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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
DISAPPEARANCES AND SUMMARY EXECUTIONS**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 January 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

DISAPPEARANCE OF A PROMINENT HUMAN RIGHTS LAWYER AND IMPUNITY IN THAILAND

In a statement to the Commission in its sixtieth session, the Asian Legal Resource Centre (ALRC) asserted that the 2003 'war on drugs' declared by the Government of Thailand, in which at least 2500 people were killed, would result in a dramatic worsening of human rights conditions in the kingdom. Regrettably, that prediction has been realised all too soon. The ALRC has submitted other statements to the Commission this year on the growth in torture practiced by the police and escalating extrajudicial killings – including the death of at least 78 persons in army custody in Narathiwat, southern Thailand. It has also written to the sixty-first session on the right to food in Thailand, increasing restrictions on freedom of expression and onerous use of outdated criminal defamation laws to silence government critics, and damage to institutions of justice there. In this statement, the ALRC wishes to express its extreme concern over the disappearance of high-profile human rights lawyer Somchai Neelaphaijit.

Somchai was representing four men who alleged they had been tortured when he was forcibly disappeared on 12 March 2004, while taking their case to senior authorities in Bangkok. The details of that case have been described in the statement that the ALRC has submitted to the Commission on torture practiced by the Royal Thai Police. Reports soon emerged that a group of five police were responsible for hitting Somchai's car from behind and removing him from it. The five officers, none of whom were known to be associated with one another prior to the alleged abduction, have been charged only with collusion to coerce and assault a person, and armed robbery. They have all been released on bail. They all deny the charges. Other police officers conducting the investigation at the scene of the crime are reported to have damaged important evidence, such as by sitting in the vehicle themselves before it could be examined by forensic experts. Senior police are reported to have remarked that the accused men are all "good officers" who will no doubt be acquitted of the charges.

The wife of the victim, Angkana Wongrachain, a joint plaintiff to the criminal case proceeding against the accused, has reached the same conclusion. From the start of the case, she expressed scepticism that they could win a conviction. More recently she has said that she believes the reason for her husband's disappearance was because he dared to challenge the unquestioned power of the state by raising publicly the practice of torture by its agents. She has stated that she has no confidence in the justice system of Thailand.

Indeed, despite deep public concern at home and abroad for the whereabouts of Somchai, the Government of Thailand soon directed most of its efforts towards deflecting criticism over the case rather than making public what it actually knew of the disappearance, and taking serious action to address the case. There also emerged many contradictory stories about what has been done to uncover Somchai's whereabouts. In a letter of 5 August 2004 to the sister organisation of the ALRC, the Asian Human Rights Commission, the Minister of Justice wrote that the Prime Minister "had given a clear command to all Thai agencies concerned that every necessary measure must be taken to search for Mr Somchai Neelaphaijit's whereabouts, and those who are responsible for his disappearance and safety will have to be brought to justice without exception". Among these measures, he added, "an ad hoc committee under the responsibility of the Special Investigation Department (SID), the Ministry of Justice has been set up to work on information gathering, forensic evidence as well as other investigation for the case". He further stated that this committee had made "a lot of progress".

However, it was not until September 23 that the wife of the victim requested the Department of Special Investigation to take up the case, and publicly complained about the lack of efforts by investigators. Thereafter, public statements attributed to the Minister of

Justice suggested that the Department has not yet taken up the case, and most recently Angkana has claimed that her application was refused. Indeed, a recent meeting to discuss cases of special importance chaired by the Minister is understood to have made no mention of Somchai's case.

The government's failure to account for the disappearance of such a prominent human rights defender throws into relief the fact that Thailand has no law prohibiting forced disappearances. Forced disappearance is a heinous crime, condemned by all civilised societies. The draft International Convention on the Protection of All Persons from Forced Disappearance of 1998 defines forced disappearance as:

"[T]he deprivation of a person's liberty, in whatever form or for whatever reason, brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person."

Under this definition, there is no doubt that Somchai was forcibly disappeared. Furthermore, all persons involved in concealing his fate or whereabouts or authorising such acts may also be held to account under this definition. The question then arises as to why the accused in this case should be charged only with relatively minor offences and not in accordance with international standards? The ALRC therefore urges the Commission, and in particular its Working Group on enforced or involuntary disappearance, to take up the need for such domestic legislation with the Government of Thailand.

In recent times large numbers of persons are reported to have disappeared in the south of Thailand, particularly subsequent to the tragic mass killing in Narathiwat province in October, about which the ALRC has submitted a separate statement to the Commission. Additionally, the deputy director of the Forensic Science Institute has stated that her agency alone receives around 1000 bodies annually that it is unable to identify. Many of these bodies are found under suspicious circumstances. The scale of disappearances in Thailand remains unknown due to the lack of any directed effort by government or non-government agencies to take up and document the issue; however, anecdotal evidence suggests that it is extremely high. The families of all these victims could benefit from the introduction of effective legislation to stem the practice of forced disappearances in Thailand.

The tragic circumstances of Somchai's disappearance speak to the total lack of justice for all victims of this crime in Thailand. Despite being a prominent lawyer and human rights defender and regardless of the intense publicity given to his case, there has to date been no justice for him and his family. The concerned authorities have lapsed into silence, and public attention has been diverted to other more recent and larger scale events, including the mass killings in Narathiwat and the devastation caused by the Indian Ocean tsunami. However, the disappearance of Somchai remains of tremendous significance to the situation of human rights in Thailand because it amounts to a challenge to the very foundations of the justice system in dealing with gross violations of rights there. How is it that the justice system in Thailand has proven so completely incapable of dealing with such a public case of disappearance, even after the initial steps of the crime have become widespread knowledge? Is the hold that impunity has on the system of justice in Thailand so strong that it is not possible to break even when there is deep public and international concern? Unfortunately, the victim's wife has good reason to doubt the ability of the justice system and the good faith of the government and officers involved in this case. The Asian Legal Resource Centre shares her suspicions and

doubts. It calls upon the Commission to take up his case with the Government of Thailand as a matter of extreme concern, and urges it to prove these doubts unfounded.
