

**COMMUNICATION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION  
AGAINST WOMEN**

**1. INFORMATION CONCERNING THE APPLICANT**

**2. INFORMATION CONCERNING THE AUTHOR OF THE COMMUNICATION**

2.1 The communication is being submitted to the Committee on the Elimination of Discrimination Against Women (“**CEDAW**”) by International Service for Human Rights (“**ISHR**”) and the International Commission of Jurists (“**ICJ**”) as the appointed representative of, and with the consent of, the Applicant (see Annexure 2).

2.2 ISHR was established in 1984 as an independent, non-governmental organisation dedicated to promoting and protecting human rights. ISHR achieves this by supporting human rights defenders, strengthening human rights systems and leading and participating in coalitions for human rights change. ISHR conducts strategic litigation at international, regional and national levels aimed at ensuring human rights defenders have the freedom to effectively and safely protect and promote human rights; that perpetrators are held accountable and victims are provided with adequate remedies when human rights violations occur.

2.3 ICJ, composed of 60 eminent judges and lawyers from all regions of the world, works to advance respect for the rule of law and the promotion and protection of human rights globally. Established in 1952, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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### 3. **INFORMATION ON THE STATE PARTY CONCERNED**

- 3.1 This communication is directed against Thailand as a State Party to the Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (the "**Optional Protocol**").
- 3.2 Thailand ratified the Convention on the Elimination of All Forms of Discrimination Against Women (the "**Convention**") in 1985 and acceded to the Optional Protocol on 14 June 2000.

### 4. **BACKGROUND FACTS**

#### **Overview**

- 4.1 The Applicant's husband, known human rights defender Somchai Neelapaijit, was the subject of an alleged enforced disappearance in 2004. The Applicant alleges that the State Party's failure to take steps to adequately investigate and prosecute the perpetrators of the alleged enforced disappearance of her husband constitutes a breach of her rights under the Convention. In particular, the State Party has breached the Applicant's rights:
- (a) To equality in the family under Articles 5(a)(b) and 16(1)(c)(d) of the Convention; and
  - (b) Of access to justice and right to a remedy under Articles 2(b), (c), (f) and 15(1) of the Convention.
- 4.2 A detailed description of the facts is outlined below, and a chronology of events is contained in the Annexure to this communication.

#### **Violence in the State Party's Southern Provinces**

- 4.3 The State Party's southern border provinces, namely, Songkhla, Pattani, Yala and Narathiwat (the "**Southern Provinces**") have been the site of protracted violence between Malay-Muslim militants and state military and security forces for many decades. Since 2004, more than 6,000 people have been killed in connection with this violence.<sup>1</sup> Following the raid of a Thai army camp, where military weapons were taken away, on 5 January 2004 the State Party's Government, led by then Prime Minister Thaksin Shinawatra, declared Martial Law in the Southern Provinces.
- 4.4 Civil society groups have raised concerns regarding the impunity of state officials for human rights violations in the Southern Provinces.<sup>2</sup> A 2011 report by the Office of the High Commissioner for Human Rights (summarising stakeholder submissions in respect of the State Party's Universal Periodic Review) stated that:

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<sup>1</sup> *Thailand: Rights Activists Detained in Deep South*, Human Rights Watch, (August 2, 2018) [www.hrw.org/news/2018/08/02/thailand-rights-activist-detained-deep-south](http://www.hrw.org/news/2018/08/02/thailand-rights-activist-detained-deep-south).

<sup>2</sup> *Thailand: Activist Held Incommunicado in South*, Human Rights Watch (February 27, 2018) [www.hrw.org/news/2018/02/27/thailand-activist-held-incommunicado-south](http://www.hrw.org/news/2018/02/27/thailand-activist-held-incommunicado-south).

- (a) The enforcement of Martial Law and other special security laws over a long period of time had given rise to complaints of human rights violations, including extrajudicial killings, arbitrary detentions, torture and enforced disappearances.<sup>3</sup>
- (b) State security forces in the Southern Provinces posed a particular threat to human rights defenders, with women human rights defenders facing a higher risk.<sup>4</sup>

### **The restrictive environment for human rights defenders in the Southern Provinces**

- 4.5 Human rights defenders in the State Party are subject to prosecution, harassment, killings and enforced disappearances for conducting their legitimate activities.<sup>5</sup>
- 4.6 Following the 2014 review of the State Party's compliance with the Convention Against Torture, the UN Committee Against Torture stated that it had been reported that in the State Party *"enforced disappearance is used as a method of harassment and repression against human rights defenders by the security and military forces, in particular in the highly militarized counter-insurgency context in southern Thailand"*.<sup>6</sup>
- 4.7 Furthermore, the UN Working Group on Enforced or Involuntary Disappearances made general allegations that *"no case of enforced disappearance has led to the prosecution or conviction of the perpetrator"*.<sup>7</sup>
- 4.8 In 2016 the State Party's National Human Rights Commission reported to the UN Human Rights Committee that *"[H]uman rights defenders are faced with threats of intimidation, as well as enforced disappearance. There have been cases in which core leaders in campaigns for civil liberty are murdered"*.<sup>8</sup>
- 4.9 Following the 2017 review of the State Party's compliance with the International Covenant on Civil and Political Rights, the UN Human Rights Committee stated that it was:

*"particularly concerned about reports of torture and other ill-treatment, extrajudicial executions and enforced disappearances against, inter alia, human rights defenders, including in the context of the southern border provinces. The Committee remains concerned about widespread impunity for those crimes and the slow progress in investigating such cases, including cases of the shooting of civilians during the political violence of 2010, the enforced disappearances of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen and the torture endured by Kritsuda Khunasen."*

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<sup>3</sup>[lib.ohchr.org/HRBodies/UPR/\\_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/session12/TH/A\\_HRC\\_WG.6\\_12\\_THA\\_3\\_Thailand\\_E.doc&action=default&DefaultItemOpen=1](http://lib.ohchr.org/HRBodies/UPR/_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/session12/TH/A_HRC_WG.6_12_THA_3_Thailand_E.doc&action=default&DefaultItemOpen=1), [26].

<sup>4</sup> Ibid, [46].

<sup>5</sup> Amnesty International, *Thailand Restrictive Environment for Human Rights*, Amnesty International, submitted to the UN Universal Periodic Review (May 10, 2016) [www.amnesty.org/download/Documents/ASA3935392015ENGLISH.pdf](http://www.amnesty.org/download/Documents/ASA3935392015ENGLISH.pdf).

<sup>6</sup> CAT, *Concluding observations on the initial report of Thailand*, (20 June 2014) CAT/C/THA/CO/1.

<sup>7</sup> Ibid.

<sup>8</sup> National Human Rights Commission of Thailand, *Alternative Report on Thailand's Implementation of the International Covenant on Civil and Political Rights (ICCPR)*, submitted to the Human Rights Committee (29 April 2016).

- 4.10 Two recent examples of arbitrary arrest and detention of human rights defenders are illustrated below.
- 4.11 On 23 February 2018, the State Party's security forces took a prominent ethnic Malay Muslim human rights activist, Aiman Hadeng, from his house in Yala province and detained him in a military camp under the 1914 Martial Law Act, allegedly for involvement in the separatist insurgency. As Human Rights Watch noted, *"the risk of enforced disappearance, torture, and other ill-treatment significantly increases when detainees are held incommunicado in informal places of detention, such as military camps"*.<sup>9</sup> Aiman Hadeng was subsequently released on 1 March 2018.<sup>10</sup> In another example, on 1 August 2018, the State Party's security forces arrested Burhan Buraheng, a well-known Malay Muslim human rights activist, at his house in Pattani under the 1914 Martial Law Act. Burhan and his family have not been notified of the basis of his arrest.<sup>11</sup> Human Rights Watch further noted that *"[a]rbitrary detention and unaccountable officials are a recipe for abuses that will only serve to alienate the people in this restive region"*.<sup>12</sup> Burhan Buraheng was released on 26 August 2018.

