

NGO Assessment of the Follow-Up Actions of the State Party in Implementing the UN Human Rights Committee's Recommendations on Extrajudicial Killings, Enforced Disappearances and Torture

The International Service for Human Rights (ISHR)
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1. Introduction

At its 199th session in March 2017, the UN Human Rights Committee (the HRCtee) reviewed Thailand's second periodic report on its compliance with the International Covenant on Civil and Political Rights (ICCPR). In its Concluding Observations the HRCtee expressed particular concern 'about reports of torture and other ill-treatment, extrajudicial executions and enforced disappearances against, inter alia, human rights defenders, including in the context of the southern border provinces,'¹ and recommended that:

The State party should:

- (a) Ensure that cases are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military, including torture, enforced disappearances and extrajudicial killings, including in the context of the southern border provinces. It should also ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;*
- (b) Provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of investigations;*
- (c) Ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition; (...)²*

ISHR's assessment is that Thailand has failed to implement the above recommendations (grade C).³

The case of human rights lawyer Somchai Neelapaijit and his wife Angkhana Neelapaijit is a specific example that demonstrates that failure. The HRCtee should take the following

¹ United Nations Human Rights Committee, Concluding observations on the second periodic report of Thailand, UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para. 21.

² Ibid., para. 22.

³ As per the Committee's follow up grades, available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf

information on Thailand's continued breach of Angkhana Neelapaijit's rights into account when evaluating Thailand's progress on the above recommendations.

2. Enforced disappearances in Thailand

From 1980 to May 2018, the UN Working Group on Enforced or Involuntary Disappearances recorded and transmitted 90 cases of enforced disappearance to the State Party.⁴ As of July 2018, 86 cases remain outstanding. Enforced disappearances are particularly prevalent in the Southern Provinces and contribute to the restrictive environment for human rights defenders. In 2004, Deputy Prime Minister Chavalit Yongchaiyudh told the Parliament of Thailand that 'Villagers [in the southern border provinces] complained to me that they have been abused continually by the authorities. They said more than 100 people have been disappeared.'⁵

Steps taken by the Government to address enforced disappearance are slow and inadequate. The Draft Prevention and Suppression of Torture and Enforced Disappearance Act is under review by the National Legislative Assembly after it was returned for further consultations to the Cabinet by the Assembly in March 2017.⁶ While a special committee was set up in 2017 by the Prime Minister to handle complaints of torture and enforced disappearance, the committee's progress is slow and families have not been contacted nor informed about any developments in the cases under the committee's mandate. Currently, there is no legal framework to officially recognise the enforced disappearance of a person or criminalize enforced disappearances.⁷ Without this official recognition, families of the disappeared victim have no access to judicial processes, compensation or remedies specific to cases of enforced disappearance.

⁴ Report of the Working Group on Enforced or Involuntary Disappearances (30 July 2018) available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/236/81/PDF/G1823681.pdf?OpenElement> [accessed 1 October 2018].

⁵ Human Rights Watch, "It was like suddenly my son no longer existed", *Enforced Disappearances in Thailand's Southern Border Provinces* (19 March 2007) available at:

www.hrw.org/report/2007/03/19/it-was-suddenly-my-son-no-longer-existed/enforced-disappearances-thailands.

⁶ See International Commission of Jurists' recommendations on the Draft Act to the Thai Government at: ICJ, 'Thailand: ICJ submits recommendations on draft law on torture and enforced disappearance amendments', 18 January 2019,

<https://www.icj.org/thailand-icj-submits-recommendations-on-draft-law-on-torture-and-enforced-disappearance-amendments/>; ICJ, 'Thailand: ICJ, Amnesty advise changes to proposed legislation on torture and enforced disappearances', 23 November

2017, <https://www.icj.org/thailand-icj-amnesty-advise-changes-to-proposed-legislation-on-torture-and-enforced-disappearances/>; ICJ, 'Thailand: pass legislation criminalizing enforced disappearance, torture without further delay', 30 August 2017,

<https://www.icj.org/thailand-pass-legislation-criminalizing-enforced-disappearance-torture-without-further-delay/>; ICJ, 'Thailand: Prioritize the amendment and passage of legislation on torture and enforced disappearances', 9 March 2017,

<https://www.icj.org/thailand-prioritize-the-amendment-and-passage-of-legislation-on-torture-and-enforced-disappearances/>.

