

Alternative Report Submitted
by
The National Human Rights Commission of Thailand (NHRCT)
on Thailand's Implementation of the Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment

Applicable Domestic laws of Thailand

1. The Constitution of the Kingdom of Thailand of B.E. 2550 (1997) guarantees the right of individuals not to be subjected to torture. The second paragraph of Section 32 of the Constitution stipulates that a torture, brutal act or punishment by cruel or inhumane means shall not be committed. The punishment by judgments of the Courts or by virtue of the law shall not be deemed as punishment by cruel or inhumane means under this Section.
2. The current Criminal Code of Thailand does not provide for torture as defined in Article 1 of the Convention as a specific offense, but the provisions relating to certain offences may be applied to give effect to the implementation of the Convention such as physically or mentally harmful acts against other persons (Sections 289, 295-298), coercion of others by inflicting physical harm (Section 309), and detention and kidnapping for ransom (Sections 310 and 312-313). (Details of the relevant provisions of the Criminal Code appear in the appendix.) The Criminal Code, however, does not make explicit reference to the purposes of the act of torture as defined in Article 1 of the Convention, which include an act committed to obtain information or confession from torture victim or third person, to punish torture victim or third person for what he or a third person has committed or is suspected of having committed, or for any reason based on discrimination of any kind. Thailand, therefore, has made an interpretative declaration that the definition of torture in Article 1 of the Convention shall be interpreted in conformity with the provisions of the current Criminal Code.
3. The application of the relevant provisions of the Criminal Code mentioned in paragraph 2 above is general in nature and is not limited to acts committed by public officials as defined in Article 1 of the Convention. However, the Criminal Code has specific provisions on criminal liability of public officials who commit wrongful act in Section 157, which states that "whoever, being an official, wrongfully exercises or omits to exercise any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished with an imprisonment term of 1 to 10 years and a fine of 2,000-20,000 baht,¹ or both." A public official who uses his power to commit a wrongful act, including inflicting physical or mental harm on or torturing any person, shall be punished in accordance with Section 157 in addition to the punishment prescribed for such act.
4. As regards Article 2.3 of the Convention, which provides that an order from a superior officer may not be invoked as a justification of torture, Section 70 of the Criminal Code can be applied to give effect to the obligation under this Article. Sections 70 stipulates that "any person who commits an

¹ Current exchange rate is approximately 32.50 baht to 1 US dollar.

act in accordance with the order of an official, even though such order is unlawful, and if such person has the duty or believes in good faith that he has the duty to comply with such order, that person shall not be punished unless that person knows that such order is unlawful." Therefore, a public official who commits torture on the order of a superior, having knowledge that the order is unlawful, is held accountable for the act. This provision also applies to any other person who commits torture on the order of a public official.

5. Domestic statute complying with Articles 4.1 and 4.2 of the Convention is the provisions of the Criminal Code relating to attempt and participation in the commission of a crime. Section 80 paragraph 2 of the Code states that whoever attempts to commit an offence shall be liable to two-thirds of the punishment prescribed by the law for such offence. Sections 83 and 84 stipulate that an accomplice of crime or any person who employs or instigates others to commit a crime shall be punished for such criminal act as provided by the law. Those who assist and support the commission of a crime shall be punished by two-thirds of the penalty prescribed for such crime in accordance with Section 86 of the Criminal Code.

6. The Criminal Procedure Code of Thailand has provisions that protect individuals from torture by circumscribing the exercise of power of state officials in the performance of duties relating to search, arrest and detention as obligated under Article 2.1 of the Convention. For example, a court warrant is required for the search and arrest of an individual (Sections 57 and 78). The arrested person must be brought to the police office immediately and the Code guarantees his right to contact a relative or trusted person while under the custody of state authorities (Section 84). The arrested person cannot be detained for a period longer than necessary but in any case not longer than 48 hours. Should the detention need be extended, a request must be submitted to the court and the arrested person must be brought before the court for such purpose (Section 87). The Criminal Procedure Code also guarantees various rights of the arrested person that can help prevent torture. These include: the right to have a lawyer or trusted person present during questioning, to be visited by or maintain contact with relatives, and to receive prompt medical care in time of sickness (Section 7/1); the right to have a legal counsel during interrogation (Sections 8 and 134/1); the right to be released on bail (Section 107); and the right not to be forced to confess guilt (Section 135). As for Thailand's obligation under Article 15 of the Convention, it is given effect to by Section 226/1 of the Criminal Procedure Code which prohibits the court from hearing evidence obtained illegally except where the admittance of such evidence would be more beneficial to the carriage of justice.

7. There have been efforts to amend domestic legislation so that it complies more fully with the Convention's provisions. Presently, there are two approaches to legislative amendment. On the one hand, some civil society organizations have proposed that a new specific law containing all provisions of the Convention be enacted. The new law would also provide for a new mechanism to conduct investigation of torture cases instead of police officers to ensure that the investigation is independent and impartial. On the other hand, the Department of Rights and Liberties Protection (DRLP) under the Ministry of Justice is of the view that the existing Criminal Code and Criminal Procedure Code are applicable to a large extent and further amendments could bring them in full conformity with the Convention. The DRPL, together with the Committee on Law, Justice and Human Rights of the House of Representatives, has drafted amendments to the two Codes to make torture a specific criminal offence, impose appropriate penalties corresponding to the seriousness of the crime and guarantee the right of an individual alleging that he has been subjected to torture to

request the court to examine his case so that such person is protected from torture as stipulated in Article 13 of the Convention. Seminars have been organized to receive opinions from various sectors as well as civil society organizations on the proposed amendments.

