

THAILAND UPR III 2021 – UPR FACTSHEET

**TORTURE & ENFORCED
DISAPPEARANCE IN THAILAND****Brief Assessment of the Implementation
of the 2nd Cycle UPR Recommendations**

During the 2nd UPR cycle, Thailand received 17 recommendations on enforced disappearance and 30 related to torture, including recommendations on (1) ratifying the pertinent international human rights treaties, such as the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and the Optional Protocol to the Convention against Torture (OP-CAT); (2) harmonizing the national legislation with international human rights standards (3) ensuring accountability for the crimes of enforced disappearance and torture as well as recognizing the rights of victims. Thailand accepted all 17 recommendations on enforced disappearance, while on issues regarding torture, it accepted 29 and noted 1 from Czech Republic calling Thailand to 'End the practice of forced detention of dissenters in the so-called "reeducation camps" and investigate all allegations of torture and ill-treatment therein'. However, none of the supported recommendations has been implemented in reality. In its midterm report, the Thai government said to have made substantive progress on the matters, including the setting-up of the National Committee for Managing Cases Relating to Torture and Enforced Disappearance and the drafting of the Prevention and Suppression of Torture and Enforced Disappearance Bill, which had been in the drafting process for over ten years since 2010 (although the draft was finally approved by the Cabinet in June 2020 and was expected to come into effect by the end of the year following its final review). The Draft is expected to be debated by Thai MPs at the Parliamentary session which would end on 15 September 2021. If the Bill is not discussed by then, its debate will be postponed to the Parliamentary winter session, at the end of 2021. This should not be taken as a confirmed step towards eradicating torture and enforced disappearance in the country, given the Bill's past history of being repeatedly delayed and sent back for further reviews. Besides, the current draft also fails to integrate certain provisions that are key to fully upholding the international human rights standards.

Consequently, torture and enforced disappearance are still a regular practice in Thailand, with the numbers of torture allegations and cases of inhumane treatment staggering in recent years, widespread in the context of the Deep South and recently among pro-democracy activists during their detention. New reports of cross-border enforced disappearance have also surfaced since the last UPR review, with various Thai political exiles abducted in neighbouring Laos and Cambodia.

REALITIES ON THE GROUND**Challenges****Cases, Facts, Comments****Challenge 1: The legal vacuum surrounding torture and enforced disappearance in Thailand**

Thailand is not a party to ICPPED and OP-CAT, nor has it achieved a comprehensive national legal framework to protect persons from enforced disappearance and torture. This has created a legal vacuum at the national level, facilitating the climate of impunity for severe human rights violations while also denying effective judicial and non-judicial remedies to the victims and their families.

Thailand has yet to ratify all the international treaties relevant to torture and enforced disappearance. Despite having accepted the recommendations on the ratification of ICPPED and the OP-CAT and having publicly expressed its intention to follow through with the promise, no mention of its progress on the ratification was made, nor its clear timeframe provided in its midterm report.

The Prevention and Suppression of Torture and Enforced Disappearance Bill have been in drafting process for ten years since 2010, with over four drafts repeatedly rejected and sent back for further review. The latest draft was eventually approved by the cabinet in June 2020. However, it still fails to integrate many key international standards into its provisions. For instance, it does not define torture and inhumane treatment in a way that is fully in line with international law, nor prohibit refoulement of individuals to countries where they are at risk of such crimes. It also fails to incorporate effective safeguards against enforced disappearance and establishes it as a continuous offense. Although the Bill presents a promising step towards the right direction, a full commitment to international human rights laws and comprehensive national legislation are needed for a definite end to Thailand's long history of torture and enforced disappearances. With regards to the latest update of the Bill, House majority whip Wirach Ratanasate confirmed in late August 2021 that the Bill would be enacted by the end of 2021, after the parliament finished its final reading by the current session in mid-September and an ad-hoc committee of the Bill finished its final review by November.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

However, given the history over the past ten years of four rejected draft, the international community and the public at large should pay a close attention to the final stretch of this Bill in order to make sure there is no more unreasonable delay.

Challenge 2: The increasing number of torture and enforced disappearance cases in recent years

For more information and cases, please refer to the UPR Factsheet on Armed Conflicts & the Human Rights Situation in the Southern Border Provinces of Thailand, and the UPR Factsheet on Civic Space.

The cases of torture are rampant in Thailand, with the Southern Borders Provinces (SBPs) being the usual ground zero for such practice. According to Duay Jai Hearty Support group alone, more than 140 former detainees in the Southern Border Provinces have alleged being tortured at the hands of Thai security forces since 2010. The group consistently documented new cases every year, meaning that this practice has not been eradicated since the last UPR cycle, despite the many recommendations on physical integrity rights accepted by the Thai government. The National Human Rights Commission has received 306 complaints since 2004.

