

Lawyers' Rights Watch Canada

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Thailand: Official impunity for enforced disappearances of human rights defenders

Twelve-year anniversary of abduction and disappearance of Mr. Somchai Neelapaijit and two-year anniversary of disappearance of Mr. Porlajee Rakchongcharoen

Statement with Timelines

20 June 2016

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers and other human rights defenders who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

Introduction

LRWC calls upon Thailand to fulfil its promises to end the serious situation of impunity for enforced and involuntary disappearances (“enforced disappearances”) of human rights defenders and others. Thailand has disregarded its duty to ensure thorough, impartial and independent investigations of at least 82 unsolved enforced disappearances in Thailand recorded by the UN Working Group on Enforced and Involuntary Disappearances (WGEID) since 1980. Thailand’s failure to investigate these continuing crimes¹ allows impunity for enforced disappearances to flourish. This statement discusses two emblematic cases of enforced disappearance: the 2004 disappearance of human rights lawyer Mr. Somchai Neelapaijit and the disappearance of indigenous land rights defender Mr. Porlajee (Billy) Rakchongcharoen. This statement provides timelines and discussion of these two cases and recommends that Thailand immediately conduct thorough, impartial investigations of these two cases and of other cases of enforced disappearances identified by the WGEID, immediately fulfil its promises to ratify the UN *International Convention for the Protection of All Persons from Enforced Disappearance*

¹ The international crime of enforced disappearance is a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared. Working Group on Enforced or Involuntary Disappearances, General Comment on the UN Working Group on Enforced or Involuntary Disappearances. General Comment on Enforced Disappearance as a Continuous Crime, A/HRC/16/48, para.39, <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>. Enforced disappearance has also been defined as a crime against humanity in article 7 (1) (i) of the Rome Statute of the International Criminal Court. See UN 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>.

(UNCED) and speedily enact a national law on enforced disappearance that mirrors the provisions of the UNCED.

More than 12 years have passed since the enforced disappearance of Mr. Somchai Neelapaijit, who was abducted by state officials and disappeared on 12 March 2004. Despite many promises of a thorough investigation, Thai authorities have made no progress in uncovering Mr. Somchai's fate and whereabouts. Thailand's conduct in this case has been marked by delays, lack of competence, procedural obstruction, and threats against Mr. Somchai's wife, Ms. Angkhana Neelapaijit, together with a weak legal framework for prosecuting enforced disappearances.

More than two years ago, Mr. Porlajee (Billy) Rakchongcharoen, a Karen land rights activist, disappeared after National Park officials admit detaining and questioning him on 17 April 2014. He has never been seen again despite park officials' claims to have released him. Details of the investigation remain unclear, with little information forthcoming from Thai authorities. Mr. Porlajee's wife, Ms. Pinnapha Phrueksapan, has also been subjected to death threats. Further concerns include incompetent and lacklustre investigation by Thai authorities, as well as legal hurdles created by Thailand's poor legal framework for investigating and bringing suspected perpetrators of enforced disappearance to justice.

Despite numerous petitions from family members to Thai authorities, Thai courts and UN bodies,² Thailand has not yet conducted thorough, independent and impartial investigations of the enforced disappearances of Mr. Somchai or Mr. Porlajee in accordance with international human rights principles.

Background facts and timelines

Mr. Somchai Neelapaijit³

At the time of his enforced disappearance on 12 March 2004, Mr. Somchai Neelapaijit, age 53, was Vice President of the Human Rights Committee of the Law Society of Thailand and President of the Muslim Lawyers Club of Thailand. He had received death threats as a result of his prominent criticism of the declaration of martial law in Thailand's southern provinces. He had been representing five persons detained in connection with accusations of theft of weapons from an army camp. He had complained to authorities that police in Narathiwat Province, southern Thailand, had tortured his clients to extract confessions, including by beating and kicking them, applying electrical shocks to their bodies, attempting to asphyxiate them and

² For details of the case of Mr. Somchai until March 2014, see International Commission of Jurists, *Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand*, March 2014, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>. For some history of the disappearance of Mr. Porlajee until April 2015, see Amnesty International, "Thailand: Sad Day for Justice as Police Officers Acquitted and Family Denied Right of Co-plaintiff in the Enforced Disappearance of Leading Human Rights Defender", AI, 29 December 2015, <https://www.amnesty.org/en/documents/asa39/3132/2015/en/>.

