**H.E. General Prawit Wongsuwan**
**Deputy Prime Minister**

1 Phitsanulok Road
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**H.E. Mr. Suwapan Tanyu-wattana**
**Minister of Justice**

Ministry of Justice
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30 August 2017

Dear H.E. General Prawit Wongsuwan and
H.E. Mr. Suwapan Tanyu-wattana,

**INTERNATIONAL DAY OF THE VICTIMS OF ENFORCED DISAPPEARANCES**

The International Commission of Jurists (ICJ), Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), Thai Lawyers for Human Rights and the Cross Cultural Foundation write to you on this day, the 2017 International Day of the Victims of Enforced Disappearances, to express our serious concern at the ongoing delay in passing legislation aimed at protecting against torture, ill-treatment and enforced disappearance and the apparent lack of progress in investigating alleged enforced disappearances, including the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen. These cases of enforced disappearance have not been resolved in spite of the repeated efforts by their families and Thai and international human rights groups to bring attention to them. We urge that the government institute legal and administrative measures to provide better protection against enforced disappearance in compliance with Thailand's international human rights obligations.

We urge the Royal Thai government to:

1. Prioritize the enactment of the Draft Prevention and Suppression of Torture and Enforced Disappearance Act [1] (Draft Act) without further delay, after its provisions have been amended to ensure compliance with international law and Thailand's international legal obligations;[2]

2. Effectively, impartially and independently investigate the alleged enforced disappearances of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen – and all other cases of enforced disappearance, torture and ill-treatment in

[1] Principle and Rationale of the Draft Prevention and Suppression of Torture and Enforced Disappearance Act B.E. …
[2] ICJ and AI, 'Joint Statement – 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/ (Hereinafter 'ICJ and AI, Joint Statement, 9 March 2017')

Thailand – and hold any identified perpetrators accountable following fair trials and provide victims with effective remedies and reparations;[3] and

3. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)[4] and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

**Background**

There have been at least 82 reported cases of enforced disappearance in Thailand since 1980.[5] Civil society and human rights organizations have also reported on allegations of torture and ill-treatment perpetrated by security forces, particularly secret military detention after the May 2014 military coup and detention of suspected separatist insurgents in the Southern Border Provinces.[6] The risk of enforced disappearance in detention is also heightened by powers of detention granted to military officials, including under the Head of NCPO Order 3/2015 which allows for the detention of persons without charge or trial in unofficial places of detention for up to seven days, without judicial oversight or safeguards against torture or ill-treatment.[7]

Thailand is bound by international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) to investigate, prosecute, punish and provide remedies and reparation for the crimes of torture, ill-treatment and enforced disappearance.[8] In January 2012, Thailand also signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), reflecting a commitment to prevent and prohibit the crime of enforced disappearance. On 10 March 2017, Thailand's National Legislative Assembly (NLA) passed a resolution in favour of ratifying the ICPPED.[9] However, the Thai

[3] ICJ and TLHR, 'Joint Submission Of The International Commission Of Jurists And Thai Lawyers For Human Rights In Advance Of The Examination Of The Kingdom Of Thailand's Second Periodic Report Under Article 40 Of The International Covenant On Civil And Political Rights', 6 February 2017. https://www.icj.org/wp-content/uploads/2017/02/Thailand-ICCPR-Submission-ICJ-TLHR-Advocacy-Non-legal-submissions-2017-ENG.pdf (Hereinafter 'ICJ and TLHR, Joint Submission, 6 February 2017')

[4] ICJ, 'Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand', March 2014, p15. http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf (Hereinafter 'ICJ Report on Somchai Neelapaijit, March 2014')

[5] Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances', 10 August 2015, A/HRC/30/38. Available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx

[6] Human Rights Watch and ICJ, 'Joint Letter to Permanent Mission of Thailand to the UN', 24 November 2015. https://www.hrw.org/news/2015/11/24/joint-letter-permanent-mission-thailand-un; Amnesty International, 'Make Him Speak by Tomorrow: Torture and Other Ill-Treatment in Thailand', 28 September 2016. https://www.amnesty.org/en/documents/asa39/4747/2016/en/

[7] See UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017, paras 25, 26.

