



# General Assembly

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## Human Rights Council

### Nineteenth session

Agenda item 3

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

### **Written statement\* submitted by the Asian Legal Resource Centre, a non-governmental 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.

[13 February 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Continued impunity for enforced disappearance in Thailand**

The Asian Legal Resource Center wishes to bring the importance of continued action to end enforced disappearance in Thailand to the attention of the Human Rights Council. While the signing of the International Convention for the Protection of All Persons from Enforced Disappearance on 9 January 2012 by the Government of Thailand is a positive step, the Convention must be ratified and domestic laws must be passed and implemented if its provisions are to be made concrete. As disappearance is one form of violence routinely used by Thai state security forces with impunity against citizens, the opportunity to secure accountability represented by the ratification and full implementation of the Convention is significant.

Documented cases indicate that enforced disappearances of citizens, including human rights defenders, dissidents, and ordinary people, have been carried out by Thai state security forces for over forty years. Like the murder of citizens by state security forces, enforced disappearance is both a clear violation human rights of individuals and one with lasting effects on the families and communities of victims. Yet in the case of enforced disappearance, the suffering caused by the loss of the victim is compounded by the fear and uncertainty created by the lack of resolution which the conditions and aftermath of death that the crime of enforced disappearance engenders. For families, colleagues, and communities of victims, the message from state security forces is clear: one can be taken from one's family and community, brutally killed, and then the material evidence hidden so that neither proper mourning nor legal processes which rely on material evidence of murder can take place.

The Justice for Peace Foundation has documented over 90 cases of enforced disappearance that took place between 1991 and 2010 in Thailand, and there are likely many more cases that remain unknown. In only one of these cases has a prosecution taken place, and to date, the prosecution has been unable to hold the perpetrators to account. This case, the disappearance of Mr. Somchai Neelaphaijit, is indicative of the challenges to ending impunity for enforced disappearance and the need for ratification and full implementation of the Convention, including the passage of domestic legislation, in Thailand.

Mr. Somchai Neelaphaijit was forcibly disappeared on the evening of 12 March 2004 in Bangkok. He was pulled from his white Honda Civic near a busy intersection on Ramkhamhaeng Road in Bangkok by five plainclothes police officers. At the time of his disappearance, Mr. Somchai was working on behalf of five men who had alleged that they were tortured by state security officials while they were in state custody in southern Thailand, which had recently been placed under martial law. The five men had been accused of being involved in the theft of over 300 guns and burning of schools which had taken place in Narathiwat Province on 4 January 2004. The five men confessed to the police during the initial period of their detention, after being suspended from the ceiling with ropes, having urine put into their mouths, and being electrically shocked on their genitals. On 11 March 2004, the day before his disappearance, Mr. Somchai submitted a complaint to the court that detailed the forms of torture experienced by the five men. He argued that this was both a violation of their human rights and the Thai Criminal Code.

As a result of concerted action by the Neelaphaijit family and human rights activists, five police officers from the Crime Suppression Division were arrested in April 2004 in connection to his enforced disappearance. In the absence of domestic legislation specifying enforced disappearance as a crime, the police could not be tried for his disappearance. As Mr. Somchai's body was never recovered and given evidentiary rules in the Thai Criminal Procedure Code (CPC), the police could not be charged with murder, and so were instead charged with robbery and coercion with the use of violence.

In the nearly eight years since Mr. Somchai was forcibly disappeared, the case has moved slowly through the Thai justice system. In January 2006, one out of the five police officers, Pol. Maj. Ngern Thongsuk, was convicted and sentenced to 3 years in jail. The other four police officers returned to work without sanction. Pol. Maj. Ngern appealed the decision and remained out on bail. After a long delay, the appeal verdict was set to be read in the Criminal Court in Bangkok in September 2010. The failure of Pol. Maj. Ngern to appear in the court for the reading caused the reading to be delayed for several months.

