

An unofficial version revised based on the hearings of the Senate on 9 August 2022 and the passage at the parliamentary session on 24 Aug 2022 after publication in the royal decree on 24 Oct 2022, the ACT will be official effective with in 120 days

(Internal use only, not for reference)

Draft

Prevention and Suppression of Torture and Enforced Disappearance Act

B.E.....

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Whereas it is expedient to have a law for the prevention and suppression of torture and enforced disappearance;

This Act contains some provisions which may restrict rights and liberties of a person that can be made possible invoking Section 26 coupled with Section 32 of the Constitution of the Kingdom of Thailand which provide for such restriction according to the provisions of the laws.

The reason and necessity to restrict people’s rights and liberties pursuant to this Act are to ensure protection of every person from an act of torture and enforced disappearance committed by public officials and to enhance the efficacy of law enforcement for the prevention, suppression and remediation of persons affected by such act. The promulgation of this Act complies with the terms prescribed in Section 26 of the Constitution of the Kingdom of Thailand.

Section 1 This Act is called the “Prevention and Suppression of Torture and Enforced Disappearance Act B.E.....”

Section 2 This Act shall come into force upon the expiration of the 120-day period from the date of its publication in the Royal Gazette.

Section 3 In this Act;

“Victim” means a person who suffers damage to life, body, or mind as a result of an act of torture or a cruel, inhuman, or degrading treatment or an enforced disappearance including the victim’s spouses, ascendants, descendants, life partners without marriage registration, custodians and those under custodianship of the person forcefully disappeared

“Public official” means a person who exercises or is bestowed with state power or is appointed, receives permission, is supported, or is recognized, directly or indirectly by the holders of state power to carry out their legal duties.

“Committee” means the Committee on Prevention and Suppression of Torture and Enforced Disappearance.

“Detention” means an arrest, deprivation of liberty, confinement, isolation, incarceration, or any other similar acts to deprive a person of liberties in their body.

Section 4 The Minister of Justice have the charge and control of the execution of this Act.

Chapter 1

General Provisions

Section 5 A person who is a public official and has intentionally inflicted severe pain or suffering, physical or mental, for one of the following purposes:

- (1) To obtain information or a confession from affected person or a third person;
- (2) To punish the affected person for the act that such person or the third party has committed or is suspected of having committed;
- (3) To threaten or coerce affected person or a third person; or
- (4) To discriminate based on any grounds,

Such person commits an act of torture.

Section 6 A person who is a public official who commits any cruel, inhuman, or degrading treatment or punishment, which, as a result, has dehumanized or violated fundamental human dignity or inflicted physical or mental pains to another person, which is not an offence under Section 5, the person shall be held accountable for committing a cruel, inhuman, or degrading treatment.

The act under the first paragraph shall exclude an injury normally caused by the implementation of a lawful punishment.

Section 7 A person who is a public official and has detained or abducted a person, and there a public official denied committing such act or conceal the fate or whereabouts of such person, resulting in the exclusion of such person from the legal protection, such person shall be held accountable for committing enforced disappearance.

The offence under the first paragraph shall be treated as a continuous offence until the fate of the person can be established.

Section 8 Whoever commits the offences of torture under Section 5, cruel, inhuman, or degrading treatment under Section 6, or enforced disappearance under Section 7 outside the Kingdom shall be punished in the Kingdom as provided herein. In this regard, the provisions of Section 10 of the Criminal Code shall apply *mutatis mutandis*.

Section 9 The commission of an offence of torture under Section 5 and enforced disappearance under Section 7 shall not be regarded as a political offence under the law on extradition and the law on international cooperation in criminal matters.

Section 10 In a case on an offence of enforced disappearance under Section 6, an investigation shall be pursued until a disappeared person can be found or until plausible evidence can be acquired to ascertain the death of such person and to shed light on the details of the commission of the offence and the perpetrator.

Section 11 In a case of torture under Section 5 or cruel, inhuman, or degrading treatment under Section 6 where a victim have no capacity to report the case or to complain by themselves or in the case of enforced disappearance under Section 7, the spouses, ascendants, descendants, life partners without marriage registration, custodians and those under custodianship of the person subject to torture or a cruel, inhuman, or degrading treatment or enforced disappearance under this Act, depending on the nature of each case, shall be considered an injured party pursuant to the Criminal Procedure Code.

Section 12 No special circumstances including war or an imminent threat of war or domestic political instability or a state of emergency may be invoked as a justification of any offence under this Act.

Section 13 No government organizations or public officials shall expel, deport, or extradite a person to another country where there are substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance.

Chapter 2

Committee on the Prevention and Suppression of Torture and Enforced Disappearance

Section 14 There shall be a committee called the “Committee on the Prevention and Suppression of Torture and Enforced Disappearance”, consisting of:

- (1) The Minister of Justice as Chairperson;
- (2) The Permanent Secretary for Justice as Vice Chairperson;
- (3) Ex officio members, including the Permanent Secretary of the Ministry of Defense, Permanent Secretary of the Ministry of Foreign Affairs, Permanent Secretary of the Ministry of Interior, Attorney General, Commissioner-General of the Royal Thai Police, Director-General of Department of Special Investigation, President of the Lawyers Council of Thailand, and President of the National Press Council of Thailand
- (4) Six members appointed by the cabinet-as follows:
 - (a) Two experts with outstanding experience in human rights, one in the field of law, and one in forensic science
 - (b) One forensic medicine doctor and one psychiatrist

The Director-General of the Rights and Liberties Protection Department shall be a member and secretary and appoints not more than two civil servants of the Rights and Liberties Protection Department to serve as assistant secretaries.

Section 15 A committee members under Section 14 must possess the qualifications and must not be under the prohibitions, as follows:

- (1) having Thai nationality;
- (2) not being bankrupt or having been a dishonest bankrupt;
- (3) not being an incompetent or quasi-incompetent person;
- (4) not being a person holding a political position, a member of a local council, a local administrator; or a director or person holding an executive position in a political party;

(5) not being a person who has been suspended from government service or has been previously discharged from government service;

(6) never having been fired, dismissed or discharged from government service; government agencies or state enterprises because of disciplinary violations;

(7) never having been imprisoned by a final judgment to imprisonment; including a final sentence of imprisonment but a suspension of punishment or a suspended sentence, except for an offence committed through negligence, a petty offence or an offence of defamation;

(8) never having been sentenced or ordered by a court to have his or her assets vested in the state as a result of unusual wealth or asset growth.

Section 16 A committee member under Section 14 (4) shall hold office for a term of four years.

When the term specified in paragraph one expires and the committee has not yet appointed a new member, the member who vacates office continues to perform duties until the newly appointed member takes office.

A member who vacates office at the end of his or her term may be reappointed but may not serve for more than two consecutive terms.

Section 17 In addition to being removal by the expiry of the term, a member under Section 14 (4) can be removed from office upon;

(1) Death

(2) Resignation

(3) Being dismissed by the cabinet on the ground of gross negligence or dishonesty, or misbehavior or a lack of competence

(4) Being disqualified or being under any of the prohibitions under Section 14

Section 18 If an office of the members under Section 14 (4) is vacant before the expiration of term, a new member shall be appointed within sixty days, unless the remaining tenure of the member is less than ninety days. A member who has been appointed to fill the vacancy shall retain his/her office only for the remaining tenure of his/her predecessor.

In the case where a member under section 14 (4) vacates office before the expiration of the term, the committee shall consist of all remaining members until the appointment of the committee under paragraph one.

Section 20 The Committee shall have the powers and duties as follows:

- (1) To propose to the Cabinet or public agencies the opinions on amendment of laws, rules, regulations, or other necessary measures under this Act
- (2) To formulate policies, plans, and measures to prevent and suppress torture, cruel, inhuman, or degrading treatment or punishment, and enforced disappearance
- (3) To formulate comprehensive policies and measures on physical and mental rehabilitation to ensure the best possible restoration of an affected person
- (4) To set forth rules and procedures for helping and remedying an affected person, both financially and mentally, to include long-term medical rehabilitation with approval of the Ministry of Finance
- (5) To establish measures to prevent the recommission of the offence and the concealment of detention of a person and measures for the protection of the person who reports information about the office under this Act.
- (6) To inquire the information and the facts pertaining to the act of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance under this Act and to receive and carry out an investigation on the complaint received.
- (7) To review reports on the state of an act of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance and to submit to the cabinet an annual report which shall be further submitted to the House of Representatives and the Senate and to the public later
- (8) To appoint advisors, subcommittees, or officials to carry out works assigned by the Committee
- (9) To formulate regulations or announcements on expenses incurred in performance the duties and other expenses with approval of the Ministry of Finance
- (10) To lay down other regulations for the implementation of this Act

Section 20 At a meeting of the Committee, a quorum must consist of at least one-half of the total number of members.

If the Chairperson is absent or unable to perform their duties at a meeting of the Committee, the Vice-Chairperson shall preside over the meeting. If the Chairperson and the Vice-Chairperson are absent or unable to perform their duties, the meeting shall then elect one of the members present at the meeting to preside over the meeting.

The decision of the meeting shall be made by a majority of votes. A member shall have one vote. In case of a tie, the Chairperson of the meeting shall have a casting vote.

Section 21 The Rights and Liberties Protection Department shall serve as the Office of Secretariat of the Committee and have the following powers and duties:

- (1) To work and collaborate with government organizations, public agencies and related private sectors in searching for and helping an affected person
- (2) To encourage government organizations, public agencies, and relevant private sectors to participate in the prevention and suppression of torture, cruel, inhuman, or degrading treatment or punishment, and enforced disappearance
- (3) To conduct research studies and disseminate knowledge on torture, cruel, inhuman, or degrading treatment or punishment, and enforced disappearance and to educate and train the general public and public officials
- (4) To document, compile statistics and prepare a report of the state of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance and an annual report coupled with the recommendations to address the commission of the office under this Act to propose to the Committee
- (5) To carry out other duties as assigned by the Committee or subcommittees

Chapter 3

Prevention of Torture and Enforced Disappearance

Section 22 When conducting detention, the responsible state official is required to continuously record audio and video throughout the arrest and detention process, until the person is delivered to the inquiry official or released. If an unforeseen situation prevents such recording, the incident shall be entered into the detention record as evidence.

The responsible state official shall immediately notify the public prosecutor and the chief district officer in the locality where the detention occurs of the detention specified in paragraph one. The notification shall be given to the public prosecutor and the director of the Department of Provincial Administration's Bureau of Investigation and Legal Affairs in Bangkok. If the informed authority determines that reasonable grounds exist to suspect torture, cruel, inhuman, or degrading treatment, or enforced disappearance, the notified authority shall proceed under section 27.

Section 23 While holding a person in detention, an responsible public official shall record, at a minimum, the following information of the detainee:

- (1) Identification data of the detainee including their first name, last name or unique physical appearance
- (2) Date, time and location of detention and information on the public official in charge of detaining. In case of change of such location, the destination where the detainee is received and the public official responsible for such change of the place of detention shall be identified
- (3) Detention order and the reason for issuance of such order;
- (4) Public official issuing the detention order;
- (5) The date, time and place of release of the detainee, person responsible for the release, and relatives or persons receiving the detainee or witnesses of the release;
- (6) Physical and mental conditions of the detainee, both before detention and upon release. In case of death in custody of the detainee, the causes of death and the place where the body is held must be identified
- (7) Other information determined by the Committee to prevent torture, other cruel, inhuman, or degrading treatment or punishment, and enforced disappearance.

Section 24 For the benefit of the detainee, a stakeholder who should have lawful access to information about the detainee, including their relative, or another person acting in the detainee's interest or attorney, or the Committee, a subcommittee or an official assigned by the Committee shall have the right to request for information about the person held in custody under Section 24 from the responsible public official.

If the public official refuses to disclose information about the detainee, the person who seeks to have the information has the right to file an application with the court with jurisdiction, the Criminal Court, the Provincial Court with jurisdiction of the area where it is believed an act of torture or the cruel, inhuman, or degrading treatment has taken place or where the person was last seen as the case may be in order that the court may order the disclosure of such information.

The court has the power to issue an order requiring the public official under the first paragraph to disclose information of the detainee prescribed in Section 24 to relative or any other person acting in the detainee's interest. If the court issues a non-disclosure order, the person may appeal with the Court of Appeal whose order shall be final.

Section 25 A responsible official or the court may not disclose information about the detainee under Section 23 if the person is already under the protection of the law, where

their [the deprivation of liberty] is subject to judicial control, and if such disclosure would adversely affect the privacy or safety of the person or impede the criminal investigation.

Section 26 When there is a claim that a person is subjected to an act of torture, other cruel, inhuman, or degrading treatment, or enforced disappearance, the following persons shall have the right to file a motion with a local criminal court or court of justice having the power to try criminal cases to issue an order to end such circumstance immediately:

- (1) An affected person or a person acting in the detainee's interest under Section 22
- (2) A public prosecutor
- (3) The Director of the Department of Provincial Administration's Investigation and Legal Affairs Bureau, or District Chief Officer under Section 23 or an administrative official assigned by the Director of the Investigation and Legal Affairs Bureau, the Department of Provincial Administration, or the District Chief Officer;
- (4) An inquiry official or a special case inquiry official;
- (5) The Committee or a subcommittee or official assigned by the Committee
- (6) Any person acting in the detainee's interest

Upon receiving the complaint under the first paragraph, the court may immediately conduct an ex parte hearing. The court shall have power to summon a public official or any person to give evidence or to send them documents or other material to aid the inquiry or order a public official to bring the detainee to the court.

Section 27 For the purpose of halting the act as referred to under section 26 and determining the initial reparation of the damage, the court may order the following:

- (1) End the act of torture or cruel, inhuman, or degrading treatment
- (2) Change the place of detention
- (3) Allow the detainee to meet their relatives, lawyer, or other persons of their choice in person
- (4) Provide medical treatment and assessment by forensic doctor or a psychiatrist with certification from the Medical Council of Thailand and prepare medical examination records as well as provide physical and mental rehabilitation
- (5) Disclose documents, records or other information

(6) Determine other appropriate measures to end an act of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance or to provide initial remedy to the affected person

If the court finds no necessity to have the person further held in custody, the court may order their release immediately.

The court's order under the first paragraph is final.

Section 28 In the event of the death of a detainee, the responsible official shall immediately inform the Committee to ensure their prompt participation in the monitoring of information and facts pertaining to any act of torture in custody.

Section 29 Upon witnessing or learning about an act of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance, the person is obliged to promptly report the case to an administrative official, a public prosecutor, an inquiry official, the Committee or the Subcommittee assigned.

The person who made the report under the first paragraph, if acting in good faith, shall not be held accountable for either civil or criminal offence, or disciplinary action, even though it eventually turns out that such commission of the offence did not take place as reported.

Chapter 4

Prosecution

Section 30 The statute of limitation of an offence under Section 7 shall not start until the fate of a disappeared person can be established.

Section 31 Offences under this Act shall be special cases under the law on investigation of special cases in Bangkok and other provinces. An inquiry official according to the Criminal Procedure Code asides, a senior administrative official, administrative officials from the Deputy District Chief or an equivalent and upward under the Department of Provincial Administration, the Ministry of Interior, special case investigator, and public prosecutor shall perform the duties of inquiry officials and shall have power to investigate and have responsibilities pursuant to the Criminal Procedure Code and to pursue prosecution of an offence under this Act and other related offences.

When a special case investigator embarks on investigation of a case concerning the offence under this Act, the case shall be treated as a special case under the law on special case investigation.

If a public official under the Department of Special Investigation stands accused of an offence under this Act, the inquiry official under the Criminal Procedure Code shall have power to carry out the investigation. When a case is under investigation of other agencies which are not the public prosecutor, the in-charge inquiry official shall inform the public prosecutor of the detail of the case in order for them to help monitor and supervise the investigation.

If a public official under the Department of Special Investigation and an inquiry official under the Criminal Procedure Code stand accused of an offence under this Act, the Attorney General shall take charge as inquiry official of the case or may designate such duties to a public prosecutor who shall have the duties and power in the investigation similar to an inquiry official under the Criminal Procedure Code and other duties and power prescribed by law as duties and power of a public prosecutor. And when the Attorney General appoints a public prosecutor as an in-charge inquiry official, and the in-charge inquiry official has completed their investigation, they shall prepare an opinion pursuant to Section 140, Section 141 or 142 of the Criminal Procedure Code in order to submit to the Attorney General an investigation report. When it is unclear as to which inquiry official of any precinct or any agency is the in-charge inquiry official, the Attorney General or a person acting on their behalf shall have power to arbitrate.

Provision in Chapter 3 "Investigation of Special Cases according to the law of special case investigation shall apply to the investigation under paragraph two and three, mutatis mundi. If an offender under this Act is a public official pursuant to the Organic Act on Counter Corruption and are subject to the duties and power of the National Anti-Corruption Commission (NACC), the inquiry official shall proceed with the legal proceeding while keeping the National Anti-Corruption Commission (NACC) aware of this.