[8] UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004). http://www.refworld.org/docid/478b26ae2.html

[9] Ministry of Foreign Affairs of the Kingdom of Thailand, 'Press Releases: Thailand's Progress on Prevention and Suppression of Torture and Enforced Disappearance, 30 June 2017. http://www.mfa.go.th/main/en/news3/6886/78828-Thailand's-Progress-on-Prevention-and-Suppression.html

government has yet to do so and has yet to set a clear time frame for depositing the treaty with the United Nations Secretary-General as required.[10]

One of the challenges in seeking accountability for victims of torture, ill-treatment and enforced disappearance in Thailand is the fact that these crimes are not specifically criminalized in domestic law. On 16 June 2017, the Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance, a Committee established following the Prime Minister's instruction and chaired by the Minister of Justice, held its first meeting and affirmed its mandate to receive complaints, perform fact-finding, monitor as well as provide assistance and remedies, and protect the rights of people affected by acts of torture or enforced disappearance.[11] The precise role and function of this Committee however remains unclear and it should not be considered a substitute for domestic legislation criminalizing torture, ill-treatment and enforced disappearance.[12]

On 25 April 2017, the UN Human Rights Committee, the body monitoring implementation of the ICCPR by its State parties, stated in its Concluding Observations on Thailand that:

> *"19. The Committee remains concerned that the State party's criminal legislation does not adequately ensure that acts of torture and enforced disappearance, as stated in the Covenant and other internationally established standards, are fully criminalized. The Committee regrets the delay in enacting the draft act on prevention and suppression of torture and enforced disappearance (arts. 2, 6-7, 9-10 and 16).*
>
> *20. The State party should ensure that legislation fully complies with the Covenant, in particular by prohibiting torture and enforced disappearance in accordance with the Covenant and international standards. The State party should expeditiously enact a law on the prevention and suppression of torture and enforced disappearances."*[13]

We therefore sincerely regret the Royal Thai government's delay in addressing the shortcomings of the Draft Act and passing the Draft Act into law.[14]

**Draft Prevention and Suppression of Torture and Enforced Disappearance Act**

In February 2017, the NLA announced it would not at that time enact the Draft Act, which was produced after years of work by officials from the Ministry of Justice in consultation with non-governmental organizations and civil society actors, including the ICJ, Amnesty International and Human Rights Watch.[15] It was further reported that the Draft Act would be returned to the Thai Cabinet "for more consultations... with Interior

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[10] Human Rights Watch, 'Thailand: Finalize Disappearances Convention', 13 March 2017. https://www.hrw.org/news/2017/03/13/thailand-finalize-disappearances-convention (Hereinafter 'HRW, 'Thailand: Finalize Disappearances Convention', 13 March 2017'); Human Rights Watch, 'Thailand: Fulfill Pledge to End Torture', 26 June 2017. https://www.hrw.org/news/2017/06/26/thailand-fulfill-pledge-end-torture (Hereinafter 'HRW, 'Thailand: Fulfill Pledge to End Torture', 26 June 2017')

[11] Ministry of Foreign Affairs of the Kingdom of Thailand, 'Press Releases: Thailand's Progress on Prevention and Suppression of Torture and Enforced Disappearance, 30 June 2017. http://www.mfa.go.th/main/en/news3/6886/78828-Thailand's-Progress-on-Prevention-and-Suppression.html

[12] HRW, 'Thailand: Fulfill Pledge to End Torture', 26 June 2017.

[13] UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017, paras 19, 20.

[14] ICJ and AI, Joint Statement, 9 March 2017; HRW, 'Thailand: Finalize Disappearances Convention', 13 March 2017; HRW, 'Thailand: Fulfill Pledge to End Torture', 26 June 2017.

