

SITUATION OF RIGHTS TO LIFE
AND PROHIBITION OF
TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR
PUNISHMENT

Arts 2 (3), 6 and 7 of the Convention of Civil and Political Rights

to

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and Patani Human Rights Network (HAP)

Summary

- 1) Since 2012, CrCF together with Duayjai and the Patani Human Rights Organization (HAP) have been documenting torture and ill treatment in Thailand by using the Istanbul Protocol proxy questionnaire. From 2004 until now, we have documented 167 allegations of torture and/or ill treatment. Previously, CrCF has taken the lead in submitting shadow reports to various UN human rights bodies (UPR 2011, CRC 2011 CERD 2012, as well as the Committee for Convention against Torture (CAT-for 2013/2014), and submitted complaints to the UN Special Rapporteur on Torture and the UN Working Group on Enforced or Involuntary Disappearances. Furthermore, CrCF has cooperated on various occasions with the Office of the United Nations High Commissioner for Human Rights (OHCHR) in organizing and conducting trainings and workshops for Thai human rights organizations.
- 2) Until date, CrCF continues to receive reports of cases of violation of the right to life and prohibition of torture and ill treatment; deaths in custody, arbitrary detention and enforced disappearances. Thailand has yet to ratify OP-CAT. Currently, there is no mechanism to monitor human rights violations, to support victims in submitting complaints or to investigate these complaints. Research into these practices in the protracted conflict in Southern Thailand has shown that the practice of torture and other ill-treatment is both widespread and systematic in the context of counter-

insurgency operations. There is an ongoing failure on the part of the authorities to investigate torture allegations and prosecute suspected perpetrators. Moreover, the victims/survivors of torture, families of disappearances and human rights defenders are under threat and intimidation includes judicial harassment. In addition, there is an urgent need to promote proper understanding of the absolute prohibition of torture and other ill-treatment and put in place safeguards, preventive and investigative mechanisms. Also there is a need for an understanding of the respective duties of security service personnel, the judiciary, lawyers, forensic doctors, health personnel and psychologists to strengthen reporting, documentation and effective provision of redress to torture survivors and their families.

State of Emergency in the Southern Border Provinces

- 3) We are concerned about numerous allegations of torture and ill-treatment during the State of Emergency in the Southern Border Provinces. We note that the State of Emergency has been prolonged and that the exercise of fundamental human rights has been restricted. Martial law allows 7 days detention without charges and the Emergency Decree allows a maximum of 30 days without charges, but with the approval of detention of a local court. Both laws do not respect the absolute and non-derogable nature of prohibition of torture, meaning that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Thai security laws allow the military to hold detainees for up to 37 days without any effective safeguards against rights abuses, including access to lawyers and family members. Suspect insurgent in the southern border provinces are vulnerable to serious abuses during pre-charge detention. There are 13 extrajudicial killing related court cases currently undertaken by Cross Cultural Foundation together with Muslim Attorney Center. All the cases are for those alleged to be involved in insurgency and were abuse during attacks or counter insurgency operation. The well-known case of Takbai incident in Oct 2004 that caused 84 deaths was not repeated however, extrajudicial killings is still widespread. Please see the selected EJE cases detail in appendix1. In addition, the 13 years violent conflict caused more than 6,000 deaths and 10,000 injuries both by multiple conflict parties both state and non-state actors.
- 4) From a recent report called ‘Torture in Pattani’¹ it became clear that torture and ill treatment occurred mostly during the detention under the special martial laws. Nationwide, the detention under the special laws, such as the drug suppression law, allows 3 days detention in a secret detention by authorized officers (Drug Suppression ACT). After the coup, NCPO order no. 3/2015 allows 7 days detention without oversight mechanism over this pre-charge detention. The arrested person is often detained in a secret detention of the NCPO. UNCAT Committee states that in Thailand, the special laws provide for enlarged executive powers of administrative detention without adequate judicial supervision and weakened fundamental safeguards for persons deprived of their liberty. Under section 15 of the Martial Law and section 12 of the Emergency Decree, a suspect can be held for as long as 37 days without a warrant or judicial oversight before being brought before court. Also, there is no restricted rule that a detainee be brought before a court at any stage of his/her detention and the location of detention is not always disclosed.

Human Rights Defenders

- 5) In the past few years, cases of intimidation and threats against human rights defenders have been on the rise. Some of the notable cases are:

¹ <https://voicefromthais.wordpress.com/2016/02/10/press-release-launching-torture-report-pattani-full-report/>

- SPA case, or the case against Mr. Somchai Homlaor (Representative of CrCF), Ms. Pornpen Khongkachonkiet (Representative of CrCF) and Ms. Anchana Heemmina (Activist from Pattani in the South of Thailand) for issuing a Report on Torture on 10th February 2016. The Internal Security Operation Command (ISOC, which is a leading security agency of the Army under the Office of the Prime Minister) related the Pattani Torture Report to criminal defamation and violation of the Computer Crime Act.
- More than 20 land rights activists in Northeast Thailand are facing charges related to land encroachment. These cases evolved out of unresolved land disputes between the communities and forestry or park office under the management of Ministry of Natural Resources and Environment. In August 2016, a military officer from Chumpae District in Khon Kaen Province filed a complaint against two land rights activists on the charge of defamation caused by information posted by them on the internet. The information related to visits made by military officials to their home prior to the Constitution Referendum in August 2016. In response to advocacy efforts of CrCF and its partners, including the UNOHCHR, Front Line Defenders and Ministry of Justice (MOJ), the military withdrew the complaint in December 2016.

Monitoring cases of Enforced Disappearances

6) Based on the monitoring of the remedies provided to the 30 victims of enforced disappearance in the Southern Border Provinces of Thailand during 2002-2008, plus two in 2009, one in 2010 and two in 2011, altogether 35 cases, it was discovered that the State has failed to support the families of the disappeared with humanitarian relief, and that they are not entitled to any benefits for affected persons or to redress, due to unrest in the Deep South. This is inconsistent with the Act for the Granting of Compensation to Aggrieved Parties and the Accused in Criminal Cases B.E. 2544 (1991). The enforced disappearances in Thailand continue until date without prosecution and reparation.

7) On 24 January 2016 Mr. Fadel Sohman was abducted at a private school in Pattani province. His family submitted a report on his disappearance to the police on 25 January 2016, but no further investigation has been done. On 16 April 2016 Mr. Den Kamlae, a 65-year-old core member and activist for land rights for the Khok Yao forest community, Chaiyaphum, was last seen on his way into the forest area, which was adjacent to the Phu Sam Phak Nam Forest Reserve and the Phu Khiaw Wildlife Sanctuary.

8) In July 2016, CrCF carried out a fact finding mission on 23 graves found in Ban Phu District, Udonthani province, after receiving 40 cases of complaints from the villagers. These graves were estimated to be up to 25 years old and recent one. However, no further investigation on the issue has been conducted by the Thai authorities.

9) On 6 June 2010, Private Ismael Nadaraning, a military private under the 4th Rifle Company, Krom Luang Songkhla Nakharin Military Camp, Songkhla, allegedly went missing after his mother, Ms. Arsisao Nadaraning, last received phone calls from him. It has been 6,5 years since and the fate of Private Ismael's disappearance is still unknown.

10) The 30-year-old leader of an ethnic Karen community, Petchaburi, and the amicable father and husband, Mr. Pholachi Rakchoncharown (aka Billy), went missing on 17 April 2014. His wife, Mr.

Pinnapa, attempted to take up the case for investigation but got dismissed by the Department of Special Investigation on 16 December 2016.

11) On 24 June 2007, Mr. Mayateng Maranor, the janitor of Ban Bang Lang School, Yala, was taken away in front of his wife and children. Mr. Mayateng was last seen in military custody and no further information about his well-being has been reported since. Unlike most cases, the affected family was granted cash compensation via government scheme by cabinet resolution and civil litigation. For more details on the cases please refer to Appendix 2.

12) Despite of the formation of an Special Committee by the Ministry of Justice since 2007 and again in 2014, there has been no improvement of State remedies in the cases of enforced disappearance. Furthermore, none of the cases has been subject to investigation and the victims' families have not been provided access to mechanisms that protect the rights of the disappeared.

Draft bill on Suppression and Prevention of Torture

13) Torture is not recognised as a criminal offence in Thai domestic law (however, causing harm to a person is penalized under the Criminal Code). Thailand has ratified CAT and signed CED. There is no mechanism for independent investigation on allegations of torture. It is difficult to secure independent investigation in cases of torture in normal circumstances. These barriers are increased manifold when allegations of torture are made in cases, which have political overtones or involve high profile people.

14) Civil society organizations who have been engaged in documenting complaints of torture in the Deep South since 2012, allege that numerous complaints relating to torture have been received, indicating that 'torture and ill-treatment' may be systematic in the Deep South. There is a need to recognise 'torture and ill-treatment' as specific offences under the criminal law in Thailand. There is also a need to create awareness regarding the absolute prohibition placed by international laws on torture, as well as State obligations under CAT, not only amongst law enforcement officers but also amongst forensic doctors, health personnel and psychologists, to strengthen provision of remedies to torture victims/survivors and their families.

15) The Ministry of Justice in Thailand has drafted a bill on Torture, following the CAT review in 2014. The bill contains the definition of torture in accordance with the CAT and duties to provide redress and rehabilitation measures, both physically and psychologically. If the bill is passed by the Parliament, it would provide for a legal structure required for establishing a rehabilitation center. Government agencies have not implemented the CAT's concluding observations released on 23 May 2014 especially on investigation, rehabilitation and redress for all torture victims. The monitoring of detention facilities of both army and police under special laws and normal criminal procedure is very limited.

16) In November 2014, the Cabinet sent the bill back to the Ministry of Justice for a review. There was no progress throughout 2015 until the 2nd UPR review on Thailand in March 2016, which gave some pressure. The Cabinet passed the Bill on 24 May 2016 with condition to send it to the Council of State for a review. During May 2016-September 2016, the bill was reviewed on a confidential basis without the consultation of civil society organizations (CSO's). Then it was sent back to the cabinet on 27 December 2016, cabinet passed it and it is schedule to send to National Legislative Assembly soon.

