Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL THA 4/2022
(Please use this reference in your reply)

19 December 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 43/16, 43/4, 43/14 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning ***Mr. Sunai Phasuk and Ms. Waraporn Utairangsee***, Thai human rights defenders who are being investigated and charged, respectively, by the Royal Thai Police under Thailand's Computer Crime Act and Criminal Code for two completely different offenses that are linked to their work on the protection of victims of torture and indigenous rights.

Mr. Sunai Phasuk is a senior researcher on Thailand at Human Rights Watch's (HRW) Asia division. Mr. Phasuk is a prominent human rights defender who has vast experience working with government agencies and civil society on investigation and analysis of human rights violations in Thailand, including cases of torture and enforced disappearances.

Ms. Waraporn Utairangsee is a well-known female human rights lawyer affiliated with the Lawyers Council of Thailand and the co-founder and lawyer of her private law firm. For many years, Ms. Utairangsee has been working to assist women subjected to domestic violence and gender-specific abuses, land and environmental rights defenders as well as indigenous communities in Thailand. Between 2011 and 2012, Ms. Utairangsee was selected as a member of the Sub-Committee on Human Rights of the Lawyers Council of Thailand, working on cases of stateless persons, migrant workers, internal displacement people, and non-Thai citizens.

We wish to recall all the previous related communications on the situation of the Karen indigenous peoples in the Kaeng Krachan Forest Complex (KKFC), sent in June 2021, February 2019 and April 2020 to the Government of Thailand (AL THA 4/2021, AL THA 4/2020, AL THA 2/2019), the IUCN World Heritage Panel (AL OTH 22/2020, OL OTH 7/2019) and the UNESCO Heritage Committee (AL OTH 23/2020, OL OTH 8/2019). These communications are publicly available.[1] We would like to thank your Excellency's government for their response.

[1] https://spcommreports.ohchr.org/Tmsearch/TMDocuments

According to the information received:

The case of Mr. Sunai Phasuk

On 11 October 2022, Mr. Phasuk received a summon warrant to report himself to the Cyber Crime Investigation Bureau (CCIB) of the Royal Thai Police (RTP) and to be interviewed as a witness regarding a tweet on his personal Twitter account where he alleged that a political activist was subjected to torture during his arrest by police officers following a rally held in front of the Din Daeng Police Station in Bangkok on 29 October 2021.

On 31 October 2022, Mr. Phasuk reported himself at the CCIB as summoned. The Police Commander of the CCIB held a short meeting with him and police officers from the CCIB to explain the case to Mr. Phasuk. According to the police officers from the CCIB, this case was filed by the Bangkok Metropolitan Police with the CCIB, drawing on the Facebook post by the Anti-Fake News Center of the Ministry of Digital Economy and Society (MDES) on 2 November 2021 that quotes Mr. Phasuk's tweet and labels the torture allegation as "fake news". Furthermore, Mr. Phasuk was informed by the police officer of the CCIB that the MDES's Anti-Fake News Center has put together a dossier on Mr. Phasuk's tweets that criticize police violence and other misconduct against pro-democracy protesters over the past year.

During the interview, the police officer at the CCIB asked Mr. Phasuk to verify that he had posted the tweet as accused by the Bangkok Metropolitan Police. Mr. Phasuk confirmed he posted the tweet which quoted a news report about the alleged torture of a protester at Din Daeng police station on 29-30 October 2021 and insisted on his status as a human rights defender.

Mr. Phasuk also testified that this torture case was investigated by the Ministry of Justice's National Interim Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance which found that the alleged victim was assaulted by police. This case is also under investigation by the Parliamentary Committee on Legal Affairs and Human Rights, as well as the National Counter-Corruption Commission.

Mr. Phasuk was informed by the police officer that the CCIB's investigation will take around three weeks and that he could face charges under the article 14 (1) and (2) of the Computer Crime Act 2017 for uploading distorted information onto the internet which could lead to personal and public damages. If found guilty, Mr. Phasuk could face up to five years imprisonment or a fine up to THB100,000, or both.

The investigation against Mr. Phasuk was conducted very soon after the adoption of the Prevention and Suppression of Torture and Enforced Disappearance Act (which will come into force 120 days following its enactment on 25 October 2022) which protects people who report cases of torture. That protection, together with the State's international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) on freedom of expression, protect and uphold people's right to raise issues of public concern.