[15] Ibid.

officials, police authorities, the national security sector, military authorities and prosecutors."[16]

At the UN Human Rights Committee's review of Thailand's compliance with the ICCPR in March 2017, the Thai delegation further confirmed the Draft Law "had been submitted to the National Legislative Assembly, which had requested the Cabinet to further review the bill, with a view to introducing amendments and launching a public consultation process."[17]

This delay does not appear to be one which was necessary for public consultation purposes, in light of the extensive consultations that have already taken place and the advanced state of the draft of the Draft Act. With respect, we urge the Royal Thai government to expedite consultations at Cabinet level towards the aim of providing timely access to justice for victims of these crimes.

We further recognize that the most recent version of the Draft Act reflects certain shortcomings which we believe should be addressed in order to bring it into line with Thailand's international human rights obligations under the ICCPR, CAT and the ICPPED.

These concerns include, but are not limited to:[18]

1. *Definition* – Omission from the definitions of enforced disappearance and torture in the Draft Act of crucial elements of both crimes as defined in the ICPPED and CAT. These provisions should be amended accordingly;

2. *Criminal liability beyond direct commission* – Lack of clarity in the Draft Act regarding the extension of criminal liability beyond direct commission of the crimes of enforced disappearance and torture. This should be rectified to clarify the extent of liability beyond direct commission and dictate appropriately severe penalties to different perpetrators;

3. *Cruel, Inhuman and Degrading Treatment or Punishment (CIDT)* – Absence in the Draft Act of explicit criminalization of CIDT. The Draft Act should be modified to specifically criminalize acts of CIDT which is unequivocally prohibited alongside torture under article 7 of the ICCPR as a non-derogable right;[19]

4. *Use of information as evidence obtained by torture* – Failure of the Draft Act to specifically bar the use of statements and other information obtained through torture or CIDT as evidence in proceedings. The Draft Act should be amended to dictate unequivocal rejection of such evidence; and

5. *Safeguards* – Absence in the Draft Act of the provision of safeguards against enforced disappearance, torture and CIDT, including visits to detainees by their lawyers and relatives, ongoing provision of information about the fate and whereabouts of detainees to their lawyers and relatives, presence of legal counsel during interrogations, and video and/or audio recording of all interrogation sessions. These safeguards should necessarily be included in the Draft Act.

We strongly urge the Royal Thai government to prioritize addressing these concerns and to pass the Draft Act into law without further delay. The need to amend and enact the Draft Act is necessitated by a prolonged failure by authorities to hold to account perpetrators of enforced disappearance. This is evident from two cases of alleged

[16] ICJ and AI, Joint Statement, 9 March 2017.
[17] 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.3350, 22 March 2017, para 5.
[18] ICJ and AI, Joint Statement, 9 March 2017.
[19] ICCPR, article 4.

enforced disappearance which have been repeatedly brought to the attention of Thai authorities and the international community, so far without effective result – the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen, where justice has been denied to victims and their families in both cases.

**Somchai Neelapaijit**

Somchai Neelapaijit, a Muslim lawyer who spent approximately two decades defending the rights of people in the Deep South of Thailand, was reportedly pulled from his car and forced into a vehicle by five men in central Bangkok on 12 March 2004, after which he disappeared without trace.[20]

In April 2004, the Criminal Court in Bangkok issued warrants for the arrest of five police officers for their alleged participation in robbing and abducting Somchai Neelapaijit. Their criminal trial commenced in July 2005.[21] Four police officers were acquitted and one was convicted for the relatively minor charge of coercion in January 2006, before that sole conviction was overturned on appeal in March 2011.[22] In the same judgment, the Court of Appeal in Bangkok refused the appeal of Angkhana Neelapaijit, Somchai Neelapaijit's wife, to include herself and their children as joint plaintiffs in the proceedings on the basis that 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".[23] This conclusion was reached despite the fact that in 2009, the Civil Court had declared Somchai Neelapaijit to be a "disappeared" person.[24] On 29 December 2015, the Supreme Court of Thailand confirmed the acquittal of all five policemen.[25]

