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

Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

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

[14 February 2011]

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

Thailand: An urgent need to end the practice of arbitrary detention and take action on enforced disappearances

The International Commission of Jurists (ICJ) welcomes the reports of the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48) and the Working Group on Arbitrary Detention (A/HRC/16/47). It seizes this opportunity to raise issues concerning the on-going need to end arbitrary detention in Thailand and for steps to be taken by the Government of Thailand to take comprehensive and meaningful action on enforced disappearances.

Enforced disappearances in Thailand

The Human Rights Council has been appraised several times of the situation concerning the enforced disappearance of persons in Thailand, particularly in the southern border provinces. Since its establishment in 1980, the Working Group on Enforced or Involuntary Disappearances (WGEID) has transmitted 57 cases to the Government of Thailand, of which 54 remain outstanding.¹ The current report of the WGEID notes that two further enforced disappearances are alleged to have occurred during the reporting period (the 12 months up to 12 November 2010).² Both allegations were transmitted by the WGEID under its urgent action procedure to the Thai Government.³

One of the outstanding cases transmitted by the Working Group to the Thai Government is the enforced disappearance of Muslim human rights lawyer Somchai Neelapaijit.⁴ The twelfth of March 2011, during the time of the 16th Regular Session of the Council, marks the seventh anniversary of the abduction and disappearance of Mr Neelapaijit. Five Thai police officers were charged with his “abduction”, along with associated charges. Following the acquittal of four of the officers, an appeal was lodged in 2006 by some of the defendants, as well as the prosecutors and the Neelapaijit family.⁵ Judgment of the Court of Appeal remains pending, which is apparently due to reluctance on the part of the Court to issue the appeal judgment because the officer is reported to have gone missing in a landslide following his release pending appeal.

Two years ago, during the 10th Regular Session of the Human Rights Council, the ICJ welcomed the commitment of the then new Government to ensure that the perpetrators of Somchai Neelapaijit’s enforced disappearance would be brought to justice.⁶ Despite this, there continue to be no concrete steps to hold anyone accountable by final judgment for the crime of the enforced disappearance of Mr Neelapaijit. Furthermore, as brought to the Council’s attention in March 2010, one of the key witnesses in the criminal case relating to the enforced disappearance of Somchai Neelapaijit himself has been missing since

¹ A/HRC/16/48, para 487.

² A/HRC/16/48, Annex II, at p. 134.

³ A/HRC/16/48, para 483.

⁴ First reported by the Working Group in E/CN.4/2006/56, para 526.

⁵ See further: ICJ, Trial Observation – Report on the criminal trial and investigation of the enforced disappearance of Somchai Neelapaijit (March 2009), online: http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=23385; and prosecution against Police Major Ngerm Thongsukand, Criminal Case Black No. 1952/2547, Case Red No. Or 48/2549 (a prosecution order on the disappearance of Somchai Neelapaijit, dated 12 December 2006).

⁶ United Nations Human Rights Council, 10th Session, 2-27 March 2009, ICJ Intervention in the Interactive Dialogue with the Chairperson of the Working Group on Enforced or Involuntary Disappearances, Mr. Santiago Corcuera (A/HRC/10/9), intervention delivered on 10 March 2009.

December 2009 whilst under the witness protection programme of Thailand's Department of Special Investigation.⁷ In the meantime, Somchai Neelapaijit's family continue to live without certainty or truth about the fate of their husband, father and son.

A significant hindrance to the prevention, prosecution and remedy for victims of enforced disappearances in Thailand is the lack of a specific offence of enforced disappearance, or an adequate equivalent offence in Thai domestic law. While enforced disappearance is a crime under international law, cases such as the Neelapaijit prosecution have required authorities in Thailand to pursue the more minor offence of coercion putting a person in fear of injury to life or liberty, under section 309 of the Thai Penal Code. This offence does not reflect the gravity of the crime of enforced disappearance.

The case of Somchai Neelapaijit appears *prima facie* to meet the elements of an enforced disappearance under international law, as reflected in the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention), namely: (1) abduction or other form of deprivation of liberty (section 309 concerns putting a person in fear of injury to life or liberty); (2) State participation, authorisation, support or acquiescence; and (3) State refusal to acknowledge the disappearance or reveal the fate of the disappeared person.