³ For a more detailed timeline, see International Commission of Jurists, *Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand*, March 2014, see citations at notes 17, 18, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>.

urinating on them.⁴ On 27 February 2004, he had given a well-publicized speech criticizing Thai police and military for torture and discrimination against Malay-Muslims in Thailand's deep south. On 11 March 2004, he wrote a letter to police, detailing the allegations of torture of his clients.⁵ The next day, he was abducted and has never been seen again.

12 March 2004: Mr. Somchai was abducted by a group of State officials in central Bangkok. According to eyewitness statements, five men, identified as plain-clothed police officials, forcibly removed Mr. Somchai from his car, placed him in another car and drove away.

17 March 2004: Deputy Prime Minister Chavalit Yongchaiyudh confirmed that he had instructed authorities to investigate the matter but dismissed suggestions of police or military involvement in the disappearance. Police reportedly were investigating the disappearance and asked to see footage from a surveillance camera at the Chalina Hotel, where Mr. Somchai was last seen. Deputy police chief General Kowit Wattana reported that investigators believed the motivation for the disappearance was a family conflict.⁶ Prime Minister Thaksin Shinawatra then suggested that family problems led to Mr. Somchai's disappearance and was quoted in *The Nation* as telling reporters that "Somchai had disputes with his wife. Perhaps, he just wants to be away from his family problems for a while."

25 March 2004: In response to a question in parliament, Deputy Prime Minister Chavalit made a statement suggesting knowledge by authorities that Mr. Somchai was dead.⁷

12 April 2005: Mr. Somchai's wife, Ms. Angkhana Neelapaijit, sought police protection after receiving threats by telephone and in person near her home. She was granted protection for two months by the Ministry of Justice's Department of Special Investigation (DSI), but declined to renew it, as it was ineffective.⁸

8 and 29 April 2004: Warrants were issued for the arrest of five police officers in connection with Mr. Somchai's enforced disappearance. They were charged with robbery and coercion, but

⁴ Amnesty International, "Thailand: Sad Day for Justice as Police Officers Acquitted and Family Denied Right of Co-plaintiff in the Enforced Disappearance of Leading Human Rights Defender", AI, 29 December 2015, <https://www.amnesty.org/en/documents/asa39/3132/2015/en/>.

⁵ See Human Rights First, Trial Monitoring Report: The Disappearance of Somchai Neelapaijit, 21 February 2006, p. 5, <https://www.humanrightsfirst.org/wp-content/uploads/pdf/thailand-report-0705.pdf>.

⁶ "Somchai Missing: Govt Urged to Find Muslim Lawyer", *The Nation*, 17 March 2004, <http://www.nationmultimedia.com/specials/south2years/mar1704.php>.

⁷ International Commission of Jurists (ICJ), *Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand*, March 2014, p. 12, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>, citing Report of the National Reconciliation Commission: Overcoming Violence through the Power of Reconciliation, 16 May 2006 (unofficial translation), p. 45, <http://nysean.org/sites/default/files/NRC%20Report%20in%20English.pdf>.

⁸ Angkhana Neelapaijit, "What Really Happens to Witnesses in Thailand? Some Cases", Asian Human Rights Commission, <http://www.humanrights.asia/resources/journals-magazines/article2/0503/what-really-happens-to-witnesses-in-thailand-some-cases>.

not murder due to a lack of forensic evidence of murder, including the absence of a body.⁹ The five were released on bail.

19 July 2005: The Ministry of Justice's DSI began investigating the enforced disappearance of Mr. Somchai.

12 January 2006: Following the trial of the five police officers during 2005, the Bangkok Criminal Court convicted only one defendant, Police Major Ngern Tongasuk, of coercion. The others were acquitted. The convicted police officer had been identified by an eyewitness as the officer who pushed Mr. Somchai into the get-away car on 12 March 2004. Pol. Maj. Ngern Tongasuk was released on bail pending appeal. He was part of the team that had been investigating Mr. Somchai's clients' case involving the theft of weapons from an army camp, and was identified as an abuser of Mr. Somchai's clients who alleged torture by the police.¹⁰ Included in the evidence at trial was a copy of the mobile phone records of the five defendants showing that on 12 March 2004, the day Mr. Somchai was disappeared, there were 75 phone calls between the five police officers, compared to very few calls between them in the days before and after the date in question. The records also show that the defendant police officers had followed Mr. Somchai from the morning of 12 March 2004 until the time of his enforced disappearance, and that a call was made to Prime Minister Thaksin's office after the abduction. Since the investigating police obtained the records unofficially, and no officials from the telephone service provider testified in court, the Court of First Instance dismissed the evidence, saying it was unreliable.¹¹ During the trial, Ms. Angkhana's lawyers participated as co-prosecutors after she obtained an order permitting her, as a victim of the crime, to be a co-plaintiff.¹²

