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Thailand: ICJ urges United Nations to remain vigilant in disappeared lawyer case

Today, on the fourth anniversary of the disappearance of Thai lawyer Somchai Neelapaichit, the International Commission of Jurists (ICJ) met with the United Nations in Geneva, together with his wife Angkhana Neelapaichit, to renew calls for progress in the criminal investigation.

The ICJ told the UN Working Group on Enforced or Involuntary Disappearances ('UN Working Group'), who are examining the case, that it welcomed the continued investigation by Thailand's Department of Special Investigations (DSI) to establish the fate of Somchai Neelapaichit, find the body and bring the perpetrators to justice. The ICJ urged the UN Working Group to remain vigilant in the case.

"The original police investigation was flawed. The Thai Government should be urged to provide strong and public support to the DSI investigators in bringing the perpetrators to justice. The Government should ensure that a thorough and independent investigation continues, and that evidence is carefully preserved and witnesses protected", said the ICJ.

Five of the suspects in the case are senior and mid-ranking police officers, which has drawn accusations of lack of police cooperation with DSI investigators. International standards require the Thai Government to take effective steps to ensure that the independent, impartial and competent authority – in this case the DSI – has the necessary powers and resources to conduct the investigation effectively and impartially. This includes powers to compel attendance of witnesses and production of relevant documents, and to make immediate and unobstructed on-site visits.

The ICJ expressed deep concern that witness protection provided to Angkhana Neelapaichit by civilian DSI officials was recently withdrawn. Police protection has been offered instead. After concerns were raised, DSI protection has been temporarily re-instated, but is still under review.

"Police protection is not appropriate in this case when the evidence strongly indicates police were involved in the disappearance and murder of Angkhana Neelapaichit's husband. The DSI civilian protection should be re-instated immediately and continue until there are no further safety concerns", said the ICJ.

Under international standards, the Thai government is required to provide effective protection to Mr Somchai's family, as well as persons participating in the investigation, from any ill-treatment, intimidation or bad consequences.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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In January 2006, a senior police officer, Police Major Ngern Thongsuk, was convicted of forcing Mr Somchai into a car: there is no law in Thailand that makes enforced disappearance a criminal offence. The other four police defendants were acquitted. "It is a principle of international customary law, that where national law does not impose a penalty for an act which constitutes a crime under international law – such as the crime of enforced disappearance – it does not exempt the person who committed the act from responsibility under international law. The lack of criminalization of enforced disappearance in the criminal legislation of Thailand doesn't exonerate the Thai authorities from its obligation to bring to justice and punish the authors of this crime and must not be used as a window for impunity" said the ICJ.

The family of Somchai Neelapaichit has challenged the judgment and have been waiting over two years for the appeal decision. "Under international law, the relatives of disappeared person have a right to an effective remedy, including the right to an appeal, without delay. A two year wait is too long. It is in the interest of all parties and the interests of justice to have finality in these legal proceedings without further delay", said the ICJ.

The ICJ also expressed serious concern that pending the appeal decision four of the police defendants have been allowed to resume police jobs. The *UN Declaration on the Protection of all Persons from Enforced Disappearance* provides that those suspected of causing enforced disappearance shall be suspended from official duties during investigations. Last year, Angkhana Neelapaichit made a complaint to the Administrative Court asking for a review of the decision not to suspend the police defendants, but the complaint was dismissed.

"International standards require the Royal Thai Police to suspend all suspects pending the outcome of the criminal appeal. Any police officers or other officials found to have been involved in the disappearance of Somchai Neelapaichit should not be allowed to resume their duties and should be brought to justice under Thai criminal law", added the ICJ.

Public statements by senior government officials, including former Prime Minister Thaksin Shinawatra, have said that Somchai Neelapaichit is dead. According to the ICJ, a fresh trial and a murder conviction should be possible even though the body is yet to be found.

"National courts around the world and international tribunals have upheld murder convictions on the basis of circumstantial evidence alone. The simple reason for this is that many murderers dispose of the body. There is compelling evidence that Somchai Neelapaichit was murdered. The fact that the murderers may have disposed of his body cannot allow them to escape justice", said the ICJ.

Thailand has a historical record of impunity for past enforced disappearances. The current violence in the southern border provinces, combined with broad emergency laws and Martial Law, contribute to an environment where enforced disappearance can take place. Thorough and effective investigations of past enforced disappearances, and bringing those responsible to justice, would not only bring justice for past victims, but help build confidence in the justice system, as recommended by the National Reconciliation Commission.

The ICJ urged the Government of Thailand to reaffirm its commitment to ending and preventing enforced disappearances in Thailand by signing and ratifying the *International Convention for the Protection of All Persons from Enforced Disappearance* and pass enabling laws giving effect domestically to the provisions of the Convention.

Background

Somchai Neelapaichit has been disappeared, presumed dead, since 12 March 2004. He was last seen in downtown Bangkok being forced into a car by a group of men. His own car was found abandoned. He was the Chairman of Thailand's Muslim Lawyers Club and Vice-Chairman of the Human Rights Committee of the Law Society of Thailand. At the time of his disappearance he was representing five Muslim men accused of terrorist-related offences in the southern border provinces of Thailand and had accused law enforcement agencies of torturing his clients.

Five police officers, Police Major Ngen Tongasuk, Police Lieutenant Colonel Sinchai Nimbunkampong, Police Lance Corporal Chaiweng Paduang, Police Sergeant Rundorn Sithiket and Police Lieutenant Colonel Chadchai Leiamsa-ngoun, were tried in 2005 for criminal offences relating to the disappearance of Somchai Neelapaichit. On 12 January 2006, Pol. Maj. Ngern Thongsuk was convicted and sentenced to three year's imprisonment. He has been on bail pending his appeal.

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