17) CSO's were not able to provide comments after it was reviewed and amended by the Council of State. There is fear that the new draft has been watered down and there is need to do strong advocacy that the proposed law should fully comply with CAT and CED. The authorities must ensure that the final draft Act brings about full domestic compliance with the provisions of UNCAT and the International

Convention for the Protection of All Persons from Enforced Disappearance (CED). In its current form, the draft Act defines the crime of torture according to UNCAT. However, the Committee that would be in charge of investigating complaints, as well as designating and changing prosecutors in cases of torture would be headed by the Minister of Justice and have many high-ranking civil servants as its members. This Committee would therefore fail to meet the requirement of impartiality of investigations as stipulated by Article 12 of UNCAT.

Torture Investigations and Impunity

18) Authorities' continued failure to promptly, independently, impartially and effectively investigate torture allegations highlights the absence of an impartial oversight mechanism with full functional capacity and powers. Authorities have allowed suspected perpetrators to remain on active duty without subjecting them to any disciplinary measures. Provisions in special laws and NCPO Orders providing immunity from prosecution have further compounded a climate of impunity. Independent bodies including National Human Rights Commission have failed to deliver promptly, independently and effective investigation and redress. While the National Anti-Corruption Commission (NACC) receives some complaints on torture, it is functionally a "graveyard" where torture investigations are metaphorically buried. Courts are also failing in their duty to investigate allegations of torture, including in cases of court inquests into deaths in custody.

19) CrCF has an opinion that a criminal proceeding in cases involving serious crime relating to special circumstances such torture and death in custody has to be conducted with accountability and transparency. Insofar, Thailand's justice system has constantly been developed on par with international standards based on the rule of law.

Role of National Anti-Corruption Commission (NACC)

20) CrCF has documented and released our press statement on 14 Oct 2015 on the Supreme Court dismissed case filed by Pol Gen Chakthip against Mr. Sudeeruan for reporting false information relating to the investigation of DSI and NACC on allegation that gun robbery suspects were tortured by police(s). It took 5 years till the Supreme Court dismissed the case filed by Pol Gen Chakthip Chaijinda currently Royal Police commissioner of Thailand (then, Pol. Gen.Maj.) against Mr. Sudeeruan Maleh since 2009. It stemmed from the evidence the defendant in this case had given to inquiry officers of the Department of Special Investigation (DSI) and the National Anti-Corruption Commission (NACC). The case has reached its final verdict as the Criminal Court read out the verdict of the Supreme Court no. 11720/2557 on 30 September 2015 in which the Court dismissed. The case was relating to the gun robbery at the Narathiwat Rajanagarind (Pileng) Army Camp in Jao Ai Rong District, Narathiwat in 2004. Later a dozen of suspects in this case alleged that they had been subjected to physical abuse and forced to confess to the crime by the police investigators. After the investigation, the DSI found there was a prima facie case and referred it to the NACC for further action.

21) NACC was used to be a graveyard for "torture investigation". From 19 to 21 March 2008, successively, the military and police officials have held in custody Mr. Rayu Dorkor, along with Imam Yapa Kaseng and other individuals and brought to them a press conference during which they were presented as being members of the insurgent group in the Southern Border Provinces. Later, they were detained in a truck for holding illegal offenders which belonged to the Royal Thai Police and located in Taskforce 39 Narathiwat. Several military officials have collectively beaten up Mr. Sukilanai Lohma, Mr. Rayu and Imam Yapa Kaseng forcing them to confess to being members of the insurgent group in the Southern Border Provinces. As a result, Mr. Rayu was inflicted with bodily and mental pain while Imam Yapa Kaseng has succumbed to death. The torture act described in the Narathiwat court decision on inquest trial case no. chor.19/2551 (2008) resulting death of Imam Yapa and two adults severe

injured could not be done but NACC only indicted one officer as stated by NACC decision dated 30 Aug 2015. Principally, NACC and PACC serve as the two independent anti-corruption commissions in Thailand. NACC investigates allegations of corruption involving high-ranking public servants and elected officials. PACC concentrates on allegations involving lower-ranking public servants.

Role of the court:

22) On 2 April 2015, a post mortem inquest was conducted in room 905 of the Criminal Court in the Black Case no. Chor 9/2557 over the death of Mr. Surakrich Chaimongkon, 35 years, who was accused of shooting dead Mr. Suthin Tharathin, a core member of those opposing elections on 26 January 2014. The arrest of Mr. Surakrich took place on 8 July 2014 invoking Martial Law and he was brought to custody at the Bangkok Remand Prison since 9 July 2014. He was pronounced dead on 28 August 2014 at the Bangkok Remand Prison due to unnatural, albeit unclear causes. Observing the court procedure on inquest, CrCF has found the investigation of the death in custody of Mr. Surakrich delay, ineffective and intended to cover the truth.

Role of NHRC:

23) In addition, National Human Rights Commission has also failure to perform their investigation on human rights violation seriously. CrCF has submitted two significant complaints letters on Torture allegation and on Death in Custody to National human rights commission in Feb 2016 and in April 2016 respectively. The both reply letters stated that the complaints shall cease as the investigation will be conducted if there is more fact and evidence.

NHRC reply letter dated 17 Aug 2016 on investigation of 54 torture allegations²;

“The Office of the National Human Rights Commission (NHRC) would like to inform you that the National Human Rights Commission (NHRC) had reviewed your complaint and found that regarding the complaint of the death of Mr. Abdulayib Doloh, it had been accepted for review as per the complaint no. 551/2558 dated 2 December 2015 and the report of the investigation shall be made separately. With regard to the demand for the investigation of facts revealed in the report on torture and other cruel, inhuman or degrading treatment in the Deep South during 2014-2015, it was found that the information in the report fails to provide sufficient facts to carry out a human rights investigation per Section 23 of the National Human Rights Commission Act B.E. 2542 (1999), and therefore it was decided that the investigation on this matter shall cease. Nevertheless, if you have facts and evidence pertaining to the case and would still want the NHRC to carry out further investigation, please furnish such information with supporting evidence to the Office of the National Human Rights Commission in order that the National Human Rights Commission (NHRC) shall execute its duties as provided for, with detail of the review as attached.”

NHRC reply letter dated 26 July 2016 on investigation of 20 deaths in custody;

“The Office of the National Human Rights Commission (NHRC) would like to inform you that the National Human Rights Commission (NHRC) had reviewed your complaint during the meeting on the protection and standards for human rights protection no. 16/2016 on 24 May 2016 and found your complaint falls under the mandate of the NHRC which shall be obliged to carry out the investigation and monitoring of the situation. As to the deaths in custody in the Southern Border Provinces per the report, the Human Rights Subcommittee had conducted the outreach investigation in the area and come

² Appendix 4

across almost all of the cases reported therein, though some cases are pending the investigation. Therefore, it was decided that the investigation on your complaint shall cease. Nevertheless, if you have facts and evidence pertaining to the case and would still want the NHRC to carry out further investigation on the other cases of death in custody as a result of torture, please furnish such information with supporting evidence to the Office of the National Human Rights Commission in order that the National Human Rights Commission (NHRC) shall execute its duties as provided for.”

Prosecution: attempt of victims' family

24) On 15 Dec 2016, Prachinburi court accepted the criminal lawsuit on the case that a victim of torture, Ritthirong Chuenchit suing Prachinburi police after more than six years of justice seeking. The hearing started since November 2015 – Dec 2016 (12 months in total). Prachinburi Provincial Court is now conducting pre-trial discovery in the Black Case no. 2 5 58/925 in which Mr. Ritthirong Chuenchit filed against seven police officers including two from the Muang Prachinburi Police Station and five from the Prachinburi Provincial Police. They are accused of being complicit in the abuse of official power, abuse of office, offences against body, and infringement on freedom as per Articles 157 , 200, 295, 305, 310, 391 coupled with Articles 83 and 91 of the Penal Code with the maximum sentence of death. Rittirong Chuenjit was allegedly beaten by police officers while in detention in January 2009. Rittirong had also filed a case with the Office of the Public Sector Anti-Corruption Commission which dismissed the case citing that there was no concrete evidence against the police. OHCHR continues to raise concern with the government on the lack of accountability on torture cases in Thailand. The Court decided to accept the case based on the psychological and medical reports of the victim.

Cash compensation for torture victims

25) Adil Samae case: Supreme Administrative Court found a military official guilty and ordered ISOC (PM office) to pay compensation for two torture survivors. May 18, 2016 marks an important date in the fight against torture in Thailand. The Supreme Administrative Court of Songkla read the official verdict ordering ISOC to pay 101,200 baht to Plaintiff no. 1 and 100,000 baht to Plaintiff no. 2 (with 7.5 % interest calculated from 2012) in damages for two victims who suffered torture/ill treatment in Yala Province. This will result in both Plaintiffs receiving approximately \$5000 USD each. The verdict stems from an incident that took place over 7 years ago in 2009, when the injured parties were then 14 and 20 years old respectively. The case sets an important precedent, extending the right to claim for damages beyond the torture victims themselves to the family members who were also unduly affected as a result of the abuse.

26. Ismael Teh, a former university student from Yala province was arrested, detained, and tortured in 2006. Ismael proceeded to file a lawsuit along with another plaintiff at Songkhla Administrative Court demanding compensation of damages for about 15,000 USD from torture, ill treatment and prolonged detention. Even though it took a substantial amount of time over the course of eight years, before the Supreme Administrative Court reached their final decision; the verdict was in favour of both tortured victims who received compensation on the account of physical harm and psychological damages which defied their dignity as human beings. The similar amount Supreme Administrative Court verdict also delivered to then 19 years old torture victim from Narathivath (same incident as Imam Yapha Kaseng, died in army custody), now 25 years old married man.

Torture used as tool for confession: Cases of suspects of robbery

27) On 26 July 2017 around 2 AM, Mr. Youssef Benhatoun, and Mr. Othmaned Tigzirine were robbed at Samroi yod District, Hua Hin, Prachuakirikhan Province. On the 1 August 2016, Nattawat (Jame) Tanattikanchan was picked up, along with three of his friend as suspects to the robbery. He was taken to the public restroom, where he was tortured. The officer put the blindfold on, kicked, slap and beat him

repeatedly, wanted his confession and demanding the location where he hides objects from the robbery. The police did a mock killing, pull the gun and point at his head and threat to kill him if he does not provide any useful information. All of the treatments were done in the present of four of his friends who were unable to help. Fear for his life Nattawat confessed, and said he did it with his friend, Mr. Apisak (Jame) Srilamud, who later that morning was also picked up by the police from his house in front of his parents and grandparents for interrogation, and was facing degrading treatment, the police use his feet to rub on Apisak face, smack his head, and threaten to kill him told him to confess, but he did not.

