

Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand



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**Ten Years Without Truth:
Somchai Neelapaijit and Enforced Disappearances in Thailand**

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The ICJ thanks Angkhana Neelapaijit and her family for their ongoing generosity, openness and courage.

The report will be made available on the ICJ's website together with links to some of the key documents referred to in the report.

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The law and the facts are stated as on 28 February 2014.

INTRODUCTION

12 March 2014 marks the 10-year anniversary of the enforced disappearance of Somchai Neelapaijit, a lawyer and human rights defender from the south of Thailand. Although a decade has now passed, his spouse Angkhana Neelapaijit and other family members are no closer to knowing the truth about what happened to him on the evening of 12 March 2004 after eyewitnesses saw a group of men forcing him into a car on Ramkhamhaeng Road, a busy street in Bangkok.

The Royal Thai Government's failure to shed any more light on the enforced disappearance of Somchai Neelapaijit, despite providing compensation to his family and finding him to be "disappeared," contradicts multiple past declarations of its commitment to seeking justice, or at least the truth, including by several former Prime Ministers, Attorneys General, and officials. It also contradicts official commitments before the United Nations Human Rights Council in March 2008. In reply to a statement by the International Commission of Jurists (ICJ), expressing concern that there have been no successful prosecutions in the Somchai Neelapaijit case, or in any other cases of enforced disappearance in Thailand, the Royal Thai Government stated:

"The Royal Thai Government attaches great importance to the case of Mr Somchai Neelapaijit, Chairman of the Muslim Lawyers Association, which is currently under investigation of the Department of Special Investigations, Ministry of Justice. To date, there have been some important developments in which certain authorities have been implicated and more revelations should be forthcoming as the investigation proceeds. The Government is determined to do its utmost and will leave no stone unturned in order to bring to justice the case of Mr Somchai."¹

The ICJ has followed Somchai Neelapaijit's enforced disappearance closely since 2004. In this report, the ICJ provides an update on the status of the case, and offers a number of recommendations to the Royal Thai Government for it to meet its international obligations including:

- (a) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance; and**
- (b) Provide Angkhana Neelapaijit and her family with an effective remedy and full reparation, in particular knowledge and clarification of the facts leading to the enforced disappearance and the progress and results of the Department of Special Investigation's investigation.**

ENFORCED DISAPPEARANCES IN THAILAND

Somchai Neelapaijit's enforced disappearance, and the failure of the Royal Thai Government to provide accountability, or even basic information, about his fate, are emblematic of the challenges of achieving justice in cases of serious human rights violations in Thailand.

A key finding of the National Reconciliation Commission appointed in 2005 by the Royal Thai Government to investigate the violence in the Southern border provinces and make policy recommendations to the Government, was the connection between the lack of accountability in the Somchai Neelapaijit case and the Malay-Muslim community's mistrust of state authorities in the deep South:

The violence that claimed Somchai had a direct impact on state-citizen relations. Many people, in particular the country's minority, felt that here was someone who always put his faith in the state's justice process, yet even he was not safe. It goes without saying how important faith in the country's justice process is to state-citizen relations.²

Definition of Enforced Disappearance in the Convention Against Enforced Disappearance

Under Article 2 of the Convention Against Enforced Disappearance, enforced disappearance is defined as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Enforced disappearance is not only a serious human rights violation, but also a crime under international law. The prohibition of enforced disappearance and its legal consequences are established and recognized in a number of United Nations resolutions, declarations and legal instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance (Convention Against Enforced Disappearance), the UN Declaration on the Protection of All Persons from Enforced Disappearance, the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), as well as under customary international law.

Thailand, pursuant to its international legal obligations as a Party both to the ICCPR and the CAT, is required to investigate, prosecute, punish and provide a remedy and reparation for the crime of enforced disappearance.³ In addition, acts of enforced disappearance are comprised of other serious violations under the ICCPR and CAT, including the right to life, the right to be free from torture and cruel, inhuman or degrading treatment, the right to liberty and security, and recognition as a person before the law.

The Royal Thai Government has signalled its recognition of the gravity of the crime of enforced disappearance, and its commitment to combating it, by signing the Convention Against Enforced Disappearance on 9 January 2012.⁴ The Convention Against Enforced Disappearance affirms the absolute right not to be subject to an enforced disappearance and places an obligation on states to make it a criminal offence punishable by appropriate penalties that take into account its “extreme seriousness.” The Convention also reinforces and builds on the similar standards enumerated in the UN Declaration on the Protection of all Persons from Enforced Disappearance, adopted by consensus of the UN General Assembly 1992.⁵

The Convention emphasizes two important points regarding enforced disappearances:

- (a) That the crime of enforced disappearance is of a continuous nature; and
- (b) That a “victim” of an enforced disappearance is not just the “disappeared” person but also any individual who has suffered harm as the direct result of an enforced disappearance, such as family members.

The Convention establishes the right to the truth “regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.” It also sets out provisions with respect to implementing the right to remedy and reparations for victims.

The Royal Thai Government’s signing of the Convention Against Enforced Disappearance obliges the authorities to ensure that state officials do not act in a manner that is contrary to the object and purpose of the Treaty. Even before its formal ratification, the signing of this Treaty represents an intention on the part of the Government that all its agencies will adhere to the Convention Against Enforced Disappearance’s provisions.

It now remains for Thailand to ratify the Treaty and to enact legislation that makes enforced disappearance a crime in Thai domestic law, together with penalties that recognize its extreme seriousness, as well as implementing the specific provisions of the Convention. Even pending ratification of the Convention, Thailand has a legal obligation, including under the ICCPR and CAT, to effectively investigate and hold criminally accountable those responsible for the enforced disappearance of Somchai Neelapaijit and provide for an effective remedy and reparations for his family members.

