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**PERMANENT MISSION OF THAILAND
GENEVA**

The Permanent Mission of Thailand to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honour to refer to the latter's Note dated 31 March 2015 requesting the input regarding the causes and human rights implications of over-incarceration and overcrowding, and ways to remedy such situations, including alternatives to detention and other relevant good practices or experiences in accordance with resolution 24/12 of the Human Rights Council.

In this connection, the Permanent Mission of Thailand has further the honour to transmit herewith information prepared by the Ministry of Foreign Affairs in cooperation with other authorities concerned in Thailand on human rights implications of over-incarceration and overcrowding imprisonment: remedy, good practices and experiences of Thailand. The Permanent Mission of Thailand remains at the Office's disposal should any further information be required.

The Permanent Mission of Thailand to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its high consideration.



Human Rights implications of over-incarceration and overcrowded imprisonment: Remedy, good practices and experiences of Thailand

Overview

- The number of prison population in Thailand has been growing almost every year. Offenders of drug-related crimes represent more than half of the total number of prison population.
- Like in many countries, overcrowded detention facilities and prisons are among Thailand's challenges in the administration of justice. Various solutions have been explored by relevant agencies that have worked in cooperation and consultation with related international organizations and civil society organizations.
- The collective Royal Pardon is usually given to the prisoners during various national celebrations where the inmates having short remaining terms of sentence will be released.
- The Narcotics Addict Rehabilitation Act B.E.2545 (2002) also allows drug related crime offenders to receive treatment in rehabilitation centers or be released on probation instead of receiving the prison sentence.

Progress on legislation and international standards

- At international level, Thailand is a member of the Commission on Crime Prevention and Criminal Justice (CCPCJ), in which Thailand participates actively in the process of revising the Standard Minimum Rules for the Treatment of Prisoners (SMRs) and played a leading role in the adoption of the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).
- At national level, the Department of Corrections is in the process of amending the Penitentiary Act B.E. 2479 (1936). The amendment aims at improving the principle of corrections and conditions of inmates in compliance with international standards including SMRs and the Bangkok Rules. The draft amendment was approved by the Cabinet and is now subject to review by Council of the State for legal scrubbing.
- The draft amendment introduces many measures to resolve problems relating to overcrowded prisons. These measures include the new prisons management and alternatives to detention or imprisonment.
- In addition, the draft amendment proposes imprisonment and detention by other means such as detention for a specific time and place as well as designation of any place for detention other than prison.
- Section 89/1 of the Criminal Procedure Code allows detention of a defendant be carried in any place, other than a prison provided that the detainee must be under the care of the applicant or official designated by the court.
- Section 89/2 states that any person who has been sentenced by a final judgment to a term of imprisonment, and has undergone it for a period not less than one-third of that determined in the warrant, or for a period not less than ten years if his term is more than thirty years or is for life, the court may issue an order that such imprisonment is to further be carried in any place other than prison.
- Thailand Institute of Justice is conducting a research on the use of alternative to incarceration including house arrest and use of electronic monitoring system in Thailand.
- The Execution of Penal Sentences Act B.E. 2527 (1984) allows foreign nationals convicted of a crime in Thailand, and Thai citizens or nationals convicted of a crime in a foreign country to apply for a prisoner transfer to their home country. Currently, Thailand has bilateral prisoner transfer treaties in force with 35 countries of which nationals imprisoned in Thailand are encouraged to apply for a prisoner transfer, once eligible. Ministry of Justice and Ministry of Foreign Affairs coordinate closely to facilitate such transfer.

Immigration detention arrangements and challenges

- As for the detention of illegal migrants, the detention is authorized by the Immigration Act B.E. 2522 (1979), which stipulates that any alien who illegally enters the country shall be deported, and while waiting for deportation, the competent officer is empowered to detain the alien at a given place.
- For such purpose, all of the immigration detention facilities are designed to shelter aliens who will eventually be deported out of the Kingdom and therefore stay in the detention only temporarily until deportation can take place.
- In view of related immigration law and regulations in Thailand, some obstacles hindering a migrant's travel home are, for example, the lack of identification or travel document, the lack of viable solution, and the cost of travel. These have resulted in migrants' longer period of detention as well as overcrowding problems in some of the country's detention facilities.
- Irregular migrants with the lack of apparent legal status in the countries of origin as well as vulnerable migrant women and children have posed more complications and challenges on how the Royal Thai Government looks after their needs and find possible solutions bearing in mind the humanitarian consideration and fundamental human rights principles.
- Embassies and consulates located in the country usually offer consular assistance to migrants for their return to the country of their nationality, or in some cases their relatives will help with the travel expenses. Nevertheless, the policy of the countries of origin to assist and provide financial support for migrants to return home can vary. There have also been cases that irregular migrants do not wish to contact their relatives and refuse to go back home. The International Committee of the Red Cross (ICRC), in accordance with its mandate, has access and assists the migrants in reconnecting with their families at home. There have also been occasional donations and assistances from civil society organizations and philanthropists.
- Illegal migrants have access to telephone, can be visited by their relatives and are entitled to consular assistance while in the custody of the Thai Immigration Bureau.
- According to Immigration Act B.E. 2522 (1979) Section 22, migrants who are found having entered the Kingdom illegally have the right to challenge such finding by filing for an appeal within 48 hours after having been notified (In practice, this usually takes place at the port of entry).
- Once detained, migrants are also entitled by the Immigration Act B.E. 2522 (1979) Section 19 to apply to be released on bail. The decision to allow migrants to be bailed is made by the immigration authorities based on a number of factors including the credibility of the bail organizations as well as the possibility of the foreseeable solutions.
- The Government is working towards improving detention facilities to accommodate an increasing number of irregular migrants each year. Some extra budget has been approved for an expansion and improvement of the detention facilities. In addition to the budget allocated for food allowance of migrants, the Government works closely with international organizations, NGOs and private donor to respond to migrants' basic needs ranging from health care, non-formal education, and nutrition supplements to recreation and exercise.
