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Discrimination against Women (CEDAW)  
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THAILAND

**FIDH – International Federation for Human Rights**

**Union for Civil Liberty (UCL)**

Joint shadow report on Thailand's implementation of the Convention on  
the Elimination of All Forms of Discrimination against Women (CEDAW)  
for the review of Thailand's sixth and seventh periodic reports

## **Female inmates: Discrimination behind bars**

### **Introduction: Women disadvantaged by the legal process**

Women in Thailand tend to encounter greater difficulties and discrimination within the legal system than men due to a combination of factors, including poverty, a lack of legal knowledge, and inadequate legal assistance. This results in women often receiving long sentences that are disproportionate to their offenses. In addition, prejudicial sentencing that fails to consider mitigating factors such as the offender's care-giving obligations or the role of abuse or coercion in the commission of the offense may also contribute to women being particularly disadvantaged by the legal system.

Many women behind bars have little knowledge or access to information on the legal system and their rights. The low socio-economic status of women makes them particularly vulnerable to being deprived of their liberty because of their inability to pay fines for petty offenses, to meet bail, or to afford legal representation.<sup>1</sup> Forty-five percent of female prisoners surveyed in Thailand by the Thailand Institute of

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<sup>1</sup> Penal Reform International, *Discrimination of women in criminal justice systems*, January 2012; page 5

Justice (TIJ) reported that they did not have a lawyer during their trial and 20% were represented by a volunteer lawyer or public defender.<sup>2</sup> This means that a significant proportion of women must navigate the legal system with very little guidance – a fact that has serious implications for sentencing outcomes.

### **Discriminatory penitentiary system**

In November 2016, in its reply to the UN Human Rights Committee (CCPR)'s List of Issues (LoI), the Thai government asserted that Thailand respected prisoners' rights and dignity and that prison conditions met international standards.<sup>3</sup> The government also mentioned efforts to improve women prisoners' wellbeing and standard of living.<sup>4</sup>

The reality is that women in detention in Thailand continue to suffer from poor conditions and are disproportionately adversely affected by the penitentiary system. Information collected by FIDH and UCL from the Central Women's Correctional Institution (CWCI) in Bangkok from September to December 2016 shows that the specific needs and basic rights of women in prison are not being met. It is likely that women in other prisons across Thailand experience similar conditions to those described by former CWCI inmates.

The CEDAW's General Recommendation No. 33 highlights that "women suffer from discrimination in criminal cases owing to: a) a lack of gender-sensitive non-custodial alternatives to detention, b) a failure to meet the specific needs of women in detention, and c) an absence of gender-sensitive monitoring and independent review mechanisms." It recommends that states ensure that mechanisms are in place "to monitor places of detention; pay special attention to the situation of women prisoners; and apply international guidance and standards on the treatment of women in detention."

The United Nations (UN) Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules') provide supplementary recommendations to the UN Standard Minimum Rules for the Treatment of Prisoners (SMRs) and acknowledge the gender specific needs of women as well as the need to give priority to applying non-custodial alternative measures to women who have been sentenced to prison terms.<sup>5</sup>

However, Thailand's failure to comply with the Bangkok Rules through the lack of non-custodial alternatives to detention for women, as well as other discriminatory

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<sup>2</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 133

<sup>3</sup> UN Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 88

<sup>4</sup> UN Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 92

<sup>5</sup> The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) state, "Taking into consideration the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system."

factors, means that a disproportionate number of women find themselves behind bars. Thailand has one of the highest incarceration rates of women in the world, with 113 female prisoners per 100,000 of the national female population, as of June 2017.<sup>6</sup> In June 2017, Thailand's female prison population of 39,694 constituted 13.4% of its total prison population.<sup>7</sup>

The UN General Assembly, in its resolution adopting the Bangkok Rules, recognized that women prisoners are “one of the most vulnerable groups that have specific needs and requirements.”<sup>8</sup> Women have a host of gender-specific needs that are often neglected in a system that is controlled by men and caters to the majority male population. Discrimination in accessing gender-specific services and maintaining family links may, in certain circumstances, constitute discrimination within the meaning of Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The penitentiary system has been unable to meet the gender-specific needs of women, which has had a significant impact on conditions for women prisoners.