BACKGROUND

Somchai Neelapaijit spent some 20 years defending the rights of people (mostly Muslim, ethnically Malay) in Thailand's restive 'deep South' (the provinces of Yala, Pattani, Narathiwat and Songkhla). He often protected those accused of acting against purported government interests and frequently challenged government officials. As tensions increased in the deep South in 2003, so did Somchai Neelapaijit's efforts to protect and promote human rights in the area.

On 4 January 2004, after a substantial robbery of military weapons from an army camp and arson attacks in 18 locations in Thailand's deep South, the Royal Thai Government, led by then Prime Minister Thaksin Shinawatra, declared Martial Law in the affected provinces.

In response, Somchai Neelapaijit began collecting names for a petition of 50,000 signatures to the President of the National Assembly submitting that Martial Law be lifted (the number of signatures required under the Thai Constitution to submit a petition requesting a change in the law).

On 26 February 2004, Somchai Neelapaijit and other colleagues from the Muslim Lawyers Club⁶ were informed that police were holding five suspects in custody. They visited the men who said the police had forced them to confess to committing offences involving national security, conspiracy to commit rebellion, to recruit people and to gather arms to commit rebellion, to function as a secret society and to act as a criminal gang. Specifically, the men alleged that the police had subjected them to torture, having beaten, kicked, electrocuted and urinated on them.⁷



Somchai Neelapaijit speaking at a panel discussion at the Santichon (Peace People) Foundation in Bangkok on 27 February 2004.

The following day, on 27 February 2004, just 13 days before he "disappeared", Somchai Neelapaijit gave what has been described by one journalist as a "powerful, bitter, outraged speech"⁸ at a panel discussion at the Santichon (Peace People) Foundation in Bangkok, attended by then Deputy Prime Minister Wanno Matha:

"I have struggled in the court for almost 20 years and the judiciary, lawyers and others have said that I am the Muslim bandits' lawyer. But I am not discouraged.

...

What I have learned from these cases is that they are not easy to defend. Some cases have taken five years or even seven years and must be fought all the way to the Supreme Court. The lower courts always ordered full sentences which made our work very difficult.

...

Martial law provides more power to the military than the police and civilians in combating crimes. It gives the military the power to raid, seize, and control everything and to conduct searches at any time without any reason and without a court order. The military can detain people for seven days. The Constitution states that in Thailand searches and arrests must be based on a subpoena, except when the crime is committed in the presence of the police. In addition, searches must be conducted during the day except if the search that began during the day continues into the night. The military cannot enter people's homes without a warrant. Despite this, in the south the military has the power to do anything. They have ordered tanks to run around like a Children's Day show."

Somchai Neelapaijit also strongly criticized the Thai police and military for alleged ill-treatment and discrimination against Malay-Muslims in the deep South and referred to the allegations of abuse he had received the day before.

Based on the abuse allegations, on 4 March 2004, Somchai Neelapaijit petitioned the court to release the five detained men. The petition was rejected on the same day. On 11 March 2004, Somchai Neelapaijit's law office then submitted a petition, alleging abuse, to the Ministry of Justice (MoJ), the Ministry of Interior, the Royal Thai Police, the Attorney General's Office, the National Human Rights Commission, the Prime Minister and the Office of the Senate.

The following day, on 12 March 2004, Somchai Neelapaijit went to work as usual in his car, a dark green Honda Civic. That evening, at 20.00, he went to the lobby of the Chaleena Hotel, Ramkamhaeng Road, together with his assistant, Pathomphong Likit, to wait for Kittha Ali-Ishak, another lawyer from the Muslim Lawyers Club. At 20.15, Kittha Ali-Ishak telephoned Somchai Neelapaijit and told him he could not attend the meeting, so Somchai Neelapaijit decided to stay overnight with his friends on Ramkamhaeng Road.

Based on eyewitness evidence given at the criminal trial, it is known that Somchai Neelapaijit then drove his car alone to Ramkamhaeng Road, Soi 65, toward Suan Son village. At about 20.30 a car behind him forced him to stop outside Mae Lah Pla Phao Restaurant. He got out of his car and was seen talking with five men who had emerged from the other car, who were then observed to push Somchai Neelapaijit into their car. Somchai Neelapaijit's car was later found abandoned on Kamphaeng Phet Road near Mor Chit bus terminal in northern Bangkok, located more than 10 kilometres from the scene of the abduction.

At the time of his enforced disappearance, Somchai Neelapaijit was married with five children aged 23, 22, 20, 18, and 16.

CRIMINAL PROCEEDINGS

On 8 and 29 April 2004, the Criminal Court issued arrest warrants for five police officers for their alleged participation in robbing Somchai Neelapaijit and forcing him into a vehicle (charging them with coercion⁹ and gang-robbery).¹⁰

One of the accused, Police Major Ngern Thongsuk, worked in the Crime Suppression Division (CSD) and was one of the officers investigating the weapons robbery on 4 January 2004. Another accused, Police Lieutenant Colonel Chadchai Liamsanguan, was the supervisor of Police Major Ngern Thongsuk and one of the other accused, and was also responsible for investigating the weapons robbery.

The trial of the five police officers commenced on 12 July 2005.

Summary of the evidence

A fuller summary of the evidence given at the trial is contained within the ICJ's March 2009 report: *Report on the Criminal Trial and Investigation of the Enforced Disappearance of Somchai Neelapaijit* (ICJ Trial Observation Report).¹¹

Forty-three witnesses gave evidence at the trial including seven eye-witnesses, three of whom testified that they saw Police Major Ngern Thongsuk pushing Somchai Neelapaijit into the car.