8. The National Human Rights Commission of Thailand (NHRCT) has an observation that the definition of torture in the draft amendment of the Criminal Code prepared by the DRLP and the Parliamentary Committee on Law, Justice and Human Rights may not be in full conformity with that of the Convention on the following points: (1) limitation of mental injury inflicted on a victim of torture to that having a long-term effect; (2) no reference to discrimination as a specific reason for the commission of torture; and (3) the definition of public officials as appeared in the draft amendment which may not be inclusive of all public officials having duties in all types of places of detention such as public officials serving in psychiatric institutions. In addition, the draft amendment does not have provisions defining acts of cruel, inhuman or degrading treatment or punishment which is not considered as torture as stipulated in Article 16 of the Convention.

9. Recommendation: The NHRCT is of the view that a specific legislation should be enacted to implement the Convention. Such legislation should include the definition of torture and other cruel, inhuman or degrading treatment or punishment as that appeared in the Convention and provide guarantees that the investigation of torture cases shall be done promptly and in an impartial manner. However, if the Government opts for the amendment of the existing laws, it should revise the draft amendment of the Criminal Code on the various points observed by the NHRCT in paragraph 8 above.

10. In the policy statement made to the Parliament when assuming office in August 2011, Prime Minister *Yingluck Shinawatra* stated that the Government would ensure security of human dignity, undertake legal reform and strengthen law enforcement in accordance with the rule of law and human rights principles. Under the second National Human Rights Plan (2009-2013), concerned agencies identified amendment of relevant laws and improvement of legal mechanisms and law enforcement as a strategy to promote and protect human rights recognized in various human rights treaties. With regard to the Convention against Torture, the government will propose a draft law against torture to the Parliament and will revise laws and regulations relating to the compensation and remedy for torture victims. Despite the commitment at policy level, the progress of legal amendment is rather slow given that Thailand has become party to the Convention since 2007.

11. Recommendation: The Government should give priority to amending law against torture by setting specific timeframe for action on legal amendment and making serious efforts to up the amendment to comply with the timeframe in order that the Convention could enforce effectively.

Complaints on Torture in the Southern Border Provinces

12. Since the breaking out of violent incidents in the southern border provinces in 2004, the NHRCT has received 102 complaints on torture committed by public officials. In investigating these complaints, the NHRCT collected information from relatives of victims, human rights organizations

and concerned government agencies and visited some places of detention in the region. It has completed the investigation of 71 complaints, the main findings of which are as follows:²

1) Torture was generally committed by means of infliction of physical harm and intimidation or coercion by state officials or with their acquiescence, allegedly for the purpose of obtaining intelligence and information about instigators of violence or arbitrarily punishing individuals whom state officials suspected of having committed a crime against national security. Victims of torture were often Thai Muslims of Malayu descent. The NHRCT found that some security officers had negative attitude against this group of persons as could be seen from news reports in the media and some operations which seemed to be discriminatory.

2) The complaints stated that torture took many forms of physical and mental harm or degrading treatment such as covering the head of a suspect with plastic bag to cause suffocation, kicking, punching, and using electric shocks on or piercing burning cigarette into the body, detaining a suspect in an extremely hot or cold condition for a prolonged period, interrogating a suspect for a long period without rest, intimidating or putting psychological pressure on the suspect.

3) State officials accused of torture were often military and police officers who exercised powers of arrest, detention and interrogation of suspects arrested under special security laws. Torture usually occurred during or after the arrest of a suspected person or in detention places where detainees had no access to visits by their relatives or a legal counsel. The regulations governing the performance of duties by security authorities enforcing special security laws, such as those relating to search and arrest of suspected individuals, may not be sufficient in preventing torture.

4) The condition of some places of detention did not meet international standards since the Martial Law Act B.E.2457 (1914) allows the military to detain individuals in any places as deemed appropriate. Some detention places under the Emergency Decree on Public Administration in Emergency Situation, B.E.2548 (2005) were too small compared to the number of detainees and there was no oversight system of such places by an independent body.

5) Injured persons faced difficulties in getting access to the justice system. An injured person usually had to submit a complaint to the agency whose officials were accused of torture. Fearing threats and intimidation from public officials, many torture victims chose not to submit complaints or report torture cases to the authorities concerned.

13. Following the investigation of complaints, the NHRCT has made recommendations to the security agencies that measures be put in place to prevent torture at all stages of search, arrest and detention of individuals including maintenance of record of arrested or detained persons and of their admission, release or transfer to other institutions, requirement of physical examination by medical personnel and creation of an oversight system for places of detention by an independent body. If a person is arrested or detained under the special security laws, which do not provide for the same arrest and detention procedures as those of the Criminal Procedural Code, measures should be implemented to protect the fundamental rights of such person in accordance with Article 14 of the International Covenant on Civil and Political Rights (ICCPR). These include informing the person of reasons for his arrest, informing his family and relatives about the arrest, allowing visit by family members and facilitating access to a legal counsel. The arrested person should be required

² National Human Rights Commission, Rights relating to the judicial process: Investigation of torture cases in the southern border provinces, 2011, pages 38-45.

to appear before the court every time there is a request to extend the period of his detention. This would give such person or his lawyer an opportunity to object the request for an extended detention and the Court could examine his physical condition in case of an alleged torture. Moreover, interrogation practices should be revised to exclude violent methods and questioning of suspects should be conducted by professional and well-trained officers only.

