

Committee against Torture
Fifty-second Session
Thailand
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Shadow Report on Thailand's Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Executive Summary

Following Thailand's submission of its initial report in February 2013, Thai civil society organizations decided to submit this alternative report in order to provide the Committee with a different perspective on the situation of torture and ill-treatment in Thailand.

This is done through the examination of a broad range of thematic issues, such as the criminalization of torture in domestic legislation, allegations of torture occurring in areas under a state of emergency, and the practical consequences of the implementation of special laws as well as the likelihood of these laws facilitating acts that could amount to ill-treatment and torture. The report also explores the general conditions of detention and treatment of migrants, asylum seekers and refugees. Finally, it also illustrates the failure of the government to ensure the victims' right to redress.

This submission not only provides a legal analysis of relevant Thai legislation, but it also refers to on-the-ground observations, together with first and second-hand information documented by the different organizations that participated in its drafting.

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Acronyms & Expressions

Black case	A Black case number is allocated when the case is still on trial, whether before the Court of First Instance, the Appeal Court, or the Supreme Court.
CrCF	Cross Cultural Foundation
Dika Appeal	Appeal to the Supreme Court (Dika Court)
DSI	Department of Special Investigation
Duayjai	Hearty Support Group (Duayjai Group, Songkhla Province)
HAP	Patani Human Rights Network (Hak Asasi Prikemanusiaan)
NHRC	National Human Rights Commission of Thailand
IDC	Immigration Detention Center
<i>Lèse majesté</i>	A crime penalizing defamation, insults, and threats against the monarch
MAC	Muslim Attorney Center Foundation
MoJ	Ministry of Justice
MSDHS	Ministry of Social Development and Human Security
NACC	National Anti-Corruption Commission
Red case	Judgment from the court rendered in a given case. It may still be subjected to appeal before the Appeal Court or the Supreme Court.
Pondok School	Traditional Islamic Boarding School
PTSD	Post-Traumatic Stress Disorder
Task Force	Military Camp established on an Ad Hoc basis [under Martial Law]
TCR	Thai Committee for Refugees.
UCL	Union for Civil Liberty
UNPO	Unrepresented Nations and Peoples Organization
Uztas	Muslim scholar trained in Islam and Islamic law

Introduction

In accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “CAT” or “Convention”), Thailand submitted, in February 2013, its initial report (CAT/C/THA/1) to the Committee (hereinafter “country report”). In light of the forthcoming session, Thai civil society organizations (hereinafter “the Coalition”)¹ jointly prepared this alternative report, which aims at shedding light on the situation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) in the country.

The leading Thai organizations that prepared this submission are the Cross Cultural Foundation (CrCF), Muslim Attorney Center Foundation (MAC), Justice for Peace (JOP), Hearty Support Group (Duayjai), Thai Committee for Refugees Foundation (TCR), and Patani Human Rights Network (HAP). The drafting process was driven by an inclusive and collaborative approach, notably through the organization of three inter-organization consultations² and public seminars held in 2013.³

In addition, Duayjai and HAP provided 86 full-length testimonies⁴ (Annex I), as well as the respective quantitative analysis (Annex II), all documented between 2011 and 2013 in the southern border provinces of Thailand.⁵ Interviews were uniformly conducted by using the *Proxy Medical Evaluation*⁶ (Annex III), 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”).⁷ Though limited geographically,⁸ in time,⁹ and far from being an exhaustive list of cases involving

¹ The Coalition comprises of Non-Governmental Organizations that participated in the drafting of this submission, namely : Cross Cultural Foundation (CrCF), Muslim Attorney center Foundation (MAC), Duayjai Group, Songkla Province (Duayjai), Justice for Peace (JOP), Thai Committee for Refugees Foundation (TCR), and Patani Human Rights Network (HAP). Other Non-Governmental Organizations are supporting this submission: Mekong Migrant Network (MMN), Human Rights Lawyer Association (HRLA), Community Resources Centre (CRC), Stateless Watch, Human Rights and Development Foundation (HRDF), Institute for Jurist and Human Rights Development (just rights), Highland Peoples Taskforces, Inter-Mountain People’s Education and Culture in Thailand Association, and Prorights Foundation.

² On 21 and on 22 January 2012, a workshop for Thai NGOs on Effective Alternative Reporting to the UN Committee against Torture was co-organized by the Association for the Prevention of Torture (APT), the Office of High Commissioner for Human Rights, and the International Commission of Jurists (ICJ). On 17 and 18 November 2012, a follow-up workshop was co-organized by the APT, the Cross Cultural Foundation (CrCF), and the ICJ. Both were held in Bangkok (Thailand).

³ Three public seminars were held in three different locations: in Khonkaen (10 September 2013), in Chiangmai (25 September 2013), and in Pattani (16 November 2013).

⁴ Amongst the 92 cases included in Annex I, six did not provide a narrative account during their interviews. (See page 8 of the *Proxy* (Annex III), section entitled: ‘Narrative Account of Alleged Torture and Ill-Treatment’).

⁵ Duayjai is based in Songkhla province and HAP is based in Yala province. Most of Duayjai and HAP’s activities were supported by the United Nations Voluntary Fund for Victims of Torture (UNVFVT).

⁶ The *Proxy Medical Evaluation* was drafted and prepared by Physicians for Human Rights (PHR) and the American Bar Association Rule of Law Initiative (ABAROLI).

⁷ OHCHR, *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series 8/Rev.1 (2004), (hereinafter “Istanbul Protocol”).

⁸ Duayjai conducted their interviews in Songkhla province, mainly in the Provincial Prison of Songkhla. HAP mainly conducts its activities in Yala and Narathiwat province (particularly in Chanae and Rangae). Due to the limited capacities and resources of these two small organizations, further investigations in Pattani and other districts Narathiwat province were not possible.

⁹ The dates of the incidents reported ranges from 2004 to 2013. See Annex I, column ‘Date of arrest/search’.

allegations of ill-treatment, and arguably torture, in the southern region,¹⁰ these testimonies offer invaluable insight on the context in which these acts took place, the different methods used, the purposes, and more generally the conditions of detention.¹¹

Structured around thematic-related issues pertaining to torture, this report highlights the failure of the Thai government to comply with its obligations under the CAT in order to prevent torture and end the culture of impunity.

More specifically, it provides comments on the current amendment of Thai domestic legislation to incorporate torture as an offence in the Criminal Code. Concerns are notably raised related to the limited scope of the acts constituting torture and other ill-treatment, of the possible perpetrators, and of the purposes of torture. The report notes that the current draft law fails to include a definition of torture that complies with the Convention. (**Chapter 1**) It further attempts to provide a comprehensive analysis of the special legislation in force in areas under a state of emergency. As it is demonstrated that most allegations of torture arise during detention, the report discusses how the implementation of such legislation may facilitate the perpetration of these acts (**Chapter 2**) with the reported purpose being to obtain confessions (**Chapter 3**). These Chapters are notably substantiated with various examples, which highlight patterns and commonalities among the different cases annexed to this report.

In addition, it explores how articles 12, 13 and 16 of the Convention are currently implemented and suggests that improvements notably in terms of complaint mechanisms, prosecution of alleged perpetrators and investigation should be made (**Chapter 4**). The Coalition further draws a general overview of the main issues related to conditions of detention, treatments of asylum seekers as well as refugees (**Chapter 5, 6 & 7**). Finally, it briefly looks at how Thailand lacks a comprehensive law on remedies for those affected by torture and the practical implications related to this issue (**Chapter 8**).

On the basis of this report and the Coalition's findings, the abovementioned organizations ask the Committee to urge the Thai authorities to amend their laws and public policies, to ensure their conformity with international human rights standards, to establish efficient mechanisms to combat and prevent torture and other ill-treatment, to bring those responsible to justice, and finally to ensure that victims are granted effective redress.

¹⁰ For instance, between 2007 and 2013, Muslims Attorney Center Foundation reported having received more than 393 complaints of ill-treatment and torture. The complaints came mainly from detainees' family members, based in Pattani, Yala, Songkhla and Narathiwat province. The content of these complaints could however not be shared because of confidentiality constraints.

¹¹ See Annex I and II.

Chapter 1. Definition and criminalization of torture in domestic legislation (Articles 1 and 4)¹²

- 1.1 As mentioned in the country report,¹³ the term ‘torture’ is already included in three different legal instruments, namely the Constitution of Thailand,¹⁴ the Criminal Code¹⁵ and the Criminal Procedure Code.¹⁶ However, ‘torture’ is not a stand-alone crime *per se*. It rather constitutes an aggravating circumstance of existing criminal offenses such as, aggravated battery, assault and battery causing grievous bodily harm, murder, kidnapping for ransom, and the offence of gang-burglary.¹⁷
- 1.2 In 2010, civil society¹⁸ proposed a draft law governing torture¹⁹ separated from the current Criminal Code and Criminal Procedure Code to ensure that Thailand fulfills its international obligations. The Coalition argues that a special Act should be enacted because torture is a major and prevalent problem in Thailand. It is even more so where special legislation such as the Martial Law, the Emergency Decree, the Internal Security Act, and the Prevention, and Suppression of Narcotic drug Act are in force, providing additional powers to the authorities. Therefore, the CrCF, the UCL and the Human Rights Lawyers Association (hereinafter “HRLA”) argued that an amendment of the Criminal Code and of the Criminal Procedure Code could not sufficiently address loopholes in both law and practice.

¹² Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 3452 (XXX) of 9 December 1975, article 7. It should be noted that this Declaration, although a non-binding instrument, was adopted by consensus by the General Assembly. (hereinafter “Declaration against Torture”). Other non-binding instruments are relevant, see notably: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly Resolution 43/173 of 9 December 1988, Principle 7. (hereinafter “Body of Principles”).

¹³ Country report, CET/C/THA/1, paras.56-58.

¹⁴ Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 32 (2). (hereinafter “Constitution”)

¹⁵ Criminal Code B.E. 2499, section 296, 298, 289(5), 313(2), 340(4), 340 *bis* (5). Available online: <<http://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation>> (last consultation: 04.03.2014). [unofficial translation] (hereinafter “Criminal Code”).

¹⁶ Criminal Procedure Code B.E. 2478, section 135. Available online: <<http://www.humanrights.asia/countries/thailand/laws/Criminal%20Procedure%20Code%20I.pdf>> (last consultation: 09.03.2014) [unofficial translation] (hereinafter “Criminal Procedure Code”).

¹⁷ *Supra* note 15. See also: Country report, CET/C/THA/1, para.58.

¹⁸ In this case, ‘civil society’ refers to: CrCF, Union for Civil Liberty (UCL) and the Human Rights Lawyers Association (HRLA). In 2010, CrCF, HRLA and UCL conducted a study on the domestic and foreign laws on the prevention of torture. The HRLA also created a draft act and organized a meeting held on 8 March 2012 to seek input from academics, the Department of Rights and Liberties Protection, and human rights organizations. When the draft act was partially completed, the HRLA received assistance from the ICJ and APT for review and comment. These consultations made the anti-torture draft act more complete and thorough. However, the formal submission of the draft law was not possible due to the lack of signatures as required by article 163 of the Constitution.

¹⁹ The people's draft law defines torture as “[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official (1) for such purposes as obtaining from him or a third person information or a confession punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, (2) or for any reason based on discrimination of any kind but in exclusive of pain or suffering arising only from, inherent in or incidental to lawful sanctions. Severe pain or suffering, whether physical or mental covers mental suffering caused or is a result of (1) An intention or a threat to inflict severe pain or suffering; (2) An action, a use of or a threat to severely disrupt the mind or a personality; (3) A close dead threat; (4) An action, a use or any employment of other means to embarrass, humiliate or inflict damage a person; and (5) A threat that other persons will be killed or will be subjected to any action in (1)-(5).” [unofficial translation]

- 1.3 However, the Office of the Attorney General and the Ministry of Justice have argued that the crime of torture should be included in the Criminal Code in order to facilitate enforcement and to avoid multiplication of legislation. They also argue that a separate new Bill on torture, which would include the creation of a new agency, would have trouble obtaining the parliament's approval notably because it would involve a financial commitment.
- 1.4 On 17 January 2013, CrCF submitted an amendment proposal to the Chairperson of Law, Justice and Human Rights Committee of the House of Representatives (hereinafter "LJHR"). The LJHR agreed with the proposal and decided to establish a "Working Group"²⁰ to elaborate a preliminary draft torture law.
- 1.5 Following several meetings²¹ between the concerned government agencies²² and several civil society representatives,²³ the Working Group persuaded the LJHR that an amendment of the Criminal Code, by including a definition and punishment in line with the CAT, is the most effective way to obtain support and ensure the passage through parliament of a law criminalizing torture.
- 1.6 Despite the sustained efforts of many stakeholders to mobilize the authorities to amend the current domestic law and include the criminal offence of torture in a separate legal instrument, the LJHR recommended that the last drafts proposed by the Working Group be pushed forward. This is despite the fact that these two drafts, namely, the *Act on the Amendments of the Criminal Code*²⁴ (hereinafter "proposed Act to amend the Criminal Code") and the *Act on the Amendments of the Criminal Procedure Code*²⁵ (hereinafter "proposed Act to amend the Criminal Procedure Code") continue to present several issues at the substantive level.
- 1.7 The proposed Act to amend the Criminal Code is notably very narrow in scope and raises three main concerns. They are all mainly related to the limited scope of the acts constituting torture and other ill-treatment, of the possible perpetrators, and of the purposes of torture.

²⁰ LJHR comprises of 11 parliamentarians appointed as an ordinary committee within the Parliament. They are mandated to investigate and study laws, and issues pertaining to justice and human rights. The current chairperson is General Pol. Wirun Puansaeng.

²¹ There were a few meetings held in 2013; notably on the 13th, the 20th and the 27th of February.

²² The LJHR invited stakeholders from different law enforcement offices (e.g. army, police and interior officers) including officers from the Correction department. They all had to opportunity to comment on the draft law.

²³ Cross Cultural Foundation, Human Rights Lawyers Association, and Amnesty International Thailand.

²⁴ Draft Prepared by the Law, Justice and Human Rights Committee's Working Group, The House of Representatives, 10 April 2013, *Act on the Amendments of the Criminal Code* (No ...), B.E.... [unofficial translation] [Proposed Act to amend the Criminal Code]. The Ministry of Justice defines torture as "[a]ny administrative officer or police officer, inquiry officer, and other officer authorized to carry out investigation, detention, imprisonment or holding in custody a person act or refrain from acting in their capacity; (1) An act of rape as per Article 276(2) Physical assault as per Article 297(3) An act of physical assault causing the other person to suffer prolonged mental harm. And the purposes the act are to; (1) Obtain from the person or the third person a statement or confession; (2) Punish the victim of torture; (3) Compel the other person to act or to refrain from acting." [unofficial translation]

²⁵ Draft Prepared by the Law, Justice and Human Rights Standing Committee's Working Group, The House of Representatives, 10 April 2013, *Act on the Amendments of the Criminal Procedure Code* (No ...), B.E....[unofficial translation] [Proposed Act to amend the Criminal Procedure Code].

