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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by Lawyers' Rights Watch Canada, a non-governmental organization in special consultative status, and Asian Legal Resource Centre, a non- government organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Unforgotten in Thailand: ensure truth, Justice, and reparations for victims of enforced disappearance

Introduction: Persistent impunity for enforced disappearances

A pattern of impunity for enforced disappearances¹ persists in Thailand despite years of promises to ratify the *International Convention for the Protection of All Persons from Enforced Disappearance* (UNCED)² and to pass legislation making enforced disappearance a crime.³ The United Nations (UN) Working Group on Enforced and Involuntary Disappearances (WGEID) reports 82 unresolved cases of enforced disappearances since 1980.⁴ This number represents a fraction of Thailand's enforced disappearances since the 1950s,⁵ as families and witnesses remain silent for fear of reprisals.⁶ Those most vulnerable to enforced disappearances belong to minorities or indigenous peoples. Also at risk are human rights defenders (defenders) or peaceful government critics.⁷ Thailand's current laws foster impunity for enforced disappearance; when a body is not found, murder charges are not laid.⁸ No public officials have ever been held accountable for suspected involvement in enforced disappearances. The persistent pattern of impunity for enforced disappearances constitutes a grave violation of Thailand's obligations under customary international law and the *International Covenant on Civil and Political Rights* (ICCPR) to which Thailand acceded in 1996.⁹

The risk of enforced disappearances is heightened by the practice of incommunicado detention of political opponents, suspects in national security cases, and suspected insurgents in southern provinces.¹⁰

This statement lists several disappeared persons, including lawyer Somchai Neelapaijit, disappeared since 2004; indigenous defender Porlajee (Billy) Rakchongcharoen, disappeared since 2014; Siam Theerawut, Chuchep Chivasut, and Kritsana Thapthai, pro-democracy political activists, disappeared since 8 May 2019; and several political activists disappeared between 2016 and 2018. Enforced disappearances constitute continuing crimes as long as perpetrators conceal the fate and whereabouts of the victims.¹¹ Family members constitute victims of the crime of enforced disappearance and are entitled to reparations.¹²

¹ WGEID - 115th session (23 April–2 May 2018), A/HRC/WGEID/115/1, 16 August 2018, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGEID/115/1&Lang=E>.

² UNCED, <https://www.refworld.org/docid/47fdfaeb0.html>.

³ UN Human Rights Committee, Concluding observations on the 2nd periodic report of Thailand: Addendum. Information received from Thailand, CCPR/C/THA/CO/2/Add.1, 10 August 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTHA%2fCO%2f2%2fAdd.1&Lang=en.

⁴ WGEID, A/HRC/30/38, 10 August 2015, p 13, 88, <https://www.refworld.org/pdfid/55ed8ba54.pdf>.

⁵ Working Group on Justice and Peace, *Enforced Disappearances in Thailand*, May 2012, p. 5, https://issuu.com/wgjp/docs/enforced_disappearances_in_thailand_03; Tyrell Haberkorn, In Plain Sight: Impunity and Human Rights in Thailand, University of Wisconsin Press, 2018, pp 165-188.

⁶ Human Rights Watch (HRW), Thailand's Failed Pledges to End 'Disappearances', 29 August 2018, <https://www.hrw.org/news/2018/08/29/thailands-failed-pledges-end-disappearances>.

⁷ WGEID, A/HRC/22/45, 28 January 2013, Para 464, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/22/45.

⁸ LRWC, Thailand: Official impunity for enforced disappearances of human rights defenders, 20 June 2016, <https://www.lrwc.org/thailand-official-impunity-for-enforced-disappearances-of-human-rights-defenders-statement/>; Angkhana Neelapaijit, Impunity remains victims' obstacle to real justice, Bangkok Post, 12 March 2019, <https://www.bangkokpost.com/opinion/opinion/1643044/impunity-remains-victims-obstacle-to-real-justice>; Haberkorn, see note 5.

⁹ ICCPR, <https://www.refworld.org/docid/3ae6b3aa0.html>.

¹⁰ HRW, see note 6.

¹¹ WGEID, General Comment on Enforced Disappearance as a Continuous Crime, A/HRC/16/48, <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>. Enforced

Thailand's international law obligations and promises

In 2005, the UN Human Rights Committee (HR Committee) expressed concern about lack of remedies in Thailand for attacks against defenders, community leaders and others, “including intimidation and verbal and physical attacks, enforced disappearances and extrajudicial killings,”¹³ in violation of ICCPR Articles 2, 6 and 7. The HR Committee recommended “full and impartial investigations” and “adequate redress” to the victims and relatives of disappeared persons to fulfil Thailand’s obligations to ensure effective remedies for violations as required by ICCPR Article 2(3). Effective investigations should be conducted in accordance with the 2016 Revised UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).¹⁴

At the time of its 2011 Universal Periodic Review (UPR)¹⁵ by the UN Human Rights Council (HRC), Thailand announced its 9 January 2012 signing of the UNCED. Thailand stated its intention to seek Parliamentary ratification of the UNCED and to pass legislation to implement the treaty.