### **Women prisoners detained far from their families**

There are a relatively small number of women's prisons in Thailand. In addition, women are assigned to prisons based on the length of their sentence. This means that many women are likely to be detained far from home.<sup>9</sup> This distance disadvantages women prisoners because they receive fewer visits from their family, which has been shown to have a detrimental impact on their mental health and wellbeing and prospects for social integration when released.<sup>10</sup> This contravenes Rule 4 of the Bangkok Rules, which states that women prisoners should be allocated to prisons close to their homes, taking into account their caretaking responsibilities and the woman's preference.<sup>11</sup>

Female prisoners tend to have more caring obligations than their male counterparts. In a 2013 study of women's prisons conducted by the TIJ, 82% of women prisoners said they had children, with one-third of those children under six years of age.<sup>12</sup> The separation of women who are primary caregivers can cause major distress to both the prisoner and her dependent children. As a result, women prisoners may need

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<sup>6</sup> Based on CIA World Factbook population estimates.

<sup>7</sup> Department of Corrections, *Statistics of incarcerated persons nationwide*, 1 June 2017, [http://www.correct.go.th/stat102/display/result\\_pdf.php?date=2017-06-01](http://www.correct.go.th/stat102/display/result_pdf.php?date=2017-06-01)

<sup>8</sup> UN General Assembly, Resolution adopted by the General Assembly on 21 December 2010, 16 March 2011, UN Doc. A/RES/65/229

<sup>9</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 44

<sup>10</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 44; Penal Reform International, *Discrimination of women in criminal justice systems*, January 2012; page 8

<sup>11</sup> Rule 4 of the Bangkok Rules states, “Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.”

<sup>12</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 129

broader visitation rights, such as contact visits with children, which are not necessarily taken into account in the male-dominated penitentiary system.

Children born in prison can stay with their mothers until they are one year old, after which they are removed and placed in the care of a family member or in alternative care.<sup>13</sup> This fixed age for the separation of children from their mothers means that individual assessments are not undertaken to decide what is appropriate and in the best interest of the child, as is required by the Bangkok Rules.<sup>14</sup> In addition, the prison arranges for the removed child to see his or her mother in prison only three to four times a year, which is insufficient and fails to give women prisoners “the maximum possible opportunity to meet with their children” prescribed by Rule 52(3) of the Bangkok Rules.

### **Women’s prisons more overcrowded**

Women’s prisons are at greater risk of overcrowding, which has an impact on living conditions for women.<sup>15</sup> The CWCI has an occupancy rate of 187%, with former prisoners reporting having an estimated space of about 0.45m (width) to sleep – significantly less than the 1.1m<sup>2</sup> for women currently mandated by the Department of Corrections to avoid over-occupancy.<sup>16</sup> With such limited space, inmates were forced to sleep on their sides in order to avoid conflicts with other prisoners.

### **Women in detention deprived of adequate healthcare and nutrition**

Healthcare, including reproductive health, is a basic right under the CEDAW.<sup>17</sup> Article 12(1) of the CEDAW requires state parties to “take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to healthcare services.”

In general, women prisoners have greater psychological and healthcare needs than their male counterparts. Women admitted to prison are more likely to be affected by pre-existing health problems, develop mental health issues, and suffer further trauma through their imprisonment. This is often the result of past physical, mental, or sexual abuse prior to their sentences.<sup>18</sup> The Bangkok Rules acknowledge that women prisoners have a “disproportionate experience of domestic violence.”<sup>19</sup>

Ms. Chonticha Jangrew, a student activist who was imprisoned in the CWCI for 13 days in May 2015 for participating in a demonstration against the military junta in Bangkok, faced physical abuse during her arrest and was delayed medical care

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<sup>13</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 107

<sup>14</sup> Bangkok Rules, Rule 52

<sup>15</sup> Penal Reform International, *Discrimination of women in criminal justice systems*, January 2012; page 8

<sup>16</sup> Calculated based on a prison population of 3,500 as of June 2017 and an official capacity of 1,868 prisoners.

<sup>17</sup> CEDAW General Recommendation No. 24

<sup>18</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; pages 132, 139

<sup>19</sup> Bangkok Rules, Rule 44

during her time in prison. She was eventually moved to the prison hospital with spinal cord compression.<sup>20</sup>

Information collected by FIDH and UCL show that the CWCI is unable to provide adequate healthcare services to female detainees. Former prisoners from the CWCI reported that medical services were very difficult to access inside the prison. A prison officer would pre-screen a prisoner before allowing the prisoner to visit the medical center. While at least one nurse would be on duty at the medical center, doctors only visited the center two to three times a week. Medical care is unavailable at night, on weekends, and public holidays. Nurses are responsible for the bulk of healthcare and are severely understaffed. Women prisoners face long waiting periods for treatment and rarely receive adequate treatment. Both doctors and nurses would generally prescribe *paracetamol* to prisoners to treat most ailments.

Depending on the prison, there are few or no psychologists or psychiatrists to deliver mental healthcare. When there is a psychiatrist available, treatment is often limited to the distribution of medicines.<sup>21</sup> This contravenes the Bangkok Rules and limits the ability of women prisoners to access mental healthcare.<sup>22</sup>

Article 12(2) of the CEDAW requires state parties to ensure “appropriate services in connection with pregnancy, confinement and the post-natal period [...] as well as adequate nutrition during pregnancy and lactation.” General Recommendation No. 24 notes that it is the duty of state parties to ensure women’s right to “safe motherhood and emergency obstetric services.” It also stipulates that state parties should “ensure women appropriate services in connection with pregnancy, confinement and the post-natal period.”

The CWCI has poor pre-natal and post-natal care services. At the CWCI, pregnant women stay in the same dormitories as other prisoners and go to the Medical Correctional Hospital to give birth. In at least one instance, a doctor told a pregnant detainee while she was giving birth that he would not deliver her baby if she screamed. She was allowed to stay at the hospital for 30 minutes and then was sent back to the CWCI. Her baby slept in the dormitory with her for 11 months.

With regard to nutrition, former prisoners described the food at the CWCI as tasteless and lacking in nutritional value. Prisoners who could afford it would buy their own meals from the prison shop or order food from outside the prison. In several prisons, there is also insufficient drinking water.<sup>23</sup> This is a significant problem for pregnant and lactating prisoners, who have increased nutritional needs.

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<sup>20</sup> Prachatai, *Supporters rally to visit jailed anti-junta activists*, 3 July 2015

<sup>21</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 61

<sup>22</sup> Rule 12 of the Bangkok Rules states, “Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non- custodial settings.”

<sup>23</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 51

It also disadvantages women who may not have the financial means to afford to buy their own meals. Inadequate nutrition can have an extremely detrimental effect on health and is also inconsistent with Rule 48 of the Bangkok Rules, which obliges prison administrations to provide pregnant or breastfeeding women with “advice on their health and diet under a program to be drawn up and monitored by a qualified health practitioner” and “adequate and timely food, a healthy environment and regular exercise opportunities for pregnant women, babies, children, and breastfeeding mothers.”

### **Women prisoners lack adequate sanitation facilities**

In terms of sanitation, female inmates do not have an adequate supply of water for personal hygiene due to overcrowding in the showering area, which consists of a pipe with holes at the CWCI, under which prisoners can wash in an open space. In addition, the strict prison timetable means that there is not enough time for prisoners to wash.<sup>24</sup> The toilets inside the dormitories lack privacy and are too few in number, frequently resulting in long queues, particularly in the mornings. Female prisoners are not provided with a sufficient number of sanitary pads for proper hygiene. One former prisoner from the CWCI said that prisoners were only given four packets of sanitary pads, which were of poor quality, every six months. The insufficient number and poor quality of sanitary pads distributed to women means that most of the prisoners had to buy sanitary products from the prison shop at their own expense.

The Bangkok Rules state that the accommodation of women prisoners shall have material required to meet specific hygiene needs, including sanitary pads, provided free of charge.<sup>25</sup>

### **Women are disproportionately jailed for drug-related offenses and affected by laws that carry the death penalty**

Women in prison in Thailand are overwhelmingly poor and generally commit crimes for economic reasons.<sup>26</sup> As of June 2017, 31,986 women – or 81% of the female prison population – were incarcerated for drug-related offenses, higher than the 70% of the male prison population incarcerated for drug-related offenses.<sup>27</sup> The criminalization of drug-related crimes is discriminatory and disproportionately impacts women, particularly poor women.