13 January 2006: Prime Minister Thaksin Shinawatra said that an ongoing investigation into Somchai Neelapaijit's disappearance suggested more than four officials were involved.¹³

21 March 2006: While working with the Central Institute of Forensic Science to try to locate Mr. Somchai's remains, Ms. Angkhana received a threat that she might have an accident or find a bomb under her car.¹⁴

⁹ Cited in Human Rights First, *Trial Monitoring Report: The Disappearance of Somchai Neelapaijit*, 21 February 2006, p. 5, <https://www.humanrightsfirst.org/wp-content/uploads/pdf/thailand-report-0705.pdf>

¹⁰ "Supreme Court Rules No One Guilty for Somchai's Enforced Disappearances", *Prachatai English*, 29 December 2015, <http://www.prachatai.com/english/node/5735>.

¹¹ "Supreme Court Rules No One Guilty for Somchai's Enforced Disappearances", *Prachatai English*, 29 December 2015, <http://www.prachatai.com/english/node/5735>. For a detailed report of the trial, see Human Rights First, *Trial Monitoring Report: The Disappearance of Somchai Neelapaijit*, 21 February 2006, p. 5, <https://www.humanrightsfirst.org/wp-content/uploads/pdf/thailand-report-0705.pdf>; see also International Commission of Jurists, *Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand*, March 2014, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>.

¹² Thailand's *Criminal Procedure Code*, section 30, states that "[i]n respect of a public prosecution, the victim may, by motion, associate himself as prosecutor at any stage of the trial before the court of first instance but prior to the delivery of judgment." See <https://www.samuihorsale.com/law-texts/thai-criminal-procedure-code.html>.

¹³ "Thai PM Says Missing Lawyer Dead", *BBC*, 13 January 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/4608594.stm>.

¹⁴ Angkhana Neelapaijit, "What Really Happens to Witnesses in Thailand? Some Cases", Asian Human Rights Commission,

22 March 2006: The DSI, Police Major General Sombat Amornwiwat, reported that DSI had identified more suspects who had killed Mr. Somchai Neelapaijit and burned his body, but that there was insufficient evidence for murder charges.

12 April 2006: Pol. Maj. Ngern Thongsuk appealed his conviction.

30 April 2006: The Prosecutor filed a cross-appeal on behalf of Ms. Angkhana. All five accused appealed the Criminal Court order permitting Ms. Angkhana and her four children to be co-plaintiffs.

12 March 2007: Ms. Angkhana reported that she had been threatened by the Acting Commissioner General of the Royal Thai Police, Pol. Gen. Seripisuth Themiyavet, after she filed a complaint to the Administrative Court in Bangkok on 12 March 2007 that police had failed to properly investigate the enforced disappearance of her husband and that, contrary to Thai law, the four police officers acquitted of criminal offences connected to Mr. Somchai's abduction and murder continued to work in the police department even though their cases were under appeal.¹⁵

11 March 2008: At the UN Human Rights Council, the Royal Thai Government pledged “to do its utmost and leave no stone unturned in order to bring to justice the case of Mr. Somchai.”¹⁶

September 2008: Pol. Maj. Ngern Thongsuk allegedly went missing during a mudslide and his current whereabouts remain unknown.¹⁷

18 May 2009: A Civil Court declared Somchai Neelapaijit to be a “disappeared” person.

23 September 2010: One day before the scheduled reading of the Appeal Court verdict on 24 September, the family of Pol. Maj. Ngern Thongsuk submitted a motion to the Pratumthani Provincial Court to have him officially declared a missing person, resulting in a delay in the verdict.

19 October 2010: The Appeal Court made a ruling that the verdict in the case of Pol. Maj. Ngern could be read without delay, because no court had made a ruling on Pol. Maj. Ngern's status.¹⁸

<http://www.humanrights.asia/resources/journals-magazines/article2/0503/what-really-happens-to-witnesses-in-thailand-some-cases>.

