



# **Submission of the National Human Rights Commission of Thailand (NHRCT)**

**on the implementation of**

**the Convention Against Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**(2<sup>nd</sup> periodic review)**

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## **I. Preparation of the Written Submission**

1. The National Human Rights Commission of Thailand (NHRCT), as a national human rights institution under the Paris Principles with A status, prepared the report by gathering and analyzing information from its works and inputs from government agencies, civil society, and academia through a participatory method. The report contains information as of 9 September 2024.

## **II. Major Developments**

2. Since 2014, Thailand has made significant advancement in addressing torture and other forms of cruel, inhuman, or degrading treatment or punishment. A milestone development is the enactment of the Prevention and Suppression of Torture and Enforced Disappearance Act, B.E. 2565 (2022) (Anti-Torture Act), which came into force on 22 February 2023. The legislation provides for the establishment of the Committee for the Prevention and Suppression of Torture and Enforced Disappearance, chaired by the Minister of Justice, as the principal mechanism for driving the implementation of the Act. It has also led to the withdrawal of Thailand's interpretative declaration to Articles 1, 4, and 5 of the Convention Against Torture. Another development relates to the dispersal of protesters at Tak Bai Police Station in Narathiwat Province in 2004, which resulted in the deaths of 85 individuals during the transfer to the Ingkhayuthboriharn Military Camp in Pattani Province. Until 2024, no criminal charges were filed against the state officials involved. However, relatives of those who died in the incident had initiated legal actions against these officials to Narathiwat Provincial Court which accepted the petition as a criminal case, marking a significant step toward the elimination of impunity.
3. Despite these developments, the NHRCT continues to receive complaints related to torture and other cruel, inhuman, or degrading treatment or punishment. From 2021 to August 2024, the NHRCT has received 57 complaints alleging that state officials have engaged in torture, cruel, inhuman, or degrading treatment or punishment, of which 35 have been accepted for investigation. The nature of complaints includes physical abuse during

detention under national security laws, physical abuse during searches, arrests, and detentions, physical abuse to coerce confessions, disciplinary punishment characterized as cruel, inhuman, or degrading, and human rights violations in drug rehabilitation centers, among others. The investigation revealed 16 instances of human rights violations, including 6 torture cases and 10 cruel treatment cases. Among these complaints, 4 cases were filed after the enforcement of the Anti-Torture Act, with 3 cases determined as torture and 1 case as cruel treatment.

### III. Laws and Enforcement

- **Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022)**

4. The Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022) is the first legislation in Thailand that criminalizes torture committed by state officials. It contains specific provisions regarding the prevention of torture and enforced disappearance, including detention process, documentation of detained individuals, disclosure of information about detainees, the right to seek a court order to stop acts of torture, procedures in the case of death during detention, and the requirement for continuous video recording from the moment of detention until release. These procedures are distinct from the general principles outlined in the Criminal Procedure Code. Additionally, the Committee for the Prevention and Suppression of Torture and Enforced Disappearance has issued the regulation concerning the recording of audio and video during arrests and detentions, notification of detentions, and documentation relating to detainees B.E. 2566 (2023). This regulation serves as a standard practice for relevant agencies.
5. Despite several challenges in the implementation of the law, relevant agencies have made efforts to ensure the effectiveness of the law, prompting officials to exercise greater caution. Moreover, state agencies have taken legal action seriously. For instance, the Special Investigation Department, the Attorney General Office, the Royal Thai Police, and the Interior Ministry have

collaborated to conduct a thorough investigation in the case of "Uncle Piak" (Mr. Panya Khongsankham), who was tortured by police to confess a murder case.

6. The NHRCT is concerned about the penalties for some offences stipulated in the Anti-Torture Act. This relates to the public prosecutor's indictment of military officials in connection with the death of a military conscript during training. The case marks the first prosecution under Section 6<sup>1</sup> of the Anti-Torture Act pertaining to cruel, inhuman, or degrading treatment. The penalty for such treatment as set out in Section 36<sup>2</sup> of the Anti-Torture Act is a maximum of three years in imprisonment or a fine not exceeding 60,000 baht, or both, without sentence enhancement clause in the case where a victim dies. Such penalty is less severe than that outlined in Section 290<sup>3</sup> of the Criminal Code, which prescribes three to fifteen years in imprisonment for causing death to a person by inflicting injury. Therefore, if the afore-mentioned case is considered solely under the Anti-Torture Act, state officials who committed the offence may face less severe penalty than an ordinary person prosecuted for similar crime under the Criminal Code. This could ultimately diminish the effectiveness of the Anti-Torture Act in deterring state officials from committing cruel, inhuman, or degrading treatment.
7. During 2021 to 2023, the NHRCT received 4 complaints regarding the case of military conscripts being subjected to cruel treatment or punishment, while

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<sup>1</sup> Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565

Section 6: A person who is a public official who commits any cruel, inhuman, or degrading treatment or punishment, which, as a result, has dehumanized or violated fundamental human rights, human dignity or inflicted physical or mental pains to another person, which is not an offence under Section 5, the person shall be held accountable for committing a cruel, inhuman, or degrading treatment.