14. Some government agencies have reported their implementation of the NHRCT recommendations mentioned in paragraph 13 above. The Ministry of Defense informed that the measures and recommendations of the NHRCT were being implemented as a normal practice and safety was always of priority consideration in all its operations. The Southern Border Provinces Police Operation Centre reported that the Center had treated suspects who were detained on security charges in compliance with human rights principles and performed its duties in accordance with relevant laws and regulations. As for visit of detention places, the Southern Border Provinces Administrative Center informed that it had visited prisons in the region and had interviews with inmates and prison staff regularly. It had not found any irregularities in the treatment of inmates that constituted a human rights violation.

15. The NHRCT has organized two workshops to promote knowledge about the Convention for law enforcement officers in the southern border provinces. The workshops have helped create a better understanding about the Convention among security officers and more permission has been granted for visit of detained persons by their relatives. Nevertheless, there are still cases where requests for visit have been rejected due to lack of understanding of some officers. The NHRCT has made special arrangement with security authorities in the southern border provinces to solve this problem. In case where the relative of the detained person has been denied the visit, he or she will inform a staff member of the NHRCT who will then coordinate with the officer in charge of the detention. In most cases, security authorities have granted permission for the visits upon coordination from NHRCT staff member. The problem reflects a lack of understanding of some security officers at operational level although the visit of detainees by their relatives has already been accepted by the more senior officers.

16. Recommendation: Despite confirmation from concerned agencies that they have performed their duties in accordance with the laws and human rights principles, the number of complaints regarding alleged assaults on arrested persons by public officials received by the NHRCT does not seem to decrease in a significant way. Such agencies should, therefore, strengthen supervisory measures to ensure that their staff members perform duties strictly in accordance with the laws. They should also review the rules and regulations relating to search, arrest, detention as well as the questioning techniques currently in use to ensure that they respect the rights of the detainees and can prevent torture in an effective manner. An oversight system for places of detention should be extended to those places under the supervision of the Ministry of Defense and the Southern Border Provinces Police Operation Centre. Thailand should consider acceding to the Optional Protocol to the Convention against Torture so that an independent national mechanism can be established to monitor places of detention on a regular basis. This will be a significant step in its efforts towards preventing torture.

17. Apart from the complaints received by the NHRCT, civil society organizations have also received many complaints about torture. There are cases in which concerned agencies conducted an

investigation and officers found guilty of the wrong doing were punished, but they are quite small in number. Generally, when there is a complaint requesting an investigation into an alleged torture, concerned government agencies tend not to pay attention to the torture victim and do not allow the relevant Sub-committee of the NHRCT to visit the victim, citing various rules and regulations to prevent immediate visit by the NHRCT Sub-committee and its holding a private interview with the detainee. There are cases in which that authorities set up an investigation committee but most of its members were from the accused agency. The investigation thus lacked transparency and usually led to a conclusion that no torture was committed although such conclusion was sometimes in conflict with the victim's medical examination and the investigation by the NHRCT Sub-committee.

18. Recommendation: The Government should restore confidence to the administrative system in delivering justice by promptly investigating a complaint about torture by public officials. Since the act of torture involves state officials, the Government should ensure that the investigation would be conducted fairly and impartially. An independent agency or a public prosecutor may participate in the investigation together with police. Any public official who is found guilty of torture must be subjected to both criminal and disciplinary punishments. Meanwhile, the government should provide protection for torture victims and witnesses from being threatened by state officials. Under the Universal Periodic Review (UPR) process, the Thai Government accepted many recommendations to investigate cases of human rights violations in the South and bring the perpetrators to punishment. It has also adopted a policy on the management and development of southern Thailand (2012-2014) which emphasizes the importance of bringing justice to the people in the area based on the rule of law and respect for human rights, including by scrutinizing the exercise of power of state officials to be in compliance with the law, investigating allegations relating to abuse of power and punishing those found guilty of wrong doing to eradicate the culture of impunity. The Government should make serious efforts to implement the accepted UPR recommendations and its declared policy on the development of southern provinces.

19. The NHRCT has found that the special security laws enforced in the southern border province, namely the Martial Law Act of B.E.2457 (1914) and the Decree on Public Administration in an Emergency Situation of B.E.2548 (2005), or the Emergency Decree, which provides for less stringent procedures of arrest, control and detention of persons from those of the Criminal Procedure Code, may induce a chance for abuse of power and commission of wrongful acts by law enforcement officers including torture. For example, Section 15 of the Martial Law Act empowers security forces to detain a person with reasonable grounds to be suspected of violating this law for the purpose of questioning or for other necessities for a period of 7 days without a court warrant. The Emergency Decree requires that a court warrant must be obtained for the arrest of a suspect under Sections 11 and 12 but allows authorities to detain the person for up to 7 days, a period longer than that stipulated in the Criminal Procedure Code. If necessary, the authorities may request the court to extend the detention for a period of 7 days each time (no regulations requiring the detainee to be brought before the court) with a total duration of detention not exceeding 30 days. Under the Emergency Decree, arrested persons are detained in other places than those specified in the Criminal Procedure Code and there are no provisions guaranteeing the rights of detainees such as access to a legal counsel and visit from relatives as stipulated in the Criminal Procedure Code.