¹⁵ Lawyers' Rights Watch Canada, “Thailand: Mrs. Angkhana Wongrachen, Wife of Mr. Somchai Neelapaijit”, 11 April 2007, <http://www.lrwc.org/mrs-angkhana-wongrachen-wife-of-mr-somchai-neelapaijit/>; Asian Human Rights Commission, “No Action against Police Chief over Threats to Human Rights Defender”, 27 March 2007, <http://www.humanrights.asia/news/urgent-appeals/UP-044-2007/?searchterm=>.

¹⁶ Royal Thai Government, Right of Reply in the Interactive Dialogue with the Chairperson of the Working Group on Enforced or Involuntary Disappearances, Santiago Corcuera, UN Doc. A/HRC/7/2, 11 March 2008, paras. 2-3, cited in International Commission of Jurists (ICJ), *Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand*, March 2014, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>.

¹⁷ “Supreme Court Rules No One Guilty for Somchai's Enforced Disappearances”, *Prachatai English*, 29 December 2015, <http://www.prachatai.com/english/node/5735>. Also see Asian Human Rights Commission, “Thailand: Call for Observers in the Hearing of Missing Person Case of Pol. Maj. Ngern Thongsuk”, Statement, 11 February 2011, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-007-2011>.

21 January 2011: There was another delay in the Appeal Court verdict due to the fact that Pol. Maj. Ngern Thongsuk was not present in person and the required procedural steps had not been taken to confirm he had been properly notified of the hearing.¹⁹

11 March 2011: The Appeal Court overturned the conviction of Pol. Maj. Ngern and upheld the acquittal of the other four police officers accused of involvement in the abduction and disappearance of Mr. Somchai due to insufficient evidence and procedural irregularities. The Court also ruled that the Neelapaijit family were not permitted to be co-plaintiffs in proceedings related to crimes against Mr. Somchai, because they were not themselves “injured parties” and because there was no evidence of Mr. Somchai’s death or his lack of capacity to bring the application to be co-plaintiff himself.²⁰

12 December 2013: Police Colonel Niran Adulyasak, the director of the DSI Bureau of Special Crime in charge of Mr. Somchai’s case, stated that the files in Mr. Somchai’s case were missing; he blamed anti-government protesters for breaking into DSI headquarters and destroying a filing cabinet. After criticism from Mr. Somchai’s family and Human Rights Watch, Pol. Col. Niran reported that the files had been located in an opening at the back of the filing cabinet in which they were stored.²¹

11 March 2015: Ms. Angkhana called on the DSI to replace Pol. Col. Niran as the investigator, since there had been no progress in 11 years.²²

29 December 2015: Thailand’s Supreme Court upheld the Appeal Court acquittals of all five police officers, absolving them of criminal responsibility for the enforced disappearance of Mr. Somchai, stating that the primary evidence in the case, the phone records of the five police officers, was weak, and the testimony of witnesses was unreliable and contradictory. The acquittal of the five police officers was due in part to the poor investigation of the crime and collecting evidence. The Supreme Court also upheld the ruling that the Neelapaijit family was not permitted to be named as joint plaintiffs on Mr. Somchai’s behalf because it could not be confirmed that he was murdered or injured to the extent that he is unable to act for himself.²³

Mr. Porlajee (Billy) Rakchongcharoen

Mr. Porlajee (Billy) Rakchongcharoen was a Karen land rights activist. At the time of his disappearance on 17 April 2014, Mr. Porlajee was travelling from his mountain village in Kaengkrachan district, Petchaburi province, to meet with ethnic Karen villagers and activists to prepare for a court hearing in a lawsuit filed by the villagers against the National Park Wildlife

¹⁸ For more detail, see Asian Human Rights Commission, “Thailand: No Justice for Somchai, Not Now, Nor Ever?”, 31 January 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-020-2011/>.

¹⁹ *Ibid.*

²⁰ Asian Human Rights Commission, Thailand: Verdict on Somchai’s Case—His Wife, Daughter Could Not Be Plaintiffs; Not Enough Evidence to Convict Accused, 17 March 2011, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-017-2011>.

²¹ Brad Adams, “Ten Years On, Another Cover-Up in Somchai’s Disappearance”, *The Nation*, 18 December 2013, <http://www.nationmultimedia.com/opinion/Ten-years-on-another-cover-up-in-Somchais-disappea-30222324.html>.

²² “Somchai’s Wife Wants Investigators Changed”, *The Nation*, 12 March 2015, <http://www.nationmultimedia.com/politics/Somchais-wife-wants-investigators-changed-30255844.html>.

