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The Permanent Mission of Thailand to the United Nations Office  
5 Rue Gustave Moynier  
Geneva 1202  
**Switzerland**

24 November 2015

Dear H.E.Thani Thongphakdi,

**RE: NAKHON CHAISRI FACILITY**

The International Commission of Jurists (ICJ) and Human Rights Watch write to express our serious concern about the establishment of a detention facility holding non-military persons named the Nakhon Chaisri temporary remand facility ("the Facility") inside the 11<sup>th</sup> Army Circle military base in Bangkok. In particular, we are concerned about the recent deaths of two detainees, Suriyan "Mor Yong" Sucharitpolwong, a prominent fortune teller, and Police Major Prakrom Warunprapa, during their detention at the Facility.

In light of these concerns, we make a number of urgent recommendations to the Royal Thai Government, including to:

1. Immediately transfer all non-military persons detained at the Facility to an officially recognized civilian place of detention that complies with international law and standards and ensure no further non-military prisoners are detained at this Facility or any other similar facility; and
2. Carry out a prompt, impartial, and effective investigation into the recent deaths of Suriyan Sucharitpolwong and Prakrom Warunprapa, prosecute and bring to justice any party found responsible, and ensure the victims' families have access to effective remedies and reparation.

**Background**

On 29 August 2015, Bilan Muhammad (also known as Adem Karadag), was arrested in connection with the Erawan Shrine bombing that took place in Bangkok on 17 August 2015.<sup>1</sup> On 1 September, Yusufu Mierili was arrested in relation to the same

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<sup>1</sup><http://www.nationmultimedia.com/national/Police-submit-shrine-bomb-report-with-military-cou-30271738.html>

attack.<sup>2</sup> Both men were held at the 11<sup>th</sup> Army Circle following their arrests.<sup>3</sup> The police stated they were being detained pursuant to National Council for Peace and Order (NCPO) Order 3/2558 which was promulgated pursuant to article 44 of the interim Constitution on 1 April 2015 after the lifting of martial law from most parts of the country.<sup>4</sup> Order 3/2558 empowers the military to detain a person for up to seven days to prevent and suppress acts which constitute certain defined crimes including *lese majeste* (insulting the monarchy); offences against the security of the state; various weapons offences; and violations of NCPO orders.

On 4 September, after being detained for seven days, Bilan Muhammad was brought before the Minburi Provincial Court for the first time and was charged with illegal possession of explosive devices.<sup>5</sup> On 9 September, after being detained for nine days, Yusufu Mierili was taken to the Minburi Provincial Court<sup>6</sup> for the first time and was charged with illegal possession of explosive devices.<sup>7</sup> Reports suggested the military had detained Yusufu Mierili for seven days under order 3/2558 before handing him over to the police who had detained him for a further two days under the Criminal Procedure Code.<sup>8</sup> Following their appearances both men were detained at the Minburi Prison.<sup>9</sup>

On 8 September, the Ministry of Justice issued a directive which appeared in the Royal Gazette on 11 September announcing the establishment of a temporary detention facility inside the 11<sup>th</sup> Army Circle military base located on Rama V Road, Bangkok.<sup>10</sup>

The order explained the establishment of the Facility as being “*for the sake of maintenance of security and to accommodate the deprivation of liberty and the treatment of suspects in cases concerning national security and other related cases, whereas the suspects give rise to special circumstances and they cannot be held in custody together with other suspects.*”

On 12 September, the Director General of the Department of Corrections, Wittaya Suriyawong, stated the Facility required some additional improvements so that it could accommodate Yusufu Mierili and Bilan Muhammad and that wardens from the Bangkok Remand Prison would assist military officials with the necessary procedures.<sup>11</sup>

On 14 September, the Director General of the Department of Corrections ordered the transfer of the two Erawan Shrine bombing suspects from Minburi Prison to the Facility.<sup>12</sup>

On 16 October, there was speculation that Suriyan Sucharitpolwong, Jirawong Watthanathewasilp (an advisor to Suriyan Sucharitpolwong), and Prakrom

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<sup>2</sup><http://www.telegraph.co.uk/news/worldnews/asia/thailand/11853792/Bangkok-suspect-admits-giving-explosive-device-to-bomber.html>

<sup>3</sup> <http://www.nationmultimedia.com/national/Police-submit-shrine-bomb-report-with-military-cou-30271738.html>

<sup>4</sup><http://www.komchadluek.net/detail/20150904/212818.html>;  
<http://www.khaosodenglish.com/detail.php?newsid=1441365220>

