

**THAILAND AND THE IMPLEMENTATION OF
THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT (CAT)
AND THE INTERNATIONAL CONVENTION FOR THE PROTECTION
OF ALL PERSONS FROM ENFORCED DISAPPEARANCES (ICPPED)**

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Abstract

Thailand acceded as a State Party to the CAT on 2 October 2007 and signed the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) on 9 January 2012. To implement the CAT Convention and the ICPPED Convention at national level, the Royal Thai Government committed to develop legislation which defines and criminalizes “torture” and “enforced disappearances” in the domestic legal system, in accordance with the aforementioned Conventions. The Ministry of Justice took a lead in proposing the draft Prevention and Suppression of Torture and Enforced Disappearance Act, which was approved by the Council of Ministers, passed the first reading of the National Legislative Assembly (NLA), and was subsequently submitted into the finalization process by the NLA. However, all legislative processes were paused on 15 March 2019 to accommodate the general election which would be held on 24 March 2019. The draft was re-submitted for consideration to the newly elected Government on 23 April 2020. Thereafter, the Council of Ministers approved the draft Act on 23 June 2020 and submitted it to the Council of State for further consideration. The Council of State finished reviewing the draft Act on 17 September 2020 and consequently, the draft Act was submitted to the Parliamentary Sub-Committee on Considering the Draft Law in Legislative Process, for further consideration.

While the draft Act is pending, the Prime Minister has established the National Committee for Managing Cases Relating to Torture and Enforced Disappearance, comprised of representatives from government agencies, civil society organizations, and academia. It is mandated to promptly investigate and follow up allegations of torture and disappearance, to redress if a violation is founded, and to promote protective mechanisms to prevent future occurrences of such cases. In this regard, any public officer who is found to have been involved in torture and/or enforced disappearance will be prosecuted in accordance with the law.

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This article aims to provide an overview of Thailand's comprehensive mechanisms to suppress and prevent torture and enforced disappearance. These initiatives ensure the Government's commitments to the fight against torture and enforced disappearance, as well as Thailand's leading role among ASEAN countries to promote and protect human rights.

Keywords : torture / enforced disappearance / CAT / ICPPED

INTRODUCTION

Thailand acceded as a State Party to the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) on 2 October 2007 and signed the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) on 9 January 2012. The Rights and Liberties Protection Department, Ministry of Justice, was assigned by the Council of Ministers to be a core agency responsible for these Conventions. As a State Party to the CAT, Thailand has duties to implement human rights obligations as stipulated in the Convention, whereas, as a signatory state to the ICPPED, Thailand has a duty to respect the Convention and not conduct any activity that is in contradiction with the principles of the Convention.

MEASURES TAKEN TO MAKE TORTURE AND ENFORCED DISAPPEARANCE A SEPARATE CRIME

At policy level, the Royal Thai Government has demonstrated continued political commitment at the highest level

to the promotion and protection of human rights, including the fight against torture and enforced disappearances. On 12 February 2018, during the announcement of human rights as a national agenda for 2018-2019, the Prime Minister attached importance to preventive and awareness-raising measures, as well as legislations for the implementation of Conventions prohibiting torture and enforced disappearances. Furthermore, the Council of Ministers has also included the prevention and suppression of torture and enforced disappearance as one of the key activities under the National Human Rights Plan (2014 to present) which is a national framework for government agencies to promote and protect human rights.

Under Thai law, torture and enforced disappearance are absolutely prohibited. If anyone commits an act of torture or enforced disappearance, such person shall be criminally punished for offenses against life and body as well as offenses against liberty and reputation under Thai Penal Code. No statutes allow or justify anyone to torture or enforce others to disappear. The perpetrator shall bear the civil responsibility towards the injured person and may, if applicable, be disciplinarily sanctioned. In addition, an innovative measure was

adopted in the 2017 Constitution where Section 25 paragraph 3 guarantees that any person whose rights enshrined in the Constitution, including the right not to be tortured, are violated, can directly invoke the provisions of the Constitution to exercise his or her right to bring a lawsuit, or to defend himself in Court, notwithstanding the absence of the concerned statute.

The Government has been committed to introducing legislation which defines and criminalizes “torture” and “enforced disappearances” in the domestic legal system in accordance with the CAT and the ICPPED. The Rights and Liberties Protection Department of the Ministry of Justice proposed the draft on Prevention and Suppression of Torture and Enforced Disappearance Act which was approved by the Council of Ministers on 27 December 2016. The draft Act was endorsed by the Parliament’s Special Committee for the deliberation of the draft Act on 4 March 2019, to be considered and finalised by the National Legislative Assembly. However, all legislative processes were paused on 15 March 2019 to accommodate the general election which would be held on 24 March 2019 and were to resume upon the new Government’s decision.

