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Thailand: Serious failures in the criminal investigation have denied justice in disappeared lawyer case

Serious failures in the criminal investigation have denied justice in the case of disappeared Muslim lawyer Somchai Neelapaichit, the International Commission of Jurists (ICJ) said in a new report released today. The ICJ said there were no signs of concrete progress in bringing the perpetrators to justice and urged the investigators to use all available legal powers to overcome a 'wall of silence' in the police and to secure essential evidence.

Five years since Somchai Neelapaichit was allegedly abducted and killed by five police officers in central Bangkok on 12 March 2004, his fate remains unknown and no one has been held accountable, in final criminal judgment, for his enforced disappearance. The case is seen as emblematic of the difficulty of achieving justice in cases of serious human rights violations in Thailand.

One of the accused police officers, Pol. Maj. Ngern Thongsuk, was convicted of the relatively minor offence of coercion and sentenced to three year's imprisonment. He was freed on bail pending the appeal decision, which is still awaited after almost three years. It was alleged by police in Phitsanulok on 19 September 2008 that he died in a landslide. This is disputed by Angkhana Neelapaichit, wife of Somchai Neelapaichit. A Thai newspaper recently reported that Pol. Maj. Ngern was seen in Ko Kong, near the Cambodian border.

The 47-page *'Report on the Criminal Trial and Investigation of the Enforced Disappearance of Somchai Neelapaichit'* analyses the criminal trial of the five suspected police officers, which took place in 2005-06, and the continued criminal investigation. The ICJ found that the defendants received a fair and public trial. However, the report finds that "serious irregularities in the overall criminal investigation and the case presented by the prosecution" have contributed to the failure to secure convictions for offences proportionate to the extreme seriousness of the crime.

ICJ Commissioner Justice Elizabeth Evatt, former expert on the United Nations Human Rights Committee and former Chief Judge of the Family Court of Australia, observed part of the trial on behalf of the ICJ.

"Since the court judgment in January 2006 it appears there has been no real progress in this case. It is very disappointing that pledges by successive governments have failed to bring to justice those responsible for this appalling crime. There is a gap between government policy and the ability of investigators to clarify the fate and whereabouts of Somchai Neelapaichit and secure convictions for those responsible," said Justice Elizabeth Evatt.

The Department of Special Investigations (DSI) has been responsible for the investigation since 2005. An independent body under the Ministry of Justice, it is a relatively new institution, established in 2002, and many staff are former police officers. According to the ICJ, the DSI appears unwilling to use its full legal powers - such as court sanctioned search, seizure, arrest and subpoenas - to obtain and preserve essential evidence. This has undermined the Government's obligations in domestic and international law to take all necessary measures to hold responsible those involved in the enforced disappearance, including superiors who order or turn a blind eye.

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

Deficiencies in the investigation include: serious questions over the independence and impartiality of the original police investigation, overall poor standards of investigation, intimidation and harassment of witnesses and lawyers and failure to provide adequate protection, failure to take all necessary steps to protect evidence, poor preparation of expert evidence, and excessive delays in the appeal process.

The report concludes that failure to properly investigate and bring the perpetrators to justice is itself a violation of international law and has denied the victim's family an effective remedy under international law.

"A prompt and effective response by the Government is not only necessary to meet international obligations, but to maintain public confidence in justice and the rule of law in Thailand – not least in the troubled deep South," said Elizabeth Evatt.

A key finding of the Government appointed National Reconciliation Commission in 2006 was the connection between lack of accountability in this case and lack of trust between the Malay-Muslim community and state authorities in the deep South, where almost 3,300 people have been killed in insurgency related violence since January 2004. For 20 years Somchai Neelapaichit championed various human rights causes. He was well known for representing clients accused of insurgency-related violence in the deep South. On 11 March 2004, the day before his disappearance, he submitted a complaint to government authorities alleging torture by state officials of Malay-Muslim clients.

Among its key recommendations, the ICJ recommended:

- The DSI use its full legal powers to ensure cooperation by the police and other agencies, and disciplinary action, including criminal prosecutions, against those who seek to obstruct justice.
- The DSI and the Office of the Attorney General should bring charges of homicide, including murder charges, whether or not the body is located.
- The Ministry of Justice effectively implement the Witness Protection Act, and also ensure protection of prosecutor and lawyers.
- The Government ratify 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.

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