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The opinions of the Thai Lawyers for Human Rights (TLHR) toward the establishment of the temporary remand facility on Nakhon Chai Sri Road and the deaths in custody of Pol Maj Prakrom Warunprapa and Mr. Suriyan Sucharitpolwong

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In pursuance to the directive of the Ministry of Justice no. 314/2558 regarding the designation of territory of the temporary remand facility on Nakhon Chai Sri Road dated 11 September 2015 and on 14 September 2015, Mr. Adem Karadag and Mr. Mieraili Yusufu, the two suspects in the bombing of the Erawan Shrine have been held in custody there whilst the Prison Director of the Bangkok Remand Prison, as the office in charge, has told the press that twenty military officials shall be appointed as Special Custodial Officers.

On 21 October 2015, Mr. Suriyan Sucharitpolwong Pol Maj Prakrom Warunprapa and Mr. Jirawong Watthanathewasilp, suspects on the violation of Article 112 of the Penal Code, were then held in custody at the same remand facility. Altogether, there were five persons being deprived of liberty there. Later, on 23 October 2015, Pol Maj Prakrom Warunprapa was found dead in the remand facility and according to the press statement of the Department of Corrections, it was alleged that he hung himself to death. It was described in the statement that the suspect was detained in a windowless holding cell which is not visible from outside without opening the door. Also, it said that the body had been transferred for autopsy at the Institute of Forensic Medicine and an inquiry committee had been set up to investigate the case.

Later on 9 November 2015, the Department of Corrections stated to the press that Mr. Suriyan Sucharitpolwong has died of bloodstream infection (septicemia) causing him an acute respiratory failure on 7 November. Prior to this, Mr. Suriyan had been hospitalized at least on two occasions. On 22 October 2015, the Director General of the Department of Corrections told the press that a physician from outside has conducted a CT Scan and could not detect any abnormalities and he suspected that Mr. Suriyan pretended to be ill. On 30 October 2015, Mr. Suriyan was not brought to the Military Court for the hearing on the second extension of his

remand in custody and according to the letter issued by the Corrections Department hospital, he was suffering from blood pressure and fatty liver disease.

It was claimed by the authorities that for the two deaths, the post mortem examinations have been conducted as warranted for by Article 150 of the Criminal Procedure Code, as the body of Pol Maj Prakrom was examined in the Corrections Department hospital, the body of Mr. Suriyan was transferred to the Institute of Forensic Medicine, the Police General Hospital for the same procedure and that their relatives have not questioned the cause of the deaths and no funeral rites have been performed for the two bodies.

The Thai Lawyers for Human Rights (TLHR) has the following opinions to share regarding the deprivation of liberty of civilians in the temporary remand facility on Nakhon Chai Sri Road located inside the military premises.

1. Reasons for the establishment of the remand facility Even though the Corrections Act B.E. 2479 (1936) authorizes the Minister to set up a temporary remand facility to hold in custody suspects for a special purpose, but the directive of the Ministry of Justice no. 314/2558 regarding the designation of territory of the temporary remand facility on Nakhon Chai Sri Road dated 11 September 2015 states the reason for such establishment as *“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. Therefore, it is deemed fit that a separate remand facility shall be established to hold in custody such suspects.”* The statement fails to provide for clear reasons as to why such suspects would give rise to “special circumstances”, what those circumstances are, and what will be the criteria for the recruitment of such inmates. **As a result, the placement of suspects in such facility is subject to arbitrary and discretionary power of the state officials and it may give rise to unfair and discriminatory treatment toward the suspects.**

In addition, the directive fails to specify measures for the maintenance of security and the treatment appropriate to the inmates in such remand facility and how they are different from those adopted in a normal prison. It basically fails to establish the necessities and proportionality for the establishment of such remand facility. The issuance of such directive by the MoJ is therefore intended for depriving a person of liberty in breach of the rule of certainty, the principle of non-discrimination and the principle of proportionality. Such enforcement of the law is unlawful and it thus makes the detention

unlawful as well as far as Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits arbitrary detention is concerned.

TLHR deems the establishment of the remand facility unnecessary and it may give rise to discrimination against the persons deprived of liberty. **Given its being located in a military premises, it is also inaccessible from outside. And practically, the establishment of a remand facility inside a military barrack is being used as a tactic to extend the remand in custody of an “alleged offender” according to the Criminal Procedure Code rendering them as a person being detained by military officials as if they were being held in custody invoking Martial Law or the Order of the Head of the National Council for Peace and Order (NCPO) no. 3/2558. It also makes the remand in custody indefinite, pretrial and during the trial.**

2. Competent custodial officials Since the deprivation of liberty of a person concerns a number of rules and regulations regarding detention and it should be conducted in accordance to the 1995 UN Standard Minimum Rules on the Treatment of Prisoners, but in this case, military officials have been appointed¹ as Special Custodian Officers, even though they are officials outside the charge of the Department of Corrections. That the custodial officers from the Bangkok Remand Prison had to be sent there to train them on the registration and how to handle visit by relatives is indicative as to how they were not ready in terms of personnel to treat any inmates and it shows their lack of awareness regarding the rights of a person being deprived of liberty and the standards regarding the detention of such a person.