### **Enforced disappearances in Thailand**

- 4.12 From 1980 to May 2018, the UN Working Group on Enforced or Involuntary Disappearances recorded and transmitted 90 cases of enforced disappearance to the State Party.<sup>13</sup> Of the 90 cases, 82 cases involve a male victim.<sup>14</sup> As of July 2018, 86 cases remain outstanding.
- 4.13 Enforced disappearances are particularly prevalent in the Southern Provinces and contribute to the restrictive environment for human rights defenders. In 2004, Deputy Prime Minister Chavalit Yongchaiyudh told the Parliament of Thailand that *"Villagers [in the southern border provinces] complained to me that they have been abused continually by the authorities. They said more than 100 people have been disappeared."*<sup>15</sup> Further, the National Reconciliation Committee has documented 23 cases of enforced disappearance of men aged 20-50 in the Southern Provinces between 2002 and 2006.<sup>16</sup>
- 4.14 In its concluding observations on 20 June 2014, the Committee Against Torture welcomed the State Party's signature of the International Convention for the Protection of All Persons from

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<sup>9</sup> *Thailand: Activist Held Incommunicado in South*, Human Rights Watch (February 27, 2018) [www.hrw.org/news/2018/02/27/thailand-activist-held-incommunicado-south](http://www.hrw.org/news/2018/02/27/thailand-activist-held-incommunicado-south).

<sup>10</sup> *Critics of Military Junta continue to be criminalised*, CIVICUS Monitor (September 7, 2018) <https://monitor.civicus.org/newsfeed/2018/09/07/critics-military-junta-continue-be-criminalised/>.

<sup>11</sup> *Thailand: Rights Activists Detained in Deep South*, Human Rights Watch, (August 2, 2018) [www.hrw.org/news/2018/08/02/thailand-rights-activist-detained-deep-south](http://www.hrw.org/news/2018/08/02/thailand-rights-activist-detained-deep-south).

<sup>12</sup> *Thailand: Rights Activists Detained in Deep South*, Human Rights Watch, (August 2, 2018) [www.hrw.org/news/2018/08/02/thailand-rights-activist-detained-deep-south](http://www.hrw.org/news/2018/08/02/thailand-rights-activist-detained-deep-south).

<sup>13</sup> Report of the Working Group on Enforced or Involuntary Disappearances (30 July 2018) available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/236/81/PDF/G1823681.pdf?OpenElement> [accessed 1 October 2018].

<sup>14</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/236/81/PDF/G1823681.pdf?OpenElement> page 33.

<sup>15</sup> Human Rights Watch, *"It was like suddenly my son no longer existed"*, *Enforced Disappearances in Thailand's Southern Border Provinces* (19 March 2007) available at: [www.hrw.org/report/2007/03/19/it-was-suddenly-my-son-no-longer-existed/enforced-disappearances-thailands](http://www.hrw.org/report/2007/03/19/it-was-suddenly-my-son-no-longer-existed/enforced-disappearances-thailands).

<sup>16</sup> See Human Rights First, *Losing Ground: Human Rights Defenders and Counterterrorism in Thailand*, Human Rights Defenders and Counterterrorism Series No. 4 (2005) available at: <https://www.humanrightsfirst.org/2006/07/18/losing-ground-human-rights-defenders-and-counterterrorism-in-thailand-2>.

Enforced Disappearance and its statement that ratification was envisioned.<sup>17</sup> Notwithstanding the Committee remained seriously concerned at:

- (a) *"The absence of a definition of enforced disappearance and the absence of the recognition of enforced disappearance as an offence in the domestic legislation;*
- (b) *The continuing and numerous alleged cases of enforced disappearance, in particular against human rights, anti-corruption and environmental activists as well as witnesses of human rights violations.*
- (c) *The failure to resolve most cases of enforced disappearance, provide remedy to the relatives of missing persons, and prosecute those responsible, as demonstrated in numerous cases, including the disappearance of Somchai Neelaphaijit, Jahwa Jalo and Myaleng Maranor. The Committee noted with concern the general allegations made by the Working Group on Enforced or Involuntary Disappearances that no case of enforced disappearance has led to the prosecution or conviction of the perpetrator and that reparation, including compensation has been extremely limited in Thailand (A/HRC/22/45, paras. 457–466) (arts. 2, 4, 12, 14 and 16)."*

4.15 Steps taken by the Government to address enforced disappearance are slow and inadequate. The Draft Prevention and Suppression of Torture and Enforced Disappearance Act is under review by the National Legislative Assembly after it was returned for further consultations to the Cabinet by the Assembly in March 2017.<sup>18</sup> While a special committee was set up in 2017 by the Prime Minister to handle complaints of torture and enforced disappearance, the committee's progress is slow and families have not been contacted or informed about any developments in the cases under the committee's mandate. Currently, there is no legal framework to officially recognise the enforced disappearance of a person or criminalize enforced disappearances. Without this official recognition, families of the disappeared victim have no access to judicial processes, compensation or remedies specific to cases of enforced disappearance.<sup>19</sup>

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<sup>17</sup> See CAT, Concluding observations on the initial report of Thailand, (20 June 2014). See recommendations on Draft Prevention and Suppression of Torture and Enforced Disappearance Act that ICJ and Amnesty International jointly prepared and submitted to the National Legislative Assembly, ICJ, 'Thailand: ICJ submits recommendations on draft law on torture and enforced disappearance amendments', 18 January 2019, <https://www.icj.org/thailand-icj-submits-recommendations-on-draft-law-on-torture-and-enforced-disappearance-amendments/>.

<sup>18</sup> See International Commission of Jurists' recommendations on the Draft Act to the Thai Government at: ICJ, 'Thailand: ICJ submits recommendations on draft law on torture and enforced disappearance amendments', 18 January 2019, <https://www.icj.org/thailand-icj-submits-recommendations-on-draft-law-on-torture-and-enforced-disappearance-amendments/>; ICJ, 'Thailand: ICJ, Amnesty advise changes to proposed legislation on torture and enforced disappearances', 23 November 2017, <https://www.icj.org/thailand-icj-amnesty-advise-changes-to-proposed-legislation-on-torture-and-enforced-disappearances/>; ICJ, 'Thailand: pass legislation criminalizing enforced disappearance, torture without further delay', 30 August 2017, <https://www.icj.org/thailand-pass-legislation-criminalizing-enforced-disappearance-torture-without-further-delay/>; ICJ, 'Thailand: Prioritize the amendment and passage of legislation on torture and enforced disappearances', 9 March 2017, <https://www.icj.org/thailand-prioritize-the-amendment-and-passage-of-legislation-on-torture-and-enforced-disappearances/>.

<sup>19</sup> <file://sydcs01/userdata/ivke/Downloads/JPF-JusticePeaceFoundation-WomenAnnex5-eng.pdf>.

### **The enforced disappearance of Somchai Neelapaijit**

- 4.16 Somchai Neelapaijit is the husband of the Applicant.
- 4.17 Prior to his disappearance on 12 March 2004, Somchai Neelapaijit spent decades defending the rights of people in the Southern Provinces. Somchai Neelapaijit was a Muslim lawyer and a known human rights defender who had been the chairman of Thailand's Muslim Lawyers Association and vice-chairman of the Human Rights Committee of the Law Society of Thailand.
- 4.18 On 4 January 2004, after the robbery of military weapons from an army camp and the arson attacks across the Southern Provinces, the then Prime Minister declared Martial Law in the relevant provinces. Somchai Neelapaijit began collecting names for a petition of 50,000 signatures to the President of the National Assembly seeking that Martial Law be lifted. On 26 February 2004, two weeks before his disappearance, Somchai Neelapaijit and his colleagues from the Muslim Lawyers Association visited five men that were being held in custody as suspects for the 4 January 2004 robbery. The men alleged that the police had subjected them to torture - beating, kicking, electrocuting and urinating on them - and had forced them to confess to a range of crimes including conspiracy to commit rebellion and to act as a criminal gang.<sup>20</sup>
- 4.19 On 27 February 2004, Somchai Neelapaijit gave a speech in Bangkok attended by the then Deputy Prime Minister Wannoo Matha. During the speech, Somchai Neelapaijit stated, "*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 similarly strongly criticised the Thai police and military for their mistreatment of Malay-Muslims in the Southern Provinces. Somchai Neelapaijit also referred to the allegations of abuse he heard from the five men the day prior.<sup>21</sup>
- 4.20 On 4 March 2004, Somchai Neelapaijit petitioned the Court to release the five detained men. The petition was rejected that same day by the Court. On 11 March 2004, Somchai Neelapaijit's law office submitted a petition alleging abuse to various government departments and public institutions, including the Ministry of Justice, 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.<sup>22</sup>
- 4.21 On the evening of 12 March 2004, Somchai Neelapaijit disappeared. Eye witnesses reported that they saw Somchai Neelapaijit getting out of a car and talking with five men from another car in central Bangkok. The five men then pushed Somchai Neelapaijit into their car and drove off. Somchai Neelapaijit's car was found abandoned more than 10 kilometres from where he was taken. He was never seen again and his body never found.<sup>23</sup>

### **The State Party's failure to adequately investigate the death of Somchai Neelapaijit**

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<sup>20</sup> International Commission of Jurists, 'Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand', March 2014, page 5.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, page 6.

