



**FIDH (International Federation for Human Rights)
Union for Civil Liberty (UCL)**

**United Nations Committee Against Torture (CAT)
52nd Session
30 April 2014**

Shadow report on the situation of torture and ill-treatment of prisoners in Thailand

Under the current conditions of Thai prisons, detainees are often subject to torture, cruel or degrading treatment, and punishment. This submission identifies critical issues in Thai penal practices, prison conditions, most notably overcrowding, inadequate nutrition, substandard medical care, and a total lack of attention to rehabilitation of the prisoner. There are other specific issues that need to be addressed as well to include: 1) a new policy that isolates prisoners from the outside world which promotes a gulag concept of prisons cut off from the outside world; 2) subjecting prisoners to shackling and isolation cells as a form of punishment; and beating prisoners which is strictly forbidden under the UN Standard Minimum Rules for the Treatment of Prisoners.

Rehabilitation, punishment, and security

The essential aim of a penitentiary system shall be “reformation and social rehabilitation” of prisoners.¹ Rehabilitation is a demanding process that depends on accurate understanding of the circumstances of each prisoner and well-kept records of their sentence. The date a prisoner’s release is the most important date by which to plan a rehabilitation program. In Thailand, this is the most uncertain date of all, firstly, due to the long length of all prison sentences, and secondly due to the unpredictable course of sentence remissions. In addition, prisons in Thailand have prisoner to warden ratios of 20/1 or more, which simply do not allow such attention for the prisoners’ individual circumstances.²

The primary aims of the Thai penitentiary system are punishment and security. It is the expectation of the Thai public that punishment should be the primary function of a prison and e ‘evil’ people and must be made to realize their condition. To reinforce this expectation, the shackling of prisoners, limiting visitation rights, and subjecting prisoners to isolation cells are common forms of punishment. Prior to January 2013, it was the usual practice to shackle all male prisoners condemned to death and who were less than 60 years old. Even though this practice was discontinued, shackles are still applied to prisoners as punishment with the weight of shackles proportional to the offence. In addition, prisoners who appear in court do so in shackles. Isolation cells are still in use under doubtful supervision and conditions even

¹ International Covenant on Civil and Political Rights (ICCPR), Article 10(3)

e

² With work shifts and assignment of personnel to non-contact with prisoner positions, the ratio of warders to prisoners is about 40/1, reducing to 100/1 in night shifts.

though solitary confinement is now known to have long lasting and serious psychological effects.

In the public opinion's perception, prisoners are also dangerous and their punishment supports the notion of 'security.' When the release of prisoners, who would complete their sentences under surveillance using monitoring bracelets, was recently proposed, there were loud protests that criminals would be freely roaming the streets and likely to engage in criminal activities to endanger the general public.

'White prison' policy

In May 2012, a new restrictive prison policy called the "white prison" came into effect.³ The policy is currently applied in nine prisons and is planned to extend to all prisons. Under the policy, visitors are banned from bringing food, clothes, or other items, including books, for prisoners. Prisoners are allowed to meet visitors once a day for 45 minutes, up to two visits a week. Inmate workshops have been cancelled, punishments have become harsher, and access to help in case of medical or fire emergencies has been limited.

The "white prison" policy is intended to limit the smuggling of contraband for prisoners – especially drugs and mobile phones and to abolish meaningful work opportunities for the prisoners. The policy is misplaced on several grounds. With respect to contraband, it is likely that such illegal items are smuggled by rogue prison officials and not by visitors. In addition, prisoners are no longer allowed to work. Workshops, once the hive of crafts activities that helped inmates pass the time and earn a little money for essentials were stopped because the activities apparently became too profitable for the guards who served as middlemen for purchasing items for the prisoners. Prison officials have also justified the move saying that some classes used dangerous substances, such as paint thinner for furniture making. It is much harder now to get face-to-face meetings for family visits, and White Prison volunteers take priority. These volunteers agree to searches in exchange for access to privileges. Many prisoners complained about new "strict and ridiculous" rules and harsh punishments. For example if a mobile phone is found in one cell and nobody takes responsibility, everyone in the cell will have visitation and other privileges withheld.

The Governor of Bang Kwang prison in Nonthaburi Province has stated that medication for prisoners would be limited to oral medicines and that injections would not be allowed. However in some cases it is still necessary to give injections. The procedure is now that prisoners receiving injections come to a metal gate, they turn their backs on the gate and lower their pants. The doctor, from the other side of the gate, reaches through the bars to deliver the injection. A prisoner expressed his humiliation at undergoing this procedure, "as if I were an animal."