20. Recommendation: The Government should review the enforcement of the Martial Law Act and the Emergency Decree in the southern border provinces. Such laws have provisions limiting the

rights and freedom of the people and should be used as necessary and for a limited period. In an area where the situation has improved, the Government should consider enforcing the Internal Security Act B.E.2551 (2008) which is less restrictive of rights instead. The procedures for search, arrest, detention, the formation of charges and investigation provided for in the Act are similar to those under the Criminal Procedure Code and the Act contains provisions that protect the rights of the accused person more in accordance with international standards.

21. The NHRCT is of the view that the Decree on Public Administration in an Emergency Situation does not provide for appropriate mechanism against wrongful exercise of power by the executive and its officials. Section 16 of the Decree stipulates that the announcements, orders or actions carried out under the Decree are not within the jurisdiction of the Administrative Court. In its judgment No.9/2553, the Constitutional Court ruled that any person suffering an injury from regulatory orders or acts of state officials under the Emergency Decree can bring the case to the Court of Justice pursuant to the Section 218 of the Constitution of the Kingdom of Thailand. However, the Constitution has provided for a dual court system with the establishment of the Administrative Court to adjudicate administrative cases separately from the Court of Justice. The Constitution also requires that the Administrative Court uses the inquiry system as the Court's procedure to allow the private party, who is in a more disadvantaged position than the state in an administrative case in terms of personnel, legal expertise, and ability to access documents or information, to receive a fair trial. The NHRCT is thus of the view that the Administrative Court should be the mechanism to review the exercise of state power under the Emergency Decree in consistence with the objective of having the dual court system. This should also allow an individual affected by an announcement or order issued under the Emergency Decree to submit a request to the Administrative Court to revoke such announcement or order together with its general application while a petition to the Court of Justice may only resolve a violation of rights in an individual case.

22. Recommendation: The government should consider a revision of Section 16 of the Emergency Decree by having the Administrative Court consider disputes arising from the exercise of power or cases of an administrative nature and the Court of Justice acts constituting a criminal offence. In addition, the government should consider amending the Decree to provide for a mechanism of check and balance in the declaration of the Decree. Section 5 of the Decree should be amended to limit the power of the Prime Minister in extending the state of emergency after the first period of the state of emergency has ended by requiring the Prime Minister to seek approval from the Parliament so that the legislative body can review the need for such extension.

23. The NHRCT is of the view that the provisions of Section 17 of the Emergency Decree, which stipulates that an official performing duty in suppressing or preventing acts that constitute a violation of this Decree shall not be liable to civil, criminal or disciplinary actions, may lead to a violation of human rights. These provisions are intended to provide confidence to officials to perform their duties under the Decree effectively and do no prejudice the right of a victim to claim compensation from the State under the law on liability for wrongful acts of officials. However, such provisions may result in officials performing their duties with over confidence and recklessness that could impact on the rights and freedoms of people. The NHRCT is of the view that the provisions of Section 17 refer to a common principle of law which protects an official from a legal liability if he performs the duties in good faith, without discrimination, reasonably for a given situation or as

dictated by necessity. Such principle has always been strictly upheld by the Court in its judgments. The provisions of Section 17 are thus unnecessary and may create a negative attitude towards the performance of duties of officials under the Decree even though such performance is for the common interest and necessity of the situation.

24. Recommendation: The Government should repeal Section 17 of the Decree on Public Administration in an Emergency Situation because without such provisions, an official who performs his duties under this Decree in good faith, without discrimination, reasonably for a given situation or as dictated by necessity, is already protected by the common principle of law. The repeal of Section 17 should help an official to perform his duties in a more careful and effective way and in accordance with the purpose of the Decree. Moreover, the public should have a more positive attitude towards the performance of duties of officials under the Decree.

Other Complaints on Torture Cases

25. There is no official statistics on the number of torture cases reported to the police and those that are prosecuted in court. Record is kept only on offences relating to bodily harm with no distinction made whether such harm is afflicted by a public official. This has made it difficult to make an accurate assessment of the situation of torture in the country.

26. Recommendation: Concerned government agencies should keep a separate record on torture cases committed by public officials. This should include the number of torture cases reported to the police, the number of cases prosecuted in court and the result of the consideration of the court on such cases. An analysis should then be made on the scope and causes of the problem of torture with a view to finding effective measures to prevent torture to achieve the ultimate goal of the Convention.

27. With regard to the work of the NHRCT, the first Commission (1999 to June 2009) received 35 complaints on torture cases during the period of, most of which were allegations about torture incidents in the southern border provinces. The investigation results of those complaints are mentioned in paragraphs 12-13 above. The current Commission (June 2009 to present) has received 69 complaints relating to torture. It has completed the investigation of 47 while 7 others are in the process of being investigated. Of the remaining 15 complaints, 10 are not within the NHRCT's mandate to examine in accordance with Section 22 of the NHRCT Act of 1999 since the matter is being considered by the Court while the examination of 5 others were terminated due to the withdrawal of the matter by the complainant and referral of the matter to other concerned agencies.