²³ “Supreme Court Rules No One Guilty for Somchai’s Enforced Disappearances”, *Prachatai English*, 29 December 2015, <http://www.prachatai.com/english/node/5735>.

and Plant Conservation Department, the Ministry of Natural Resources and Environment and the Kaengkrachan National Park Office Chief, Mr. Chaiwat Limlikitaksor. The lawsuit alleges that in July 2011, the authorities destroyed and burned houses and property of more than 20 Karen families who had been residing in Bangkloybon villages in the National Park. Mr. Porlajee was also planning to collect signatures for a royal petition concerning Mr. Chaiwat's alleged abuse of power. At the time of his disappearance, he was carrying files related to the lawsuit. He is believed to be a victim of enforced disappearance, as he has never been seen since 17 April 2014, and his whereabouts are unknown.

17 April 2014: Mr. Porlajee disappeared after being reportedly arrested by National Park authorities in Kaengkrachan National Park in Petchaburi province and released.²⁴

18 April 2014: The Kaengkrachan National Park Office Park Chief, Mr. Chaiwat Limlikitaksor, reportedly advised local activists that Mr. Porlajee had been detained at a checkpoint on the afternoon of 17 April 2014 and was released after being questioned about alleged unlawful possession of a wild bee honeycomb and six bottles of honey.

19 April 2014: Mr. Porlajee's family filed a complaint with the local police regarding his disappearance.²⁵

23 April 2014: It was reported that police questioned Mr. Chaiwat, after which Mr. Chaiwat told news reporters that he believed Mr. Porlajee to be "still alive and still in the national park area."²⁶ A search of the area by 200 police and military personnel did not uncover the whereabouts of Mr. Porlajee.

26 April 2014: It was reported that the Chairperson of the Civil and Political Rights panel of Thailand's National Human Rights Commission, Dr. Nirand Pitakwatchara, called for National Police Chief General Adul Saengsingkaew to order an investigation into Mr. Porlajee's disappearance as soon as possible.²⁷

2 May 2014: The UN High Commissioner for Human Rights (UNHCHR) issued a statement expressing concern about lack of progress in the investigation into the disappearance of Mr. Porlajee.²⁸

14 May 2014: Kaengkrachan National Park Chief Mr. Chaiwat agreed to be transferred to an inactive post to facilitate the police investigation into the disappearance.²⁹

²⁴ Human Rights Watch, "Thailand: Prominent Activist Feared 'Disappeared': Urgently Produce Information on Por Cha Lee Rakchongcharoen", 20 April 2014, <https://www.hrw.org/news/2014/04/20/thailand-prominent-activist-feared-disappeared>.

²⁵ *Ibid.*

²⁶ "Park Chief Quizzed in Billy Case", *Bangkok Post*, 23 April 2014, <http://www.bangkokpost.com/print/406286/>

²⁷ "Rights Body Asks If Weapons Were Used against Missing Activist", *The Nation*, 26 April 2014, <http://www.nationmultimedia.com/national/Rights-body-asks-if-weapons-were-used-against-miss-30232265.html>

²⁸ UN Office of the High Commissioner for Human Rights, Press briefing notes on South Sudan, Ethiopia, United States, Palestine and Thailand / South East Asia, 2 May 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14556&>.

²⁹ "Kaeng Krachan Park Chief Transferred", *Bangkok Post*, 14 May 2014, <http://www.bangkokpost.com/print/409730/>.

17 July 2014: The Phetchaburi Provincial Court rejected a habeas corpus application filed by Mr. Porlajee's wife, Ms. Pinnapha Phrueksapan, seeking a judicial enquiry into her husband's whereabouts in detention.³⁰

24 August 2014: Mr. Chaiwat was sent back to his position at Kaengkrachan National Park, leading to concern about the impartiality of the investigation into Mr. Porlajee's disappearance.³¹

6 October 2014: Mr. Chaiwat was removed from his position at Kaengkrachan National Park and moved to the water management department in Prachinburi province after local Karen people and activists complained and asked for his removal to allow for an impartial investigation.³²

28 October 2014: Mr Chaiwat had previously been charged with masterminding the 2011 murder of a Karen rights activist, Mr. Tatkamol Ob-om,³³ but the Phetchaburi Provincial Court dismissed those charges in October 2014.³⁴

2 December 2014: Police reported that CCTV footage of Kaengkrachan National Park did not indicate that Mr. Porlajee had been released following his arrest.³⁵ National Human Rights Commission (NHRC) member Dr. Nirand Pitakwatchara planned to issue a request from the NHRC that witness protection be provided for Mr. Porlajee's wife, Ms. Pinnapha.

