

Thailand: immediately stop criminal defamation complaint against torture victim

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Bangkok, Thailand --- Thailand should immediately cease misusing criminal and civil defamation laws to legally harass victims, human rights defenders and journalists who raise allegations of torture or other ill-treatment, the ICJ said today.

Yesterday, the Director of the Internal Operations Security Command (ISOC) Region 4, Lt. Gen. Piyawat Nakwanich, reportedly authorized Lt. Col. Seathtasit Kaewkumuang to lodge defamation complaints against Isma-ae Tae, a founder of Patani Human Rights Organization (HAP). ISOC is responsible for security operations in Thailand's deep South.

"It is astonishing that after all of the Government's repeated commitments to address allegations of torture and protect victims and human rights defenders, ISOC is now misusing the justice system to legally harass an alleged victim of torture," said Kingsley Abbott, the ICJ's Senior International Legal Adviser for Southeast Asia. "Thailand should immediately stop these defamation complaints against Isma-ae Tae and ensure an investigation that meets international law and standards is conducted into all allegations of torture or other ill-treatment without delay."

The accusations relate to a TV program entitled "Policy by People" that aired on the Thai PBS channel on 5 February 2018 in which Isma-ae Tae described being tortured and ill-treated by Thai soldiers when he was a student in Yala, located in Thailand's restive deep South.

Criminal defamation in Thailand carries a maximum penalty of two years imprisonment and a fine of up to 200,000 Baht (USD \$6,300).

"The imposition of harsh penalties such as imprisonment or large fines under these laws has the effect of discouraging victims of torture or other ill-treatment from coming forward to seek the remedies and reparations to which they are entitled under international human rights law binding on Thailand."

The complaints were made against the backdrop of a ruling by the Supreme Administrative Court on 19 October 2016, which ordered the Royal Thai Army and the Defence Ministry to pay 305,000 baht (USD \$9,700) compensation to Isma-ae Tae, after it found he was "physically assaulted" during detention and had been illegally detained for nine days - exceeding the limit of seven days permitted under Martial Law Act B.E. 2457 (1914) (Martial Law).

"Even more astonishing is that a superior Thai court has already found that the military physically assaulted Isma-ae Tae and awarded him compensation, which only serves to highlight the injustice of these complaints", added Abbott.

In 2008, Isma-ae Tae was arrested pursuant to Martial Law and allegedly tortured in order to purportedly extract a confession in relation to a national security case. To date, no perpetrators have been brought to justice.

Other similar cases of legal harassment in the deep South

This case is just the latest example of the authorities' abusive resort to laws, including criminal defamation and the Computer Crime Act, to silence victims, human rights defenders and journalists in the deep South.

On 9 February 2018, the military filed a complaint to the police against the editor of the '*Manager Online*' news website for defamation over a story the website carried regarding the alleged torture or other ill-treatment of a suspect at two military camps. The military also sought 10 million baht (USD \$320,000) in damages from the news website for its report.

The ISOC Region 4 Director reportedly authorized Col. Hanphon Petmuang, Commander of the Ranger Taskforce 43, to lodge a criminal complaint under Article 328 of the Thai Criminal Code and Article 14(2) of the Computer Crime Act against the editor of *Manager Online* which had published a report "To expose! An ex-suspect revealed his near-death experience of being tortured while he was in military custody at a military barrack" on 5 February 2018.

In 2011, the police made a criminal complaint against Anuphong Phanthachayangkun, a former Sub-district Head from Su-ngai Padi District in Narathiwat province, claiming he had made a false complaint of torture and ill-treatment against a police investigation team.

The alleged "false complaint" was Anuphong Phanthachayangkun's claim he had been tortured into confessing that he was involved in a 2004 armed robbery case at Naradhiwas Rajanagarindra Army Base and in the murder of a police officer with three other individuals.

Anuphong Phanthachayangkun filed his complaint against 20 police officers in the investigation team after he was acquitted of the charges by the Court of First Instance and the Appeal Court.

On 22 November 2017, Anuphong Phanthachayangkun was sentenced to one year in prison after the Supreme Court upheld the guilty verdict of the lower courts.