28. Among the 47 complaints that have been investigated, the NHRCT has found 7 cases of torture, 3 by the police and 4 by prison officials. One torture incident by the police took place during arrest of the suspected person while the other two happened during the time when the arrested persons were taken to an unknown place and were physically abused and forced to confess of committing the crime before being sent to the local police station. The NHRCT requested explanation regarding the alleged torture incidents from the authorities concerned and was informed that the matters had been looked into but no incident of torture had been founded. However, the NHRCT has an

observation that the examination of torture cases by the police relied mainly on the information provided by the officers alleged of committing torture. In one torture case, a committee of inquiry was established by the Police Inspector-General but no result was reported. The results of NHRCT's investigation of the above 3 torture cases are different from those of the Police. In the process of investigation, the NHRCT Sub-Committee on Investigation of Complaints on Violations of the Rights Relating to Criminal Justice found in two torture cases some inconsistencies between the police findings of torture cases examination and medical reports which stated that the injuries suffered by the suspects were likely to be caused during the period when the suspects were under custody of the police. The NHRCT has sent these findings to the Royal Thai Police and requested that the police officers involved in the two torture cases be prosecuted and appropriate remedy be provided to the torture victims. In the other torture case, the medical report stated that the injuries suffered by the complainant were caused by an accident. However, the complainant claimed that he was in fact beaten by the police but told the doctor that it was an accident out of fear of reprisal. In this case, the complainant has filed a lawsuit against the police officer allegedly involved in the case.³

29. Recommendation: Given the findings of the above torture cases, the NHRCT has made recommendations to the Royal Thai Police to adopt a more effective supervision of police officers in the performing of their duty to ensure that the arrest of suspected persons is carried out strictly in accordance with the provisions of the Criminal Procedure Code and the evidence of crime is obtained by legal means. It should ensure that police officers take into account human rights principles and human dignity when performing their duty to prevent recurrence of torture incidents in the future. When there is a complaint about torture, an investigation should be instituted that accords fairness to the complainant. Should any officer be found to have committed torture, prosecution and disciplinary actions must be taken against him. As the alleged offenders in torture cases are public officials, the authorities concerned must ensure that the investigation of torture cases is carried out in an impartial manner.

30. Recommendation: Concerned government agencies should disseminate information and promote understanding about the Convention widely among police officers and other law enforcement officials having the power to conduct search, arrest and detain individuals. It should also consider becoming party to the Optional Protocol of the Convention as mentioned in paragraph 15 above.

31. As regards the 4 cases of torture by prison officials, 3 of them involved infliction of bodily harm on detainees to force to confess of having in possession prohibited items, i.e. narcotic drugs and mobile phones, while the other one involved punishment of a detainee for inappropriate behavior and disobedience to prison official's order. In each of the 4 cases, a procedure was instituted either by the Prison Chief or by a Correctional Inspector to investigate the allegations. In one case, the prison officials received a punishment of extra guarding duty of 2 days but with extenuating circumstances, the punishment was reduced to admonishment. In other two cases, no physical abuse was found and in the last case, the NHRCT did not receive the investigation report from the authorities concerned.

³ Human rights investigation report no. 474/2556 dated 3 July 2013 on the right to life and liberty of persons: Allegation on physical abuse by officers of Mae Sod Police Station, Tak Province.

32. From the information provided by the concerned authorities, the NHRCT has an observation that although action was taken to investigate the complaints, it was done mostly by prison officials. The information obtained from the investigation was largely from prison staff and detainees who were assigned to assist them. Since the assisting detainees were under the command of prison officials, the fear of getting reprisal from prison officials might prevent them from telling the truth. This is reflected in one of the case where the information about the allegations provided to the NHRCT Sub-Committee on Investigation of Complaints on Violations of the Rights Relating to Criminal Justice by the witnesses who were detainees was different from that appeared in the investigation report of the Corrections Department.⁴

33. Recommendation: The Corrections Department should provide human rights education for its officials and put in place measures to ensure that they perform their duty strictly in accordance with the Disciplines of Corrections Officials Act of B.E. 2482 (1939) and the Code of Ethics for Corrections Officials and that human rights principles are taken into account to prevent recurrence of physical abuse of detainees. It may also consider other preventive measures such as installing surveillance cameras in areas where human rights violations are likely to occur and setting physical distance between prison wardens and inmates.

Visits to Places of Detention

34. Apart from receiving complaints relating to torture, the NHRCT also makes visits to places of detention nation-wide, including detention places at police stations, prisons and immigration detention centers. During 2012-2013, the NHRCT Sub-Committee on the Rights Relating to Criminal Justice visited detention places of 16 police stations and 17 prisons in different regions of the country to obtain information for developing relevant policy recommendations for the administration of these places in accordance with human rights principles. In the case of detention places of police stations, it is found that most police stations have separate cells for male and female detainees and for juvenile offenders. They are generally in good physical condition except for a few stations which have rather worn out detention places and cleanliness problem. Most police stations have non-prescription drugs to treat detainees for minor illness. As a suspected person is usually detained for a relatively short period, there has been no case of serious illness among detainees.