<sup>23</sup> Ibid.

- 4.22 In April 2004, the Criminal Court issued arrest warrants for five police officers for their alleged involvement in robbing and forcing Somchai Neelapaijit into a vehicle (charging them with coercion and gang-robbery). Two of the police officers arrested were responsible for investigating the armed robbery on 4 January 2004 that led to a declaration of Martial Law. During their trial, the five men who Somchai Neelapaijit had been defending at the time of his disappearance identified one of the accused as a police officer who had abused them. Following the trial, the Criminal Court in Bangkok acquitted four of the accused and convicted one police officer of the more minor charge of coercion, with a sentence of three years in prison. The officer, Police Major Ngern Thongsuk, appealed his conviction and was released pending his appeal. In response, the Applicant and her four children filed a cross-appeal to join the Public Prosecutor in the criminal proceedings. Police Major Thongsuk was later reported as missing by police due to a landslide and, to date, his location has not been established.<sup>24</sup>
- 4.23 In January 2006, the State Party's then Prime Minister made a formal statement indicating that "*The Department of Special Investigation is working on this case and murder charges are being considered. I know Somchai Neelapaijit is dead, circumstantial evidence indicated that...and there were more than four government officials implicated by the investigation. Witness 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 [2006]*".<sup>25</sup>
- 4.24 In March 2009, the Chief DSI investigator, Police Colonel Weerasak Meenakanit, revealed that the failure to advance the investigation was due to investigators not wanting to deal with high-ranking police officers involved in the case.<sup>26</sup>
- 4.25 In March 2011, the Appeal Court rejected the application by the Applicant and her children to join the prosecution, overturned the conviction of Police Major Thongsuk and confirmed the Court's assessment that there was insufficient evidence to convict the remaining four accused. On the question of standing, the Appeal Court held that under criminal procedure a family member can only act for another family member's benefit when their family member is so injured that they have died or are unable to act by themselves. The Appeal Court found that it could not absolutely confirm that Somchai Neelapaijit had been injured to such an extent that he could not act by himself or that he had been assaulted to death because the accused officers had only been charged with coercion and gang robbery.<sup>27</sup>
- 4.26 In May 2011, the Applicant appealed the matter of her family's standing and the acquittal of the five accused to the Supreme Court of Thailand. On 29 December 2015, the Supreme Court upheld the Appeal Court's decision, confirming the acquittal of all five accused policemen and ruling that the Neelapaijit family could not act as joint plaintiff on Somchai Neelapaijit's behalf.
- 4.27 In October 2016, the Department of Special Investigation ("**DSI**") under the Ministry of Justice, who had been investigating Somchai Neelapaijit's disappearance since 19 July 2005, wrote to the Applicant to inform her that the investigation into Somchai Neelapaijit's

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<sup>24</sup> Ibid, page 7.

<sup>25</sup> Ibid, page 7.

<sup>26</sup> Ibid, page 11.

<sup>27</sup> Ibid, page 8.

disappearance would be closed because they could not find any culprit.<sup>28</sup> The State Party indicated during a review of Thailand's compliance with the International Covenant on Civil and Political Rights that the investigation could be reopened "if a perpetrator was subsequently identified".<sup>29</sup>

- 4.28 In May 2017, the State Party set up an Interim Mechanism for Torture and Enforced Disappearances Complaint Management Committee with mandates to follow-up on allegations of torture and disappearances.<sup>30</sup> It was initially reported that the Committee would not investigate any cases of torture or enforced disappearance prior to 2007, which meant that the case of Somchai Neelapaijit would have been beyond the Committee's mandate.<sup>31</sup> However, on 26 June 2017, the Committee reportedly stated that it would consider past, pending and new cases of enforced disappearance, including cases that had already been reported to the Working Group on Enforced or Involuntary Disappearances, and the case of Somchai Neelapaijit.<sup>32</sup> To date, however, authorities have not informed the Neelapaijit family about any progress or development in the case. Concerns have also been raised about the effectiveness of the Committee, as there is lack of clarity – domestic and/or international – on the legal framework that will ground the Committee's operation.<sup>33</sup>
- 4.29 According to an eyewitness, Somchai Neelapaijit's car was driven away by one of the perpetrators. There were also hair samples found in Somchai Neelapaijit's car. However, there were substantial gaps in the physical forensic evidence collected and examined by both the Scientific Crime Detection Division of the Royal Thai Police and the Central Institute of Forensic Science of Ministry of Justice submitted to the court, including: failure to preserve the integrity of the victim's car before it became subject to a full and independent forensic examination, failure to examine some hair samples found in the victim's car against samples from three of the defendants, and failure to properly investigate and prepare adequate expert evidence regarding the mobile phone records of the five defendants.<sup>34</sup>

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<sup>28</sup> [www.bangkokpost.com/news/crime/1109580/Somchai-Neelapaijit-neelapaijit-case-closed-says-dsi](http://www.bangkokpost.com/news/crime/1109580/Somchai-Neelapaijit-neelapaijit-case-closed-says-dsi).

<sup>29</sup> UN Human Rights Committee, 119th Session, Consideration of reports submitted by States parties under article 40 of the Covenant - Second periodic report of Thailand (continued), CCPR/C/SR.3349, 22 March 2017, para 65.

<sup>30</sup> Cross Cultural Foundation (CrCF), Duayjai Group, Patani Human Rights Organization (HAP), Fairly Tell Group with the support of the Centre for Civil and Political Rights, *Thailand: NGO assessment of the implementation of follow-up recommendations*, (8 March 2018) available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT\\_CCPR\\_NGS\\_THA\\_30567\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_NGS_THA_30567_E.pdf) [accessed 1 October 2018].

<sup>31</sup> Cross Cultural Foundation (CrCF), Duayjai Group, Patani Human Rights Organization (HAP), Fairly Tell Group with the support of the Centre for Civil and Political Rights, *Thailand: NGO assessment of the implementation of follow-up recommendations*, (8 March 2018) available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT\\_CCPR\\_NGS\\_THA\\_30567\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_NGS_THA_30567_E.pdf) [accessed 1 October 2018].

<sup>32</sup> Komchadluek, *Thailand did not neglect 82 cases on Enforced disappearance*, (26 June 2017), available at: <http://www.komchadluek.net/news/regional/284642>.

<sup>33</sup> International Commission of Jurists, 'Thailand: at fourth anniversary of enforced disappearance of "Billy", still no resolution', 16 April 2018, <https://www.icj.org/thailand-at-fourth-anniversary-of-enforced-disappearance-of-billy-still-no-resolution/>; International Commission of Jurists, 'ICJ commemorates International Day of the Victims of Enforced Disappearances with Thai human rights defenders', 30 August 2018, <https://www.icj.org/thailand-icj-commemorates-international-day-of-the-victims-of-enforced-disappearances-with-thai-human-rights-defenders/>.

<sup>34</sup> International Commission of Jurists, *Somchai Neelapaichit – Report on Trial & Investigation*, (March 2009), available at: <https://www.icj.org/thailand-a-report-on-the-criminal-trial-and-investigation-of-the-enforced-disappearance-of-the-thai-human-rights-lawyer-somchai-neelapaichit/>, page 3, 15-17, 26-27.



- 4.30 Given the risks faced by witnesses in Thailand, eye witnesses regarding this case appeared to be afraid of the perpetrators and supplying information to the investigation.<sup>35</sup>
- 4.31 The State Party's failure to adequately investigate the death of case of Somchai Neelapaijit was communicated to the Working Group on Enforced and Involuntary Disappearances in 2005<sup>36</sup>, and referred to in the concluding observations of the Committee Against Torture on the initial report of the State Party in 2014.<sup>37</sup>

### **The Applicant's circumstances following the disappearance of her husband**

- 4.32 The enforced disappearance of a person has an acute impact on their family, who also become victims of their enforced disappearance. As noted above in Section 4.12, most of the persons recorded as disappeared in Thailand are men. The Applicant's circumstances following the disappearance of her husband mirror those of the many women who find themselves in a similar situation of loss, hardship and physical danger, left to take on the entire economic responsibility of their families, to suffer from the stigma of being viewed as part of the insurgency movement by State officials and to struggle to seek remedies and answers to their husband's disappearance.<sup>38</sup>

#### *Financial difficulties*

- 4.33 At the time of Somchai Neelapaijit's disappearance, he and the Applicant were married and had five children aged 16, 18, 20, 22 and 23. The Applicant and her children were reliant on the financial support of Somchai Neelapaijit's income. Following his disappearance, the Applicant became the sole source of financial support for herself and her children. This occurred in the context where the already marginalised position of Muslim women with limited social services left the Applicant with few options for support or employment.

