

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

23 October 2024

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 54/14, 53/4, 52/5 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the forthcoming expiration of the statute of limitation on 25 October 2024 for the killings of 84 individuals belonging to the Malay Muslim community, a religious minority group by security officials in the Tak Bai incident in October 2004, which would bring an end to ongoing attempts to prosecute those responsible.

Special Procedures mandate holders have expressed concern on several occasions in the past related to the Tak Bai incident and subsequent events, including in

- THA 17/2004 regarding the incident itself, to which replies were received on 15 November 2004, 20 January 2005, and 3 February 2005
- THA 18/2004 regarding the confiscation of video footage of the incident by the Police, to which a reply was received on 11 March 2005
- THA 22/2004 in relation to the prohibition of sharing footage of the incident, to which a reply was received on 11 March 2005
- THA 4/2005 concerning the retaliatory killing of a Buddhist village chief, to which no reply was received and
- THA 10/2006 concerning the killings of a village headman who was assisting family members of victims to which no reply was received.

According to the information received:

Tak Bai incident

In October 2004, six members of a volunteer defense unit were arrested and charged with embezzlement and making false reports to officials following an allegation that they had given their weapons to insurgents. Members of the

local community gathered around the police station in Tak Bai where the six individuals were being detained calling for their release. Following failed negotiations between protestors and officials, the security forces decided to forcibly disperse the crowd using water cannons. After a gunshot was heard from the protestors, the security forces opened fire. Seven people were shot dead and 1,370 protestors were arrested.

The arrested individuals were forced to remove their shirts, had their hands tied and then made to lie on top of one another in four trucks. They were taken from Tak Bai police station to Ingkayuthaborihan military camp in Pattani province, a journey of 150 kilometers which took around five hours. As a result, 78 individuals died and seven were reportedly subjected to enforced disappearance and their fate and whereabouts remain unknown to date. The protesters were predominantly members of the Malay Muslim community, a religious minority group who were fasting at the time.

No officials were held accountable for the killings and efforts were made to prevent information about the incident from being shared.

Tak Bai is located in Narathiwat Province, one of the Southern Border Provinces. Martial Law, Emergency Decree and Internal Security Act have been in place in the region since 2004.

From January 2004 to August 2024, reportedly at least 7600 people have died and 14000 people injured as a result of the ongoing conflict.

Legal proceedings and compensation

On 2 November 2004, the then Prime Minister ordered the establishment of an Independent Committee for Investigation on Factual Information in Case of Death in Tak Bai Incident. The Committee found that only a small number of protestors were armed and that the use of live ammunition by rangers and conscripts who lacked experience in dispersing demonstrations, was inappropriate. It further noted that, although the detention of the protestors was lawful, the trucks had inadequate ventilation, and weight from people lying above led to the deaths of detainees. Several high-ranking officials were identified as responsible for managing the protest dispersal and treatment of detainees.

From 2005 to 2006, families of victims filed several lawsuits against the state seeking compensation. These were settled after the families were offered civil compensation.

A criminal case was filed against 59 protestors. This was eventually withdrawn by the prosecutors in 2006.

In 2012, the then Government offered compensation ranging from 500,000 to 7.5 million baht (approximately 16,000 to 241,300 USD at the time) to the families of those died and those injured in the incident.

In 2004 a criminal case was filed with police in Nong Chik, Pattani province. In 2013, the Supreme Court upheld rulings of the Court of First Instance and

the Appeal Court which stated that the officers were performing their duties according to the situation. The Court found that all 78 protestors had died of suffocation. No individuals were identified as responsible for the suffocation. The case was referred back to Nong Chik police in Pattani Province, and then suspended.

In December 2023, families of the victims submitted a letter to the House of Representative's Standing Committee on Legal Affairs, Justice, and Human Rights requesting they follow up with relevant agencies. The Standing Committee summoned representatives from the Southern Border Provincial Administrative Center (SBPAC), the Office of Public Prosecutor Region 9, the Office of Royal Thai Police Region 9, and the Nong Chik and Tak Bai Police Stations to provide further information. It transpired that the agencies were unable to locate the pending criminal cases with the Pattani Public Prosecutor and the Pattani Police Station. The Chairperson of the committee submitted an urgent request to the office of the Attorney General (OAG) and the Royal Thai Police to expedite both cases. On 12 September 2024, the OAG issued a prosecution order against eight suspects for violating section 288 of the criminal code. This included the commander who ordered the dispersal of the protest, six individuals who drove the trucks and the controller of the trucks. The case is currently ongoing.