<sup>5</sup> <http://www.bangkokbiznews.com/news/detail/664182>

<sup>6</sup> <http://www.bangkokpost.com/archive/court-approves-detention-of-second-bomb-suspect/686848>; <http://pazanews.com/?p=107167>

<sup>7</sup> <http://news.truelife.com/detail/3329394>

<sup>8</sup> <http://pazanews.com/?p=107167>

<sup>9</sup> <http://www.thairath.co.th/content/523687>

<sup>10</sup> <http://www.ratchakittha.soc.go.th/DATA/PDF/2558/E/215/7.PDF>

<sup>11</sup> [http://thainews.prd.go.th/website\\_en/news/news\\_detail/WNSOC5809130010012](http://thainews.prd.go.th/website_en/news/news_detail/WNSOC5809130010012)

<sup>12</sup> <http://www.prachatai.com/journal/2015/09/61407><http://www.ryt9.com/s/ryt9/2251677>

Warunprapa had been arrested and detained on suspicion of *lese majeste*,<sup>13</sup> which the police denied.<sup>14</sup> The men were initially detained pursuant to NCPO Order 3/2558.<sup>15</sup>

On 21 October, the three men appeared before the Bangkok Military Court for the first time, where they were charged with *lese majeste* and were remanded at the Facility while investigations were ongoing.<sup>16</sup> None of the three men were members of the Royal Thai Armed Forces.

On 24 October, it was reported that Prakrom Warunprapa had committed suicide at the Facility on 23 October by hanging himself in his cell while in solitary confinement.<sup>17</sup> A Corrections Department statement said that a "special committee" had been established to investigate the matter.<sup>18</sup> In the same statement, the Department said the room where Prakrom was being held had a solid/opaque door and four cement walls and that only one night guard had been assigned to guard the facility at the time.<sup>19</sup>

On 26 October, the Director General of the Corrections Department said "Prakrom's notification of death was issued with the reason of 'asphyxiation' by the trace around his neck."<sup>20</sup> He added that there was no need to carry out an autopsy "because his family did not doubt about the death." At around 12 noon on the same day, Prakrom's family collected the body and cremated it.<sup>21</sup>

On 9 November, Justice Minister Paiboon Koomchaya announced Sucharitpolwong had died on 7 November.<sup>22</sup> A statement released by the Corrections Department stated he had been found unconscious with a faint pulse at about 9 pm on 7 November by guards at the Facility before being rushed to the hospital where he died the same day.<sup>23</sup> The statement also claimed an autopsy performed on 8 November by the Institute of Forensic Medicine, which is part of the Police General Hospital, found Sucharitpolwong died from "respiratory and blood circulation failures due to blood infection".<sup>24</sup> According to reports, his relatives collected his body on 8 November and cremated it the following day.<sup>25</sup>

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<sup>13</sup> <http://www.bangkokpost.com/news/politics/759328/lese-majeste-suspect-mor-yong-dies-in-army-custody>; <http://www.dailynews.co.th/article/359900>;  
<http://freedom.ilaw.or.th/Royal%20Clam>

<sup>14</sup> <http://www.bangkokpost.com/news/politics/759328/lese-majeste-suspect-mor-yong-dies-in-army-custody>; <http://www.bangkokbiznews.com/news/detail/673540>

<sup>15</sup> <http://www.dailynews.co.th/crime/355864>

<sup>16</sup> <http://www.nationmultimedia.com/national/Trio-confess-30271385.html>

<sup>17</sup> <http://www.bangkokpost.com/news/crime/741808/lese-majeste-suspect-found-hanged>

<sup>18</sup> <http://www.correct.go.th/correct2009/upload/files/information/58/11000.pdf>;  
<http://morning->

[news.bectero.com/m/main.php?m=newsdetail&cname=political&nid=59788](http://morning-news.bectero.com/m/main.php?m=newsdetail&cname=political&nid=59788)

<sup>19</sup> <http://www.correct.go.th/correct2009/upload/files/information/58/11000.pdf>;

<http://morning->

[news.bectero.com/m/main.php?m=newsdetail&cname=political&nid=59788](http://morning-news.bectero.com/m/main.php?m=newsdetail&cname=political&nid=59788);

<sup>20</sup> <http://www.springnews.co.th/crime/248476>

<sup>21</sup> <http://www.springnews.co.th/crime/248597>

<sup>22</sup> [http://www.prachachat.net/news\\_detail.php?newsid=1447049544](http://www.prachachat.net/news_detail.php?newsid=1447049544)

<sup>23</sup> [http://www.prachachat.net/news\\_detail.php?newsid=1447049544](http://www.prachachat.net/news_detail.php?newsid=1447049544)

<sup>24</sup>

[http://www.prachachat.net/news\\_detail.php?newsid=1447049544](http://www.prachachat.net/news_detail.php?newsid=1447049544)<http://www.bangkokpost.com/print/759328/>

<sup>25</sup>

<http://breakingnews.nationtv.tv/home/read.php?newsid=772581><http://highlight.kapook.com/view/128916>

## **Thailand's international legal obligations**

### Right to be free from arbitrary arrest or detention

The ICJ and Human Rights Watch underscore the detention of any non-military persons at the Facility is clearly contrary to international standards.

#### *Arbitrariness of detention*

The detention of non-military persons at the the Facility is arbitrary in violation of article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State Party, because it deprives them of safeguards which would be afforded to them if detained in an officially recognized civilian place of detention.

Article 9 of the ICCPR, guaranteeing the right to liberty and security of the person, provides that *"No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."*

The detainees' detention is arbitrary under international law whether or not the establishment of the Facility and the arrest and detention of the people detained there was implemented in accordance with the law currently in place in Thailand.

The United Nations Human Rights Committee, the international expert body charged with supervising the implementation of the ICCPR, has noted *"an arrest or detention may be authorized by domestic law and nonetheless be arbitrary."* *The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.*"<sup>26</sup>

The detention of civilians inside a military facility is inappropriate, unreasonable, and unnecessary - and therefore arbitrary. Rule 11 of the UN Nelson Mandela Rules (an updated iteration of the 1955 UN Standard Minimum Rules for the Treatment of Prisoners)<sup>27</sup> establishes that different categories of prisoners must be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.<sup>28</sup>

The general prohibition on non-military persons - as a category of prisoner - being detained at a military detention facility is set out specifically in Principle 11, para. 40, of the UN Principles Governing the Administration of Justice Through Military Tribunals: *"In keeping with the preceding principles and pursuant to the principle of 'separation of categories' cited in the Standard Minimum Rules for the Treatment of Prisoners, it should not be possible for a civilian to be held in a military prison. This applies to disciplinary blocks as well as military prisons or other internment camps under military supervision, and to all prisoners, whether in pretrial detention or serving sentence after conviction for a military offence."*<sup>29</sup>

The Human Rights Committee has repeatedly stated that persons detained for longer than 48 hours before being brought before a judge have been arbitrarily detained -

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<sup>26</sup> UN Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, para. 12.

<sup>27</sup> Adopted by the UN Commission on Crime Prevention and Criminal Justice in May 2015 and by the Third Committee of the UN General Assembly on 5 November; expected to be adopted by the General Assembly by the end of 2015.

<sup>28</sup> The Nelson Mandela Rules can be accessed here:

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/70/L.3](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3)

<sup>29</sup> The Principles Governing the Administration of Justice Through Military Tribunals can be accessed here: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/10/Dcaux-Principles-military-tribunals.pdf>

any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>30</sup> Article 9 of the ICCPR, which also applies to persons who are administratively detained, states that detainees must be brought “promptly” before a judge and are entitled to trial within a reasonable time or to release.<sup>31</sup>

The requirement under international law that a detained person should be brought promptly before a court not only allows the detainee to challenge the lawfulness of the detention but also protects his or her physical safety by affording them the opportunity to raise any incident of torture or other ill-treatment with the court and for the judge to observe the detainee’s physical condition.

#### *Legality of detention*

Further, the 8 September directive of the Ministry of Justice justifying the detention of non-military persons at the Facility is inconsistent with the principle of legality under general principles of law. No explanation is given as to what “*special circumstances*” justifies not holding detainees in custody with other suspects at officially recognized civilian places of detention. This vague language could be abused to detain people arbitrarily contrary to the requirements for detention of predictability, due process of law, reasonableness, necessity and proportionality. The UN Human Rights Committee has stated that any “*substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application. Deprivation of liberty without such legal authorization is unlawful.*”<sup>32</sup>

#### *Minimum guarantees of detention*

Due to the lack of information made publicly available about the Facility and the fact it is located on a secure military base, it is unknown precisely what procedures governing detention are in place at the Facility and what training the staff of the Facility have received in meeting Thailand’s international legal obligations under the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Thailand is a State Party.

The Human Rights Committee has stated “*To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.*”<sup>33</sup>

The Committee against Torture, which monitors the implementation of the CAT, has stated that there must be certain basic guarantees in places of detention including “*inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and*

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<sup>30</sup> UN Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, para. 33.