On 23 April 2020, the draft was re-submitted to the new Government for consideration and the Council of Ministers approved the draft Act on 23 June 2020. It was then submitted to the Council of State for further consideration. The Council of State finished reviewing the draft Act on 17 September 2020, and consequently, the draft Act will be re-submitted, once again, to the Council of Ministers before referring

it to the Parliament for further consideration.

Some key features of the draft Act are as follows:

1. Torture is defined as “any act done in order to inflict severe pain or suffering, whether physical or mental, on another person” for one of the following purposes.

a) To obtain information or a confession from him or a third person; or

b) To punish him for an act that he or a third person has committed or is suspected of having committed; or

c) To intimidate or coerce him or a third person.

d) To discriminate against such person”

2. Enforced disappearance is defined as “an arrest, detention, abduction or any other form of deprivation of liberty done by a state official and that state official refuses to acknowledge the said act or conceals the fate or whereabouts of the disappeared person.”

3. Both torture and enforced disappearance are each a specific crime punishable by five to fifteen years’ imprisonment and a fine of THB one hundred thousand to THB three hundred thousand. If there is an aggravating consequence or an aggravating fact, the punishment will be heavier, as follows:

a) Aggravating consequence:

■ Grievous bodily harm: punishable by ten to twenty-five years’ imprisonment and a fine of THB two hundred thousand to THB five hundred thousand.

■ Death: punishable by fifteen to thirty years’ imprisonment or life imprisonment and a fine of THB three hundred thousand to THB one million.

b) Aggravating fact: If the crime is inflicted on a person under 18 years of age, a pregnant woman, a person with a disability, whether physical or mental, or a dependent, the perpetrator's punishment shall be increased by half.

4. Mitigation: In case of enforced disappearance, the perpetrator may be given a lesser sentence (not less than a half),

a) if the perpetrator arranges for the disappeared person to be found and the disappeared person does not suffer grievous bodily harm or face an imminent fatal danger of life; or

b) if the perpetrator provides the state with information that is critical to the investigation.

5. Conspiracy: The Bill states that whoever conspires to commit either one of the offences shall be liable to one-third of the punishment provided for the respective offence.

6. Attempts: Every participator shall be liable to two-thirds of the offence.

7. Accessory: Unlike other crimes, if torture or enforced disappearance is committed, every participator shall be liable as if they were the principal.

8. Universal jurisdiction: Subject to the principle of double jeopardy, the law establishes universal jurisdiction for both offences.

9. Extradition and the international cooperation on criminal matters: Both offences shall not be regarded as a political offence.

10. Superior responsibility: For enforced disappearance, if a subordinate commits an act of enforced disappearance, the superior officer may be convicted of a crime of enforced disappearance,

a) if he is aware that his subordinate is about to commit an act of enforced disappearance and he does not prevent it from happening; or

b) if he is aware that his subordinate had already committed an act of enforced disappearance and he does not put him under investigation.

11. Statute of limitation: Despite recalling paragraph 40 of the Committee's general comment No. 3 on the implementation of article 14 by States Parties, Thailand continues to hold that it is not necessary to make either one of the offences an imprescriptible offence. The period for the statute of limitation for both offences will be subject to punishable rates attached to each offence, laid down in section 95 of the Criminal Code, in conjunction with the Procedures for Corruption and Misconduct Cases Act B.E 2559 (2016) which defines that if a person absconds during the proceedings, that period of time which the escape is in progress will not be included in the computation of the period of prescription.

NATIONAL MECHANISM TO ADDRESS TORTURE AND ENFORCED DISAPPEARANCE

While the Prevention and Suppression of Torture and Enforced Disappearance Act is pending, the Prime Minister has issued the Office of Prime Minister's Order No. 131/2560 (2017) dated 23 May 2017 and No.338/2562 (2019) dated 15 November 2019 to establish the National Committee for Managing Cases Relating to Torture and Enforced Disappearance. The National

Committee is chaired by the Minister of Justice and comprises of 18 members from government agencies, civil society organisations, and academia. It is mandated to promptly investigate and follow up allegations of torture and disappearance, to redress if a violation is founded, and to promote protective mechanisms to prevent future occurrences of such cases. Any public officer who is found to have been involved in torture and/or enforced disappearance will be prosecuted in accordance with the law. The powers and responsibilities of this Committee are strengthened and broadened, compared to its 2016 predecessor which was established by the Minister of Justice, to ensure the effectiveness of its work.