The maximum penalty under section 309 of the Penal Code is a sentence of three years' imprisonment, which is far from adequate for dealing with the seriousness of enforced disappearances. The Convention, by contrast, requires parties to it to punish the offence of enforced disappearance by penalties commensurate with the "extreme seriousness" of the offence.⁸

The WGEID has called on the Government of Thailand to become a party to the Convention and accept the competence of the Committee under articles 31 and 32 of the Convention.⁹

Thailand's ongoing use of arbitrary detention

The ICJ remains concerned about the ongoing practice of arbitrary detention in Thailand, pursuant to the Emergency Decree 2005.

Since the enactment of the Emergency Decree in July 2005, there has been a declared "severe emergency situation" in three southern border provinces.¹⁰ Renewed every three months by the Prime Minister and Cabinet, this emergency measure is now entering into a state of semi-permanence. In response to the 'Red Shirt' demonstrations in 2010, a declaration has also been made in respect of Bangkok and other provinces, although it is not currently being enforced within Bangkok. The ICJ has repeatedly highlighted that the implementation of these emergency measures is not compliant with Thailand's international legal obligations, including under the ICCPR.¹¹

⁷ United Nations Human Rights Council, 13th Session, 2-27 March 2010, ICJ Intervention in the Interactive Dialogue with the Working Group on Enforced or Involuntary Disappearances (A/HRC/13/31), intervention delivered on 9 March 2010.

⁸ Article 7(1) of the Convention.

⁹ Most recently in A/HRC/16/48, para 488. See also A/HRC/13/31, para 558.

¹⁰ The affected provinces are Yala, Pattani and Narathiwat (although the declaration was lifted on 28 December 2010 in respect of the Maelan District in the Pattani Province).

¹¹ ICJ, Legal Memorandum: The Implementation of Thailand's Emergency Decree (July 2007), online: http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=23396; and ICJ, More Power, Less Accountability: Thailand's new

While recognising the security threat faced by the Thai Government in the southern provinces, the ICJ has undertaken detailed legal analyses of the Emergency Decree and its provisions concerning arrest and detention, and has expressed concerns that the Decree undermines the rule of law and Thailand's legal obligations.¹² This includes serious alarm about the overly expanded powers of detention under the Emergency Decree which allow the arbitrary detention of persons, contrary to article 9 of the International Covenant on Civil and Political Rights. Furthermore, although the Decree provides for judicial oversight of continuances of seven-day periods of detention without charge, detainees are not in practice produced before the court or heard by the authorising judicial officer. Because such detainees remain on an online suspects list following release from detention, their re-arrest at security checkpoints is frequent. Due to administrative inadequacies, access to remedies for such persons is frustrated, resulting in often unnecessary and lengthy arbitrary detention with inadequate judicial scrutiny.

The report of the Working Group on Arbitrary Detention (WGAD) notes that the Working Group has asked to visit Thailand for the purpose of conducting an official mission.¹³

Call for action

The International Commission of Jurists urges the Human Rights Council to:

1. Remain seized of the situation in Thailand concerning arbitrary detention and enforced disappearances;
2. Call on the Government of Thailand to:
 - Undertake an independent and Parliamentary review of the emergency provisions and their implementation with a view to bringing any such those provisions and implementing measures in line with Thailand's international legal obligations;
 - Accept the request of the Working Group on Arbitrary Detention (WGAD) to undertake an official mission in Thailand at the earliest possible opportunity and to extend to the WGAD all reasonable cooperation and assistance to facilitate a timely and effective country mission;
 - Cooperate fully with the Working Group on Enforced or Involuntary Disappearances (WGEID), and take all necessary steps within Thailand, to bring to a conclusion the 54 outstanding transmissions to the Government by the WGEID;
 - Accede as soon as possible to the International Convention for the Protection of All Persons from Enforced Disappearance and accept the competence of the Committee under articles 31 and 32 of the Convention.

The ICJ encourages the WGAD to pursue its request to undertake an official mission in Thailand.

The ICJ encourages the WGEID to:

1. Continue to follow up all allegations of enforced or involuntary disappearances in Thailand;

emergency decree (August 2005), online:
http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=23704.

¹² Ibid.

¹³ A/HRC/16/47, para 23.

2. Request to visit Thailand for the purpose of conducting an official mission.
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