28) Contradicting to the incident unfold, the warrant to arrest were issued on 2 August 2016, and police record issued on the 3 August 2016 stated that Natawat, Apisak, and Mr. Saranyu Sainamkeow show up at the police station to acknowledge of the robbery charges filed against them by Mr. Youssef Benhatoun, and Mr. Othmaned Tizgirine. What happens is that only Mr. Apisak showed up on the 3 August 2016, while the other two were already in custody. Apisak denied all charges and provided the CCTV tape to the police and said on 25 July 2016 around 11:30 PM, he was at a hotel with Nattawat and stay in the hotel until 10 AM of 26 July 2017. That same night Apisak was out fishing in the ocean with his family. Police indicted Nattawat base on his confession, Saranyu and Apisak were not indicted. Natawat case is now at the Hua Hin public prosecution office.

Deaths in Custody

29) Torture is an act in breach of international obligation including CAT to which Thailand is a state party. Still, the torture incidences persist, particularly in areas where the competent officials and security officials operate including in politically contested areas, areas where special laws and security laws including the Martial Law Act B.E. 2457 (1914) and the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) have been put in place in the Southern Border Provinces (SBPs), or in areas where security laws including the Head of the National Council for Peace and Order (NCPO) no. 3/2558 and no. 13/2559. Such special laws bestow power on the military officials to hold a person in custody for seven days without pressing the charge against them. It provides for the deprivation of liberty in an undisclosed place without access to their family or lawyer. As a result, the person deprived of liberty is highly vulnerable to torture and other cruel, inhuman or degrading treatment or punishment.

30) Among the victims of torture, apart from security related suspects in the SBPs, the anti-coup or anti-military junta activists and drug suspects, there were also military officials as well. Some have been victimized through the disciplinary process including the torture and ill-treatment or during the military drill and some had died including Pvt. Wichan Phuaksom who died on 5 June 2011 at Pi Leng Military Camp in Narathiwat, Pvt. Somchai Sri-Uang at Kawila Military Camp in Chiang Mai, Corporal Kittikorn Suthiraphan in the 25th Military Circle in Surin on 21 February 2016 and the deaths of Pvt Songtham Mudmad on 4 April 2016 and Pvt Chatpisut Chumphan at the Payak Camp, Bannang Sata district, Yala, etc. Please see death in Custody detail cases in Appendix 3

31) In Sep 2016, Mr. Thawatchai Anukul, former Phuket land official had died mysteriously after having been arrested by the Department of Special Investigation (DSI) in an alleged fraudulent practice to issue land title deeds worth nearly ten billion baht in the provinces of Phuket and Phang-nga. He was held in custody at the DSI and the Mongkutwattana Hospital had revealed that it had been contacted by the DSI around 1.00am of 30 August 2016 and informed that Mr. Thawatchai Anukul had passed out but later announced death at 4.45. On the same day, DSI officials had taken media crew to the sixth floor of the building where the detention cell no. 6008 is located. At the entrance, it was heavily manned by security guards and no outsider was allowed. Inside the cell, the electronic door was made of transparent glass pane which could be seen from outside with CCTV installed. It was located right next door to the room of the custodian chief officer.

32) According to the DSI's press conference, Mr. Thawatchai Anukul was arrested and held in custody at the holding cell of DSI awaiting the transfer to the remand hearing at the Court in the morning (30 August). He died in the middle of the night. The security guards had found him hanging himself from a door hinge using his own shirt and died of suffocation. He was transferred to the hospital and later pronounced dead. His body had been examined by the Police Institute of Forensic Medicine, and it was announced that his causes of death were relating to the bleeding in abdominal cavity, damaged liver as a result of pressure from blunt object coupled with suffocation as a result of the hanging.

33) The significant of this death in custody is that in Nov. 2016, the Council of State amended the draft Prevention and Suppression of Torture and Enforced Disappearance Act that Department of Special Investigation (DSI) will be the responsible body to investigate torture and disappearance in the new draft law. "Article 26 Offences under this Act is the special case under the Special Case Investigation Act. If the suspect under this Act is an officer from Department of Investigation, the inquiry official under Criminal Procedure Code shall has the authority to investigate the case whereby chapter 3 of the Special Case Investigation Act concerning investigation and inquiry, shall apply mutatis mutandis." Draft as of Nov 2016

Shackling, Ill-treatment and Prison Conditions

34) Article 14 of the 1936 Correction Act provides that instruments of restraint can be used in cases where prisoners pose a serious risk to their own or others' lives or they are likely to attempt to escape, but cannot be used as a form of punishment. Following a ruling by the Supreme Administrative Court in July 2015, the Corrections Department may hold convicts on death row in permanent shackles. The use of shackling has been documented in both criminal prisons and institutes where drug addicts are detained for rehabilitation.

35) CrCF act as legal representation on the inquest trial of the Death in Custody of army officer Kitikon in Surin Province between April- July 2016, the inquest helps us to gain information about the detention condition in military prisons (shackle 24 hours, torture practice before entering to prison, at least 4 military officers and one prison guards are responsible for the death). Please see the case detail in the appendix 2.

Non-Refoulement

36) Authorities have continued to forcibly return individuals to countries where they are at real risk of serious human rights violations or abuses, including torture and other ill-treatment, in violation of the principle of *non-refoulement*. Asylum seekers report being denied access to screening procedures and the United Nations High Commissioner for Refugees (UNHCR). The government has both forcibly expelled and pushed back migrants and asylum seekers, in particular Rohingya from Myanmar arriving by boat, in violation of the principle of *non-refoulement*.

The deportation of Uighurs to China by Thailand

37) The government has deported Uighur refugee including 173 women and children to Turkey on 29 June 2015 and another group of 109 individuals Uighur refugee, mostly men to China on 9 July 2015. The deportations were conducted forcibly and without prior notice. Later, the Thai Ministry of Foreign Affairs in its statement claimed that the deportations have resulted from a request by the Chinese government since these people might have been involved with the commission of illegal acts in China. Some 60 others remain in detention in Thailand. This is violation of rights to live and the prohibition of the principle of non-refoulement is contained in Article 3 of the Convention against Torture and other

Cruel, Inhumane or Degrading Treatment or Punishment to which Thailand is a party. In addition, the forcible deportation of 109 Uighur migrants to China is violation of Thai Extradition Act B.E. 2551(2008). Any extradition conducted not in line with legal procedure is tantamount to a breach of domestic law. The procedures require judicial intervention, diplomatic legal procedure and the role of the Office of Attorney General in both countries. Moreover, during a press interview on 9 July, the PM was quoted as saying toward the end of the interview broadcast that “What can we do? If we did not do this, what else could have been done? Will you let them breed here until they reproduce three litters of offspring? Damn it!” The statement fragrantly reflects an opinion with grossly disrespect on human rights and sounds very degrading to a person.

Detention under Special Security Laws

38) Special laws, including NCPO Order 3/2015, the Martial Law Act, and the Emergency Decree have facilitated the detention of individuals without access to judicial oversight or any other safeguards provided by Thai law, for periods of between 7 and 37 days, facilitating systematic torture and ill-treatment by military personnel. In practice, the location of detention of many detainees is not disclosed. Most of the cases of torture and ill-treatment documented in the South took place chiefly during detentions under these laws. Under the Measure for Suppressing Narcotic Offenders Act, authorised officers may hold individuals in secret for 3 days. CAT has expressed concern (in its June 2014 Concluding observations on the initial report of Thailand) over the special laws’ enlarged executive powers of administrative detention without adequate judicial supervision, and the weakening of fundamental safeguards for persons deprived of their liberty as a result of the special laws.

39) The Minister of Justice has issued the MoJ Directive no. 314/2558 dated 8 September 2015, to designate a temporary remand facility on Nakhon Chai Sri Road for holding in custody suspects in special cases who should be remanded in custody separately from other suspects. The facility is located inside the 11th Army Circle on Rama V Road, Bangkok, a military barrack. However, on 23 October, Pol Maj Prakrom Warunprapa, a suspect on violation of Article 112 of the Penal Code (lèse-majesté), was found to have died allegedly from hanging himself in the cell. The monitor detention facility both army detention and police detention under special laws and normal criminal procedure is very limited.

40) Since the schedule of the visit of UN Special Rapporteur on Torture in 2014 has been postponed indefinitely, there is need to do campaign and advocacy in Thailand for establishment of national mechanism and provision of legal assistance on the cases of torture. Since the coup, the situation of risk of torture and ill treatment including arbitrary detention in Thai political context is increasing and the space for monitoring by National Human Rights Institutions and Human Rights Organizations (both national and international) has become very limited.

Lack of Rehabilitation

41) Observing the situation in the Deep South, there is no mental health providers specifically designed for the recovery from torture in Thailand. The Department of Mental Health (DMH), within the Ministry of Public Health (MOPH), expressed that the mental health officers are not only lacking of specific treatment program on torture victims but also safety/trusted environment for victims and healers is very limited due to security situation. There is a lack of both government and private facilities for the psychological and physical rehabilitation of survivors of torture. Preliminary findings of a study into the effects of torture in Southern Thailand suggest that individuals’ experienced significant psychological distress resulting from torture experiences and that this distress also tended to persist over many years. Under UNVFTV, at least 50 victims out of 167 documented cases have individually been treated with effort from foreign experts.

42. Since 2013, CrCF has used Proxy Form on Torture Documentation. The Torture documentation is used for interviewing torture victims uniformly conducted by using the Proxy Medical Evaluation, which is mainly based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “Istanbul Protocol”). The local partners of CrCF in the Deep South; Duayjai and HAP provided 86 full-length testimonies since 2014 and another 30 cases in 2015. This project is supported by UNVFTV however; CrCF has used the primary assessment for physical and psychological support for the victims.

Key Recommendations:

Criminalizing Torture and disappearances

1. Support the enactment of the draft Prevention and Suppression of Torture and Enforced Disappearance Act that is in full compliance with UNCAT and CED, including a definition of the crime of torture according to Article 1(1) of UNCAT, and the provisions of: non-refoulement (Article 3 of UNCAT); punishments commensurate with the gravity of the crime (Article 4(2) of UNCAT), universal jurisdiction (Articles 5-9 of UNCAT), independent investigations (Articles 12-13 of UNCAT); no admissibility for statements obtained by torture (Article 15 of UNCAT), and prevention of cruel, inhuman or degrading treatment or punishment (Article 16 of UNCAT).