Additionally, the National Committee's work is supported by four sub-committees: (1) the Sub-Committee to Monitor and Investigate Cases of Torture and Enforced Disappearance, chaired by the Director-General of the Department of Special Investigation of the Ministry of Justice; (2) the Sub-Committee on Remediation for Cases of Torture and Enforced Disappearance, chaired by the Director-General of the Rights and Liberties Protection Department of the Ministry of Justice. Its mandate is to remediate victims of torture and enforced disappearances; (3) the Sub-Committee to Prevent Acts of Torture and Enforced Disappearance chaired by Professor Narong Jaihar, a human rights expert and a former dean of Faculty of Law, Thammasat University. This sub-committee has provided

training to officers throughout the country, as well as those who are responsible for receiving complaints. It has also developed a manual on the preliminary investigation of alleged acts of torture and enforced disappearances and memoranda of understanding between relevant agencies are being prepared to strengthen the sub-committee's capacity to fulfil its duties.

Also, it is charged with the duty to develop and promote preventive mechanisms for law enforcement agencies to prevent acts of torture and enforced disappearance. To date, this sub-committee has trained thousands of officers throughout the country on the Convention, the national mechanisms, as well as the law against torture and enforced disappearance; and (4) the regional Sub-Committees on the Screening of Cases of Torture and Enforced Disappearance. The eleven regional sub-committees across the country are mandated to receive and consider complaints of torture and enforced disappearances and, if the criteria are met, to submit them to the monitoring and investigating sub-committee. The National Committee has commenced its work to investigate on the whereabouts and status of persons alleged to have disappeared in the list of the UN Working Group on Enforced or Involuntary Disappearances (WGEID). Out of 87 cases in the WGEID's list, of which 12 cases have been withdrawn from the list by the Working Group.

Workflow of the National mechanism to address torture and enforced disappearance

Step	Process	Timeframe	Verification
1. Taking complaint Officials committing torture or enforced disappearance	Submit – taking complaint	1 day	-Every government sector such as Provincial Justice Offices, representatives or leaders of villages, community, provinces, Damrongtham Centers - E-mail, telephone etc.
2. Preliminary screening If the criterias' in CAT and ICCPED are met	Verify -Prima facie/ non- Prima facie - terminate or proceed in line with the Criminal Procedure Code + inform a complainant	Within 15 days and 1 time extension (15 days/time)	-Provincial Justice Office takes a preliminary examination - 11 Sub-Committees on Screening
3. Verify and search for Facts/ laws	the Sub-Committee to Monitor and Investigate Cases	<u>Torture</u> 30 days with 1 time extension (30 days/time) <u>Disappearance</u> 90 days with 2 times extension (30 days/time)	the Sub-Committee to Monitor and Investigate Cases (DSI)
4. Deliberate Deliberate and issue a resolution (Criteria are met/not met) and inform a complainant	Deliberate	30 days	the Sub-Committee to Monitor and Investigate Cases (Special cases/forward to other agencies/terminate/others) <u>Exception</u> if a case is in public attention or need to be deliberated upon specifically, it will be submitted to the Committee
5. Proceed	Proceed and inform a complainant	30 days	5.1 if it is a special case, forward to DSI 5.2 forward to relevant agencies such as PACC, NACC 5.3 forward to the Sub-Committee on Remediation -Secretariat to inform a complainant
6. Follow-up and evaluate	Follow-up	Every 15 days	- Secretariat to the Sub-Committee to Monitor and Investigate Cases - Secretariat to the Sub-Committee on Remediation
7. Report to the Committee Terminate/ inform a complainant	inform a complainant Terminate	1 day	- the Committee - Secretariat (RLPD)

WITNESSES AND VICTIMS' PROTECTION

The Witness Protection Act B.E. 2546 (2003) provides protection of witnesses in criminal cases for their safety, as well as individuals who are closely related to the witnesses and are at risk of being threatened or harassed because of them becoming or being a witness. The measures taken to protect witnesses and their family members include providing them with a safe house and bodyguards and changing names. The Government, by the Rights and Liberties Protection Department, is in the process of amending the Act to enhance a legal framework and measures on witness safeguard and protection, including to cover those who are intimidated or threatened before criminal proceedings are initiated. The draft law to amend the Witness Protection Act was approved by the Council of Ministers on 29 January 2019, Council of State on 13 June 2019, and the draft law is now under the process of re-submission to the Council of Ministers.

Some key proposed amendments are as follows:

(1) Amend the definition of “witness” and “official” to cover those who are whistleblowers, complainers, and information providers.

(2) Improve general protection measures to allow relevant officials to evaluate the witness’s safety in order to extend or terminate the protection as per the witness’s request.

(3) Amend the special protection measures to make them compatible with the current situation, especially with new predicate offences. Some new measures will be introduced, such as methods of change of

registered information.

(4) Amend the Witness Protection Office (WPO)’s mandate and power and increase the power of officials who execute this law including making WPO a coordinating body to assist the witness to bring light to the case. Also, to assist the witness to resume their normal lives. This will have a positive effect in enabling the witness’s trust in testifying throughout the entire criminal proceeding.