On 25 April 2024, 48 families of individuals who died in the Tak Bai incident filed a separate criminal lawsuit against nine officials involved at Narathiwat Provincial Court under Sections 288, 289(5), 309, and 310 of the Criminal Code (Black case - No. Criminal Case A.578/2567). The court charged seven defendants with murder under section 288 of the Criminal Code, unlawful detention or deprivation of liberty resulting in death or severe injury under section 310(2), including two former commanders of the relevant army region, the former commander of the Provincial Police, the former director of the Operations Center of the National Police Headquarters, the former superintendent of Tak Bai Police station, the former Deputy Director of the Southern Border Provinces Peacebuilding Command and the former Governor of Narathiwat Province. Deputy Judge of Region 9 submitted a counterargument asserting that only four defendants should be held accountable and the use of live ammunition was proportionate in the situation. However, the court proceeded with charging seven defendants.

On 12 September 2024, a hearing was scheduled to take testimony from the seven defendants. None of them appeared. The court issued arrest warrants for six of the defendants and made an urgent request to the Chair of Parliament to summon the seven individual, who is a Member of Parliament for the Pheu Thai party, for the next hearing.

On 3 October 2024, the Narathiwat Provincial Court issued an arrest warrant for the Member of Parliament.

None of the individuals have been arrested by police. Reportedly, three have fled the country.

On 15 October 2024, none of the defendants appeared in court.

The statute of limitation for the crimes in question under section 95(1) of the Criminal Procedure Code is 20 years. This period will expire on 25 October 2024. The Narathiwat Provincial Court stated they would wait until midnight on 25 October 2024 for the police to locate and apprehend the defendants.

On 21 October 2024, a call was made for the Cabinet to invoke section 172 of the 2017 Constitution of Thailand to issue an Emergency Decree to extend the statute of limitations on the Tak Bai case, if deemed necessary for National Security. The General Secretary of the Pheu Thai Party indicated it was too late to issue such a decree as it would require the Government to first evaluate whether the conflict in the southern border provinces meets the criteria.

Without wishing to prejudge the accuracy of the information received, while we welcome the recent court proceedings against alleged perpetrators of the killing of 85 individuals in the Tak Bai incident, we express our grave concern about the forthcoming expiry of the statute of limitations for relevant offenses on 25 October 2024, which risks ending these proceedings prematurely.

We would like to underline that an important element of the protection afforded to the right to life is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents. Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at, amongst other things ensuring that those responsible are brought to justice (Human Rights Committee, general comment 36, para 27).

The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time (the Minnesota Protocol, para. 23). The Human Rights Committee has further observed that failure to investigate and failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the International Covenant on Civil and Political Rights (para. 15, general comment No. 31).

From the outset, we would like to remind Your Excellency's Government that the prohibition of enforced disappearance and the corresponding obligation to investigate it have attained the status of *jus cogens* in international law.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), ratified by your Excellency's Government on 14 May 2024, establishes in its article 8 that any State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings: (a) is of long duration and is proportionate to the extreme seriousness of this offence; (b) commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

We would also like to recall the General Comment of the Working Group on Enforced or Involuntary Disappearances on "enforced disappearances as a continuous crime (A/HRC/16/48)", which stresses that enforced disappearances are prototypical continuous acts. The act begins at the time of the abduction and extends for the whole

period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual. In this regard, when an enforced disappearance began before the entry into force of an instrument or before the specific State accepted the jurisdiction of the competent body, the fact that the disappearance continues after the entry into force or the acceptance of the jurisdiction gives the institution the competence and jurisdiction to consider the act of enforced disappearance as a whole, and not only acts or omissions imputable to the State that followed the entry into force of the relevant legal instrument or the acceptance of the jurisdiction.

We would also like to remind your Excellency's Government that the prohibition of torture is absolute under international law, precluding the applicability of Statutes of limitations for crimes of torture and other forms of ill-treatment, with a view to preventing impunity in relation to the investigation and prosecution of such acts. We reiterate the concern raised by Committee Against Torture regarding the absence of an explicit prohibition against the application of the statute of limitations for crimes amounting to torture (CAT/C/THA/CO/1, para. 9) and request the authorities to take the necessary legislative and procedural measures to bring the national law in compliance with its international human rights obligations.

