



THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

... a partnership for human rights in our region

ABN 98 099 972 997

QUESTIONNAIRE

Advisory Council of Jurists - Terms of Reference on Torture Background Paper on Torture

Please complete the questionnaire and send all responses by e-mail to:

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Responses to this questionnaire will be used in the Background Paper on Torture which will be distributed to the Advisory Council of Jurists.

We would be grateful to receive your response by or before **10 December 2004**. Thank you in advance for your time and contribution.

Information about the Advisory Council of Jurists and the terms of reference on torture is available at <http://www.asiapacificforum.net/jurists/>

Activities of National Human Rights Institutions:

1. Has your Commission received complaints from individuals or groups claiming torture? If so, how many complaints and please describe some of the most important cases and the role of your Commission in resolving the complaints.

Yes. However, our filing system does not categorise cases of torture as such, but cases involved other issues such as impacts of the government's policy on drugs suppression, the administration of justice, etc. However, we could inform that we received over 10 cases of complaint involving the acts of torture within this year.

As for the role of the Commission in resolving the complaints, the Commission will collect information, ask for further information from all parties concerned, and visit the place if useful. If the acts of torture were found, we will inform the authorities concerned to take disciplinary measures and legal action against those who are responsible within given time. Besides, we suggested the authorities to provide human rights education/training for police officers.

2. Has your Commission conducted research on the issue of torture? If so, please provide the results of this research.

No.

3. Has your Commission undertaken awareness and education campaigns relating to torture? If so, please provide details of these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.

We do not provide education/awareness campaign specifically on torture. But when Commissioners went for their field investigation, they will hold small forum educating people/local communities on their basic rights and freedoms, which were guaranteed by the Constitution, including the prohibition of torture, brutal act, or punishment by a cruel or inhuman means. Besides, through the Sub-Commission on Human Rights Education, we encourage the police/military academies to provide human rights course/training for their cadets.

4. Has your Commission monitored the conditions in and visited centres of detention to assess the conditions in which detainees are kept and the treatment they receive? If so, please provide details of any findings.

Yes. The Commission occasionally visited detention places when it was reported that detainee(s) were dead in the custody. The findings depended on each place. For example, in certain cell of police station, the condition was rather grim and sanitary was not satisfactory. A number of places do not meet the minimum standards. The Commission has plan to regularly visit police stations this year.

The Commission also regularly visits prisons. The common problem we found is the overcrowding. This is due to limited space and budget the authorities receive annually. (Many of them were prosecuted on drugs-related charges.) We also found that personnel training is also needed. However, a number of positive changes have been noted during the year such as human rights awareness among high-level officials, improvement of prison conditions, and the effort to privatise prison administration as a means to provide better facilities and to cope with resource constraints.

The Commission also visited detention places of children and juveniles in many provinces. The general conditions in average meet minimum standards and the Commission co-operate with the authorities concerned for more positive changes. However, limited resources, lack of personnel training, occasional officers' misconducts at the operational level are still some issues of concern.

The Commission also co-operated with various organizations for the amendment of the existing law in order to allow maternal leave for pregnant inmates, and/or to provide them with appropriate facilities in detention places for female prisoners accompanied by young babies/children.

5. Has your Commission intervened in court proceedings on the issue of torture? If so, please provide details of the cases, the role of the Commission and the outcome of the cases. Please provide copies of any submissions and court decisions.

No. Section 22 of the National Human Rights Commission Act states "the Commission shall have the duties to examine and propose remedial measures under this Act for the commission or omission of acts which violate human rights and which is not a matter being litigated in the Court or that upon which the Court has already given final order or judgement."

6. Has your Commission addressed the issue of torture in its annual reports? If so, please provide a copy of the relevant sections.

Yes. In our report, we gave example cases which were resolved by the Commission and some of which were concerned with torture. In the report, the Commission also urged the Thai government to become party to the Convention against Torture.