(5) Amend provisions on compensation and payment of witnesses’ allowance to be more reasonable and practical, including in the case where the witness has given testimony but failed to appear in the court for the hearing, and.

REDRESS FOR THE INJURED PERSONS AND THEIR FAMILIES WHO HAVE BEEN AFFECTED BY THE ACT OF TORTURE AND ENFORCED DISAPPEARANCE

The Sub-Committee on Remediation for Cases of Torture and Enforced Disappearance is founded to redress the injured persons (and their families) who have been affected by the government officers’ action. The sub-committee will consider and investigate complaints, if a violation is founded, the sub-committee will pay compensation.

Regarding the situation in the southern border provinces, the Southern Border Provinces Administration Centre (SBPAC) has these guidelines.

(1) “Damrongtham” centres have been established in all three southern border provinces to receive complaints concerning human rights violations causing disabilities

or deaths committed by an officer. The SBPAC officials will investigate the allegation. If it is founded that a person is assaulted while being searched, arrested, detained, or imprisoned by an officer, the SBPAC will sanction the said officer and redress the injured person and other people who are impacted by the violation.

(2) For those who have been affected by the situation in the South, SBPAC has in place a comprehensive remedy manual to provide assistance and remedies to the victims or their families for the loss of lives or injuries/disabilities (physical/mental) and their property (dwellings, personal belongings, vehicles, etc.) due to the violations of the perpetrators in the SBPs or to provide compensation for the injured persons and their families who have been affected by the government officers' action. The manual provides clear and detailed guidelines, including for individualized assessments of the degree of damages (such as the severity of the injury, degree of pain and suffering, impact on day-to-day living, degree of dependence on others, side effects, ability to work, the market value of lost or damaged properties), and the time frame and rates of remedies or compensation or a combined option of remedy and compensation from concerned agencies, as well as access to remedy or compensation and necessary documentation and forms. In addition, SBPAC has also set up a helpline and a 'Help & Support' online application.

(3) According to the SBPAC manual, the injured persons and their families who have been affected by the government officers' action will be compensated in the following items:

a) Compensation in case of death or a disability (THB five hundred thousand).

b) Hospital bills including costs of rehabilitation, both physical and mental.

c) Compensation for not be able to work.

d) In case of enforced disappearance (THB five hundred thousand).

Moreover, to develop the quality of life of those affected by the unstable situation, the Government will pay tuition fees for the children of those affected by the government officers' action from kindergarten level until they receive a college degree (not older than 25 years). These children will also receive a monthly allowance.

INADMISSIBILITY OF EVIDENCE OBTAINED THROUGH TORTURE

Evidence obtained by torture is inadmissible in legal proceedings before Thai courts. It is a clear and publicly stated policy of the Royal Thai Government not to seek to adduce material obtained by torture in legal proceedings. The inadmissibility of evidence obtained by torture is confirmed by the Criminal Procedure Code, section 226 in conjunction with section 135. Section 226/1 is an exception to section 226 and bestows upon the court the discretion to admit evidence which may have been obtained unlawfully but does not specifically allow for inadmissibility of evidence obtained through torture or ill-treatment. In using such discretion, the judge shall weigh between the benefit of the administration of justice as a whole and the effect it may have on the criminal justice system and/or the fundamental freedoms of the people. Section 226/1 further indicates four criteria, among others, that the judge must consider when regarding admissibility, including whether

the officer who unlawfully obtained the piece of evidence has been punished.

TRAINING FOR LAW ENFORCEMENT OFFICIALS ON CAT AND ICPPED

To promote effective implementation of the CAT and the ICPPED, training courses on torture and enforced disappearance prevention are regularly provided for state officials in the armed forces, the police, prisons, and other related agencies. These training courses include both routine programmes and special sessions. The following are examples of courses provided by responsible agencies:

(1) In the Sergeants School, the GE 21102 course on Human Rights for Police Officers is a compulsory module offered to sergeants to cover the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as the CAT and the ICPPED.

(2) Lectures and trainings related to the provisions of the CAT and the ICPPED are presented to officers working in the Southern border provinces of Thailand by the Rights and Liberties Protection Department. The aim is to ensure that all officials are aware of the rights-based principle and the concept of the Conventions. The participants of the courses are military officers, police officers, administrative officers, and criminal justice officers of the Ministry of Justice in the provinces (Songkla, Pattani, Yala, and Narathiwat). In addition to the Conventions, the courses discuss the application of special laws in compliance with human rights obligations such as the UN Basic Principles on the Use of Force

and Firearms by Law Enforcement Officials. The numbers of participants in the years 2016, 2017, 2018 and 2019 were 3,400, 1,923, 1,920, and 2,440, respectively.