A. Acts constituting torture and other ill-treatment

- 1.8 The definition of torture in this Act does not reflect the definition enshrined in the CAT,²⁶ *inter alia*, the torture methods are limited to physical assault, rape and/or sexual harassment. This restrictive approach is not in line with article 1 of the Convention,²⁷ nor with the Human Rights Committee and the Committee against Torture's interpretation of what may, or may not, amount to torture or other ill-treatment. Both Committees have recognized that "[t]he prohibition [torture] relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. (...) moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure."²⁸ Each situation shall be considered on a case-by-case basis, taking into consideration the duration of torture, gender, age, and physical condition of the victim.²⁹
- 1.9 The proposed Act to amend the Criminal Code also excludes other types of ill-treatment. Although article 2 of the Convention does not require State parties to include these in their domestic law, it should be included because torture and ill-treatment are often difficult to distinguish.³⁰ By recognizing that "[t]he obligations to prevent torture and [ill-treatment] (...) under article 16, paragraph 1, are indivisible, interdependent and interrelated"³¹ and that ill-treatment often supports the use of torture, any preventive measures used to prevent torture should also be applied to prevent ill-treatment.
- 1.10 Additionally, the proposed Act restrains the definition of torture to the limited scope of Section 276 and 297 of the Criminal Code.³² These sections enumerate an exhaustive list of types of injury, leaving no room for any other harm being inflicted to potential victims, both of psychological or physical nature:

Section 276 Whoever has sexual intercourse with other person, being in the condition of inability to resist, by committing any act of violence or by making such another person misunderstand himself or herself as another person (...).³³

Section 297 (...) Grievous bodily harms are as follows:

1. Deprivation of the sight, deprivation of the hearing, cutting of the tongue or loss of the sense of smelling;

²⁶ CAT, article 1. See also: CAT/C/GC/2, para.9. The Committee notably mentions that: "[s]erious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation (...)."

²⁷ CAT, article 1: "[a]ny act by which severe pain or suffering, whether physical or mental (...)."

²⁸ HRC, General Comment No.20, A/44/40, para.5. See also: CAT/C/GC/3, para.3.

²⁹ *Prosecutor v Krnojelac* (15 March 2002) ICTY, Trial Chamber II, Judgment, Case No. IT-95-27-T, para.182. This was reiterated in: *Prosecutor v Simic* (17 October 2002) ICTY, Trial Chamber II, Judgment, Case No. IT-95-9/2-S, para.34.

³⁰ HRC, General Comment No.20, A/44/40, para.4: "it [is not] necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied."

³¹ CAT/C/GC/2, para.3. As extensively explained in the General Comment, the obligation to prevent torture set out in article 2 should be interpreted and applied in light of article 16(1) of the Convention.

³² Proposed Act to amend the Criminal Code, draft article 166/1, para.1 (1), (2) and (3).

³³ Criminal Code, section 276. The second paragraph tackles aggravating circumstances. [unofficial translation]

2. Loss of genital organs or reproductive ability;
3. Loss of an arm, leg, hand, foot, finger or any other organ;
4. Permanent disfiguration of face;
5. Abortion;
6. Permanent insanity;
7. Infirmity or chronic illness which may last throughout life;

Infirmity or illness causing the sufferer to be in severe bodily pain for over twenty days or to be unable to follow the ordinary pursuits for over twenty days.³⁴

B. Perpetrators of torture

- 1.11 The proposed Act to amend the Criminal Code also limits the definition of perpetrators to: “[a]ny administrative officer or police officer, inquiry officer, and other officer authorized to carry out investigation, detention, imprisonment or holding in custody a person (...)”³⁵ which are all strictly defined under the Criminal Procedure Code,³⁶ whereas all the other provisions under the same Chapter remain broad by only indicating: “[w]hoever, being an official”.³⁷
- 1.12 The wording used in the CAT is broad in scope to ensure the inclusion of all types of officials or other persons acting in an official capacity. Thus, the Coalition is concerned that by interpreting the draft provision 166/1 in a restrictive manner, this wording might create loopholes and some perpetrators could therefore fall out of the scope of the provision. As a result, they would not be found accountable for their acts,³⁸ furthering the culture of impunity.

C. Purposes of torture

- 1.13 Finally, the exhaustive enumeration of possible purposes of torture prescribed in the proposed Act to amend the Criminal Code raises great concerns as it is far from reflecting the wordings of the Convention. As of now, the draft article 166/1 includes:
- (1) Obtain for the person or the third person a statement or confession;
 - (2) Punish the victim of torture;
 - (3) Compel the other person to act or to refrain from acting.³⁹
- 1.14 According to the CAT, purposes also include “intimidating or coercing him or a third person, [and] for any reason based on discrimination of any kind (...)”.⁴⁰ This latter

³⁴ - *Ibid*, section 297. [unofficial translation]

³⁵ Proposed Act to amend the Criminal Code, draft article 166/1, para.1. [unofficial translation];

³⁶ The ‘administrative officer or police officer, inquiry officer’ are all defined in section 2(16) and the ‘inquiry officer’ is defined in section 2(6) of the Criminal Procedure Code. The proposed definition covers as well ‘other officers’ who are authorized to carry out investigation, detention, imprisonment, or holding in a person in custody.

³⁷ Criminal Code, sections 147 to 166. [unofficial translation]

³⁸ In this case, the Coalition is concerned that this provision may not include some state officials, such as teachers. These discrepancies with the definition enshrined in the Convention may “create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation” See: note 26.

³⁹ Proposed Act to amend the Criminal Code, draft article 166/1, para.2. [unofficial translation]

purpose is particularly relevant for minority groups, such as the Malayu Thais mainly located in the southern border provinces of the country.⁴¹

- 1.15 This is illustrated by various testimonies annexed to this report. Detainees notably reported that they were prevented from practicing *ibadah* (worship) such as not being allowed or able to perform *ṣalāt* (prayers), or not being able to eat halal food.⁴² In one case, the detainee reported that the official ordered his wife to take off her hijab. He further added that she cried while taking it off.⁴³ Some of the testimonies mention that officials also qualified Islam as being a 'wicked and evil' religion, and more generally reported that they insulted religious beliefs.⁴⁴
- 1.16 In its Concluding Observations of 15 November 2012, the Committee on the Elimination of Racial Discrimination: "remain[ed] seriously concerned at the discriminatory impact of the application of the special laws in force in the southern border provinces, including reports of identity checks and arrests carried out on the basis of racial profiling, as well as reports of torture and enforced disappearance of Malayu Thais. The Committee is further concerned at the risk of serious human rights violations in the enforcement of these laws as well as at the absence of a mechanism of oversight of their application (arts. 2 and 5 (a, b, d))."⁴⁵ It further recommended that Thailand should: "[r]eview the special laws with a view to meeting international human rights standards, particularly those in regard to the prevention of torture."⁴⁶
- 1.17 In addition, the phrasing chosen in paragraph 3 of the draft article 166/1 preoccupies the Coalition as it is not clear if it encompasses the wordings of the Convention, which states: "intimidating or coercing him or a third person".

⁴⁰ CAT, article 1.

⁴¹ This minority group, along with others, reported having been subjected to discrimination. See notably: National Commission on Human Rights of Thailand, *Alternative Report on Thailand's Implementation of the Convention on the Elimination of All Forms of Racial Discrimination submitted to the Committee on the Elimination of Racial Discrimination*, paras. 8-16. Available online: <www2.ohchr.org/english/bodies/ngos/NCHR_Thailand81.doc> (last consultation: 12.03.2014). See also: Coalition on Racial Discrimination, *Shadow Report on Eliminating Racial Discrimination*, paras. 8, 9, 34, and 110-114. Available online: <<http://www2.ohchr.org/english/bodies/cerd/docs/ngos/CRDWThailand81.pdf>> (last consultation: 12.03.2014). It was thereafter highlighted by the Committee on the Elimination of Racial Discrimination in: CERD/C/THA/CO/1-3, para.21.

⁴² As examples, see: Annex I, cases: DJ1 (the victim asked permission to pray salaah, but the authorities did not allow), DJ17 (the morning of the first day, the authorities interrogated him and didn't let him eat and pray), DJ52 (the victim asked to say prayer but the officers denied his request saying he had said prayer too much), DJ53 (the victim was not allowed to say prayer), and DJ54 (the victim did not eat for 7 days till on the last day, his food was with pork. He was not allowed to pray, no relatives were allowed to visit him.).

⁴³ See Annex I, case: DJ18.

⁴⁴ As examples, see: Annex I, cases: DJ5 (the officials said "You are a person who doesn't attend school", "a person who doesn't have a knowledge of religion", called him "hooligan", and used some word that insulted his religion referring to him as "indian"), DJ52 (the officers condemned Islam as wicked and evil. They added that the Malay Thais shoot randomly into people.), and DJ53 (The victim reported being electrocuted and exposed to contemptuous word against his religion: "The Malay Thais at Ban Kurong are villains. They shall not be allowed to live in Thailand. When will you guys move to Malaysia?"). Also, more generally, see Annex II, Table I and Graph I where it is indicated that out of 85 cases, 26 of them have reported having been '[f]orced to go against [their] religious practices'.

⁴⁵ CERD/C/THA/CO/1-3, para.21.

⁴⁶ *Ibid.*

1.18 Thus, the omission of such purposes in the current proposed Act to amend the Criminal Code would not only be contrary to Thailand's international obligation,⁴⁷ but would also leave out important evidence that victims of other ill-treatment or torture could rest on in order to lodge a complaint against alleged perpetrators.

Recommendations

- If the proposed draft submitted by civil society is not considered suitable by Thailand, at the very least, the Criminal Code and the Criminal Procedure Code should be amended to include torture as a distinctive crime apart from other existing criminal offences.⁴⁸
- Include the purpose of "for any reason based on discrimination of any kind" in the definition of torture in order to properly reflect the different purposes laid out in Article 1 of the Convention against Torture.
- Clarify the purpose of "compel the other person to act or to refrain from acting" enshrined in the third paragraph of the present draft article 166/1. Alternatively, replace this formulation for "intimidating or coercing him or a third person" in order to fully reflect the different purposes laid out in Article 1 of the Convention against Torture.
- Include other ill-treatment in the definition of torture to ensure that the text of the provision complies with the Convention against Torture. Additionally, the offence should not be limited to physical assault, rape and sexual offences, it should include any act that amount to severe pain and suffering either physically or mentally to any person.
- Ensure that the perpetrator(s) mentioned in the definition will not be limited to a restrictive list of certain public officials but rather that it covers any action from any persons appointed or acting in an official capacity. The new provision must also stipulate appropriate punishment for torture.
- Organize trainings⁴⁹ on the Convention against Torture, and on the Committee's General Comments No. 2 and No. 3 for the police, prison, security, health, judicial, immigration officials and other officials who conduct arrests and detentions. The curriculum should incorporate the notion of systematic investigations into allegations of torture and cruel treatment as well as data collection methods as detailed in the Istanbul Protocol.⁵⁰

⁴⁷ CAT, article 7.

⁴⁸ This would be in accordance to the Committee's second General Comment, CAT/C/GC/2, para. 11.

⁴⁹ CAT, article 10.

⁵⁰ Istanbul Protocol, para.77. This paragraph lays out the purposes of an investigation into torture.

Chapter 2. Arrest and detention in time of emergency (Article 11)⁵¹

- 2.1 The country report highlights the different fair trial rights that aim at protecting alleged offenders, all of which enshrined in the Criminal Procedure Code and applicable under normal circumstances. Such rights notably include the right not to be arrested, detained or searched without reasonable ground, the right to provisional release, the right to *habeas corpus*, the right to have access to assistance by legal counsel during an interrogation, and the right to have a legal counsel or a trusted person to be present during an interrogation⁵² However, these guarantees are substantially reduced in times of emergency. In addition to the power of arrest and detention under the Criminal Procedure Code,⁵³ Thailand has granted extra powers to state officials under the Martial Law and the Emergency Decree.
- 2.2 This second Chapter aims at shedding light on how these rights are truly implemented in practice, while bearing in mind the State's liberty to derogate to some rights not listed under article 4 of the International Covenant on Civil and Political Rights.⁵⁴
- 2.3 Under the Martial Law, major concerns are related to section 15 *bis*, which enables the military authorities to detain any persons when "there is a reasonable ground to suspect that [this] person is the enemy or violates the provisions of this Act or the order of the military authority."⁵⁵ The omission of any legal obligation to request and issue an arrest warrant provides a wide liberty of action to the military authorities acting under these dispositions. Thus, any person may be arrested and detained up to seven days for interrogation or for any 'other necessities of the military'.⁵⁶
- 2.4 As for the Emergency Decree, concerns are mainly related to section 12 which allows state officials to arrest and detain "suspected persons" in custody for a period not exceeding seven days. If the necessity of the detention is proven before the court, state officials may be granted an extension of the detention by seven days at a time, provided that the total period does not exceed thirty days.⁵⁷ Such request can be made without bringing the detainee to the court.⁵⁸ Following the issuance of the Emergency Decree on

⁵¹ See also: Body of Principles, Principles 11 to 13, 15 to 19, and 23. These principles detail specific legal safeguards that shall be guaranteed to detained or imprisoned individuals.

⁵² Country report, CET/C/THA/1, para. 44. All of these rights are prescribed in the Criminal Procedure Code, sections: 78, 87, 92 (rights related to arrest, detention and search), 107-119 (right to be released on bail), 90 (right to request the *Habeas corpus*), 8, and 134/1 (right to have access to a legal counsel and the presence of a trusted person during an interrogation).

⁵³ Criminal Code, sections 78 and 87. This is also explained in the Country report, CET/C/THA/1, paras.122-123.

⁵⁴ International Covenant on Civil and Political Rights, article 4. See also: CCPR/C/21/Rev.1/Add.11, para.13 (a).

⁵⁵ Martial Law B.E. 2457 (1974), section 15*bis*. [unofficial translation]. Available online: <<http://www.thailawforum.com/laws/Martial%20Law.pdf>> (last consultation: 06.04.2014) (hereinafter "Martial Law")

⁵⁶ *Ibid.*

⁵⁷ Emergency Decree on Public Administration in State of Emergency, B.E. 2548 (2005), section 12. [unofficial translation]. Available online: <<http://www.icnl.org/research/library/files/Thailand/Emergency.pdf>> (last consultation: 06.04.2014) (hereinafter "Emergency Decree"). See also: Practical Guideline on Arrest and Detention of Suspected Person under the Emergency Decree B.E. 2548, section 10.

⁵⁸ Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) dated 24 January 2007, section 3.7. [unofficial translation] (hereinafter "ISOC Regulation (2007)")

20 July 2005 in the three southern border provinces,⁵⁹ 5,283 emergency warrants have been issued and 4,080 suspects have been arrested.⁶⁰

A. Implementation of the special laws

- 2.5 The Coalition is strongly concerned about allegations of torture mostly reported during detention in the southern border provinces of the country that is currently under public emergency. According to the Thai authorities, the legislation applicable in a state of normalcy was 'inadequate' to address the current situation in the region because of the "(...) the increasing intensity of the violent situations in the [southern border provinces] since 2004 (...)"⁶¹ They therefore justified the implementation of the special laws "in order to cope with the situation in a timely manner, ensuring security for the public as a whole. The special legislation was also necessary to address diverse and complicated problems as well as the violence inflicted upon the public and state officials. (...) Moreover, the special legislation is required to facilitate officers' performance of their duties."⁶²
- 2.6 However, contrary to the Thai authorities' position,⁶³ the regulations, procedures and guidelines issued by different security agencies⁶⁴ detail extensive restrictions of rights that are arguably not in compliance with Thailand's obligation to limit derogations to those strictly required by the exigencies of the situation and in accordance with the principle of proportionality.⁶⁵
- 2.7 More particularly, one must question the legitimacy of having two special laws simultaneously enforced in the same areas considering their similar scope of application.⁶⁶

⁵⁹ Royal Gazette: Vol. 122, Chapter 58 Kor, pp, 1-9, July 16, 2005

⁶⁰ CrCF received these figures from SBPAC (Southern Border Provinces Administrative Centre) on 21 August 2013 via email. They represent the number of emergency warrants issued between 20 July 2005 and July 2013.

⁶¹ CERD/C/THA/CO/1-3/Add.1, para.23. The legislation applicable in a state of normalcy is the Criminal Code and the Criminal Procedural Code.

⁶² *Ibid.*

⁶³ *Supra*, note 61, para.24: "The aims of these detailed arrangements are to minimize any potential negative impact vis-à-vis members of the public and to promote respect for human rights."

⁶⁴ The ISOC Regulation was first issued by the Fourth Army Area Commander (as the Director of the ISOC Region 4 and Chief of the Response Team to States of Emergency). See ISOC Regulation (2007), second paragraph.

⁶⁵ CCPR/CO/84/THA, para. 13. Following the entry into force of the Emergency Decree, the Human Rights Committee specifically stated that: "The Committee is concerned that the Emergency Decree on Government Administration in States of Emergency which came into immediate effect on 16 July 2005, and on the basis of which a state of emergency was declared in three southern provinces, does not explicitly specify, or place sufficient limits, on the derogations from the rights protected by the Covenant that may be made in emergencies and does not guarantee full implementation of article 4 of the Covenant. It is especially concerned that the Decree provides for officials enforcing the state of emergency to be exempt from legal and disciplinary actions, thus exacerbating the problem of impunity. Detention without external safeguards beyond 48 hours should be prohibited (art. 4). **The State party should ensure that all the requirements of article 4 of the Covenant are complied with in its law and practice, including the prohibition of derogation from the rights listed in its paragraph 2. In this regard, the Committee draws the attention of the State party to its general comment No. 29 and the obligations imposed upon the State party to inform other States parties, as required by its paragraph 3 [emphasis added].**" Albeit these observations, the Emergency Decree was not amended, nor clarified. The vagueness of its provision was again reported in 2010 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. See: A/HRC/10/3/Add.1, para.284 and 285. See more generally: CCPR/C/21/Rev.1/Add.11, para.4.

⁶⁶ Indeed, the Martial Law may be proclaimed: "[w]henver there is necessity to preserve good order so as to be free from external or internal danger" (section 2) [unofficial translation] and more specifically "[i]f there is a war or insurrection in

The Emergency Decree was declared in the three southern border provinces on 20 July 2005.⁶⁷ The following day, Thailand immediately revoked the Martial Law that was in force since 5 January 2004.⁶⁸ It suggests that the Emergency Decree was meant to replace the Martial Law.⁶⁹ Nevertheless, the Martial Law and the Emergency Decree are actually both in place since 26 September 2006.⁷⁰

- 2.8 The Muslim Attorney Centre Foundation observed that, in some cases, individuals detained under the Martial Law for a period of seven days are further detained under the Emergency Decree for an additional thirty days. However, the subsequent application of these two special laws, in order to arrest and detain a person, should not be allowed considering that there is no distinct difference in the legal status of individuals detained. The Martial Law allows the military to detain when there is sufficient reason to suspect any individual of being an enemy, to suspect that an individual violated provisions under the Martial Law, or the order of the military authority⁷¹ while the Emergency Decree states that officials have the power to arrest and detain persons suspected of playing a part in causing the emergency situation.⁷²
- 2.9 The Coalition is preoccupied that detainees are not fully entitled to all fundamental legal safeguards during their detention.⁷³ By having two special laws simultaneously enforced in some areas, serious concerns remain that their implementation has led to arbitrary detention and administration of torture.

B. Guarantees of fundamental legal safeguards during detention

- 2.10 This section illustrates that when individuals are deprived of their liberty under the special laws, the government fails to take prompt and effective measures to ensure that the detainees are afforded all legal safeguards, in both in law and practice, from the very outset of their detention.⁷⁴

any area" (section 4) [unofficial translation]. On the other hand, the Emergency Decree may be proclaimed when there is an emergency situation, in which it is defined to include a "fight or war". (section 4) [unofficial translation].

⁶⁷ Royal Gazette No. 122 Special 54 Ngor, p. 1, 20 July 2005.

⁶⁸ On 5 January 2004, the Martial Law was declared by an announcement by the 4th Army Region as a response to the gun robbery incident in Narathiwat. It was declared only in some areas of Narathiwat (Bajor, Ruesor, Takbai, Sungaipadi, Yeengor, Sungaikolok), Pattani (Kapor), and Yala (Raman). On 26 January 2004, it was further declared by the announcement of the 4th Army Region in the additional areas of Narathiwat (Muang), Satul (Muang, Kuando, Langoo, Thapae), Pattani (Muang, Nongjik, Yaring, Mayor, Yarang, Maelan, Saiburi, Thungyangdang, Kok-poh, Mai-kan, Panarae), and Yala (King Ampeo Krong Penang). On 21 July 2005, the Martial Law was revoked by the Royal Decree (Royal Gazette No. 122 Special 59 Kor, p. 1, 21 July 2005). Later, on 26 September 2006, General Sonthi Boonyaratglin acting as coup leader declared the Martial Law everywhere in the Kingdom and it has been in place in the three southern border provinces ever since (Vol 123, Chapter 95 Kor, pp. 3, September 20, 2006).

⁶⁹ It shall be noted that in section 4 *in fine* of the Martial Law, it is indicated that "[i]n this case, the proclamation of the Martial Law shall be reported to the Government immediately. [unofficial translation]"

⁷⁰ Except in Mae Lan district of Pattani where it is enforced with the Martial Law and the Internal Security Act.

⁷¹ Martial Law, section 15*bis*.

⁷² Emergency Decree, sections 11(1) and 12.

⁷³ As guaranteed by section 7/1 of the Criminal Procedure Code.

⁷⁴ For example, see DJ34 where the individual reported that he was prevented from choosing his own counsel. An enumeration of the relevant legal safeguards is also provided in the Committee's second General Comment, para. 13.

- 2.11 This issue might stem from unclear instructions and the overly broad provisions and definitions provided under these laws.⁷⁵ Despite attempts by the Internal Security Operations Command Region 4 to develop a comprehensive regulation under the Emergency Decree⁷⁶ and guidelines under both the Martial Law and the Emergency Decree,⁷⁷ the guarantees laid out in these instruments are significantly weaker than the ones enshrined in the Criminal Code and more particularly the Constitution.
- 2.12 While the Guidelines under the Martial Law expressly indicates that when an individual is deprived of his/her liberty, physical abuse, verbal threat, any humiliation and torture is absolutely prohibited,⁷⁸ the right to visit and inquire about the wellbeing of the detainee is subject to the discretion of the detaining agencies.⁷⁹ From the cases annexed to this report, it is demonstrated that such abuses, although expressly proscribed in the aforementioned Guidelines, occurred on several occasions.⁸⁰
- 2.13 Under the Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (hereinafter "ISOC Regulation (January 2007)"), specific provisions, discussed in the following paragraphs, are particularly problematic and were subjected to multiple amendments.⁸¹
- 2.14 The first version, in force between January 2007 and January 2008, indicated that visits by relatives or legal representative(s) 'must be allowed' after the first three days following the arrest: "3.9.3 Visiting time, **after the first three days of detention**, visit by relatives must be allowed everyday between 09.00-10.00 and 14.30-15.00. The person held in

⁷⁵ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism notably highlighted this point. See: A/HRC/10/3/Add.1, paras.284-288. More specifically, the Special Rapporteur mentioned in paragraph 284: "It is my opinion that the definitions contained in the Decree are overly broad and vague, and may therefore allow for the declaration of a state of emergency in cases which do not amount to a threat to the life of the nation, and which should therefore be dealt with under the ordinary legal framework, without derogating from the ICCPR." He further added in the next paragraph: "The second area of concern was the overly broad and vague definitions contained in the emergency decree, in particular those defining the powers granted to those allowed to take measures under the Decree."

⁷⁶ ISOC Regulation (2007).

⁷⁷ Guidelines on the Detention Invoking the Martial Law Act B.E.2457 and Practical Guidelines on Arrest and Detention of Suspected Persons under the Emergency Decree B.E. 2548.

⁷⁸ Guidelines on the Detention Invoking the Martial Law Act B.E.2457, para.3.

⁷⁹ *Ibid.*

⁸⁰ Generally see Annex I. This was generally observed by the different organizations constituting the Coalition, especially MAC, CrCF, Duayjai and HAP.

⁸¹ Following its enactment, specific dispositions of the ISOC Regulation (2007) were amended: Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) (1st Amendment) on 1 January 2008. [unofficial translation] (hereinafter "ISOC Regulation (1st amendment, 1 January 2008)"); Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) (2nd Amendment) on 1 February 2008: [unofficial translation] (hereinafter "ISOC Regulation (2nd amendment, 1 February 2008)") and Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) (3rd Amendment) on 22 March 2010. [unofficial translation] (hereinafter "ISOC Regulation (3rd amendment, 22 March 2010)").

custody is allowed to meet his relative not exceeding 30 minutes per day [emphasis added].”⁸²

- 2.15 Although the wordings did not expressly prohibit visits during the first three days, testimonies annexed to this report, together with the second amendment to this same provision, illustrate that access to the detainees were difficult, inconsistent⁸³ and often not in line with this regulation. In a few cases, it was reported that the relatives were not aware of the detainee’s whereabouts,⁸⁴ or that the detainee was transferred to various place of detention over a very short period of time.⁸⁵ This made it very difficult for relatives to identify where the individual was actually detained. In other cases, though visits were allowed, relatives could not see the detainee,⁸⁶ or were not allowed to speak in their mother tongue.⁸⁷
- 2.16 On 1 January 2008, a second phrase was added to this same disposition, preventing family members from visiting detainees who hold positions as soldiers or governmental officials, without having an express authorization from the Director of the Internal Security Operations Command Region 4 (hereinafter “Director of the ISOC”). This addition remains in force: “In case the detainee is a military official, police officer, civil servant or the one serving for the Internal Security Operation Command Region 4 and/or an official from other governmental sectors whose work is related to the internal security, **visit shall not be allowed, except the one made under permission of the Director of the Internal Security Operation Command Region 4** [emphasis added].”⁸⁸
- 2.17 Pursuant the first amendment, the Director of the ISOC issued a second amendment on 1 February 2008: “in order to ease worry of the detainee’s family and express honesty of competent officials in treating detainees (...)”.⁸⁹

⁸² ISOC Regulation (2007), Section 3.9.3. [unofficial translation] This sentence was also kept under ISOC Regulation (1st amendment, 1 January 2008), section 3.9.3.

⁸³ For examples that took place at the time of the first version of this provision, see: DJ57 (date of the incident: 2007-2008. The detainee reported that his family was not informed of his whereabouts and was not allowed to visit him during the first seven days of his detention); DJ50 (date of the incident: 2007. The detainee was barred from receiving a family visit in Muang Pattani Police Station); DJ35 (date of the incident: 17 October 2007. Visits were not allowed during the first day in Task Force 4); DJ26 (date of the incident: October 2007. The detainee’s relatives were not allowed to visit him during the first two days and 3 nights following his arrest. They were able to visit three times a day); DJ40 (date of the incident: 5 October 2006. The detainee reported being allowed to see his family after 4-5 days’ detention). After the second amendment adopted in February 2008, inconsistencies were still observed. See for example: DJ59 (date of the incident: March 2010. The detainee reported having been denied visitors during the first three days of his arrest); DJ46 (date of the incident: 22 October 2011. The day of the arrest, the detainee was not allowed to contact his family); H33 (date of the incident: 3 May 2013. The detainee’s family could not visit him for the first two days of his detention.)

⁸⁴ See notably: H12 (date of the incident: 2008. The detainee reported that his mother did not know where he was and the officials kept saying that he was in different camps); DJ20 (date of the incident: 12 August 2008. The detainee’s family was only informed two weeks after he was moved. When he was moved to a remand prison, it took another week before the family knew where he was.)

⁸⁵ See for example DJ21.

⁸⁶ See: DJ45 (the detainee’s family went to visit him at Joh Ai Rong Police Station, but they were not allowed to see him.). DJ46 (the detainee’s family visited during the first 3 days but he was not allowed to see them and did not know that they had come). H10 experienced the opposite. The detainee reported that while being detained in Task Force 11, on the first three days, he did not meet anyone, including his family, because they did not know where he was. On the 4th day, when his family came, they could only see each other.

⁸⁷ See for example: H33.

⁸⁸ ISOC Regulation (1st amendment, 1 January 2008), section 3.9.3. [unofficial translation]

⁸⁹ ISOC Regulation (2nd amendment, 1 February 2008), para.1. [unofficial translation]

2.18 Substantial, but insufficient, changes were adopted:

3.9.3 (...) visit by the detainee's grandparents, parents, husband or wife, husband's or wife's parents as well as children and brothers or sisters **must be allowed every day after the detention. The visiting time shall begin immediately on the first day of detention done according to the Regulation from 9am to 10am and from 2.30pm to 3pm. Detainees can meet their relatives not exceeding 30 minutes per day.** In case the detainee is a military official, police officers civil servant or the one serving for the Internal security operations command region 4 and/or an official from other government sectors whose work is related to the internal security, visit shall not allowed, except the one made under permission of the Director of [ISOC Region 4].

Other visit made by the detainee's relatives, apart from the one stated in the above paragraph, shall be allowed every day after the first three days of detention from 9am to 10am and from 2.30am to 3pm and the detainees is allowed to meet his/her relatives for no more than 30 minutes per day.

In case of a visit made by other person the one mentioned in the two paragraphs above, prior permission must be made from the Director of [ISOC Region 4]. The visit made in accordance with those mentioned in the paragraphs earlier shall be under supervision of authorized officials who will be able to observe the conversation during the visits [emphasis added].⁹⁰

- 2.19 Contrary to the Thai authorities' position,⁹¹ this disposition does not conform to the right of access to legal counsel.⁹² Although authorization may be granted, the third paragraph is not worded as formulating a right *per se* as it is drafted for relatives of the detainee. It has been observed by Muslim Attorney Centre Foundation that, in practice, legal counsel seldom have access to detainees, especially in the initial days following the arrest, and such restrictions may facilitate the occurrence of abuses.⁹³ According to Mr. Sittipong Jantarawiroj, President of Muslim Attorney Centre Foundation: "[b]ecause of the enforcement of special laws, lawyers are not allowed to be present during the interrogation. MAC provided legal assistance to 800 court cases since 2007. From our observations, in 10 cases under the special laws, lawyers not working with MAC were allowed to participate in the interrogation session. However, MAC's lawyers were never allowed to sit with the suspects during their interrogations. [unofficial translation]"⁹⁴

⁹⁰ ISOC Regulation (2nd amendment, 1 February 2008), section 3.9.3. [unofficial translation]

⁹¹ CERD/THA/CO/1-3/Add.1, para. 27: "The suspects' families are allowed to visit the arrested family members on a daily basis. The suspects are also allowed for an access to legal counsel (...)"

⁹² See: ICCPR, article 14; CCPR/C/107/R.3, paras.23, 36 (*in fine*) and 62.; CAT/C/GC/2, para.13. See also: Body of Principles, Principles 18 and 21: "1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person. 2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment."

⁹³ Cases are further discussed in Chapter 3. More specifically, see paragraph 3.3 where it is demonstrated that in almost all cases annexed to this report, abuses occurred in the first 3 days following the arrest.

⁹⁴ Quote from Mr. Sittipong Jantarawiroj (speech during Seminar on Death Penalty and Justice System in Southern Border Provinces, Foundation of Islamic Centre of Thailand, Bangkok, 17 March 2014).

- 2.20 In addition, the Coalition is concerned about the express distinction of treatment between detainees that are states officials and the ones that are not.⁹⁵ This is not explained, nor legally justified.
- 2.21 Even if these restrictions conform to international standards in times of emergency, the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* and the *Basic Principles on the Role of Lawyers* expressly states that: “[i]nterviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.”⁹⁶ These non-binding instruments should serve as benchmarks for the government when implementing different special laws and regulations.
- 2.22 Therefore, while the Coalition acknowledges the government’s initiative to develop detailed guidelines to ensure consistency in the implementation of the Martial Law and the Emergency Decree, serious concerns remain with regards to the fact that detainees’ legal safeguards are not fully respected. Therefore, one’s right not to be subjected to torture remains to be guaranteed.

C. Habeas corpus - right to challenge the legality of one’s detention

- 2.23 Pursuant to section 90 of the Criminal Procedural Code, whenever there is a claim that a person is unlawfully detained in a criminal case, this section allows the filing of a petition to the court requesting the release of the detainee.⁹⁷ No petition has been filed for arbitrary detention under the Martial Law so far, notably due to lack of information as to the precise place of detention of detainees, and the fact that detainees are often transferred from one detention center to another without notification. However, section 90 has been applied in several cases in the three southern border provinces when legal counsel, acting on behalf of the detainee, challenge the legality of the detention under the Emergency Decree.
- 2.24 According to section 12 of the Emergency Decree and section 3.7 of the ISOC Regulation (January 2007), prolonged detention can only be granted if its necessity is justified as being necessary in response to the state of emergency.⁹⁸
- 2.25 Petitioners usually argue that the State’s inquiry lacks such necessity as the detainee has been in custody without ever being questioned by the authorities. Petitioners also support their claim by stating that there is enough evidence to indicate the detainee could be criminally prosecuted, and that detention under the Emergency Decree is therefore no longer legally justified.

⁹⁵ This refers to the 1st amendment and to their right of being visited by their relatives. See paragraph 2.16 of this report.

⁹⁶ *Body of Principles*, Principle 18 (4). See also: *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 1990), Principle 7.

⁹⁷ Criminal Procedure Code, section 90. Interested persons include (1) the detainee *per se*; (2) the public prosecutor; (3) an inquiry official; (4) the Governor of the Goal or gaoler; (5) Spouse or such person’s relatives or any other person for the benefit of the detained person.

⁹⁸ ISOC Regulation (27 January 2007), section 3.7. See also: *Practical Guideline on Arrest and Detention of Suspected Person under the Emergency Decree B.E. 2548*, section 10.

- 2.26 When allegations of torture are reported, section 90 and section 32 of the Constitution are both used in order to challenge the legality of the detention. In addition, section 32 of the Constitution stipulates that the court could determine proper measures or remedies for the damage incurred by the victim.⁹⁹ However, as far as the Muslim Attorney Center Foundation and Cross Cultural Foundation are aware, remedy under this section has never been successfully granted. This may be due to the fact that there are no clear guidelines indicating how compensation shall be allocated, and so the court instead usually indicates the victim should file a new civil case.
- 2.27 The Muslim Attorney Centre Foundation have noticed a consistent lack of efforts from judicial bodies to ensure oversight of the lawfulness of detention. Often, when a petition under section 90 is filed, state officials will release the detainee prior to the hearing. Further, the courts dismiss such cases, stating that a judicial assessment is no longer needed as the detainee has been released.
- 2.28 The Coalition is of the opinion that if there are allegations of torture during detention, the Court must play its role to impartially and independently investigate such allegations, regardless if the person is still detained or has been released, and provide remedies if the violations are proven.¹⁰⁰ By dismissing the case, such allegations are seldom investigated and only a very limited number of victims have received compensation. The absence of judicial control in this regard violates the well-established principle of the separation of powers and the Constitution.¹⁰¹

D. The need to establish impartial mechanism for inspecting and visiting places of detention (Articles 11 and 12)

- 2.29 Currently, the National Human Rights Commission of Thailand (hereinafter "NHRC") is the main body charged with monitoring and inspecting places of detention. However, inspectors face important difficulties. Detention authorities are not always cooperative, the Commission only conducts announced visits, and there is no systematic assessment of the conditions of the different detention facilities.¹⁰² As a result, there are serious concerns that such inspections may not reflect the accurate situation of detention facilities and the wellbeing of detainees.¹⁰³ Therefore, it can neither be considered as an effective preventive, nor risk reduction measure against torture or other ill-treatment.

⁹⁹ Constitution, section 32: "In the case where there occurs an act affecting the right and liberty under paragraph one, the injured person, the Public Prosecutor, or any other person, in the interest of the injured person, has the right to file an application to the Court for an order stopping or revoking such act, and, for this purpose, there may be determined appropriate means or remedies for injury sustained". [unofficial translation]

¹⁰⁰ HRC, *General Comment No. 8, Right to liberty and security of persons (Article 9)*, 30 June 1982. Even though international law recognizes administrative detention, as long as it is based on grounds established by law, judicial control must be available as well as compensation in the case of a breach.

¹⁰¹ Constitution, section 32.

¹⁰² Pornpen Khongkachonkiet, a former member of the NHRC sub-committee in the South, observed that there is no clear rules or any announcement from the NHRC in this regard.

¹⁰³ See as an example: DJ8. The individual reported that he was taken in a cold room and given only one piece of thin blanket. When the National Human Rights Commission of Thailand came, he was given a good mattress and a good blanket.

Recommendations

- Consider revoking security laws in certain areas if they fail to meet with the principles of necessity and proportionality. Refrain from using overlapping and simultaneous powers from different laws to unnecessarily detain individuals for an extended period of time.
- Adopt effective measures without delay to ensure that all detainees enjoy in practice all fundamental legal safeguards at the outset of their detention. Those detained during administrative detention must be provided with all legal safeguards, in particular, the right to promptly appear and be brought physically before a judge and the right to a lawyer of his/her choice. The Court should be able to assess the legality of detention under the both special laws (Martial law and Emergency Decree) and provide compensation if there is violation.
- Establish and make public an official list of all places of detention. Ensure that all regulations and guidelines aiming at implementing the special laws are in line with international standards and are followed in practice. Make those regulations and guidelines available to the public to foster awareness and understanding.
- As per article 4 of the International Covenant on Civil and Political Rights (ICCPR) relating to states of emergencies,¹⁰⁴ notify the United Nations Secretary General when proclaiming a state of emergency and provide explanations on the rationale of having simultaneous special laws in force in some areas of the country, notably in the southern border provinces.
- Ratify the Optional Protocol to the Convention with a view to establishing a system of regular unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

¹⁰⁴ See also: CCPR/C/21/Rev.1/Add.11, para.17.

Chapter 3. Torture and other ill-treatment for the purpose of obtaining confessions (Article 15)

- 3.1 In the Coalition's experience, detainees are tortured mostly to obtain confessions or information.¹⁰⁵ Furthermore, in the 86 testimonies annexed, it was reported that most violations occurred during detention.¹⁰⁶
- 3.2 Allegations of torture not only involve a broad range of perpetrators, ranging from military,¹⁰⁷ police,¹⁰⁸ paramilitary officials,¹⁰⁹ and volunteers,¹¹⁰ but also indicate that such acts take place in various institutions.¹¹¹ Patterns can be drawn as regard to specific military camps and detention centers where individuals are more at risk of being mistreated. For instance, out of the 86 testimonies annexed, 21 people reported having been ill-treated in Ingkayuth Boriarn Military Camp,¹¹² 8 individuals referred to the Royal Thai Police Forward Operations Center in Yala,¹¹³ up to 31 reported having been mistreated in different Task Forces centers¹¹⁴ and many others generally referred to police stations.¹¹⁵ Detainees are often transferred several times to different detention facilities.¹¹⁶ Some of them not only reported having been mistreated in the different locations, but also at the time of their arrest¹¹⁷ and during their transportation.¹¹⁸
- 3.3 It is also worthwhile to note that allegations of torture and other ill-treatment mostly arise during the first week of detention, in which it is the period when fundamental legal safeguards are not fully respected. For instance, out of 86 testimonies annexed,¹¹⁹ 58

¹⁰⁵ See Annex II, Table II and Graph II. From this quantitative analysis, 66 out of 85 cases reported having been forced to confess. See also, Annex I where in most testimonies, the individuals reported having been mistreated and coerced to confess to the charges submitted against them.

¹⁰⁶ See Annex I.

¹⁰⁷ See for example: DJ21, DJ27, and DJ37. It shall be noted than in many cases, individuals reported being mistreated by both, military officials and police officials. See for example DJ8, DJ18, DJ24, DJ50 and DJ53.

¹⁰⁸ See for example: DJ1, DJ25, DJ32, and DJ36.

¹⁰⁹ For example, see: DJ29. This information may not appear expressly in the testimony. It was however indicated in page 13 of the *Proxy form* (Annex III) under the section entitled: 'Alleged Perpetrators'.

¹¹⁰ For examples, see: DJ21 and DJ41. This information may not appear in their testimonies. It was however indicated in page 13 of the *Proxy form* (Annex III) under the section entitled: 'Alleged Perpetrators'.

¹¹¹ From the 86 testimonies included in Annex I, it was reported that mistreatment notably took place in Ingkayut Boriarn Military Camp, in the Royal Thai Police Forward Operations Center (Yala), in different Task Forces, in Wat Chang Military Base, in Pileng Camp as well as in different police stations. Detainees may have been mistreated in one of these detention facilities, or in many of them following their transfer. As an example, see: DJ21.

¹¹² For examples, see: DJ5, DJ6, DJ8, DJ10, DJ19, DJ21, DJ24, DJ27 (in Ingkayuth Boriarn hospital), DJ29, DJ33, DJ35, DJ37, DJ38, DJ41, DJ46, DJ48, DJ50, DJ51, H2, H8, and H16.

¹¹³ For examples, see: DJ2, DJ4, DJ12, DJ16, DJ17, DJ18, DJ24, and DJ40

¹¹⁴ For examples, see: DJ15, DJ20, DJ21, DJ26, DJ33, DJ35, DJ36, DJ38, DJ39, DJ41, DJ44, DJ49, DJ51, DJ52, DJ53, DJ59, H2, H3, H4, H5, H8, H9, H10, H13, H15, H16, H17, H23, H30, H31, and H33.

¹¹⁵ For examples, see: DJ28, DJ31, DJ36, DJ38, DJ42, DJ45, DJ49, DJ50, DJ53, H1, H25, and H27.

¹¹⁶ All these cases illustrate instance of multiple transfers, which include at least three different detention facilities: DJ21, DJ22, DJ35, DJ41, H4, H8, and H16.

¹¹⁷ For examples, see: DJ41, DJ42, DJ44, DJ48, and DJ52.

¹¹⁸ For examples, see: DJ28, DJ36, DJ38, DJ39, DJ41, DJ45, DJ52, and H20.

¹¹⁹ Out of 92 cases, 6 of them did not have any testimonies recorded. Therefore, this analysis is only based on the 86 testimonies available. For the following cases, the testimonies were not clear on when the mistreatment occurred or they did not mention any abuses: DJ9, DJ10, DJ11, DJ25, DJ27, DJ43, DJ47, DJ55, DJ56, DJ57, H19, H21, H22, H29, and H32.

reported having been assaulted on the same day of their arrest,¹²⁰ 37 reported having been assaulted during the first three days of detention,¹²¹ 19 reported having been assaulted in the first week of the detention,¹²² and 8 reported that they have been assaulted after the first week of the detention.¹²³

- 3.4 Officials often used the following torture methods to extract confessions, including but not limited to: strangling with hands or rope, choking, face dunking, kicking, punching, beating in the stomach, beating with cloth wrapped wooden bat, head-butting against the wall, and electric shock.¹²⁴ Some methods may leave wounds on the body while others do not leave any trace. For instance, it has been reported that detainees were exposed to extremely high or low temperature or to light or darkness for extended periods of time.¹²⁵ Other methods involve death threats, threats to harm detainees and/or their family members, forced feeding or injecting of substances which lead to loss of consciousness, loss of control or using a black bag to cover the detainee's head.¹²⁶
- 3.5 As detailed below, most cases with security charges do not lead to conviction. Major obstacles and problems for prosecution in the southern border provinces include lack of witnesses and forensic evidence. Forensic evidence are seldom used in Court in support of the Prosecution's allegations. Because of the overlapping mandate of the Office of Forensic Science under the Royal Thai Police and the Central Institute of Forensic Science under the Ministry of Justice, the use of forensic evidence in court is persistently problematic. The two centers do not synchronize and each of them maintains a separate database. When several institutions investigate, examine evidence and provide

¹²⁰ In the following cases, the individuals specifically reported having been mistreated on the same day of their arrest. See notably: DJ1, DJ2, DJ4, DJ5, DJ6, DJ7, DJ8, DJ12, DJ13, DJ14, DJ15, DJ17, DJ18, DJ19, DJ20, DJ21, DJ22, DJ23, DJ24, DJ26, DJ28, DJ29, DJ30, DJ31, DJ32, DJ33, DJ35, DJ36, DJ37, DJ38, DJ39, DJ41, DJ42, DJ44, DJ45, DJ46, DJ48, DJ49, DJ51, DJ52, DJ53, DJ54, H1, H4, H8, H9, H10, H13, H16, H17, H20, H23, H25, H27, H28, H30, H31, and H33.

¹²¹ In the following cases, the individuals specifically mentioned that they were mistreated continuously during the first 3 days following their arrest. This explains why there are repeated cases from the previous footnote. See notably: DJ2, DJ4, DJ5, DJ6, DJ7, DJ18, DJ20, DJ21, DJ29, DJ30, DJ31, DJ32, DJ34, DJ35, DJ38, DJ39, DJ40, DJ41, DJ44, DJ45, DJ46, DJ54, DJ59, H3, H4, H5, H6, H7, H8, H9, H10, H13, H15, H16, H23, H31, and H33.

¹²² In these cases, the individuals expressed that they were generally assaulted during the first week of their detention. See notably: DJ13, DJ17, DJ20, DJ29, DJ31, DJ33, DJ38, DJ39, DJ45, DJ54, DJ58, H2, H4, H12, H13, H16, H23, H28, and H31.

¹²³ In these cases, whether individuals reported having been assaulted at several occasions during the first week following their arrest and beyond, or simply indicated that they were subject to mistreatment generally after the first week. See notably: DJ10, DJ16, DJ29, DJ45, DJ50, DJ54, H4, and H27.

¹²⁴ See generally Annex I and Annex II, Table II and Graph II.

¹²⁵ See Annex II, Table II and Graph II. For concrete examples in the testimonies, see: DJ1, DJ2, DJ5, DJ6, DJ8, DJ16, DJ18, DJ21, DJ27, DJ29, DJ35, DJ38, DJ40, DJ41, DJ44, H4, and H12. The practice of placing detainees in a cold room has frequently been reported in Ingkayut Boriharn Military Camp. As examples, see: DJ5, DJ6, DJ29, DJ35, DJ38, DJ41, H8, and H16.

¹²⁶ See Annex II, Table II and Graph II. For concrete examples in the testimonies, see notably: DJ49 (threats to harm the detainee's family), DJ50 (threats of further torture, notably to have his teeth removed by the use of a pincer or having a needle inserted under his fingernails), DJ2, DJ4, DJ5, DJ17 (the detainees' head were covered with a bag), DJ8, DJ16 (the detainees' body were covered with a bag) DJ13, DJ24, DJ27, DJ38 and H2 (practice of forced drinking and forced feeding), DJ21 (the individual was injected a substance which led to loss of consciousness), DJ22, DJ27, H16, and H29 (the threat or the use of electric shock).

contradictory results, the Court is more prone to dismiss the case,¹²⁷ owing to the fact that there was no other evidence to indict accused apart from the coerced confession.¹²⁸

- 3.6 From an article published in January 2014 by Isranews, which includes statistics on security cases gathered by the Southern Border Provinces Police Operation from January 2004 to January 2014, it was highlighted that out of 2,184 security cases where perpetrators could be identified,¹²⁹ in only 685 did courts rendered a verdict. Amongst these 685 cases, 264 of them (comprising a total of 444 accused) were found guilty,¹³⁰ while the remaining 421 cases (comprising a total of 1,030 accused) were dismissed.¹³¹ Other cases which used other evidence, such as CCTV photographs or cases that employed forensic evidence during witness examinations, had more merits during hearings.¹³²
- 3.7 Section 226/1 of the Criminal Procedure Code expressly prohibits the use of evidence obtained by unlawful methods. Exceptionally, it allows the admission of such evidence if it were to contribute to the sound administration of justice and if this admission outweighs the possible infringements on criminal justice standards and fundamental rights and liberties.¹³³ According to article 15 of the CAT, such exception shall never be applicable

¹²⁷ The Asia Foundation, *Manual on Forensic Evidence and Science for Public Prosecutor*, S.L. Publication Co. Ltd., 4 March 2012, page 4.1-4.2. – (hereinafter “The Asia Foundation, *Manual on Forensic Evidence*”)

¹²⁸ As examples, see the following five cases: **Red Criminal Case No. 753/2555, Pattani Provincial Court** [Summary of the verdict provided by MAC]: the court found that the only evidence submitted was the one obtained during the interrogation while the suspects were detained under the special laws. The evidence consisted of confessions, reenactment photographs and crime scene reenactment along with inquiry statements, which is hearsay evidence. The evidence was considered insufficient to convict the suspects. The court dismissed the case, the public prosecutor (Prosecution) appealed and the Appeal Court also dismissed the case. See also: **Red Criminal Case No. 2414/2555, Yala Provincial Court** [Summary of the verdict provided by MAC]: the court dismissed the case because the witness could not clearly testify and gave conflicting accounts during their examinations. It was observed that the witness was fearful. As a result, the testimony could not be used. The accused’s confessions were obtained during their interrogation, therefore under the influence of the officials. Thus, the benefit of the doubt was granted to the accused. The court dismissed the case, which is now being appealed. See also: **Red Criminal Case No. 2870/2555, Yala Provincial Court** [Summary of the verdict by MAC]: the court dismissed the evidence and the accused’s confession provided during interrogations carried out under the Emergency Decree. The court found that they had been the result of coercion. However, there was insufficient evidence to indict the accused. See also: **Red Criminal Case No. 2247/2554, Pattani Provincial Court** [Summary of the verdict provided by MAC]: the court dismissed the case because other witnesses could not affirmed that the accused had used such firearm to shoot the injured person. The accused’s confession, obtained under the Emergency Decree and the Martial Law detention, alone should not be used to incriminate him as it is unlawful and he was subjected to torture in order for the officials to obtain a confession. See also: **Red Case No. 2848/2555, Pattani Provincial Court** [Summary of the verdict provided by MAC]: the court dismissed the charge because the only evidence used were crime scene investigations and crime enactment photographs under the virtue of the Emergency Decree, when the accused were subject to torture. There was no other evidence to incriminate the accused.

¹²⁹ Out of a total of 9,326 security cases, in only 2,184 the perpetrators were identified. In the remaining 7,178 cases, the perpetrators were not identified. See: Pakorn Phuengnet, “เจาะสถิติ 10 ด้านในสาร 10 ปีไฟใต้ 10 ปีเปลี่ยน” Isra News Agency (4 January 2014). Available online: <http://www.isranews.org/south-news/stat-history/item/26389-10subjects.html#_Uxwk5tGB_M.facebook> (last consultation: 05.03.2014) (Thai language only) (hereinafter “Pakorn Phuengnet, Isra News Agency”)

¹³⁰ *Ibid.* Punishment notably included death penalty for 46 cases (57 accused), life imprisonment for 73 cases (111 accused), and imprisonment of not more than 50 years for 145 cases (276 accused).

¹³¹ Pakorn Phuengnet, Isra News Agency.

¹³² As examples, see the following two cases: **Red Criminal Case No. 2071/2555, Narathiwat Provincial Court** [Summary of the verdict provided by MAC]: the court found that the key evidence used to convict the accused were from important forensic evidence found at the crime scene. All arguments used by the accused could not overrule the crime scene evidence. See also: **Red Criminal Case No. 2090/2555, Yala Provincial Court.**

¹³³ Section 226/1 has been inserted by the Act Amending the Criminal Procedure Code (No. 28), BE 2551 (2008). This is indicated in this following version of the Criminal Procedure Code: Available online:

for evidence obtained under torture: “except against a person accused of torture as evidence that the statement was made”.¹³⁴ Notably, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment recommends that: “[w]here allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.”¹³⁵

- 3.8 Furthermore, shortage of competent forensic personnel to conduct evidence collection is a major obstacle. In some cases, forensic officials did not collect forensic evidence.¹³⁶ Difficulties in reaching crime scenes, undue delay, lack of, or insufficient laboratories all greatly impact on a timely delivery of forensic investigations and examinations. In the three southern border provinces, there have very few cases in which courts have employed forensic evidence for indictment.¹³⁷

Recommendations

- Guarantee that, without any exception, confessions obtained under torture or other ill-treatment will not be used as evidence in court. Past condemnations made on the sole basis of suspects’ confession should also be reviewed. If it is found that confessions were obtained under torture, the State should investigate and bring perpetrators to justice.
- Provide sufficient personnel and facilities for forensic examinations to meet the needs of the situation. Training should be regularly provided to personnel, who should be well-equipped with recent forensic technology for the benefit of judges, public prosecutors, investigation officials, security officials and/or relevant stakeholders. In addition, relevant agencies should develop operational guidelines to work together.

<<http://www.humanrights.asia/countries/thailand/laws/Criminal%20Procedure%20Code%20I.pdf>> (last consultation: 01.04.2014)

¹³⁴ CAT, article 15.

¹³⁵ E/CN.4/2003/68, 17 December 2002, p.12, para.26 (k).

¹³⁶ For example, see: **Red Criminal Case No. 1131/2556, Narathiwat Provincial Court** [Summary of the verdict provided by MAC]: The accused was detained and put on trial because paramilitary forces patrolling Palukasamoh sub-district found a suspect person in a backyard cabin. The suspects escaped, using a firearm to shoot the officials. Later, a phone with the defendant's photos was discovered and confiscated as evidence. Nine officials could not prove how the defendant is related to the phone and did not perform latent fingerprint and DNA tests on the phone. See also: **Red Criminal Case No. 628/2555, Yala Provincial Court** [Summary of the verdict provided by MAC]: the court dismissed the charge. The public prosecutor (Plaintiff) appealed and the 9th Region Appeal Court reaffirmed the First Instance's verdict because of latent fingerprint and DNA tests. Also, at the crime scene, the explosive substance trace test conducted by the Science Records Division did not match the defendant's fingerprint or DNA.

¹³⁷ The Asia Foundation, *Manual on Forensic Evidence*, p. 11-12.

Chapter 4. Filing of Complaints, Investigation and Prosecution (Articles 7, 12, 13 and 16)¹³⁸

A. Complaint mechanisms

- 4.1 Even though Thailand has established various complaint mechanisms as described in the country report,¹³⁹ the processes of receiving complaints for torture and other ill-treatment are still limited due to the lack of a dedicated and independent mechanism. The existing mechanisms fail to ensure prompt and impartial examinations of torture complaints. Most injured persons are afraid of the potential reprisals against them if they choose to accuse state officials of having committed a crime. The Cross Cultural Foundation has observed that Thailand does not have any effective mechanism to protect petitioners and witnesses. Fear of reprisals was exacerbated by a recent case, in which a complainant was criminally counter-charged by the police, accused making a false statement to the authorities.¹⁴⁰
- 4.2 Complaints of torture or other ill-treatment have been made through multiple channels. The NHRC received 134 complaints consisting of 188 individual cases from 2007 to 2013 from all over Thailand. Ninety-three of these complaints came from the southern border provinces.¹⁴¹ Since 2007, the Muslim Attorney Center Foundation, operating legal aid offices in the Deep South, received 3,465 complaints involving different human rights violations. Among these complaints, there were 393 cases involving torture and/or ill-treatment. Complaints submitted to both the NHRC and the Muslim Attorney Centre Foundation referred to physical abuses during detention.¹⁴² Nevertheless, it is difficult to identify whether all of these cases are related to torture or other ill-treatment, defined under the Convention against Torture. This is notably due to the absence of specific law on torture, which results in a lack of accurate data on complaints of torture and ill-treatment and/or unlawful use of force by state officials. Furthermore, currently there are no methods to assess whether any mental suffering and damage has been inflicted to the victim.¹⁴³

¹³⁸ See also: Declaration against Torture, article 10.

¹³⁹ Country report, CAT/C/THA/1, paras. 132-140.

¹⁴⁰ For example, see: Annex IV, Case 1.

¹⁴¹ National Human rights Commission, CrCF obtained the press release on 31 March 2014. For more details, refer to the NHRC's website where it details the complaints received involving allegations of torture. Available online: <http://www.nhrc.or.th/2012/wb/th/contentpage.php?id=25&menu_id=2&groupID=3&subID=23> (last consultation: 03.04.2014). (Thai language only)

¹⁴² For general information on Muslim Attorney Center Foundation's complaints, see: <<http://th.maemuslim.com/>> (last consultation: 03.04.2014). (Thai language only)

¹⁴³ While CrCF is operating a UNVFTV project in the southern border provinces of Thailand, it observed that Thailand has little capacity to address the psychological and physical harm caused by torture. The establishment of rehabilitation centers for torture survivors therefore requires urgent attention. Few health care and mental health providers are aware that some of their patients are survivors of torture. Symptoms are overlooked and/or incorrectly identified, leaving torture survivors to receive care for the wrong problems and creating a missed opportunity for providers to address the scars of torture. None of the interviewees questioned under the UNVFTV project were ever admitted to governmental hospitals for their PTSD or other mental problems. Torture survivors are also unwilling to reveal the state of their mental health to official mental health officers. Furthermore, mental health centers are only available in government hospital, with Mental Health Center No. 15 based in Pattani. In addition, there is no professional outreach and training for existing health providers of how to assess the situation of torture survivors. From the Coalition's point of view, the lack of special health providers specifically for torture survivors such as released detainees, prisoners and affected populations (namely the families of detainees) in the three southern border provinces have a large potential to negatively impact the ongoing situation.

B. Investigation and Post Mortem Inquest

- 4.3 The explanations provided in the country report regarding the process of investigation¹⁴⁴ show that Thailand still does not have bodies to investigate claims of torture or ill-treatment in a thorough, prompt and impartial manner. At present, the bodies responsible for investigating torture and ill-treatment complaints are the police and the Department of Special Investigation. When allegations of torture during detention are reported, which is considered as “malfeasance in office”, the law requires the cases to be forwarded to the National Anti-Corruption Commission (hereinafter “NACC”) for further investigation and fact-finding.
- 4.4 Once the claim is considered to be substantiated following the completion of a preliminary investigation and a fact-finding mission, the NACC will forward the case to the Office of the Attorney General for further proceedings.
- 4.5 The process of post mortem inquest applies in case of unnatural deaths or death of individuals under official custody.¹⁴⁵ In these cases, the law orders that a post mortem inquest be conducted to ensure justice to the deceased. Public prosecutors are in charge of assessing if the death happened during the performance of official duties or under official custody. If it is the case, they will file a post mortem inquest application to the court where the dead body was found. The court will identify the victim's identity, circumstances, time, causes and nature of death in a court order. If a person was killed as a result of manslaughter or physical assault, the court shall inquire or identify a perpetrator to the extent the information available permits. The outcome of the inquest shall be forwarded to public prosecutors. The public prosecutor will then forward the case to an inquiry official for further legal action against the perpetrator(s).¹⁴⁶
- 4.6 It has been demonstrated that the post mortem inquest can be successfully carried out for fact-finding purposes.¹⁴⁷ However, in the southern border provinces, post mortem inquests face many obstacles. For example, relatives may be reluctant to agree to such an inquest due to religious concerns and additional expenses required to bring the corpse to a hospital qualified to carry out an autopsy.
- 4.7 Obstacles are sometimes reflected in the court order itself, which fails to indicate all the details required by law. For example in the Takbai incident in 2004,¹⁴⁸ the post mortem inquest involved 78 persons who died while they were being transported from a peaceful public protest. On 25 October 2004, over one thousand people gathered in front of Takbai Police Station in Narathiwat, seeking justice for six Village Defence Volunteers who had been arrested and accused by state officials of being part of an insurgent group. Later, the

¹⁴⁴ Country report, CAT/C/THA/1, paras. 41, and 132-136.

¹⁴⁵ Criminal Procedure Code, section 149.

¹⁴⁶ Criminal Procedure Code, section 150.

¹⁴⁷ See Red Case No. 10/2555, Pattani Provincial Court: The court order indicated that [redacted] died from cerebral oxygen shortage, and was hung by a towel from a window lattice while under official custody; See also Annex IV, Cases 2 and 3.

