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UN High Commissioner for Human Rights Calls on Thai Government to Investigate Growing Number of Forced Disappearances

February 17, 2016
by Wilson Melbostad

A January 6, 2016 news release from the United Nations Commissioner for Human Rights, Zeid Ra'ad Al Hussein, urged Thai authorities to take steps to criminalize enforced disappearances and align such legislation with [international standards](#). The High Commissioner also urged the Thai government to conduct thorough investigations as to the whereabouts of at least [82 individuals](#) that the UN working group on Enforced or Involuntary Disappearance has listed as disappeared.

Notable global NGO, Human Rights Watch (HRW), also crafted a letter to coup leader, Prime Minister [Gen. Prayut Chan-ocha](#), on the matter of Thailand's unsolved enforced disappearances. These calls for action came on the heels of Thailand's Supreme Court upholding a decision to acquit [five police officers](#) accused in the disappearance of human rights lawyer Somchai Neelapaijit. Since Thailand's criminal code does not address disappearances, the government prosecuted the police on charges of coercion and robbery. Somchai went [missing in 2004](#) while representing five southern Muslim insurgents who claimed they were tortured by police. The case was the only enforced disappearance case of the reported 82 total cases ever brought to court in Thailand. Somchai's whereabouts are still unknown.

International law defines enforced disappearance as the "arrest or detention of a person by state officials or their agents followed by a refusal to acknowledge the deprivation of liberty, or to reveal the person's fate or whereabouts." The previous government, under Prime Minister Yingluck Shinawatra, signed the [International Convention for the Protection of All Persons from Enforced Disappearance \(ICCPED\)](#) in January 2012. Shinawatra's government neither ratified the treaty, nor codified a domestic prohibition on enforced disappearance. Likewise, the ruling military junta, which took power via coup in May 2014, has not amended the Thai Penal Code to incorporate such a prohibition. The [International Covenant on Civil and Political Rights \(ICCPR\)](#), however, to which Thailand is a party, forbids enforced disappearances through [provisions](#) against arbitrary arrest and detention; torture and other cruel, inhuman, or degrading treatment; and extrajudicial execution.

Legislating against enforced disappearances and other abuses in Thailand is especially difficult since the nation currently operates on its [military-introduced interim constitution](#). The interim constitution replaced the previous 2007 constitution after Thailand's military government, the [National Council for Peace and Order](#), came to power in May of 2014. The military government has since appointed a committee to draft what would be the country's 20th constitution. However, the junta-appointed [National Reforms Council](#) rejected the committee's draft Charter in September 2015, and a new 21-person committee plans to release a new draft sometime in March of 2016. In a response letter to the Drafting Committee, Prime Minister Gen. Prayut Chan-ocha recommended that the new constitution include a clause "exempting [the] military from civil,

criminal, or administrative accountability for the use of force in good faith.” Although Chan-ocha defended the clause as protecting national security from both internal and external threats, HRW Asia director Brad Adams likened the proposal to a “[license to kill](#)” and a slippery slope to further impunity for the Thai military relating to [disappearances](#). This extended drafting process will effectively delay elections until at least 2017, prolonging the rule of the incumbent military government.

Despite the great uncertainty with Thailand’s current and future constitution, the High Commissioner noted that the judiciary in Somchai’s case missed an opportunity to “protect the rights of the victims to truth, justice and redress.” Additionally, he expressed disappointment that the court could not even acknowledge Somchai as a missing person, which also served to bar Somchai’s family from standing as joint plaintiffs. Ultimately, the High Commissioner called on the Thai authorities to immediately ratify the International Convention for the Protection of All Persons from Enforced Disappearance and adopt corresponding laws within its own legislature. Furthermore, if and when the the new constitution is voted upon, bylaws of the charter offer an additional opportunity to incorporate the ICCPR and ICCPED prohibitions on forced disappearances.

Malaysia — International Community Urges Government to Amend the 1948 Sedition Act to Align with International Human Rights Standards

March 24, 2016
by Wilson Melbostad

The [High Commissioner of Human Rights](#) urged the Malaysian Government to take serious steps to repeal or modify the nation's "Sedition Act" and its 2015 amendment so as to align it with international obligations such as freedom of expression.

The contested [Sedition Act](#), enacted in 1948 by British Colonial authorities, originally aimed to restrict anti-colonial activities and fend off an impending coup from a disgruntled Malaysian population. Although the government rarely enforced the law after Malaysia gained independence in 1957, the ruling Barisan Nasional coalition government, led by Prime Minister Najib Razak, began [using the Act](#) to monitor critics of its administration in 2009. Although Razak publically pledged to [abolish the Act](#) in 2013, the legislation not only remained in place but both the use and scope of the Act exponentially increased since the [Barisan Nasional coalition](#) narrowly won the 2013 general elections. In 2015 alone, there were a total of [91 instances](#) of the government invoking the Sedition Act to arrest, investigate, or prosecute individuals for reportedly political purposes—a number almost five times as many as during the law's first 50 years of existence. The government has used the Act to target a range of individuals including rights activists, journalists, and opposition politicians for actions deemed critical of the government.

Malaysia has not signed or ratified any [international human rights treaties](#) protecting the freedom of expression. However, Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees the right to freedom of expression. Although not directly binding on States, the UDHR has acquired full legal force as customary international law; thus, States are obligated to abide by it. Article 10 of the Malaysian Federal Constitution also assures freedom of speech and expression to its citizens. Yet, Article 10(2) of the constitution establishes that the Malaysian Parliament may legally impose restrictions on such freedoms, if deemed necessary in the interest of national security. International organizations and courts have emphasized on numerous occasions the importance of freedom expression and information. In particular, UN General Assembly resolution 59(I) states, "[freedom of information](#) is a fundamental human right and . . . the touchstone of all the freedoms to which the United Nations is consecrated."

In 2013, [Prime Minister Razak went on record](#) to promise citizens that he would abolish the colonial-era Sedition Act. Yet, in 2014, speaking in front of his party's annual congress, the Prime Minister contradicted his previous intention [to repeal](#) the law. Consequently, in 2015, after less than a day of debate, parliament pushed through an amendment that strengthened the auspices of the Sedition Act. Revisions extended the [maximum jail term](#) to twenty years from the current three,

and made it illegal to propagate sedition on the Internet, prompting concerns over potential online censorship.

The U.S. State Department and European Union have called upon to Malaysia to repeal the Act and its recently enacted amendments. NGOs, such as Amnesty International also encouraged the State to take immediate steps to ensure that previous convictions under the Sedition Act are quashed, and to [ratify the International Covenant on Civil and Political Rights \(ICCPR\)](#), one of the key international human rights treaties providing a range of protections including freedom of speech and expression.

South Korea — UN Working Group on Business and Human Rights Requests National Action Plan and Reform After Country Visit

July 5, 2016
by Wilson Melbostad

On June 1, 2016, after concluding a ten-day trip in the Republic of Korea (ROK), members of the UN Working Group for Business and Human Rights delivered their [preliminary observations and recommendations](#) in a meeting with the press in Seoul. The Working Group was invited by the South Korean government to evaluate the country and its use of the [UN Guiding Principles](#) on Business and Human Rights. The Guiding Principles were developed by the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises. They were officially endorsed via a resolution by members of the Human Rights Council, [including South Korea](#), in June 2011. Over the course of their visit, the Working Group engaged with government authorities, state and privately owned enterprises, and civil society organizations in order to obtain a comprehensive understanding of the Guiding Principles' implementation and effectiveness in the country.

One of the outstanding issues amidst the initial observations stemmed from insufficient labor rights in various links of Korean corporate supply chains. Under the Guiding Principles, all companies are expected to avoid human rights issues linked to any part of their operations. Yet, based on its assessments, the Working Group noted that Korean business enterprises often failed to provide effective oversight within their supply chains and showed a “lack of willingness” to assume responsibility to prevent or mitigate human rights based transgressions linked to their activities. Some of the larger Korean conglomerate groups, referred to as *chaebols*, reported to the Working Group that it was simply impossible for them to monitor operations beyond their direct suppliers. Large conglomerates constitute less than 1% of the total number of business enterprises, yet account for nearly [80% of the nation's GDP](#). The remaining 99% of enterprises are designated as small and medium-sized companies (SMEs), which account for 88% of all employment and are major suppliers, either by way of second- or third party subcontracts, for the *chaebol* conglomerates.

In its report, the Working Group pointed to a 2014 study conducted by the [National Human Rights Commission of Korea \(NHRCK\)](#), which raised concerns for the increasing reliance large corporations have on subcontractors. The study [showed](#) that subcontracted workers are subjected to more dangerous tasks, inadequate safeguards, and are given less safety information when compared to their directly employed counterparts.

In particular, the Working Group highlighted the case of Hyundai Heavy Industries (HHI), the world's largest shipbuilding company. In HHI's shipyard in the southeastern city of Ulsan, the Working Group reported that 30,000 of the 55,000 employees working on HHI premises were

subcontractors. 80% of these subcontracted shipyard employees work in production – where there are [well-documented](#), extreme health and safety risks – compared to only 20% of the directly employed workers. A Busan Regional Ministry of Employment and Labor investigation, conducted from April to May of this year, confirmed that HHI is [outsourcing risk](#) and refusing to accept responsibility for occupational accidents and deaths of subcontracted workers at the shipyard. The Working Group investigated similar practices at two other Korean conglomerates, Samsung and LG, which have likewise been cited by the Ministry of Labor for [knowingly outsourcing production](#) of semiconductors and cell phone parts to subcontractors with poor health and safety records. A [lawsuit](#) was filed in April 2016 by [Minbyun Law Group](#) against two Samsung and LG subcontractors after Ministry of Labor investigations showed they failed to provide health training or adequate equipment to workers before exposing them to gaseous methanol levels up to thirteen times the acceptable rates of consumption. Neither Samsung nor LG were included in the lawsuit since, under Chapter V of the current [Korean Civil Act](#), businesses are not legally liable for the jobs that they outsource.

The Working Group also noted that, as Korean companies become more transnational in their operations, it is increasingly important for these companies to give more attention to how they exercise human rights due diligence in their activities abroad. The Working Group heard cases regarding the [sourcing of forced-labor cotton](#) from Uzbekistan by the Korean Mint (KOMSCO) in order to make bank notes, as well as allegations of [abusive labor conditions](#) of Korean corporate-owned garment factories in Myanmar. Additionally, the Working Group was informed of the current [lawsuit being filed by a group of Korean law students](#) against POSCO Daewoo International for their illegal acquisition of land and eviction of local citizens for natural gas extraction, also in Myanmar. To date, no Korean company has been found guilty or even tried in front of national courts for human rights abuses abroad.

The Working Group cited that the Korean government has set up programs under domestic civil and criminal law, as well as through the development of a workers' compensation procedure, to mitigate damages for business-related human rights abuses. However, the Working Group also stressed the need for improved coordination and multi-stakeholder dialogue that will better allow the voices of the most vulnerable to be heard. Workers compensation investigation and reimbursements are often painstakingly slow and victims are often coerced through bribes and threats from their employers not to file claims in the first place. In this respect, the Working Group, echoing a similar request made by the NHRCK earlier this year, suggested the development of a National Action Plan (NAP) on business and human rights to ensure policy coherence amongst government, civil society, and businesses to increase awareness of such grievance mechanisms and ensure they are utilized effectively moving forward.

The [Special Procedures process](#) for the UN requires Special Rapporteurs or Working Groups to first request a nation's government for a visit to their country. If the state consents, then the government sends a [formal invitation](#) to the Working Group or Special Rapporteur and the dates of a visit are negotiated. Since 2008, the South Korean Network for International Advocacy, which consists of multiple South Korean public interest [law firms](#) and [NGOs](#), have taken an active role in encouraging Special Procedures visits as well as facilitating informational hearings during UN visits. South Korea hosted the Special Rapporteur on the promotion and protection of the right to freedom of expression in [2010](#); the Special Rapporteur on the situation of human rights defenders in [2013](#); the Special Rapporteur on the contemporary forms of racism, racial discrimination,

xenophobia and related intolerance in [2014](#); and is expecting visits from the Special Rapporteur on arbitrary detention as well as the Special Rapporteur on freedom of expression later this year. The Working Group for Business and Human Rights will field criticisms and additions from the NGO community regarding their initial observations and present a final report to the Human Rights Council in the Summer of 2017.