

Thailand: Six Years after Billy's enforced disappearance, there has been no real progress towards accountability

On the sixth anniversary of the apparent enforced disappearance of Karen activist, Pholachi "Billy" Rakchongcharoen, the ICJ repeated its calls for Thailand to bring those responsible to justice and apply appropriate penalties that take into account the extreme seriousness of the crime.

On 23 December 2019, after the Thai Ministry of Justice's Department of Special Investigation (DSI) in September had located bone fragments which they identified as likely belonging to Billy, eight charges, including premeditated murder and concealing the body, were brought against four officials of Kaeng Krachan National Park, with whom Billy was last seen. However, in January 2020, public prosecutors suddenly dropped seven murder-related charges against the four accused on the basis that there was insufficient evidence to take the cases to trial.

"It is disturbing that after six years the prosecutors could not move forward with the prosecution because the authorities failed to gather evidence to identify the perpetrator for Billy's murder despite the discovery of bone fragments," said Frederick Rawski, Asia Regional Director of the ICJ. "Thai authorities should, pursuant to its international legal obligations, continue to gather other direct and circumstantial evidence to prosecute and punish perpetrator with appropriate penalties."

The four suspects are now facing only a minor charge for failing to exercise their official functions because they released Billy instead of handing him over to the police after they took him into custody in April 2014 for collecting wild honey in the park.

"Thailand needs to implement legislation criminalizing enforced disappearance without delay so that prosecutors have the appropriate tools to prosecute those responsible, and are not forced to bring charges for crimes of lesser gravity," he added.

Background

Billy was last seen on 17 April 2014 in the custody of Kaeng Krachan National Park officials. The officials claimed they detained Billy for illegal possession of honey but released him later the same day.

Billy's case is currently under consideration by the Director-General of the DSI. If the Director-General disagrees with the prosecutors' non-prosecution order, the file will be submitted to the Attorney General for his decision. Such decision would then be final.

On 12 September 2019, after the discovery of bone fragments, the Ministry of Justice provided financial payments to Billy's family in accordance with the Act on Victim Compensation and Expense Reimbursement in Criminal Cases (2001). They were granted 140,000 THB (approx. 4289 USD). This does not constitute an effective remedy and reparation under international law.

Thailand is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Thailand has also signed, but not yet ratified, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

Under Article 2 of the ICPPED, "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.”

The Thai Government has stated it would not ratify the Convention until its provisions are incorporated in domestic law. However, efforts to pass the Draft Prevention and Suppression of Torture and Enforced Disappearance Act (draft Act) stalled after it was dropped by the National Legislative Assembly (NLA) prior to the 2019 national election.

After the general election in March 2019, the Ministry of Justice requested the draft Act “to be further reviewed” by the Ministry, an act which has served to further delayed the passage of this essential legislation. The Draft Act was scheduled for public consultation between 4 and 31 December 2019. After incorporate comments contained in the public hearing, it will be submitted to the Cabinet and the Parliament.

As it stands, it is still necessary for Thailand to address principal shortcomings which the ICJ and other stakeholders and experts have indicated in order to bring the draft Act into line with Thailand’s international human rights obligations.

Thailand also has a binding obligation under international law to conduct prompt, effective and thorough, independent and impartial, and transparent investigations into all suspected cases of unlawful death and enforced disappearance.

According to the ICPPED and the revised Minnesota Protocol (2016), which contains the international standards on the conduct of investigations into unlawful death and enforced disappearance – and which Thailand launched in May 2017 – records that investigations “must seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death.” (para 26)

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Further reading

Thailand: discovery of “Billy’s” remains should reinvigorate efforts to identify perpetrator(s)

Thailand: continuing delay in the enactment of the draft law on torture and enforced disappearance undermines access to justice and accountability