



2 July 2018

Thailand: Special Investigation into apparent enforced disappearance of “Billy” welcome, but much more is needed

(Bangkok, Thailand) --- The investigation of the apparent enforced disappearance of Karen activist, Pholachi “Billy” Rakchongcharoen, should genuinely seek to establish Billy’s fate and whereabouts, continually and fully inform his family on developments, and bring persons identified as responsible, irrespective of rank or status, to justice in a fair trial, the International Commission of Jurists (ICJ), Amnesty International and Human Rights Watch said today. The organizations also called on authorities to expedite long overdue legal and administrative measures to provide better protection against enforced disappearance, in compliance with Thailand’s international human rights obligations.

On 28 June 2018, following a meeting of the Special Case Committee No. 1/2018, the Ministry of Justice’s Department of Special Investigations (“DSI”) made the welcome announcement that it had decided to recognize the apparent enforced disappearance of Pholachi “Billy” Rakchongcharoen, an ethnic Karen activist, as a “Special Case” that must be “investigated in accordance with the Special Case Investigation Act, B.E. 2547 (2004)”, that is, by the DSI itself.

Pholachi “Billy” Rakchongcharoen was last seen on 17 April 2014 in the custody of Kaeng Krachan National Park officials in Thailand’s Phetchaburi province. At the time of his apparent enforced disappearance, Billy had been working with ethnic Karen villagers and activists on legal complaints against the National Park officials for purportedly burning and destroying their houses, farms, and other properties.

The DSI’s announcement followed a long-standing request by Billy’s wife, Phinnapha Phrueksaphan, and years of advocacy by the ICJ, Amnesty International and Human Rights Watch calling on the DSI to assume jurisdiction over the case and to conduct a prompt, independent, impartial and effective investigation into his fate or whereabouts consistent with international law and standards, including the [revised Minnesota Protocol](#) on the Investigation of Potentially Unlawful Death (2016), which was [launched in collaboration with the Thai Ministry of Justice](#) on 25 May 2017.

The revised Minnesota Protocol states 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).

Despite the existence of a wealth of information relevant to the circumstances surrounding Billy’s apparent enforced disappearance, the four-year-old police investigation has been marked by a significant lack of progress.

At the same time, Thailand has yet to honor its repeated commitments to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which it signed on 9 January 2012. Thai authorities have failed to implement Thailand’s international

legal obligations to provide justice for the victims of enforced disappearance and their families. Perpetrators are able to evade penalties, at least in part because Thai laws still do not make enforced disappearance a specific criminal offence.

The Convention affirms that “No one shall be subjected to enforced disappearance” and places an obligation on states to investigate acts of enforced disappearance, to bring those responsible to justice, and make it a criminal offence punishable by appropriate penalties that take into account its “extreme seriousness”.

On 10 March 2017, Thailand’s legislative body, the National Legislative Assembly (NLA), voted in favor of ratifying the ICPPED. However, on 6 September 2017, the ICJ was informed by Thailand’s Ministry of Foreign Affairs that a decision had been taken to delay the ratification of the ICPPED until legislation had been enacted to give domestic effect to the treaty.

Irrespective of ICPPED ratification, Thailand is also obliged to effectively investigate and prosecute the crime of enforced disappearance under the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture (CAT).

Efforts to pass a law making torture, other acts of ill-treatment and enforced disappearance specific offences in Thai law have also stalled.

Thailand’s Ministry of Justice notes that a second round of public consultations on a Draft Prevention and Suppression of Torture and Enforced Disappearance Act (‘Draft Act’) has been concluded and that it is now in the process of evaluating the consultations. The ICJ, Amnesty International and Human Rights Watch urge that this process be hastened.

The ICJ, Amnesty International and Human Rights Watch have reviewed several versions of the Draft Act and are seriously concerned that adoption of the Draft Act as it currently stands will fail to bring the law into compliance with Thailand’s international human rights obligations.

On [30 August 2017](#), [23 November 2017](#), and [12 March 2018](#), civil society organizations, including the ICJ, Amnesty International and Human Rights Watch, sent open letters to the Government, including to Thailand’s Minister of Justice, outlining amendments that would be necessary to bring the Draft Act in line with Thailand’s international human rights obligations.

Background

“Enforced disappearance” is defined under international law as the arrest or detention of a person by state officials or their agents followed by a refusal to acknowledge the deprivation of liberty, or to reveal the person’s fate or whereabouts. Enforced disappearance violates a range of fundamental human rights protected under international law, including prohibitions against arbitrary arrest and detention; torture and other cruel, inhuman, or degrading treatment; and extrajudicial execution. The UN General Assembly has repeatedly described enforced disappearance as “an offense to human dignity” and “a grave and flagrant violation” of international human rights law.

Thailand is bound by international legal obligations under the ICCPR and CAT – both of which it has acceded to- to investigate, prosecute, punish and provide remedies and reparation for the crimes of torture, other acts of ill-treatment and enforced disappearance.

The DSI was created by The Special Investigation Act B.E. 2547 (2004) and has the power to assume jurisdiction over special criminal cases including complex cases that require special

inquiry; crimes committed by organized criminal groups; and cases where the principal person or the person who instigates or supports the crime is an influential person.

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