

The Measures taken to Implement the selected recommendations to the Human Rights Commission in the Concluding Observations on the Second Periodic of Thailand

III. Condition of Detentions (Paragraph 34 of the Concluding Observations)¹

Treatment of the Prisoners and the Implementation of the Nelson Mandela Rules

1. **Correction Act B.E. 2560**² has been promulgated in accordance with the Nelson Mandela Rules³, which include the respect of prisoners' rights and the provision of medical and health check-ups and facilities. However, due to budget constraint, these have not always been adequately addressed. Prisoners with HIV/AIDS receive proper treatment as advised by the doctor. Moreover, other health-related precautions have also been taken to guarantee prisoners' basic human rights according to the international standards.

Overcrowding

2. Lad Yao Prison, for example, which has a capacity of 5,000 prisoners, currently houses as many as 10,000 prisoners. 95% of them are on their 7th or 8th prison term from drug-related case⁴. The Ministry of Justice, aware of the issue, has, thus, drafted the "**Drug Act B.E. ...**" in order to reduce the number of this group of prisoners. The Drug Code is a delicate law encompassing various issues. The drafting process has adhered to the principles put forward by the **United Nation General Assembly Special Session on Drug** in 2017, which regarded drug issues as a (physical and mental) health and human rights issues and considered drug users patients. Many rounds of consultation have taken place, yet the law was interrupted by the 2014 coup d'état. At the present, the cabinet is seeking consultation and preparing to propose it to the parliament anew.

3. The reduction of prisoners can be done through law reform, suspension of sentence, and behavior classification used to reduce penalties on important occasions, except prisoners with serious offences.

4. To solve the overcrowding issue, the government has installed bunk beds to increase the available slots. It is expected that this measure could add up around 50,000 spaces.

Alternatives to Detention

5. The accused may decide to use of an EM (electronic monitoring) device from the detention stage until the court decision on his/her own will or according to the court order, so that the case party can get bailed without deposit. Presently, 30,000 EM devices have been employed with target to reach 100,000 in order to reduce the number of detainees. A policy has been put in place to let the accused

¹ Data from the interview with a Ministry of Justice official

² The Correction Act is promulgated in the Royal Gazette on 16th February 2017
<http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/021/1.PDF>

³ https://en.wikipedia.org/wiki/Standard_Minimum_Rules_for_the_Treatment_of_Prisoners

⁴ From the Civil Society Sector's midterm report of Thailand under the UPR 2nd cycle, page 25, printed by People Empowerment Foundation, supported by the Embassy of Switzerland in Thailand.

bear the rental fee of the device according to his/her financial status. In addition, it has been found that shackles are still used while detainees are being brought to the court to prevent escape.

Law Enforcement

6. Despite a good legal framework, law enforcement in Thailand is largely weak. The understanding and interpretation of laws are limited and unfavorable for the detainees/prisoners. The trainings to equip state officers with legal understanding and practices have met with little success as a result of human resource issue. In total, there are about 30,000 officers and 131 prisons nation-wide. Each correctional officer is responsible for about 35 prisoners and works two shifts. The attendance of such training would lead to a personnel shortage. Consequently, law enforcement remains, by and large, problematic.

Assistance to Reintegration and Employment

7. With regards with reintegration, the Drug Code has been amended to comply with the Tokyo Rules⁵ involving communities to take care of the former prisoners. Most of the prisoners do not wish to receive state support. Employers are not confident in hiring former prisoners. The government attempts to create incentives so that the society would give the prisoners a chance to be reintegrated and to find jobs, for instance, tax reduction for businesses employing former prisoners. According to the observation, the reoffending rate is around 30%.

Juvenile and Elderly Offenders

8. The policies state that juvenile offenders' records shall be deleted and juvenile offenders are entitled to bail. Sports are used for rehabilitation and youth training centers are established to maximize the reintegration rate. Persons who are over 60 years old and are ill shall receive a suspended sentence and can be released, except serious offences including rape and murder.

Women Offenders⁶

9. According to the statistics of the Department of Corrections, there are 27,782 female inmates in prisons and correctional institutions all over the country, as well as 10,084 women who are being detained during pending legal procedure. Most of the cases are related to the offences under the government's drug suppression policy, which account for 80% of the total female prisoners. Furthermore, the working group studying and developing approaches to reduce the number of female detainees in drug-related cases according to the **Bangkok Rules**, which is an initiative of

⁵ Tokyo rules

https://www.google.com/search?q=tokyo+rules&rlz=1C1GGRV_enTH751TH751&oq=Tokyo+Rule+&ags=chrome.1.69i57j69i59j0l6.14125j0j7&sourceid=chrome&ie=UTF-8

⁶ A Pilot Prison on the "Women Building" to Improve Women's Quality of Life According to the Bangkok Rules

<https://www.bangkokbiznews.com/news/detail/607413>

Princess Bajrakitiyabha and has been incorporated in a UN rule on the **treatment of female prisoners**, encourages the respect of human rights within the criminal judicial system among female prisoners and their children.

In conclusion:

1) Prisons and correctional institutions are designed for persons who have committed serious offences and dangerous criminals, most of whom are men. They are, thus, not suitable for keeping women who are more sensitive, both physically in terms of reproductive health and giving birth, as well as emotionally, 2) the nature of the offence committed by most female prisoners is not that of someone with a leading role or an important function in the drug trafficking chain, but of someone with a bottom rank, 3) women often become a “hostage” of the drug traffickers in a criminal proceeding, while the law enforcers are unable to get hold of the main culprits or influential people, 4) if left unchanged, we believe that the justice system will not only be unable to solve the drug-related crimes as the government has aspired, but, instead, also create broad socio-economic problems serving in turn as another cause of crimes, and even triggering a collapse of the entire justice system as a whole.

Princess Bajrakitiyabha has concluded that no policy of any government at any given point of time and no law or regulation are perfect in themselves. Rather, we must strike a balance between them and the actual enforcement. If we are to target the drug trafficking chains, we should clearly differentiate the users and other related parties from them, because a great number of small-scale sellers, who only sell drugs to earn money to buy products for personal use or for other necessities, have been arrested and brought into the judicial procedures. In the past, the policies mainly focused on the eradication of drugs or the ban on drug use, which were physical coercion, and did not address the mental rehabilitation. At the same time, drug users have a symptom called “an addicted brain” caused by deeply rooted positive impression in the brain from their first drug use, which greatly increases the chance of relapse. Therefore, everyone must work together to help former drug users reintegrate and promote their self-reliance in order to prevent them from returning to addictive substances. Nakhon Phanom Prison, for instance, is one of the facilities constructing “women buildings” according to the Bangkok Rules, which also include space for vocational trainings and other life-skills activities, such as a maternity and children room providing care for the children of convicted mothers, or a meditation room. The prison is considered the first prison with a concrete approach on mental development on top of the physical and vocational development.

LGBTI Detainees

10. The awareness on the gender diversity among detainees has increased. Most of the cases are related to theft, fraud, and drugs. In some prisons, there has been an attempt to separate them from male and female detainees, for example, Minburi Prison (which also has LGBTI wardens) and Pattaya Prison, keep the LGBTI detainees in the infirmary. The request for hormones pills was denied, as the prisons could only provide basic health supplies. Following Princess Bajrakitiyabha’s interest in women prisoners, gender awareness in prisons has risen.

Political Prisoners

11. Political prisoners are prisoners of conscience. The Royal Thai Government does not acknowledge the presence of political prisoners in Thailand. Instead, section 112⁷ and 116⁸ of the Criminal Code have continuously been used to harass human rights activists, while they insist that individuals prosecuted under section 112 and 116 of the Criminal Code are political prisoners whose political stance differs from that of the state⁹.