The act under the first paragraph shall exclude an injury normally caused by the implementation of a lawful punishment.

<sup>2</sup> Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565

Section 36: Whoever commits an offence of cruel, inhuman, or degrading treatment under Section 6 shall be liable to imprisonment for a term of not exceeding three years and a fine not exceeding 60,000 baht, or both.

<sup>3</sup> Criminal Code

Section 290 (Paragraph 1): Whoever, causes death to the other person by inflicting injury upon the body of such person without intent to cause death, shall be punished with imprisonment of three to fifteen years.

information from media reports indicate that as many as 19 conscripts<sup>4</sup> had died between 2014 and 2023. However, there is dispute in the jurisdiction of courts with regard to the military conscript's death during training, which has brought concern to the NHRCT. Defendants, who are military officials, have filed petitions with the Constitutional Court seeking a ruling that the provision of the Anti-Torture Act, which designates the Criminal Court of Anti-Corruption and Misconduct as having jurisdiction over offences under this Act, are unconstitutional according to Section 199<sup>5</sup> of the Constitution. Section 199 grants military courts the authority to adjudicate criminal cases involving individuals subject to military jurisdiction. The Constitutional Court decided not to accept the petition for consideration, stating that this issue pertains to the duties and powers between courts as per Section 192<sup>6</sup> of the Constitution, which falls under the jurisdiction of the committee responsible for resolving jurisdictional conflicts. Such disputes have delayed the adjudication of offences under the Anti-Torture Act and are inconsistent with the spirit of Section 34<sup>7</sup> of the Anti-Torture Act.

8. The NHRCT is also concerned with the enforcement of the overlapping laws with equal legal hierarchy, as law enforcement officials tend to apply the laws with which they are most experienced. Furthermore, some officials do not have

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<sup>4</sup> Information from Prachathai News Agency, retrieved on September 9, 2024.

<sup>5</sup> Constitution of the Kingdom of Thailand B.E. 2560 (2017)  
Section 199 (First Paragraph): Military Courts have the powers to try and adjudicate cases involving offenders who are subject to the jurisdiction of the Military Courts and other cases, as provided by law.

<sup>6</sup> Constitution of the Kingdom of Thailand B.E. 2560  
Section 192: In the case of a dispute on the competent jurisdictions between the Court of Justice, the Administrative Court, or the Military Court, a ruling shall be made by a committee consisting of the President of the Supreme Court as Chairperson, the President of the Supreme Administrative Court, the Chief of Military Judicial Office and not more than four qualified persons as provided by law as members.

The rules and procedures for ruling on a dispute on the competent jurisdictions between the Courts under paragraph one shall be as provided by law.

<sup>7</sup> Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565  
Section 34: The Criminal Court for Corruption and Misconduct Cases shall have jurisdiction over cases related to an offence under this Act including cases whereby the person committing an offence under this Act was a person under the jurisdiction of the Military Court while committing the offence.

sufficient awareness and comprehension of the Anti-Torture Act, which may lead to their failure to enforce it alongside other legislation. For instance, state officials in the southern border provinces primarily apply security laws, and officials involved in the process of deporting foreigners under the Extradition Act of 2008 may not apply the principle of non-refoulement as stipulated in Section 13<sup>8</sup> of the Anti-Torture Act. Currently, there are no guidelines in place to ensure that state officials adhere to this principle in enforcing laws relating to deportation.

9. To allow for participation of citizens in monitoring acts of torture, the Anti-Torture Act stipulates that any person witnessing suspicious incidents can report them to the competent authorities<sup>9</sup>. This is considered an important development. However, this mechanism has not been as effective as it should be as some officials lack knowledge and understanding about this provision or have different practices in handling such reports, while the public lacks confidence in the reporting mechanism, particularly regarding the safety of the witnesses.
10. The NHRCT is seriously concerned that law enforcement officials tend to interpret acts of torture in a very restricted manner and lack gender sensitivity. This relates to the case where the public prosecutor did not prosecute a police informant who raped a female suspect while in custody in a drug-related case on the charge of torture. This act of sexual violence that causes severe pain or suffering to the victim can amount to torture.

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<sup>8</sup> Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565

Section 13: No government organizations or public officials shall expel, deport, or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance.

<sup>9</sup> Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565

Section 29: Upon witnessing or learning about an act of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance, the person is obliged to report the case to an administrative official, a public prosecutor, an inquiry official, the Committee or the Subcommittee assigned without delay.

The person who made the report under the first paragraph, if acting in good faith, shall not be held accountable for either civil or criminal offence, or disciplinary action, even though it eventually turns out that such commission of the offence did not take place as reported.

## 11. Recommendations

- a. The state should enhance understanding and raise awareness about the Anti-Torture Act consistently and widely, encompassing all pertinent law enforcement agencies at all levels, as well as civil society and the general public.
- b. To ensure that the penalties under the Anti-Torture Act are appropriate for the severity of the offences in line with the spirit of the Convention, the state should consider amending Section 36 of the Anti-Torture Act to include sentence enhancement clause for the offence under Section 6 that result in the death of the victim.
- c. The state should ensure that cases involving offenders under this law who are personnel in the military fall under the jurisdiction of the Criminal Court for Corruption and Misconduct as specified in the Anti-Torture Act. This court operates under an inquisitorial system, granting it the authority to directly examine witnesses, thereby enhancing the administration of justice for all parties and mitigating disparities between unequal parties.
- d. As there are several laws of equal legal hierarchy that have provisions concerning the detention of individuals, the state should ensure that the actions of the state or its officials under such laws are in line with the Anti-Torture Act. Clear guidelines should be established for officials to ensure unified law enforcement, such as guidelines on application of non-refoulement principle for aliens' deportation.
- e. The state should develop a reporting mechanism under Section 29 of the Anti-Torture Act that ensures the safety of persons reporting torture incidents, as well as establish standardized operational guidelines for officials in handling such reports.
- f. The state should ensure that offences under the Anti-Torture Act are not interpreted in a restricted manner, and that officials take gender sensitivity into account, as acts of torture can take various forms and have different implications on individuals of diverse gender identities.

- **Drug Prevention and Suppression**

12. The government's policy aimed at preventing and suppressing drug trafficking has led to the enactment of the Act on Procedure of Narcotic Cases (No. 2) B.E. 2564 (2021), which amends Section 11/6, paragraph one, of the Act on Procedure of Narcotic Cases B.E. 2550 (2007), to authorize drug control officials to detain serious drug offenders for 3 days before turning them over to the inquiry officials, who have the power to detain them for additional 48 hours. This allows the authorities to detain a suspect in drug-related matters for a maximum of 5 days without having to bring the suspect before the court and without oversight on the exercise of detention power by other entities or the court.
13. The NHRCT is concerned that the 5-day detention period puts the suspects at risk of torture as we received complaints regarding the police physically assaulting suspects during arrest and detention for further investigation in drug-related cases. The NHRCT issued recommendations to the government to revoke the power under the afore-mentioned Section, and to apply the procedures outlined in the Criminal Procedure Code as in other criminal cases. Should there be a necessity to investigate further in drug-related cases, or if some other reasons arise to prolong the detention period, the authorities should petition the court to determine the necessity for an extended detention.
14. Even though the relevant agencies insist on the necessity of detention for continued investigation and guarantee the rights of the detainees under the Anti-Torture Act, the NHRCT is of the view that the power to detain under this law unduly infringes upon individuals' rights and freedoms, and is inconsistent with the right to due process, whereby arrested or detained individuals must be brought promptly before a court, according to Article 9 (3) of the International Covenant on Civil and Political Rights<sup>10</sup>. Furthermore, the detention of

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<sup>10</sup> International Covenant on Civil and Political Rights

Article 9(3): Any person who is arrested or detained on criminal charges must be promptly brought before a judge or other authorized legal authority. They have the right to a fair trial within a reasonable time or to be released. It is not a general principle that individuals awaiting trial must be kept in custody, but release may be conditioned on a guarantee to appear in court for trial and at other stages of the proceedings, as well as to comply with any judgment issued.

individuals under narcotics law should incorporate a judicial oversight mechanism.

15. The NHRCT is also concerned about the manner in which drug users or addicts are brought into the treatment process. Section 15, paragraph one<sup>11</sup> of the Ministerial Regulation on the Treatment of Drug Addicts B.E. 2565, authorizes officials to temporarily detain individuals suspected of using or possessing drugs for up to 24 hours from the time they are tested for the presence of drugs in their bodies. This period of detention poses a risk of torture as well.
16. There are currently two systems for the treatment and rehabilitation of drug addicts: the **medical treatment**, which is conducted by agencies under the supervision of the Ministry of Public Health; and the **social treatment**, which is carried out by both state and private organizations that are registered according to regulations or announcements of the Public Health Ministry. There are 135 registered rehabilitation facilities for drug addicts in total (83 in the public sector and 52 in the private sector), some of which are supervised by the military and the Department of Local Administration.
17. The NHRCT has received complaints related to the social treatment, such as cases where rehabilitation centers for drug addicts impose punishments deemed cruel, inhumane, or degrading. Besides, non-registered private drug rehabilitation centers frequently infringe upon the freedom of those undergoing treatment, enforce rules and penalties that pose a high risk of human rights violations. These centers are also regarded as detention facilities and are, therefore, subject to adhere to the Anti-Torture Act. The NHRCT is concerned about the effectiveness of an oversight mechanism, the prevention of sub-standard rehabilitation or potential human rights violations, as well as the actions against illegal centers.