In late 2016, after 11 years and three months of investigation, the Department of Special Investigation ('DSI'), under the Ministry of Justice, which had also been investigating the case, declared the investigation of Somchai Neelapaijit closed, stating that investigations were concluded as no culprits had been found.[26]

At the UN Human Rights Committee's review of Thailand's compliance with the ICCPR in March 2017, the Thai government delegation confirmed that "(t)he investigation had been closed in September 2016, but could be reopened if a perpetrator was subsequently identified."[27] The Thai delegation thereafter indicated that "the Ministry of Justice was considering submitting the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen to a special committee within the Department of Special Investigation for follow-up."[28]

**Porlajee "Billy" Rakchongcharoen**

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[20] For background and detailed analysis of the case, see ICJ Report on Somchai Neelapaijit, March 2014.
[21] ICJ Report on Somchai Neelapaijit, March 2014, p6; Human Rights Watch, 'Thailand: 12 Years Bring No Answers', 10 March 2016. https://www.hrw.org/news/2016/03/10/thailand-12-years-bring-no-answers
[22] ICJ Report on Somchai Neelapaijit, March 2014, p7.
[23] Ibid, p8.
[24] Ibid, p9.
[25] Prachatai English, 'Supreme Court rules no one guilty for Somchai's enforced disappearance', 29 December 2015, https://prachatai.com/english/node/5735
[26] Prachatai English, 'Case closed on disappeared human rights lawyer', 13 October 2016, https://prachatai.com/english/node/6648
[27] 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.
[28] 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.3350, 22 March 2017, para 4.

On 17 April 2014, Porlajee "Billy" Rakchongcharoen, an ethnic minority Karen human rights defender, was last seen in the custody of Kaeng Krachan National Park officials and has not been seen since. At that time, Billy had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of the homes and other property of villagers in the National Park in 2010 and 2011. Park officials who stated that they had detained Billy for "illegal possession of wild honey" claimed that they had released him later the same day.[29]

Soon after, on 24 April 2014, Billy's wife, Phinnapha Phrueksaphan, filed a *habeas corpus* petition at the Petchaburi Provincial Court seeking an inquiry into the lawfulness of Billy's detention. [30] The Court decided on 17 July 2014, after a six-day inquiry, that it had insufficient evidence and could not establish that Billy was still in detention at the time of his apparent disappearance.[31] Appeals lodged by the family to the Court of Appeal and Supreme Court were not successful in revealing more information about Billy's fate or whereabouts.[32]

On 6 August 2015, Phinnapha Phrueksaphan requested the DSI to open a special investigation into Billy's case. [33] On 30 January 2017, the DSI stated that such investigation would not be opened and that the case would remain under regular police investigation.[34] The DSI reportedly advised the National Human Rights Commission of Thailand that three reasons were the basis upon which it had decided not to open a special investigation; namely, that efforts at investigation had resulted in inconclusive results; that Phinnapha Phrueksaphan was not legally married to Billy and thus had no standing to petition the DSI to investigate his case[35]; and that the DSI's investigation could proceed if Billy's body was found.[36]

One of the reasons that has consistently been presented by the authorities for the failure to prosecute someone for enforced disappearance is that a body or remains have not been located and therefore death could not be established. However, conclusively establishing a death is not an element that is necessary to prove the crime of enforced disappearance, in cases where enforced disappearance is believed to have led to a death. Indeed, even in cases where enforced disappearance is not believed to have led to a death, the enforced disappearance itself is a crime in and of itself that should be investigated. In that connection, the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) ('Minnesota Protocol'), which establishes the international legal standards for the investigation of potentially unlawful deaths, has clarified that "if investigators are unable to locate a body or remains, they should continue to gather other direct and circumstantial evidence which may suffice for identifying the perpetrator(s)."[37]

In relation to reasons Thailand has provided in the past for apparent shortcomings in the investigations of the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen, the UN Human Rights Committee, in its review of Thailand's