#### *Threats to security*

- 4.34 Following Somchai Neelapaijit's disappearance, the Applicant experienced numerous instances of threats to her security, as well as that of her family.
- 4.35 On 7 June 2009, Somchai Neelapaijit's car - which was parked in front of the Neelapaijit house - was broken into. Several belongings were moved within the car, but none taken. A few days later, the Applicant's car, also parked in front of the Neelapaijit house, was broken into in a very similar manner. These incidences constitute threats to the Applicant and her family.<sup>39</sup>
- 4.36 The Applicant has been the subject of acts of intimidation, such as receiving a phone call to warn her to be careful, a person opening their bag to expose various weapons<sup>40</sup> and her car

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<sup>35</sup> Somchai Neelapaijit case Black docket no. 1952/2547/ Red docket no. Or. 48/2548.

<sup>36</sup> Case no. 1003249.

<sup>37</sup> CAT/C/THA/CO/1, para 14(c); also noted in paragraph 4.14(c).

<sup>38</sup> [www.amnesty.at/media/2065/deadly-but-preventable-attacks-killings-and-enforced-disappearances-of-those-who-defend-human-rights.pdf](http://www.amnesty.at/media/2065/deadly-but-preventable-attacks-killings-and-enforced-disappearances-of-those-who-defend-human-rights.pdf), page 30.

<sup>39</sup> [www.simonrobins.com/ECAP-We%20need%20the%20Truth-Asia%20disappearances.pdf](http://www.simonrobins.com/ECAP-We%20need%20the%20Truth-Asia%20disappearances.pdf) page 60.

<sup>40</sup> <http://material.ahrchk.net/docs/ReadingBetweenTheLines.pdf> page 25.

headlights being smashed in on the day that the Court handed down its verdict in Somchai Neelapaijit's case. Friends and supporters of the Applicant also expressed fears regarding the impact that supporting the Applicant and her family would have on their own safety.

- 4.37 The Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Working Group on the issue of discrimination against women in law and in practice sent a communication to State Party concerning the security of the Applicant on 13 September 2017<sup>41</sup>. The communication set out alleged acts of intimidation, harassment and death threats on the Internet against the Applicant:
- (a) *"On 14 November 2016, a Facebook webpage was created called 'Jampen Tong Khatjai Naeoruam BRN', which can be translated as: 'It is necessary to oppose separatist movements in the Deep South of Thailand'. The webpage published an article, entitled: 'Treason of the country', together with the photo of three individuals, including Ms. Neelapaijit, warning readers that, during popular festivals, violence might be caused by those appearing in the photo.*
  - (b) *On 9 April 2017, shortly after the National Human Rights Commission of Thailand (NHRCT) was downgraded from A to B grade status, the Chairperson of the NHRCT issued a statement in which it was suggested that some Commission's members might be responsible for the downgrade, were 'working for foreigners' and 'undermined the nation'. While the name of Ms. Neelapaijit did not appear, she was allegedly one of the Commissioners targeted by the statement.*
  - (c) *On 22 May 2017, a Facebook webpage called 'E Ngo' posted a message with a manipulated photo of Ms. Neelapaijit titled: 'Netizen condemned the NHRCT for their inaction after a bombing incident in a hospital'. It further stated that the Commissioner was only active in issues related to Red-shirt activists or in cases related to 'political assembly'. Some comments posted under the text were reportedly threatening the NHRCT and its members.*
  - (d) *On 1 June 2017, several news websites claimed that Ms. Neelapaijit had provided comments in support of a karaoke hostess accused of having committed a murder. Some threatening comments were posted under a number of news articles. It is reported that on 7 June 2017, Ms. Neelapaijit filed a complaint to the Technology Crime Suppression Division. Following the complaint, several online news outlets reportedly removed the story or the edited photo of Ms. Neelapaijit."*
- 4.38 This communication and the online smear campaign accusing the Applicant of bias and misinformation, and associating her human rights advocacy with the promotion of insurgency and separatist movements was included in the 2018 Report of the Secretary General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights.<sup>42</sup>

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<sup>41</sup> AL THA 6/2017.

<sup>42</sup> A/HRC/39/41, page 50, paragraph 53.

### *Lack of justice and accountability*

- 4.39 The Applicant has continued to seek truth, justice and accountability for Somchai Neelapaijit's disappearance. Throughout the investigation, the Applicant spent considerable time and energy travelling to the office of the officers investigating Somchai Neelapaijit's disappearance to seek answers. The Applicant also repeatedly asked for information and evidence against the five policemen arrested for their involvement in the disappearance. These requests went unanswered.<sup>43</sup>
- 4.40 By the time the DSI agreed to investigate Somchai Neelapaijit's disappearance (following repeated requests from the Applicant) some key forensic evidence had disappeared. The Applicant repeatedly sought to have the investigation broadened and additional charges brought against the policemen, beyond the limited charges of robbery and coercion. In December 2005, the Applicant wrote to the Deputy Prime Minister and the Director-General of the Department of Special Investigation outlining these requests. Instead, the Applicant learned that one of the defendants in the case of gang robbery and coercion was not suspended from his services and continued to carry out his police duties throughout the proceeding.
- 4.41 As stepped out above, the Applicant has taken numerous steps seeking that the State Party carry out a thorough and transparent investigation into her husband's disappearance to ensure so those responsible are held accountable.
- 4.42 The closure of the investigation with no perpetrators being identified, as well as the rejection of appeals and the application to join as a plaintiff has caused distress to the Applicant and her family.

### **Monetary compensation**

- 4.43 The Applicant and her children have received monetary compensation for Somchai Neelapaijit's disappearance. However, these payments do not constitute adequate reparation for the gross human rights violation of her husband's enforced disappearance.
- 4.44 Since 2005, the Thai Government has provided the Applicant's children with financial support and a monthly education stipend. In 2006, the Applicant was offered compensation as part of a larger compensation scheme for disappearances related to the conflict in the Southern Provinces. In response, the Applicant refused this payment and asked that the money be spent to assist victims of violence in the Southern Provinces.
- 4.45 In December 2009, the Applicant received victims compensation payments for Somchai Neelapaijit's disappearance and death, following the rejection of her initial application in September 2009. However, this payment did not cover the maintenance of the criminal case or expenses for funeral rites as the body had not been retrieved.
- 4.46 In June 2012, the Applicant received additional monetary compensation for Somchai Neelapaijit's disappearance. The compensation was granted on the basis that Somchai Neelapaijit had been declared "disappeared", that State Party's officials are believed to be responsible for his disappearance and that his disappearance is connected to the conflict in

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<sup>43</sup> <http://material.ahrchk.net/docs/ReadingBetweenTheLines.pdf> page 24.

the Southern Provinces. The Applicant accepted the compensation on the basis that it would not extinguish the right to bring a criminal prosecution.

- 4.47 Despite the Applicant receiving compensation in the form of financial support for their children and victims compensation payments, there has not been an acknowledgment of a human rights violation by the State Party, nor any acceptance by the State Party of its liability or responsibility with respect to its duty to investigate the disappearance of Somchai Neelapaijit.

## 5. **ADMISSIBILITY OF THE APPLICANT'S COMMUNICATION**

- 5.1 The Applicant submits that her communication is admissible under Article 4 of the Optional Protocol:

- (a) The Applicant is a victim of a violation of her rights under the Convention;
- (b) The Applicant has not been able to receive appropriate reparations and remedies through domestic channels; and
- (c) This matter is not being examined by another procedure of international investigation or settlement and has not previously been examined by the CEDAW.

- 5.2 Each of these elements are examined in turn in paragraphs 5.3 to 5.9 below.

### **The Applicant has standing to submit this communication**

- 5.3 The Applicant is an individual under the jurisdiction of a State Party to the Optional Protocol and is a victim of a violation of her rights under Articles 2 and 3 of the Convention, as described in Section 6 below.

### **The Applicant cannot obtain an effective domestic remedy**

- 5.4 As described in paragraphs 4.32 to 4.47 above, the Applicant has taken numerous steps to obtain domestic remedies in respect of the violation of her rights.
- 5.5 There is no further recourse to challenge the decision of the State Party to close the investigation into the disappearance of the Applicant's husband, Somchai Neelapaijit. Accordingly, the Applicant has exhausted all civil, criminal and administrative channels for obtaining remedies.
- 5.6 Further and alternatively, domestic remedies for the Applicant's claims would not bring effective relief.
- 5.7 Further and alternatively, recourse at the domestic level would be unreasonably prolonged. As described above, the Applicant has taken steps that have after over a decade not resulted in sufficient remedy.
- 5.8 The Applicant refers to the CEDAW's Views adopted on communication No. 75/2014: "*the application of domestic remedies has been unreasonably prolonged and that the inaction of*

*the competent authorities rendered the application of a remedy that may bring effective relief to the authors highly unlikely.*"<sup>44</sup>

**This matter is not the subject of any other international procedures**

5.9 This matter has not been and is not currently being examined under any other procedure of international investigation or settlement (Article 4(2) of the Optional Protocol).