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<sup>11</sup> Ministerial Regulation on Procedures for the Treatment of Drug Addicts B.E. 2565

Section 15(1): If an officer suspects someone of committing an offence related to drug use or possession for personal use, and initial tests indicate that the individual may be a drug user, the officer may temporarily detain the individual for treatment and send them to a drug rehabilitation facility or screening center. However, this temporary custody must not exceed twenty-four hours from the time the individual is tested for drugs.

## 18. **Recommendations**

- a. The state should review existing laws pertaining to the prevention and suppression of drug offences that authorize officials to temporarily detain individuals for a period of 24 hours and hold them for further investigation for up to 3 days. This practice not only diverges from the procedures outlined in the Criminal Procedure Code and lacks essential oversight over the use of discretion by the courts or other entities, but it also poses a significant risk of torture during this timeframe.
- b. Both state and private rehabilitation centers for drug addicts are detention facilities that pose a high risk of human rights violations. The government, through the Ministry of Public Health and relevant agencies, should expedite the registration process for these facilities. Furthermore, it should develop effective oversight mechanisms to mitigate risks, perform regular inspections of the facilities, and rigorously monitor rehabilitation standards, quality, and procedures for drug addicts. Furthermore, it is crucial that these facilities adhere to established standards and refrain from any acts that could constitute torture or any cruel, inhumane, or degrading treatment or punishment.

## **IV. Situation in the Southern Border Provinces**

19. Although the state has continuously reduced the areas under the emergency situation as declared under the Royal Decree on Public Administration in Emergency Situations B.E. 2548 (2005), security laws, namely the Internal Security Act B.E. 2551 (2008) and the Martial Law Act B.E. 2457(1914), remain enforced in the southern border provinces. These laws grant officials extensive powers that affect individual rights and freedoms, particularly the power to carry out raids, search residences, and detain individuals for questioning in interrogation centers for up to 7 days under the Martial Law. The detention period can be prolonged for an additional 7 days, but not exceeding 30 days in total as per the Emergency Decree.

20. The security agencies in the southern border provinces primarily adhere to security laws in their operations. After the enactment of the Anti-Torture Act and the issuance of the regulation concerning the recording of audio and video during arrests and detentions, notification of detentions, and documentation related to detainees B.E. 2566 (2023), security agencies have issued two regulations<sup>12</sup> outlining procedures for searches and detention of individuals with reasonable suspicion in accordance with the Anti-Torture Act.
21. The NHRCT notes that security agencies continue to prioritize security laws over the Anti-Torture Act. Article 4 of the two regulations mentioned above clearly states that "The regulations or orders issued by the principal agency under the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565, which do not conflict with or contradict this regulation, may be applied *mutatis mutandis*." Furthermore, these regulations do not explicitly state the notification of detentions and transfers of detainees to the public prosecutors or administrative officials as stipulated in the Anti-Torture Act. This may compromise the duties and responsibilities of officials under these regulations, impacting the guarantees of rights and freedoms of detainees. Moreover, although security agencies have measures in place to continuously undertake audio and video recordings, there remain instances where no recording is made due to equipment malfunctions during detentions, discontinuous recordings, or incomplete submissions of recordings to the public prosecutor.
22. The NHRCT has occasionally received complaints regarding torture or physical abuse during detentions under security laws, both prior to and after the enactment of the Anti-Torture Act. Some cases were concluded as human rights violations, such as a case where a victim was detained for interrogation under security laws for 33 days. During this detention, the victim was subjected to assaults in the head and face, forced to squat repeatedly for 30 minutes, compelled to take off all the clothes, and threatened with the kind of meat that

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<sup>12</sup> 1) Regulation of the Fourth Army Area / Internal Security Operations Command on Procedures for Searches and Detention of Suspicious Individuals under the Martial Law Act B.E. 2457 dated March 11, 2024 and 2) Regulation of the Internal Security Operations Command on Procedures for Officials under Sections 11 and 12 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 dated March 11, 2024.

was mistaken by the victim as forbidden by his religious beliefs to coerce him into confessing or providing information. These actions left no visible scars and were conducted outside the official interrogation facilities; therefore, the audio and videos recording were not properly carried out. The search of evidence continues to be an important obstacle in investigating complaints related to torture, and in ensuring the victim's access to remedy.

23. **Recommendations**

- a. The state should revoke the enforcement of security laws in areas where they are deemed unnecessary, taking into account the local situation, and the readiness of agencies and the community. The assessment of local situation and necessity should take into account opinions from the local population through participatory processes.
- b. While the enforcement of security laws in the area remains, the state must guarantee that no exceptional circumstances can be invoked as a justification of torture. Local agencies should strictly comply with the Anti-Torture Act and security laws and related regulations can be applied only to the extent that they do not conflict with the Anti-Torture Act.

## V. Treatment of Persons Under Arrest or Detention

### • Arrest and Detention

24. Section 22 of the Anti-Torture Act stipulates that state officials must continuously record audio and video throughout the arrest and detention process until the person is handed over to the inquiry officials or released. The Committee under the Anti-Torture Act has issued the regulation concerning the audio and video recording during arrests and detentions, notification of detentions, and documentation related to detainees to be a standard practice for relevant agencies. After the regulation came into effect on 21 September 2023, relevant agencies have organized trainings for officials, procured recording equipment, and developed data storage systems to ensure compliance with the law.

25. Nonetheless, the audio and video recordings, the notification of detentions, and the documentation of information about detainees remain problematic in practice. For instance, the number of recording devices does not correspond to the number of operational staff, some personnel within the justice system have insufficient knowledge and understanding of the Anti-Torture Act, and may not be aware about the importance of strictly complying with the law. There have been instances where police have provided incomplete arrest information to prosecutors and administrative officials, while some prosecutors have not thoroughly reviewed the audio and video recordings. Some operational personnel have interpreted that inviting individuals to provide information does not constitute detention under the Anti-Torture Act, as it is not a step provided for in the Criminal Procedure Code. Additionally, relevant agencies have different procedures on detention notification, reporting, and data storage, which obstruct operational effectiveness, such as the data linkage among agencies and access to public complaint mechanisms.
26. After the enforcement of the Anti-Torture Act, the NHRCT continues to receive complaints alleging that officials have physically harmed suspects during arrests and detentions. However, officials failed to undertake audio and video recording continuously during these processes, inadequately documented exceptional circumstances that hindered proper recording, or reported malfunctions of surveillance cameras during detentions.
27. **Recommendations**
  - a. The state should ensure that officials strictly comply with the law and should review the different regulations and procedures of relevant agencies, which may pose obstacles to effective operations.
  - b. The state should provide support to relevant agencies through budgetary allocations, equipment, and training for officials at all levels. Priority should be given to equipment procurement and sufficient allocation to those directly responsible for detention operations.

- **Imprisonment**

28. The NHRCT has visited various detention facilities to ensure the detainees are treated in accordance with international human rights standards and obligations. These facilities include prisons, immigration detention centers, juvenile observation and protection centers, facilities for vulnerable groups, drug rehabilitation centers, and interrogation centers.
29. The state has amended the Prison Act B.E. 2560 (2017) and issued related ministerial regulations including on prolonged solitary confinement to bring it in conformity with international standards, particularly the UN Standard Minimum Rules for the Treatment of Prisoners, or the Mandela Rules. However, the NHRCT found that prison overcrowding remains a major challenge, as the living space per inmate falls below international standards due to the number of inmates exceeding prison's capacity. The lack of separation between convicted inmates and those awaiting trial in most detention facilities is a serious cause of concerns. The statistics show that the majority of inmates are individuals charged with drug-related offences, accounting for 72.43% of the total inmate population, or 216,421 persons. Those awaiting trial comprise 24.15%, or 72,151 persons, while the number of other types of detainees is 2.42%, or 7,233 persons (as of 9 September 2024). Furthermore, the NHRCT noticed deficiency in the management of detention facilities, such as inadequate access to medical care, substandard hygiene, insufficient equipment, and serious shortage of staff, resulting in staff's fatigue and Those awaiting trial comprise 24.15%, or 72,151 persons, while the number of other types of detainees is 2.42%, or 7,233 persons, stress that ultimately affect the treatment of detainees.
30. The immigration detention centers face similar challenges, including overcrowding and inadequate medical and public health services. In 2023, the NHRCT received a complaint regarding the deaths of two Uyghur detainees in the Bangkok Immigration Detention Center. This highlights limitations in healthcare for detainees, such as a lack of appropriate medical supplies for basic treatment, insufficient medical personnel, including psychiatrists, and budget

constraints in the case where detainees require hospitalization without financial support from relatives, embassies, or consulates to cover medical expenses.