The five men whom Somchai Neelapaijit had been defending at the time of his enforced disappearance and who had allegedly suffered abuse at the hands of the police also gave evidence at trial. They all testified that Police Major Ngern Thongsuk was one of the police officers who had abused them. They also said that another one of the accused had visited them two times while they were in detention. This same accused's name had appeared in a letter from the Royal Thai Police assigning 133 police to investigate the weapons robbery and school arson cases in the deep South.

Other evidence adduced at trial included the forensic examination of Somchai Neelapaijit's car, fingerprint and hair sample analysis, mobile phone records and evidence of motive. The mobile phone records were produced as evidence of the movements of the accused, allegedly establishing their presence at the crime scene at the relevant time, and communications between them. There were also other calls potentially of interest including to other police colleagues after the "disappearance," including to colleagues in Ratchaburi Province [where later searches for Somchai Neelapaijit's remains were focussed], and, allegedly, one call to someone in the Prime Minister's Office. A number of calls after the time of the abduction had been redacted from the documents produced to the Court.

The five accused gave *alibi* evidence that, at the relevant time, they were not at the scene of the abduction. They also objected to the admission of the phone records on the grounds of confidentiality, that the Prosecution had not produced the originals, and that they were unreliable in the form that they had been handed in to the Court as they contained redactions and inconsistencies. Finally, they denied abusing Somchai Neelapaijit's five clients and challenged the allegation of motive.

The verdict

The Court handed down its verdict on 12 January 2006. The court acquitted four of the accused but convicted Police Major Ngern Thongsuk of the relatively minor charge of coercion. The court sentenced Police Major Ngern Thongsuk to three years in prison, but released him on bail of THB 1,500,000 (approx. USD \$35,000 at the time), pending his appeal. The Court gave the following reasons for convicting Police Major Ngern Thongsuk:

Based on the testimonies and record of statements of the Prosecutors' eye-witnesses, the facts have been established as presented by the Prosecutor and five Joint Prosecutors especially [eyewitness] who saw the incident and confirmed all along from the first statements that she had witnessed the incident and recognized the cars and people in the incident especially Mr. Somchai Neelapaijit and identified that Accused No.1 [Police Major Ngern Thongsuk] looked similar to the person who had captured and pushed Mr. Somchai into the car. After watching the VCD of the search of Accused No. 1's house, the witness was even sure that Accused No.1 looked very much similar to the person who had captured and pushed Mr. Somchai into the car.

The witness has never known nor been angry with Accused No.1 nor has she known Mr. Somchai Neelapaijit and the five Joint Prosecutors, there was no reason nor need for the witness to assist or criminalize anyone. The statements given to the police officers were given voluntarily. If the witness did not witness the incident nor remember what she had testified, there was no reason nor need for the witness to inform such facts to the police officers nor was there any reason for the witness to criminalize Accused No.1 with this kind of material charges.

Therefore, having considered the evidence presented by the Prosecutor and five Joint Prosecutors, the undisputed facts have been established without doubt that Accused No.1 was one of the criminals who had jointly committed the crimes whereby Accused No.1 had captured and pushed Mr. Somchai Neelapaijit into the car.

On the other hand, the phone records, potentially very probative evidence in the trial, were ruled inadmissible on the grounds that they lacked credibility as they were not original documents and were not produced by witnesses who could authenticate them, in violation of Section 238 of the Criminal Procedure Code.

Significantly, on 13 January 2006, then Prime Minister Thaksin Shinawatra made a statement acknowledging that Somchai Neelapaijit was deceased and that government officials were implicated, saying:

The Department of Special Investigation is working on this case and murder charges are being considered. I know Somchai is dead, circumstantial evidence indicated that... and there were more than four government officials implicated by the investigation. Witnesses and evidence are still being collected, but that is not easy because this case involves government officials. I think the Department of Special Investigations will conclude the investigation by the end of February.¹²

On 12 April 2006, Police Major Ngern Thongsuk appealed his conviction. On 30 April 2006, the Prosecutor filed a cross-appeal on behalf of Angkhana Neelapaijit. All five accused appealed against the interlocutory order of the Criminal Court that permitted Angkhana Neelapaijit and her four children to join cause with the Public Prosecutor.

On 19 September 2008, the police reported that Police Major Ngern Thongsuk had gone missing in a landslide. To date, his whereabouts or the location of his remains has not been established and the Civil Court has declared him to be a missing person.

On 11 December 2009, one of Somchai Neelapaijit's clients and a witness at the trial, went missing from his home in Narathiwat while under DSI witness protection.¹³

In its report of March 2009, the ICJ found that the defendants received a fair and public trial, which, on the whole, was conducted by the Court in accordance with international standards. However, it found serious deficiencies in the overall criminal investigation and the case presented by the Prosecution, which denied the victim's family the effective remedy to which they are entitled under international law.

Appeal Court

On 11 March 2011, five years after Angkhana Neelapaijit filed her appeal, the Appeal Court issued its decision, finding that:

- (a) Somchai Neelapaijit's wife, Angkhana Neelapaijit, and his children could not be considered as joint plaintiffs in the proceeding;
- (b) The conviction of Police Major Ngern Thongsuk should be overturned; and
- (c) With respect to the remaining four accused, there was insufficient evidence to convict them.

The Court found that Angkhana Neelapaijit (and her children) could not act on her husband's behalf as plaintiffs in the proceeding. Section 5(2) of the Criminal Procedure Code provides that "the ascendant or descendant, the husband or wife, in respect only of criminal offences in which the injured person is so injured that he died or is unable to act by himself [may act on behalf of the injured person]." However, the Court noted that the accused had only been charged with coercion and gang robbery, and it "could not be absolutely confirmed that Somchai Neelapaijit had been injured to such an extent that he could not act by himself or had been indeed assaulted to death."