Investigation of Torture allegations/enforced disappearance and Ending Impunity

2. Ensure that the draft Prevention and Suppression of Torture and Enforced Disappearance Act provides for an independent, professional and effective body to criminally investigate allegations of torture, deaths in custody and enforced disappearance.
 - (a) Developing effective measures for the prevention of torture and promoting their adoption among government agencies including ensuring that the person deprived of liberty be given access to their family and lawyer, their access to medical examination right from the start of the detention and regularly afterward and when requested
 - (b) Appointing officials with the expertise to carry out the investigation independently and professionally
 - (c) Taking disciplinary action against the superior official who has neglected their duties letting the act of torture be committed by officials under their charge
 - (d) Giving training to law enforcement officials and security officials making them aware of, realize the importance and strictly heed to international obligations including the CAT
 - (e) Promoting the use of forensic science to enhance criminal investigation
 - (f) Announcing the list of official detention facilities and doing away with concealed detention facilities or safe houses or other hidden detention places provided for by various special laws
3. Ratify OP-CAT and establish National Preventive Mechanisms to conduct visits, including unannounced visits, to all places of detention.
4. Review the role of the NACC and the Public Sector Anti-Corruption Commission (PACC) – in investigations of torture and disappearances, and ensure its independence and that it is able to achieve substantive results.
5. Support both government agencies and CSOs to follow up and implement CAT’s 2014 concluding observations, including on investigation, rehabilitation, and redress for all torture victims.

Non-Refoulement

6. Pass the draft Prevention and Suppression of Torture and Enforced Disappearance Act and ensure it complies with the principle of non-refoulement.
7. Immediately end all unlawful returns and investigate recent cases of refoulement; Rohingya and Uighur refugees

Deaths in Custody

9. Support CSOs/NGOs in monitoring detention facilities run by the army and/or the police, both under special laws and under normal criminal procedures, to document and report human rights violations, including torture and other ill-treatment and provide legal and other aid to persons deprived of liberty.

Detention under Special Security Laws

10. Review and amend all special laws that allow authorities to detain individuals for more than 48 hours before judicial review, and ensure that individuals are allowed to contact their family and are given access to lawyers and independent medical counsel without delay.
11. Bring all detainees, regardless of the circumstances, promptly before an independent court.
12. Ensure that suspects cannot be held incommunicado or in unofficial places of detention, and that the detention locations are always disclosed and authorized.

Shackling

13. End the shackling of death-row prisoners and as a form of punishment, and other conditions of detention that amount to cruel, inhuman and degrading treatment.

Lack of Rehabilitation

14. Support the establishment of independent torture rehabilitation centres for torture victims in the Deep South and also at the national level, as well as an independent psychological health unit for Deep South detainees.
15. Ensure that victims, families, legal counsel, CSOs and NGOs can report incidents of torture or other ill-treatment without receiving threats or other forms of intimidation.
16. Increase awareness of the Istanbul Protocol among forensic doctors, psychologists, police, army, lawyers, prosecutors and the judiciary and provide training on the provisions of this Protocol.

Recommendation to NHRC Thailand

16. The National Human Rights Commission (NHRC) should set up a taskforce of experts to investigate the deaths in custody suspiciously caused by torture.
17. The NHRC is urged to form a taskforce composed of experts to visit various forms of detention places under the charge of different agencies including the Department of Corrections, the Royal Thai Police, the Immigration Bureau, military prisons, detention places established by the virtue of

Martial Law, the Emergency Decree on Government Administration in States of Emergency, the NCPO's Announcements and Orders, as well as the detention invoking narcotic law, etc. The taskforce shall be mandated to carry out regular visitation to detention facilities to ensure their compliance with international standards and practices while Thailand has yet to sign the Optional Protocol to the CAT (OPCAT).

Appendix 1

List of selected extrajudicial cases

1. Black number 519/2558 of Pattani Provincial Court (Pulopuyo Case) The fact in the case: on 29 January 2012 in the mid of trying to capture members of the separatist group. During the manhunt, the soldier force comes to the area where the incident took place which they found the truck. The soldiers were then shooting at the truck killing and four passengers the truck and living five injured. Criminal charge: On 31st July 2014, during the post-mortem inquest at Pattani Court, the judge ruled that the death was a direct result of the soldiers action. The family of victims appointed a lawyer to file a case with the administrative court requesting for the compensation from the government.

2. Extra-judiciary killing case, black number shor.2/2558 of Pattani Provincial court (Toh Shoot Case) The fact in the case: on 25th March 2015 the collaboration force between soldier and police has seized a house in Baan Tho Shoot, Tambon Piten, Tungyangdeang district Pattani province. The police claimed that someone was shooting at them from the inside of the house, so the collaboration force open fired at the house. The event left four people dead, two of which are students from Fatoni University. The inquest case filing with Pattani court by the prosecution on 12rd October 2015 provided six witnesses to be given evidence about the event. The hearing is scheduled for 2nd 3rd February 2016. The fact-finding committee concluded that the death of the four victims was caused by government officers including three soldier and three police officers. The family of victims also filed the criminal charge with Tungyangdaeng police station against the officers. The government compensates the family of victims with 500,000 baht per person.

3. Mr. Asharee Samaal of Yala Provincial Court

The fact in the case: On 21st July 2007 around 11:00 AM the collaboration force between special task force 11, 13 and police from Patae police station from Yaha district, Yala province seized and searched rubber plantation in Moo 5 Baan Charozeepoh, Tambon Sa-eh, Pinang district, Yala province. Mr. Samaal was detained by the soldier and brought to Inkayut Camp for interrogation. He was torture during interrogation. In the evening of the same day around 19:00 PM Mr. Samaal was sent to Inkayuth hospital with a severe injury. He died on 22nd July 2007 around 05:20 AM. The post-mortem inquest hearing at Yala provincial court concluded that his dead caused by government officers. The civil case filed with the administrative court for the accountability of the official wrongful act. The judge, persuasion to Accountability for Official Wrongful Act, granted compensation for Mr. Samaal's mother of 534,301.36 baht. The criminal case against officers is still pending at the National Anti-Corruption Commission to make a decision if the officer committing the crime in violation of his authority.

5. Mr. Mafoawsee Kwangboo and Mr. Adil Samae's case black case number Or. 1256/2555 (2009)

The fact in the case: Mr. Mafoawsee Kwangboo and Mr. Adil Samae was detained by military patrol force on 11st April 2009 around Pattani River, Tambon Sateng, Yala district, Yala province. At that time, Mr. Adil Samae was only 14 years old. During detention both of them were attacked by the soldiers. On 26th May 2009, the Pattani military provincial court ruling that the official were guilty and

sentence them to 6 months imprisonment and 2,000 baht fine. The imprisonment sentence was suspended because the first offender. The civil case filed with Songkhla Administrative Court demanding for Defense Ministry, the Army, and Internal Security Operations Command (ISOC) to compensate for the harm the soldiers caused in the line of their duty. The case is now at the highest Administrative Court.

6. Imam Yapa Kaseng's case

The fact in the case: on 19th March 2008 the collaboration force of Rueso police station and soldier from Narathiwat special task force 39 seized Mr. Dorkor house number 5/11 Moo 5 Tambon Rueso, Rueso District Narathiwat province. Mr. Dorkor was arrested together with Imam Yapa Kaseng. They were detained at the 39th Taskforce Unit in Narathiwat province. During interrogation both of them were tortured, Imam Yapa Kaseng died in custody. After his death, Imam Yapa's family has been seeking justice through civil and criminal suits. In July 2011, the civil case, the Administrative Court ordered the Defence Ministry and the Army to pay 5,211,000 baht compensation to the family. His family tried to privately prosecute the officer, but the case was rejected because it falls under Martial Court which only allows the prosecution to prosecute government official. The case was referred to National Anti-Corruption for the inquiry if there was criminal misconduct of officer while performing his duty. After six years the inquiry committee one officer was the wrongful act.

10. Mr. Makoseng Lasae's case

The fact in the case: Mr. Makoseng was shot to death by soldier on 20th August 2012 while he was working inside his parents' rubber plantation in Uyongsoongae Moo 6 Tambon Baroh, Yaha District, Yala Province. At the time, Mr. Makoseng was only 15 years and nine months old. The finding of post-mortem inquest at Yala Provincial Court is that Mr. Makoseng died from soldier committing an offense while performing their official duties. His mother filed the civil case against the Army and Officer of the Prime Minister.

11. Mr. Su Peangsa et al.'s case

The fact in the case: Soo Peangsa was shot to death at Sanae Village, Tambon Riang, Rueso District, Narathiwat province. The operation led by Southern Border Province Police Bureau (SPB) and supported by Special task force Narathiwat 30. The clash left four people dead, soldier claim they were members of rebel group. The post-mortem inquest at Narathiwat Provincial Court on 17th October 2014 reviewed that Mr. Soo Peangsa surrendered to the soldier. He was detained with his hand tied behind his back and was under the control of officer at the time. His death was resulting from the excessive to the cause act of the officer. His family filed a civil case with Songkhla Administrative Court against the Royal Thai Police and the Office of Prime Minister in 2014.

12. Mr. Zagareeya Jema et al's case

The fact in the case: Mr. Zagareeya Jema was shot to death by the police officer on 15th 2013 at Tambon Namdum, Tungyangdaeng District, Pattani Province. The finding of post-mortem inquest at Pattani Provincial Court was that the police did not act excessively to his duty. His family filed a civil case with Songkhla Administrative Court against the Royal Thai Police and the Office of Prime Minister on 2014. The case is still pending.

13. Mr. Frugon Mama's case

The fact in the case: Mr. Frugon Mama was shot to death by the police officer on 7th March 2012 at Poyoh Village Moo 4, Tambon Lummai, Yala District, Yala Province. The operation led by infantry

forces Ro.5031, to arrest the suspect on the existing arrest warrant. His mother filed a civil case with Songkhla Administrative Court against the Royal Thai Police and the Office of Prime Minister on 2013. The case is still pending.

Appendix 3:

List of persons who died in custody during 2007-2016

1. Mr. Ashari Sama-ae, died 22 July 2007

The incidence took place on 21 July 2007 around 11.00am. Military forces from the Taskforce 11 and police from Patae Police Station, Yaha District, Yala, combined forces in the cordon and search operation to hold in custody Mr. Ashari Sama-ae and others at a rubber plantation in Moo 5, Ban Jarao Sipo, Krong Penang District, Yala invoking Martial Law. In the same evening. Mr. Ashari Sama-ae was transferred to the Ingkhayudh Boriharn Army Camp Hospital, Pattani due to his grave injuries. He was then transferred on to Yala Hospital and died there the morning of 22 July 2007. It was determined initially by doctor that he died of brain contusion and bruises were found all over his body. Later the persons deprived of liberty at the same time with Mr. Ashari have complained to the National Human Rights Commission (NHRC) that they had been subject to physical abuse committed by the officials during their custody causing them to sustain injuries and the officials had also abused Mr. Ashari until he died.