(3) The National Human Rights Commission develops training courses on “The Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Thailand” for military officers, policemen, administrative officers, and correction officers consistently and regularly throughout the year. To date more than 1,000 officers have enrolled in these courses.

(4) Training courses provided by the Corrections Department cover human rights in general and the prevention of torture and enforced disappearance. The courses are mandatory for newly recruited civil servants and officials at management level.

(5) The Internal Security Operations Command Region 4 provides courses on human rights to military officers and other relevant officials throughout the year. The courses highlight two important topics (1) human rights facilitator (2) effective legal enforcement for officials in southern border provinces. In 2019, a total of 1,546 officers participated in these courses.

(6) The Police College taught 960 inspectors during 2018-2019 and 2,080 superintendents between 2017-2019 on the prevention of torture and enforced disappearance.

(7) The Rights and Liberties Protection Department went on field visits to train law enforcement officers in many provinces during the years 2018-2020. Evidence of the success of these training sessions can be found in the statistical data concerning complaints received by the National Committee for Managing Cases Relating to

Torture and Enforced disappearance. Data shows that incidents of torture and enforced disappearance have decreased continuously over the past few years.

TRAINING INTO EVIDENCE OF TORTURE AND ENFORCED DISAPPEARANCE

The Office of the Attorney-General offers courses designed for prosecutors with the key learning points of forensic science, including evidence, chemistry, and autopsy. By developing these skills, prosecutors will be able to distinguish different types of wounds or injuries which is essential in documenting cases of torture and enforced disappearance.

The Rights and Liberties Protection Department together with the International Commission of Jurists and the United Nations High Commissioner for Human Rights has developed a capacity-building training course for medical personnel and other responsible officers on the subjects of human rights, investigation, and forensic science, in the cases of torture and enforced disappearance, including unlawful deaths, as referred to by the Istanbul Protocol and the Minnesota Protocol since 2017.

The Central Institute of Forensic Science has convened a series of trainings concerning human rights principles, international standards, and investigation, in alleged cases of extrajudicial killing and enforced disappearance to concerned officials since 2015. Currently, in the southern border provinces, the Southern Border Provinces Administration Centers has allocated budget to the Prince of Songkla University (Songkhla campus)

to purchase a CT scanner to support forensic works in the case of allegations of torture or ill-treatment due to the Muslim beliefs that conducting autopsies on a dead person is not consistent with religious principles.

THE AMENDED PENITENTIARY ACT

The introduction of the 2017 Corrections Act which repeals the 1943 Penitentiary Act is part of Thailand's effort to amend its law to be more in line with the relevant international standards, in particular the Mandela Rules, the Bangkok Rules, and the CAT. The Department of Corrections has also circulated instructions for all prison personnel and relevant staff to treat detainees in accordance with international human rights standards as well as to create a better understanding of the obligations under the Convention.

Regarding restraining devices, the spirit of the Corrections Act is to restrict the use of such devices to the extent where possible. The Department of Corrections now operates pursuant to section 21 of the 2017 Corrections Act which applies a higher standard than that required by the Nelson Mandela Rules. Restraining devices are not allowed to be used with inmates unless there is an absolute necessity, such as to prevent self-harm or escape, or in case of going outside the prison. The Corrections Act imposes an even stricter requirement for detainees who are under the age of 18, those over the age of 60 years, female detainees, or those with special medical requirements. In the case where restraining devices are used, such a decision is reviewed every 15 days. The restraining devices will be removed once it is established that the necessity no longer exists.

Solitary confinement is a form of disciplinary sanction under section 69 of the Corrections Act. Ministry of Justice is currently in the process of drafting a Ministerial Regulation stipulating that solitary confinement shall not be imposed for more than 15 consecutive days, along with several other draft Ministerial Regulations for the implementation of the Corrections Act.

Section 33 of the 2017 Corrections Act provides that the Department of Corrections may detain prisoners in a place which is not a prison to provide occupational training, medical treatment, and preparation training before returning to society. The purpose of detention in places other than prisons is therefore not for punishment but to enable a more enabling environment for learning, treatment, and rehabilitation. To date, this has not yet been carried out in practice.

To prepare and support detainees on livelihoods after their release, the Department of Corrections has developed a training program to ensure that released persons are able to reintegrate into society and resume their normal lives. The Department also provides consultation services regarding personal matters, economic and social issues, and relationship with their families and communities. One of the most recent developments is the establishment of the Centre for Assistance to Reintegration and Employment (CARE) in each of the 143 prisons nationwide. CARE commenced their operations on 15 February 2018 with the main objective of promoting employment for inmates after their release. On 26 March 2018, the Department of Employment under the Ministry of Labour signed memoranda of understanding on public-private partnership projects with the Department of Skill

Development, the Department of Corrections, the Federation of Thai Industries, and the Chamber of Commerce of Thailand, to create opportunities for inmates by building their skills suitable for a career after release.

For LGBTI inmates, since 1993, the Department of Corrections has established the Practice Guide on Detainees who are Transgender Women which provides for specific measures such as detaining transgender women in separate facilities from male detainees and ensuring that equipment for physical inspections does not undermine transgender women inmates' rights and dignity. Also, section 31 of the 2017 Corrections Act affirms that appropriate facilities be provided for inmates based on gender. In response, the Department of Corrections provided separate zones for LGBTI inmates, particularly in prisons with a significant number of LGBTI inmates such as the Min Buri Remand Prison, the Klong Prem Central Prison, and the Pattaya Remand Prison.

SAFEGARD FOR ALL DETAINEES, DETENTION REGISTRY, AND LEGAL AID

Section 7/1 of the Criminal Procedure Code guarantees all legal safeguards for all detainees. These rights must be strictly observed by the police, prison staff, and other officials in the criminal justice system. In all police stations, prisons, and other detention places, all persons who are taken into custody are instructed as to their rights and obligations in languages which they can understand.

The Justice System Reform Plan of 6 April 2018 strives to enhance various

aspects of the judicial system, including improvement of conditions in prisons and detention centres across the country. On 18 July 2017, to commemorate the Nelson Mandela International Day, the Department of Corrections, Ministry of Justice, and the Thailand Institute of Justice (TIJ) announced collective commitments to drive forward the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) towards full and effective implementation in the country. The Department of Corrections has commenced a pilot project at the Thonburi Remand Prison to fully implement the Nelson Mandela Rules, with a plan to expand it to the Bangkok Remand Prison and the Uthai Thani Provincial Prison. In addition, 12 prisons in different parts of the country are piloting the implementation of the Mandela Rules.

Regarding health services in prison, the Medical Services Division of the Department of Corrections, Ministry of Justice, places efforts and resources in ensuring that inmates receive adequate medical services. The 2017 Corrections Act requires that a medical centre be established in every prison. To strengthen health services in prisons, on 22 January 2019, the Ministry of Public Health, the Department of Corrections, and the National Health Security Office concluded an MoU to improve the health service system for prisoners. This is in accordance with the Council of Ministers resolution of 17 November 2015 which requested relevant authorities to assign health personnel from local hospitals to provide services in prisons, establish a special ward for prisoners requiring treatment outside of prison facilities, and

improve the health services system for prisoners.

This year, the National Health Security Office will register health facilities in 141 prisons as a primary health facility and another 2 facilities as a permanent facility. This effort will enable these health facilities in prison to receive and transfer patients to other health facilities under the National Health Security System of the National Health Security Office, Ministry of Public Health. Nurses are stationed in all health facilities in prisons and doctors from the Ministry of Public Health will visit those facilities on a regular basis. In case of emergency, ill prisoners will be transferred to a hospital outside of the prison. Moreover, the Ministry of Public Health cooperates with other agencies to collect all relevant information, such as patient data and social security information of prisoners.

The Royal Thai Government places access to justice as one of the key priorities, including the provision of legal aid and assistance. The Justice Fund has been established by the Justice Fund Act B.E. 2558 (2015) to provide legal aid to individuals, including the accused and those who suffer from trials or those whose human rights are infringed, regardless of nationality. The Justice Fund, which holds the status of a juristic person by law, covers assistance in terms of bail, retention of lawyers, court's fees and other expenses relating to a trial in Thailand. In addition, the fund provides financial support for legal education for the public to ensure that they know their rights and are not taken advantage of. Currently, there are three ways to access the Justice Fund: (1) through a mobile application, (2) through the website of the fund (jfo.MOJ.

go.th), and (3) in person at the Justice Fund Offices which are located in every province of the country.

The Ministry of Justice has also initiated “Justice Care”, an outreach programme which combines several existing means to assist injured persons and victims of crime into one single platform. This programme will deal with complaints regarding human rights violations promptly and effectively. This service is available to everyone regardless of their race, nationality, or legal status. Through this channel, people can request legal advice, legal assistance, restitution, state compensation, witness protection, and other forms of support pursuant to relevant legislations, such as the Justice Fund Act 2015, the Damages for the Injured Person and Compensation and Expenses for the Accused in Criminal Case Act 2001 and (as amended 2016).

ADDRESSING THE PROBLEM OF PRISON OVERCROWDING

Prison overcrowding is one of the key challenges in Thailand’s corrections system. The Justice System Reform Plan of 6 April 2018 strives to enhance various aspects of the judicial system, including to improve the conditions of prisons and detention centres across the country. The 2017 Corrections Act also provides the Department of Corrections with the tools to solve the problem of overcrowding in an effective and practical manner by mandating the Department of Corrections to employ alternatives to detention, including allowing for ‘other facilities which are not prisons’ to be designated as detention facilities. Similarly,

the Office of Narcotic Control Board has succeeded in implementing its policy to allow addicted offenders to voluntarily undergo a rehabilitation program in lieu of prison sentence.