⁷ Human Rights Watch, 'Still No Law on Enforced Disappearance in Thailand,'

<https://www.hrw.org/news/2019/09/01/still-no-law-enforced-disappearance-thailand>

2.1. The enforced disappearance of Somchai Neelapaijit

Known human rights lawyer Somchai Neelapaijit, was the subject of an alleged enforced disappearance in 2004. Prior to his disappearance on 12 March 2004, Somchai Neelapaijit spent decades defending the rights of people in the Southern Provinces. Somchai Neelapaijit was a Muslim lawyer and the chairman of Thailand's Muslim Lawyers Association and vice-chairman of the Human Rights Committee of the Law Society of Thailand.

In October 2016, the Department of Special Investigation (DSI) under the Ministry of Justice, wrote to his wife, Angkhana Neelapaijit, to inform her that the investigation into Somchai Neelapaijit's disappearance would be closed because they could not find any culprit.⁸

Following the 2017 review of the State Party's compliance with the ICCPR, the HRCtee specifically referred to Somchai Neelapaijit's case, stating that it was: 'particularly concerned about reports of torture and other ill-treatment, extrajudicial executions and enforced disappearances against, inter alia, human rights defenders, including in the context of the southern border provinces. The [HRCtee] remains concerned about widespread impunity for those crimes and the slow progress in investigating such cases, including cases of the shooting of civilians during the political violence of 2010, the enforced disappearances of Somchai Neelapaijit and Porlajee 'Billy' Rakchongcharoen and the torture endured by Kritsuda Khunasen.'⁹

2.2. Thailand's failure to implement the recommendations of the Committee, as evidenced by the case of Somchai Neelapaijit:

- (a) *The State Party should ensure that cases are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military, including torture, enforced disappearances and extrajudicial killings, including in the context of the southern border provinces. It should also ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;***

In May 2017, the State Party set up an Interim Mechanism for Torture and Enforced Disappearances Complaint Management Committee with mandates to follow-up on allegations of torture and disappearances (the Committee).¹⁰ It was initially reported that the Committee

⁸ www.bangkokpost.com/news/crime/1109580/Somchai-Neelapaijit-neelapaijit-case-closed-says-dsi.

⁹ United Nations Human Rights Committee, Concluding observations on the second periodic report of Thailand, UN Doc. CCPR/C/THA/CO/2, 25 April 2017.

¹⁰ Cross Cultural Foundation (CrCF), Duayjai Group, Patani Human Rights Organization (HAP), Fairly Tell Group with the support of the Centre for Civil and Political Rights, *Thailand: NGO assessment of the implementation of follow-up recommendations*, (8 March 2018) available

would not investigate any cases of torture or enforced disappearance prior to 2007, which meant that Somchai Neelapaijit's case would have been beyond the Committee's mandate.¹¹ However, on 26 June 2017, the Committee reportedly stated that it would consider past, pending and new cases of enforced disappearance, including cases that had already been reported to the UN Working Group on Enforced or Involuntary Disappearances, and the case of Somchai Neelapaijit.¹² Almost four years later, authorities have not informed the Neelapaijit family about any progress or development in the case. Concerns have also been raised about the effectiveness of the Committee generally, as there is a lack of clarity on the legal framework—domestic or international—that will mandate the Committee's operation.¹³

(b) The State Party should provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of investigations;

Angkhana Neelapaijit has continued to seek truth, justice and accountability for Somchai Neelapaijit's disappearance. Over 15 years have passed since Somchai Neelapaijit's disappearance and his fate and whereabouts are still unknown.¹⁴ As stated above, the Neelapaijit family has not been informed about any progress or development in the investigation despite Angkhana's efforts.¹⁵

(c) The State Party should ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition;

Relatives and spouses as victims of enforced disappearances

at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_NGS_THA_30567_E.pdf [accessed 1 October 2018].

¹¹ Cross Cultural Foundation (CrCF), Duayjai Group, Patani Human Rights Organization (HAP), Fairly Tell Group with the support of the Centre for Civil and Political Rights, Thailand: NGO assessment of the implementation of follow-up recommendations, (8 March 2018) available at:

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_NGS_THA_30567_E.pdf [accessed 1 October 2018].

¹² Komchadluek, *Thailand did not neglect 82 cases on Enforced disappearance*, (26 June 2017), available at: <http://www.komchadluek.net/news/regional/284642>.