35. As regards visits to prisons, it is found that most prisons are rather crowded. Some of them are not in good physical condition and the limitation of space does not allow for clear-cut separate areas between under-trial detainees and convicted persons. Almost all of the prisons visited are faced with insufficient budget and staff. The overcrowding population of the prisons has affected the performing of duties of prison officials, who have to take on more workload than usual and are exposed to danger. The situation has also impacted on the effectiveness of prison administration and rehabilitation of prisoners. All of the visited prisons provide nutritious food to inmates but some of them do not have enough clean water and face water shortage during dry season which affects the hygiene of inmates. Most prisons do not have adequate medical personnel or psychiatrists to

⁴ Human rights investigation report no. 760/2012 dated 10 October 2012 on the right to life and liberty of persons: Allegation on physical abuse by officials of Chaiphume Prison.

provide counselling to prisoners. Some of them lack full-time nurses and inmates with contagious diseases such as tuberculosis and certain skin diseases are not put in separate wards due to limitation of space.

36. Prison wardens may use force if inmates become disobedient. This can lead to clashes and creates a possibility where inmates can be physically harmed. Disciplinary punishments must be done in accordance with the Corrections Act of B.E. 2479 (1936) and relevant ministerial regulations. Such punishments range from probation and deprivation of benefits and rewards to solitary confinement and reduction of the number of days of the commuted sentence. Most prisons use segregation, solitary confinement and shackling to punish inmates for breaking disciplinary rules except for two visited women prisons which no longer use these forms of punishment. All of the prisons have a visiting system and relatives are usually allowed to leave personal items for the prisoners. However, in some prisons facing widespread drug problem, leaving of personal items is not permitted to prevent smuggling of drugs and other prohibited items into the prison. This has affected other inmates who are not involved in the drug problem. As regards rehabilitation, every prison provides for education of inmates up to college level as well as for vocational training. Prisoners are allowed to work and receive remuneration for the work they have done. On complaint procedures, a prisoner may submit a complaint in accordance with the Interior Ministry Regulation issued under section 58 of the Corrections Act, B.E. 2479 (1936). The complaint can be submitted to a prison warden or put in a place indicated specifically for this purpose. If the prisoner wishes to keep the complaint confidential, the warden may not read its content and must forward it to the addressee.

37. Recommendation: The Government should address the overcrowding problem of many prisons by adopting appropriate criminal justice policy including resorting to court cases diversions and using punishment forms that are suitable for the type of wrongdoing to reduce the number of detainees in the prison, which should be reserved for offenders of serious crimes only. It should also allocate financial and personnel resources necessary for an efficient administration of the prison. Each prison should ensure that different types of detainees are kept in separate areas in accordance with international standards and outsourcing detention of under-trial persons to the private sector should be considered. The Corrections Department should ensure that every prison under its supervision can provide enough clean water for the detainees and appropriate medical care is available to the sick persons. On disciplinary punishment, other instruments of restraint should be considered instead of shackling which is regarded as degrading. Moreover, the Corrections Department should review the remuneration of correctional officials to correspond with the workload and risk inherent in the job to give them incentives to work effectively.

38. During 2011-2013, the NHRCT Sub-Committee on the Rights of Children and Women and Equality of Persons visited 3 juvenile observation and protection centers, 3 correctional institutions for women and one protection and occupational development center. The visited juvenile observation and protection centers offered a wide range of services to detained children including counselling, vocational training, education provided by the Non-Formal and Informal Education Department of the Ministry of Education, life-skills learning, and drug treatment. Children having specific problems were taken care of with the help of a multi-disciplinary team. As for correctional institutions, the Bangkok Central Correctional Institution was rather crowded with the number of detainees exceeding the holding capacity of the prison. Children of detainees were allowed to stay

with their mother for one year and then moved to *Boonthorn* Home for Children where they could be visited by their mother once a week. *Chiangmai* and *Thanyaburi* Correctional Institutions were generally in good condition with relaxing atmosphere. However, *Thanyaburi* Institution, which was specifically for women prisoners who were drug addicts, lacked medical personnel with expertise in drug treatment. The Sub-Committee also visited *Kredtrakarn* Protection and Occupational Development Center which provided shelter to women and girls having family problems or being lured into forced labor or sexual exploitation. The Center offered vocational training to its residents to prepare them for a decent livelihood, engaged in family visits and provided assistance to the residents' families as appropriate.

39. The visit to immigration detention centers is related to the problem of Rohingya migrants. Racial conflicts and violence in Myanmar have caused many Rohingyas to leave their country by sea. A number of Rohingya migrants were apprehended in Thai waters on the way to their destination in third countries such as Malaysia and Indonesia. These Rohingyas are detained as illegal immigrants awaiting return to their country of origin when the situation there permits. The increasing number of Rohingya migrants arrested by the Thai authorities has overcrowded many immigration detention centers. As of 1 May 2013, a total of 2,026 Rohingyas have been arrested. With many detainees having escaped detention and a few deaths, there remains 1,934 Rohingyas in various detention centers all over the country, mostly in southern provinces, with the exception of 374 Rohingya women and children who have been transferred to different children and family homes run by the Ministry of Social Development and Human Security.

40. In 2009, the NHRCT received a complaint about the death of 2 Rohingya detainees in *Rayong* province. The NHRCT Sub-Committee on Civil and Political Rights have investigated the case and found that the overcrowded condition of the detention center with insufficient ventilation and a lack of adequate medical care to Rohingyas with chronic or serious sickness, had contributed to the death of the two detainees. The Sub-Committee visited several immigration detention centers in various provinces during March-July 2013 and received a report that 8 Rohingyas have died while in detention. Although 7 of them were sent to the hospital for treatment, they were in quite a critical condition when admitted. Most Rohingya migrants were malnourished and weak from the long and arduous journey. Medical check-up is usually done before they are admitted to the detention center to separate those suffering from malaria from the rest, but medical care to sick detainees is not provided in a continuous manner. Communication problems due to a lack of interpreters have put obstacles to the treatment and might have rendered it ineffective.