7. If your government has ratified the International Covenant on Civil and Political Rights, Convention Against Torture and/or Convention on the Rights of the Child, has your Commission been approached by the government to contribute to the periodic reports to the relevant Committees, or has your Commission provided a shadow report to the relevant Committees? If so, please provide copies of the sections relevant to the issue of torture.

Thailand is party to the ICCPR and the CRC. Both reports were drafted before the establishment of the Thai Commission. Nevertheless, the Commission (through the Sub-Commission on Children, Youth and Family) has monitored the implementation to the CRC by inviting authorities concerned to give information on their activities, particularly concerning with the compliance with the CRC Committee's observations. (The ICCPR initial country report has not been examined by the Human Rights Committee yet.)

8. Does your Commission have regional offices and are these offices involved in torture issues? If so, in what way?

No.

9. Does your Commission work in collaboration with civil society including the private sector, government or UN agencies or multilateral donors such as the World Bank on the issue of torture? If so, in what way?

In our investigation process of complaints (including the alleged acts of torture), the Commission involved experts from academic institutions and civil society to permanently sit in every Sub-Commission of the Commission, which has investigation power. Besides, we also received contacts, information or cases concerning the alleged acts of torture from the UN special mechanisms and international organisations such as Amnesty International, the Association for the Prevention of Torture.

10. Has your Commission identified laws/policies/practices in your country that impact on torture?

Yes. In giving our decisions or recommendations concerning the acts of torture, the Commission always refer to Section 31 of the Constitution, which prohibits "a torture, brutal act, or punishment by a cruel or inhumane means."

11. Has your Commission proposed legislation relating to torture, or helped develop a national policy?

Under the National Human Rights Act, the Commission has a duty to propose to the Parliament and/or the Government policies and recommendations with regard to the revision of laws, rules or regulation to respect for human rights. The Commission keeps urging the authorities concerned to consider the accession to the Convention against Torture, and also suggested that the government should support the adoption of the Optional Protocol to the Convention.

Documentation

Please send the following documentation to the APF Secretariat by e-mail or by mail:

Constitutional provisions relating to:

- torture, including references to other ill-treatment and refoulement or extradition; and
Please see answer to question No. 10 above.
- relevance of international law in the domestic jurisdiction.

The Thai legal system is dualistic, which international law will not be automatically applied in the domestic jurisdiction. However, Section 200 (1) of the Constitution indicates one of the powers and duties of the National Human Rights Commission as "To examine and report the commission or omission of acts which violate human rights or which do not comply with obligation under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding."

Relevant legislation referring to:

- torture and other forms of ill-treatment;
- the treatment of individuals in all forms of detention; and
- legal and other safeguards aimed at the prevention of torture.

Please see answers to Question no. 1, 3, 4 below.

NGO Reports

- Reports by local, national or regional non-governmental organisations on torture within your country.

Please see an example of open letter from Amnesty International Secretary-General to the Thai Prime Minister at <http://web.amnesty.org/library/Index/ENGASA390152004?open&of=ENG-THA>

Issues raised in the Terms of Reference

1. Do the police and other disciplinary forces in your country currently follow set minimum standards of interrogation?

If so, are you able to provide a copy of these minimum standards?

If not, please provide any information you have about these minimum standards including:

- who developed them?
- on the basis of what documentation?
- when were they developed?
- when were they last revised?
- do the staff of the disciplinary services receive specific training in interrogation methods?
 - if so, how often and who conducts the training?

The police and other disciplinary forces are obliged to conduct interrogation in compliance with the Constitution. The Constitution has a number provisions which relate to the case. They include:

Section 31 providing the enjoyment of right and liberty of his/her life, and the prohibition of the acts of torture. (See details above.)