¹³ International Commission of Jurists, 'Thailand: at fourth anniversary of enforced disappearance of "Billy", still no resolution', 16 April 2018,

<https://www.icj.org/thailand-at-fourth-anniversary-of-enforced-disappearance-of-billy-still-no-resolution/>; International Commission of Jurists, 'ICJ commemorates International Day of the Victims of Enforced Disappearances with Thai human rights defenders', 30 August 2018, <https://www.icj.org/thailand-icj-commemorates-international-day-of-the-victims-of-enforced-disappearances-with-thai-human-rights-defenders/>.

¹⁴ International Commission of Jurists, 'Thailand: at event marking 15th anniversary of the enforced disappearance of Somchai Neelapaijit, ICJ calls for effective measures to tackle the crime,' 12 March 2019,

<https://www.icj.org/thailand-icj-condemns-the-use-of-criminal-defamation-law-to-harass-angkhana-neelapaijit/>

¹⁵ International Commission of Jurists, 'ICJ commemorates International Day of the Victims of Enforced Disappearances with Thai human rights defenders', 30 August 2018,

<https://www.icj.org/thailand-icj-commemorates-international-day-of-the-victims-of-enforced-disappearances-with-thai-human-rights-defenders/>.

As indicated above, the majority of enforced disappearances in the State Party have been of men.¹⁶ The aftermath of enforced disappearances therefore disproportionately impacts the spouses and relatives who are left to bear the economic and social burden of supporting the family of the disappeared. As relatives of those who have disappeared, women may also be considered victims of enforced disappearances.¹⁷

In their concluding observations on the combined sixth and seventh periodic reports of Thailand, the Committee on the Elimination of All Forms of Discriminations Against Women (CEDAW) recognised that ‘Muslim women in the southern border provinces continue to face obstacles to the enjoyment of their rights on an equal footing with men, including with regard to access to education, employment, health care and social security, and that their situation is exacerbated by the ongoing conflict in the region.’¹⁸ Relevant to the case of Angkhana Neelapaijit was the particular concern that the CEDAW noted for ‘[w]omen who have become widows and heads of households as a result of male family members having been arrested, disappeared or killed, and who face stigma and difficulties in earning a living and supporting their families.’¹⁹

Few measures appear to have been adopted by the State Party to address the consequences of enforced disappearances on women, in particular those in the Southern Provinces – as well as the customs and practices which contribute to the financial and social disadvantage faced by women who take on the responsibility of providing for their family following a family member's disappearance. Moreover, the prohibition of discrimination on the basis of gender in the Constitution and the Gender Equality Act does not apply in the Southern Border Provinces due to the continued operation of the special emergency laws.²⁰

The UN Working Group on Enforced or Involuntary Disappearances makes clear that ‘States must pay particular attention to the obstacles that hinder women victims of enforced disappearances from enjoying their guaranteed rights in the same way as men. Women's access to rights is aggravated by lack of legal literacy and the lack of services designed to ensure their rights are protected, particularly in situations where police, judicial and other institutions dealing with enforced disappearances are mainly staffed by men. Furthermore, in cases where women become household heads, family obligations constitute a further limitation on their access to rights, due to the increase in family burden and concomitant reduction in time to deal with all the issues.’²¹

The UN Working Group on Enforced or Involuntary Disappearances has noted the trend that ‘women play a fundamental role in securing and advancing the rights of disappeared persons. In

¹⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/236/81/PDF/G1823681.pdf?OpenElement>, page 33.

¹⁷ Human Rights Council Working Group on Enforced or Involuntary Disappearances, General Comment on women affected by enforced disappearances adopted by the UN Working Group on Enforced or Involuntary Disappearances dated 14 February 2013 (A/HRC/WGEID/98/2).

¹⁸ CEDAW/C/THA/CO/6-7 [22].

¹⁹ CEDAW/C/THA/CO/6-7 [22a].

²⁰ CEDAW/C/THA/CO/6-7[8].