41. Many Rohingya detainees have become depressed from the prolonged and indefinite detention due to unresolved problems in the country of origin. Some have caused violent incidents and tried to escape from several detention centers. There are reports that a number of Rohingyas were sent to the border but were not handed to Myanmar authorities (soft deportation). Another group of Rohingyas were taken to the Thai-Malaysian border and there are reports that their relatives in Malaysia were demanded to pay some money if they wanted these Rohingyas to be taken into Malaysia. Those Rohingyas who did not have any relative or a means to pay would be sold to work on a fishing vessel or physically harmed, leading in some cases to their death.

42. Recommendation: The Government should protect the basic rights of Rohingya migrants in Thailand, especially by providing appropriate medical care and treatment to the sick Rohingyas. At

the same time, the Government should consider other alternatives to holding Rohingya migrants in immigration detention centers. An arrangement could be made for them to stay in a temporary shelter and international and private non-profit organizations be allowed to provide humanitarian assistance. Another alternative is to permit Rohingya migrants to work temporarily in accordance with Section 13 of the Work of Foreigners Act, B.E. 2551 (2008). The Government should also provide for a screening procedure to identify Rohingyas who are victims of human trafficking or who are considered refugees so that they are given appropriate protection. At policy level, Thailand should engage Myanmar and Bangladesh in an effort to resolve this problem both by addressing the root causes in the country of origin and in handling Rohingya migrants in Thailand. It should also seek cooperation from the ASEAN Community in finding a more lasting solution. The Government should take serious action against those involved in the illegal smuggling of Rohingyas into the country, be they Thai, Myanmar or Bangladeshi brokers or Thai officials involved in the human trafficking.

Protection of Victims and Remedy

43. The Government is in the process of amending Section 90 of the Criminal Procedure Code to protect a person from torture in accordance with Article 13 of the Convention. The amendment would enable the person alleging that he has been subjected to torture or other persons, i.e. the prosecutor, the police investigator or any person for the benefit of the victim of torture, to submit to the Court a request that his case be examined and that an interim protection measure be provided. The Court shall also issue an order to provide for the remedy to the victim of torture. Witnesses in torture cases may also receive protection by the provisions of the Protection of Witnesses in Criminal Cases, B.E. 2548 (2003). According to the Act, the police investigator, the Court or the Office of Witness Protection may put the witness in a criminal case who is in danger under a protection program as deemed appropriate or at the request of the witness or any other person having related interest with the witness. Such protection may be extended to other persons having close relationship with the witness who might be exposed to danger from the witness' cooperation with the authorities. The task of providing protection to a witness is currently under the responsibility of the Department of Rights and Liberties Protection (DRLP), the Ministry of Justice. However, there is a plan to transfer this task to the Department of Special Investigation (DSI) due to DRLP's human resources limitation. The NHRCT is concerned that the transfer of witness protection task to an agency having the mandate and power to investigate criminal cases such as DSI may negatively affect the safety of witness should an officer of that agency is allegedly involved in the act of torture.

44. Recommendation: The Government should expedite the amendment of Section 90 of the Criminal Procedure Code to give protection to a person allegedly being subjected to torture. It should review the planned transfer of task of providing protection to witnesses in criminal cases to the DSI. The NHRCT is of the view that the DPRL is the agency more suitable to the task and the Government should provide it with sufficient financial resources and personnel to enable it to carry out the task effectively.

45. Section 44/1 of the Criminal Procedure Code and Section 420 of the Civil and Commercial Code guarantee the right of an injured person to submit to the Court a request for compensation for the loss and damage to his life, body, reputation or property caused by the commission of a criminal offence in accordance with Article 14 of the Convention. However, the offender is usually not in a position to pay for the compensation. Therefore, the Act on Restitution for Injured Persons and Compensation and Expenses for the Accused in Criminal Cases was passed in 2001 to give effect to the right of persons suffering injuries from a criminal offence committed by other persons whose injuries may not be remedied by other means to appropriate restitution as guaranteed in the Constitution in force at the time. The right of the injured person to remedy is confirmed in Section 32 of the current Constitution.

46. There are, however, some limitations on the request for restitution by the injured person in a criminal case in accordance with the 2001 Restitution Act. A request for restitution is limited only to persons affected by certain criminal acts, i.e. sexual offences (Sections 276-287 of the Criminal Code) and offences against life and body (Sections 288-308). The restitution that the injured person is entitled to includes: (1) medical expenses including those actually paid for physical and mental rehabilitation worth not more than 50,000 baht; (2) compensation for loss of earnings due to inability to work of not more than 200 baht per day; (3) compensation for the loss of life of the injured person and funeral expenses of not more than 120,000 baht and compensation for those deprived of support caused by the death of the injured person of not more than 30,000 baht; and (4) compensation for other damages as deemed appropriate by the Committee on Restitution established by virtue of the Act worth not more than 30,000 baht.