On 6 January 2016, the UN High Commissioner for Human Rights (UNHCHR) called on Thailand to fulfil its commitments ratify the UNCED and to criminalize enforced disappearance in line with international standards. The UNHCHR pointed out Thailand’s responsibility “to ensure the fair prosecution and punishment of perpetrators, and to commit to stamping out the deplorable act of enforced disappearances.”¹⁶ During its May 2016 UPR, Thailand again promised to ratify the UNCED and pass legislation to implement it.¹⁷

Thailand’s adoption of a draft Prevention and Suppression of Torture and Enforced Disappearance Act has been suspended since 28 February 2017 with no time frame for completion.¹⁸ The draft law requires revisions to ensure compliance with Thailand’s international human rights obligations.¹⁹ In March 2017 the National Legislative Assembly unanimously resolved to ratify the UNCED.²⁰ It remains unratified. In April 2017, the HR

disappearance is also defined as a crime against humanity in Article 7 (1) (i) of the Rome Statute of the International Criminal Court; WGEID, General Comment on the definition of enforced disappearance, A/HRC/7/2, 10 January 2008, para 26, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/101/05/PDF/G0810105.pdf>.

¹² WGEID, A/HRC/19/58/Rev.1 of March 2, 2012, para. 58, 60,

https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Rev1_en.pdf.

¹³ UN Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 Of The Covenant: Concluding observations of the Human Rights Committee: Thailand, CCPR/CO/84/THA, 8 July 2005, paras 10, 19,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2f84%2fTHA&Lang=en.

¹⁴ OHCHR, Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016),

<https://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>.

¹⁵ Report of the Working Group on the UPR: Thailand, A/HRC/19/8/Add.1, 6 March 2012,

http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/A_HRC_19_8_Add.1_Thailand_E.doc.

¹⁶ OHCHR, Zeid urges Thailand to fully investigate enforced disappearances, 6 January 2016,

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16924&LangID=E>.

¹⁷ Report of the Working Group on the UPR: Thailand, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/33/16/Add.1, 7 September 2016, p. 3, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/33/16/Add.1&Lang=E>.

¹⁸ WGEID 115th session A/HRC/WGEID/115/1, 16 August 2018, Annex, para 10, see note 1.

¹⁹ International Commission of Jurists, Letter to Deputy Prime Minister and Minister of Justice, 30 August 2017, <https://www.icj.org/wp-content/uploads/2017/08/Thailand-ED-Day-letter-Advocacy-open-letters-2017-ENG.pdf>.

²⁰ WGEID, Annex, para 15, see note 18.

Committee expressed concern about delays in enacting criminal legislation to criminalize enforced disappearance.²¹ Thailand's government established a Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance in May 2017, but this committee has not taken effective actions.²²

Since 30 June 2011, the WGEID has made repeated requests to conduct a country visit to Thailand. Thailand has not yet accepted this request despite WGEID reminders on 8 November 2012, 2 September 2013, 28 October 2014, 27 November 2015, 18 November 2016 and 19 January 2018.²³

Thailand's failure since 2012 to ratify UNCED or implement effective measures to investigate, remedy, and prevent enforced disappearances, allows for continued use of enforced disappearance, impunity for perpetrators, and denial of remedies for victims. Family members of victims whose disappearances have been inadequately investigated continue to experience violation of their right to the truth and denial of other remedies guaranteed by international law binding on Thailand.

Case examples

This section outlines prominent examples of unresolved enforced disappearances from 2004 to 2019:

- Disappearance since 12 March 2004 of Somchai Neelapaijit, human rights lawyer, Vice President of the Human Rights Committee of the Law Society of Thailand, and President of the Muslim Lawyers Club of Thailand. Mr. Somchai was abducted by a group of police officers on 12 March 2004 and disappeared.²⁴ Prior to his disappearance he had received death threats due to his criticism of martial law in Thailand's southern provinces. Thai authorities have failed to uncover Mr. Somchai's fate or whereabouts. Investigation has been marked by delays, lack of competence, procedural obstruction, and harassment of Mr. Somchai's wife, Ms. Angkhana Neelapaijit.²⁵ Several police seen abducting Mr. Somchai were charged with "robbery" and "coercion" but acquitted by the Supreme Court. No murder charges were laid, as there was no proof of death. Thailand's Department of Special Investigation (DSI) closed its investigation on 13 October 2016.
- Disappearance since 17 April 2014 of Porlajee (Billy) Rakchongcharoen, a Karen land rights defender. Mr. Porlajee disappeared on 17 April 2014 after National Park officials detained and questioned him while he was travelling to meet Karen villagers to discuss a court case alleging unlawful destruction of villagers' homes and property by a National Park official. Park officials claim they released him, but there is no evidence of release. Mr. Porlajee's wife, Ms. Pinnapha Phrueksapan, was subjected to death threats. On 31 January 2017, the DSI announced it would not

²¹ UN Human Rights Committee, Concluding observations on the 2nd periodic report of Thailand. CCPR/C/THA/CO/2, 25 April 2017, paras 19-22, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/THA/CO/2&Lang=En.