Especially harmful to prisoner welfare is the isolation of the prisons to inflow of outside news, and the reverse limits to communication with the outside world. In a system without external and independent monitoring, prisoners are subject to arbitrary decision and treatment, their independence denied beyond that justified by legal internment. This is the breeding ground for outright torture as has recently appeared in several prisons. Previously, charitable organizations could visit prisoners and deliver needed medicines, sanitary products, or just provide encouragement and friendship. This is no longer possible.

³ Bangkok Post, *Is 'White Prison' making Bang Khwang a darker place?*, 17 March 2013

Torture in the judicial system of the southern border provinces

In Thailand's three Muslim-majority southern provinces of Yala, Narathiwat, and Pattani, a terrorist insurgency has been active for the past 10 years. An Emergency Decree has been effective in the three provinces since 2004 and an Internal Security Act was imposed this year. This year also marks the 100th anniversary of Martial Law which was first imposed in 1914. Special laws bestow immense power on officials. Civilian officers are supposed to follow orders given by military officials. Martial Law contains just a few articles, but it grants the military significant powers and provides no accountability. During over a decade of conflict in Thailand's three southern provinces there has not been a single case prosecuted against any state officials for the physical abuse they have committed.

Police and security forces have routinely used torture as an ineffective tool of counter terrorism. This has likely contributed to the deteriorating situation. Torture has become part of legal enforcement in the region and the main source of evidence leading to convictions in the courts. The torture is severe; it is inflicted by government agents for the purposes of obtaining confessions for use in court trials, to obtain information leading to the arrest of other suspects, and to intimidate those arrested by military and police.

Those brought before the courts must be charged under articles of the Criminal Code. However the stages of arrest and interrogation often use a cocktail of powers derived from Martial Law, the Emergency Decree, and the Internal Security Act. Arrests are made and house searches are carried out without warrant on grounds of mere suspicion rather than preliminary evidence. Prisoners are held in facilities other than those designated as 'official' detention centres where they can be interrogated without the presence of their lawyer or a family member. Visits by family members or lawyers are denied or restricted. On arrest, prisoners can be held for seven days invoking Martial Law, rather than the 48 hours prescribed by the Criminal Procedure Code. After seven days in custody, a suspect may be further detained invoking the Emergency Decree, which can be extended in increments of seven days. Upon the completion of seven days, the officials can ask for an extension of the detention by giving supporting reasons to the Court, but the combined length of detentions shall not exceed thirty days. The extension order can be made by video link and the prisoner need not appear in person before the judge permitting the renewal order.

These practices provide conditions for extraction of confessions by torture, either to implicate the arrested person or to enable the arrest of new suspects who can in turn become victims of further forced confessions. Once a signed confession has been obtained, the prisoner can be arrested transferred to the normal course of criminal justice, including meetings with a chosen lawyer, family visits, and interrogation in the presence of a lawyer chosen by the arrested person. On occasion, attempts are made to legitimize an interrogation process by the presence of a lawyer chosen by the interrogation officials, a process which should invalidate any admission made.

The period between arrest without warrant as a suspect and the transfer to normal criminal procedure is ominously known as a 'danger period,' when evidence can be obtained using torture and without proof, witness, or forensic evidence. The effects of torture can be concealed from outside observers, especially when the period of detention allows symptoms to subside.

Beatings in prisons

Beatings by prison warders in Thai prisons have long occurred. In recent years, the practice has been adapted as warders avoid the possibility of prosecution for such actions by delegating the beatings to other prisoners. However, within the last year, reports emerged from several prisons of beatings carried out by non-prison officials who were engaged in

night time searches. The practice appears to be due to failure of the authorities to control prisoners who greatly outnumber prison staff. UCL gathered accounts of this appalling practice. [See below, *Beatings in Bang Kwang prison, Nonthaburi Province, and Bom Bak special prison in Bangkok*]

Death penalty

Currently the number of prisoners condemned to death is 685: 630 males and 55 females⁴. Executions are rare: four in 2003 and two in 2009. Only three women have been executed over the period for which records are available. In August 2012 the death sentences of prisoners for whom all legal process was complete were granted a royal commutation of sentence to life imprisonment. Although the commutation was not reported in the press, the action sent a clear statement to government ministers who were attempting to accelerate execution of those condemned on drug-related cases, which number approximately half of all death penalties.

