

**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 6/2016:

4 August 2016

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 charges brought against human rights defenders **Ms. Porpen Khongkachonkiet**, **Mr. Somchai Homla-or** and **Ms. Anchana Heemmina for the legitimate exercise of their rights to freedom of expression and freedom of association.**

**Ms. Pornpen Khongkachonkiet** is a woman human rights defender and Director of Cross Cultural Foundation (CrCF), an organization that provides research, legal aid and litigation services to victims of human rights violations in Southern Thailand, in particular on cases of ill-treatment and torture. **Mr. Somchai Homla-or** is a human rights defender and adviser to the Foundation. He previously served as a Commissioner for the Law Reform Commission of Thailand.

**Ms. Anchana Heemmina** is the Founder of the Duay Jai Group (Hearty Support Group), an organization that provides rehabilitation services to victims of torture and support for their families in Thailand.

Ms. Khongkachonkiet and Mr. Homla-or have been the subjects of a communication sent by various Special Rapporteurs on 12 September 2014, which expressed concerns about alleged acts of reprisals, in relation to charges brought against them for their advocacy work on behalf of victims of torture and ill-treatment in detention (see A/HRC/28/85, case no. THA 10/2014). We acknowledge your Excellency's Government's response to this communication dated 15 September 2014, which noted that "at the policy level, the Royal Thai Army recognizes the importance of the legitimate activities" of civil society and Ms. Khongkachonkiet.

In addition to this, several communications have been addressed to your Excellency's Government referring to allegations similar to those presented in this communication, including on the application of the Computer Crime Act against the exercise of the right to freedom of expression. Most lately, such concerns were expressed in our communication of 25 February 2016 (see A/HRC/32/53, case no. THA 9/2015). We however remain concerned about threats and acts of retaliation against the human rights defenders in light of the new information received.

According to new information received:

On 8 June 2016, Ms. Khongkachonkiet, Mr. Homla-or and Ms. Heemmina were informed of a complaint filed against them by the Internal Security Operations Command Region 4 ('ISOC 4'), a unit of the Royal Thai Army operating in the Southern Border Provinces (SPB). The ISOC 4 accused the human rights defenders of publicizing false information on torture and ill-treatment committed by military officials in the SPB, in a report entitled "54 cases of torture and ill-treatment in the Deep South documented in 2014-2015", which was co-published by the CrCF and Hearty Support Group in February 2016.

The three human rights defenders are reportedly investigated for criminal defamation under the Penal Code and the Computer Crimes Act for publishing the aforementioned report. Since its publication, and during the investigation, they have faced harassment, including pressure to reveal the sources of their information and the identity of the victims of alleged torture. It is further alleged that ISOC 4 has approached the victims of torture and partners of the CrCF and Hearty Support Group in attempt to discourage their cooperation with the organizations.

It is reported that the spokesperson of the Internal Security Operations Command made a public statement on 11 February 2016, accusing the organizations of bias. The statement reportedly stated that the author organizations "need to evoke old information using it as a pretext in order to make themselves worth receiving funding support. It is also worrying that once this report gets distributed abroad, it would have created misunderstanding". The report was partly funded by the United Nations Voluntary Fund for Victims of Torture in the context of a project proposal submitted to the Fund for the provision of mental health and medical assistance to victims of torture.<sup>1</sup>

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<sup>1</sup> The United Nations Voluntary Fund for Victims of Torture was established in 1981 by the General Assembly resolution 36/151 and is managed by the United Nations Office of the High Commissioner for Human Rights. Since its establishment, the Fund has awarded more than 620 organizations and rehabilitation centres worldwide reaching out to over 50,000 victims every year.

On 26 June 2016, the Muang Pattani Police Station re-scheduled the summoning of the human rights defenders until 26 July 2016, upon a request made by their lawyers.

On 26 July 2016, Ms. Khongkachonkiet, Mr. Homla-or and Ms. Heemmina were reportedly charged by officers at the Muang Pattani Police Station for defamation and putting false information on the Internet. The police have allowed the three individuals to submit a written statement within 30 days.

Reportedly, if the three defenders are charged with criminal defamation under the Penal Code, they may face up to three years imprisonment. However, if they are charged under the Computer Crime Act, they risk up to five years imprisonment.

We express grave concern about the continued restrictions on fundamental freedoms in Thailand following the military coup of 22 May 2014. We express concern at the criminal defamation charges filed against Ms. Khongkachonkiet, Mr. Homla-or and Ms. Heemmina, which seem to be related to their human rights work on documenting cases of torture and ill-treatment in Thailand and to their exercise of their right of freedom of opinion and expression, as well as their right of association. The concerns are also alarming given our previous communication conveyed to the Government concerning similar charges brought against Ms. Khongkachonkiet and Mr. Homla-or, which were later dropped.

We express further concern at the statement by ISOC, which appears to delegitimize the organizations by suggesting their ultimate objective was to seek external funding rather than the protection of human rights. In this connection, we would like to recall the commitment of your Excellency's Government to accept recommendations during the Universal Periodic Review of Thailand on 11 May 2016, relating to the prevention of torture and access to justice for survivors of torture.

We wish to underline our concerns regarding the increasing use of investigations, judicial proceedings, and criminal sanctions on acts that are legitimate under international human rights law. In particular, we are concerned at the use of criminal sanctions on cases related to defamation, which may have a chilling effect on the right to freedom of expression and association and the legitimate and peaceful work of civil society and human rights defenders. These actions seem to particularly target and criminalize individuals who express critical views and who promote human rights and government accountability. We reiterate our concerns at the inconformity of the application of section 14 of the Computer Crime Act with the right to freedom of expression as guaranteed under international human rights law.

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 the 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 the Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand on 29 October 1996, which guarantee the right to freedom of opinion and expression and the right to freedom of association.

We refer to General Comment 34, in which the Human Rights Committee underlined that criminal defamation 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 (CCPR/C/GC/34). Moreover, we refer to the recommendations made in the report E/CN.4/2001/64 urging States that the plaintiff should bear the burden of proving the falsity of any statements of fact on matters of public concern

With regards to the alleged charges being linked to the human rights work of the above-mentioned individuals, we wish 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 Articles 1, 2, 5, 6 and 8.

Furthermore, we wish to recall the 2014 Concluding Observations of Thailand, in which the Committee against Torture recommended that Thailand "should take all the necessary measures to: (a) put an immediate halt to harassment and attacks against human rights defenders, journalists and community leaders" (CAT/C/THA/CO/1).

Additionally, we would like to draw the attention of your Excellency's Government to paragraph 8(a) of Human Rights Council resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture." Furthermore, 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.”

Finally, we would further like to refer your Excellency’s Government to Human Rights Council resolution 24/5, in which the Council “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”.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 person(s) 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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide details on the charges and any criminal proceedings brought against Ms. Pornpen Khongkachonkiet, Mr. Somchai Homla-or and Ms. Anchana Heemmina. In particular, please explain how the use of criminal defamation proceedings against individuals for their publication of a human rights report is compatible with Thailand’s obligations under international human rights law, in particular with article 19 of the ICCPR.
3. Please provide information on measures taken to bring the Penal Code and Computer Crimes Act, as well as their enforcement into line with international human rights law. In particular, in order to ensure that no criminal sanctions are imposed on cases related to defamation, and that civil or administrative sanctions are not used to limit and curtail legitimate expression.
4. Please indicate what measures have been taken to ensure that human rights defenders in Thailand are able to carry out their legitimate work in a safe and enabling

environment without fear of threats or acts of intimidation, harassment or prosecution of any sort.

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

Maina Kiai  
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