31. The NHRCT found that, in practice, cases of detaining children alongside their parents in standard immigration detention centers persist, despite the collaboration among relevant state agencies in implementing the “alternatives to detention” policy for children who entered the country without proper documentation. This is to ensure that children are placed in an environment conducive to their development as outlined in the Memorandum of Understanding (MoU) of January 2019 regarding measures and guidelines for the detention of children in immigration detention centers pending their return.
32. Another significant issue is the detention of certain groups of foreigners without a specific release timeframe, including Uyghur and Rohingya detainees. Most Uyghur detainees have been confined since 2013 without a specified date for release or deportation under immigration law. Additionally, their communication with external parties is restricted and must obtain prior approval from the National Security Council (NSC) for national security and international relations concerns.
33. **Recommendations**
  - a. The NHRCT believes that a primary cause of prison overcrowding is the excessive use of criminal penalties (over-criminalization). The state should consider minimizing the use of criminal penalties, especially imprisonment, for acts that do not necessarily require such punishment and implement a decriminalization policy for such offences as defamation and drug-related offence by abolishing the irrebuttable presumption that possession of narcotics is for the purpose of distribution, among other measures.
  - b. The state should amend the annex to the Act on Imposition of Non-Criminal Regulatory Fines, B.E 2565 (2022) to include a more comprehensive list of criminal offences that are only punishable by a fine,

while urging officials to enforce such law in order to reduce the number of persons detained in lieu of fines.

- c. The state should expedite the process of separating pre-trial detainees from convicted inmates to alleviate prison overcrowding and uphold the principle of presumption of innocence, which presumes that an individual accused of any crimes is considered innocent until proven guilty.
- d. The state should allocate appropriate personnel and financial resources to the Corrections Department and the Immigration Bureau to improve the management of detention facilities in line with international standards.
- e. The state should facilitate the access of Uyghur and Rohingya detainees who have been detained for a protracted period without specific release date to the National Screening Mechanism to ensure that they are granted the status of "protected persons" without discrimination and can temporarily reside in Thailand. Besides, the state should accelerate cooperation with third countries to find sustainable solutions for these asylum seekers.
- f. While asylum seekers remain in detention, the state should ensure their adequate standard of living and access to healthcare, including the ability to practice religious activities and communicate with family members or trusted individuals.

#### • Prosecution

34. Section 226/1 of the Criminal Procedure Code states that "In case where it appears to the Court that any evidence arising duly but derived by acting in bad faith or derived by means of the data arisen or derived wrongfully, such evidence shall not be admitted by the Court, unless the admission of such evidence will have more beneficial effect on the delivery of justice than the bad effect arisen from its impact on the standard of criminal justice system or basic rights and liberty of the people." This provision allows for the court to consider unlawfully obtained evidence by weighing its value against the protection of individual rights and freedoms. The NHRCT is concerned that this provision may allow the admission of evidence obtained through torture or cruel,

inhuman, or degrading punishment, which contradict the principle of non-derogable rights and may encourage officials to violate people' rights or act wrongfully to obtain evidence.

35. The NHRCT is concerned about cases where the court admits evidence obtained through interrogation under security laws. Particularly in Supreme Court ruling No. 3214/2017, it was stated that statements or facts obtained from interrogation methods are not considered testimony of the accused under the final paragraph of Section 84 of the Criminal Procedure Code<sup>13</sup> because the interrogated person had not been arrested at the time. Therefore, it does not fall under inadmissible evidence, even though the rights to judicial process were not informed to that person beforehand. Additionally, the court held that although the testimony of the interrogated person is generally hearsay, which is essentially inadmissible, the case falls under an exception which allows the court to use discretion to admit it under Section 226/3, second paragraph<sup>14</sup>, of the Criminal Procedure Code. The NHRCT is concerned that this approach could encourage interrogation methods that poses risk of human rights violations.
36. According to the research<sup>15</sup> conducted by the NHRCT in collaboration with partner institution, one of the major obstacles in implementing the Anti-Torture Act is the difficulty in gathering evidence to prove acts of torture. This is due to the fact that victims are often held in detention facilities for longer period,

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<sup>13</sup> Criminal Procedure Code

Section 84 (Last Paragraph): Any statements made by the arrested person to the arresting officer, administrative officer, or police during the arrest or surrender of the arrested person, if those statements are confessions of the arrested person admitting to committing an offence, shall not be admissible as evidence. However, if they are other statements, they may be admissible as evidence to prove the offence of the arrested person only if the rights have been informed in accordance with the first paragraph or under Section 83, second paragraph, as applicable.

<sup>14</sup> Criminal Procedure Code

Section 226/3 (Second Paragraph): The court shall not admit hearsay evidence unless (1) the circumstances, nature, source, and surrounding facts of the hearsay evidence make it credible enough to prove the truth, or (2) there is a necessity due to the inability to bring the person who has seen, heard, or knows the relevant information to testify directly, and it is reasonable in the interests of justice to admit the hearsay evidence.

<sup>15</sup> Research Project for the Development of Tools, Standards, and Systems for the Prevention, Protection, and Remediation in accordance with the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment conducted by the National Human Rights Commission of Thailand.

particularly in areas where security laws are enforced. As a result, physical evidence on the body may be undetected, and some forms of torture may leave no physical marks. Even after a medical examination, there may be insufficient evidence to hold perpetrators accountable. Furthermore, medical examinations of detainees are often conducted by medical personnel affiliated with the same agencies as the perpetrators or located in the same area, which may compromise the independence of the medical opinion due to concerns over safety. Additionally, medical personnel lack a systematic approach to evaluate information and facts, including physical and mental components, as well as other forms of examinations that can serve as evidence in legal proceedings and for the purpose of providing victims with effective remedies.

37. **Recommendations**

- a. The discretion exercised by the court must align with Article 15<sup>16</sup> of the Convention Against Torture, which stipulates that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings. Thus, the court should establish guidelines or issue a regulation of the President of the Supreme Court on the judicial discretion in hearing evidence to ensure that the evidence obtained through torture does not fall under any exception for admissibility, regardless of any circumstances.
- b. The state should ensure that detainees are able to receive medical and psychological examinations, as well as unbiased medical opinions from independent practitioners. A systematic framework or guidelines for medical personnel to conduct medical examinations and provide medical opinions in cases of torture should be established. This will enable effective prosecution of perpetrators and adequate remedies for victims.

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<sup>16</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 15 Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

## VI. Remedies

38. The term “victim” under the Criminal Procedure Code refers to an individual who suffers harm due to a criminal offence. However, the definition of "victim" in the Anti-Torture Act also includes spouses, parents, descendants, cohabiting partners without marriage registration, guardians, and dependents as victims under the Criminal Procedure Code. Victims under the Anti-Torture Act are granted rights to request state officials to disclose detention information, to seek a court order for the cessation of acts of torture or cruel treatment, and to pursue remedies. This represents important progress in protecting the victim's rights.
39. Since 2014, the Court of Justice has rendered judgments to compensate victims of torture and other forms of cruel, inhumane, or degrading treatment or punishment. In particular, the Court ordered the Royal Thai army to pay approximately 7 million baht to the family of Private Wichian Pueksom for the torture leading to his death, and ordered the Royal Thai Police to compensate Mr. Rittirong Chuenchit, who was tortured to confess. While these rulings signify progress, the legal process is extremely lengthy. (Private Wichian's case took 12 years, and Mr. Rittirong's case took 13 years.) Besides legal redress, victims of torture may also seek compensation under other laws and regulations such as the Damages for the Injured Persons and Compensation and Expenses for the Accused in Criminal Cases Act B.E. 2544 (2001) and regulations regarding assistance for those affected by state officials' actions in the Southern Border Provinces.
40. The NHRCT observes that the current redress mechanisms focus mainly on monetary compensation, and the said mechanisms still have practical limitations, such as the time limit for the victim to exercise his or her rights and the condition that the victim must not be implicated in the crime. This is particularly pertinent in the Southern Border Provinces, where compensation has yet to encompass victims deemed involved in security incidents and their families. Children, women, and people with disabilities are disproportionately affected by psychological trauma, stigma, forced DNA

testing, limited opportunities for employment and education, and poverty due to the loss of family breadwinners.

41. The Anti-Torture Act seeks to address these limitations by ensuring victims' rights to comprehensive physical and psychological recovery, taking into account possible restitution and long-term medical care. The Committee for the Prevention and Suppression of Torture is in the process of drafting regulations on the assistance, compensation, and rehabilitation for victims B.E. .... to establish guidelines for comprehensive remedial measures.
42. The NHRCT's research<sup>17</sup> found that torture causes severe and long-lasting effects physically and mentally, particularly the Post-Traumatic Stress Disorder (PTSD). Effective reparations require collaboration among various sectors, especially medical professionals from the Ministry of Public Health. However, the Public Health Ministry is not yet member of the Committee for the Prevention and Suppression of Torture and Enforced Disappearances. The evaluation of physical and mental conditions of torture victims was found to be constrained by the limited number as well as specialized knowledge and expertise of the medical personnel.
43. **Recommendations**
  - a. The state should develop a database to efficiently facilitate and monitor compensation assistance for victims, while revising rules and regulations that hinder the compensation process, such as the application timeframe and disqualification criteria related to victims' deemed involvement in security-related cases.
  - b. The state should determine other forms of compensation, focusing on restitution of victims, such as providing living allowances, scholarships, access to mental health services, career support, and assistive equipment for persons with disabilities, in order to ensure the reintegration of victims and their families into society.

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<sup>17</sup> Cited in footnote 18.

- c. The state should develop effective remedial mechanisms and tools by integrating cooperation among relevant agencies<sup>18</sup> to ensure the effectiveness of non-monetary remedial measures for victims under the Anti-Torture Act.
- d. The state should appoint the Ministry of Public Health as a member of the Committee for the Prevention and Suppression of Torture. Meanwhile, the Ministry should develop policies and guidelines on medical examinations to assist in the evaluation and rehabilitation of victims of torture and enforced disappearance. It should also develop a physical and mental rehabilitation system, while preparing public health personnel for these tasks.

