukpan was a leader of the Chiang Mai 51, a Red Shirt group based in Chiang Mai Province and a radio host on FM. 92.50, a community radio station belonging to the group. On 27 May 2014, Mr. Sukpan received an order 25/2014 by the NCPO to report to the military in Bangkok. Mr. Sukpan had criticised the monarchy through comments made on Facebook. He did not report to the NCPO as summoned and instead fled to Lao PDR.

In 2014 and 2015 Mr. Sukpan criticized the military through YouTube videos and Facebook posts. During this period, persons associated with him were visited by Thai military officers and were informed that the authorities were investigating allegations of lèse majesté against Mr. Sukpan.

Mr. Sukpan last made contact with persons associated with him on 19 June 2016. He was last seen on 22 June 2016 while eating in a restaurant and then left on his motorcycle to return to his house at around midnight. Late that evening a man was heard crying out in that area. His motorcycle and one of his sports shoes were found the next day one kilometer from the restaurant.

Persons associated with Mr. Sukpan received information that Mr. Sukpan had been arrested by the Thai authorities and taken to the 36th Infantry Military Circle in Petchchaboon Province in Thailand but when they enquired about him at the Circle the military denied that he had been arrested. On 20 July 2016, a Spokesperson of the NCPO told the public that the NCPO had monitored Mr. Sukpan's activities and acknowledged that he was in exile in a neighboring country, however, the NCPO's Spokesperson denied acknowledgement of arrest and detention of Mr. Sukpan by Thai authorities. The NCPO Spokesperson said that the Crime Suppression Division of the Royal Thai Police together with the NCPO would investigate the case and he said that he suspected that Mr. Sukpan's disappearance was a fake news which was made by the opponent of the NCPO to discredit the NCPO during the Constitution Referendum. The fate and whereabouts of Mr. Itthipol Sukpan remain unknown.

Another activist, affiliated with UDD, who had also been living in the Lao PDR reportedly disappeared in 2017.

Legislation criminalising enforced disappearances and torture

The crimes of enforced disappearance and torture are not currently codified within Thai law. A draft law on this topic has been pending since 2010. In May 2016, the Government of Thailand decided to enact the legislation rendering enforced or involuntary disappearance and torture criminal offences, but the legislation was put on hold in February 2017. A draft Bill on Suppression and Prevention of Torture and Enforced Disappearance was re-submitted to the National Legislative Assembly for consideration and promulgation in December 2018. It is scheduled to be adopted on 7 March, ahead of elections which will be held on 24 March 2019.

It appears the bill may not be fully compliant with international standards: two key safeguard provisions were removed from the draft (Articles 11 and 12); the draft no longer contains an explicit and absolute prohibition of acts of torture and enforced disappearances in any circumstances, including during a State of Emergency; and there is no provision prohibiting the refoulement of individuals to countries where they would face a real risk of torture, or other cruel, inhuman or degrading treatment or punishment or enforced disappearance. These shortcomings are deeply concerning and seriously weaken the legal protection against torture and disappearances.

We express our most serious concern regarding the alleged abduction and killing of Mr. Bubphawan and Mr. Luelert, the alleged enforced disappearance and possible killing of Mr. Danwattananusorn and the alleged disappearance of Mr. Itthipol Sukpan and that these events may be directly linked to their political opinions and activities. Should these allegations be confirmed, they would be in violation of international human rights law articles 6, 7 and 19, of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand on 29 October 1996. The ICCPR guarantees the rights to life, to personal security, to freedom from torture and other cruel, inhuman or degrading treatment or punishment, and freedom of expression, association and assembly.

In its General Comment 36, the United Nations Human Rights Committee underscored that State parties are expected to take all necessary measures to prevent arbitrary deprivations of life by their law enforcement officials and to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities. Furthermore, we highlight that thorough, prompt and impartial investigations must be undertaken for all suspected cases of extra-legal, arbitrary and summary executions. Failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13 and CCPR/C/GC/36).

In relation to the allegations that the fate and whereabouts of Mr. Danwattananusorn and Mr. Itthipol Sukpan remain unknown, the United Nations

Declaration on the Protection of All Persons from Enforced Disappearance sets out necessary protection by the State. In particular, it states that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). The declaration underscores that investigations should be conducted for as long as the fate of the victims of enforced disappearance remains unclarified (article 13), and that states should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14).

While we welcome efforts to ensure that enforced disappearances and torture are codified as crimes within Thai law, we underline the importance of ensuring that any legislation in this regard is fully compliant with international human rights standards

As matter of urgency we strongly recommend legislators enact a robust law that fully complies with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Thailand is a party to; the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which Thailand signed in 2012, and which it has pledged to ratify including in several recommendations which it accepted during its universal periodic review in 2014; as well as the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.

Several of the obligations laid out in these instruments are non-derogable, notably protection from torture and ill treatment and enforced disappearance even in a State of Emergency and the right of non-refoulement where a person may be at risk of torture or enforced disappearance. It is essential that these legal principles are fully articulated and incorporated into the domestic legislation and that the definition of all crimes be in line with international standards.

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 gravity of these matters, we would appreciate a response on the 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 the full details of any investigations which may have been undertaken into the killing of Mr. Bubphawan and Mr. Luelert. Have any perpetrators been identified and if so have any criminal prosecution been undertaken? If no investigations have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Thailand's human rights obligations under the treaties it has ratified.
3. Please provide information on the fate and whereabouts of Mr. Danwattananusorn and Mr. Itthipol Sukpan. If their fate and whereabouts are still unknown, please provide the details on any investigation or other queries which may have been carried out. If no investigations have taken place, or if they have been inconclusive, please explain why.
4. Given that the crime of enforced disappearance is not yet codified within Thai law, please elaborate on the legal framework which is being applied to investigate these cases and the disappearance of other Thai activists in Thailand or in neighbouring Laos.
5. Please provide an update on the status of the draft law criminalising enforced disappearance and torture and the measures being taken to ensure that it is fully compliant with international standards.

While awaiting a reply, we urge that all necessary measures be taken to protect the human rights to life, personal security, integrity and freedom of expression in Thailand and to prevent the violation of these rights, and in the event that investigations establish that the allegations described in this letter are correct, to ensure the criminal accountability of any person responsible for them.

Given the seriousness of the allegations, we may publicly express our concerns in the near future as, in our view, the information in our possession appears to be sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the Government authorities at all levels and the wider public should be alerted to the adverse implications for the enjoyment and exercise of human rights of these allegations. Any public statement on our part would indicate that we have sought your Excellency's Government's information to clarify the issue in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

A communication on this case is also being sent to the Lao People's Democratic Republic.

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

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment