



Prof. Pornpetch Wichitcholchai

The President of the Senate

1111 Samsen Road
Thanon Nakhon Chai Si, Dusit,
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THAILAND

Pol.Gen. Chatchawan Suksojmit

**Chairperson of the Extraordinary
Committee Considering the Draft
Prevention and Suppression of Torture
and Enforced Disappearance Act**

1111 Samsen Road
Thanon Nakhon Chai Si, Dusit,
Bangkok 10300
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Dear President of the Senate and Honorable Chair of the Extraordinary Committee,

RE: INTERNATIONAL DAY IN SUPPORT OF VICTIMS OF TORTURE

We, the undersigned organizations, write to you following the 2022 International Day in Support of Victims of Torture to express our grave concern at the ongoing delay in finalizing and adopting legislation aimed at protecting against torture, other ill-treatment and enforced disappearance. We urge the Extraordinary Committee and the Senate to expedite the enactment of the Draft Act without further delay and ensure its compliance with Thailand's obligations under international human rights law. We also call for a more transparent and fuller update on the debate and the progress made in the Senate's proceedings.

On 28 February 2022, the Senate passed the Draft Prevention and Suppression of Torture and Enforced Disappearance Act ("Draft Act") in its first reading, by a 197-to-two vote, with four abstentions. Consequently, 25 Committee members were appointed to review the bill within 15 days before the further reading by the Senate. Unfortunately, this deadline was extended and in the past four months, only 13 meetings were convened by the Committee to consider this important legislation. Further, not all the meeting notes were placed on the Senate's webpage, making it difficult for the public to monitor the Committee's debates on the Draft Act. Victims and civil society organizations also reported limited access to the proceedings.

Since becoming a State Party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT") in 2007, Thailand has made repeated international and domestic commitments to criminalize torture and enforced disappearances. During the second Universal Periodic Review ("UPR") in 2016, the government voluntarily pledged to ratify the Optional Protocol to the UNCAT to strengthen its obligation to prevent torture and ill-treatment in accordance with international human rights law. Yet, despite the pledges made over 15 years, several versions of legislation to criminalize torture and

disappearances have been formulated and then dropped by different governmental authorities over a period of years.

For example, the Draft Act came close to being enacted in 2018 when it was approved by the National Legislative Assembly ("NLA") in its first reading. However, after several extensions of the deadline to complete review of the Draft Act by the NLA, it was eventually withdrawn before Thailand's general election, which was held on 24 March 2019, and sent back to the Ministry of Justice, causing significant delays in the process.

In addition, the text of the Draft Act has, on several occasions, been weakened and degraded so as to make it non-compliant with the UNCAT, the International Covenant on Civil and Political Rights ("ICCPR"), and the International Convention for the Protection of All Persons from Enforced Disappearances ("ICPPED") despite the calls from our organizations, and other international human rights experts, to bring the draft into line with Thailand's international human rights obligations. Among the shortcomings in previous drafts were definitions of the crimes of torture and enforced disappearance, which are incomplete or otherwise discordant with international law; the absence of provisions concerning cruel, inhuman, or degrading treatment or punishment; the inadequacy of provisions concerning the prosecuting agency; the inadequacy of provisions on the inadmissibility of statements and other information obtained by torture, other ill-treatment and enforced disappearances as evidence in legal proceedings; the inadequacy of provisions relating to modes of liability for crimes described in the Draft Act; and the inadequacy of provisions concerning safeguards against torture, other ill-treatment and enforced disappearances. The Draft Act stipulated that there is a statute of limitations for torture and enforced disappearance crimes that were not fully compliant with UNCAT and ICPPED. It also did not provide for provisions that the crime of enforced disappearance shall be continuous as long as the fate or whereabouts of the victim are not determined.

We note that a substantial number of these shortcomings were addressed in the draft law of the House of Representatives' Committee Considering the Draft Prevention and Suppression of Torture and Enforced Disappearance Act that was finally approved by the House of Representatives on 23 February 2022 and sent to the Senate for consideration. The current bill now before the Senate is still not entirely consistent with international standards. For example, on the definition of torture, the Draft Act still implies that the four purposes identified are exhaustive. When the plain language of the UNCAT, as well as the jurisprudence of the Committee against Torture and other authorities, make clear that these purposes are illustrative and not exhaustive. The definition of enforced disappearance would require an active denial by a public official of committing the act, whereas all that is required is declining to acknowledge the commission of the act, which could take the form of silence.

Background

As enshrined in the preamble of the Draft Act, the Act was promulgated "to enhance and improve the law enforcement and the protection of human rights in Thailand ... in compliance with the UNCAT and the ICPPED."

Thailand became a State party to the UNCAT in 2007. In 2012, Thailand also signed the ICPPED, reflecting a commitment to prevent and prohibit the crime of enforced disappearance. Nonetheless, Thailand's accession to the ICPPED remains pending up until now.

On 20 June 2014, the UN Committee against Torture released its Concluding Observations on the Initial Report of Thailand. Among other reservations, the Committee expressed their

concern about the absence of a definition of torture and noted that torture is not recognized as an offence in Thailand's legal system.

On 25 April 2017, the UN Human Rights Committee also released its Concluding Observations on the Second Period Report of Thailand. The Committee expressed their concern about the delay in enacting the draft act on prevention and suppression of torture and enforced disappearance in Thailand and called on Thailand to expeditiously pass a law that fully complies with international law and standards.

During its third UPR cycle on 10 November 2021, Thailand also accepted recommendations from other countries to enact legislation criminalizing torture and enforced disappearance and ensure that it is aligned with Thailand's obligations under international law.

We remain committed to working with the Senate of Thailand on the Draft Act and welcome any opportunity to meet, discuss and address any comments or questions you may have in response to the contents of this letter. For further information, please contact: Sanhawan Srisod, ICJ's Legal Adviser (+66 (0)2 619 8477/8478) or Chanatip Tatiyakaroonwong, Amnesty International's Regional Researcher (+66 (0)98 754 3995)

Yours faithfully,

Amnesty International

ASEAN Parliamentarians for Human Rights

Human Rights Watch

International Commission of Jurists (ICJ)

International Federation for Human Rights (FIDH)

World Organisation Against Torture