Thailand has implemented these measures in order to reduce the overcrowding of prisons:

(1) Extending the existing and building the new prisons to increase the capacity of prisons in Thailand.

(2) Building Minimum Security Prisons to detain prisoners who is close to finishing serving their terms to prepare them for reuniting with society.

(3) Granting parole to and reducing the serving days of some prisoners who display good behavior. Additionally, the conditions to be paroled are eased; therefore, more prisoners can apply for parole. The Department of Corrections also launched a project to allow for the suspension of sentences in special cases where the concerned inmate has a serious illness, is a person with disabilities, or if he or she is over the age of 70 years.

(4) Transferring foreign prisoners back to their respective countries of residence.

(5) Reviewing criminal law to repeal outdated pieces of criminal legislation or to reduce the punishment to a reasonable and proportionate to the crimes, including drug offences.

(6) Applying for royal pardon.

In 2014, the Department of Probation introduced the Electronic Monitoring (EM) system as an alternative to pre-trial detention for suspects who have been granted temporary release. This was followed by the Court of Justice in 2015. If an accused or defendant

allows the use of EM or other devices to track or restrict his/her travel, a court may exercise discretion to reduce the amount of bail money in accordance with the President of the Supreme Court's Regulation. If the accused or defendant is poor, the court may exercise discretion to lower the bail money in any amount below the minimum rate prescribed in the regulation. As of January 2020, there are a total of 9,522 EMs used in the justice system.

Furthermore, by virtue of section 6 of the 2017 Corrections Act, the Ministry of Justice is currently drafting a Ministerial Regulation to specify alternative criminal sanctions to imprisonment. The draft Ministerial Regulation proposes 6 alternative sanctions: (1) intermittent sentences, (2) detention during specified hours, (3) detention within the specified place of detention, (4) community service, (5) travel restrictions in accordance with section 89/2 of the Criminal Procedure Code, and (6) any other sanctions specified by the Department of Corrections.

WOMEN IN PRISON

Thailand recognizes the specific human rights challenges that women prisoners face and therefore initiated an effort to raise awareness on this issue, resulting in the adoption of the Bangkok Rules by the UN General Assembly. Thailand has been working closely with the United Nations Office on Drugs and Crimes (UNODC) and other relevant stakeholders in the implementation of the Bangkok Rules. One prominent example includes the development of the Guidance Document

on and Index of Implementation of the Bangkok Rules, containing practical information for relevant agencies to consider the Bangkok Rules when practicing their policies on the treatment of prisoners.

Pursuant to the Correction Department's regulations relating to body search for new inmates and incoming/outgoing inmates B.E. 2561 (2018), a body search on a woman, including a transwoman, must be conducted in a designated area by a medical staff, a nurse, or a prison staff who has been medically trained. Since 2013, the Corrections Department has installed CT scanners in 25 women prisons across the country to improve the body search method, in accordance with international standards. The Department also aims to install those devices in all prisons in Thailand.

Pregnant prisoners are given special attention and care for their specific needs. Section 57-59 of the 2017 Corrections Act provides for measures pertaining to pregnant and breastfeeding prisoners such as providing appropriate health and nutrition advice by medical personnel, providing sufficient food, arranging for birth-giving at hospitals outside of the prison, and providing health check-ups for infants residing with their mothers in prisons. Some of other additional practices in the prisons include arranging bedrooms and bathrooms for the specific use of pregnant prisoners, bringing in nurses or obstetricians to provide health and pregnancy check-ups, and bringing pregnant prisoners to receive antenatal care at an outside hospital (where available) or organizing the provision of such service in prison.

PRISON VISITS

The Department of Corrections allows visits and contact with prisoners by individuals and organizations, including visits by diplomatic and consular staff in the case of foreign prisoners, where they are required to submit requests prior to the visit for security and safety reasons. Independent organisations such as the Ombudsman and the National Human Rights Commission do not need to inform the Department of Corrections of their visit in advance. In the case where the independent organizations receive complaints against government officials, a visit may be conducted while the complainant's identity is kept confidential, and the prison officials will not be allowed to attend the interview. Overall, NHRC and the Ombudsman reported that normally there is no significant impediment that would hinder their access to places of detention.

