

Complaint No. 14/2013: Rights in judicial system and freedom of life and body, Case on the Death of her son under the term of military services;

Miss Yamelah Isbueraheng lodged a Complaint to the National Human Rights Commission of Thailand (NHRCT). The Case is said to claim that on 2nd April 2009 at 8.00 p.m. while her son, Hakim Madaoh, a 10-year-old boy, accompanied by his father, Mr. Masapae-ing Madaoh and two neighbors, took a car to return home. While they reached Bankayaeng School in Erawan Sub-district, Waeng District, Narathiwat Province, the military officers of the Sukirin Special Unit and the police of Waeng District Police Station promptly shown up with stopping of the car and arrested Mr. Masapae-ing with allegation on narcotic drugs. At that time, Hakim got off the car to see what was happening and was shot by Corporal Warongkorn Daosakul. This caused him severely injured and subsequently died. From the incident, Corporal Warongkorn Daosakul reached an agreement upon a Compromise Contract, dated 18th November 2009, for paying of compensation in amount of 150,000 baht. Later on the Pattani Military Court judged that Corporal Warongkorn Daosakul was guilty of negligence and causing the death of other person according to the Red Case No. 16A /2010.

The Complainant then filed the Complaint requesting remedy from the Secretary-General of Southern Border Provinces Administrative Centre. (SBPAC) and the Department of Special Investigation, but there is none of results of the operations informed yet.

The National Human Rights Commission of Thailand (NHRCT) has acquired and considered the facts gained from examination of relevant laws and opined that for the government officials' claim that the arrest of Mr. Madaoh (Hakim's father) which caused Hakim to die was an event not related to the Unrest. They claimed that the arrest of Mr. Madaoh was conducted under an arrest warrant and was not fallen into any three-party certification criteria on entitlement of remedies with receipt of 500,000 baht for remedy. The NHRCT considered from such event and saw that the death of Hakim resulted from actions taken by government officials while he did not commit the offense and did not fight or try to escape. Moreover, such cases occurred in the Deep South Provinces under the enforcement of Special Security Law. In addition, the checkpoint at scene of the crime was not a permanent checkpoint. Thus authorities arrest raids shall accept that the loss being a result of duties delivered by government officers. They should not deny their responsibilities resulting from their actions that led to infringement of rights, life and liberty, under Article 32 of Constitution of the Kingdom of Thailand B.E.2550 (2007), stipulates that a victim is

entitled to protection and assistance as necessary and appropriate by the State as well as under Article 40 of the Constitution. This is also in accordance with Article 2, Clause 3 of the International Covenant on Civil and Political Rights (ICCPR), of which Thailand is a state party since 27th October 1996.

For the claim that the damages occurred in the Southern Border Provinces are not related to the Unrest, but they were in the area with enforcement of Special Security Laws. There was the case under special treatment granted by the Committee Providing Remedies to Persons Affected from Unrests in the Deep South. Although an element of legal regulation in some cases, does not meet the discretion the Committee with eligibility for the remedy. Therefore the discretion of those involved in the rescue and remedy should be clarified in legal framework and relevant regulation in accordance with rule of law, the Principles of Equity and Non-Discrimination which are consistent with the Principles of Equality certified by Article 30 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Also such judgment should be made to comply with legal and justice policies that the State is required to protect the rights and freedom of individuals from being violated by government officials and others are also required to facilitate justice equally for people as guaranteed by Article 81 under the Constitution. Referring to Hakim's death, the Pattani Provincial Military Court had judged and Corporal Warongkorn Daosakul had reached an agreement upon a Compromise Contract for paying of compensation in amount of 150,000 baht to the Complaint. But the compensation was paid in person by an individual, not by a remedial authority under the relevant State Rules.

For reasons above-mentioned, the NHRCT had submitted policy recommendations to the Internal Security Operations Command, the 4th Army Area and the Southern Border Provinces Administrative Centre (SBPAC) to review the remedies in the Case of Hakim's death, in order to provide human rights protection in pursuance of the Principles of Freedom and Equality, as follows:

- 1) The Southern Border Provinces Administrative Centre (SBPAC) and the Internal Security Operations Command, the 4th Army Area should consider the reviewing of the facts and the remedy for Hakim's Case under authority provided by the relevant laws and regulations, including the facts that if the result of the officer's operation had caused damage to a person who was not involved and if a case occurred in the Southern Border Provinces under the enforcement of

Special Security Law, the consideration should be given to remedy the damage caused. Using discretion in the remedies must have clarity in the form of commission regarding the consistence with the rule of law, equality and non-discrimination. The discretion should be made in the same direction as the cases which the Committee had made decisions to treat the victims who were government officials that had occurred in several incidents before.

- 2) If there are any events occurred in the same way as the above Case and the victims did not involve in any offense, the Southern Border Provinces Administrative Centre (SBPAC) and the Internal Security Operations Command, the 4th Army Area shall automatically provide immediate remedies and aids, regardless complaints or requests raised by victims or their families. For the entertaining of this efforts, the Southern Border Provinces Administrative Centre (SBPAC) and the Internal Security Operations Command, the 4th Army Area shall facilitate the victim to access their rights in such cases.
- 3) The relevant agencies shall control affiliated line officers to carefully carry out their duties at the checkpoint scenes. They shall strictly follow the Guidelines with cautiousness whenever the raid is recorded which somehow may affect tolerance to human rights, such as the officers noted that they found narcotic drug when arrested Hakim's father, which in fact, they did not find any drugs,.etc.

All this, the NHRCT would like to have more updates on its progress within 60 days counting from the date of receipt of this Report.