¹⁴⁸ As a witness testimony of this incident, please see: DJ3.

state officials decided to disperse the demonstrators, arresting and transferring them to Inkayuth Boriharn Military Camp in Pattani province (the distance between Takbai and Ingkayuth Boriharn Military Camp is around 160 km). This incident resulted in the deaths of 78 persons due to suffocation during the transportation. On 29 May 2009, the Court ruled that the nature and circumstance of the death of the 78 persons had resulted from suffocation while they were under custody of officials. No evidence indicated who caused the deaths, and the Court considered the officials' acts and decisions fell within the scope of their official duties.¹⁴⁹ This is merely a failure by the judiciary to facilitate the victims' relatives' access to truth and justice. In this regard, the Asian Human Rights Commission issued an Urgent Appeal Update on 5 June 2009 outlining that:

(...) a four-year-long post mortem inquest, a provincial court in Southern Thailand has absolved all officials and military persons of responsibility for the deaths of 78 persons at Takbai, Narathiwat. The court admits that the victims suffocated to death, **but glosses over how and why**: namely that the men were beaten and then piled five-deep in trucks for five to six hours. The court considers the deaths collateral damage sustained in the line of police duty. The case raises grave concerns over impunity in Thailand [emphasis added].¹⁵⁰

- 4.8 The process of post mortem inquests plays a great role in ensuring families and relatives of victims have the right to know the truth about the circumstances and which violations occurred in the case of their loved one's death. The judiciary has a vital role to play in this regard, to ensure the principle is respected. Once the truth is established, this allows for other remedies, and eventually justice, to be obtained.¹⁵¹

C. Prosecution

- 4.9 Under the Thai legal system, an injured person can instigate both civil and criminal prosecution.¹⁵² When it concerns torts or liability by administrative agencies or when it deals with functions carried out by officials in light of the law, these civil cases are considered as administrative, under the jurisdiction of the Administrative Court.¹⁵³
- 4.10 In the regions under the state of emergency, it is unclear to which court victims should file a complaint and lodge civil lawsuits against state officials. Section 16 of the Emergency Decree exempts jurisdiction of the Administrative Courts articulating that: "[t]he ordinances, announcements, orders or actions under this Emergency Decree shall not be subject to the law on administrative procedure and the law on establishment of administrative courts and procedure thereof."¹⁵⁴ This means that victims must file their complaint to the Court of Justice even though the matter concerns functions exercised by

¹⁴⁹ Red Criminal Case No. Chor.8/2552, Songkhla Provincial Court.

¹⁵⁰ Asian Human Rights Commission, *UPDATE (Thailand): Court condones the death by suffocation of 78 men in military trucks*, Urgent Appeal Update: AHRC-UAU-012-2009 (5 June 2009).

Available online: <<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-012-2009>> (last consultation: 31.03.2014).

¹⁵¹ See generally: CAT/C/GC/3, paras.16-17.

¹⁵² Civil Procedural Code B.E. 2477 (1934), section 55; Criminal Procedural Code, section 28.

¹⁵³ Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 252 (1999) section 9.

¹⁵⁴ Emergency Decree, section 16. [unofficial translation]

the state officials and is administrative in nature. However, in practice,¹⁵⁵ the Court of Justice usually dismisses such complaints and transfers them to the Administrative Court – it is, as a result, unclear what the rationale lies behind section 16 of the Emergency Decree.

- 4.11 As explained in the country report regarding the procedure for criminal prosecution,¹⁵⁶ an injured person in a criminal case can choose to file a complaint to an inquiry official, following which the case will be instituted by the public prosecutor.¹⁵⁷ However, the law also allows victims to institute a criminal prosecution without filing a complaint. In the latter case, the court has to conduct a preliminary investigation in order to assess if it is *prima facie* well grounded.¹⁵⁸ However, according to section 13 of the Act on the Organization of Military Court B.E. 2498 (1955) (hereinafter “Military Court Act”)¹⁵⁹, if an alleged perpetrator is a military personnel, the case is subject to the jurisdiction of the military court.¹⁶⁰ Victims, as civilians, are not entitled to institute a criminal prosecution before the military court or to submit additional evidence to the case; rather they have to turn the case over to a military prosecutor.¹⁶¹ The situation becomes even more concerning when one considers that the southern border provinces are under Martial Law, which the Military Court Act recognizes as an “abnormal period”, defined as: “(...) periods of conflict or war or during the enforcement of martial law”.¹⁶² During this “abnormal period”, judgments and orders from the military court cannot be appealed.¹⁶³

D. Immunity clauses under the special laws

- 4.12 There are immunity clauses articulated under the special laws implying that officials may not be held liable for damages. For example, section 16 of the Martial Law stipulates that “[n]o compensation or indemnity for any damage which may result from the exercise of powers of the military authority as prescribed in sections 8 to section 15 may be claimed from the military authority by any person (...)”.¹⁶⁴ Section 17 of the Emergency Decree

¹⁵⁵ For example, see: Annex IV, Cases 3, 4, and 5.

¹⁵⁶ Country Report, CET/C/THA/1, paras. 40-42.

¹⁵⁷ Criminal Procedure Code, section 28: “The following persons are entitled to institute the criminal prosecution in the Court (1) The Public Prosecutor; (2) The Injured Person”. [unofficial translation]

¹⁵⁸ Criminal Procedure Code, section 162.

¹⁵⁹ Act on the Organization of Military Court B.E. 2498 (1955) (hereinafter “Military Court Act”).

¹⁶⁰ Military Court Act, section 13: “A military court shall be competent to try and adjudicate and inflict punishment to any person who violates military law or other laws of criminal nature in the case which the offender is under the jurisdiction of the military court at the time of committing of offence, and the court shall be competent to give order inflicting punishment or any person who commits contempt of court as provided in the Civil Procedural Code”. [unofficial translation]

¹⁶¹ Military Court Act, section 49: “In a military court in a normal period, a military prosecutor or an injured person who is under the competency of military court shall be entitled to institute a criminal prosecution. If the injured person is not under the competency of military court, he shall have to turn the case over to a military prosecutor for action”; For example, see: Annex IV, Case 2. [unofficial translation]

¹⁶² Military Court Act, section 36: “In abnormal period, that is, in periods of conflict or war or during the enforcement of Martial Law, military courts shall have jurisdiction to try and adjudicate all criminal cases, but if the person authorized to proclaim the Martial Law has proclaimed it, or the Supreme Commander has issued an order under the law on Martial Law, authorizing military courts to have jurisdiction to try and adjudicate any criminal cases, military courts shall also have jurisdiction to try and adjudicate criminal cases under such proclamation or order.” [unofficial translation]

¹⁶³ Military Court Act, section 61, para.2: “Neither appeal nor dika appeal shall be lodged against judgments or orders of military court in an abnormal period, or against judgments of a court adjudicating cases in place of a court martial under Section 40 and 43”. [unofficial translation]

¹⁶⁴ Martial Law, section 16. [unofficial translation]

also stipulates that “[t]he competent authorities under this Emergency Decree or persons invested with the same authority as them shall incur no civil, criminal or disciplinary liability (...)”.¹⁶⁵ The courts have however clearly established that state officials cannot use these immunity clauses as a shield to prevent themselves from liability if their functions are considered as wrongful acts.

- 4.13 The Songkhla Administrative Court has notably interpreted the scope of application of section 16 in Red Case No.235/2554. The court explained that this section only protects officials when they exercise their powers as stipulated under sections 8 to 15, but does not cover powers under section 15 *bis* which allows military officials to detain a person for inquiry or for other necessities. If state officials exercise powers under section 15 *bis* and commit an unlawful act, s/he shall not be exempted from liability. The Songkhla Administrative Court further emphasized this point in Red Case No. 14/2555 by considering that section 16 only protects military personnel who lawfully exercise their powers. It cannot be construed that they could be exempted from liability when engaging in unlawful conduct which are in violation of the fundamental rights of individuals under their control even when in the course of their duties.
- 4.14 Even though there is no clear interpretation by the court in regard to the scope of application of section 17 of the Emergency Decree, its wording expressly prescribes that immunity shall only cover “[acts carried out] in good faith, [which] does not give rise to discrimination and does not exceed the reasonability or necessity of the circumstances”.¹⁶⁶ This reflects the principle of legality in administrative law, and is in conformity with the Act on Liability for Wrongful Act of Officials, B.E. 2539 (1996). This latter Act provides that the state agency shall be liable for the result of the wrongful act of its officials in the performance of their duties to the aggrieved or injured individual, but state officials themselves bear no personal liability.¹⁶⁷
- 4.15 These two judgments from the court marked a positive development and strongly established that state officials cannot claim immunity for their wrongful actions. However, by the wordings expressed under these two special laws, one might understand that state officials are granted immunity from civil lawsuits and criminal prosecution. This becomes obvious when government agencies cite these immunity clauses as their arguments in civil lawsuits.¹⁶⁸ In addition, to the best of its knowledge, the Coalition is unaware of any cases where legal action to demand criminal accountability of officials for torture has occurred, or where an official has received a guilty verdict. Although victims are entitled to file their own complaints and initiate prosecution, the State is directly obliged to bring to trial the alleged perpetrators of acts of torture or ill-treatment, as well as to ensure sentences with penalties that are consistent with the gravity of their acts¹⁶⁹ as a preventive measure in order to deter future violations.

¹⁶⁵ Emergency Decree, section 17. [unofficial translation]

¹⁶⁶ *Ibid.*

¹⁶⁷ Act on Liability for Wrongful Act of Official, B.E. 2539 (1996), section 5.

¹⁶⁸ Red Case No. 235/2554, Songkhla Administrative Court; Red Case No.14/2555, Songkhla Administrative Court.

¹⁶⁹ CAT, article 7.

Recommendations

- Establish a dedicated and independent mechanism to receive complaints of torture and ill-treatment so as to ensure the prompt and impartial examination of such complaints. Protection and assistance should be provided to complainants and witnesses.
- Take all appropriate measures to ensure that all allegations of torture and ill-treatment are investigated promptly and thoroughly by independent bodies.
- Bring to trial the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, ensure sentences with penalties that are consistent with the gravity of their acts and that the victims receive compensation.
- Ensure that, in cases of alleged torture and ill-treatment, suspects are suspended from duty immediately for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged acts or obstruct the investigation.
- Implement all legal measures that can reveal the truth, punish those who are guilty and grant compensation to the victims in order to put an end to impunity. Orders for post mortem inquests should be clearly expressed, particularly to identify the cause and circumstances of the death and to identify perpetrators to the extent possible. Public prosecutors should play a role in fact-finding through this mechanism in an objective and independent manner. Additional investigation after the court renders its order should be undertaken to bring offenders to justice when required.
- In cases where a detainee dies while in official custody, an investigation should be conducted promptly, impartially and thoroughly to identify the cause of the death. Relatives of the detainee should be provided with counseling and support to ensure they obtain access to justice through the mechanism of a post mortem inquest. In the interest of justice, complainants should receive assistance and not have to shoulder the financial burden in order to reduce obstacles in access to justice for fact-finding purposes.
- Section 16 of the Emergency Decree should be revised to ease difficulties and assist victims to undertake prompt legal actions through court proceedings.
- Abolish section 16 of the Martial Law and section 17 of the Emergency Decree given that they create confusion in appearing to grant criminal and civil immunity to State officials.
- The military court should preclude its jurisdiction over cases involving human rights violations and offences against civilians in which military personnel are involved.

Chapter 5. Refoulement (Article 3)

A. Current Policy & Practice

- 5.1 Thailand has no domestic laws ensuring the rights of refugees and asylum seekers, including their right not to be deported back to their countries of origins, despite the existence of legislation regulating immigration more generally. Even so, in the responses it provided during its Universal Periodic Review (UPR) by the UN Human Rights Council, the Thai government stated that it adheres to non-refoulement principle.¹⁷⁰ This is generally true for the case of Burmese refugees located in the nine camps along the Thai-Burma border to which the Thai government has been a generous host for several decades. However, other cases exist which show that the principle of non-refoulement has at times been violated, including the principle not to return a person to a place where s/he would face a real risk of torture as stipulated in CAT.
- 5.2 In addition, the screening process to identify refugees, trafficked persons and victims of labour abuses is inadequate in Thailand, leaving such vulnerable groups at risk of refoulement. Appropriate questioning is not carried out systematically for all detainees, interviews are generally carried out in public areas with no confidentiality, and translation services are not always available.¹⁷¹ In a 2011 survey of migrants who have been arrested and detained, only three per cent reported that arresting authorities asked questions to screen them as refugees, trafficked persons or victims of labour abuses. According to Mekong Migrant Network: “When asked whether they had been referred to a relevant authority to ascertain their status, just two migrants reported yes. In no cases did migrants report that authorities explained what assistance might be available for them to seek justice.”¹⁷²

B. Violations

The Lao Hmong (December 2009 & December 2011)

- 5.3 In December 2009, the Thai government conducted the involuntary repatriation of some 4,500 Hmong to Laos. It argued that the Laotian government had offered a diplomatic assurance of the safety of these Hmong upon their return, despite past cases, in which numerous *refouled* Lao Hmong were subjected to arbitrary detention, torture, physical and sexual assault, and disappearance.¹⁷³ In addition, 158 of those deported had already been

¹⁷⁰ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review “Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review” A/HRC/19/8/Add.1 (6 March 2012), para. 18.

¹⁷¹ United States Department of State, *2013 Trafficking in Persons Report - Thailand*, 19 June 2013. Available online: <<http://www.refworld.org/docid/51c2f3824d.html>> (last consultation: 02.04.2014).

¹⁷² Mekong Migrant Network, *No Choice in the Matter: Migrants' experiences of arrest, detention and deportation*, October 2013, p.35. Available online: <http://www.mekongmigration.org/No%20Choice_Eng.pdf> (last consultation: 02.04.2014). This paragraph was provided by Mekong Migrant Network.

¹⁷³ Amnesty International, “Refoulement in the Asia Pacific” (Published on 18 January 2010) Available online: <<http://www.amnesty.org.au/refugees/comments/22395/>> (last consultation: 25.03.2014).

identified as refugees by the UNHCR¹⁷⁴, and had already received offers of resettlement from third countries, thus making their deportation a clear case of refoulement. The fact that the Thai authorities denied camp access to UNHCR staff and the media during the forced repatriation process also signifies the lack of transparency of such processes. Since then, the fate of the deported remains unknown to the public, raising concerns for their safety, especially that of the 158 Hmong refugees. In any case, the argument that the Laotian government had offered diplomatic assurances for the safe return of the Hmong is untenable, as it is the same government that has subjected this group of ethnic people to severe human rights abuse including torture and summary execution,¹⁷⁵ and driving them to become refugees in the first place, due to their past role in assisting the U.S. military against the former communist regime.

- 5.4 Besides the mass refoulement incident in 2009, more recently the Thai government again engaged in another case of refoulement of Lao Hmong when, in December 2011, it deported one Lao Hmong named [redacted] from the Immigration Detention Center in Bangkok by handing him over to Laotian officials at the Thai-Lao border,¹⁷⁶ even though [redacted] had already been registered as a refugee by the UNHCR and accepted by the U.S. for resettlement. Since his deportation to Laos, his whereabouts have been unknown, raising fears for his safety. These refoulement incidents are evidence that the Thai government has violated article 3 of CAT.