On 21 August 2015, the Administrative Court of Songkhla read the verdict in the case filed by Mrs. Badao Sama-ae who launched the damages claim against the Ministry of Defence, defendant no. 1, the Royal Thai Army, defendant no. 2, the Royal Thai Police, defendant no. 3 and the Office of the Prime Minister, defendant no.4 alleging their the officials under their charge had committed an abuse of office by invoking Martial Law to hold in custody Mr. Ashari Sama-ae, his son and others and committed physical abuse against them until Mr. Ashari Sama-ae had died. Later the Supreme Administrative Court ruled that the Office of Prime Minister as the defendant no. 4 shall provide the compensation for the amount of 534,301 baht plus 7.5% interest incurred since 17 July 2008 and dismissed the case against the defendants no. 1, 2 and 3

2. Imam Yapha Kaseng, died 21 March 2008

An imam attached to a local mosque in Ban Kor Tor, Tambon Rueso Ok, Rueso District, Narathiwat, Yapha Kaseng was arrested around 19-20 March 2008 and held in custody at the Taskforce 39 Narathiwat located in Wat Suan Tham, Moo 2, Tambon Rueso Ok, Rueso District, Narathiwat. He died on 21 March 2008 as a result of physical abuse with broken ribs, pneumothorax in his right pleural cavity during the military custody.

Mrs. Nima Kaseng, his wife, had filed the case with the Provincial Court of Narathiwat as the Black Case no. 1611/2552 against Maj. Wicha Phuthong, defendant no.1, Capt. Sirikhet Wanichbamrung, defendant no.2, Sgt.Maj.1 Rerngnarong Buangam, defendant no.3, Sgt. Narongrit Harnwet, defendant no.4, Sgt. Bandit Thinsook, defendant no.5, and Pol. Col. Thanongsak Wangsupha, defendant no.6 (former Superintendent of Rueso Police Station) on charges regarding coercing another person to do or refrain from doing something or to concede to a demand, detention or confinement of a person, malfeasance or corrupt practice by officials, and participating in committing injuries which has led to death of a person as a result of torture or an act of cruelty. During the pretrial hearing, both the Trial Court and the Appeals Court have found it not a prima facie case and an appeal being reviewed by the Supreme Court.

As for the abuse of office charge, the inquiry official of Rueso Police Station has transferred the investigation report to the National Anti-Corruption Commission (NACC) since June 2008, but there has been no other progress even since. As a result, the deceased, Imam Yapha Kaseng and his family have been deprived of the right to judicial process.

3. Mr. Sulaiman Naesa, died 29 May 2010

On 22 May 2010, Mr. Sulaiman Naesa was held in custody at the Reconciliation Promotion Center, Ingkhayudh Boriharn Army Camp, Tambon Nongchik, Bor Thong District, Pattani. It was a place usually used for questioning a suspect in security cases. On 30 May 2010, at 7.00am, he was found dead in his cell by the officials. From an initial investigation, he hung himself from the window grille with towel in cell no.2 where he was deprived of liberty. According to the autopsy doctor, he had probably died at least five hours before then and no bruises were found on his body.

The Pattani public prosecutor had filed for the post mortem inquest with the Provincial Court of Pattani as the case no. Ch14/2553 with Mr. Jaewae Naesa, his father, filing a pleading as a petitioner. According to the ruling of the Provincial Court of Pattani regarding his death, the Court states that "...Mr. Sulaiman died as his the blood veins to his brain were blocked as a result of his tying his neck to the window grille using towel. He died while being held in custody of officials who performed their lawful duties. And he died just around after midnight of 29 May until noon of 30 May 2010..."

4. Pvt. Wichean Phuaksom, died 5 June 2011

Pvt. Wichean Phuaksom was attached to the 4th Development Battalion, Kromluag Narathiwat Rajanagarindra Military Camp or Pi Leng Military Camp, Cho Airong District, Narathiwat. His relatives were informed on 5 June 2011 that he had died. According to the autopsy carried out by doctor from the Narathiwat Rajanagarindra Hospital, Muang District, Narathiwat, he died of acute renal failure, severe muscle laceration, being pressed on body with blunt object and bearing traces of physical abuse. Later investigation had revealed that the torture had taken place during the practice under trainer for new military recruits in the Kromluag Narathiwat Rajanagarindra Military Camp. The trainer claimed Pvt. Wichean was being disciplined as he had evaded from his duty to practice. The punishment was in fact unlawful according to the investigation report by the Fourth Army Area no.KH0448/2463 dated 5 July 2011.

His relatives have filed a criminal complaint for him. But given that the alleged offenders were military officials under the rank of Major, their cases were subject to the power of the Public Sector Anti-Corruption Commission (PACC) under the Ministry of Justice. After more than four years of investigation, lately, the PACC had revealed in its report of the inquiry into the death of Pvt. Wichean that 1LT Neung and others, altogether ten of them, the alleged offenders, had committed an offence against the Penal Code's Article 157 coupled with Article 83 and the Military Penal Code B.E. 2473 (1930)'s Article 30(4), and from now on, the investigation report shall be submitted to the public prosecutor.

5. Mr. Krongkamol Khangsiri, died 1 September 2013

He suffered a serious injury and then died at the age of 28 while being held in custody in the Provincial Prison of Sa Kaeo on narcotic charges. He had been convicted and sentenced to three years and nine months. After four months in prison, he was sent to Yuppharat Sa Kaeo Hospital as he was found to have broken his jaw, sustained brain contusion having blood oozed from his mouth and eyes. The injury was sustained while he was being held in the Provincial Prison of Sa Kaeo.

Mrs. Jarunee Thongthanphan, 48 years, from 65, Mitsamphan Rd., Tambon Aranyaprathet, Aranyaprathet District, Sa Kaeo had reported the case to Pol Maj Boonnak Trachu, inquiry official of Muang Police Station, Sa Kaeo and the police was supposed to carry out the investigation and to bring to

justice the perpetrators. According to Mrs. Jarunee, while receiving treatment at the hospital, Mr. Krongkamol told her that "... (I) was booted by the custodian official until I broke my lips and I was subject to physical abuse causing injuries all over my body..."

6. Mr. Abdulaziz Salae, died 15 October 2013

Mr. Abdulaziz Salae was arrested and died when he was 26. He was one of the three persons killed during the operation of officials in their cordon and search at Ban Kampong Buerangae, Tambon Nam Dam, Thung Yan Daeng District, Pattani on 15 October 2013. His family had complained with the National Human Rights Commission (NHRC) asking for justice since they did not believe Mr. Abdulaziz died in the clash with the officials since he had been arrested prior to his death.

The public prosecutor had filed for the post mortem inquest with the Provincial Court of Pattani as the case no. Ch7/2557. His mother has authorized an attorney to examine the prosecution witnesses and to present other evidence. The Court has completed the taking of evidence from the petitioner and relatives of the deceased already. On 18 November 2014, the Provincial Court of Pattani ruled that Mr. Abdulaziz Salae had died as a result of the lawful performance of duties by the police officials.

7. Pvt. Somchai Sriuangdoy, died 29 January 2014

During 21-23 January 2014, Pvt. Somchai Sriuangdoy, 22 years, was serving in the Kawila Military Camp in Chiang Mai. According to the complaint of his relatives, he was subject to physical abuse and punished by three other military officials including having steel box covering his head, being hit in the head, back and chest with weapon 20 times. Then, he called and informed his mother of the physical abuse. On 28 January 2014, Pvt. Somchai was sent to Kawila Military Camp Hospital having suffered from coughing, sore throat, exhausted, panting, and perspiration. The nurse had found his condition was too serious and he might have infection, so they had decided to transfer him to Thep Panya Hospital in Chang Mai. He later died on 29 January 2014 at 10.40am.

8. Mr. Thanakit Chungcharoen, died 27 March 2014

Mr. Thanakit Chungcharoen was arrested by officials from the Bang Phong Phang Police Station on drunk driving at a checkpoint on Rama III Rd. He was then transferred to the public prosecutor and indicted with the South Bangkok Municipal Court, though the case filed, his name appeared to be "Mr. Thanakit Sapking". His name was not crosschecked with the Civil Registration Database, even though the person who bore the name had in fact died since January 2014. The Court sentenced him to 42 days as he could not pay for the fine. He was then transferred to the prison in Pathumthani and was held in custody in Zone 1 where convicts with high penalties were held, instead of Zone 2

During his serving time in the prison, he was physically abused by nine other fellow inmates and sustained serious injury as he had appeared to cause disturbance to the resting time of VIP prisoners. He was then transferred to an isolated confinement and denied food until he died. The prison custodian officials had reported the case to the police at the Thanyaburi Police Station stating that he had died of a physical abuse. Then, his body was transferred to the Thammasat Rangsit Hospital for an autopsy.

9. Mr. Paisit Chansiri, 27 years, died 26 May 2014

Mr. Paisit Chansiri, 27 years, was convicted on narcotic charges and transferred from the Drug Rehabilitation Center in Sukhothai to another rehabilitation center in the Klong Phai Central Prison in Nakhon Ratchasima on 9 January 2014. He was supposed to stay there for the 180-day-treatment. During that time "... Mrs. Montha, his mother, received calls from officials in the center asking for money in exchange of his wellbeing and safety in the prison, 5,000-10,000 baht at a time. The deceased's father, Mr. Thawannapong revealed that the money had been transferred to different accounts save for one woman whose account had received many transfers, altogether around 200,000 baht..." In addition, Mrs. Montha further revealed that "... my son told me he wanted to return home. It was horrific

to live in the center, as he had been subject to beating, had his food stolen from him and forced to pay the bribe to keep himself safe. Most importantly, he cried every time we visited him pleading us to take him out of there....Doctors at the Mararat Hospital, Nakhon Ratchasima, determined that Mr. Paisit Chansiri, aka “Nong Champ” had died of being hit in his head by a blunt object...” The authorities had pledged to bring to justice the perpetrators.