²¹ A/HRC/WGEID/98/2 (2013).

particular, from its experience the Working Group recognizes that women are often at the forefront of the struggle against enforced disappearances. They often form organizations and associations to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims themselves.¹²²

Not only do they lead the struggle to find truth, those women are also put in circumstances where they risk of persecution, violence and intimidation.²³ Due to gender inequalities in many cultures, they experience heightened and intersecting economic, legal, social, and psychological harms as a result of losing a family member, who is often the breadwinner and head-of-household.²⁴

Reparations provided in the case of to Angkhana Neelapaijit

Angkhana Neelapaijit's circumstances following the disappearance of her husband mirror those of many women who find themselves in a similar situation of loss, hardship and physical danger, left to take on the entire economic responsibility of their families, to suffer from the stigma of being viewed as part of the insurgency movement by State officials and to struggle to seek remedies and answers to their husbands' disappearances.²⁵

Angkhana Neelapaijit and her children were reliant on the financial support of Somchai Neelapaijit's income. Following his disappearance, Angkhana became the sole source of financial support for herself and her children. This occurred in the context where the already marginalised position of Muslim women with limited social services left her with few options for support or employment. The payments Angkhana Neelapaijit received therefore do not constitute adequate financial compensation for the gross human rights violation of her husband's enforced disappearance.

Despite receiving some financial compensation, Angkhana has not received adequate reparation for the gross human rights violation of her husband's enforced disappearance. In December 2009, Angkhana Neelapaijit received victim compensation payments for Somchai Neelapaijit's disappearance and death, following the rejection of her initial application in September 2009.²⁶ However, this payment did not cover the maintenance of the criminal case or expenses for funeral rites. In June 2012, Angkhana Neelapaijit received additional monetary

²² Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication submitted on behalf of J.I., No. 103/2016; CEDAW/C/69/D/103/2016, para 8.7.

²³ www.amnesty.org/en/what-we-do/disappearances/;
www.ictj.org/news/overlooked-and-invisible-women-enforceddisappearances.

²⁴ www.amnesty.org/en/what-we-do/disappearances/;
www.ictj.org/news/overlooked-and-invisible-women-enforceddisappearances.

²⁵ www.amnesty.at/media/2065/deadly-but-preventable-attacks-killings-and-enforced-disappearances-of-those-who-defend-human-rights.pdf, page 30.

²⁶ Prior to that, in 2006, Angkhana Neelapaijit was offered compensation as part of a larger compensation scheme for disappearances related to the conflict in the Southern Provinces. In response, she refused this payment and asked that the money be spent to assist victims of violence in the Southern Provinces.

compensation for Somchai Neelapaijit's disappearance, which she accepted on the basis that it would not extinguish the right to bring a criminal prosecution.

In addition, financial compensation alone for damages suffered may not be an effective remedy as it will not provide integral reparation in respect of the violation.²⁷ Rather, an effective remedy in the case of enforced disappearances will include not only compensatory measures, but also a requirement to (a) investigate the crime and the whereabouts of the person; (b) bring those responsible for the crime to justice; and (c) obtain the victim's body or bones.²⁸

Angkhana Neelapaijit has been denied access to justice by the State Party's failure to carry out a thorough, prompt and independent investigation into the disappearance of Somchai Neelapaijit, as evidenced in section 2.2(a) above. The failure to investigate has denied Angkhana Neelapaijit and her children the right to know the truth about the fate and whereabouts of Somchai Neelapaijit. It has also led to impunity for the perpetrators of Somchai Neelapaijit's disappearance and presumed death. Additionally, there has not been an acknowledgment of a human rights violation by the State Party, nor any acceptance by the State Party of its liability or responsibility with respect to its duty to investigate the disappearance of Somchai Neelapaijit.

The State Party has, over the last 14 years, failed to keep Angkhana Neelapaijit informed of the progress of the investigations and she has been required to lobby the State Party to continue its investigations. In doing so, Angkhana Neelapaijit has not only suffered distress and hardship, but has faced serious threats to her and her family's personal security that the State Party has disregarded.

The State has failed to protect Angkhana from numerous threats to her security, as well as that of her family following Somchai Neelapaijit's disappearance. Her car was broken into numerous times.²⁹ Angkhana Neelapaijit has also been the subject of various acts of intimidation, including receiving a phone call to warn her to be careful, a person opening their bag to expose various weapons³⁰ and her car headlights being smashed on the day that the Court handed down its verdict in Somchai Neelapaijit's case. Friends and supporters of Angkhana Neelapaijit also expressed fears regarding the impact that supporting Angkhana and her family would have on their own safety.