The case of Ms. Waraporn Utairangsee

Between 5 and 9 May 2011, at least 20 families of Karen indigenous villagers, who had been living in the Kaeng Krachan National Park (KKNP) in Petchaburi province for generations, were allegedly forcibly evicted during an operation undertaken by the KKNP officials in coordination with the military and the police for allegedly encroaching on the National Park. During the operation, at least 98 houses and rice barns of the villagers were burnt down by the park officials.In the same month, the Karen villagers who were affected by the forced eviction operation sought assistance from the Sub-Committee on Human Rights of the Lawyers Council of Thailand to file a lawsuit against the park officials, including [redacted], the former Head of the KKNP who led the operation in May 2011.

In order to assist the work of its Sub-Committee on Human Rights, the Lawyers Council of Thailand set up the "Working Group to Provide Legal Aid to the Karen Indigenous Villagers Who were Affected from the Park Officials Operation" on 26 October 2011. Ms. Utairangsee was appointed as a member and an assistant to the secretary of this Working Group. She still currently holds a membership on this Working Group.

On 4 May 2012, with the support from the Lawyers Council of Thailand, a group of six Karen villagers, as representatives of the Karen villagers from the KKNP, lodged a lawsuit with the Administrative Court against the Department of National Parks, Wildlife and Plant Conservation (DNP) of the Ministry of Natural Resources and Environment (MNRE) and the former head of the KKNP, [redacted], and requested the Court to allow the villagers to return to live in the area for they had been living in the KKNP before it was declared part of the National Park in 1981.

On 19 October 2015, Ms. Utairangsee assisted a senior Karen villager from the KKNP in filing additional criminal complaints against [redacted] and other park officials at the Kaeng Krachan Provincial Police Station for allegedly burning down the villagers' houses and damaging the rice barns under sections 83[2], 157[3], and 217-218[4] of the Criminal Code. The police indicted and forwarded the case under section 157[5] to the consideration of the Office of Public Sector Anti-Corruption Commission (PACC).

Reportedly in 2016, the Administrative Court ordered the DNP to pay compensation to the group of six Karen villagers for the burning of their houses. In June 2018, the Supreme Administrative Court amended the ruling and ordered the DNP to pay additional compensation for each community member but did not allow them to return to their lands given the villagers did not have official land claims. In February 2021, the PACC pointed out grounds for guilt of the former Head of the KKNP, [redacted] together with other six former KKNP officers, for wrongfully exercising his function under

[2] Principles. See the full section at: https://library.siam-legal.com/thai-law/criminal-code-principals-and-supporters-sections-83-86/

[3] An official, wrongfully exercises or does not exercise any of his functions to the injury of any person. See the full section at: https://library.siam-legal.com/thai-law/criminal-code-malfeasance-in-office-sections-151-157/

[4] Arson. See the full section at: https://library.siam-legal.com/thai-law/criminal-code-arson-sections-217-225/ Cited.

section 157 of the Criminal Code[6] in relation to the illegal operation through arson in 2011 and suggested the MNRE discharge [redacted] from his position. Consequently, in March 2021, the MNRE had dismissed [redacted] from his position at that time as the Director of the Administration Office of the 9th Conservation Area of Ubon Ratchathani province of the Department of National Parks, Wildlife and Plant Conservation of the MNRE. On 27 July 2021, [redacted] filed a perjury complaint against Ms. Uthairangsee for allegedly committing perjury by acting on behalf of six Karen villagers from the KKNP and filing a complaint against him for burning down the houses and rice barns in Karen village in the KKNP between 5 – 9 May 2011. [redacted] claimed that it was perjury because the houses were unoccupied when they were burned down and because the burning did not take place during the operation.

In January 2022, [redacted] allegedly filed a case in the Administrative Court in Petchaburi Province to overturn the decision of the PACC in February 2021 to discharge him from his position. On 29 September 2022, the Administrative Court in Petchaburi ruled in favor of [redacted] overturning the decision of the MNRE to discharge him from his position and ordering the MNRE to reinstate [redacted] to his position. Consequently, in the same month, he returned to his position in the MNRE as the Administration Office of the 9th Conservation Area of Ubon Ratchathani province.

On 31 August 2022, after the case has been pending with the police investigation for more than a year, Ms. Utairangsee was summoned to acknowledge the charges of perjury causing damage to another person or with malicious intent (under section 137, 172, 173, 174 and 181 of the Criminal Code[7]) at the Kaeng Krachan Provincial Police Station. As she refused to acknowledge that any offence had been committed, Ms. Utairangsee submitted a written testimony to the Kaeng Krachan Provincial Police Station on 7 November requesting further investigation. If found guilty, Ms. Utairangsee could face up to 15 years imprisonment and high fines. The case against Ms. Utairangsee is expected to be indicted by the police and forwarded to the Provincial Public Prosecutor in December 2022.