29 January 2015: Investigation officers of the Royal Thai Police Region 7 filed charges under Article 157 of the *Criminal Code* for malfeasance in office against Mr. Chaiwat and four other park officers for alleged unlawful detention of Mr. Porlajee.³⁶

February 2015: The Appeals Court dismissed Ms. Pinnapha's appeal of the Phetchaburi Provincial Court's decision to dismiss the petition she had submitted in July 2014 for a judicial inquiry into his whereabouts in detention.³⁷

³⁰ "Park Chief Reinstated Despite Links to Case of Missing Karen Activist", *Khaosod English*, 2 September 2014, <http://www.khaosodenglish.com/detail.php?newsid=1409650604>.

³¹ "Park Chief Reinstated Despite Links to Case of Missing Karen Activist", *Khaosod English*, 2 September 2014, <http://www.khaosodenglish.com/detail.php?newsid=1409650604>; "Karen Activist Disappearance: Park Chief Finally Removed", *Khaosod English*, <http://www.khaosodenglish.com/detail.php?newsid=1412426772>.

³² "Karen Activist Disappearance: Park Chief Finally Removed", *Khaosod English*, <http://www.khaosodenglish.com/detail.php?newsid=1412426772>.

³³ "Park Chief Quizzed in Billy Case", *Bangkok Post*, 23 April 2014, <http://www.bangkokpost.com/print/406286/>; also see HRW, "Thailand: Prominent Activist Feared 'Disappeared': Urgently Produce Information on Por Cha Lee Rakchongcharoen", 20 April 2014, <https://www.hrw.org/news/2014/04/20/thailand-prominent-activist-feared-disappeared/>; "Park Chief Reinstated Despite Links to Case of Missing Karen Activist", *Khaosod English*, 2 September 2014, <http://www.khaosodenglish.com/detail.php?newsid=1409650604>.

³⁴ "Court Rejects Murder Case against Chaiwat", *Bangkok Post*, 29 October 2014, <http://www.bangkokpost.com/print/440140/>.

³⁵ Tanpisit Lerdbamrunghchai, "Karen Activist 'Never Released'", *The Nation*, 3 December 2014, <http://www.nationmultimedia.com/national/Karen-activist-never-released-30249034.html>.

³⁶ "Police File Charge against Park Officers over Billy's Disappearance", *Prachatai English*, 29 January 2015, <http://prachatai.org/english/node/4727>; "Ex-Park Head Accused of Unlawfully Detaining Missing Karen Activist", *Prachatai English*, 18 April 2016, <http://www.prachatai.com/english/node/6045>.

7 August 2015: Ms. Pinnapha reported receiving a warning from a neighbour to stop asking state agencies to help search for her husband or she might be the next person to disappear.³⁸ Ms. Angkhana Neelapaijit, who had assisted Ms. Pinnapha to submit a petition to the DSI to investigate the case, reported that police had told Ms. Pinnapha they had finished questioning witnesses and planned to stop their investigation. DSI investigators reported that they had not provided any information to Ms. Pinnapha since starting their investigation.

1 September 2015: The Supreme Court of Thailand dismissed Ms. Pinnapha's appeal of two lower courts' refusals to launch a judicial inquiry into Mr. Porlajee's whereabouts in detention.³⁹ After the ruling, Mr. Chaiwat stated he planned to take legal action for defamation.

January 2016: The DSI and the National Anti-Corruption Commission (NACC) have been investigating the case; however, no progress has been reported as of January 2016.⁴⁰

17 April 2016: At Kaengkrachan District Police Station, Phetchaburi Province, villagers from the Karen Network for Culture and Environment filed a complaint against Mr. Chaiwat, former Chief of Kaengkrachan National Park, and his four colleagues, for unlawful detention of Mr. Porlajee under Articles 309 and 310 of the *Criminal Code*, a crime punishable by up to three years in jail.⁴¹

5 May 2016: It was reported that Thailand's Department of National Parks, Wildlife and Plant Conservation appointed Mr. Chaiwat as head of a special task force on forest encroachment.⁴² Local human rights activists have expressed fear of new conflict, given Mr. Chaiwat's history of alleged human rights violations.⁴³

Violations of International Human Rights Law

The UN *International Convention for the Protection of All Persons from Enforced Disappearance* (UNCED), Article 2 defines "enforced disappearance" as:

... the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or

³⁷ Amnesty International, "Thailand: Family Waits for Justice One Year Since Human Rights Defender Was Last Seen", Index: ASA 39/1466/2015, 17 April 2015,

<https://www.amnesty.org/download/Documents/ASA3914662015ENGLISH.pdf>.