The 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 sent

²⁷ International Commission of Jurists, "Enforced Disappearance and Extrajudicial Execution: The Rights of Family Members - A Practitioners' Guide" (2016) at para. 86.

²⁸ International Commission of Jurists, "Enforced Disappearance and Extrajudicial Execution: The Rights of Family Members - A Practitioners' Guide" (2016) at para. 71.

²⁹ www.simonrobins.com/ECAP-We%20need%20the%20Truth-Asia%20disappearances.pdf page 60.

³⁰ <http://material.ahrchk.net/docs/ReadingBetweenTheLines.pdf> page 25.

a communication to State Party concerning the security of Angkhana Neelapaijit, on 13 September 2017.³¹ The communication set out alleged acts of intimidation, harassment and death threats on the Internet against Angkhana Neelapaijit, who was working as a Commissioner for Thailand's National Human Rights Commission at the time:³²

(a) 'On 14 November 2016, a Facebook webpage was created called 'Jampen Tong Khatjai Naeoruam BRN,' which can be translated as: 'It is necessary to oppose separatist movements in the Deep South of Thailand'. The webpage published an article, entitled: 'Treason of the country', together with the photo of three individuals, including Ms. Neelapaijit, warning readers that, during popular festivals, violence might be caused by those appearing in the photo.

(b) On 9 April 2017, shortly after the National Human Rights Commission of Thailand (NHRCT) was downgraded from A to B grade status, the Chairperson of the NHRCT issued a statement which suggested that some Commission's members might be responsible for the downgrade, were 'working for foreigners' and 'undermined the nation'. While Ms. Neelapaijit's name did not appear in the statement, she was allegedly one of the Commissioners targeted by the statement.

(c) On 22 May 2017, a Facebook webpage called 'E Ngo' posted a message with a manipulated photo of Ms. Neelapaijit titled: 'Netizen condemned the NHRCT for their inaction after a bombing incident in a hospital'. It further stated that the Commissioner was only active in issues related to Red-shirt activists or in cases related to 'political assembly'. Some comments posted under the text were reportedly threatening the NHRCT and its members.

(d) On 1 June 2017, several news websites claimed that Ms. Neelapaijit had provided comments in support of a karaoke hostess accused of having committed a murder. Some threatening comments were posted under a number of news articles. It is reported that on 7 June 2017, Ms. Neelapaijit filed a complaint to the Technology Crime Suppression Division. Following the complaint, several online news outlets reportedly removed the story or the edited photo of Ms. Neelapaijit.³³

This joint communication by the Special Procedures and the online smear campaign accusing Angkhana Neelapaijit of bias and misinformation, and associating her human rights advocacy with the promotion of insurgency and separatist movements were included in the 2018 Report of the Secretary General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights.³⁴

³¹ AL THA 6/2017.

³² <https://www.hrw.org/news/2019/05/01/thailand-outspoken-rights-commissioner-harassed#>

³³ AL THA 6/2017.

³⁴ A/HRC/39/41, p.50, para.53.

Conclusion:

Based on the above, we recommend that Thailand be given a **C grade** for its inaction in response to the above recommendations. In addition to calling on the State to implement these, we urge the HRCtee to call on Thailand to:

1. Resume the investigation into the disappearance of Somchai Neelapaijit within a reasonable timeframe in order to identify and eliminate any existing de jure or de facto obstacles that have impeded clarification of the circumstances of the crime and identification of its perpetrators.
2. Ensure that the perpetrators identified are prosecuted and subject to impartial judicial proceedings, with adequate punishment if convicted;
3. Enact legislation on the prevention and suppression of enforced disappearances, which recognises the family of those that are disappeared as victims of such crimes;
4. Ensure that perpetrators of enforced disappearances are prosecuted and, if convicted, punished with sanctions proportionate to the gravity of their crimes, even when no body or human remains are found; and
5. Ensure that any individual who has suffered harm as the direct result of an enforced disappearance has access to fair and adequate compensation, including any necessary psychological, social and financial support.
6. Take appropriate measures to address the gendered impact of enforced disappearances and the intersecting forms of discrimination faced by Muslim women in the southern border provinces, in particular widows and women heads of household; and
7. Ensure that women whose spouses or other family members have been subjected to human rights violations have access to effective remedies and obtain justice, including by ensuring that such violations are thoroughly investigated, alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions.