



Secretary
Working Group on Arbitrary Detention

22 July 2022

Response to the observations of Thailand in the matter of Mr. Zayn Al Abidin Muhammad Husayn (Abu Zubaydah)

Thank you for your letter dated 7 July 2022, transmitting the observations from the government of Thailand in relation to the Petition and Urgent Appeal concerning Abu Zubaydah, filed on 28 April 2022.

It is deeply regrettable that Thailand has responded with only vague assertions that their relevant agencies 'do not have information or records regarding the existence of a CIA secret detention centre, nor the detention, torture, or transfer of the applicant to and from Thailand'. It is hardly a defence to allegations of secret detention that there were no records of detention, where the failure to ensure that detention is recorded is itself a violation of the right to liberty. It is also disingenuous to suggest that the state 'stand ready to investigate further and to verify' in circumstances of the abject failure to do so for the twenty years since our client was brutally tortured on Thai soil and many years since evidence of the role of the Thai government was in the public domain.

The government's cursory denial is contradicted by overwhelming evidence that a CIA-run black site existed in Thailand, with Thai government knowledge and cooperation, wherein Abu Zubaydah was subjected to extreme arbitrary detention and torture. In brief, the range of authoritative sources on Thai responsibility include the following:

- The US Senate Intelligence Committee report ("SSCI Report"), following unprecedented access to internal documentation, provides ample detail on the facility code-named 'Detention Site Green' where the most "aggressive phase" of interrogation and torture took place.¹ It confirms that officials were aware of the site, approved its creation (p. 22 – 23), and after 'continued lobbying' by the CIA Station Chief and 'negotiations,' 'allow[ed]' the site to remain operational (p. 24). The Report suggests government officers 'had knowledge of the presence of Abu Zubaydah' at Detention Site Green (p. 24). The SSCI Report documents extreme conditions of confinement, isolation, and 'enhanced interrogation techniques' used on an 'almost 24-hour-per-day basis' (p. 40). The Report provides direct evidence, from CIA memos, cables and FBI interrogators present at the time, that during his time in Thailand Abu Zubaydah was subject to the most egregious arbitrary detention and torture. This included being held for '*...a total of more than 11 days in a coffin-sized box, and 29 hours in a box which measures just 75cm x 75cm x 55 cm,*' intense waterboarding, detention in a windowless cell constantly illuminated by halogen lamps, sleep deprivation, forced nudity and shackling in extreme stress positions.²
- The European Court of Human Rights twice found it established 'beyond reasonable doubt' that the applicant was detained in Thailand from an unidentified date after his capture on 28 March 2002 to 4 December 2002.³ Experts heard by the Court during the fact-finding

¹ Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Programme'

² SSCI report esp. p. 24-25.

³ *Husayn (Abu Zubaydah) v. Poland* (Application No 7511/13) Judgment of 24 July 2014, §404 and *Abu Zubaydah v. Lithuania* (Application No 46454/11) Judgment of 31 May 2018, §166 and §258

proceedings, including Senator Marty and Mr. J.G.S., ‘conclusively confirmed’ that Abu Zubaydah was transferred out of Thailand on 4 December 2002 (*Zubaydah v. Poland*, §404). Contracts and flight data including from EuroControl indicated his transfer from Bangkok, Thailand, to Poland via Dubai on that date (§93 – 94). The European Court judgments also detail the extreme arbitrary detention and torture while in Thailand, where ‘he was interrogated by CIA agents and where a variety of EITs were tested on him’ (*Zubaydah v. Poland*, §86). It cites many other sources, including CIA documentary evidence and ‘cables between CIA officials at the Thai site and headquarters ... which demonstrates that the applicant was arbitrarily detained and tortured in Thailand.’ It references no less than 90 video tapes of his torture in Thailand, though these videos were destroyed by CIA officials (§309). The experts appearing before the ECtHR described the ‘videotaping of interrogations’ of Abu Zubaydah in Thailand as an ‘established judicial fact’ (§309) (and the same facts were confirmed by the SSCI report (p. 40 – 45)).

- A 2010 UN ‘Joint Study on Global Practices in relation to Secret Detention in the context of countering terrorism’ (UN Doc A/HRC/13/42), a report of multiple special rapporteurs and working groups, provides early confirmation that the existence of a CIA black site in Thailand was ‘credible’ (§111). Likewise the Council of Europe 2007 report stated that ‘Thailand hosted the first CIA “black site”, and that Abu Zubaydah was held there after his capture in 2002’.⁴
- Similar findings has been confirmed by multiple press reports, and in depth studies by journalists and NGOs.⁵

The Thai role in the ERP was crucial, not least as the first ‘black site’ and one where many of the most notorious violations occurred. Yet as the government’s response confirms, there has been no investigation, sanction, truth or reparation from Thailand. Instead there is a stark policy of denial reflected in the states response. This has serious implications for human rights in Thailand today. As stated by Human Rights Watch, “the legacy of the CIA secret prison is a daily reality in Thailand today”, where CIA techniques are replicated and treated as ‘effective tools’ in countering terrorism.⁶

The Thai government refers to current legislative developments in Thailand in relation to the prevention of torture and enforced disappearance. The state’s obligation goes beyond enshrining the rights to the protection against arbitrary detention, torture, and enforced disappearance in law, to ensuring that these rights are given real effect in practice. The stark failure of the Thai state to do so, as epitomised by its posture in this case, should be subject to robust rebuke. It should be urged to address its notorious role in the arbitrary detention of our client and to provide, belatedly, adequate reparation.

Yours sincerely,

Helen Duffy

for Abu Zubaydah

⁴ ‘Secret Detention and illegal transfers of detainees involving Council of Europe member states: second report’ (11 June 2007) Doc. 11302, §70

⁵ Among many examples, see BBC News reports ‘CIA director Gina Haspel’s Thailand torture ties’, 4 May 2018. Crofton Black, Sam Raphael, and Ruth Blakeley (‘CIA Torture Unredacted, An investigation into the CIA Rendition Programme’, July 2019), provides detail our clients ‘interrogation during April and May 2002, and then placed in isolation’ from 18 June to 1 August (CIA Torture Unredacted, p. 80-82) and sets out the cables related to “Abu Zubaydah’s torture in the Thai black site”.

⁶ Sunai Phasuk, Human Rights Watch https://www.supremecourt.gov/opinions/URLs_Cited/OT2021/20-827/20-827-2.pdf