³⁸ "Wife of Missing Activist Threatened", *Bangkok Post*, <http://www.bangkokpost.com/print/647084/>.

³⁹ "Plea for Emergency Trial in Billy Case Rejected by Court", *The Nation*, 3 September 2015, <http://www.nationmultimedia.com/national/Plea-for-emergency-trial-in-Billy-case-rejected-by-30267998.html>.

⁴⁰ 200,000 Baht Bounty for Disappeared Karen Activist 'Billy,' *Khaosod*, 14 January 2016, <http://www.khaosodenglish.com/detail.php?newsid=1452771722>

⁴¹ "Ex-Park Head Accused of Unlawfully Detaining Missing Karen Activist," *Prachatai* English, 18 April 2016, <http://www.prachatai.com/english/node/6045>.

⁴² "Dept Sticks by Chaiwat to Head Panel", *Bangkok Post*, 5 May 2016, <http://www.bangkokpost.com/news/general/959749/dept-sticks-by-chaiwat-to-head-panel>.

⁴³ "Fear of More Conflict as Krachan Park Chief Takes Up New Post", *The Nation*, 5 May 2016, <http://www.nationmultimedia.com/national/Fear-of-more-conflict-as-Krachan-Park-chief-takes--30285323.html>.

by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁴⁴

The UN Working Group on Enforced or Involuntary Disappearances (WGEID) has elaborated, saying:

Enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law. Enforced disappearance has been defined as a crime against humanity in article 7 (1) (i) of the Rome Statute of the International Criminal Court.⁴⁵

Between 1980 and 2014, the United Nations' WGEID transmitted 89 cases of reported enforced disappearance to Thailand, of which 81 remain unresolved. Mr. Somchai's case is the only enforced disappearance case that has been brought to court. The actual number of cases in Thailand is underreported because some families of victims and witnesses keep silent due to fears of reprisal and the lack of an effective witness protection system.

Unsolved enforced disappearances are continuing crimes. The crime of enforced disappearance continues as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared.⁴⁶

The UNCED expressly provides that victims are not only the disappeared person, but also anyone – including families – suffering harm as the direct result of an enforced disappearance. Therefore, Ms. Angkhana Neelapaijit and her children are victims of the crime of enforced disappearance of Mr. Somchai Neelapaijit, and Ms. Pinnapha Phrueksapan is a victim of the crime of enforced disappearance of her husband, Mr. Porlajee Rakchongcharoen.

Thailand's responses to its 2011 UPR included a stated intention to study the possibility of ratifying the UNCED.⁴⁷ On 9 January 2012, Thailand signed the UNCED and on 6 March 2012 confirmed its intention to ratify the Convention subject to approval by Thailand's Cabinet and Parliament.⁴⁸ Pending ratification, Thailand is expected to desist from any acts that would defeat the objective and purpose of the UNCED. In its 2016 UPR in May 2016, Thailand indicated

⁴⁴ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

⁴⁵ Working Group on Enforced Disappearances, 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>.

⁴⁶ General Comment on Enforced Disappearance as a Continuous Crime, A/HRC/16/48, para.39, <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>.

⁴⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/19/8, 8 December 2011, para. 91, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/172/64/PDF/G1117264.pdf>.

