

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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13 June 2016

General Prayut Chan-o-cha
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General Udomdet Sitabut,
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General Theerachai Nakvanich
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Email: informdepart@gmail.com;

Dear Prime Minister, Minister and Generals,

Re: Reprisals against human rights defenders, Mr. Somchai Homlaor, Ms. Pornpen Khongkachonkie, and Ms. Anchana Heemmina

I am writing on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and other human rights defenders who promote human rights and the rule of law through advocacy, education and research. LRWC advocates for human rights defenders threatened as a result of their human rights work. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC is seriously concerned about reports that on 17 May 2016, Thailand's Internal Security Operations Command (ISOC) Region 4 filed a criminal complaint in Yala against three human rights defenders: Mr. Somchai Homlaor, lawyer, Commissioner of the Law Reform Commission of Thailand and President of the Cross Cultural Foundation; Ms. Pornpen Khongkachonkie, Director of the Cross Cultural Foundation; and Ms. Anchana Heemmina, President of Duay Jai Group (Hearty Support Group), a human rights organization based in Thailand's Deep South

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region. The criminal complaint accuses these three human rights defenders of criminal defamation under the *Criminal Code* and spreading false information under the *Computer Crimes Act*. The charges are based on and were laid after the release of *Torture and ill treatment in the Deep South Documented in 2014-2015*,¹ a report co-edited by the three. The report documents 54 cases in which Thai security personnel allegedly tortured and ill-treated ethnic Malay Muslim insurgent suspects in Thailand's Deep South between 2014 and 2015.

As production of the report received funding from the UN Voluntary Fund for Victims of Torture,² the three human rights defenders are considered "individuals who cooperate with the United Nations, its representatives and mechanisms in the field of Human Rights." As a member of the United Nations, Thailand is obligated to "prevent and refrain from all acts of intimidation or reprisal" against such persons.³

Thailand is obligated to ensure that all people and organizations engaged in the protection and promotion of human rights are able to work in a safe and enabling environment, without fear of reprisals or judicial harassment. The right to file complaints about torture and mistreatment and to have the complaint promptly and impartially investigated is ensured under international treaties to which Thailand is party, including the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which Thailand ratified in 2007, and the *International Covenant on Civil and Political Rights*. In addition, the *UN Declaration on Human Rights Defenders* adopted by consensus by the General Assembly of the UN on December 9, 1998, especially Article 12.2, provides that

the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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 present Declaration.

Thailand's responses to the May 2016 Universal Periodic Review (UPR) by the UN Human Rights Council have signalled a commitment to protect human rights defenders. Specifically, Thailand formally accepted the recommendations from Member States to stop all forms of harassment and intimidation of human rights defenders, to ensure the internationally protected rights of human rights defenders are properly respected, and to protect human rights defenders in accordance with the *UN Declaration on Human Rights Defenders*. Thailand also accepted the

¹ Patani Human Rights Organization, Cross Cultural Foundation and Hearty Support Group, *Torture and ill-treatment in the Deep South Documented in 2014 – 2015*, January 2016, <https://voicefromthais.wordpress.com/2016/02/10/press-release-launching-torture-report-pattani-full-report/>

² The UN Voluntary Fund for Victims of Torture was established by the UN General Assembly under resolution A/RES/36/151, 16 December 1981, available at: <http://www.un.org/documents/ga/res/36/a36r151.htm>

³ UN Human Rights Council, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, A/HRC/12/L.8, 25 September 2009, adopted by the UN Human Rights Council by consensus, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/12/L.8.

recommendation to ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2006*, ensure that all laws are brought into conformity with the treaty, and adopt a definition of torture as a specific offence in Thai legislation. In addition, Thailand's delegation at its UPR in May 2016 advised that the Ministry of Justice Rights and Liberties Protection Department has established a working group to develop measures to protect human rights defenders whose human rights are at risk of being violated.

LRWC calls upon the Government of Thailand to:

1. Ensure that the criminal complaints under the *Criminal Code* and the *Computer Crimes Act* against Mr. Somchai Homlaor, Ms. Pornpen Khongkachonkie, and Ms. Anchana Heemmina are immediately and unconditionally withdrawn; and,
2. Prevent and refrain from any further reprisals against Mr. Somchai Homlaor, Ms. Pornpen Khongkachonkie, and Ms. Anchana Heemmina for work related to:
 - a. the production of *Torture and ill treatment in The Deep South Documented in 2014-2015*;
 - b. cooperation with the UN, its representatives and mechanisms in the field of human rights; and,
 - c. peaceful human rights advocacy.

We look forward to your urgent response.

Sincerely,



Gail Davidson
Executive Director , LRWC

Copied to:

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Khongkachonkie, and Ms. Anchana Heemmina**