With regard to the conviction of Police Major Ngern Thongsuk, the Court found the eyewitness evidence presented by the Prosecution to be unreliable. The key eye-witness had become less sure of Police Major Ngern Thongsuk's identification during different police interviews and had failed to identify Police Major Ngern Thongsuk in open court as the person who pushed Somchai Neelapaijit into the car. The other two witnesses to the actual event were also unreliable as they were not certain in their identification of Police Major Ngern Thongsuk, the event had happened quickly, and the lighting in the area of the abduction was poor at the relevant time. Accordingly, it found that "there is a reasonable doubt on the evidence adduced by the Prosecutor" and therefore the "benefit of the doubt" should be given to Police Major Ngern Thongsuk, pursuant to Section 227 of the Criminal Procedure Code.

Regarding the remaining four accused, the Appeal Court found first, that there was an absence of reliable identification evidence linking them to the event; and second, that the telephone records, placing four of the five accused at the scene (and establishing contemporaneous telephone contact with the fifth accused), were unreliable. At trial, the Prosecution only produced a photocopy of the telephone records, not an original, and the person who had made the copy was not called to give evidence to prove that the documents were copies of the original telephone records.

Appeal to Supreme Court

On 10 May 2011, Angkhana Neelapaijit appealed to the Supreme Court both the decision on her family's standing and the substantive issues in the case.

ICJ's findings on the use of phone records at trial:

"Whilst it is a complicated area of evidence, the use of mobile phone evidence in criminal cases is now well-established in other legal jurisdictions and it should not have been difficult to find a suitably qualified expert to deal with these issues. The prosecution, together with those responsible for the investigation, showed inexperience in dealing with this kind of evidence and did not adequately prepare the expert and documentary evidence on the use of the defendants' mobile telephones. This contributed to the rejection of this evidence by the court and the acquittal of four of the defendants."

International Commission of Jurists, *Report on the Criminal Trial and Investigation of the Enforced Disappearance of Somchai Neelapaichit*, March 2009, p. 35.

With regard to the issue of standing, Angkhana Neelapaijit argued that the incapacitation or death of Somchai Neelapaijit had been established by such facts as the evidence that a group of men pushed Somchai Neelapaijit into a car against his will; the fact he has not returned home since the night of his enforced disappearance; and that, after five years, the Civil Court declared him to be a “disappeared” person. She also argued that Somchai Neelapaijit, as a person injured by criminal acts, is entitled to a fair hearing and access to justice. As it is clear that he is unable to act for himself, Angkhana Neelapaijit and her four children should be able to act on his behalf in the criminal proceedings. Accordingly, she argued that the Appeal Court’s decision to exclude her and her children from acting on behalf of Somchai Neelapaijit violates his rights to access to justice and a fair hearing.

With respect to the acquittals, Angkhana argued they had been based on technical errors made during the investigation with respect to the documentary evidence, the treatment of the phone records, and the fact that appropriate experts had not been consulted. Accordingly, Angkhana Neelapaijit requested the Supreme Court to exercise its discretion, pursuant to Sections 225 and 208(1) of Criminal Procedure Code, to hear additional evidence, on the phone records in particular.

The Supreme Court has not yet rendered its decision.

OTHER LEGAL PROCEEDINGS

Civil Court

On 18 May 2009, five years after his enforced disappearance, the Civil Court declared Somchai Neelapaijit to be a “disappeared” person.

Administrative Court

In addition to the criminal proceedings, Angkhana Neelapaijit lodged a complaint with the Administrative Court against the Royal Thai Police for failure to take disciplinary action against Police Major Ngern Thongsuk and the other accused at trial. Angkhana Neelapaijit was unsuccessful both at first instance and on appeal.

National Anti-Corruption Commission

The Department of Special Investigation (DSI) investigated the allegations of torture of Somchai Neelapaijit’s five clients and submitted the case to the National Anti-Corruption Commission (NACC). The complaint named 19 police officers and alleged malfeasance in public office. In 2007, the NACC commenced its inquiry and in 2010 dismissed the complaints due to insufficient evidence proving that any torture had occurred.

Criminal proceedings: false statements

In 2009, two high-ranking police officers filed separate criminal proceedings against one of Somchai Neelapaijit’s five clients for allegedly making false statements against them to the DSI and the NACC.¹⁴ While the first case was dismissed, the second was successful and, in 2011, the Criminal Court found the accused guilty of giving false statements and sentenced him to 2 years imprisonment.¹⁵

DSI INVESTIGATION

Since 19 July 2005, the DSI, under the MoJ, has been investigating Somchai Neelapaijit’s enforced disappearance. However, there is little information in the public domain regarding its progress other than a number of searches for his remains, detailed below.

Concise timeline

On 13 January 2006, then Prime Minister Thaksin Shinawatra told the Thai press that according to the DSI’s preliminary investigation, more than four state officials were involved in Somchai Neelapaijit’s enforced disappearance and that he was deceased.¹⁶

On 22 March 2006, the Director-General of the DSI, Police Major General Sombat Amornwiwat, told the Thai press that the DSI had identified more suspects who had killed Somchai Neelapaijit and burned his body, but it still had to gather evidence to demonstrate the links of all the wrongful acts before issuing arrest warrants for a charge of murder.¹⁷ Further, the DSI would search the Mae Klong River, in Ratchaburi Province, in search of burned oil barrels that the DSI believed (on grounds not publicly divulged) to have been used to destroy Somchai Neelapaijit's remains. The DSI and the Central Institute of Forensic Science (CIFS) carried out searches for Somchai Neelapaijit's remains in different locations in Ratchaburi Province in March and November 2006.¹⁸

In November of the same year, the Office of Attorney-General reportedly said that it had received evidence from the DSI that Somchai Neelapaijit, who has been officially listed as missing, "may have died" and that arrest warrants could be issued for murder charges,¹⁹ but denied reports about issuing arrest warrants for police generals and colonels.²⁰ Angkhana Neelapaijit raised concerns that the DSI should have investigated the evidence more thoroughly, including the phone records and other witnesses, before concluding that people could be charged with murder or issuing arrest warrants, because there was a risk that the Court could dismiss the case due to insufficient evidence of murder.²¹