⁴⁸ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Thailand. Addendum, 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.

acceptance of recommendations to expedite and accelerate its ratification of the UNCED.⁴⁹ State parties to the UNCED must make enforced disappearance an offence under national criminal law, thoroughly and impartially investigate cases of enforced disappearance and put in place preventive measures.⁵⁰ On 24 May 2016, nine years after its adoption was first urged, Thailand's interim Cabinet endorsed a bill that once enacted will criminalize torture and enforced disappearances. In its present form, the bill forwarded by the Justice Ministry states that officials found guilty of committing torture or forced disappearance face up to 20 years in prison and 30 years if it results in serious injury. In cases where someone is tortured to death, the maximum penalty is life imprisonment. Officials are broadly defined to include those holding political positions and employees of state agencies to local administrators.⁵¹

The enforced disappearance of Mr. Somchai and Mr. Porlajee also highlight the ongoing risks to human rights defenders in Thailand who are raising issues of public concern and seeking redress for human rights violations. The UN *Basic Principles on the Role of Lawyers*⁵² mandate that

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

On 30 June 2015, the UN Human Rights Council passed a unanimous resolution condemning “the increasingly frequent attacks on the independence ... lawyers..., in particular threats, intimidation and interference in the discharge of their professional functions”, and reminding States of their duty

to uphold the integrity of ... lawyers and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice...⁵³

⁴⁹ UN Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/WG.6/25/L.13, 19 May 2016, http://www.upr-info.org/sites/default/files/document/thailand/session_25_-_may_2016/a-hrc-wg.6-25-l.13.pdf.

⁵⁰ UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, available at: <http://www.refworld.org/docid/47fdfaeb0.html>.

⁵¹ “Thailand Moves to Ban Torture and Abduction. Activists Aren’t Ready to Celebrate”, *Khaosod*, 26 May 2016, : <http://www.khaosodenglish.com/politics/2016/05/26/1464264492/>.

⁵³ UN Human Rights Council, *Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers*, A/HRC/29/L.11, 30 June 2015, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

The UN *Declaration on Human Rights Defenders*⁵⁴ provides in Article 12.2 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.

In December 2015, the UN General Assembly adopted a resolution calling for accountability for violence against and intimidation of human rights defenders and urging States to release defenders who have been arbitrarily detained for exercising their fundamental rights to freedom of expression, peaceful assembly and association.⁵⁵ Thailand voted in favour of this resolution.

In March 2016, the UN Human Rights Council adopted a resolution calling on States

to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards the realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy.

This resolution expressed grave concern that:

...human rights defenders addressing environmental and land issues and corporate responsibility, as well as those working on governance issues, promoting transparency and accountability, and those exposing discrimination, corruption and violence at the hands of States, business enterprises and other non-State actors, are among those human rights defenders who are most exposed and at risk, and noting with grave concern also the findings of the Working Group on Enforced or Involuntary Disappearance that the practice of enforced disappearance is often used to repress and intimidate human rights defenders and prevent others from claiming and exercising their economic, social and cultural rights.⁵⁶

LRWC welcomes information provided by Thailand at its UPR in May 2016 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.

Recommendations

LRWC calls upon Thailand to take effective measures to:

⁵⁴ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, <http://www.refworld.org/docid/3b00f54c14.html>.

⁵⁵ General Assembly, “Human rights defenders in the context of the Declaration on the Right and Responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,” 17 December 2016, A/RES/70/161, <http://www.un.org/press/en/2015/ga11745.doc.htm>.

⁵⁶ UN Human Rights Council, “Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights”, 21 March 2016, A/HRC/31/L.28 (Preamble), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.28.

1. guarantee immediate independent, effective and thorough investigations of the enforced disappearances of Mr. Somchai Neelapaijit and Mr. Porlajee (Billy) Rakchongcharoen and of other cases of enforced disappearances identified by the WGEID;
2. ensure identification of those responsible for the enforced disappearances of Mr. Somchai Neelapaijit and Mr. Porlajee (Billy) Rakchongcharoen through investigations and trials as required by international law including the *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*;⁵⁷ and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*;⁵⁸
2. immediately ratify the UNCED;
3. immediately pass the draft law to make enforced disappearance a criminal offence in conformity with the UNCED;
4. guarantee in all circumstances that all human rights defenders in Thailand are able to carry out their legitimate human rights activities without fear of reprisals and free from intimidation, verbal and physical attacks, enforced disappearances and extrajudicial killings;
5. put an immediate end to the harassment and intimidation of the families and others seeking justice for victims of enforced disappearances;
6. comply with the *UN Declaration on Human Rights Defenders*, adopted by the General Assembly of the UN on December 9, 1998, especially Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”, and Article 12.2, which 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.
7. restore democratic rule through free and fair elections.

⁵⁷ Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 1 December 1987, see <http://www.un.org/documents/ga/res/44/a44r159.htm>.

⁵⁸ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution / adopted by the General Assembly*, 21 March 2006, A/RES/60/147, <http://www.refworld.org/docid/4721cb942.html>.