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<sup>24</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 58

<sup>25</sup> Rule 5 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders states, “The accommodation of women prisoners shall have facilities and materials required to meet women’s special hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.”

<sup>26</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 132, 134

<sup>27</sup> Department of Corrections, *Statistics of incarcerated persons nationwide for offenses under the Narcotics Act*, 1 June 2017, [http://www.correct.go.th/stat102/display/result\\_pdf.php?date=2017-06-01](http://www.correct.go.th/stat102/display/result_pdf.php?date=2017-06-01)

Because a large number of women are convicted of drug-related offenses, many receive death sentences under Articles 65 and 66 of the 1979 Narcotics Act, which prescribes the death penalty as punishment for the distribution or possession of “dangerous narcotics such as heroin.”<sup>28</sup> The imposition of the death penalty for drug-related crimes disproportionately affects women. Among prisoners under death sentence, 67 out of 77, a staggering 87%, had been found guilty of drug-related offenses, as of May 2017.<sup>29</sup>

The imposition of the death penalty on women for drug-related offenses is in breach Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which states that the death penalty may only be legally applied for the “most serious crimes.” This has been interpreted by a wide range of international human rights bodies as limiting capital punishment to offenses “with lethal or other extremely grave consequences,”<sup>30</sup> and does not extend to drug-related offenses. In its July 2005 concluding observations on Thailand, the UN Human Rights Committee (CCPR) noted with concern that the death penalty was applied to drug trafficking, beyond the scope of the ICCPR.<sup>31</sup> In its March 2017 concluding observations, the CCPR reiterated its concern that domestic law punished with the death penalty crimes relating to drugs, which do not meet the threshold of the “most serious crimes” within the meaning of Article 6(2) of the ICCPR.<sup>32</sup>

### **Punishment practices and labor conditions could amount to torture and ill-treatment**

General Recommendation No. 19 on violence against women addresses “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” General Recommendation No. 19 extends gender-based violence, which impairs or nullifies the enjoyment of human rights and fundamental freedoms, to: 1) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; 2) the right to liberty and security of person; 3) the right to the highest standard attainable of physical and mental health; 4) the right to just and favorable conditions of work.

Punishment practices at the CWCI constitute violence against women under General Recommendation No. 19, contravene international standards, and in some cases could amount to torture and ill-treatment. Former prisoners from the CWCI reported that types of punishment included having one’s feet chained until a guard deemed that the prisoner had calmed down – usually handed out for fighting with another

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<sup>28</sup> Narcotics Act, B.E. 2522 (1979)

<sup>29</sup> Department of Corrections, *Statistics of prisoners under death sentence May 2017*, <http://www.correct.go.th/stathomepage/ประชากรชีวิตพล.60.pdf>

<sup>30</sup> Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by Economic and Social Council resolution 1984/50 of 25 May 1984, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

<sup>31</sup> UN Human Rights Committee, *Concluding observations of the Human Rights Committee, Thailand*, 8 July 2005, UN Doc. CCPR/CO/84/THA, Para 14

<sup>32</sup> UN Human Rights Committee, *Concluding observations on the second periodic report of Thailand*, 25 April 2017, UN Doc. CCPR/C/THA/CO/2, Para. 17

prisoner. Such a punishment could range from three days to one week, or even to one month. Another type of punishment could be corner segregation – handed out for fighting with another prisoner. The length of time for this type of punishment could range from one to three months.

Invasive search procedures are conducted on women prisoners upon admission to prison. Invasive body searches are also conducted whenever a prisoner leaves and returns to prison (from court or a hospital).<sup>33</sup> Women prisoners have been forced to undergo invasive pelvic examinations, despite the fact that they were not suspects in drug-related crimes. Labor activist Ms. Jittra Kotchadej and student activist Ms. Kornkanok Khumta both reported being forced to remove all of their clothes in the presence of several prison staff and undergo a pelvic examination while they were detained at the CWCI in June 2014 and April 2016, respectively. Prison officials asked Ms. Kornkanok to undergo the exam despite the fact that she had already been granted bail by the court the same day.<sup>34</sup>

In another case, activist Ms. Theerawan Charoensuk, who was briefly detained in Chiang Mai in March 2016, reported being forced to repeatedly sit and stand, while naked, in front of two prison officers to prove that she had not hidden any objects, despite the fact that she had informed the officers that she had already been granted bail.<sup>35</sup>