²² WGEID 115th session, A/HRC/WGEID/115/1, 16 August 2018 Annex, para 11, see note 1.

²³ Report of the WGEID, A/HRC/39/46, 30 July 2018, para. 135, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/46; WGEID - 116th session (10–14 September 2018), A/HRC/WGEID/116/1, November 2018, para. 163, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGEID/116/1.

²⁴ See a timeline of the cases of Mr. Somchai and Mr. Porlajee until June 2016 at LRWC, see note 8; International Commission of Jurists, *Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand*, March 2014, <https://www.icj.org/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>.

²⁵ Ibid ICJ and LRWC; UN SG 2018 report on reprisals, A/HRC/39/41, Annex I. 16, para. 53, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/41.

investigate,²⁶ but national and international attention prompted DSI to open an investigation on 28 June 2018.²⁷ On 11 July 2019, DSI's deputy director-general stated that as "most of the witnesses are too afraid to speak out, we are finding it very challenging to obtain new evidence" in the five-year-old case.²⁸

- Enforced disappearances in 2018-2019: Siam Theerawut, Chuchee Chivasut, and Kritsana Thapthai," Thai pro-democracy political activists living in exile in Lao People's Democratic Republic (Laos), were reportedly detained by Vietnamese authorities for illegally crossing the Laos-Vietnam border in early 2019, and handed over to Thai authorities on 8 May 2019.²⁹ Neither Vietnamese nor Thai authorities have acknowledged their detention. Their fate and whereabouts remain unknown. The three men are political activists associated with the United Front for Democracy Against Dictatorship (UDD). All three may be facing charges of lèse majesté (Penal Code Article 112) and sedition (Article 116) as a result of their political activism. A well-grounded fear of lèse majesté charges (considered political in character) is among the grounds for potential grants of refugee status by the UN High Commissioner for Refugees.³⁰ The three are believed to have moved from Laos to Vietnam after enforced disappearances in Laos of political activists Surachai Danwattananusorn, Kraidej Luelert, and Chatchan Buphawan in late 2018. The murdered and mutilated bodies of Kraidej Luelert and Chatchan Buphawan were discovered in northeast Thailand in late December 2018. Enforced disappearances in Laos of Thai activists Itthipol Sukpaenin in June 2016 and Wuthipong Kachathamakul in July 2017 remain unresolved.

Recommendations

LRWC requests that the Human Rights Council urge Thailand to immediately:

- Ensure independent, impartial and thorough investigations of all enforced disappearances in accordance with the Minnesota Protocol.
- Accept the WGEID's request for a country visit in 2019;
- Ratify the UNCED;
- Ensure revision and adoption of the draft Prevention and Suppression of Torture and Enforced Disappearance Act in accordance with international human rights standards;
- Guarantee protection from harassment for all relatives and others seeking justice for victims of enforced disappearances, and ensure reparations for family members of the disappeared;
- Guarantee defenders in Thailand the right to conduct human rights activities in accordance with the UN Declaration on Human Rights Defenders, free from judicial

²⁶ DSI refuses to accept case of disappeared Karen activist, Prachatai, 31 January 2019, <https://prachatai.com/english/node/6886>.

²⁷ Cross Cultural Foundation. Fifth anniversary of Porlajee "Billy" Rakchongcharoen's enforced disappearance shows Thailand has failed to investigate this crime and bring perpetrators to justice, 18 April 2019, <https://voicefromthais.wordpress.com/2019/04/18/public-statement-fifth-anniversary-of-porlajee-billy-rakchongcharoens-enforced-disappearance-shows-thailand-has-failed-to-investigate-this-crime-and-bring-perpetrators-to-j/>.

²⁸ DSI admits 'difficulties' in solving activist's disappearance, The Nation, 11 July 2019, <https://www.nationthailand.com/news/30372830>.

²⁹ Siam's parents are demanding help from agencies to search for their son, TLHR, 14 May 2019 <https://www.tlhr2014.com/?p=12366&lang=en>; Unknown fate for 3 more Thai Dissidents, ILaw, 23 May 2019, <https://freedom.ilaw.or.th/en/blog/unknown-fate-3-more-thai-dissidents>; Human Rights Watch, Thailand: Critics Feared 'Disappeared', 9 May 2019, <https://www.hrw.org/news/2019/05/09/thailand-critics-feared-disappeared>.

³⁰ UNHCR, Guidance Note on Refugee Claims Relating to Crimes of Lèse Majesté and Similar Criminal Offences, 2015, <https://www.refworld.org/docid/55ee8a254.html>.

harassment, enforced disappearances, extrajudicial killings, or other reprisals or intimidation, and adopt a law to protect defenders based on the Model National Law on the Recognition and Protection of Human Rights Defenders.³¹

Thai Lawyers for Human Rights (TLHR), NGO without consultative status, also shares the views expressed in this statement.

³¹ International Service for Human Rights, Model National Law on the Recognition and Protection of Human Rights Defenders, 2016, https://academy.ishr.ch/upload/resources_and_tools/ishr_Model_Law_for_the_recognition_and_protection_of_human_rights_defenders_en.pdf.