



ADDITIONAL INFORMATION TO UN COMMITTEE AGAINST TORTURE IN VIEW OF ITS ADOPTION OF A LIST OF ISSUES PRIOR TO REPORTING ON THE KINGDOM OF THAILAND IN ADVANCE OF THE SUBMISSION OF ITS SECOND PERIODIC REPORT UNDER ARTICLE 19 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Thai Lawyers for Human Rights (TLHR), a coalition of human rights lawyers and defenders, formed immediately following the May 2014 coup d'état in Thailand. The collective's aim has since been to raise awareness about human rights violations resulting from the imposition of martial law and military rule in the country. The organization runs a 24-hour hotline and uses the information gathered to disseminate public awareness and advice for those summoned or arrested. TLHR provides free litigation and legal assistance for vulnerable people whose rights have been affected by martial law and who do not have legal representatives.

Submitted on 30 April 2018

Introduction

Since 29 January 2018, when the International Commission of Jurists (ICJ) and Thai Lawyers for Human Rights (TLHR) filed a joint submission with the UN Committee against Torture ('the Committee') in view of its adoption of a List of Issues prior to reporting on the Kingdom of Thailand, there have been several developments that the organizations wish to bring to the attention of the Committee. They are: certain new amendments to the Draft Prevention and Suppression of Torture and Enforced Disappearance Act ('Draft Act'), and some incidents of reprisals against persons working to bring to light cases of alleged torture and other cruel, inhuman and degrading treatment or punishment (hereafter: 'other ill-treatment'). These updates are set out in greater detail below.

Amendments to the Draft Prevention and Suppression of Torture and Enforced Disappearance Act

On 12 March 2018, the ICJ and Amnesty International addressed an open letter to H.E. General Prachin Chantong, Thailand's Deputy Prime Minister and Minister of Justice of Thailand, expressing their concern at a number of amendments to the latest version of the Draft Act dated 6 March 2018.¹ These amendments included: (i) deletion of article 11 (old)² of the Draft Act, which, in turn, results in the removal of an express recognition of the non-derogability of the absolute prohibition against acts of torture and enforced disappearances, including during states of emergency; (ii) deletion of article 12 (old) of the Draft Act, which, in turn, results in the removal of an express articulation of the fundamental international law principle of *non-refoulement*, that is, the prohibition on the removal in any manner whatsoever of individuals to places where they would face a real risk of serious human rights violations, including torture, other ill-treatment or enforced disappearance; and (iii) amendment of article 32 (old) of the Draft Act, which, in turn, has the effect of removing in its entirety the affirmation of the principle of command responsibility for supervisors whose subordinates commit acts of torture, and of unduly limiting command responsibility for supervisors whose subordinates commit acts of enforced disappearance only to those supervisors "responsible for and (with) the power to control the acts related to the enforced disappearance."

In their letter, the ICJ and Amnesty International noted that the latest version of the Draft Act dated 6 March 2018, if passed, would fail to bring Thailand's domestic legal framework into compliance with the country's international legal obligations under the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED).³

As referred to in paragraphs 29 and 30 of the ICJ and TLHR's joint January 2018 submission to the Committee, on 30 August 2017⁴ and 23 November 2017,⁵ respectively, the ICJ and Amnesty International had addressed a set of

¹ ICJ and Amnesty International, 'Amendments To The Draft Prevention And Suppression Of Torture And Enforced Disappearance Act', 12 March 2018, <https://www.icj.org/wp-content/uploads/2018/03/Thailand-Amendments-to-Prevention-and-Suppression-of-Torture-2018-ENG.pdf>.

² 'Article (old)' refers to an article of the Draft Act as it stood of 23 November 2017.

³ Thailand has ratified the ICCPR and CAT and has signed but not yet ratified the ICPPED.

⁴ ICJ and Amnesty International, 'International Day Of The Victims Of Enforced Disappearances', 30 August 2017, <https://www.icj.org/wp-content/uploads/2017/08/Thailand-ED-Day-letter-Advocacy-open-letters-2017-ENG.pdf>.

⁵ ICJ and Amnesty International, 'Recommendations concerning the Draft Prevention and Suppression of Torture and Enforced Disappearances Act', 23 November 2017, <https://www.icj.org/wp-content/uploads/2017/11/Thailand-Torture-and-ED-Advocacy-nonlegal-submission-ENG.pdf>.

recommendations to the Ministry of Justice in which the organizations had emphasized that articles 11 (old) and 12 (old) were imperatives to be retained within the Draft Act to ensure that the crimes of torture and enforced disappearance would be absolutely prohibited under any circumstances. The ICJ and Amnesty International had further emphasized that they would strongly oppose any amendments that shielded from accountability supervisors exercising effective authority and control over perpetrators of these crimes, such as the amendments featured in the latest revisions of 6 March 2018 to the Draft Act, as mentioned above.

Reprisals against persons working to bring to light cases of alleged torture and other ill-treatment

On 9 February 2018, the military filed a complaint with the police against the editor of the 'Manager Online' news website for defamation over a story the website carried regarding the alleged torture or ill-treatment of a suspect at two military camps. The military reportedly sought 10 million Baht (USD 320,000) in damages from the news website for this story. 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 (criminal defamation) and article 14(2) of the Computer Crime Act against the editor of Manager Online, which had published an article entitled, *"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 2018.⁶

On 14 February 2018, the Director of the 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). His complaints related to a TV program entitled: "Policy by People" that aired on the Thai PBS channel on 5 February 2018, and in which Isma-ae Tae described being tortured and ill-treated by Thai soldiers when he was a student in Yala province of the southern border provinces. The defamation suits were lodged notwithstanding 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 the Court had found that he had been "physically assaulted" during detention, and had been illegally detained for nine days - exceeding the limit of seven days permitted under Martial Law Act.⁷

On 1 July 2017, Anchana Heemmina, co-founder of Duay Jai Foundation, an organization that provides rehabilitation services for torture victims in the Southern Border Provinces and support for their families, was reportedly visited at her family shop by plain-clothed men believed to be military personnel who warned her against posting comments about human rights violations on social media.⁸ Even though this incident occurred in 2017, the ICJ and TLHR learnt of it only in February 2018, which is why the organizations did not raise it in their January 2018 joint submission to the Committee.

⁶ Ibid; The Nation, 'Army under fire for defamation lawsuits against media, rights group over torture', 19 February 2018, <http://www.nationmultimedia.com/detail/national/30339163>.

⁷ ICJ, 'Thailand: immediately stop criminal defamation complaint against torture victim', 15 February 2018, <https://www.icj.org/thailand-immediately-stop-criminal-defamation-complaint-against-torture-victim/>.

⁸ Communications issued on Thailand, 'Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Working Group on the issue of discrimination against women in law and in practice', AL/THA 6/2017, 13 September 2017.