**6. BREACHES OF THE CONVENTION**

6.1 The rights to non-discrimination and equality are the backbone of the Convention; guiding its overarching object and purpose and informing each of the obligations enumerated in the Convention.

6.2 Articles 1–5 and 24 of CEDAW enumerate the general obligations of States Parties to eliminate all forms of discrimination against women and achieve substantive equality. They also form the interpretative framework for CEDAW's substantive provisions in Articles 6–16. Together, these two parts of the Convention protect women's rights to non-discrimination and equality in political and public life, economic and social matters and in legal and civil matters.

6.3 The Applicant alleges that the State Party has violated Articles 2(b)(c)(f), 5(a)(b), 15(1) and 16(1)(c)(d) of the Convention.

**Articles 2(f) and 5(a) of the Convention**

6.4 Article 2(f) provides that States must *take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.*

6.5 Similarly, under Article 5(a), States have an obligation to *modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*

6.6 Articles 2(f) and 5(a), together with Article 1<sup>45</sup>, make it clear that the Convention covers gender-based discrimination against women, as well as sex-based discrimination.<sup>46</sup> Pursuant to Articles 2(f) and 5(a), States Parties have the obligation to adopt appropriate measures to amend or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women.<sup>47</sup> This is an obligation of transformative equality which requires State Parties to implement an effective strategy that aims to redistribute power and resources amongst men and women, as well as *"address the norms, prejudices and stereotypes that violate women's rights and create the conditions necessary for women*

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<sup>44</sup> CEDAW/C/67/D/75/2014.

<sup>45</sup> Article 1 of the Convention states that *"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."*

<sup>46</sup> General Recommendation No. 28 on the core obligations of States parties under art. 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW/C/GC/28, 16 December 2010), para 5.

<sup>47</sup> *Ji v Finland* CEDAW/C/69/D/103/2016, 5 March 2018.

to exercise their autonomy and agency".<sup>48</sup> The Applicant refers in particular to the CEDAW's interpretation of Article 2(f) and 5 as imposing an obligation on State Parties to "*not only take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women.*"<sup>49</sup>

- 6.7 The term "appropriate measures" comprises measures ensuring that a State Party:
- (a) Abstains from performing, sponsoring or condoning any practice, policy or measure that violates the Convention (respect);
  - (b) Takes steps to prevent prohibit and punish violations of the Convention by third parties and provide reparation to victims (protect);
  - (c) Fosters wide knowledge about and support for its obligations under the Convention (promote); and
  - (d) Adopts temporary special measures that achieve sex non-discrimination and gender equality in practice (fulfil).<sup>50</sup>
- 6.8 As mentioned above in paragraph 4.12 to 4.14, enforced disappearances are prevalent, particularly in the Southern Provinces of the State Party. In many cases, such disappearances have been committed by apparatuses of the State Party, including local policemen and security forces.<sup>51</sup> Further, there is an ongoing pattern of the State failing to address those cases through both legislative or other means.<sup>52</sup>
- 6.9 As indicated above in paragraph 4.12, the majority of enforced disappearances in the State Party have been of men.<sup>53</sup> The aftermath of enforced disappearances therefore disproportionately impacts the spouses and relatives who are left to bear the economic and social burden of supporting the family of the disappeared. As relatives of those who have disappeared, women may also be considered victims of enforced disappearances.<sup>54</sup>
- 6.10 The UN Working Group on Enforced or Involuntary Disappearances makes clear that "*States must pay particular attention to the obstacles that hinder women victims of enforced disappearances from enjoying their guaranteed rights in the same way as men. Women's access to rights is aggravated by lack of legal literacy and the lack of services designed to*

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<sup>48</sup> Simone Cusack and Lisa Pusey, "CEDAW and the Rights to Non-Discrimination and Equality" (2013) *Melbourne Journal of International Law* 1 at p 11.

<sup>49</sup> *R.K.B. v. Turkey*, communication no 28/2010 UN Doc. CEDAW/C/51/D/28/2010 (13 April 2012) [8.8].

<sup>50</sup> General Recommendation No. 28 on the core obligations of States parties under art. 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW/C/GC/28, 16 December 2010), para 37.

<sup>51</sup> Human Rights Watch, *International Day of the Victims of Enforced Disappearances*, [www.hrw.org/news/2017/08/30/international-day-victims-enforced-disappearances](http://www.hrw.org/news/2017/08/30/international-day-victims-enforced-disappearances) (30 August 2017); UN Human Rights Committee, *Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017, paras 19 to 22.*

<sup>52</sup> The UN Human Rights Committee report ref above plus para. 4.12 to 4.15 of this communication.

<sup>53</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/236/81/PDF/G1823681.pdf?OpenElement>, page 33.

<sup>54</sup> Human Rights Council Working Group on Enforced or Involuntary Disappearances, General Comment on women affected by enforced disappearances adopted by the UN Working Group on Enforced or Involuntary Disappearances dated 14 February 2013 (A/HRC/WGEID/98/2).

*ensure their rights are protected, particularly in situations where police, judicial and other institutions dealing with enforced disappearances are mainly staffed by men. Furthermore, in cases where women become household heads, family obligations constitute a further limitation on their access to rights, due to the increase in family burden and concomitant reduction in time to deal with all the issues.*"<sup>55</sup>

- 6.11 The UN Working Group on Enforced or Involuntary Disappearances has noted the trend that *"women play a fundamental role in securing and advancing the rights of disappeared persons. In particular, from its experience the Working Group recognizes that women are often at the forefront of the struggle against enforced disappearances. They often form organizations and associations to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims themselves"*.<sup>56</sup>
- 6.12 Not only do they lead the struggle to find truth, those women are also put in circumstances where they risk of persecution, violence and intimidation.<sup>57</sup> Due to gender inequalities in many cultures, they experience heightened and intersecting economic, legal, social, and psychological harms as a result of losing a family member, who is often the breadwinner and head-of-household.<sup>58</sup> As noted above in paragraphs 4.33 to 4.35 above, the Applicant has experienced substantial economic difficulties as a consequence of her husband's disappearance and was required to seek justice while her and her family's physical safety were under threat.
- 6.13 These difficulties are more acute for the Applicant due to customs and practices that discriminate against women in the Southern Border Provinces. In their concluding observations on the combined sixth and seventh periodic reports of Thailand, the CEDAW recognized that *"Muslim women in the southern border provinces continue to face obstacles to the enjoyment of their rights on an equal footing with men, including with regard to access to education, employment, health care and social security, and that their situation is exacerbated by the ongoing conflict in the region."*<sup>59</sup> Relevant to the Applicant was the particular concern that the CEDAW noted for *"[w]omen who have become widows and heads of households as a result of male family members having been arrested, disappeared or killed, and who face stigma and difficulties in earning a living and supporting their families."*<sup>60</sup>
- 6.14 Whilst the State Party indicated during its periodic review that it would ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact domestic legislation criminalising enforced disappearances, to date this has not occurred. Further, the panels that were put in place to examine cases of enforced disappearances has been dubbed by a civil society body to be an administrative body *"with little authority or political will to seriously act in cases."*<sup>61</sup> These points, in addition to the elements identified in paragraph

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<sup>55</sup> A/HRC/WGEID/98/2 (2013).

<sup>56</sup> Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication submitted on behalf of J.I, No. 103/2016; CEDAW/C/69/D/103/2016, para 8.7.

<sup>57</sup> [www.amnesty.org/en/what-we-do/disappearances/](http://www.amnesty.org/en/what-we-do/disappearances/); [www.ictj.org/news/overlooked-and-invisible-women-enforced-disappearances](http://www.ictj.org/news/overlooked-and-invisible-women-enforced-disappearances).

<sup>58</sup> [www.amnesty.org/en/what-we-do/disappearances/](http://www.amnesty.org/en/what-we-do/disappearances/); [www.ictj.org/news/overlooked-and-invisible-women-enforced-disappearances](http://www.ictj.org/news/overlooked-and-invisible-women-enforced-disappearances).

<sup>59</sup> CEDAW/C/THA/CO/6-7 [22].