10. Mr. Surakrich Chaimongkon, 35 years, died 28 August 2014

Mr. Surakrich Chaimongkon was a suspect in the deadly shooting of Mr. Suthin Tharathin, core member of the People’s Alliance for Democracy (PAD) and the Energy Reform Network of Thailand who died during his public speech on Bangna – Trat Rd. in January 2014. Mr. Surakrich Chaimongkon died while being held in custody in the Bangkok Remand Prison. According to the Superintendent of the Bangkok Remand Prison, Mr. Aryut Sinthopphan “...Mr. Surakrich died the afternoon of 28 August 2014 as he was suffering from asthma and could not breathe. He was then transferred to the Corrections Department’s Hospital where he was pronounced dead around 18.00...”

According to Dr. Salaktham Tojirakan, a medical doctor from the Police General Hospital “...Being part of the autopsy team to determine the initial cause of death, we have found he had died of acute hemorrhage in his stomach and it could be attributed as the cause leading to his death due to low blood count. It could not be determined if asthma could have been one of the causes of his death since I did not have his medical record with me. As to bruises found on his body which had prompted his relatives to assume they were the cause of his death, it could not be pinned down at this point pending further examination of the tissues, muscles and blood...”

11. 2nd Lt. Sanan Thongdeenok, died 6 June 2015

2LT Sanan Thongdeenok, 30 years, an official of the 4th Infantry Battalion, the 1st Infantry Regiment, the King’s Guard. He was participating in the UKBT training, the 11th batch, in the swimming pool of the 1st Infantry Regiment. The whole duration of the course was from 17 May to 24 July 2015 with 48 participants. The incidence took place at the swimming pool, 25 meters long and three meters at the deepest point. Ten trainers were staying on guard during the time with an ambulance and another team of trainers.

The incidence happened on 6 June 2015 at an unspecified time. Around 11.30am, the military official called his family informing them that 2LT Sanan was drowned and they were asked to come to the Veterans General Hospital. According to the trainer, 2LT Sanan was drowned while holding the swimming pool’s edge. He was rescued by one trainer and given CRP and holding him on shoulder. After he vomited, he was taken to the Veterans General Hospital since 6 June 2015.

According to the doctor at the Veterans General Hospital, he stopped breathing since before his arrival at the hospital. Given the unnatural cause of death, an arrangement was made to report the case to the police and to have the post mortem examination. The military unit coordinated with the Bang Sue Police Station to get the officials to help conduct the autopsy and his body was transferred to the forensic department of the Police General Hospital for further examination. It was determined that he died of acute cardiac failure. On 11 August 2015, at the request of his relatives, his body was transferred to the Central Institute of Forensic Science (CIFS) for a second opinion. It was determined that he died of an acute cardiac failure, possible as a result of the drowning (from his medical record).

His wife has complained with the Office of the Prime Minister and the complaint was passed on to the Ministry of Defense for further investigation. There is still no progress of the investigation. Nevertheless, the money for funeral rite had been disbursed by the Royal Thai Army. According to the

record of member of the Funeral Support Fund, the Royal Thai Army for the deceased no. 4114/58, it was determined that he died of an acute cardiac failure at the age of 30, on 6 June 2015.

12. Mr. Prakrom Warunprapa, died 24 October 2015

Mr. Prakrom Warunprapa, formerly Pol Maj Prakrom Warunprapa, aka “Inspector Ead”, was a suspect in the offence against the Penal Code’s Article 112 and was held in custody at the temporary remand facility in the 11th Military Circle. He was levied with altogether 13 charges involving the fraudulent claim of royal connection to seek benefits and for having in possession firearms and ammunitions which could not be issued with licenses, having in possession of unlicensed radio equipment, for setting up radio transmission station without licenses, for forging official documents and making use of them.

On 24 October, Pol Maj Prakrom Warunprapa was found dead from hanging himself using his own inmate uniform in the prison cell. The uniform was given to him by the prison and he used it to hang himself in the cell inside the 11th Military Circle, the at the temporary remand facility on Nakhon Chai Sri Road. He was later transferred to the Medical Correctional Hospital and pronounced dead there.

13. Mr. Suriyan Sucharitpolwong, aka “Mor Yong”, died 7 November 2015

Mr. Suriyan Sucharitpolwong was part of the organizers of “Bike for Mom”. Together with Mr. Jirawong Watthanathewasilp, aka “Art”, a close aid of Mor Yong, and Pol Maj Prakrom Warunprapa, Inspector of Subdivision 1, the Technology Crime Suppression Division (TCSD), he was charged for committing a serious offence against the Penal Code’s Article 112. They were alleged to have exploited their royal connection for their own personal gains and faced 13 charges and were then held in custody at the at the temporary remand facility on Nakhon Chai Sri Road in the 11th Military Circle.

Around 21.00 of 7 November, Mor Yong was found dead. Prior to that it was reported that he had got ill since 5 November and had been receiving the treatment. Given his more serious condition, he was taken from the temporary remand facility on Nakhon Chai Sri Road in the 11th Military Circle to the Medical Correctional Hospital and died around 22.00 the night of 7 November. In the following morning on 8 November, the Director General of the Corrections Department had described that Mor Yong had his personal ailment and was so stressed from the legal action. He had received treatment from medical doctors from outside several times during his custody. According to the autopsy conducted by officials from the four divisions, the administrative, the police, the public prosecutor and the forensic doctor, it was determined that he died to bloodstream infection.

14. Mr. Anant Kerdkaew, died 13 November 2015

Mr. Anant Kerdkaew, 34 years from Nakhon Ratchasima, was arrested by the investigation police of the Muang Police Station, Nakhon Ratchasima, for having narcotics for sale. Previously, he used to serve two years for the same charge and he had just been discharged for two years. During the arrest, he was subject to physical abuse and forced to make the confession. He had complained about this several times. On 9 November 2559, around 19.00, he was set up and sold drug to the official in front of the District Office of Jor Hor, Nakhon Ratchasima. He was then riding a motorcycle with his friend. He was deprived of liberty and was brought to a house behind the Muang Police Staiton, Nakhon Ratchasima, for questioning.

On 11 November 2015, around 11.00am, the police had transferred the severely injured Mr. Anant to receive treatment at the Maharat Nakhon Ratchasima Hospital. From the outset, he broke his jaw, sustained bruises all over body including his face, and was conscious and unresponsive. The doctor determined that no operation could be carried house given his unresponsive condition.

On 13 November 2015 at 11.10, he succumbed to death and it was indicated in his death certificate that he had died of head wound injury as a result of a harsh knock with bleeding in dura mater. His body was retrieved for the funeral by his relatives who then reported the case to the Muang Police Station. The police came to examine the body at the Maharat Nakhon Ratchasima Hospital and registered it as the case no. ch819/2558. The public prosecutor of Nakhon Ratchasima had requested the Provincial Court of Nakhon Ratchasima to conduct a post mortem inquest as the case no. ch1/2559 and the Court had fixed 25 June 2016 at 13.00 for the first hearing.

15. Mr. Uthai Kongha, died 24 November 2015

Mr. Uthai Kongha, 40 years, was one of the nine suspects in the arson of the Provincial Hall of Maha Sarakham on 19 November 2010. Though the building was not apparently burned, and some tires, tamarind tree and telephone booth were burned. Shortly after, Mr. Uthai was arrested and had been remanded during the trial of the Lower Court until he was sentenced to five years and eight months. In July 2012, he was bailed out with help from the Rights and Liberties Protection Department and was later held in custody again as he was sentenced to five years and eight months in September 2014 for the alleged arson of the Provincial Hall of Maha Sarakham.

According to the prison's officials, Mr. Uthai had a circulatory shock preceded by low blood pressure, exhaustion and breathing difficulty. He was then transferred for treatment at the Maha Sarakham Hospital since the evening of 23 November 2015. His wife was then informed by the treating doctor that he sustained bloodstream infection and had to be tied up to his bed as he could not control his gestures. Eventually, he had gone unconscious and unresponsive. Around noon time of 24 November 2015, the life support system was discontinued with consent from his relatives and wife.

As to deaths in custody while being held in prison in 2010, the case of Mr. Uthai was the second of its kind. The first case was Mr. Wanchai Raksanguansilpa from Udonthani, who had died while being held in the special prison in Lak Si on 27 December 2012.

16. Mr. Abdullayib Dolah, died 4 December 2015

Mr. Abdullayib Dolah was from Ban Mai, Tambon Kholo Tanyong, Nongchik District, Pattani. He died while being held in custody at the Reconciliation Promotion Center, Ingkhayudh Boriharn Army Camp, Pattani. At 8.00am of 4 December 2015, the military official from the Ingkhayudh Boriharn Army Camp had called Mr. Abdullayib Dolah's relatives asking them to retrieve the body. Home. At 11.00am, Internal Security Operations Command Region Forward (ISOC Region 4) held a press conference about his death while being held in custody at the Ingkhayudh Boriharn Army Camp.

Mr. Abdullayib Dolah was arrested on 11 November 2015 by the special joint operation unit of Pattani and the Pattani Taskforce 24 during the operation in Tambon Kholo Tanyong, Nongchik District, Pattani. Part of the letter from ISOC Region 4 Forward explains that Mr. Abdullayib Dolah or Poh Zu was a core member of the insurrection group "kompi" and according to the initial questioning, he had admitted to being part of the insurrection group and used to commit violence through taking the oath or "Zumpao". He was later brought to the Nong Chik Police Station to have the charge laid against him and was then transferred for the questioning procedure at the Military Intelligence Forward of the Southern Border Provinces where he was held until he died in custody.

17. Mr. Urai Sattanan, died 21 December 2015

On 20 December 2015, Mr. Urai Sattanan, 40 years, was arrested by the military personnel from the SR16, 1st Battalion at the temporary based of Ban Chado, Tambon Khok Sawan, Panom Prai District, Roi-Et. He was charged in a grocery store in Tambon Kham Hai, Panom Prai District, Roi-Et and brought to the military base for questioning relating to narcotic.

On 21 December 2015, Mr. Urai had succumbed to death while being held in custody. Contused bruises were found on his chest and the sides of his abdomen. His relatives had transferred him for an autopsy at the Srinagarind Hospital to determine the real cause of death.

18. Corporal Kittikorn Suthiraphan, died 21 February 2016

Corporal Kittikorn Suthiraphan, 25 years, of the 23rd Regiment, the 3rd Infantry Battalion, Weerawat Yothin Military Camp, the 25th Military Circle, was arrested on 30 January 2016 per the warrant by the Surin Military Circle Court no.14/2558, the warrant application no.J11/2558 dated 4 August 2015 for providing shelter, harboring, or giving whatever support to conceal a person escaping from the execution of the court's order to prevent the person from the arrest. The arrest was made against him per the military court warrant on "providing help to a convict sentenced by the military court". As a military officer, after hearing the charge, he was brought into custody at the prison of the 25th Military Circle, Weerawat Yothin Military Camp in Surin, where he was serving until he died in custody at the prison.