Detention in Another Place

12. On 10th January 2020, seven Uyghur people escaped from the Immigration Detention Center in Mukdahan Province. They were later apprehended and brutally assaulted until they passed out. That was their second escape attempt. The first time was on 12th February 2019. The reason was that they did not want to stay in the small, uncomfortable detention center of the immigration and they feared physical abuses. They had been detained at the Immigration Detention Center since 2013. They wanted to be moved to a prison that had bigger space and more freedom. They had been detained without offences. They decided to escape from the detention center, despite an odd chance. For the second escape, the Mukdahan Provincial Court passed a judgment that all seven of them were guilty of damaging government properties and gave them a 2-year jail term on Thursday, 5th March 2020. The Uyghur issue is a sensitive political issue, in which China seeks to control and govern its ethnic minority through oppression and religious restriction and by force, such as arrests, extrajudicial killings, and forced attendance to the internment camps. Many Uyghur people have fled China and have been deported back. For example, the deportation of a number of Uyghur people from Cambodia to China in 2010 and 120 Uyghur people from Thailand in 2015. All of them have faced a tragic fate. It is believed that they had either been murdered or detained in a facility in China and have not been released. In spite of Thailand's close diplomatic and trade ties to China, Thailand should, nevertheless, respect the universal human rights principles and, thus, should not repatriate anyone to a dangerous country of origin. All of the Uyghurs wanted to be re-settled in Turkey. On 6th February 2020, the officials moved two Uyghurs from the immigration detention center in Ubon Ratchathani to Mukdahan. When they found out about the two escape attempts, the immigration office in Mukdahan lined all four walls with metal plates to prevent future attempts¹⁰.

COVID-19

⁷ Lèse majesté offences <https://thaipoliticalprisoners.wordpress.com/2011/04/03/article-112-awareness-campaign%E0%B9%81%E0%B8%84%E0%B8%A1%E0%B9%80%E0%B8%9B%E0%B8%8D-%E0%B8%A1%E0%B8%B2%E0%B8%95%E0%B8%A3%E0%B8%B2-112-%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A3%E0%B8%93%E0%B8%A3/>

⁸ Section 116 of the Criminal Code or the "sedation" charge is not commonly known as it has been rarely used. However, following the 2014 coup, we have seen the rise in the use of the charge to silence political dissidents and, thus, is regarded as a political tool. This confirms that this law has always been complementing the restriction of the freedom of expression in every government. <https://freedom.ilaw.or.th/blog/116NCPO>

⁹ Campaign for Political Prisoners <https://thaipoliticalprisoners.wordpress.com/2011/04/03/article-112-awareness-campaign%E0%B9%81%E0%B8%84%E0%B8%A1%E0%B9%80%E0%B8%9B%E0%B8%8D-%E0%B8%A1%E0%B8%B2%E0%B8%95%E0%B8%A3%E0%B8%B2-112-%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A3%E0%B8%93%E0%B8%A3/>

¹⁰ It is of concern that the Uyghurs might be sent to Laos or Cambodia, who will then further deport them to China.

13. The Department of Corrections will not release any prisoners due to the outbreak of COVID-19 because it insists that it can control the virus spread within the prisons. Moreover, the prisoners, if released, will create troubles for the public since they could not take care of themselves well during the crisis. The Department of Corrections has laid out strict preventive measures, where all prisons have suspended relatives' visit and must conduct screening of new or transferred prisoners. If found positive or at risk, the prisoners will be isolated to prevent any transmission to other prisoners. Detainees who have to go to the court must be quarantined for 14 days before returning to their cells. The Department of Corrections has built special rooms in all prisons. Currently, there has been no prisoner tested positive for COVID-19.

Policy Implementation

14. Although many laws have been amended as to comply with the international standards, there still exist many loopholes in terms of understanding the legal provisions, which could lead to proper implementation. The legislators possess comprehensive knowledge including human rights. Laws have been drafted to promote the respect and protection of human rights in various areas. However, Thai society is little aware of the human rights sensibility and has a sociocultural context that is in contradiction to the universal principles, such as what is good and bad. The attitudes of the society impede the improvement of human rights in the country. The lack of the human rights awareness prevents any genuine understanding of the will of laws and, in turn, effective implementation. Apart from legal trainings, many other things must simultaneously happen to generate changes in attitudes, beliefs, and values, which are required to transform policies into practices in order to create a more just society.

End of report.