TLHR deems that the duty to detain a person directly belongs to the Department of Corrections. That the suspects were left under the responsibility of untrained military officials without knowledge as to how to treat a person being deprived of liberty and by claiming that it has been done so for the benefit of investigation are simply the negligence of duties by the Department of Corrections and as a result of such negligence, the rights and liberties of the detained suspects had been infringed and it has led to their deaths.

3. Detention condition and standards According to the press statement of the Department of Corrections regarding the death of Pol Maj Prakrom, the remand facility had been adapted from an office

¹ <http://breakingnews.nationtv.tv/home/read.php?newsid=768325>

building of the military. The individual holding cells were windowless and the detention condition was inappropriate since the suspects were subject to solitary confinement. Each of them was held in custody in a small holding cell incommunicado which constitutes an inhuman or degrading treatment in breach of the international obligations Thailand has to abide by including those guaranteed in the Convention Against Torture (CAT) and the ICCPR as well as Article 3 of the 1995 UN Standard Minimum Rules on the Treatment of Prisoners and the directive of the Department of Corrections no. YT 0705.1/33405 dated 3 November 2015 which specifies measures to prevent the death in custody and the treatment of a person who died in custody including the survey of the remand facility and the improvement of visibility to make more transparent from outside.

In addition, a sick inmate is entitled to seeing a doctor and to receiving immediate treatment. But such remand facility has failed to provide adequate medical examination and treatment services and it is located quite far from the Corrections Department hospital and as a result, no timely help could have been provided. The incidences are a glaring example as to how the remand facility and the Department of Corrections have been performing poorly and substandard as far as the deprivation of liberty and the treatment of the detainees are concerned. Persons deprived of liberty in such facility are therefore vulnerable to gross human rights violation including being tortured to confess, being killed in the holding cells, etc.

4. The post mortem examination and the inquest

Since both Pol Maj Prakrom and Mr. Suriyan died in custody and according to Article 150 of the Criminal Procedure Code, a post mortem examination has to be conducted by a physician, the inquiry officer, the public prosecutor, and the administrative officer. In addition, an inquest has to be conducted to determine as to who the deceased was, where he died, when, and the circumstance around the death. And if the person has been killed, who the perpetrator was as far as it could be established.

The post mortem autopsy of a person who died in custody is a very important procedure since if the death has resulted from the act of an officer, an inquiry has to be conducted promptly, transparently and effectively to bring the person to justice and to provide for remedies. The process has to proceed with transparency and accountability with respect to the rights of the deceased suspect and to ensure due remedies. If the post mortem examination begins with a lack of transparency and a lack of effectiveness, it shall infringe on the right in criminal justice process of the deceased including the violation of the right to fair trial as enshrined in Article 14 of the ICCPR.

TLHR deems it insufficient to dispel any doubt for only the post mortem examination had been conducted. It may necessitate the dissection of the body in order to ascertain the cause of the death as provided for in Article 151 of the Criminal Procedure Code. What has spurred doubts in this two cases of death was the fact that both bodies were incinerated right away without any proper funeral rite. Nevertheless, TLHR urges the authorities to reveal detail of the registration of the admission of prisoners, their medical records, autopsy reports, photos of the corpses, photos take of where the two persons had succumbed to death in order to provide for transparency of the detention and the cause of death. Insofar, society at large has largely been deprived of information and the means to verify it and they simply have to accept whatever information provided for them by the state.

5. The establishment of an inquiry committee

According to the two press statements by the Department of Corrections regarding the establishment of an inquiry committee to investigate the deaths, TLHR seconds the proposal. We want to further recommend that such a committee should be composed of persons with medical expertise and well-versed in the standards concerning the treatment of prisoners. They should also be independent and impartial. Their names should be publicly revealed along with their qualifications, the timeframe of their work and the findings they will have come to in both cases.

Since the fatal incidences inflicted on the two detainees could be attributed to the improper facility and a lack of skills and knowledge in handling the welfare of the prisoners in compliance with human rights standards and a lack of reasonableness for the establishment of such remand facility inside the 11th Military Circle, TLHR demands the closure of the temporary remand facility on Nakhon Chai Sri Road and the transfer of all remaining detainees to the Bangkok Remand Prison as well as the disclosure of the autopsy reports and the inquiry reports.

To ensure transparency and compliance with human rights standards and laws and to assure public that their rights in justice process are upheld under the rule of the coup makers.

With respect to rights and liberties

Thai Lawyers for Human Rights (TLHR)