While being held in custody at the prison of the Weerawat Yothin Military Camp, on 20 February 2016 around 18.00, the prison custodian official had asked to have him discharged from his detention cell to take disciplinary action. He was brought back to his cell around 21.00. On the following morning, 21 February 2016, he was found dead in his cell. According to the autopsy report of forensic doctor at Suin Hospital, he sustained contused wounds on body, contused brain, broke his jaw, and sustained lacerated stomach.

The public prosecutor of Surin had requested the Provincial Court of Surin to conduct a post mortem inquest on 4 March 2016 as the case no.ch1/2559 and Mrs. Boonrueng Suthiraphan, his mother as the petitioner. The first hearing took place on 25 April 2016 at 9.00am.

19. Pvt Songtham Mudmad, died 4 April 2016

Pvt Songtham Mudmad of the 1st Battalion of the 152nd Infantry Regiment, the Payak Camp, Bannang Sata district, Yala, have been punished as a result of their alleged breaches of the discipline. Later, Pvt Songtham sustained severe injury and was brought for treatment at the Yala Regional Hospital before succumbing to death on 4 April 2016

From an initial investigation, one commissioned military official and six non-commissioned military officials were identified as being the perpetrators. The Commander of the 15th Infantry Division sanctioned the punishment of the seven military officials for their disobeying the instructions of their superior officials, for excessive treatment. The commissioned official was incarcerated for one month, while the other non-commissioned officials for 45 days. As to the criminal suit, it was left in the hand of the police inquiry official to press the charges and initiate the legal action. . There is yet to be a post mortem inquest conducted in this case.

20. Mr. Wanchai Raksanguansilpa, died 27 December 2012

Mr. Wanchai Raksanguansilpa from Udonthani, a political prisoner at the Bangkok Remand Prison (Lak Si) was convicted in several criminal charges relating to the demonstrations on 19 May 2010. He and others, 22 of them, were accused of destroying the property and setting fire on the buildings of the Muang District Office of Udonthani and the Provincial Hall of Udonthani. He was later indicted and on 28 October 2012, the Court found him "...guilty per the charges of arson, trespassing, causing damage to property and building of the municipality, a single act which was offensive to several legal provisions and for trespassing in the Provincial Hall and caused damage to a firefighter truck and sentenced him to 22 years and six months..."

According to Mr. Sansern Chongcharoen, the Superintendent of the Bangkok Remand Prison (Lak Si), he was informed that the prisoner had passed out. The officials and fellow inmates helped to bring him to the Medical Correctional Hospital, but he succumbed to death eventually. It could not be determined as to the cause of death. He had informed the relatives of the death. And on 28 December 2015, the body was transferred for an autopsy examination to determine the cause of death through a formal protocol. At the time of his death, the deceased was only 30 years and enjoyed robust health as he regularly exercised.

Appendix 3 List of selected cases of enforced disappearance

1) Case of Mr. Fadel Sohman

Mr. Fadel Sohman was abducted and went missing since 24 Jan 2016. According to Information from Muslim Attorney Center Foundation, Pattani that Mr. Fadel Sohman that on Sunday 24 January 2016, around 11.00am, he had left his home on a Honda motorbike, license plate Kor 670 Pattani to a private school. A black sedan with perpetrators turned right into the school and pulled over by a football field. Three young men got off and ran toward the teachers' room, about five meters from the parking. Two of them locked the arms of Fadel, one on each side and dragged him to the car. Another man was opening the door waiting. Witnesses saw Fadel being dragged and how he tried to resist it by holding on to the frame of the door. The other man helped to shove him by pushing his legs causing him to drop his shoes. Then, they just drove away. According to our fact finding and interviewing relatives, we found that the family still is in search of his whereabouts. The family has reported to police and later on 25 Feb 2016 Police office of Napadu sent a letter stated that the missing case is under our investigation. However, there is no progress on investigation since. Moreover, the younger brother of Mr. Fadel, Mr. Fadlan Sohman was also shot death during the military operation in Oct 2016.

2) Case of Mr. Ismael Nadaraning

CrCF lawyer is legal representation of Ms. Arsisao Nadaraning, mother of Mr. Ismael Nadaraning on 13 November 2015, who has filed a motion with the Court asking to have Mr. Ismael Nadaraning declared a missing person and was accepted for review as the Black Case no. 527/2558. The Court took the action to request at least 4 more Navy officers in the same unit to testify whereabouts Private Ismael Nadaraning. Private Ismael Nadaraning went missing since June 2010. On 20 August 2015, the Foundation of the Muslim Attorney Centre (MAC) and Cross Cultural Foundation (CrCF) have given legal assistance to the Nadaraning family, even though the disappearance had taken place more than five years ago. It happened on 6 June 2010, as Mr. Ismael Nadaraning, the son of Ms. Arsisao Nadaraning, was serving as a military private under the 4th Rifle Company, the 8th Infantry Battalion, Krom Luang Songkhla Nakharin Military Camp located by the sea in Tambon Bor Yang, Muang District, Songkhla. On that day, according to his mother, her son had called her at 10.00 telling her that he wanted to return home, but she told him to stay put since he had been working there just less than a month. From 6 June 2010, when he was last heard by his family until now, it was over five years according to the law (the Civil and Commercial Code's Article 61), may it please the Court to declare him a disappeared person. However, the civil court enquiry session was not able to review the truth on Mr. Ismael Nadaraning's disappearance. The family is still facing dramatically psychological impact especially the mother from violation of the rights to truth.

3) Cases of Den Kamlae, Chaiyapum Province

Mr. Den Kamlar, 65 years old, was a core member and activist for land rights for his community in the forest of Khok Yao community and was chairperson of Khok Yao community land title deed community

in Tambon Thung Lui Lai, Kon San District, Chaiyaphum. During 2009-2016, he led a network of villagers, NGOs, and academics to campaign for policy proposals to address and manage land problems based on the “community land title deed” model. Eventually, the then government issued the Regulation of the Office of the Prime Minister on community land title deed BE 2553 (2010), though the policy was abandoned by the subsequent governments. Members of Khok Yao community along with Mr. Den Kamlar have been in dispute with the forest authorities and interest groups which looked to gain benefits from public land over land right. On 16 April 2016, he had gone into the forest around Khok Yao community, the part of which was adjacent to Phu Sam Phak Nam Forest Reserve and the Phu Khiaw Wildlife Sanctuary to look for bamboo shoot. He normally collected it and sold it at the market in Thung Lui Lai every day in late afternoon. He was last seen there and has never returned home.

4) Cases of Udonthani Province graveyard (40 complaints of enforced disappearances)

On 16-17 July 2016, CrCF team conduct the fact finding on 23 graves found in Ban Pu District Udonthani province after national news report widely. The graveyard is located in the area of Forestry Department in Ban Pue District, Udonthani Province. There were more than 40 cases complaints by villagers nearby of their relatives that went missing ranking from 25 years ago to a few years ago. However, the issues got media attention for a few weeks later the investigation was cease since there is not criminal offence on disappearances and there is no political will and independent investigation by police forces themselves who were allegedly involved in wrongdoings.

5) Case of Billy, Mr. Pholachi Rakchongcharoen

On 16 Dec 2016, Ms. Pinnapa, wife of Mr. Pholachi Rakchongcharoen got a letter from Department of Special Investigation dismissed her request for DSI to take up the case for investigation. Mr. Pholachi Rakchongcharoen, aka ‘Billy’, 30 years old, was a leader of ethnic Karen community, Ban Pong Luk Bang Kloy Ban in Kaeng Krachan National Park, Petchaburi. He disappeared on 17 April 2014. Billy was an amicable father and husband. His grandfather, Ko-I Meemi, and his Karen community have seen the officials burn their homes, properties and crops down in 2011 and were forced to move out from their ancestral land on which they have been living for hundreds of years before it was declared National Park. Billy has been working actively with his community to demand the right to the land.

While the legal team and he were busy preparing information to bring the case to the Administrative Court, Billy was nabbed by the National Park officials when he was driving from his home in Ban Pong Luk Bang Kloy to the city. The officials and the Chief Officer of the National Park claimed that they let Billy go, though he has never returned home and no one has ever seen him again. In 2014, the lawsuit was filed against the Department of National Parks, the Ministry of Natural Resources and Environment, and Krachan National Park. Despite, the unjust acts targeted towards them as a community in 2016 the verdict was in favor of the Department. Karen human rights activists and lawyers have proceeded to appeal the court’s decision in their struggle for justice.

6) Case of Mr. Mayathen Malanor

On 18 May 2016, the Supreme Court ordered not accepting the appeal from Teacher cooperative of Yala on “no paying compensation to missing person’s family is not benefiting to the public”. The case related to Mr. Mayateng Malanor missing since 9 years ago. The family has received cash compensation via government scheme by cabinet resolution and also via civil litigation however, the rights to truth has never been reviewed. In June 2007, Mrs. Sumaidoh Maranor reported to the police at the Bannang Sata Police Station that her husband, Mr. Mayateng Maranor, a janitor at Ban Bang Lang School was arrested by several military officers invoking Martial Law during their cordon and search operation. Mr. Mayateng and his car were taken away in front of his wife and children on 24 June 2007. Since then, there has been no information as to whether Mr. Mayateng was still alive or dead. His relatives got to

see Mr. Mayateng the last time when he was held in custody of the military officers. Apart from causing grave concern to his family about his being dead or alive, the incidence has rendered grave violations of the rights and responsibilities of the disappeared causing grievances to his surviving family. Eventually, his family decided to seek help from the justice process to review the operation of security officers invoking their power from the special laws. They have complained and asked the Court to issue an injunction to summon all concerned officials to appear and testify to the Court. Also, the Court was asked to announce the fact of Mr. Mayateng Maranor's disappearance and later the Court did announce him a disappeared person as requested for by his family. The case filed by Mr. Mayateng's family asking for an inquiry into the case of enforced disappearance is pending in the Supreme Court. It has taken already over three years to uncover the truths.

This consumer case is a litigation to demand the restoration of the rights as a member of the Cooperative owing to some rare technical problem. It happened since the existing regulations do not provide for the case of a disappeared member making it easy for the damaged party to lose their rights and benefits. After the ruling was made by the Court, Mrs. Sumaidoh Maranor, the disappeared's wife said that "I feel very happy after the Court ruled that I and my family are entitled to the rights and benefits. It shall help to reduce our debt burden which we have had to bear for a long time since the disappearance of Mr. Mayateng."