To the extent that acts of counter-insurgency in the south are being qualified by the Government as terrorism, we would like to draw your Excellency's Government attention to the fact that the General Assembly has unanimously affirmed and unanimously recognized that effectively combatting terrorism and ensuring respect for human rights are not competing but complementary and mutually reinforcing goals in the Global Counter-Terrorism Strategy. Moreover, United Nations resolutions¹ require that any measures taken to combat terrorism and violent extremism comply with States' obligations under international law, in particular international human rights law, refugee law, and international humanitarian law. Counterterrorism measures must also conform to fundamental assumptions of legality, proportionality, necessity, and non-discrimination.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the efforts taken to investigate the Tak Bai incident and ensure that perpetrators are brought to justice. Please include information on the compliance of investigations with international standards including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

¹ See e.g. Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); General Assembly resolutions 49/60, 51/210, 72/123 and 72/180; and Human Rights Council resolution 35/34

3. Please provide details and updates regarding the report on the seven individuals reportedly forcibly disappeared during the Tak Bai incident, as well as any actions taken by the Thai Government to elucidate their fate and whereabouts and to investigate the matter in accordance with the Prevention and Suppression of Torture and Enforced Disappearance Act B.E.2565.
4. Please provide information on whether the government will adopt an interim measure to suspend the statute of limitation to ensure that the investigation can continue to ensure that the perpetrators are brought to justice.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the investigations into the Tak Bai incident can continue and to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations as the statute of limitations is soon to expire. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would also like to inform your Excellency's Government that given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit the alleged cases of enforced disappearances through its humanitarian procedure. The Government is required to respond separately to the present communication and the humanitarian procedure.

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

Gabriella Citroni
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nicolas Levrat
Special Rapporteur on minority issues

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 6, 7, 9, 10, 16, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which guarantee the rights to life, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the humane treatment of individuals deprived of their liberty, that everyone shall have the right to recognition everywhere as a person before the law, freedom of expression and opinion and freedom of peaceful assembly.

We recall that the right to life is a supreme *jus cogens* norm, applicable to all persons at all times and that cannot be derogated under any circumstance under international law. As the Human Rights Committee has emphasized in its general comment no. 36, that states parties have a particular duty to investigate allegations of violations of article 6 whenever State authorities have used or appear to have used firearms or other potentially lethal force outside the immediate context of an armed conflict, for example, when live fire has been used against demonstrators. Furthermore, loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6.

Investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent and should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.

General comment No. 36 of the Human Rights Committee on the right to life establishes that extreme forms of arbitrary detention that are themselves life threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life (para 57). In addition, enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life. The deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. It thus results in a violation of the right to life as well as other rights recognized in the Covenant, in particular, article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of person) and article 16 (right to recognition as a person before the law).

In further adds that States parties must take adequate measures to prevent the enforced disappearance of individuals and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced

disappearance. States parties should also ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions and introduce prompt and effective procedures for cases of disappearance to be investigated thoroughly by independent and impartial bodies that operate, as a rule, within the ordinary criminal justice system. They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation (para. 58).

A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

Article 3 of the ICPPED establishes that each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. Articles 13 and 17 of the Declaration on the Protection of all Persons from Enforced Disappearances establish that each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority and that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified respectively.

The Working Group on Enforced Disappearances has also recalled the importance of respect for cultural diversity and the existence of a space in which multiple opinions, positions and interpretations of history can find expression in the public sphere, which reduces the level of vulnerability of those who question dominant ideas and positions in one way or another (A/HRC/30/38/Add.5). Also, due to the collective nature of certain economic, social and cultural rights, the disappearance of one person can have a negative impact on the community as a whole. An example is the forced disappearance of a leader of a minority community and the impact this may have on the exercise of the right to participate in the cultural life of minorities and on other members of the affected community. Such disappearances may also affect the right to political participation and the existence and protection of other human rights.

We would like to recall also article 21 of the ICCPR, that guarantees the right to peaceful assembly. This article also states that “no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. The Human Rights Committee has confirmed that article 21 ‘protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs’ (CCPR/C/GC/37, para. 6).

In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that, in order to advance accountability and end impunity for serious human rights violations, “important steps include

investigating, prosecuting and punishing perpetrators, providing reparations to victims and institutional and policy reforms, including measures aimed at establishing an honest, comprehensive and public account of past violations”, and recalled that “access to justice and remedies is an integral element of the protection of the rights to freedom of peaceful assembly and of association” (A/HRC/53/38, para. 4).

We would also like to note the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refer to the obligation to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).