In February 2007, then Prime Minister, General Surayud Chulanont, in a meeting with the then ICJ Secretary-General, Nicholas Howen, gave assurances that the Interim Government considered it important to ensure justice for past human rights violations, including that of Somchai Neelapaijit.²²

On 2 March 2007, the DSI reported it had enough evidence to show Somchai Neelapaijit was dead, but had been unable to locate the body. The DSI announced a cash reward of THB 500,000 (approx. USD \$15,000) for information leading to the location of his body.²³

On 22 February 2008, Police Colonel Thawee Sodsong was appointed as the new Director General of the DSI. Angkhana Neelapaijit objected on the grounds that he was the superior of the police officers who had stood trial in relation to Somchai Neelapaijit's enforced disappearance.²⁴

In the same month, the MoJ restructured the DSI and Angkhana Neelapaijit's DSI-assigned civilian protection was changed to police protection. However, following protests by Angkhana Neelapaijit, national and international NGOs, and the UN Working Group on Enforced and Involuntary Disappearance, the Royal Thai Government re-instated the DSI civilian protection indefinitely.²⁵

On 22 January 2009, Prime Minister Abhisit Vejjajiva ordered the police to increase their efforts to investigate a number of key cases, including the enforced disappearance of Somchai Neelapaijit: "If the cases remain unsolved, it will affect the country's image regarding justice," he told the Bangkok Post. DSI investigator, Police General Thanee Somboonsap, was reported in the Bangkok Post as saying, "The success of the case of human rights lawyer Somchai will help bring confidence back to solving problems in the deep South." It is worth noting that Police General Thanee Somboonsap was the lead DSI investigator in May 2006.

The following month, on 7 February 2009, Justice Minister Pirapan Salirathavibhaga led a team of government officials and Angkhana Neelapaijit to inspect suspected human remains (bone fragments) located in Ratchaburi province. The DSI had searched the same area on three previous occasions.²⁶ According to the Bangkok Post, "Mr Pirapan said he did not expect much from the inspection, but said he would do his best to solve the case." He said the Somchai Neelapaijit case was a top priority for the Justice Ministry and the Royal Thai Government.²⁷

On 8 February 2009, Police General Thanee Somboonsap was reported in the Bangkok Post as saying the case was hard to solve mainly because evidence had been destroyed.²⁸

On 14 February 2009, the Bangkok Post reported that the bone fragments found on 7 February 2009 did not belong to Somchai Neelapaijit. According to the Bangkok Post, "A total of 200 bones, both human and animal, have been sent to the Institute's (Central Institute for Forensic Science) laboratory for examination. Twenty samples had been examined and found to belong to unknown men."²⁹

In March 2009, Police Colonel Weerasak Meenakanit, the Chief DSI investigator, revealed that the delay in the Somchai Neelapaijit case was because the investigation team did not want to deal with those high-ranking police officers involved in the case and that the delay had an impact on the conflict in the deep South. Police Colonel Thawee Sodsong, the DSI Director-General, publicly stated that, from secret investigations, the DSI knew that a group of perpetrators brought Somchai Neelapaijit's corpse to be burned at a bomb disposal site owned by the military and threw the burned barrels and remains into the Mae Klong River near Sirilak Bridge in Ratchaburi province. Further, the DSI consulted with the MoJ to send those unidentified bone fragments to be examined by the U.S. Federal Bureau of Investigation and the U.K. Scotland Yard for a more technologically advanced analysis.³⁰

On 23 September 2010, DSI Director-General Tharit Pengdit affirmed that the DSI had not abandoned the Somchai Neelapaijit case but was focussing on "trying to unmask the masterminds." He also said that the failure to locate Somchai Neelapaijit's body was not an obstacle because "based on precedents, convictions in murder cases did not rely on the discovery of the corpses alone."³¹

On 11 December 2013, the DSI claimed the Somchai Neelapaijit investigation files had been stolen in the course of protests in Bangkok,³² a claim that was later declared to be unfounded.³³

On 20 December 2013, the DSI announced that it was contemplating closing the investigation into Somchai Neelapaijit's enforced disappearance.³⁴

ICJ letter to the DSI and Royal Thai Government

On 4 February 2014, the ICJ wrote to the DSI and the Royal Thai Government raising its concerns about the December 2013 announcements, and making a number of recommendations for Thailand to comply with its international obligations, including those under the ICCPR, the CAT, and the Convention Against Enforced Disappearance.³⁵

ICJ's Recommendations

The ICJ's recommendations to the DSI are to:

- (a) Continue the investigation into the enforced disappearance of Somchai Neelapaijit until his fate and whereabouts are disclosed and those responsible, including any state officials, are identified;
- (b) Request such human and financial resources as are required for the DSI to ensure the investigation is thoroughly and impartially carried out and to be completed without delay, including assistance from the international community;
- (c) Work with the MoJ and the Cabinet to ensure that persons under investigation are not in a position to influence the progress of the investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of Somchai Neelapaijit or their lawyers, or at persons participating in the investigation;
- (d) Provide the family of Somchai Neelapaijit and the public with regular updates on the status of the investigation;
- (e) Continue to provide effective DSI civilian protection to Angkhana Neelapaijit; and
- (f) Take all measures necessary, including in cooperation with the Office of the Attorney General, to ensure that those responsible for Somchai Neelapaijit's enforced disappearance are brought to justice, whether or not Somchai Neelapaijit's body is located.

