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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandates of the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and the
Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA G/SO 217/1 G/SO 214 (107-9)
THA 5/2011

16 February 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 7/12 and 7/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of **Ms. Angkhana Neelaphaijit**. Ms. Neelaphaijit is the President of the Justice and Peace Foundation, a human rights organisation which promotes access to justice, and campaigns for an end to impunity in Southern Thailand. Ms. Neelaphaijit is also the wife of human rights lawyer Mr. Somchai Neelaphaijit, who disappeared on 11 March 2004. Ms. Neelaphaijit is currently part of the witness protection programme of the Department of Special Investigation, under the Ministry of Justice. Ms. Neelaphaijit has campaigned publicly for justice in case of her husband's enforced disappearance.

Ms. Neelaphaijit was the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 September 2005; an urgent appeal sent by the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 28 March 2006; an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the

Special Representative of the Secretary-General on the situation of human rights defenders pursuant to Commission on Human Rights resolutions on 16 March 2007; an urgent appeal sent by the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and the Special Representative of the Secretary-General on the situation of human rights defenders on 26 February 2008; and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders on 20 March 2008.

According to the information received:

Between 18 and 20 January 2011, Ms. Neelaphaijit received a number of threatening calls to her landline phone from unknown persons. The threats made reference both to Ms. Neelaphaijit, and members of her family. It is alleged that Ms. Neelaphaijit received up to twenty such calls per day.

According to the information received, the Department of Special Investigation under the Ministry of Justice confirmed by letter to Ms. Neelaphaijit that the phone calls had been made from a wireless phone set up at an internet café. The location of the internet café was not revealed in the letter. Allegedly, Ms. Neelaphaijit was then advised by the Department of Special Investigation to contact the telephone service provider directly for further information.

It should be noted that the recent threatening phone calls coincide with ongoing legal proceedings concerning the case of Mr. Neelaphaijit.

On 24 September 2010, it is alleged that the Criminal Court in Thailand postponed indefinitely the reading of an Appeal Court verdict in the case involving the disappearance of Ms. Neelaphaijit's husband, pending the decision of the Pathum Thani Court on a related case. On 21 January 2011, the Criminal Court of Thailand again postponed the reading of the verdict, on the basis that the defendant, Police Major Ngern Thongsuk, who was found guilty of the crime in the Court of First Instance, was not present in person. The Criminal Procedure Code stipulates that defendants must be present when a verdict is delivered to ensure that they are properly notified. On 11 February 2011, the Appeal Court of Thailand issued a warrant for the arrest of a former police officer after he failed to appear to hear its ruling on a case involving the disappearance of Mr. Neelaphaijit. It is alleged that the court will render its verdict on 11 March 2011.

On 21 January 2011, Ms Neelaphaijit allegedly filed a complaint at Bangeeria Police Station.

Concern is expressed for the physical and psychological integrity of Ms. Neelaphaijit, considering the nature of the phone calls received. Further concern is expressed that the threatening phone calls may be related to Ms. Neelaphaijit's work as a human rights defender, in particular, her search for justice in the case of her husband Mr. Neelaphaijit.

The Working Group on Enforced or Involuntary Disappearances would like to recall that, in its resolution 7/12, the Human Rights Council urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

Further, in the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations of cases of disappearance, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's Government attention to the right to physical and mental integrity of Ms. Neelaphaijit.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of

everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Neelaphaijit are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of Ms. Neelaphaijit in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case.
3. Please provide the full details of measures of protection available to Ms. Neelaphaijit under the witness protection programme, and the manner in which such protection measures are implemented.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Jeremy Sarkin
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders