

## **Investigation Report No. 283/2018**

**Subject: Human dignity and the right to liberty and security of person: the case of a complaint which claims that the practice of using restraints on prisoners during transport to courts is a violation of human rights**

### **Complaint Issues**

The National Human Rights Commission of Thailand (NHRCT) has received a complaint from a complainant whose son and other seven persons are detained in Phon District Prison, pending trial at Phon Provincial Court in the case of jointly committing arson, jointly making the loss of properties, racketeer, criminal association and the offense under Section 112 of the Criminal Code in the incident of setting fire to an arch in honor of King Rama IX in Chonnabot District, Khon Kaen Province. The son of the complainant and the others were arrested and were taken to detention at Phon District Prison. The inquiry official concluded and submitted to Phon Provincial Prosecutor the investigation file with an opinion that the eight accused persons should be prosecuted. The Phon Provincial Public Prosecutor filed a lawsuit with the Phon Provincial Court, which made an appointment to hear testimonies and evidence on October 2, 2017. In the transport of the son of the complainant and the other 7 persons to the Phon Provincial Court, the complained officials put shackles on the son of the complainant and the others and did not allow them to tie ropes with the shackles so that they could pull up the shackles to be able to walk more conveniently, and also did not allow them to wear socks to prevent friction between the shackles and their ankles. The complainant considers that the actions of the complained officials are cruel and violates the human dignity of inmates in cases still pending court hearing.

### **Actions Taken**

NHRCT considers that any harm to the son of the complainant and the others only happened during the time when the son of the complainant and the others were taken outside the prison. This is in accordance with the Corrections Act B.E. 2017 which authorizes the complained officials to restrict the rights and freedom of prisoners. Although the use of restraints may cause some harm, the rights and liberties of the son of the complainant and the others were not completely deprived. The fact that the complained officials put restraints on the son of the complainant and seven others during transport outside the prison is not deemed a violation of

human rights of the son of the complainant and the others. Therefore the Commission has a resolution to drop the matter. However, although there are corrections laws stipulating the types and conditions of the use of restraints on inmates, the laws allow for government officials to use their discretion to use restraints without specifying clear and exact rules that can be used as a guideline for the exercise of discretion as to when is the case of necessity or whether there are reasonable grounds to use restraints on prisoners. This could result in instances where government officials exercise their discretion beyond appropriateness and necessity according to the intent of the law, which may reduce human dignity or unreasonably affect the rights and liberties of prisoners. Therefore, to protect the rights of persons from the exercise of powers by government officials and to prevent government officials from exercising their powers beyond the scope and conditions stipulated by law, the Commission has decided to recommend the following appropriate measures or approaches to prevent or address human rights violations to the Department of Corrections in accordance with Section 247 (1) of the Constitution of the Kingdom of Thailand B.E. 2017, and Section 26 (1) of the Organic Act on the National Human Rights Commission B.E. 2017, and recommend measures or guidelines to promote and protect human rights to the Ministry of Justice and the Office of the Courts of Justice in accordance with Section 247 (3) the Constitution of the Kingdom of Thailand B.E. 2017, and Sections 26 (3) and 42 of the Organic Act on the National Human Rights Commission B.E. 2017:

### **Recommended Appropriate Measures or Approaches to Prevent or Address Human Rights Violations**

(1) The Department of Corrections should instruct all prisons and correctional institutions to strictly comply with the Directive of the Department of Corrections No. *Yor Tor* 0705 / *Wor* 38 dated June 10, 2005, regarding the guideline for the use of restraints on prisoners while a ministerial regulation which is to be issued under Section 21 of the Correction Act B.E. 2017 has yet to be available. It should also provide training for staff to have knowledge and understanding on the performance of duties in making decisions to use restraints on inmates correctly and as necessary, taking into account the human dignity and the right to liberty and security of prisoners, especially those who have not yet been given the final court verdict and shall not be treated as being guilty.

(2) The Department of Corrections should consider to more clearly define the rules and conditions for the use of restraints, taking into account the circumstances of the case and the seriousness of the offense as well as the behavior of prisoners while in prison to prevent officials from exercising discretion inappropriately to control inmates. The Department, should consider using other types of restraints, such as handcuffs, fetters, or a set of handcuffs and fetters, in place of shackles in order to protect the person from being treated in degrading and inhumane manner. In cases where it is necessary to use restraints on prisoners, the Department should consider allowing or providing reasonable protection against harm or injuries from the use of restraint devices.

### **Recommended Measures or Guidelines to Promote and Protect Human Rights**

The Ministry of Justice and the Office of the Court of Justice should consider providing a dedicated corridor for prisoners to facilitate the control of inmates from the car park to the detention room at the court, which would prevent the undue use of restraints.

### **Achievements/Progress in Human Rights Protection**

(1) The Department of Corrections has informed that it has issued a written instruction to prisons regarding the use of restraints on inmates to be in compliance with the law by ordering all prisons/correctional institutions across the country to consider the use of restraints on inmates to be in compliance with the law and not contrary to the Correction Act B.E. 2017;

(2) The Office of the Court of Justice has informed that in accordance with Section 21 of the Correction Act B.E. 2017 the use of restraints on inmates is to control inmates whose behaviors show signs of insanity or mental disorder which may endanger the life and body of one's own or others, or likelihood to make an attempt to escape, in which case it is necessary to use restraints. So it considers that the use of restraints is not a violation of human rights. Articles 7 (4) (5) and 8 (b) of the Regulation of the Executive Committee of the Court of Justice on Security B.E. 2007 already provide measures on buildings and premises appropriate for security control, i.e., setting separate entrance and exit channels for prison vehicles transporting inmates and providing special parking spaces close to the detention room; installing steel fences around the premises of the Court of Justice in order to prevent people from approaching the buildings; and arranging separate, dedicated corridors inside the premises for judges, the accused

or defendants, and visitors so as for them not to mix together. As for NHRCT recommendation to provide a dedicated corridor for inmates, the Office of the Court of Justice has inquired with the Phon Provincial Court about the aisle from the car park to the court's detention room, and has been informed that currently the Phon Provincial Court is having a new court building constructed, which is at the back of the original court building. As a result, prison vehicles that bring inmates to the court cannot park near the detention room, and have to park at the side of the court building. The inmates then have to walk through the door beside the court building to the detention room at a distance of about 50 meters with security personnel on guard. However, when the construction of the new building is completed, there will be separate detention rooms for males and females in order to be in compliance with the regulations. The transport of inmates will return to the original parking spot near the detention room with a distance of 10-20 meters from the car park to the detention room, which shall facilitate the transport of inmates in accordance with Articles 7 (4) (5) and 8 (b) of the Regulation of the Executive Committee of the Court of Justice on Security B.E. 2007.

(3) The Ministry of Justice has informed that the Department of Corrections has given importance to the treatment of inmates with regard to the prevention of human rights violations as required by law, and has already provided training courses on the treatment of inmates according to human rights principles to correctional officials. To prevent human rights violations of inmates in the case of using restraints, the Ministry has issued a guideline for consideration in using restraint devices for inmates in Chapter 3, Articles 14 - 19 of the draft Ministerial Regulation issued under the Correction Act B.E. 2017, which stipulate that in the event that an inmate must be taken outside the prison, if a restraint device is required, handcuffs shall be used. If the inmate has been sentenced by the court to the imprisonment of 10 years or more, or has been in detention in a case with a high penalty of prison sentence of ten years or more, shackles or fetters or a set of handcuffs and fetters shall be used. It is prohibited to use restraints on inmates under the age of 18 years, inmates over 60 years of age, female inmates, or inmates who are ill, unless they are ferocious or mentally ill, who have to be prevented from causing harm. Currently, the draft ministerial regulation has been approved and in the process of being issued under the Correction Act B.E. 2017.