The case of student activist Parit ‘Penguin’ Chiwarat

Reports of torture and ill-treatment have also resurfaced among political activists since the pro-democracy movement began in 2020. The arrest of pro-democracy activist Parit ‘Penguin’ Chiwarat for his involvement in a protest on 2 August 2021 is one of the examples. After his arrest, Penguin’s Facebook account released a statement saying that he had been beaten by police officers and suffered injuries to his legs, arms, and face. He is now being held at a medical center of the Correction Department, reportedly along with other 43 inmates in the same room, after having tested positive for coronavirus.

With regards to enforced disappearance, 91 cases have been transmitted to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) since 1980, with community leaders and political dissidents being the usual targets. Many of them were victims of cross-border enforced disappearance, making it harder for the victims’ families to seek the truth. As of today, 75 cases remain outstanding.

The case of Thai pro-democracy activist in exile Wanchalearm Satsakit

Wanchalearm disappeared a day after he posted a video online criticizing Prime Minister Prayut Chan-o-cha. He was abducted near his home in Cambodia on 4 June 2020, with authorities from both countries neglecting their responsibility to effectively investigate his disappearance. His whereabouts remain unknown to this day. Wanchalearm Satsakit is the 9th Thai dissident to go missing since the 2014 coup.

Challenge 3: Ineffectiveness of the National Human Rights Commission and the National Committee for Managing Cases Related to Torture and Enforced Disappearance

The National Human Rights Commission of Thailand has been known for its lack of competencies in investigating cases of torture and enforced disappearance.

Regarding the National Committee for Managing Cases Related to Torture and Enforced Disappearance, founded in 2017, it is an empty step towards accountability. It is just an administrative body, with little political and legal power to effectively investigate the allegations and make a meaningful difference for victims. Even if the Committee were to take action against perpetrators, it is believed that either the charges will be dropped or the perpetrators are convicted just for minor offenses. For many CSOs, the National Committee seems to be more focused on reducing the number of cases transmitted to the UN Working Group on Enforced & Involuntary Disappearances, ‘lobbying’ families of victims to agree to withdraw their cases from the UNWGEID’s list in order to stop further investigations.

Out of the 306 torture complaints submitted to the National Human Rights Commission, the Commission did not find any perpetrators for 298 reports.

The incompetence of the NHRCT led to the termination of the investigations and left victims and their families without any possible remedy.

Impunity for the disappearance of Karen human rights defender “Billy”

No accountability processes have been successful in shedding light on his fate. The Court of First Instance, the Appeal Court, and Supreme Court on the Habeas Corpus all dismissed the case against a former National Park official, Chaiwat Limilkhitakorn, one of the accused, for lack of evidence with the Courts concluding that it could not be proved that Billy was still detained by the National Park officers when he disappeared. In November 2019, when the Department of Special Investigations (DSI) issued an arrest warrant for four suspects; and they were charged with six offences, including premeditated murder, unlawful detention, and the concealing of the Billy’s body.



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However, in January 2020, the prosecutor dropped the murder charges, leaving the suspects with only minor offenses, such as failing to hand over Billy to the police after his arrest by the national park officials. The prosecutor contended that there was no clear evidence that the victim was dead because his body was never found, even after the DSI concluded the discovered skull fragments matched Billy's DNA. Impunity for the brutal murder and disappearance of Billy continues to this day. Regarding the National Committee, it lobbied Billy's wife to withdraw his case from the UNWGEID's list to stop further investigation.

Challenge 4: Failure to conduct prompt, effective and independent/impartial investigations into reports of torture and enforced disappearance

Despite having accepted the recommendation made by New Zealand and Switzerland calling for a prompt, independent and transparent investigation in allegations of torture, Thailand has yet to follow through with its promises. The climate of immunity surrounding cases of torture and ill-treatment still persists to this day, partly because of authorities' failure to investigate.

In a discussion with the CrCF, a community member expressed concerns about the lack of effective investigation procedures into reports of torture and enforced disappearance, especially with regards to medical and forensic evaluations. Effective medical procedures and personnel documenting evidences of such practice are highly needed, especially now that authorities have resorted to using inflicting methods that leave no visible signs trauma. Examples include being forced to stand in a fixed position for three days and two nights in a row, sleep deprivation, staying naked, being soaked in dirty water, or water boarding.

#JusticeForJirapong - The case of a death in custody at Nakhon Sawan Police Station

Independent and effective investigations into the allegations are needed to ensure accountability and justice for the victims and their families. For example, on 24 August 2021, a shocking video was leaked, showing at least seven officers of the Nakhon Sawan municipal police station restraining an already handcuffed and seated male suspect, while a senior officer was smothering him with a plastic bag in an apparent attempt to extort a two-million-baht bribe. The suspect "Jirapong" then shouted in agony and eventually died at the spot. In another leaked document, the drug suspect's cause of death was mysteriously listed as drug overdose. Thailand's national police chief later confirmed the veracity of the leaked video and ordered a temporary suspension of the involved officers. However, after the complaint was filed, the first response of the regional commander overseeing Nakhon Sawan province was a transfer of the senior officer who carried out the murder. His whereabouts remain unknown as of 25 August 2021.