The uncertainties of survival and the rigors of death penalty prison conditions are a prolonged torture for the condemned. Recently, a dynamic interpretation of the death penalty by the UN Special Rapporteur on torture identifies the prohibition of the death penalty deriving from the concept of human dignity as an evolving standard of customary international law. UCL can add its testimony to this interpretation from the behavior of prisoners condemned to death in Bang Kwang prison in Bangkok's neighboring province of Nonthaburi. Those condemned to death remain for up to ten years in a no man's land of waiting for possible execution. In the most recent executions of two prisoners in 2009, the prison governor was given two hours' notice of the executions; the prisoners themselves were informed one hour before. Such a procedure creates an atmosphere of deep anxiety among condemned prisoners. Prisons live on rumor and prisoners exchange news of possible executions. Even an unusual noise or commotion gives rise to fears that executioners may be on their way. A commutation of sentence is little relief as the alternative is life imprisonment from which prisoners may search the opportunity to commit suicide. In time, the life sentence may be commuted to 50 years' imprisonment. All remissions are in steps which give little prospect of eventual release. Release, in fact may come after about 14 years, but in steps which give little hope and no preparation for reintegration into society.

Overcrowding in Thai prisons

While Thailand ranks 19th in the table of world populations but it ranks sixth in prison population.⁵ As of 2014 there were 262,077 prisoners in prison designed to accommodate 109,430 prisoners.⁶ The occupancy level of Thai prisons is thus 244%. By using an estimated floor area of prison accommodation this translates into a floor area per prisoner of one square meter. Such overcrowding is documented by prisoner accounts of overcrowding in cells occupied by up to 40 persons. Female prisoners are especially subject to overcrowding, with up to 200 women to a dormitory; with a sleeping space of less than one square meter. If a woman leaves her sleeping place during the night, a spontaneous shift by the sleeping prisoners occupies her space, forcing her to remain standing until morning. If fights for space break out between prisoners, guards shut off ventilation of fans so that other prisoners are forced to regulate any dispute. Restrictions on women prisoners are stricter than for their male counterparts. One toilet is available in each cell, with only partial privacy for the person using the facility. While toilet availability in the exercise area is greater, the same lack of privacy is a continuous embarrassment to prisoners.

⁴ Department of Corrections: 25, February 2014

⁵ Economist: Pocket World in Figures, 2012 edition; International Centre for Prison Studies (ICPS), World Prison Brief

⁶ Economist: Pocket World in Figures, 2014 edition; International Centre for Prison Studies (ICPS), World Prison Brief

Medical care

The medical care available to prisoners is claimed to be equivalent to that available to the general population. Thai prisoners have a national medical card that entitles them to free care. However, the overall general prison conditions for treatment of sick prisoners in Thailand are inadequate. The main problem is the lack of resources, including qualified staffs and materials. The overpopulation in some prisons or prison departments further contributes to the inadequate response. Sick prisoners must usually wait for a week to see a doctor and large numbers of prisoners oblige the prison authorities to limit visits from any prison section to perhaps one day a week. Medical examination is cursory, and most ailments are treated by Paracetamol, two tablets for an ordinary complaint, three for a more serious, and four for a 'serious' condition. Costly, or out of the ordinary medicine must be paid for by the prisoner. While there are very devoted prison doctors, at most one for each hospital, most of the medical personnel are prisoners who are trained by that doctor and reports have emerged of sepsis due to poor after surgery care by inept assistants. Dental care is rudimentary and limited largely to extractions. As prisoners grow old they lose their teeth. Psychiatric care consists of periodic injections of Haloperidol, which induces temporary immobility of the prisoner.

Most serious is the absence of medical help at night, on weekends, or on holidays. In a recent case, a patient who suffered a heart attack, died after a four hour wait for medical help to arrive. A case which received much attention in the media was the death of a Mr. Ampon Tangnoppakul, a 62-year-old retired truck driver who was condemned to 20 years in prison on a lèse majesté charge on 23 November 2011. Mr. Ampon was found dead on 8 May 2012, three days after he complained of painful stomach ache and was given Paracetamol.⁷

Nutrition, sanitation

While it is generally agreed that the food available is adequate, it is certainly monotonous with little variation. As the timetable of prison life forces the prisoners back to their dormitories between 3 and 4pm they cannot be served an evening meal at the usual time for Thai people. Although it is against rules, tolerant guards allow prisoners to take food for an evening meal back with them to their cells. As in almost all aspects of prison life, those with money can supplement prison food from a convenience store within the prison, or pay other prisoners to cook for them. Previously, relatives visiting prisoners could bring cooked food or fruit to them, but under the 'white prison' policy, all such supplements are banned. Relatives may order some supplements from a list displayed at the entrance to the visiting area, which are then delivered to the prisoners from the prison store. But the selection available has also been strictly limited and little that is nourishing or palatable is available. Sanitary products are given to the prisoners at rare intervals and in insufficient quantity. Women prisoners especially suffer from such restrictions.

