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JOINT STATEMENT

Thailand: Prioritize the amendment and passage of legislation on torture and enforced disappearances

Amnesty International and the International Commission of Jurists (ICJ) regret the decision of Thailand's National Legislative Assembly (NLA) to further delay the passage of essential legislation criminalizing torture and enforced disappearances. Our organizations call on the Thai government to cease its stalling measures and instead prioritize the amendment of the Draft Prevention and Suppression of Torture and Enforced Disappearance Act (Draft Act) in order to bring it into line with international law. The government should then ensure its passage into law without undue delay.

On 28 February, the Office of the High Commissioner for Human Rights announced that it had been informed that the NLA would not enact the Draft Act. The following day, an NLA official speaking to BBC Thai confirmed that the draft would be "returned [to the Thai Cabinet] for more consultations... with Interior officials, police authorities, the national security sector, military authorities and prosecutors."

The Draft Act is the result of years of effort by government authorities, including by Ministry of Justice officials who consulted with our organizations and took account of many of our recommendations in elaborating it. The draft was approved by Thailand's Cabinet in May 2016. The recent decision by the NLA has indefinitely delayed the enactment of this important piece of legislation, which would represent a significant step towards preventing torture and enforced disappearances in Thailand.

The slow-tracking of this law in the face of all the commitments Thailand has made over the years right up to last year is extremely disappointing, especially for the victims of torture and enforced disappearances who have struggled to obtain justice in the absence of a clear legal framework.

The most recent version of the Draft Act addresses many existing gaps in Thailand's current legal framework and could support Thailand's compliance with its obligations under international human rights law. However, further amendments are needed to address significant shortcomings in the Draft Act.

In particular, the Draft Act omits key elements from the definitions of torture and enforced disappearances, does not criminalize acts of cruel, inhuman or degrading treatment, and fails to define enforced disappearance as a continuing crime. Additionally, the Draft Act does not extend criminal liability beyond the direct commission of the act and fails to unequivocally bar the use as evidence in court proceedings of statements obtained by torture.

Thailand should make it a top priority to address these and other concerns and to enact the law as soon as possible. The urgent need to amend and enact the Draft Act is underscored by recent reports alleging the use of torture and other ill-treatment by state security forces and the continued failure to hold accountable perpetrators of torture, other ill-treatment and enforced disappearances. Our organizations

remain committed to providing any necessary assistance to the Thai government in amending the Draft Act or otherwise acting to prevent torture and enforced disappearances in Thailand.

Background

Thailand is a state party to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and has signed, but not ratified, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). The expert UN bodies overseeing the implementation of these treaties have consistently called upon states parties to criminalise torture and enforced disappearance as specific crimes.

On 13 and 14 March 2017, the UN Human Rights Committee will review Thailand's compliance with the ICCPR.

In Thailand's 15 November 2016 reply to the Committee's List of Issues,¹ it noted that it was in the process of passing the Draft Law which would "provide clear definition and set up specific offence on torture to be in line with the terms set forth under CAT" and "serve as an implementing legislation for ICPPED."

It also noted that the Draft Act "aims to strengthen the prevention, suppression, and prosecution mechanism and to ensure remedy for victims as well as address the problem of misuse, and abuses of power by government authorities with regard to torture and enforced disappearances."

It concluded by noting that "[o]n 24 May 2016, the Cabinet approved the draft Act in principle. The draft has been reviewed by the Council of State and is currently waiting to be submitted to the legislative branch for consideration."

¹ Human Rights Committee, "Replies of Thailand to the List of Issues," U.N. Doc. CCPR/C/THA/Q/2/Add.1, para 51.