Section 32 An agency having the power to investigate an offence under this Act shall notify the affected person of the progress of such offence in a continuous manner. The Committee, subcommittee or official assigned by the Committee to monitor the progress of the case and implement proper measures for protection of the affected person's wellbeing and safety, to compensate for and remedy physical and mental damages, to provide legal advice, and to provide support for the prosecution with participation of the affected person.

Section 33 To ensure assistance to the affected person, an inquiry official or a public prosecutor shall promptly inform the affected person of the chance to demand

compensation for the offence committed under this Act and the right to receive legal assistance.

If the affected person is entitled to and wants to request for such compensation under the first paragraph, the public prosecutor shall also request for compensation on behalf of the affected person.

Section 34 The Criminal Court for Corruption and Misconduct Cases shall have jurisdiction over cases related to an offence under this Act including cases whereby the person committing an offence under this Act was a person under the jurisdiction of the Military Court while committing the offence.

Chapter 5

Penalties

Section 35 Whoever commits an offence of torture under Section 5 shall be liable to imprisonment from five to fifteen years and a fine from 100,000 baht to 300,000 baht.

If the offence under the first paragraph has resulted in the victim's serious injuries or trauma, the offender shall be liable to imprisonment for a term of ten to twenty-five years and a fine of 200,000 to 500,000 baht.

If the offence under the first paragraph has resulted in the victim's death, the offender shall be liable to imprisonment for a term of fifteen to thirty years and a fine of 300,000 to 1,000,000 baht.

Section 36 Whoever commits an offence of cruel, inhuman, or degrading treatment under Section 6 shall be liable to imprisonment for a term of not exceeding three years and a fine not exceeding Sixty Thousand Baht, or both.

Section 37 Whoever commits an offence of enforced disappearance under Section 7 shall be liable to imprisonment from five to fifteen years and a fine from One Hundred Thousand to Three Hundred Thousand Baht.

If the offence under the first paragraph has resulted in the victim's serious injuries or trauma, the offender shall be liable to imprisonment for a term of ten to twenty-five years and a fine of 200,000 to 500,000 baht.

If the offence under the first paragraph has resulted in the victim's death, the offender shall be liable to imprisonment for a term of fifteen to thirty years and a fine of 300,000 to 1,000,000 baht.

Section 38 If the offence under Section 38 or Section 39 is committed against a person who is yet eighteen years of age, a pregnant woman, a person with physical or mental disabilities, or a person who can not help themselves due to their age or illness, the offender shall be liable to an imprisonment one half more severe than what is prescribed in the concerned Section.

If the offence under Section 29 is committed against a person under the first paragraph, the offender shall be liable to an imprisonment one half more severe than what is prescribed in the concerned Section.

Section 39 Whoever conspires to commit an offence under Section 35, Section 36, Section 37, or Section 38 shall be liable to a punishment at one third of the prescribed punishment.

If the offence has been committed according to the conspiracy under the first paragraph, the co-conspirator shall be liable to the punishment prescribed for the offence.

If the offence has proceeded to the action level, although due to an intervention of one of the co-conspirators, the act could not be completed or even though completed, the desirable outcome could not be achieved, the court may punish the co-conspirator who made such intervention at any lesser extent than what is prescribed by law.

Section 40 Whoever aids and abets the commission of the offence under Section 35, Section 36, Section 37 or Section 38 shall be liable to the punishment prescribed for the offence.

Section 41 If a person guilty of committing an offence under Section 37 Section 38 paragraph two, Section 39 or Section 40 helps to identify the disappeared person prior to the delivery of the judgment by the trial court, and if the person did not sustain severe injuries or was not under any condition which could endanger their life, or if the person offer key information useful for the prosecution, the court may punish the offender less than what is prescribed by law, but not less than a half of such punishment.

Section 42 A superior who knows that a person under their command is about to or has committed an offence under Section 35, Section 36, Section 37, or Section 38, but fails to take necessary or reasonable measures within their power to prevent or preempt such offence, or not undertake or forward the case for investigation and prosecution in accordance with law, shall be liable to half of the penalty as prescribed for such offence.

The supervisor official under the first paragraph shall be responsible for and have the authority to control activities involving the act of torture or the cruel, inhuman, or degrading treatment or the enforced disappearance.

Transitional Provision

Section 43 Provision in Section 10 shall apply mutatis mundi to an act of enforced disappearance prior to when this Act comes into force.

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