<sup>60</sup> CEDAW/C/THA/CO/6-7 [22a].

<sup>61</sup> <https://www.hrw.org/news/2018/08/29/thailands-failed-pledges-end-disappearances>.

4.14, demonstrate that the State Party has failed to take appropriate measures to put an end to the enforced disappearances of men, which has a discriminatory impact upon the women and relatives left behind.

- 6.15 In addition, few measures appear to have been adopted by the State Party to address the consequences of enforced disappearances on women, in particular those in the Southern Provinces – as well as the customs and practices which contribute to the financial and social disadvantage faced by women who take on the responsibility of providing for their family following a family member's disappearance. The Applicant notes that the prohibition of discrimination on the basis of gender in the Constitution and the Gender Equality Act does not apply in the Southern Border Provinces due to the continued operation of the special emergency laws.<sup>62</sup>
- 6.16 The Applicant submits that in failing to take appropriate measures to: (a) put an end to the enforced disappearances of men in the State Party; (b) appropriately investigate those disappearances, including the enforced disappearance of Somchai Neelapaijit and hold those responsible accountable; and (c) address the impact of such enforced disappearances on the female relatives of the disappeared, the State Party has violated Articles 2(f) and 5(a) of the Convention.

#### **Article 16(1)(d) of the Convention**

- 6.17 Under Article 16(1)(d), State parties shall "*take all appropriate measures to eliminate discrimination in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women...the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount*".

##### *(i) The shared responsibility of parents*

- 6.18 The *shared* responsibility of parents for the care, protection and maintenance of children is broadly recognised amongst States, in the Convention and in other international instruments, as is the right of women to equality within the family.<sup>63</sup>
- 6.19 Since 2004 and the disappearance of the Applicant's husband, she has had to bear sole responsibility for the family. Being required to act as sole carer and financial provider. Her ability to manage her property was also limited. As Thai Civil Law requires a husband's consent for a wife to sell their land, the Applicant was required to wait for five years after her husband's disappearance to submit a petition to the Civil Court to declare Somchai Neelapaijit a "disappeared" person – which occurred on 18 May 2009. This then allowed her to sell her land.
- 6.20 The Applicant was also left to pursue justice for the disappearance of her husband as set out in paragraphs 4.39 to 4.42 above, which caused her on-going distress.

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<sup>62</sup> CEDAW/C/THA/CO/6-7[8].

<sup>63</sup> See General Recommendation No. 21 on Article 16(1)(d), the Convention on the Rights of the Child, the Beijing Platform for Action and the Millennium Development Goals.



- 6.21 Critically, the Applicant continued to perform all of the responsibilities for her children under threat of harm to her and her children. As set out in 6.13, the situation was heightened by the significant and specific difficulties she faced as member of an ethnic minority.
- 6.22 Societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 of the Convention are violated.<sup>64</sup> Further, according to CEDAW, the abrogation of family responsibilities by men has been said to be can be a form of violence and coercion.<sup>65</sup>
- 6.23 By failing to investigate, as well as its alleged involvement in, Somchai Neelapaijit's disappearance which resulted in the Applicant being required to bear the sole responsibility for her family, the State party violated its obligation to ensure the Applicant and Somchai Neelapaijit had the same rights and responsibilities as parents in matters relating to their children.

(ii) *The best interests of the child*

- 6.24 The principle that the best interests of the child should be paramount has also been recognised in other international agreements including the Convention on the Rights of the Child.<sup>66</sup>
- 6.25 The CEDAW has indicated that it "is of the view that the expression 'paramount' in Article 16 (1) (d) and (f) of the Convention means that the child's best interests may not be considered to be on the same level as all other considerations.... in order to demonstrate that the right of the child to have one's best interests assessed and taken as a primary or paramount consideration has been respected, any decision concerning a child must be reasoned, justified and explained."
- 6.26 In this case, the State Party's involvement in the disappearance of Somchai Neelapaijit and failure to adequately investigate the disappearance constitute a failure to ensure the best interests of the children of the Applicant and Somchai Neelapaijit are paramount.

**Article 16(1)(c) of the Convention**

- 6.27 Under Article 16(1)(c), the State parties shall "*provide for the same rights and responsibilities during marriage and at its dissolution*".
- 6.28 According to the CEDAW, article 16 of the Convention provides for the elimination of discrimination against women at the inception of marriage, during marriage and at its dissolution by divorce or death.<sup>67</sup>
- 6.29 In General Recommendation 29, the CEDAW stated its growing concern for the economic consequences for women in stages of marriage, noting that women's general "*economic inferiority permeates all stages of family relationships*."<sup>68</sup> In particular, the CEDAW

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<sup>64</sup> General Recommendation No. 21 (13th session, 1994).

<sup>65</sup> General Recommendation No. 19 (11th session), 1992, Violence against women, specific to article 16.

<sup>66</sup> [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx).

<sup>67</sup> CEDAW/C/GC/29.

<sup>68</sup> CEDAW/C/GC/29.

recognised that women, in contrast to men, "*experience a substantial decline in household income and increased dependence on social welfare*" upon the dissolution of marriage.<sup>69</sup> The trend of economic inferiority, including on dissolution of marriage, is global, the CEDAW noting:

*"Regardless of the vast range of economic arrangements within the family, women in both developing and developed countries generally share the experience of being worse off economically than men in family relationships and following the dissolution of those relationships."<sup>70</sup>*

- 6.30 Pursuant to Art 16(1)(c), the Applicant is granted the same rights prior to and after the disappearance of Somchai Neelapaijit, and the dissolution of her marriage. Read together with Article 16(1)(d), the Applicant has the right to benefit from equal treatment regarding her role as a mother both before and after his disappearance.
- 6.31 The Applicant experienced substantial economic difficulties and became the sole supporter and caretaker of the family due to the dissolution of her marriage caused by her husband's disappearance.
- 6.32 The State Party's involvement in the disappearance of Somchai Neelapaijit and thereby the dissolution of the Applicant's marriage - heightened by the fact that women carry the load of responsibilities upon the disappearances of relatives and are generally worse off economically than men following the dissolution of a marriage<sup>71</sup> - has violated the Applicant's rights pursuant to Article 16(1)(c).

#### **Article 5(b) of the Convention**

- 6.33 Under Article 5(b) of the Convention, State Parties have an obligation to take all appropriate measures "*to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases*".
- 6.34 Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality.<sup>72</sup>
- 6.35 The State Party's delay in adequately investigating the disappearance of Somchai Neelapaijit and decision in March 2018 that it would close its investigation, are a clear indication of the State Party's failure to inform the public about the shared responsibility of men and women in the upbringing of their children. The Applicant was required to bear the sole economic, social and physical responsibility for raising her family, due to both action and inaction by the State Party. The fact that mostly men are disappeared provides support that this issue is systematic, and consistent with the State Party's perspective in terms of the role of women that feed into existing gender stereotypes supported in the State Party — gender stereotypes

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<sup>69</sup> CEDAW/C/GC/29.

<sup>70</sup> CEDAW/C/GC/29.

<sup>71</sup> CEDAW/C/GC/29.

<sup>72</sup> CEDAW General Recommendation No. 3, 1987.

and fixed parental gender roles that the Committee has continuously stressed have a 'pronounced impact' on women's human rights.<sup>73</sup>

### **Articles 2(b), 2(c), 15(1) of the Convention**

- 6.36 Whilst not an express right in the Convention, the right to a remedy has been accepted as a right that is implied into the Convention by virtue of Articles 2(b), 2(c) and 15(1).<sup>74</sup>
- 6.37 The Applicant refers in particular to the Views adopted by the CEDAW in communication No. 22/2009 (CEDAW/C/50/D/22/2009) stating that although the CEDAW "*recognizes that the Convention does not expressly refer to the right to a remedy, it considers that this right is implicit, in particular in article 2(c), whereby States parties undertake to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination"*.
- 6.38 The right to an effective remedy includes:<sup>75</sup>
- (a) Ensuring equal and effective access to justice. This includes the obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies;
  - (b) Providing adequate, effective and prompt reparation to victims for harm suffered in the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Satisfaction may include a number of aspects including verification of the facts and full and public disclosure of the truth as well as a search for the whereabouts of the disappeared and judicial and administrative sanctions against the person liable; and
  - (c) Providing access to relevant information concerning violations and reparation mechanisms.
- 6.39 In the context of enforced disappearances, the right is "*closely linked to [the] right to investigation, reparation and the truth. In terms of the latter, the right to an effective remedy is twofold: on the one hand, it refers to the right to know the truth about the circumstances, motives and perpetrators of the violation; and on the other hand it refers to discovering the fate or whereabouts of the person who was disappeared, and possibly secretly executed or buried, so as to locate and restore the person or, in the case of death, the body or remains to the relatives"*.<sup>76</sup>

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<sup>73</sup> e.g. CRC Preamble and art 18(1); ACHR art 17; CCPR, 'General Comment 19' (1990) UN Doc HRI/ GEN/1/Rev.1 para 8.