UNITED NATIONS WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

The UN Working Group on Enforced or Involuntary Disappearance, a special body established under the United Nations Human Rights Council, has sought to establish the fate and whereabouts of Somchai Neelapaijit since 2005, when the case was first communicated to the Working Group. It has engaged both with the Royal Thai Government, the ICJ and other NGOs, and the victim's family, and has referred to the case in a number of its reports over the years.³⁶

On 5 February 2014, the ICJ's United Nations Representative in Geneva appeared before the United Nations Working Group on Enforced or Involuntary Disappearances on behalf of Angkhana Neelapaijit.

Following the meeting, the ICJ's UN representative in Geneva said:

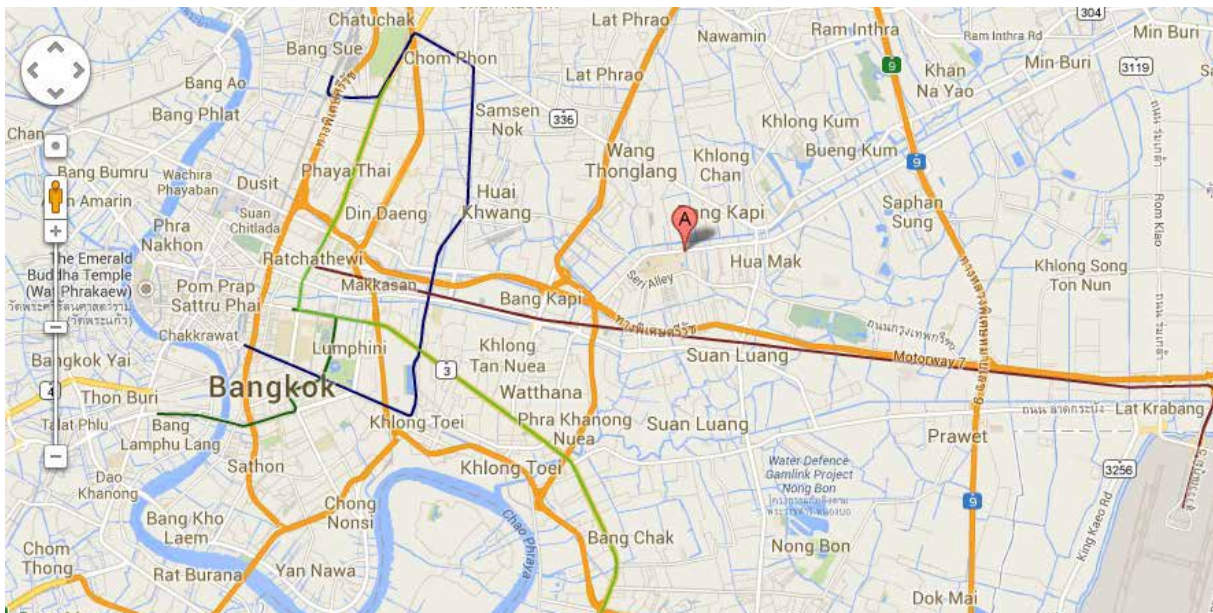
*"The UN Working Group on Enforced Disappearances has demonstrated a deep commitment to the case of Somchai Neelapaijit since first being made aware of it in 2005... The ICJ appreciates the Working Group's continuing efforts to ensure that the Thai Government properly investigates this case, prosecutes those responsible, and provides for the protection of anyone who remains at risk of intimidation or reprisals for seeking justice."*³⁷

THE FATE OF SOMCHAI NEELAPIJIT

There is strong circumstantial evidence that Somchai Neelapaijit is dead and that he appears to have been killed due to actions or omissions of state officials. Certainly, his family and friends have stated that they believe him to have been killed and now seek truth, accountability, and a suitable remedy for his death.

In addition to the statement of then Prime Minister Thaksin Shinawatra on 13 January 2006 acknowledging that Somchai Neelapaijit is dead,³⁸ numerous government agencies and senior government officials have publicly asserted certainty about his death. As early as 25 March 2004, Deputy Prime Minister Gen. Chavalit Yongchaiyudh, in response to a query in the House of Representatives, said, "I have information about who Mr. Somchai talked to before he died..."³⁹

On 13 January 2006, the Prime Minister Thaksin Shinawatra, told the Thai press that, "...we have learned from circumstantial evidence that he is dead."⁴⁰ On 2 March 2007, the DSI reported it had enough evidence to indicate that Somchai Neelapaijit was dead, but had been unable to locate his body.⁴¹ The Attorney General's Office had earlier, on 3 November 2006, also announced that it had evidence of his death.⁴²



Location of the last sighting of Somchai Neelapaijit on Ramkhamhaeng Road, Bang Kapi, Bangkok.

KEY LEGAL ISSUES

The Court of Appeal's decision emphasized two key legal issues:

- (a) The status of family members as victims of an enforced disappearance in the Thai justice system; and
- (b) Whether the location of the body or remains of a "disappeared" person is required before someone can be charged with unlawful killing.

Status of victims of enforced disappearance in the Thai justice system

Under international law, family members of a victim of an enforced disappearance are also victims, and should be recognized as such in the Thai justice system.

The authorities must ensure that family members of victims are able to enjoy the right to access to an effective remedy and to full reparation. This right is guaranteed under Article 2 of the ICCPR and Articles 13 and 14 of the CAT; and these requirements are also reflected in Articles 8 and 24 of the Convention Against Enforced Disappearance and Article 9 of the Declaration on the Protection of All Persons from Enforced Disappearance. Where the "disappeared" person had children at the time of his enforced disappearance, the children's rights are also guaranteed under the Convention on the Rights of the Child.⁴³

Investigators, including the DSI, have an obligation to provide family members with regular updates on the progress of the investigation as part of their right to a remedy and reparation.

This right is reflected in a number of international standards, including in Article 24 of the Convention Against Enforced Disappearance, which confers an obligation on the authorities to provide the family with the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the "disappeared" person.⁴⁴

Accordingly, the Royal Thai Government must amend existing Thai law to conform to the Convention Against Enforced Disappearance, including by amending those provisions that may make it difficult for family members of a victim of an enforced disappearance to participate in criminal proceedings on behalf of a "disappeared" person. For example, Section 5 of the Criminal Procedure Code requires that a family member prove that an injured person is dead or unable to act by herself before they can act on the victim's behalf.

The absence of a body

The fact that investigators are unable to locate the remains of a "disappeared" person should not prevent those responsible for the enforced disappearance from being brought to justice and punished with penalties proportional to the extreme seriousness of the offence.

There is a line of established international jurisprudence in which courts have convicted for unlawful killing even when no body or human remains was found. Indeed, cases of unlawful killing may be successfully prosecuted while relying upon circumstantial evidence alone, as long as the necessary elements to establish unlawful killing are proved to the required standard:

- (a) The victim is dead;
- (b) The accused caused the death; and
- (c) The accused possessed the requisite *mens rea*, e.g. intention to kill.

In cases of enforced disappearance, there is a particular obligation on State Parties and the courts within their jurisdictions to conduct effective investigations and to hold perpetrators criminally responsible.

Accordingly, in cases where there is credible circumstantial evidence of death caused by law enforcement officials, prosecutions for unlawful killing ought to be seriously pursued.

REMEDIES AND REPARATION

The Royal Thai Government must provide Angkhana Neelapaijit and her family with an effective remedy.

Under a 2005 Cabinet Resolution which approved assistance and restitution for persons affected by the unrest in the deep South, the Royal Thai Government provided Somchai Neelapaijit's five children with financial support and a monthly stipend towards their education. However, these gestures were not accompanied by recognition of liability or responsibility.

In 2006, the Royal Thai Government, on the recommendation of the National Reconciliation Commission, provided compensation of THB 100,000 (approx. USD \$3,300) to Angkhana Neelapaijit as part of compensation for disappearances related to the southern conflict. Angkhana Neelapaijit refused to accept the compensation and asked that the money be used to assist people affected by violence in the deep South.⁴⁵

On 21 September 2009, Angkhana Neelapaijit filed a request to the Rights and Liberties Protection Department, MoJ, for restitution and compensation for victims in criminal cases. Initially, officials turned down her application claiming that it did not appear that Somchai Neelapaijit had been injured or found dead. Moreover, an application for restitution is required to be submitted within one year. Later, on 16 December 2009, the Committee to Review Compensation for the Aggrieved Parties in Criminal Cases, chaired by the Deputy Permanent Secretary, looked into the case again. Acknowledging facts and legal opinions regarding the case, they eventually agreed to provide compensation for Angkhana Neelapaijit for the murder case without an allowance for maintenance of the case. The expenses for funeral rites were not provided as the body had not been retrieved.⁴⁶

On 25 December 2009, after the Civil Court declared Somchai Neelapaijit to be a "disappeared" person, Angkhana Neelapaijit received monetary compensation of THB 80,000 (approx. USD \$2,600) under the Compensation to Aggrieved Parties and the Accused in Criminal Cases Act B.E. 2544 (2001).⁴⁷

In June 2012, as part of the Royal Thai Government's no-fault compensation scheme for victims in the deep South, the Committee on Compensation and Restitution for Affected Persons of the Southern Unrest provided monetary compensation of THB 7,500,000 (approx. USD \$250,000) for Somchai Neelapaijit's disappearance, to Angkhana Neelapaijit. The compensation was granted on the grounds that Somchai Neelapaijit had been declared to be a "disappeared" person, and that his disappearance is believed to involve some state officials and be connected to the conflict in the deep South. Notably, Angkhana Neelapaijit said she would not accept the compensation if it extinguished the right to bring a criminal prosecution, which the Royal Thai Government accepted.⁴⁸

However, these payments do not and cannot constitute reparation for a human rights violation under international law, as they are not connected to any declaration of a rights violation or any wrongdoing by the State.



"I am not interested in why Khun Somchai was disappeared, but I often ask myself why society allows people to disappear without feeling that it is something unusual that society must take responsibility for. One year after Khun Somchai's disappearance, I began to ask the children what we should do. We had the choice of doing nothing, with many people trying to make things better. Or we could stand up to demand justice, when we would not know what we would face in the days to come and whether, in the end, there would be any justice for little people like us. We could lose family and friends who may not be able to put up with the threats and intimidation. In the end, the family agreed that we should not allow Dad to be disappeared without us doing anything."

Angkhana Neelapaijit, *Reading between the Lines*, March 2009, p.22.

International law prescribes that states must provide a prompt and effective remedy, and full reparation for everyone who alleges a violation of his or her human rights.⁴⁹ The remedy must be made known, so that all persons can avail themselves of it without discrimination. In order to be effective, the authority competent to investigate and decide on the case must be independent and impartial. In all cases, the remedy must be practical and effective and not illusory:

- (a) It must be effective, prompt and accessible.
- (b) It must be a remedy before an independent authority.
- (c) The victim should have access to legal counsel and if necessary to free legal assistance.
- (d) The remedy must be capable of leading to relief, including reparation and compensation.
- (e) The right to a prompt, effective and impartial investigation is part of the right to a remedy.
- (f) The remedy must be expeditious and enforceable by the competent authorities.
- (g) The remedy must be judicial in case of gross human rights violations.
- (h) Reparation must not be limited solely to monetary provision, but includes restitution, satisfaction, guarantees of non-repetition, rehabilitation, and compensation.⁵⁰

Above all else, Angkhana Neelapaijit and her family have a right to know the truth. The right to truth is a right of victims and families to obtain knowledge and clarification of the facts leading to gross human rights violations. A denial of this right amounts not only to a denial of the right to a remedy, to investigation and to reparation; it can also constitute in itself cruel, inhuman and degrading treatment because it causes new suffering to victims and their relatives.⁵¹

Article 18 of the Convention Against Enforced Disappearance provides that States must “guarantee to any person with a legitimate interest in ... information [about the enforced disappearance], such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information: “the authority that ordered the deprivation of liberty; date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty; the authority responsible for supervising the deprivation of liberty; whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer; date, time and place of release; elements relating to the state of health of the person deprived of liberty; and in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains”.