When the appeal verdict was finally read in the Criminal Court on 11 March 2011, its results were gravely disappointing for those concerned with securing accountability in the case of the enforced disappearance of Mr. Somchai Neelaphaijit as well as those concerned with broader questions of the court's ability in aiding in the securing of accountability for enforced disappearance in Thailand. The results indicated the inability within current Thai law to hold perpetrators of enforced disappearance to account in two significant ways:

The Appeal Court ruled that the family of Mr. Somchai Neelaphaijit could not be joint plaintiffs in the case. The Appeal Court ruled that they could not be joint plaintiffs because legally they could not act on behalf the "injured person or death person," to institute a criminal prosecution based on the conditions provided by sections 5 and 28 of the CPC. Under section 5 of the CPC, it notes that the "wife" and "descendants" of the injured person in the prosecution of criminal offenses "may act on (his/her) behalf" if they could show that "the injured person had died or is unable to act by himself." A similar condition also applies under section 28 of the CPC, which defines those who "are entitled to institute the criminal prosecution in the Court." The verdict argued that Mrs. Angkhana and her children did not show that Somchai has been assaulted to death or that he was disabled and had died, and so could not be joint plaintiffs. This decision both denies the rights of families of victims of enforced disappearance to seek justice and also indicates the problems created by the failure to specify disappearance as a crime within Thai law. Given that the purpose of enforced disappearance is to remove all traces of a human being, it is impossible for the court to expect that the evidence needed to prove death would, or could, be available.

The Appeal Court ruled that there was not enough evidence to convict the five police officers prosecuted, including Pol. Maj. Ngern Thongsuk, who had been convicted by the Court of First Instance. In the case of Pol. Maj. Ngern, as well as the 2nd (Pol. Maj. Sinchai Nimpunyakampong), 3rd (Pol. Serg. Maj. Chaiweng Paduang) and 4th (Pol. Serg. Rundorn Sithiket) defendants, the verdict noted that there was not enough evidence that could link them or involve them in the incident because the eyewitnesses did not identify the defendants when they were testifying in court. The verdict noted that with regards to the 5th defendant (Pol. Lieut. Col. Chadchai Liamsanguan), there was not sufficient evidence proving that he was present at the place where the incident happened. Even though there were phone records of his communications with other defendants when the incident happened, the verdict noted that it was insufficient because the mobile phone records submitted were only a photocopy of the original document, despite having been certified as a true copy.

At this time, the verdict of the Appeal Court in the case of the Mr. Somchai Neelaphaijit is being reviewed at the Supreme Court and the Department of Special Investigation continues to investigate his case as a murder case. The difficulties of evidence and procedure faced in the court case to date indicate the need for domestic legislation specifying the crime of enforced disappearance and providing for appropriate paths to securing accountability and ending impunity.

In addition, during the nearly eight years since Mr. Somchai Neelaphaijit was forcibly disappeared, and in particular since they began to struggle to secure justice, his wife, Mrs. Angkhana Neelaphaijit, and the rest of the Neelaphaijit family have faced constant harassment and threats to their lives and safety. Formal recognition of the crime of enforced

disappearance and the passage of domestic legislation that provides for specific protection for witnesses and families of victims of enforced disappearance is urgently needed.

In closing, the Asian Legal Resource Center wishes to commend the Government of Thailand for signing the International Convention for the Protection of All Persons from Enforced Disappearance and indicating its support for ending impunity for state violence. In order to make the provisions for accountability and protections for victims concrete for those who have suffered from enforced disappearance, the Asian Legal Resource Center calls for the Council to:

- Urge the Government of Thailand to ratify the International Convention for the Protection of All Person's from Enforced Disappearance and promulgate domestic legislation in line with its provisions.
  - Urge the Government of Thailand to proceed with urgency in the investigation and prosecution of ongoing cases of enforced disappearance to end impunity and foster the respect for human rights.
  - Urge the Government of Thailand to ensure that witnesses and families of victims of enforced disappearance are fully protected.
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