The Uighur (August 2011)

- 5.5 In August 2011, the Thai government forcibly returned an ethnic Uighur, [redacted], to Chinese officials.¹⁷⁷ According to a report by Human Rights Watch (HRW), [redacted] was arrested by immigration authorities in Bangkok and taken to the Bangkok Immigration Detention Center (IDC) where he was directly handed over into the custody of Chinese officials waiting for him. Many countries in Asia – namely Myanmar, Cambodia, Pakistan, Uzbekistan, and Nepal – have also cooperated with China in its apparent effort to systematically identify and forcibly return many ethnic Uighur seeking refuge in the region to China.
- 5.6 So far, [redacted]’s fate and whereabouts remain unknown. There are great reasons to believe that he may be in grave danger based on the Chinese government’s records of torture and harsh punishment of the ethnic Uighur, which the Chinese government frequently and unilaterally brand as “terrorists”.¹⁷⁸ The fact that he was tracked down and

¹⁷⁴ Adrian Edwards, “Deportation of Lao Hmong must stop: UN High Commissioner for Refugees” UNHCR, News Stories (28 December 2009). Available online: <<http://www.unhcr.org/4b38d1049.html>> (last consultation: 02.04.2014).

¹⁷⁵ Unrepresented Nations and Peoples Organization, *Alternative Report Submitted to the UN Committee on the Elimination of Racial Discrimination at the 80th session during the consideration of the 16th – 18th periodic reports of Laos*, p.7-8. Available online: <http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LAO/INT_CERD_NGO_LAO_80_9471_E.pdf> (last consultation: 02.04.2014).

¹⁷⁶ Forum Asia, “Thailand: Deportation of Lao Hmong Refugees” (published on 29 December 2011) Available online: <<http://www.forum-asia.org/?p=11808>> (last consultation: 25.03.2014).

¹⁷⁷ Human Rights Watch, “China/Thailand: Account for Uighur Man Turned Over to Chinese Officials” (10 August 2011). Available online: <<http://www.hrw.org/news/2011/08/10/chinathailand-account-uighur-man-turned-over-chinese-officials>> (last consultation: 25.03.2014).

¹⁷⁸ *Ibid.*

received by the Chinese officials inevitably indicates that there is cause for concern once he was placed in the hands of the Chinese authorities. By agreeing to China's request, Thailand has essentially violated the principle of non-refoulement as stipulated in article 3 of the CAT.

The Six Khmer Krom (March 2013)

- 5.7 In March 2013, six ethnic Khmer Krom men were arrested in Thailand and deported to Cambodia, where they were immediately charged of terrorism and plotting an armed revolt against the Cambodian government.¹⁷⁹ These men, belonging to the Khmer Krom ethnic minority in Vietnam, where such an ethnic people have long been persecuted, had earlier travelled from Vietnam to Phnom Penh where the Khmer Krom minority is similarly persecuted and discriminated against. The six men consequently fled to Thailand to seek asylum. Sadly, they were arbitrarily arrested and deported by the Thai authorities.
- 5.8 Once in the hand of the Cambodian government, it is likely that these Khmer Krom men were very much at risk. This is because the Cambodian authorities are known to use excessive violence and torture against the Khmer Krom. A 2009 report submitted by the Unrepresented Nations and Peoples Organization (UNPO) to the UN Office of the High Commissioner for Human Rights (OHCHR) cites multiple incidents that show the use of violence and torture, religious persecution, and forced repatriation of the Khmer Krom to Vietnam by the Cambodia government.¹⁸⁰ Also, the fact that two of these six asylum seekers had already been registered as refugees by the UNHCR at the time of their deportation¹⁸¹ adds concern as to their fate once deported to Cambodia.
- 5.9 Therefore, in arresting and deporting the six Khmer Krom to Cambodia, the Thai government must be held accountable for violating the principle of non-refoulement in article 3 of CAT.

Recommendations

- Thailand must take a firm stance in adhering to the non-refoulement principle as specified in article 3 of the CAT, which is also recognized as a principle of customary international law.
- Thailand should not deem diplomatic assurances as a sufficient guarantee of safety to deport refugees or asylum seekers back to their countries of origin. That is because, most likely, these are governments that subject their people to persecution and led the individuals in question to become refugees and asylum seekers in the first place.
- Thai authorities must screen migrants as soon as possible to identify vulnerable groups needing assistance, potential refugee status, as well as for possible abuses of their human

¹⁷⁹ Buth Reaksmeay Kongkea, "Thais Hand Over "Terrorists" The Phnom Penh Post (18 March 2013). Available online: <<http://www.phnompenhpost.com/national/thais-hand-over-%E2%80%98terrorists%E2%80%99>> (last consultation: 02.04.2014).

¹⁸⁰ Unrepresented Nations and Peoples Organization, *Submission to the UN Office of the High Commissioner for Human Rights - Universal Periodic Review: Cambodia*. (2009), p.2.

¹⁸¹ This was confirmed by one of UNHCR's top-level official in an informal meeting with NGOs in late 2013.

rights, including forced labour, and immediately refer migrants to relevant agencies such as UNHCR. Appropriate interviews should take place as soon as possible, before the authorities refer any immigration offences to court.

Chapter 6. Cruel Treatment Towards the Rohingya (Article 16)

A. Current Policy & Practice

6.1 The Thai government's policies towards the Rohingya are "ad hoc and inadequate", as Human Rights Watch has characterized Thailand's policies on refugees and stateless people in general.¹⁸² Over the years, measures taken by the Thai government have involved either deporting the Rohingya back at the Myanmar border; "pushing back" their boats out to sea, with little supplies and sometimes no running engines, resulting in over 300 deaths in 2008-2009 alone;¹⁸³ or re-supplying their boats and "helping them on" towards their assumed final destinations (usually Malaysia or Indonesia). Then, in early 2013, the Thai government shifted its policy on the Rohingya towards detaining them pending further measures. In January that year, the Thai authorities arrested over 800 Rohingya from several plantation raids in southern provinces, and hundreds more were also apprehended when their boats were intercepted by the authorities. They were all sent to be detained in several detention centers throughout the country. The number of the Rohingya detained swelled to approximately 2,000 people in June 2013,¹⁸⁴ while the government, under international pressure, struggled to find suitable solutions for them. With time, these detained Rohingya slipped outside of IDCs, presumably with the help of human traffickers. At the end of 2013, the last group of the detained Rohingya was reported to have been deported to Myanmar's Koh Son.¹⁸⁵ It was unclear whether they would be sent back to the Rakhine state or if they would be allowed to continue their journey to their next country of destination after they were deported.

B. Violations

6.2 Concurrent to such policies and practice at the government level, it has been widely reported that Thai officials themselves have been engaging in selling the Rohingya boat people to human traffickers.

6.3 One BBC report from January 2013 shows the account of a young Rohingya man who escaped Myanmar to Thailand in November 2012 to flee ethnic violence. After the boat that he and 60 other Rohingya were on was intercepted by the Thai authorities, they were put in police vans and sold to people smugglers who then extracted money from them. The trafficked Rohingya were severely beaten and forced to pay for their freedom or continuation of the journey to their final destinations. The report also reveals an under-the-

¹⁸² Human Rights Watch, *Adhoc and Inadequate - Thailand's Treatment of Refugees and Asylum Seekers* (United States of America, September 2012). Available online: <<http://www.hrw.org/sites/default/files/reports/thailand0912.pdf>> (last consultation: 02.04.2014). (hereinafter "HRW, *Adhoc and Inadequate*")

¹⁸³ Equal Rights Trust, *Unraveling Anomaly - Detention, Discrimination and the Protection Needs of Stateless Persons* (London, July 2010), p.162. Available online: <<http://www.equalrightstrust.org/crtdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>> (last consultation: 25.03.2014).

¹⁸⁴ Irin News, "Rohingya detainees in Thailand face dire conditions" (published on 28 June 2013). Available online: <<http://www.irinnews.org/ir/report/98301/rohingya-detainees-in-thailand-face-dire-conditions>> (last consultation: 25.03.2014).

¹⁸⁵ Bangkok Post, "All Rohingya sent home, Pharnu says" (published on 24 February 2014). Available online: <<http://m.bangkokpost.com/topstories/394745>> (last consultation: 25.03.2014).

table deal when another group of nearly 80 Rohingya were intercepted by the Thai authorities on 1 January 2013, and sold by officials to traffickers.¹⁸⁶

- 6.4 The 2012 report by Human Rights Watch also reports similar accounts of Rohingya being sold by Thai officials.¹⁸⁷ These Rohingya were subjected to severe beatings and cruel treatment by their traffickers. Some who could not raise enough money were beaten to death. Other reports also show that many Rohingya are sold to work in dangerous jobs such as on fish trawlers notorious for labor abuse and abysmal conditions, or into sexual slavery in the case of women.¹⁸⁸
- 6.5 The widespread networks of human traffickers preying on the Rohingya were also confirmed by Surapong Kongchantuk from the human rights subcommittee under the Lawyers Council of Thailand who acknowledged the involvement of corrupted Thai officials.¹⁸⁹
- 6.6 However, as of June 2013, it was reported that only one police officer has been charged with taking part in human trafficking of the Rohingya, as a result of a probe into the rape of a Rohingya woman who was lured from a government-run shelter set up for Rohingya women and children.¹⁹⁰
- 6.7 Although such a charge is unprecedented, little further progress has been made. In fact, the charge was not pursued in 2014, according to court documents.¹⁹¹ The Thai government should be doing much more to combat trafficking. The lack of genuine attempts, thus far, by the government to investigate and combat trafficking of the Rohingya shows its lack of political will to root out networks of corrupt officials engaging in such human trade. This has resulted in growing networks of Rohingya trafficking today, and signals the failure of the Thai state to sincerely uphold article 16 of CAT.

¹⁸⁶ John Fisher, "Burmese refugees sold on by Thai officials" BBC News, (published on 21 January 2013). Available online: <<http://www.bbc.co.uk/news/world-asia-21115728>> (last consultation: 25.03.2014).

¹⁸⁷ HRW, *Adhoc and Inadequate*, p.76-77, note 216.

¹⁸⁸ Thai Action Committee for Democracy in Burma (TACDB) and Lawyers Council of Thailand, *Rohingya : Stateless & Forgotten people - Fact-Findings Report and Recommendations from the Round Table Discussion on the Inhumane Push-Back of the Rohingya boat people* (March 2009), p.13. Available online: <<http://www.eurac.edu/en/research/institutes/imr/Documents/TACDBFFMRoundtableSeminarFINALREPORTason13MARCH2009.pdf>> (last consultation: 25.03.2014).

¹⁸⁹ NHRC, "ปัดจนท.รัฐเลี้ยวตามมนุษย์ไร้สัญชาติผายมันคงค้านตั้งค่ายแม่สอด", NHRC News (Source: เว็บไซต์กรุงเทพมหานคร) (published on 15 August 2013).

Available online: <http://www.nhrc.or.th/2012/vb/th/news_detail.php?nid=1955&parent_id=1&type=new> (last consultation: 25.03.2014). (Thai language only) See also: Chaiyot Yongcharoenchai, "Fleeing Rohingya at the mercy of a smuggling network greased by graft" BangkokPost Top Stories (published 13 January 2013). Available online: <<http://www.bangkokpost.com/lite/topstories/330557/fleeing-rohingya-at-the-mercy-of-a-smuggling-network-greased-by-graft>> (last consultation: 25.03.2014). Surapong Kongchantuk is the chair of the human rights subcommittee on ethnic minorities, stateless people, migrant workers and displaced persons of the Lawyers Council of Thailand. He has been documenting and working on cases involving smuggled Rohingya for now over a decade.

¹⁹⁰ AFP, "Thai official charged after Rohingya refugee trafficked and raped" DVB, (Published on 28 June 2013). Available online: <<http://www.dvb.no/news/thai-official-charged-after-rohingya-refugee-trafficked-and-raped/29050>> (last consultation: 02.04.2014).

¹⁹¹ Chutima Sidasathian and Alan Morison, "Charges Dropped Against Policeman Linked to Rohingya Rape, Abduction Claims" Phuket Wan Tourism News, (Published on 25 January 2014). Available online: <<http://phuketwan.com/tourism/charges-dropped-against-policeman-linked-rohingya-rape-abduction-claims-19632/>> (last consultation: 02.04.2014).

Recommendations

- Undertake genuine efforts to root out networks of corrupted officials with links to human traffickers, and crack down on trafficking rings.

Chapter 7. Immigration Detention (Article 16)

A. Current Policy & Practice

- 7.1 Thailand is not a party to the 1951 Convention Relating to the Status of Refugees; nor does it have a domestic legal framework that recognizes the rights of refugees and asylum seekers. Therefore, all asylum seekers and even refugees who are already recognized by the UNHCR are considered as irregular migrants by the Thai law. They are, therefore, subject to arbitrary arrests by the Thai authorities.
- 7.2 Once arrested, refugees and asylum seekers, including children are detained in one of Thailand's Immigration Detention Centers (IDCs). These IDCs are administered by the Immigration Police Bureau who in turns reports to the Royal Thai Police, and are not subject to many of the regulations that govern the regular prison system.
- 7.3 Both regular and irregular migrant workers are also frequently arrested and detained by Immigration Police to review their status. The complexity and cost of registration processes means that many migrants are not able to regularize their status, putting them at a greater risk of arrest, detention and deportation, as well as extortion by agents and Thai authorities. Sections 19 and 54 of the Immigration Act provide that competent officials may detain non-citizens at any place. Migrants may be detained in a variety of centres, including immigration detention centres, police cells and shelters, and deportation vehicles, and occasionally in more than one type of detention facility.

B. Violations

Indefinite Detention

- 7.4 So far, the Thai authorities allow certain NGOs and civil society organizations (albeit, in a limited number) to assist and bail out refugees from IDCs. Representatives from the Immigration Department also participated in a 2012 working group headed by Thailand's National Human Rights Commission whose goal is to amend the country's current immigration act to recognize the legal status of refugees and asylum seekers. However, in reality, arbitrary arrests of refugees and asylum seekers by immigration police are rampant; and myriads of them have had to endure years of detention as Thailand's flawed immigration law allows for *indefinite detention* of irregular aliens while they await deportation, including refugees and asylum seekers.
- 7.5 Arrested asylum seekers are detained while awaiting finalization of the UNHCR's refugee status determination (RSD) and resettlement processes, which usually takes two to four years; with limited prospect of being allowed bail. Even those who manage to stay away from the immigration police throughout the long RSD process must still inevitably go through mandatory detention before they can leave Thailand for resettlement in third countries. This is particularly true if they overstay their visas – which is commonly the case for asylum seekers and refugees due to the nature of their plight and the time it takes for UNHCR Thailand to process their cases. Therefore, by subjecting refugees and asylum seekers to the regulations and detention terms as specified in the current immigration law, (e.g., Articles 19, 20, 54, 59), Thailand is in effect violating article 16 of CAT.

Detention of Minors

7.6 Detention of children and minors is very common in Thailand's IDCs. There are roughly 40 to 100 minors (of migrants, refugees, asylum seekers, and the stateless combined) in detention at the Bangkok IDC in Suan Phlu at any point in time.¹⁹² According to UNHCR, as of January 2014, 17 of the minors detained are children of refugees and/or registered asylum seekers, while the rest are of migrants, stateless people, and those asylum seekers whose cases have been rejected by UNHCR. Their age ranges from 2-17 years old. Not only are these minors deprived of access to quality education while detained, they also have limited access to the outdoors and recreation activities vital to their development. They are also put in rooms together with other unrelated adult detainees (albeit of the same sex) – many of whom are in poor physical and/or psychological conditions due to their prolonged periods of detention. There is an elevated risk that the negative setting and traumatic experience caused by the detention will have an adverse impact on these minors long into the future.