RECOMMENDATIONS

With a view to urging the Royal Thai Government to advance the investigation into the enforced disappearance of Somchai Neelapaijit in a manner that conforms to its international obligations, the ICJ recommends the following:

- (a) Ratify the Convention Against Enforced Disappearance;
- (b) Enact legislation that makes enforced disappearance a specific crime in Thai domestic law, together with penalties that recognize its extreme seriousness;
- (c) Amend existing Thai law to conform with the Convention Against Enforced Disappearance, as well as the State’s obligations, including with respect to effective remedy and reparation, under the ICCPR and CAT;
- (d) Provide Angkhana Neelapaijit and her family with an effective remedy and full reparation, in particular knowledge and clarification of the facts leading to the enforced disappearance and the progress and results of the DSI investigation; and
- (e) Address the recommendations the ICJ made to the DSI in its letter of 4 February 2014 with respect to its investigation.

APPENDIX

Angkhana Neelapaijit's journey - ten years in search of justice

Since 14 March 2004, when she made a formal complaint to the police that her husband was missing, Angkhana Neelapaijit has searched for the truth and pursued justice with respect to Somchai Neelapaijit's enforced disappearance.

In the process, Angkhana Neelapaijit has become an active human rights defender and the Chairperson of the Justice for Peace Foundation (JPF) working to strengthen non-violent efforts to protect human rights, to promote access to justice, and to end impunity.

In addition to bringing the case to the attention of a number of United Nations bodies, Angkhana Neelapaijit has written to and met with numerous officials, bodies and agencies in Thailand, including the following examples:

- 20 June 2005** Angkhana Neelapaijit met with Prime Minister Thaksin Shinawatra who promised to look into the case.
- 23 August 2005** Angkhana Neelapaijit sent a letter to the Chairperson of the National Human Rights Commission complaining she had not received justice for over one year and five months despite the number of people and agencies investigating the case.
- 1 December 2005** Angkhana Neelapaijit sent a letter to the Deputy Prime Minister and Minister of Justice, Police General Chitchai Wannasathit, and the Director-General of the DSI, Police Major General Sombat Amornwiwat, calling for urgency in the case of Somchai Neelapaijit's disappearance. She also called for a broader investigation and additional charges, since the trial only concerned robbery and coercion, which could not bring about full justice with respect to the enforced disappearance of an individual, especially an enforced disappearance carried out by agents of the state.
- 8 December 2005** Angkhana Neelapaijit sent a letter to the Inspector-General of the Royal Thai Police to protest the fact that a police officer who was an accused in the criminal trial was still in government service and carrying out duties while the case was in progress, and that the other accused were in the process of asking to return to government service after court proceedings were finished.
- 22 March 2006** Angkhana Neelapaijit sent a letter to the Office of the Ombudsman requesting assistance in Somchai Neelapaijit's case (to help the victim and family to file a case against the police in an administrative court).
- 20 July 2006** Angkhana Neelapaijit sent a letter to the Director General of the DSI requesting information on the progress of the investigation.
- 22 November 2006** Angkhana Neelapaijit sent a letter to Prime Minister General Surayud Chulanond requesting him to look into a number of issues in the case and asking the Government to reveal the truth.
- 12 March 2007** Angkhana Neelapaijit lodged a complaint with the Administrative Court against the Royal Thai Police for failing to take disciplinary action against the convicted police officer and the four other defendants.

- 23 December 2009** Angkhana Neelapaijit sent an open letter to Prime Minister Abhisit, urging action on the Somchai Neelapaijit case.
- 18 January 2010** Angkhana Neelapaijit met with Tharit Pengdith, DSI Permanent-Secretary, on the progress of the investigation into Somchai Neelapaijit's enforced disappearance.
- 10 February 2011** Angkhana Neelapaijit sent a letter to the Minister of Justice to follow up with the progress of the investigation into the enforced disappearance of Somchai Neelapaijit while raising a number of concerns.
- 10 March 2013** Angkhana Neelapaijit sent an open letter urging Prime Minister Yingluck Shinawatra to address the culture of impunity in Thailand in light of the 9th anniversary of the disappearance of Somchai Neelapaijit.
- 10 September 2013** Angkhana Neelapaijit sent a letter to Prime Minister Yingluck Shinawatra regarding the investigation into Somchai Neelapaijit's case.
- 19 December 2013** Angkhana Neelapaijit sent a letter to the Acting Minister of Justice, copying: 1. Chairperson of the UN Working group on Enforced or Involuntary Disappearances (WGEID) 2. UN High Commissioner for Human Rights regarding the DSI investigation and its statements that the case file had gone missing and that, in any event, it was considering closing the investigation.

Despite her many attempts to uncover the truth about what happened to her husband, the authorities have not yet provided Angkhana Neelapaijit with a satisfactory response. For example, recently, on 10 January 2014, the MoJ wrote a letter to Angkhana Neelapaijit which simply said that the Minister of Justice had received her letter regarding the 'lost' files and requesting information about the progress of the investigation (her letter dated 19 December 2013), and that the MoJ had referred the request to the DSI for further inquiry.

(Endnotes)

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- 2 *Report of the National Reconciliation Commission: Overcoming Violence through the Power of Reconciliation, Prognosis of Violent Phenomenon*, 16 May 2006, pp.45-46.
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