<sup>31</sup> Concluding Observations of the Human Rights Committee: Jordan, CCPR/C/79/Add.35; A/49/40, paras. 226-244; Observations finales du Comité des droits de l’homme: Maroc, CCPR/C/79/Add.44, para. 21; Concluding observations of the Human Rights Committee: Viet Nam, CCPR/ CO/75/VNM, para. 8; Concluding observations of the Human Rights Committee: Cameroon, CCPR/C/79/Add.116, para. 19.

<sup>32</sup> UN Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, para. 22.

<sup>33</sup> UN Human Rights Committee, General Comment No. 20, HRI/GEN/1/Rev.1 at 30, para 11.

*impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.*<sup>34</sup>

#### Right to life and to be free from torture

Thailand has violated its international obligations by so far failing to carry out a prompt, impartial and effective investigation into the cause of deaths of Suriyan Sucharitpolwong and Prakrom Warunprapa at the Facility.

Particularly troubling is the fact that both deceaseds' bodies appear to have been cremated before a full investigation into the cause of death that meets international standards could take place.

As a State Party to both the ICCPR and the CAT, Thailand has an obligation to carry out a prompt, impartial, and effective investigation into deaths in custody and any related torture and other ill treatment, to prosecute and bring to justice any party found responsible, and to ensure victims and their families have access to effective remedies and reparation. These are required under the ICCPR article 2(3), article 6 (protecting the right to life), and article 7 (freedom from torture and cruel, inhuman and degrading treatment or punishment); and CAT articles 4, 12, 13, and 14 (investigation, prosecution, and remedy and reparation).

As the Human Rights Committee has pointed out, "*States Parties must ensure that those responsible are brought to justice...failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7) -[and] summary and arbitrary killing (article 6).*"<sup>35</sup>

The Human Rights Committee has stated that a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution, and there should be thorough, prompt and impartial investigation to confirm or rebut the presumption.<sup>36</sup>

We are also concerned that, according to the press statement of the Department of Corrections, detainees at the Facility are being held in solitary confinement. Prolonged solitary confinement amounts to torture or cruel, inhuman or degrading treatment in violation of Thailand's obligations under the ICCPR and CAT. Solitary confinement should be prohibited in cases where detainees have mental or physical disabilities when their conditions would be exacerbated by such measures.<sup>37</sup>

#### **Recommendations**

In light of these concerns, the ICJ and Human Rights Watch make the following urgent recommendations to the Royal Thai Government for it to comply with its international legal obligations:

1. Immediately transfer all non-military persons detained at the Facility to an officially recognized civilian place of detention that complies with international law and standards, including the Nelson Mandela Rules, and ensure no further non-military prisoners are detained at this Facility or any other similar facility;

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<sup>34</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2/CRP. 1/Rev.4 (2007), para 13.

<sup>35</sup> UN Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13, para. 18.

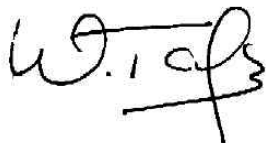
<sup>36</sup> Eshonov v Uzbekistan, CCPR/C/99/D/1225/2003, views adopted 22 July 2010, para 9.2.

<sup>37</sup> See also rules 43 – 45 of the Nelson Mandela Rules, which can be accessed here: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/70/L.3](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3)

2. Carry out a prompt, impartial, and effective investigation into the recent deaths of Suriyan Sucharitpolwong and Prakrom Warunprapa, prosecute and bring to justice any party found responsible, and ensure the victims' families have access to effective remedies and reparation;
3. Ensure the director and staff of the Facility preserve all evidence that may be relevant to the deaths in custody and fully cooperate with the independent body carrying out that investigation including by providing full disclosure of all relevant information and documentation such as the deceaseds' medical records, any statements taken from facility and medical staff, and all available closed circuit television footage;
4. Clarify what is meant in the 8 September 2015 directive establishing the Facility by "*special circumstances*" that would justify not holding detainees in custody with other suspects at officially recognized civilian places of detention;
5. Ensure that no prisoners, including military prisoners, are detained at the Facility until it complies with international law and standards including the Nelson Mandela Rules and recommendation 4 is satisfactorily addressed in line with international law and standards; and
6. Ensure that all detainees in Thailand, without exception, are physically brought before a judge within 48 hours of arrest.

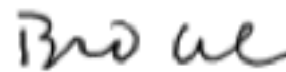
Please do not hesitate to contact us if you have any comments or questions. We appreciate your urgent attention to this matter.

Yours faithfully,



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Department of Corrections

**Colonel Paiboon Khumchaya**  
Minister of Justice  
Ministry of Justice