The order made by the Provincial Court of Yala has set a precedent to enhance protection of the rights of victims of enforced disappearance to provide for redress of the affected families through the justice process. Throughout Thailand, there are many cases of enforced disappearance which have not been investigated and the affected relatives have no access to mechanisms to protect the rights of the disappeared. At least, the Court is still the last resort for people.

Appendix 4: NHRC Investigation report on 76/2559 (2016)

Garuda sign

Unofficial Translation

NHRC 0007/2035

National Human Rights Commission of Thailand
The Government Complex Commemorating His Majesty the King's
80th Birthday Anniversary 5th December, B.E.2550 (2007)
120 Chaengwattana Road, Laksi District, Bangkok 10210

17 August 2016

Subject: Reporting progress of investigation

ATT: Ms. Pornpen Khongkachonkiet

With reference to: Your complaint dated 29 January 2016

Attachment: A copy of the report of the investigation no. 76/2559 dated 26 July 2016, four pages

Dear Sir,

In pursuance to your complaint to the National Human Rights Commission (NHRC), the complaint no. 142/2559 dated 1 February 2016 requesting the investigation of the death in the military custody of Mr. Abdulayib Doloh at the Inghayutthaborihan Military Camp and the investigation of facts revealed in the report on torture and other cruel, inhuman or degrading treatment in the Deep South during 2014-2015;

The Office of the National Human Rights Commission (NHRC) would like to inform you that the National Human Rights Commission (NHRC) had reviewed your complaint and found that regarding the complaint of the death of Mr. Abdulayib Doloh, it had been accepted for review as per the complaint no. 551/2558 dated 2 December 2015 and the report of the investigation shall be made separately. With regard to the demand for the investigation of facts revealed in the report on torture and other cruel, inhuman or degrading treatment in the Deep South during 2014-2015, it was found that the information in the report fails to provide sufficient facts to carry out a human rights investigation per Section 23 of the National Human Rights Commission Act B.E. 2542 (1999), and therefore it was decided that the investigation on this matter shall cease. Nevertheless, if you have facts and evidence pertaining to the case and would still want the NHRC to carry out further investigation, please furnish such information with supporting evidence to the Office of the National Human Rights Commission in order that the National Human Rights Commission (NHRC) shall execute its duties as provided for, with detail of the review as attached.

Please be informed

Yours sincerely,

Mrs. Bhirom Sriprasert
Secretary General of the National Human Rights Commission (NHRC)

Bureau of Law and Litigation
Phone 0 2141 1930 (nopparat)
Fax 0 2143 8720

NHCR Investigation report

NHRC 2

Report of human rights violation investigation
The National Human Rights Commission (NHRC)
26 July 2016
Investigation Report no. 76/2559

Subject: Rights and liberties in life and body pertaining to the rights in judicial process regarding the allegation of torture and other cruel, inhuman or degrading treatment in the situation report covering 2014-2015

Complainant: Ms. Pornpen Khongkachonkiet

Alleged persons: Military and police forces in the Southern Border Provinces

1. Background

The complainant had complained with the National Human Rights Commission (NHRC) per the complaint no. 142/2559 dated 1 February 2016 alleging that the Cross Cultural Foundation (CrCF) with the complainant as its Director with the Duay Jai Group and the Patani Human Rights Network had conducted an investigation on the human rights violation per the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by documenting cases of persons affected by violence or torture committed by government officials in the Southern Border Provinces and the information has been made into the report on the torture and other cruel, inhuman or degrading treatment in the Southern Border Provinces during 2014-2015. The report had been submitted to the leader of the peace dialogue team and the Commander of the Fourth Army Area who were asked to investigate those cases, though no progress had been made. The complainant had found that each of the torture committed, apart from affecting the injured parties and their families, also compromises national security making people have less trust in the state mechanisms and structure which had failed to provide effectively for protection and safety of the people. In addition, it was alleged that the state should have acted in compliance with the Convention Against Torture (CAT) concretely, particularly concerning the death in custody of Mr. Abdulayib Doloh on 4 December 2015 while he was held in custody by the military at the Ingkayutthaborihan Military Camp. His wife had already complained with the National Human Rights Commission (NHRC) asking us to carry out the investigation since the time he was still held in custody and not yet dead as the assistance he received during the custody seemed to be inefficient and failed to prevent the incidence. Therefore, the complainant had asked for an investigation of the facts in order to prevent the human rights violations as alleged in the report.

2. Initial review of the complaint

The National Human Rights Commission (NHRC) had made the initial review of the case and found that the alleged behaviors were pertaining to the issue about rights and liberties in life and body, which fall under the mandate of the National Human Rights Commission (NHRC) per the National Human Rights Commission Act B.E. 2542 (1999)'s Section 15.

The complaint requests an investigation of the commission and the omission of an act regarding the issues of human rights violations as follows;

- (1) A request for an investigation on the death of Mr. Abdulayib Doloh
- (2) The case that Cross Cultural Foundation (CrCF), Duay Jai Group and Patani Human Rights Network had requested for an investigation of the facts revealed in the report on the torture and other cruel, inhuman or degrading treatment in the Southern Border Provinces during 2014-2015

3. Result of the review

The National Human Rights Commission (NHRC) had delegated the duty of investigation in this case to the Subcommittee on Human Rights in the Southern Border Provinces per the National Human Rights Commission Act B.E. 2542 (1999) and the Rule of the National Human Rights Commission on the criteria and methods for the investigation of human rights violation B.E.2558 (2015).

The Subcommittee on Human Rights in the Southern Border Provinces had written a summary of the information in the complaint and the report on the torture and other cruel, inhuman or degrading treatment in the Southern Border Provinces during 2014-2015 discerning detail of the individuals and agencies accused of committing the offence, the circumstance of the offence, the date and crime scene, based on the information regarding 54 injured parties or 80 cases.

4. The opinion of the National Human Rights Commission

The National Human Rights Commission (NHRC) had initially reviewed the complaint, information from the complainant and alleged persons and the opinion of the Subcommittee on Human Rights in the Southern Border Provinces and found that (1) regarding the request for an investigation on the death of Mr. Abdulayib Doloh, the Office of National Human Rights Commission had already received a complaint from Ms. Kurosamoh Doloh, wife of Mr. Abdulayib Doloh per the complaint no. 551/2558 dated 2 December 201 which alleged that her husband had been unjustly held in custody by the military. On that matter, the National Human Rights Commission (NHRC) had delegated the duties of investigation to the Subcommittee on Human Rights in the Southern Border Provinces and to produce a separate report to this report. The results of the investigation shall be further furnished to Ms. Kurosamoh Doloh.

As to (2) regarding the request for an investigation on the facts revealed in the report on the torture and other cruel, inhuman or degrading treatment in the Southern Border Provinces during 2014-2015, the Subcommittee on Human Rights in the Southern Border Provinces had written a summary of the information in the complaint and the report on the torture and other cruel, inhuman or degrading treatment in the Southern Border Provinces during 2014-2015 discerning detail of the individuals and agencies accused of committing the offence, the circumstance of the offence, the date and crime scene, based on the information regarding 54 injured parties or 80 cases. In most cases, the injured parties had all claimed they had been subjected to torture or inhuman treatment committed by the military and the police officials while being held in custody. The incidences took place in the Southern Border Provinces. The report has been written based on the interviews of the injured parties and their relatives, albeit their names, addresses and detail of the injured parties were not mentioned and no other accompanying evidence had been given. In addition, it appears to be hearsay evidence without the attachment of testimonial forms or complaints signed by the injured parties or their relatives. The National Human Rights Commission (NHRC) had reviewed and found the information in the report of the complainant fails to provide sufficient facts to carry out a human rights investigation per Section 23 of the National Human Rights Commission Act B.E. 2542 (1999)¹, and it was impossible to initiate an investigation of the facts pertaining to the persons mentioned in those cases. At this stage, it was decided that the investigation on this matter shall

¹ The National Human Rights Commission Act B.E. 2542 (1999)' s Section 23, first paragraph provides that "The person whose rights are violated are entitled to submit a complaint which has to be made in written form with the following detail

(1) Name and address of the complainant or the person acting on their behalf

(2) Facts and circumstance pertaining to the case of the commission or the omission of the act which has given rise to the violation of human rights

(3) Signature of the complainant or the person acting on their behalf of the person entitled to submit the complaint Etc.

cease and the complainant shall be informed that should they have facts and evidence pertaining to the cases in the report and still want the NHRC to carry out further investigation, please furnish such information with detail of the victims of human rights violation, the behaviors of the alleged persons, the date, time and place where the crime took place and other supporting evidence to the Office of the National Human Rights Commission which shall be passed on for the review of the National Human Rights Commission (NHRC) to execute its duties as provided for.

Nevertheless, even though the report on the torture and other cruel, inhuman or degrading treatment in the Southern Border Provinces during 2014-2015 referred to in the complaint fails to provide sufficient facts to carry out a human rights investigation pertaining the complaint, but the information in the report is based on the interviews of the persons who claimed to have been subjected to torture and inhuman treatment by government officials in the Southern Border Provinces. The report is also an attempt to explore background of the problem and analyze the overall situation, as well as propose solutions for the prevention of torture in terms of the revision of law and enforcement of the law of state officials. Such information could be useful for further study and the development of policy recommendations and recommendations for the improvement of law of the National Human Rights Commission (NHRC) in order to promote and protect human rights of the people in the Southern Border Provinces. It was deemed appropriate that a copy of the complaint would be furnished to the Subcommittee on the Policy Recommendations and Recommendations for the Revision of the Laws and Regulations for the Promotion and Protection of Human Rights to be further studied and used for proposing policy recommendations to the Parliament and the cabinet further on. It was decided that the investigation shall cease.

5. The decision of the National Human Rights Commission (NHRC)

Based on the above reasons, the National Human Rights Commission (NHRC), during the meeting on the protection and standards of human rights protection no. 20/2559 on 28 June 2016, has decided that the matter shall be terminated and the complainant be informed likewise. A copy of the complaint shall be furnished to the Subcommittee on the Policy Recommendations and Recommendations for the Revision of the Laws and Regulations for the Promotion and Protection of Human Rights to be further studied and used for proposing policy recommendations to the Parliament and the cabinet further on.

The National Human Rights Commission (NHRC)

Mrs. Bhirom Sriprasert
Secretary General of the National Human Rights Commission (NHRC)

Copy certified as authentic
Ms. Paweena Chaniad

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