IMPROVING OF CONDITIONS OF DETENTIONS

The Government recognizes the challenge of conditions of detention and places in introducing alternatives to detention and developing detention places. The Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Centers is one example of implementation of alternatives to detention. In the case of developing detention places, there are several projects to build and improve detention centers: (1) construction of a new building in some detention centres with facilities for mothers and children, including

a day-care center; (2) a renovation project of the Sun Plu Migrant Detention Center, completed in 2019; and (3) a construction project of a new detention center in Pathum Thani province expected to be complete by 2022.

NON-REFOULEMENT

While not party to the 1951 Convention Relating to the Status of Refugees, Thailand respects the principle of non-refoulement and has worked systematically with all sectors in the country to protect those who fled conflicts and those who seek asylum, in accordance with applicable international standards. In December 2018, Thailand together with many other countries adopted the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM).

On 21 January 2019, The Royal Thai Police, the Ministries of Social Development and Human Security, Foreign Affairs, Interior, Health, Education and Labour signed the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Centers. The document defines children as those under the age of 18 who are being detained in the detention centers while awaiting repatriation by the Immigration Bureau in accordance with the laws which are based on the following principles:

(1) Children shall not be detained, except in exceptional circumstances detention can be carried out in government custody, as a measure of last resort and in the shortest period of time possible.

(2) The decision to detain a child must be made based on the best interests of the child, with appropriate consultation with the child.

(3) Children have the right to adequate standard of living essential to their needs and development, helping children grow, develop, and achieve their capabilities.

(4) Any alternative care options for children shall take into account their physical and psychological well-being as well as the goal of long-term and sustainable solutions.

(5) Relevant government agencies shall ensure that they have appropriate measures for the protection and assistance of children.

that once a person is considered a “protected person” due to having reasonable grounds to believe that he or she may be persecuted in the receiving country, the concerned agencies shall not repatriate such protected person to the country of origin, except in the case such person voluntarily intends to leave the Kingdom, or if there is a cause that may affect national security. The Regulation also stipulates that the concerned agencies shall take appropriate action to provide education to the protected child, and to provide healthcare services in accordance with the relevant laws, international obligations, Council of Ministers resolutions, and government policies.

EXTRADITIONS AND DEPORTATIONS

In practice, Thailand has treated the issue of deportation with high caution and has consistently considered the principle of non-refoulement, human rights, humanitarian concerns and other international obligations. Should there be a potential risk of mistreatment of the person to be deported, the Government would do its utmost to seek assurances from the receiving country that such person would not be tortured or ill-treated. Furthermore, following a Council of Ministers resolution on 10 January 2017, the draft Regulation of the Office of the Prime Minister on Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin has already been finalized and approved by the Council of Ministers on 24 December 2019, and entered into force on 22 June 2020. The Regulation takes into account the principle of non-refoulement and provides

CONCLUSION

From the aforementioned information, it is clear that there has been continued progress in the implementation of CAT and ICPPED at the domestic level, not only in law and policy, but also in practice. However, there are still some challenges that remain, such as lack of understanding on the Conventions and political instability. Therefore, it is the duty of Thailand to push forward effective implementation. In this regard, concrete actions are needed; especially in the enactment of domestic law, fully incorporating essential international principles which will lead to a comprehensive approach to prevent and suppress all acts of torture and enforced disappearance, guaranteeing remediation to victims and members of their families, and ensuring access to justice with no impunity for anyone.

REFERENCES

- Constitution of Kingdom of Thailand B.E. 2560. (2017). *The Government Gazette, 134(40a)*, 1-90.
- Corrections Act B.E.2560. (2017). *the Government Gazette, 134(21a)*, 1-24.
- President of the Supreme Court's Regulation on Guidelines, Conditions and Methods for Temporary Release of the Accused or Defendant in Criminal Cases (No.3) B.E. 2562. (2019). *The Government Gazette, 136(96a)*, 24.
- Rights and Liberties Protection Department. (n.d.). *Draft Act on Prevention and Suppression of Torture and Enforced Disappearances B.E.....*, N.p: n.p.
- Rights and Liberties Protection Department. (n.d.). *Information gathered from relevant agencies on the progress of implementation of the CAT and the ICPPED during the year 2014-2020*. N.p: n.p.
- United Nations General Assembly. (1984). *The United Nations General Assembly resolution. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*. resolution 39/46 dated 10 December 1984.
- United Nations General Assembly. (1992). *The United Nations General Assembly resolution. International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED)*. resolution 47/133 dated 18 December 1992.
- United Nations General Assembly. (2010). *The United Nations General Assembly resolution. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*. resolution 65/229 dated 21 December 2010.
- United Nations General Assembly. (2015). *The United Nations General Assembly resolution. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. resolution 70/175 dated 17 December 2015.
- Verbal interpellation of the Senate to the Prime Minister NO. 003 (Ror.) titled "Resolving prison overcrowding"*. (2020). *the Government Gazette, 137(114d)*, 45-50.