

27 July 2016

Thailand: stop use of defamation charges against human rights defenders seeking accountability for torture

Bangkok, Thailand / Geneva, Switzerland – Thailand’s government should immediately stop allowing criminal defamation laws to be used to harass victims and human rights defenders who seek justice for alleged incidents of torture, the International Commission of Jurists (ICJ) said today.

Yesterday, the government charged three human rights defenders (Pornpen Khongkachonkiet and Somchai Homloar of the Cross Cultural Foundation and Anchana Heemina of Hearty Support Group) under the criminal defamation provisions of the Penal Code and the Computer Crime Act, for publication of a report that documented 54 cases of alleged torture and other ill-treatment by the Thai authorities in the country’s restive deep South since 2004.

“Thailand must repeal or revise its vague and broad criminal defamation laws to prevent them from being used to silence human rights defenders and journalists working on important public interest issues”, said Wilder Tayler, the ICJ’s Secretary General. “The imposition of harsh penalties such as imprisonment or large fines under these laws has a chilling effect on the exercise of freedom of expression – a right which is enshrined in treaties to which Thailand is a party and bound to uphold. ”

Also yesterday, the government used the same provisions to charge Naritsarawan Kaewnopparat, the niece of an army conscript who was killed after being severely punished by soldiers on a military base.

Although the Thai government has formally acknowledged that the death was caused by torture and compensated the family, none of the perpetrators have been held accountable for the death of Private Wichian Puaksom and have only faced military disciplinary sanctions of 30 days of detention or less, the ICJ reminds.

The case against Ms Kaewnopparat was brought by a military officer who alleges she accused him of being involved in her uncle's death in the context of the family's efforts to seek justice.

Last month, Thailand informed the Human Rights Council during its Universal Periodic Review that the Cabinet was considering a draft Act on Prevention and Suppression of Torture and Enforced Disappearance.

It was reported that the Cabinet approved the draft law on 24 May 2016 and would forward it for approval to the National Legislative Assembly.

At the conclusion of the review, Thailand also adopted several recommendations to protect human rights defenders and investigate reported cases of intimidation, harassment and attacks against them.

“Prosecuting people who seek justice for alleged torture goes against the spirit of the proposed legislation,” Tayler said. “Thai authorities have an obligation to investigate and

ensure justice for incidents of torture, but instead they are harassing and intimidating those responsible for exposing these horrendous acts.”

On 17 December 2015, Thailand joined 127 other states at the UN General Assembly in adopting a UN Resolution on human rights defenders. The Resolution calls upon states to refrain from intimidation or reprisals against human rights defenders.

Contact:

Sam Zarifi, ICJ Asia Pacific Regional Director (Bangkok), t: +66 807819002; e: sam.zarifi@icj.org

Background

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State Party, guarantees the right to freedom of expression, which includes the right to impart information.

The UN Human Rights Committee, which monitors State compliance with the ICCPR, has said that criminal defamation laws should never be used when expression is made without malice and in the public interest, and that imprisonment is never an appropriate penalty for defamation. Indeed, the ICJ, the Human Rights Committee, the UN Special Rapporteur on freedom of opinion and expression and other international human rights bodies and an increasing number of governments believe that criminal defamation laws should be abolished entirely.

On 1 September 2015, the Phuket Provincial Court acquitted two journalists of criminal defamation and violations of the Computer Crime Act after the Royal Thai Navy complained the journalists defamed it when, on 17 July 2013, the journalists reproduced a paragraph from a Pulitzer prize-winning Reuters article that alleged “Thai naval forces” were complicit in human trafficking. The verdict in this case clearly established that the Computer Crime Act was not intended to cover allegations of defamation. The NLA is currently debating amendments to the Computer Crime Act

The right to an effective remedy against torture and other ill-treatment and to have complaints promptly, fully and impartially investigated is guaranteed under international treaties to which Thailand is party, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the ICCPR.

Thailand has an obligation under both treaties to conduct such investigations where there are allegations of torture and ill-treatment and to bring to justice those responsible in fair criminal proceedings. Article 13 of the UNCAT specifically provides that, “Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Thailand was criticized in May 2014 for its failure to address violations when the United Nations Committee Against Torture expressed its concern “at the numerous and consistent allegations of serious acts of reprisals and threats against human rights defenders, journalists, community leaders and their relatives, including verbal and physical attacks, enforced disappearances and extrajudicial killings, as well as by the lack of information provided on any investigations into such allegations.”

The Committee 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; and (b) systematically investigate all reported instances of intimidation, harassment and attacks with a view to prosecuting and punishing perpetrators, and guarantee effective remedies to victims and their families.”