<sup>74</sup> See also CEDAW General Recommendation No. 33 on Women's Access to Justice (2015) UN Doc CEDAW/C/GC/33 on remedies: particularly paras 11, 13 to 20, 38, 39 which cover generally the need for justiciable, available, accessible, efficient provision of remedies, and Sections III and IV which provide specific recommendations for law and mechanisms to provide these remedies.

<sup>75</sup> See Article VII of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147, 21 March 2016). See also General Comment No. 31 - Nature of the General Legal Obligation Imposed on States Parties to the International Covenant on Civil and Political Rights, 29 March 2004.

<sup>76</sup> International Commission of Jurists, "Enforced Disappearance and Extrajudicial Execution: The Rights of Family Members - A Practitioners' Guide" (2016) at p. 69.

- 6.40 Financial compensation alone for damages suffered may not be an effective remedy as it will not provide integral reparation in respect of the violation.<sup>77</sup> Rather, an effective remedy in the case of enforced disappearances will include not only compensatory measures, but also a requirement to (a) investigate the crime and the whereabouts of the person; (b) bring those responsible for the crime to justice; and (c) obtain the victim's body or bones.<sup>78</sup>
- 6.41 Regional human rights systems have examined this issue. The Inter-American Court of Human Rights has established an obligation on the State to use due diligence in conducting prompt and immediate investigations once there are reasonable grounds to suspect that a person has been the subject of an enforced disappearance.<sup>79</sup> The investigation must include all actions necessary with the object of determining the fate of the victim and the location of his or her remains.<sup>80</sup> In the jurisprudence of the European Court of Human Rights, in addition to the payment of compensation where appropriate, the Court has highlighted the need in enforced disappearance cases for a thorough and independent investigation, carried out promptly and with reasonable expedition, that is capable of leading to the identification and punishment of those responsible, including effective access for relatives to investigatory procedures.<sup>81</sup>
- 6.42 Similarly, in the international system, the Human Rights Committee stated that States must comprehensively investigate and bring to justice those responsible for enforced disappearances.<sup>82</sup>
- 6.43 In addition, the report of the UN Human Rights Council Advisory Committee on best practices in cases of missing persons stated that it should be possible for a criminal investigation of a case of missing persons to be conducted for as long as the fate and whereabouts of the missing persons have not been solved.<sup>83</sup>
- 6.44 The CEDAW has previously considered a case involving similar circumstances. In communication No. 75/2014<sup>84</sup>, an individual was tried and acquitted for the murder of Pilar Arguello Trujillo. No further investigative acts were undertaken by the Mexican authorities after an Appeals Court confirmed the acquittal. The CEDAW noted that, "Although it

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<sup>77</sup> Ibid, para 86.

<sup>78</sup> Ibid, para 71.

<sup>79</sup> See, for example, *Caso Tenorio Roca y otros v Peru* (22 June 2016) at paras. 168, 178 and 179.

<sup>80</sup> See for example, *Caso Vásquez Durand y otros v Ecuador* (15 February 2017) at paras. 149, 153 and 154. See also *Caso Gómez Palomino v Perú* (22 November 2005) at 100 and Ophelia Claude, "A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence" (2010) *Intercultural Human rights Law Review* 407 at pp. 450 to 451.

<sup>81</sup> See for example, *Rantsev v Cyprus and Russia* (No. 25965/04, 7 January 2010) at para. 288, *Gaysanova v Russia* (No. 62235/09, 12 May 2016) at paras 132 – 133 and *Khachukayevy v Russia* (Application No. 34576/08, 6 June 2016) at para. 67. See also Claude, above no. 9 at pp. 450 to 451 and Council of Europe Commissioner for Human Rights, "Issue Paper: Missing Persons and Victims of Enforced Disappearance in Europe".

<sup>82</sup> Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", 26 May 2004, para. 14. See also General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), A/HRC/WGEID/98/2, 14 February 2013 at paras 22 to 31 concerning the right to the truth and to an effective remedy and Views in Communication No. 1275/2004, *Umetaliev and Tashtanbekova v. Kyrgyzstan*, 30 October 2008 at para. 9.2.

<sup>83</sup> A/HRC/AC/6/2 at para 62.

<sup>84</sup> CEDAW/C/67/D/75/2014.

recognizes that the obligation of the State to investigate crimes is one of conduct and not of result, the Committee considers that in the present case, the State party has failed to demonstrate that it made every effort to comply with its obligation under the Convention to investigate the crime, bring the perpetrator(s) to trial, and impose adequate penal sanctions. The State has failed to demonstrate that it took the necessary measures under article 2(b) and (c) and article 5, read in conjunction with article 1 of the Convention, to act with due diligence in order to ensure an investigation and trial, with the result that the offence went unpunished, and that the authors are victims of a denial of justice". The remedies recommended included a resumption of the investigation into Ms Trujillo's murder within a reasonable timeframe in order to show the State party's commitment to ensuring access to justice for the authors of the communication, Ms Trujillo's parents.

- 6.45 The jurisprudence of international and regional courts and bodies has characterised the failure to adequately investigate an enforced disappearance as a violation of the rights of family members of the disappeared, including the right to an effective remedy. For example, the Human Rights Committee found in *Quinteros Almeida v. Uruguay* that the applicant, the mother of the disappeared woman, was a victim of a human rights violation due to the "anguish and stress" and the "continuing uncertainty" concerning her daughter's fate and whereabouts.<sup>85</sup> It stated, "The author has the right to know what has happened to her daughter."<sup>86</sup>
- 6.46 In *Jaramillo et. al v. Colombia*, the Inter-American Court of Human Rights recognised that the arbitrary detention and execution of the victim had "a specific and grave impact on the stability of the family, which was deprived of the person who guided and supported it," thus making them victims of human rights violations.<sup>87</sup> In *Portugal v. Panama*, the Court also found that the disappeared person's relatives were victims of human rights violations because of the distress from the uncertainty of the person's whereabouts and the State's failure to act and ineffective measures.<sup>88</sup> The Court again ruled on an enforced disappearance case brought by relatives in *Ticona Estrada et al.s v. Bolivia*, where it found Bolivia's inadequate and delayed investigation of the disappeared person's whereabouts a breach to the right of access to justice of the person's family members.<sup>89</sup> The European Court of Human Rights has recognised family members as victims of rights violations as well.<sup>90</sup>
- 6.47 The Applicant has been denied access to justice by the State Party's failure to carry out a thorough, prompt and independent investigation into the disappearance of Somchai Neelapaijit. The State Party has, over the last 14 years, failed to keep the Applicant informed of the progress of the investigations and she has been required to lobby the State Party to continue its investigations. In doing so, the Applicant has not only suffered distress and hardship, but has faced serious threats to her and her family's personal security that the State Party has disregarded. From a procedural standpoint, the Applicant has also been denied the opportunity to participate in the Court prosecution processes on behalf of Somchai Neelapaijit. Whilst the Applicant has received limited monetary compensation, as set out

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<sup>85</sup> [www.bayefsky.com/html/133\\_uruguay107vws.php](http://www.bayefsky.com/html/133_uruguay107vws.php).

<sup>86</sup> [www.bayefsky.com/html/133\\_uruguay107vws.php](http://www.bayefsky.com/html/133_uruguay107vws.php).

<sup>87</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_192\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf), page 22.

<sup>88</sup> [www.corteidh.or.cr/docs/casos/articulos/seriec\\_186\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_186_ing.pdf), pages 42-45.

<sup>89</sup> [www.corteidh.or.cr/docs/casos/articulos/seriec\\_191\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_191_ing.pdf), page 23, 24.

<sup>90</sup> [www.echr-online.info/article-34/victim/#Indirect%20victim](http://www.echr-online.info/article-34/victim/#Indirect%20victim).

above, these payments do not constitute an adequate remedy in the circumstances. The failure to investigate has denied the Applicant and her children the right to know the truth about the fate and whereabouts of Somchai Neelapaijit. It has also led to impunity for the perpetrators of Somchai Neelapaijit's disappearance and presumed death. The State Party has violated and continues to violate the Applicant's right to an effective remedy under Articles 2(b), 2(c) and 15(1).