These invasive search procedures are in violation of Rule 20 of the Bangkok Rules, which urges the use of alternative methods for routine screenings of women prisoners, in recognition of the fact that “invasive search procedures are serious assaults on a person’s privacy and dignity, and that they also carry some risk of physical and psychological injury.”<sup>36</sup> Routine invasive search procedures also fail to protect women prisoners’ dignity in accordance with Rule 19 of the Bangkok Rules, and may amount to inhuman or degrading treatment if they are conducted in a way that is excessive, humiliating, or that creates a feeling of harassment or inferiority.<sup>37</sup> The psychological impact of strip-searches on women is disproportionately greater than on men, as women detainees, as a group, present a higher incidence of previous sexual assault than their male counterparts.<sup>38</sup>

Working conditions at the CWCI are harsh and the remuneration is insufficient. Prisoners work seven days a week (from 8am to 4pm) and receive a stipend for their work. The stipend given to prisoners varies depending on the type of work they do.

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<sup>33</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, November 2014; page 72

<sup>34</sup> Prachatai, *Political dissidents recall ordeal in women’s prison*, 4 May 2016

<sup>35</sup> Prachatai, *Political dissidents recall ordeal in women’s prison*, 4 May 2016

<sup>36</sup> Rule 20 of the Bangkok Rules, “This Rule takes account the World Medical Association (WMA) Statement on Body Searches, where WMA urges all governments and public officials with responsibility for public safety to recognize that invasive search procedures are serious assaults on a person’s privacy and dignity, and that they also carry some risk of physical and psychological injury. Therefore this rule recommends that to the extent feasible, without compromising public security, alternative methods should be used for routine screening of women prisoners.”

<sup>37</sup> Penal Reform International, *Body searches, Detention Monitoring Tool*, 2013; page 4

<sup>38</sup> Penal Reform International, *Discrimination of women in criminal justice systems*, January 2012; page 7



However, most of the work at the CWCI is laborious work, such as sewing, packaging, and folding paper. The prison officers specify how many items are to be produced each day. Prisoners who are unable to reach the daily quotas are punished. Punishment could involve the prison officer not giving the prisoner money for her work or keeping her at the factory until she has completed the task.

**Recommendations:**

1. Urge the Thai government to increase the use of alternatives to prison sentences, by developing non-custodial measures within the legal system in line with the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), including measures aimed at: the avoidance of pre-trial or remand detention; alternatives to prison terms during sentencing; and post-sentencing alternatives that assist prisoners' reintegration into society.
2. Urge the Thai government to address and resolve the issue of overcrowding in prisons by finding sustainable and effective measures to reduce the prison population. Such measures could include: rehabilitation for drug-related offenses; the imposition of fines for first-time offenders, when there is discretion in imposing fines and/or prison time; the granting of bail to people awaiting trial for certain categories of crimes; the use of home detention coupled with electronic monitoring devices to prevent flight; and repatriation of foreign prisoners.
3. Urge the Thai government to ensure that when pre-trial or remand detention is used, it is for as short a period as possible, and that bail bonds are not unduly onerous and proportionate to the offense.
4. Urge the Thai government to ensure that where prison sentences are required, the penalties are proportionate to the crime committed, such as crimes related to drug production or drug consumption.
5. Urge the Thai government to explore the possibility of introducing the use of early release procedures, such as parole and conditional release.
6. Urge the Thai government to improve living conditions in prisons to conform with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), particularly with regard to the amount of space allocated per prisoner, sanitation facilities, and the availability of adequate healthcare.
7. Urge the Thai government to improve living conditions for women prisoners in line with the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), by acknowledging that specific needs of women in prison and ensuring they have adequate medical care and facilities, especially in the case of pregnant women and women with young children.
8. Urge the Thai government to provide adequate healthcare, including reproductive health, and health-related services, to female detainees within the framework of the CEDAW's General Recommendation No. 24.
9. Urge the Thai government to reinforce the training of law enforcement officials and prison officers on full respect for human rights, including the eradication of punishment practices and labor conditions that could amount to torture and ill-treatment.

10. Urge the Thai government to arrange a country visit for the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Special Rapporteur on violence against women, its causes and consequences.