## VII. Enforced Disappearance

44. Before the enactment of the Anti-Torture Act, there were legal proceedings against those responsible for unlawful detention, notably in the case of Mr. Porlajee Rakchongcharoen, or Billy, where the Central Criminal Court for Corruption and Misconduct sentenced the former head of Kaeng Krachan National Park to 3 years in prison without probation for unlawfully detaining Billy. However, the Court dismissed the charge of first-degree murder due to insufficient evidence. Furthermore, there is no record of any compensation or redress provided to Billy's family and relatives for state officials' wrongdoings. A lawsuit has been filed by Billy's family members in civil court against the Department of National Parks, Wildlife and Plant Conservation to seek compensation. Since the enactment of the Anti-Torture Act, there have been no prosecution on the charge of enforced disappearance under this law.
45. The NHRCT investigated cases of 9 Thai nationals living abroad who were subjected to enforced disappearance and death between 2017 and 2021<sup>19</sup>. These

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<sup>18</sup> These include the Committee for the Prevention and Suppression of Torture and Enforced Disappearances, the Ministry of Justice, the Department of Rights and Liberties Protection, the Ministry of Public Health, central and general hospitals, the Department of Mental Health, and the Office of the Attorney General, among others.

<sup>19</sup> These are: 1) Mr. Itthiphol Sukpaen, 2) Mr. Wuthipong Kachathamakul, 3) Mr. Surachai Danwattananusorn, 4) Mr. Chatchan Bupphawan (deceased), 5) Mr. Kraidet Luealert (deceased), 6) Mr.

individuals were politically active and faced continuous surveillance from state officials, which led them to leave Thailand for other countries after the coup in 2014. They continued their political activities abroad but subsequently went missing. Although there is currently no clear evidence indicating state involvement in these 9 individual disappearances, the investigation of the facts and surrounding circumstances suggests that these cases likely involve enforced disappearance.

46. In response to these incidents, state agencies have coordinated with neighboring countries to obtain facts and updates on the investigations concerning the missing persons. Only in the case of Mr. Wanchalerm Satsaksit has there been progress, as the case is currently under consideration by the Cambodian court. However, for the other cases, the investigation process has been slow, and the collaboration efforts have not been sufficiently effective. This inadequacy has adversely affected the right of the families and relatives of the missing persons to know the truth, indicating that the legal frameworks or state measures for investigating enforced disappearance in neighboring countries remain insufficient.
47. The existing mechanisms for providing redress to victims do not adequately cover cases where the fate of missing persons is unknown. Currently, there is only monetary compensation for the relatives and families of those confirmed dead. In cases of other missing persons, no monetary or alternative compensation has been reported. Notably, the subcommittee for considering compensation for victims and expenses for defendants in criminal cases has rejected financial assistance requests from the relatives of two individuals who were forcibly disappeared, citing the lack of clarity regarding whether these individuals are deceased or may be in physical or psychological danger. Additionally, the Justice Fund Office has denied assistance in arranging legal representation for these cases on the grounds that the enforced disappearances occurred outside the country. Although the Anti-Torture Act guarantees

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Chucheep Chivasut, 7) Mr Kritsana Thapthai, 8) Mr. Siam Theerawut, and 9) Mr. Wanchalerm Satsaksit.

assistance and redress for victims of enforced disappearance, practical implementation has not yet been possible due to the absence of criteria and procedures for providing assistance and redress.

48. **Recommendations**

- a. The state should monitor and track information until the whereabouts and fates of the enforced disappearance victims are known, and identify the perpetrators for legal action. Moreover, the state should develop more efficient strategies for investigating cases of torture or enforced disappearance involving Thai nationals residing overseas.
- b. The state should expedite the enactment of the draft regulation of the Committee for the Prevention and Suppression of Torture and Enforced Disappearance concerning the assistance, redress, and rehabilitation of victims B.E. ..., to ensure that victims of enforced disappearance have the right to appropriate compensation and redress at the earliest.

## VIII. Powers and Duties of the NHRCT

49. The NHRCT has the authority to enter premises or any places to examine facts or gather relevant evidence. In the case that such place is not in the possession of state agency and the owner or occupant does not give consent, entering can only be done with a court order. For the previous visits to the places of detention, the NHRCT had to acquire responsible agencies' permission prior to entering the premises.
  50. **Recommendations** The state should become party to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and establish a National Preventive Mechanism (NPM). Currently, there is no independent agency fulfilling this role. However, the NHRCT stands ready to serve as Thailand's NPM and has set up a "NPM initiative Unit", to conduct preventive visits to detention facilities.
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