[29] ICJ and TLHR, Joint Submission, 6 February 2017, pp 10, 11.
[30] ICJ, 'Thailand: "Disappearance" of Billy demands special investigation', 17 July 2014. https://www.icj.org/thailand-disappearance-of-billy-demands-special-investigation/
[31] Ibid.
[32] Ibid.
[33] ICJ and JPF, 'Thailand: launch special investigation into enforced disappearance of "Billy"', 6 August 2015, https://www.icj.org/thailand-launch-special-investigation-into-enforced-disappearance-of-billy/
[34] Prachatai English, 'DSI refuses to accept case of disappeared Karen activist', 31 January 2017. http://prachatai.org/english/node/6886
[35] Bangkok Post, 'NHRC pursues fight for 'Billy' with DSI', 10 February 2017. http://m.bangkokpost.com/news/crime/1195813/nhrc-pursues-fight-for-billy-with-dsi
[36] ICJ and TLHR, Joint Submission, 6 February 2017, p 11.
[37] UN Office of the High Commissioner for Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para 56, footnote 87.

compliance with the ICCPR in March 2017, stated that "grounds that the victim's body had (not) been found or that the person's spouse could not produce a marriage certificate… were too flimsy to outweigh the State party's obligation to investigate disappearances ex officio, regardless of the existence or otherwise of a complaint."[38]

In response to the UN Human Rights Committee's review, the Thai government delegation stated that "A special committee set up to investigate the case of Porlajee Billy Rakchongcharoen had found the evidence insufficient to bring criminal proceedings against the suspected person. An attempt had been made to transfer the case from the local investigating team to the Department of Special Investigation, but the Department had refused to accept it; it would, however, continue to assist with the search for Mr. Rakchongcharoen and the preliminary investigation."[39] As noted above, the Thai delegation soon after indicated that "the Ministry of Justice was considering submitting the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen to a special committee within the Department of Special Investigation for follow-up."[40]

**Recommendations**

On this International Day of the Victims of Enforced Disappearances, the ICJ, Amnesty International, Human Rights Watch, FIDH, Thai Lawyers for Human Rights and the Cross Cultural Foundation urge the Royal Thai government to adopt the following recommendations:

1. Ratify the ICPPED and accede to the Optional Protocol to the Convention against Torture;

2. Prioritize the amendment of the Draft Act to bring it in line with international law and thereafter enact it without further delay;

3. Ensure that the DSI effectively implements its obligation to independently, impartially and effectively investigate all reported cases of enforced disappearance, including the alleged enforced disappearance of Somchai Neelapaijit until such time as his fate or whereabouts is established; any individual who has knowledge of the fate or whereabouts of Somchai Neelapaijit or any other alleged victim of enforced disappearance must divulge it immediately;

4. Ensure that the DSI investigates the case of the apparent enforced disappearance of Porlajee "Billy" Rakchongcharoen independently, impartially and effectively until such time as his fate or whereabouts is established;

5. Provide the family victims in both cases with access to effective remedies and reparations, including regular updates on the status of the investigations;

6. Ensure, in the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen, that if investigations result in sufficient admissible evidence, those who are reasonably suspected of responsibility are prosecuted in fair proceedings without resort to the death penalty; and

[38] 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 31.
[39] 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 66.
[40] 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.3350, 22 March 2017, para 4.

7. Implement the recommendations of the Human Rights Committee as stated in its Concluding Observations on Thailand in 2017, to "bring its legislation and practices into compliance with article 9" of the ICCPR, including by ending the practice of arbitrarily detaining persons incommunicado[41], and to ensure "guarantees against incommunicado detention enumerated in the Committee's general comment No. 35 (2014) on liberty and security of person".[42]

Please do not hesitate to contact us if you have any comments or questions. We stand by to provide any assistance required.

We appreciate your urgent attention to this matter.

Yours faithfully,

Matt Pollard
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James Gomez
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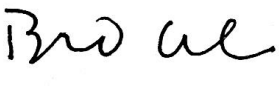

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[41] UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017, paras 25, 26.
[42] UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017, para 23.

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