## 7. **OBJECTIVE OF THE COMMUNICATION**

7.1 The Applicant seeks the following remedies in respect of the State Party's breaches of her rights under the Convention:

- (a) The State Party be found in breach of Articles 2(b), 2(c)(f), 5(a)(b), 15(1) and 16(1) (c) (d) of the Convention.
- (b) The State Party resume the investigation into the disappearance of Somchai Neelapaijit within a reasonable timeframe in order to identify and eliminate any existing de jure or de facto obstacles that have impeded clarification of the circumstances of the crime and identification of its perpetrators.
- (c) The State Party ensure that the perpetrators identified are prosecuted and subject to impartial judicial proceedings, with adequate punishment if convicted.

7.2 More generally, in line with the concluding observations on the second periodic report of State Party by the Human Rights Committee dated 25 April 2017 (CCPR/C/THA/CO/2), the concluding observations on the initial report of the State Party by the Committee Against Torture dated 20 June 2014 (CAT/C/THA/CO/1) and the concluding observations on the sixth and seventh periodic reports of the State Party by the CEDAW dated 24 July 2017 (CEDAW/C/THA/CO/6-7), the Applicant asks the CEDAW to recommend that the State Party:

- (a) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- (b) Ratify the First Optional Protocol to the International Covenant on Civil and Political Rights;
- (c) Adopt measures to solve the outstanding cases of enforced disappearance;
- (d) Accept the request by the Working Group on Enforced or Involuntary Disappearances to visit the country;
- (e) Enact legislation on the prevention and suppression of enforced disappearances, which recognises the family of those that are disappeared as victims of such crimes;
- (f) Establish an independent mechanism for the prevention and suppression of enforced disappearances;
- (g) Ensure that cases of enforced disappearances are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law officials and the military, including torture, enforced disappearances and extrajudicial killings;

- (h) Ensure that perpetrators of enforced disappearances are prosecuted and, if convicted, punished with sanctions proportionate to the gravity of their crimes, even when no body or human remains are found;<sup>91</sup>
- (i) Ensure that any individual who has suffered harm as the direct result of an enforced disappearance has access to fair and adequate compensation, including any necessary psychological, social and financial support;
- (j) Provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of investigations;
- (k) Adopt special measures for Muslim women in the southern border provinces, in particular widows and women heads of household, to ensure their substantive equality with men in all areas including by providing sufficient financial and social support; and
- (l) Ensure that women whose spouses or other family members have been subjected to human rights violations have access to effective remedies and obtain justice, including by ensuring that such violations are thoroughly investigated, alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions.

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<sup>91</sup> See CAT, *Concluding observations on the initial report of Thailand*, (20 June 2014) CAT/C/THA/CO/1.

## ANNEXURE 1

### 1. TABLE 1: CHRONOLOGY OF EVENTS RELATING TO THE DISAPPEARANCE

| Date  | Event   |
|---|---|
| 5 January 2004                                | State Party declares Martial Law in Southern Provinces following a robbery of military weapons and arson attacks.   |
| Sometime after the robbery, date unconfirmed. | Police Major Ngern Thongsuk, among others, investigates the weapons robbery. Police Lieutenant Colonel Chadchai Liamsanguan supervises Police Major Thongsuk.   |
| 26 February 2004                              | Somchai Neelapaijit and other colleagues from the Muslim Lawyers Club visit the five suspects held in custody for the robbery and arson attacks, who alleged that police officers had subjected them to torture. One of these police officers is Police Major Thongsuk. |
| 27 February 2004                              | Somchai Neelapaijit delivers a speech at a panel discussion at the Santichon (Peace People) Foundation in Bangkok, criticising the Thai police and military for alleged ill-treatment and discrimination against Malay-Muslims in the deep south.                       |
| 11 March 2004                                 | Somchai Neelapaijit's law office submits a petition alleging abuse to the Ministry of Justice, the Royal Thai Police, the Ministry of Interior, the Attorney General's Office, the Human Rights Commission, the Prime Minister and the Office of the Senate.            |
| 12 March 2004                                 | Somchai Neelapaijit is seen being pushed into a car by a group of men outside Mae Lah Pla Phao Restaurant.  |
| 15 March 2004                                 | Somchai Neelapaijit collects names for a petition to the President of the National Assembly submitting that Martial Law be lifted.  |

### 2. TABLE 2: CHRONOLOGY OF CRIMINAL PROCEEDINGS

| Date                | Event  |
|---------------------|--|
| 8 and 29 April 2004 | <p>The Criminal Court issues arrest warrants for five police officers for gang robbery and coercion in relation to their alleged participation in Somchai Neelapaijit's abduction.</p> <p>Among the accused are Police Major Thongsuk and Police Lieutenant Colonel Liamsanguan.</p> |



| Date              | Event  |
|-------------------|--|
| 12 July 2005      | <p>The trial of the police officers commences.</p> <p>Evidence is adduced from eye-witnesses who testify that they saw Police Major Thongsuk pushing Somchai Neelapaijit into the car, and mobile phone records that allegedly establish the presence of the accused at the crime scene at the relevant time.</p>                                      |
| 12 January 2006   | <p>The Criminal Court hands down verdict acquitting four of the police officers and convicting Police Major Thongsuk of the minor charge of coercion.</p> <p>The mobile phone records were ruled inadmissible on the grounds of credibility.</p>   |
| 12 April 2006     | Police Major Thongsuk appeals his conviction.  |
| 30 April 2006     | The Prosecutor files a cross-appeal on behalf of Angkhana Neelapaijit.   |
| 19 September 2008 | The police report that Police Major Thongsuk had gone missing in a landslide.  |
| 11 December 2009  | One of Somchai Neelapaijit's clients and a witness at the trial is reported missing.   |
| 11 March 2011     | <p>The Appeal Court issues decision finding that:</p> <ul style="list-style-type: none"> <li>(a) the Applicant and her children could not join the appeal as plaintiffs;</li> <li>(b) the conviction of Police Major Thongsuk should be overturned; and</li> <li>(c) there was insufficient evidence to convict the remaining four accused.</li> </ul> |
| 10 May 2011       | The Applicant appeals to the Supreme Court on the issue of her and her family's standard and on the substantive issues.  |
| 29 December 2015  | <p>The Supreme Court issues decision finding that:</p> <ul style="list-style-type: none"> <li>(a) the acquittals of the five accused should be upheld; and</li> <li>(b) the Applicant and her children did not have standing to participate in the criminal proceedings.</li> </ul>  |

3. **TABLE 3: CHRONOLOGY OF INVESTIGATIONS, CIVIL AND ADMINISTRATIVE PROCEEDINGS AND OTHER EVENTS**

| <b>Date</b>      | <b>Event</b>   |
|------------------|--|
| 19 July 2005     | The Department of Special Investigations ( <b>DSI</b> ) commences its investigation into Somchai Neelapaijit's enforced disappearance.   |
| 13 January 2006  | Prime Minister Thaksin Shinawatra makes a public statement acknowledging that Somchai Neelapaijit is deceased and that government officials are implicated.  |
| 22 March 2006    | The DSI tells the press that the DSI had identified more suspects who had killed Somchai Neelapaijit and burned his body, but that it required further evidence to issue arrest warrants for murder. |
| 5 November 2006  | The Office of the Attorney-General reports that it has received evidence from the DSI that Somchai Neelapaijit may have died and that arrest warrants could be issued.                               |
| 5 November 2006  | The Applicant raises concerns that the DSI has not investigated the matter thoroughly, creating the risk that the Court may dismiss the murder case due to insufficient evidence.                    |
| 2007             | The National Anti-Corruption Commission ( <b>NACC</b> ) commences its inquiry in response to a complaint by DSI naming 19 police officers for alleged malfeasance in public office.                  |
| 2 March 2007     | The DSI reports that it has enough evidence to show that Somchai Neelapaijit was dead but that they had been unable to locate the body.  |
| 22 February 2008 | Police Colonel Thawee Sodsong is appointed the new Director General of the DSI, the superior of the police officers who were charged in relation to Somchai Neelapaijit's disappearance.             |
| March 2009       | The Chief DSI Investigator reports that the delay in the investigation is due to the investigation team not wanting to deal with the high-ranking police officers involved.                          |
| 18 May 2009      | The Civil Court declares Somchai Neelapaijit to be a "disappeared" person.   |
| 2010             | NACC dismisses the complaints against the 19 police officers due to insufficient evidence that any torture had occurred.   |

| <b>Date</b>     | <b>Event</b>   |
|-----------------|--|
| 11 October 2016 | The Applicant is informed that DSI has ceased its investigation into the disappearance of Somchai Neelapaijit. |