Dire Conditions of Immigration Detention Centers (IDCs) and other places of detention

7.7 The detention rooms of immigration detention centers are generally overcrowded throughout Thailand. For example, there are 20-30 detainees per small room at Suvarnabhumi Airport; and over 100 people detained in a room at the Bangkok IDC (in SuanPhlu). While detention rooms at IDCs were designed for a short stay of several days, in practice, many detainees are held for years.

7.8 Access to daylight and fresh air is also an issue. At the Suvarnabhumi Airport's detention rooms, for example, two detainees interviewed indicated they had had no access to daylight the entire time they had been held there, in some cases for a number of months. Nor can they tell day from night since the room is constantly lit with a light bulb which is never turned off even at night, making it difficult for detainees to sleep.

7.9 Sanitary conditions inside IDCs are squalid. In Bangkok IDCs, for example, cockroaches and rats are rampant.¹⁹³ There is constant, strong smell from the toilets inside the room. Also, detainees have to share dirty beds and bed sheets (which detainees must provide themselves) because there is no space to wash and dry them, thus resulting in skin rashes and bleeding (from scratches) for both children and adults.

7.10 Meals are also notoriously poor at Bangkok IDCs. Detainees receive the same kind of food with very poor nutritional value every day. One former detainee who was interviewed recalled the experience of having just rice, vegetable soup with chicken bones, and occasionally an egg, every meal, day in and day out. Detention authorities are also insensitive to cultural and/or religious restrictions on food (e.g., Muslim detainees cannot request halal food).

7.11 These conditions are even more extreme in various IDCs outside Bangkok. At times, it appeared that the worst conditions could be found inside detention centers in Thailand's

¹⁹² Information obtained from organizations dealing with children in IDCs.

¹⁹³ These findings are based on accounts of several interviewed detainees.

southern provinces where the Rohingya were held last year. A shocking video footage¹⁹⁴ secretly filmed in May 2013 shows 276 Rohingya men being detained in two cells meant to hold 15 people each at an IDC in PhangNga Province. In addition to extreme overcrowding, detainees also had no access to exercise. Worse yet, the IDC in Sadao was reported to lack daylight or fresh air in the wards, and detainees were kept in such tight spaces that they lost the use of their limbs.

- 7.12 The quality and adequacy of medical attention for detainees at IDCs should also be questioned. Detainees of Bangkok IDCs reported that they were given very limited medical checkups and care, and that the same medicine was usually prescribed for various illnesses. After several months in detention in various provincial IDCs, eight Rohingya detainees died in mid-August 2013 during or shortly after transfers to hospitals.¹⁹⁵ Investigation by the National Human Rights Commission as well as doctors on the ground found that at least six Rohingyas died in detention as a result of septic shock, while some reported serious illnesses during detention before being transferred to the hospital and, either died on the way, or shortly afterwards.¹⁹⁶
- 7.13 One should question how these Rohingya experienced septic shock and/or serious illnesses while in detention in the first place. According to the Arakan Project, one of the Rohingya who died (aged 18) talked to his brother in Burma two days before he died and complained that he felt very sick but had not received any medical care.¹⁹⁷ The lives of these eight Rohingya men could have been saved if they had received appropriate medical attention earlier.
- 7.14 Denial of prompt medical care has led to deaths in custody on other occasions as well. On 17 April 2012, two Burmese migrants, Mr [redacted] (25), and Ms [redacted] (36) died in the back of a deportation truck whilst being transported from the Sadao Immigration office, in Songkhla Province to Burma/Myanmar via the Mae Sot border crossing. An investigation carried out by the NHRC found that the deportation did not correspond to international standards and that the actions of immigration officials on board the truck, by failing to give the two migrants in question access to emergency medical care, were in breach of article 4 of the Thai constitution.¹⁹⁸ The public health official who carried out a pre-deportation health check of the two migrants should have arranged medical treatment and should not have allowed the migrants to be deported, and was also found to have contributed to the violation of human dignity and human rights of the migrants in question. The NHRC made a series of recommendations for better respect of human rights during the deportation process, including that the Immigration Police should stop using trucks designed to transport goods or livestock as deportation vehicles. There does not appear to have been any further monitoring of authorities' compliance with the recommendations of the NHRC, nor any disciplinary action taken against the individuals involved.

¹⁹⁴ John Sparks, "Rohingya people crammed in filthy cages in Thailand", Channel 4 (published on 31 May 2013). Available online: <<http://www.channel4.com/news/rohingya-kept-crammed-into-filthy-cages-in-thailand>>. (last consultation: 25.03.2014)

¹⁹⁵ Based on news reports and information obtained directly from an NGO in the field, half of the detainees who died were from the IDC in Sadao which was reported to have the worst conditions of all.

¹⁹⁶ Sources: email correspondence.

¹⁹⁷ Information obtained via email with the Arakan Project.

¹⁹⁸ Constitution, article 4: "The human dignity, rights, liberty, and equality of the people shall be protected."

Recommendations

- End immigration detention of refugees and asylum seekers, starting immediately with children, women, and other vulnerable people; and find alternatives to their detention that respect international human rights laws.
- Thailand must also adopt genuine alternatives to arrest, detention and deportation in managing its irregular migrant population. In limited cases where such law enforcement is inevitable, Thailand must reform the procedures of arrest, detention and deportation to make them more humane, transparent and subject to independent legal oversight.
- As a way to find alternatives to detention for children, the authorities should continue their 2013 policy of moving Rohingya children and women from provincial IDCs to shelters run by Ministry of Social Development and Human Security (MSDHS). This policy should be applied to families with children of other detained nationalities both in Bangkok as well as provincial IDCs.
- In the long run, develop domestic legal and policy frameworks that recognize the status and the rights of refugees and asylum seekers. This will thus put an end to detention and refoulement of this group of vulnerable people. Also, *indefinite detention* must have no place in the language of the law as it gives uninhibited power to officials.
- Ratify the 1951 Convention Relating to the Status of Refugees, and its 1967 Protocol.
- Meanwhile, before such alternatives to detention are established and domestic frameworks developed, IDCs must be improved on the following areas:
 - General detention conditions at IDCs across the country must be improved; and all detainees must have access to timely and adequate healthcare.
 - Mechanisms should be in place to screen refugees and asylum seekers and distinguish them from irregular migrants, in order to ensure their respective rights are met as much as possible while being detained at IDCs.
 - Quality psycho-social support service should be available to refugees and asylum seekers who are detained, as these people have a high tendency for stress and trauma from their experience of fleeing persecution, the prolonged detention period while their cases are being processed by the UNHCR, and the uncertainty of the outcome of their cases.

Chapter 8. Remedies and right to redress (Article 14)¹⁹⁹

- 8.1 Since Thailand does not have any specific provisions for torture offense,²⁰⁰ it also lacks a comprehensive law on remedies for those affected by torture.
- 8.2 The Constitution enshrines the right to seek an appropriate remedy for torture victims through the final paragraph of section 32, which allows an injured person to seek a court order to stop the abuse/torture with compensation.²⁰¹ In the context of criminal cases, the right to obtain reparation is set out in the Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act, however torture is not included in the Act as it is not a criminal offense under Thai law.²⁰² Seeking reparation through this mechanism has not proved to be satisfactory, as many victims do not trust the witness protection programme and are afraid to file charges against offending officials.²⁰³ Moreover, it often takes a long time to receive the compensation and, in financial terms, it is often insufficient.²⁰⁴ This echoes concerns raised by the Human Rights Committee in 2005²⁰⁵ and indicates that the feasibility of obtaining appropriate reparation for human rights violations in Thailand does not meet the standard set in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.²⁰⁶
- 8.3 Another avenue through which torture victims can seek reparations from a perpetrator is by claiming for damages under the Civil and Commercial Code,²⁰⁷ which fall within the jurisdiction of the Civil or Administrative Courts.
- 8.4 Although compensation for violations carried out by state actors has been paid out to some victims, it is often done so out of court to avoid prosecution proceedings.²⁰⁸ The authorities continue to encourage victims or their families to settle out of court.²⁰⁹ The amounts awarded often do not reflect the physical and psychological harm suffered, and length of

¹⁹⁹ See also: Declaration against Torture, article 11.

²⁰⁰ See Chapter 1 of this Report.

²⁰¹ Constitution, section 32. Also refer to Chapter 2 of this Report, paras. 2.26 – 2.28.

²⁰² Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act, B.E. 2544 (2001), unofficial translation available online:

²⁰³ <<http://www.thaigov.go.th/media-centre-government-house/item/55147-.html>> (last consultation: 07.04.2014).

²⁰⁴ See Muslim Attorney Centre Foundation (MAC) and Cross Cultural Foundation (CrCF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, para.22. Available online: <<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS8-JointSubmission8-eng.pdf>> (last consultation: 06.04.2014).

²⁰⁵ *Ibid.*

²⁰⁶ CCPR/CO/84/THA, para.15.

²⁰⁷ General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', adopted by the resolution A/RES/60/147 of 16 December 2005.

²⁰⁸ Civil and Commercial Code, B.E. 2551 (2008), section 420. The first part of the Code is available online: <<http://www.samufforsale.com/law-texts/thailand-civil-code-part-1.html>> (last consultation: 06.04.2014).

²⁰⁹ Asian Human Rights Commission, *Thailand: Compensation without criminal liability is no solution to the killings in Southern Thailand*, AHRC Statement, AS-24-2004 (4 August 2004). Available online: <<http://www.humanrights.asia/news/ahrc-news/AS-24-2004>> (last consultation: 06.04.2014).

²⁰⁹ As an example, see: Annex IV, Case No. 2. See also: Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, (London: Amnesty International Publications, 13 January 2009), p. 12. Available online: <<http://www.amnesty.org/fr/library/asset/ASA39/001/2009/en/45c1226f-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.pdf>> (last consultation: 06.04.2014).

time in obtaining reparations through existing procedure is considered to be overly strenuous.²¹⁰

- 8.5 The availability of physical and psychological healthcare is integral to the rehabilitation of torture victims. In Thailand, there are notable obstacles to the effective provision of these services, which, together with the level of impunity for perpetrators, has reinforced a culture of abuse and ill-treatment.
- 8.6 Victims' health, both mental and physical, and their dignity may be affected as a result of severe torture, and a lack of understanding and expertise in rehabilitation for victims of torture may aggravate the situation.²¹¹ Out of the 92 cases annexed to this report, it was found that none have received any rehabilitation services from any agency with the exception of peer support from friends and relatives.²¹² Thai state cannot argue that budget problems justify the non-fulfillment of its obligation to provide rehabilitation services to victims of torture or ill-treatment. As the Committee mentioned in its third General Comment: "[t]he obligation [to provide victims with the means for "as full rehabilitation as possible"] does not relate to the available resources of States parties and may not be postponed."²¹³
- 8.7 Many of those interviewed by Duayjai and HAP²¹⁴ appeared to have psychological symptoms including anxiety, depression, guilt, paranoia, confusion, insomnia, nightmares and memory loss.²¹⁵ Those who had been subjected to torture were often reluctant to disclose information about their painful experiences. They may also fear or worry about forgetting the incident. These feelings discourage them from seeking the help they need. These effects are often widespread and long-term. Families, especially children whose parents are detained, also face difficulties. For example, children may have to drop out from school prematurely and encounter difficulties in their relationship with their society and communities.
- 8.8 The Region Mental Health Department 15, Pattani is the only government agency that visits those affected by repetitive violence, including victims of torture. It is also the only agency that operates in special circumstances, such as in the southern border provinces of Thailand. The mental health facilities available in other parts of the country do not provide

²¹⁰ Article 2, *Special Report: Rule of Law vs. Rule of Lords in Thailand - Institutionalised torture, extrajudicial killings & uneven application of law in Thailand*, Asian Legal Resource Centre, vol.4, no.2 (15 April 2005), para.11(x), Available online: <<http://www.article2.org/mainfile.php/0402/186/>> (last consultation: 06.04.2014).

²¹¹ These findings are based on accounts of interviewed detainees, where none of them indicated having received psychological treatment.

²¹² Duayjai Group and Cross Cultural Foundation, *Social Support for Detainee's families in Songkla prison center*, (28 May 2012). (Thai language only) This Report was based on 47 cases, which were interviewed in 2011 (see Annex I: DJ1 to DJ47). From the interviews conducted in 2013, Duayjai and HAP also observed that none of the individuals have received rehabilitation services from any agency. These findings however are confined to the cases evaluated by Duayjai and HAP, which are not assumed to be an exhaustive representation of the situation.

²¹³ CAT/C/GC/3, para. 12.

²¹⁴ See Annex II.

²¹⁵ See Annex II, Table III, IV, V, and VI. For the anxiety symptoms, the most common are 'feeling tense' and 'feeling fearful'. As regard to the depression symptoms, the most common is notably 'feeling everything is an effort'. The most common PTSD symptom is notably 'recurrent thoughts or memories of the most hurtful or terrifying events'. Finally, other trauma symptoms were observed such as 'feeling no trust or confidence in others'. All this information was collected according to the different sections in the Proxy included in Annex III and reflects the symptoms observed in 80 to 85 cases.

rehabilitation services tailored to the culture, history and specificities of victims as well as encouraging them to access these services without discrimination. This is especially true for marginalized or vulnerable groups. Access to such services for asylum seekers, refugees and long-term detainees in Bangkok immigration detention centers is extremely rare.

- 8.9 High-level correctional officials understand the unrest in the southern border provinces and the ideological perspective of suspects involved in security cases. They are also aware of the problems with the judicial process and the importance of human rights principles. However, management of suspects in security cases in prisons varies and depends on the capacity of each prison, particularly regarding halal food and healthcare service delivery in prison.²¹⁶ The Department of Corrections and almost every prison lacks the ability to provide a medical evaluation by an independent and qualified physician in cases of suspected torture or ill-treatment.
- 8.10 Thai prison system simply takes photos of detainees before and after detention or imprisonment by the Department of Corrections. However, Thailand does not provide direct rehabilitation services.
- 8.11 There is no funding for medical institutions, legal institutions or other organizations providing these services. Thailand has not enacted a law for the State Party to provide concrete measures for rehabilitation of victims of torture or ill treatment. These mean that victims of torture cannot access rehabilitation projects in a timely manner.
- 8.12 While medical institutions may be able to provide immediate assistance, they often do not have interpretation services. Services delivered by NGOs depend on their capacities and potential. In the southern border provinces of Thailand, as it has been observed by CrCF, the state does not provide such support. Although there is no threats to organizations that deliver services.

Recommendations

- Ensure immediate, effective and fair remedies to torture victims. Such remedies must comply with international standards and the Committee against Torture's General Comment No. 3, regarding compliance of article 14 of the CAT.
- When it is reasonable to believe that there has been an act of torture or ill-treatment, promptly intervene to ensure that a victim receives remedy even before a complaint.
- Declare that it recognizes the competence of the Committee against Torture to receive and consider communications under article 22 of the Convention to ensure that victims can file such communications and request views as to the existence of violations of the Convention from the Committee.

²¹⁶ See: Annex II, Table II and Graph II. Out of 85 cases, 31 reported having been deprived of medical care and, more generally, 24 reported having been forced to engage in practices against one's religion.