47. There are some obstacles that might prevent the injured person from receiving the remedy as stipulated in the 2001 Restitution Act. Firstly, the type of criminal offences specified in the Act has restricted access to remedy of persons suffering injuries from other wrongful acts. Secondly, the one-year period, starting from the date when he knows of the wrongful act, during which the injured person must submit a request for compensation is too short. Moreover, many victims of crime do not know of their right to restitution and have failed to exercise such right. Lastly, some victims have complained that the various compensation rates set by the Restitution Committee are too low and do not correspond with the actual cost of living.

48. Recommendation: When the Criminal Code is amended to include “torture” as a separate offence, such offence should be included in the 2001 Restitution Act as a basis for request of compensation. The Government should also amend the Act to extend the period during which the injured person can submit such request and undertake awareness raising activities, including in cooperation with lawyers’ association, to inform the people about their right to restitution. The Restitution Committee should review the rates of different types of compensation so that they are appropriate to the damage suffered by the injured person and reflect the actual cost of living. For example, the compensation for physical and mental rehabilitation should take into account the period of time needed to restore the injured person’ health as specified in a medical report. Likewise, in making compensation to support a dependent of the victim who has lost his life, consideration must be given to the period of time during which the dependent will receive support should the victim remain alive. In both cases, the suitable compensation might be higher than the rates set by the Restitution Committee. As for the compensation for loss of earnings, the rate of

such compensation should not be lower than the legal minimum wage, which is currently at 300 baht per day.

49. From its examination of complaints on torture in the southern border provinces, the NHRCT found that victims of torture had suffered physical and mental injuries, some of them having lost their lives. However, either treatment was not provided or there was no follow up on the physical and mental rehabilitation of the victims. Following the breaking out of violent incidents in southern border provinces in 2004, the Government approved in 2005 the guidelines for the assistance and remedy to those affected from the incidents. According to the guidelines, the Government would pay a compensation of 100,000 baht to an individual who had lost his life and 80,000 baht to a person who had been disabled. Later in 2012, the Government revised the guidelines in line with those for persons affected by political conflicts during late 2005 to 2010 with retrospective effect to incidents taking place from 2004 onwards. Under the new guidelines, the compensation for the loss of life is increased from 100,000 baht to 500,000 baht and that for disabled person from 80,000 baht to 500,000 baht. As for people who have been injured or lost their lives due to the performance of duties of public officials in a specific incident such as *Grue Sae Mosque* and *Tak Bai* incidents, the Government will pay a compensation ranging from 4,500,000-7,000,000 baht. This is also applied to enforced disappearance of persons where there are reasonable grounds to believe that a public official is involved. The Southern Border Provinces Administrative Centre stated in its 2012 annual report that the Government has provided remedy to 528 victims who lost their lives, had been injured or disabled due to the performance of duties of public officials during violent incidents with the total sum of 1.1 billion baht. Among the 528 cases, 473 were victims in specific incidents while 55 involved other violations of rights and enforced disappearance. Persons suffering injuries from the performance of duties of public officials in cases other than those relating to violent incidents in the South may receive remedy by the provisions of the 2011 Act on Restitution for Injured Persons and Compensation and Expenses for the Accused in Criminal Cases which provide for compensation of much lower value. (This does not prevent the victim from submitting request to the Court for remedy in accordance with Section 44/1 of the Criminal Procedure Code.)

50. Recommendation: The Government should review guidelines and relevant laws on the assistance and remedy to victims of torture by public officials to ensure that the remedy they receive is adequate and fair and is based on the principle of non-discrimination. A victim of torture in similar circumstances should be entitled to similar remedy regardless of where the commission of torture takes place. If there are differences in the criteria of compensation given to victims of torture, such differences should be reasonably justified.

51. The NHRCT is of the view that the Martial Law Decree of 1914 does not provide for the right of an affected person to remedy. According to Section 16 of the Decree, a person may not claim a compensation or indemnity from the military authority for any damage which may result from their exercise of powers although many of the operations prescribed in the Decree may affect the rights and freedoms of the people. Such provision is not in conformity with Article 8 of the Universal Declaration of Human Rights and Article 2.3 (a) of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right of any person to an effective remedy for a violation of his or her right recognized in the Covenant.

52. Recommendation: The Government should consider amending Section 16 of the Martial Law Decree of 1914 to protect the right of those suffering injuries from the enforcement of such law to appropriate compensation and remedy to comply with Thailand's obligation under Article 2.3 (a) of the ICCPR.

Conclusion

53. The problem of torture remains a challenge for Thailand although the country has become party to the Convention against Torture since 2007. Torture incidents usually occur in conjunction with the arrest and detention of persons that are not carried out in strict compliance with the law and cases of alleged torture by public officials seem not to be seriously pursued so that the offenders are held accountable for their wrongful acts and brought to justice. The problem of torture seems to be more serious in the southern border provinces where special security laws are enforced. The Government should pay greater attention to ensure that public officials perform their duties strictly in accordance with the law. In the southern border provinces, the enforcement of the Martial Law Decree and the Emergency Decree on Public Administration in Emergency Situation should be limited to the extent strictly required by the exigencies of the situation. In areas where the security situation has improved, the Government should consider enforcing the 2008 Internal Security Act instead since the provisions of the ISA Act does not have as much impact on the rights and freedoms of the people. It should ensure that appropriate measures are put in place to effectively protect of the basic rights of the accused and prevent torture. Victims of torture s should be provided with a fair and sufficient remedy in accordance with Thailand's obligations under the Convention against and the International Covenant on Civil and Political Rights.