Recommendations

- Prisons in Thailand should be subject and open to inspection by an independent committee, such as is envisaged in the Optional Protocol of the UN Convention Against Torture (CAT).
- Health issues in the prisons should be transferred to the responsibility of the Ministry of Health.

⁷ Under Section 112 of the Criminal Code of Thailand, lèse majesté or defaming the monarchy, is a crime punishable with three up to 15 years of imprisonment per offence. Lèse majesté suspects are unlikely to have their bail requests approved, even when their health condition cannot be adequately treated in prison. Between 2006 and 2011, 478 known cases of alleged lèse majesté were submitted to the Thai Criminal Court since 2006. The conviction rate for lèse majesté cases is currently 94%.

- Overcrowding in Thai prisons should be reduced significantly by granting bail to all prisoners and making the bail amount proportional to the resources of the prisoners.
- Those awaiting trial and not yet condemned must be separated from condemned prisoners.
- Thai sentencing must be brought into line with world standards/practices. At present sentences are excessive.⁸
- Begin the use non-custodial sentences according to the Tokyo Rules.
- Abolish the death penalty, replacing it with a reasonable maximum sentence. The average world sentence replacing the death penalty is 14 years.
- The rule by emergency decree, abandonment of democratic processes and fundamental abridgements of a democratic constitution must be resisted.⁹

ANNEX I: Beatings in Bang Kwang prison, Nonthaburi Province, and Bom Bak special prison, Bangkok

On the evenings of 16 and 17 May 2012, personnel from a special masked unit made searches throughout Bang Kwang prison in Nonthaburi Province, which holds those serving sentences over 30 years and those condemned to death. The first attack on prisoners was made by a group of blue-uniformed persons wearing caps, identified by the prisoners as ‘police.’ On the floor on which our informant was detained, there were about 20 prisoners in each separate cell. The floor consisted of 24 such rooms of facing cells. At first, they heard sounds of beating, shouts, and screams. The assailants moved from room to room, apparently carrying out beatings on every floor of every building. They carried batons and numbered from fifty to a hundred or more. Prisoners were made to squat on the floor while searches were carried out. Apart from the blue clad ‘police’, there were ‘officials’ wearing white t-shirts, possibly military or corrections department officials, and a special masked squad dressed in black. Attacks on prisoners appeared to be random; they reported that one prisoner, a Thai citizen, had been beaten to death, and another seriously injured, with a cracked skull, when telephones were found in their bed area. Our informant was kicked on the legs as he crouched on the ground. In another building an informant told us that the prisoners were warned in advance by their own warders to hide telephones, which they did by attaching them behind fans. Prisoners remarked that if the search had been made by warders themselves these phones would have easily been discovered. Our informant’s account of the beatings corresponded to that of a prisoner in a separate building for prisoners condemned to death. Beatings carried out by masked assailants lasted about 90 minutes. A police man stood at the door of each cell while the occupants were being beaten. On one occasion, a regular prison guard was heard calling for a doctor to come. On the following morning, our informant observed two prisoners showing extensive wounds on their backs. In one account, the prisoners were addressed the following morning by a recently appointed prison governor, warning them that news of the previous night’s events were not to spread outside the prison. However, warders advised prisoners to tell their relatives during visits and called on them to make complaints. It was clear that regular prison staff were against these beatings by outside forces.

On 9 May 2012, Thai correctional officers conducted a raid on Building 9 of Bom Bak special prison looking for “illegal belongings.” This search was completely different from all previous searches carried out by the relevant authorities. These officers used extreme violence, brutality, and threatening behaviour. They repeatedly hit, punched, and kicked passive inmates. Hundreds of inmates required hospital treatment after the cowardly assaults.

⁸ In one case, one prisoner was condemned to 120 years imprisonment for stealing government property. The offence related to the stealing of 20 school desks and the court imposed the maximum sentence for the theft of each desk, 6 years. 6 x 20 = 120!

⁹ “Terrorism versus Democracy: the Liberal State Response”, Wilkinson, Paul, 3rd Edition, Routledge, Oxford 2011