On 5 October 2016, [Narissarawan Kaewnopparat](#), a niece of an army conscript, Wichian Phuaksom, who was allegedly tortured to death during military training in 2011 in Narathiwat Province, was charged with criminal defamation and violation of the Computer Crime Act.

The case against her was brought by a military officer who alleged she accused him of being involved in her uncle's death in the context of the family's efforts to seek justice. Her case is now pending for an indictment decision by the Attorney General.

On 26 July 2016, following a complaint by the ISOC Region 4 (Forward Command), [three human rights defenders](#), Pornpen Khongkachonkiet, Somchai Homlaor and Anchana Heemina, were charged with criminal defamation and violation of the Computer Crime Act for publishing a report that documented 54 alleged cases of torture and ill-treatment by Thai authorities in the deep South since 2004.

The ISOC Region 4 (Forward Command) announced in March 2017 that they would withdraw the charges and, on 24 October 2017, the Pattani Provincial Prosecutor decided to [end the prosecution](#) of the three.

The Royal Thai Army had also earlier, in May 2014, filed [a criminal complaint](#) against Pornpen Khongkachonkiet, as well as her organization, Cross Cultural Foundation (CrCF), for "damaging the reputation" of the Paramilitary Unit in the deep South after she wrote an open letter to the Thai Government requesting an investigation into allegations that military personnel had beaten a man during an arrest. In August 2015,

she and CrCF was informed by the police that the prosecutor had decided not to prosecute her.

Background

Thailand is a State party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The rights to an effective remedy against torture and other ill-treatment and to have complaints promptly, fully and impartially investigated are guaranteed under the ICCPR and CAT.

In May 2014, during the examination of the First Periodic Report of Thailand under Article 19 of the CAT, the United Nations Committee Against Torture (Committee Against Torture) expressed its concern at "serious acts of reprisals and threats against human rights defenders, journalists, community leaders and their relatives" and urged Thailand to take all relevant measures to stop such "intimidation, harassment and attacks", and to provide "effective remedies to victims and their families.

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; 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."

On 29 January 2018, [in a joint submission to the Committee Against Torture](#), the ICJ and Thai Lawyers for Human Rights (TLHR) recommended that the Committee address certain questions to the Government of Thailand in its upcoming second periodic review, including concerns about threats and reprisals against persons working to bring to light cases of alleged torture and other ill-treatment, and enforced disappearance.

One of the challenges in seeking accountability for victims of torture and other ill-treatment in Thailand is the fact that these crimes are not specifically criminalized in domestic law.

The [draft Prevention and Suppression of Torture and Enforced Disappearance Act](#), which had been drafted by the Ministry of Justice in consultation with several non-governmental organizations, including the ICJ, has been reportedly returned to the Thai Cabinet "for more consultations... with Interior officials, police authorities, the national security sector, military authorities and prosecutors."

With no indication of a time frame and no legally stipulated time limit within which the Cabinet has to review the Draft Act, the National Legislative Assembly (NLA) has effectively delayed the enactment into law of this legislation indefinitely.

On 23 November 2017, the ICJ and Amnesty International [submitted recommendations to the Ministry of Justice](#) that changes be made to the draft Prevention and Suppression of Torture and Enforced Disappearance Act in order to bring it into line with Thailand's international legal obligations.

Further reading

[Thailand: ICJ welcomes decision to end proceedings against human rights defenders who raised allegations of torture](#)

[Thailand: ICJ welcomes dropping of complaints against human rights defenders but calls for investigation into torture](#)

[Thailand: stop use of defamation charges against human rights defenders seeking accountability for torture](#)

[Thailand: immediately withdraw criminal complaints against human rights defenders](#)

Further reading on the Draft Prevention and Suppression of Torture and Enforced Disappearance Act

[UN Committee against Torture: ICJ and TLHR's joint submission on Thailand](#)

[Thailand: ICJ, Amnesty advise changes to proposed legislation on torture and enforced disappearances](#)

[Thailand: ICJ commemorates international day in support of victims of enforced disappearances](#)

[Thailand: pass legislation criminalizing enforced disappearance, torture without further delay](#)

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