RECOMMENDATIONS

1. On Challenge 1: The legal vacuum surrounding torture and enforced disappearance in Thailand

- 1.1. In accordance with the 2014 Concluding Observations of the Committee Against Torture to Thailand, **ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and accelerate the process to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).**
- 1.2. In line with the 2014 Concluding Observations of the Committee Against Torture to Thailand and the 2017 Concluding Observations of the Human Rights Committee to Thailand, **enact the Prevention and Suppression of Torture and Enforced Disappearance Act in full compliance with international standards.**

2. On Challenge 2: The increase number of torture and enforced disappearance cases

- 2.1. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **reinforce the training of law enforcement officials and military personnel with full respect for human rights, including on the appropriate use of force and on the eradication of torture and ill-treatment.**

RECOMMENDATIONS

2.2. In accordance with the 2019 Report of the Working Group on Enforced or Involuntary Disappearances, **refrain from the use of extraterritorial abduction carried out with the cooperation of other states.**

3. On Challenge 3: Ineffectiveness of the National Human Rights Commission and the National Committee for Managing Cases Related to Torture and Enforced Disappearance

3.1. In line with The Paris Principles related to the Status of National Human Rights Institutions, **ensure that the National Human Rights Commission and the National Committee for Managing Cases related to Torture and Enforced Disappearance are vested with competence to promote and protect human rights.**

3.2. In line with the 2014 Concluding Observations of the Committee Against Torture to Thailand, **strengthen witness protection and the protection of victims of torture and human rights defenders who complain, advocate and report on torture and enforced disappearances. Ensure the prohibition of counter lawsuits and judicial harassment.**

4. On Challenge 4: Failure to conduct prompt, effective and independent/impartial investigations into reports of torture and enforced disappearance

4.1. In accordance with the 2014 Concluding Observations of the Committee against Torture to Thailand, **provide specific training to all relevant personnel, including medical personnel, on how to identify signs of torture and ill-treatment, including on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

4.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **ensure that cases of torture are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military; and guarantee that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.**



REFERENCES

AP, Thai Cabinet approves draft laws against torture, abductions, (23 June 2020), available at: <https://apnews.com/article/8f208b5b06d2128387da74f6badad712>

Bangkok Post, Custody death clip sparks storm, (25 August 2021), available at: <https://www.bangkokpost.com/thailand/general/2170519/custody-death-clip-sparks-storm>

Committee against Torture, Concluding observations on the initial report of Thailand, adopted by the Committee at its fifty-second session (28 April–23 May 2014), CAT/C/THA/CO/1, (June 2014)

Cross Cultural Foundation, Statement: Thai police must conduct a fair, full and transparent probe into the killing of alleged drug suspect in police custody, (25 August 2021), available at: <https://crcfthailand.org/2021/08/25/statement-thai-police-must-conduct-a-fair-full-and-transparent-probe-into-the-killing-of-alleged-drug-suspect-in-police-custody/>

Input a community member from Cross Cultural Foundation to inform the UPR Factsheet on the investigation into cases of torture and arbitrary killing in the Southern Border Provinces

Khaosod Online, 'รุ่ง' แจ้งข่าว 'เพนกวิน' อาการน่าเป็นห่วง ปอดมีฝ้า หอบจัดยาผิด ไข้ชุดเดิมมา3วัน, (19 August 2021), available at: https://www.khaosod.co.th/breaking-news/news_6573547

Prachachart, เพนกวินเผย ตำรวจทำร้าย ข้ำกึ่งตัว ผ่าทุกคนสู่ออ ไมต้องห่วง, (11 August 2021), available at: <https://www.prachachat.net/politics/news-736191>

The Patani Working Group for Monitoring on International Mechanisms, Civil Society Assembly For Peace (CAP), The Federation of Patani Students and Youth (PerMAS) and Manushya Foundation, Joint UPR Submission: Armed Conflicts & The Human Rights Situation in the Southern Border Provinces in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, (March 2021), available at <https://www.manushyafoundation.org/joint-upr-submission-armedconflicts>

UN Human Rights Committee (HRC), Concluding observations on the second periodic report of Thailand, adopted by the Committee at its 119th session (6-29 March 2017), CCPR/C/THA/CO/2, (April 2017), available at: <https://www.refworld.org/docid/591e9d914.html>

UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), (2004), HR/P/PT/8/Rev.1, available at: <https://www.refworld.org/docid/4638aca62.html>

United Nations General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 (20 December 1993), available at: <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

Human Rights Council, Working Group on Enforced or Involuntary Disappearances: 'Report of the Working Group on Enforced or Involuntary Disappearances', (7 August 2020), at page 32, available at <https://undocs.org/A/HRC/45/13>

Bangkokbiznews.com, 'รัฐฯ' คาดบังคับใช้พ.ร.บ.ป้องกันบรรณฯ ได้ภายในปีนี้, (26 August 2021), available at: <https://www.bangkokbiznews.com/news/detail/956779>