Without wishing to prejudge the accuracy of the allegations, we are deeply concerned about the investigation and charges against human rights defenders Mr. Sunai Phasuk and Ms. Waraporn Utairangsee, which seem to be directly related to the exercise of their freedom of expression.

We are particularly concerned about the investigation against Mr. Phasuk which is reported to be indicative of a continuous pattern of surveillance, investigations, arrests and detentions and judicial harassment experienced by many human rights defenders who have peacefully exercised their fundamental freedoms over the past years. We are concerned that it may send a strong signal to other human

[6] An official, wrongfully exercises or does not exercise any of his functions to the injury of any person. See the full section at: https://library.siam-legal.com/thai-law/criminal-code-malfeasance-in-office-sections-151-157/
Section 137. False Information to Official, see the full text at: https://library.siam-legal.com/thai-law/criminal-code-offense-against-officials-sections-136-140/. Section 172-174, providing False Information, False Charges of Crime, and Filing a Report with Malicious Intent, see the full text at: https://library.siam-legal.com/thai-law/criminal-code-false-evidence-sections-172-183/. And section 181, Penalties, see the full text at: https://library.siam-legal.com/thai-law/criminal-code-false-evidence-sections-172-183/

rights defenders that they too could be subject to serious judicial action if they were to be too critical on human rights issues, which is likely to have a significant chilling effect on their freedom of expression.

With regard to the investigation for perjury against Ms Utairangsee, we wish to express our concerns that the proceedings brought against her may be in retaliation of her legitimate human rights work and exercise of her legal profession. Lawyers are entitled to in order to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards. In circumstances in which lawyers may be prosecuted for crimes allegedly committed in the course of performing their duties, appropriate orders should be issued to prevent public prosecutors from maliciously prosecuting members of the legal profession who criticize State officials and institutions in the exercise of their independence and their freedom of expression (A/HRC/50/36).

We are also concerned about the tightening of restrictions on freedom of expression online in Thailand. Through the MDES's Anti-Fake News Center and the Cyber Crime Investigation Bureau (CCIB) thousands of restrictive actions have reportedly been performed, such as the blocking of 4,735 URLs during the first nine months of 2022 in response to 183 court rulings. An important number of these restrictive actions were allegedly aimed at lèse-majesté (1,816 URLs). Further reports suggest that at least 154 individuals were charged in 174 cases under the Computer Crime Act 2017 between 18 July 2020 and 31 October 2022 in relation to their exercising fundamental freedoms.

Finally, we are also concerned about the apparent trend of increased number of cases of judicial harassment experienced by human rights defenders and indigenous persons who have been engaging with the government on compliance with issues articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 and/or comment(s) you may have on the above-mentioned allegations.

2. Please clarify the grounding for an investigation by MDES into Mr. Sunai Phasuk's act of spreading 'fake news' on a case that has been reported as a credible case of assault by a police officer by the National Interim Mechanism on Torture and Enforced Disappearance.

3. Please provide information on the legal and factual basis for the investigation against Ms. Utairangsee for pursuing justice and

reparations for the effected indigenous villagers in her capacity as lawyer for the Sub-Committee on Human Rights of the Lawyers Council of Thailand. Please explain whether and how these measures are compatible with international human rights norms.

4. Please indicate what measures have been taken to ensure that human rights defenders, legal professionals, civil society actors and political activists can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, provides that "[e]veryone 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". Any restrictions to the exercise of this right to freedom of expression, in accordance with article 19(3) ICCPR, must be provided by law and necessary and proportionate.

In paragraph 23 of its General Comment No. 34, the Human Rights Committee has recognized that those "persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports", are "frequently subjected to threats, intimidation and attacks because of their activities." The Committee has urged States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression.

With respect to charges related to the spreading of false information, we refer to the report of the Special Rapporteur on freedom of opinion and expression on disinformation (A/HRC/47/25). In this report, the Special Rapporteur notably highlighted that the right to freedom of expression applies "to all kinds of information and ideas, including those that may shock, offend or disturb", and "irrespective of the truth or falsehood of the content" (See also Human Rights Committee, general comment No. 34 (2011), paras. 47 and 49).

With regard to the expressions made by the human rights defenders, 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 9 paragraph 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In this context, we would also like to refer to Human Rights Council Resolution 22/6, which called upon States to create a safe and enabling environment for the work of human rights defenders.

We would also like to refer your Excellency's Government to the General Assembly Resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly, acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

We would additionally like to refer to Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in meditation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

Finally, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba), in particular:

- Principle 16, according to which Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics;

- Principle 17, provides that "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities".

- Principle 18, provides that “[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions”.

- Principle 23, which enshrines that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.