Section 237 providing basic rights of the suspects in a criminal case. It provides that no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence or where there is such other necessity for an arrest without warrant as provided by law. The arrested person shall, without delay, be notified of the charge and details of such arrest and shall be given an opportunity to inform, at the earliest convenience, his or her relative, or the person of his or her confidence, of the arrest. The arrested person being kept in custody shall be sent to the Court within forty eight hours as from the time of his or here arrival at the office of the inquiry official in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not, except for the case of *force majeure* or any other unavoidable necessity as provided by law.

Section 241 provides that in a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial.

At the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations.

An injured person or the accused in a criminal case has the right to inspect or require a copy of his or her statements made during the inquiry or documents pertaining thereto when the public prosecutor has taken prosecution as provided by law.

Section 242 provides that in a criminal case, the suspect or the accused has the right to receive an aid from the State by providing an advocate as provided by law. In the case where a person being kept in custody or detained cannot find an advocate, the State shall render assistance by providing an advocate without delay.

Section 243 provides that a person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her.

Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.

In terms of Martial Court, the Ministry of Defence issues the regulation on the procedures of cases under the Court jurisdiction in 2004. The Commission was informed by the Ministry of Defence that the Regulation prohibits any investigation of criminal charges by officers without the authorisation. Such measure will help prevent any arbitrary investigation by officers.

Please provide any information about complaints received by individuals or groups about the methods of interrogation used by the disciplinary forces in your country.

Despite the Constitutional provisions above, the Commission received a number of complaints, which alleged law enforcement officers of committing torture or degrading treatments during detention and interrogation. For examples, they used methods of torture—threatening, beating, stripping detainees naked and electrocuting sensitive parts of body.

2. Do your national courts recognise customary international law as a source of law to be complied with? Include any cases that refer to the rule of customary international law prohibiting torture.

Thailand subscribes to the dualistic legal system, and also requires domestic legal codes to be followed in the judicial proceedings. The Court will not take customary international law into consideration except that it is translated into domestic law, especially concerning criminal offences. Section 32 of the Constitution prescribes that "No person shall be inflicted with criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment thereof, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence. And also Section 2 of the Criminal Code states that no person shall be inflicted with criminal punishment unless he or she has committed an offence against the law in force at the time, and a punishment is imposed for such act.

3. Does your constitution or national law allow for any derogation from the prohibition on torture and other forms of ill-treatment? If so, please provide the relevant sections.

No, there is not such derogation clause. Nevertheless, Section 31 of the Constitution also provides that "punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under the Section."

4. Set out any legislation, rules or practices of courts in admitting or rejecting any statement that is made by an accused as a result of torture or any other form of ill-treatment.

Of the Constitution, Section 243 of Chapter VIII dealing with the authority of the Court provides that any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.

Section 226 of the Criminal Procedure Code states that any object, document, person which can be proved against or for the innocence of the accused shall be claimed as witness. Nevertheless, such witness must not be obtained from inducement, promise, threat, deceit, or other unlawful acts.

5. Describe the remedies available and provided in practice to victims of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms and medical rehabilitation.

Under the Constitution, Section 245 states that in a criminal case, an injured person has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law. In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive an aid from the State, upon the conditions and in the manner provided by law.

Section 246 also provides that any person who has become the accused in a criminal case and has been detained during the trial shall, if it appears from the final judgement of the case that the accused did not commit the offence or the act of the accused does not constitute an offence, be entitled to appropriate compensation, expenses and the recovery of any right lost on account of that incident, upon the conditions and in the manner provided by law.

As the organic law, the Remedies for an Injured Person, Compensation and Expense for a Defendant in Criminal Case Act B.E. 2544 (2001) established a Committee to consider the remedies and compensation provided by State.

Section 3 defines that "an injured person" means person who suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission.

Section 18 provides that the remedies for an injured person shall include medical expense, physical and mental rehabilitation, compensation in case of death, compensation for the loss of income due to his/her disability to work as normal and other compensation of damages which the Committee deems appropriate. The remedies received by an injured person will be commensurate with the grave consequences he/she received, considering other forms of coverage for the benefits he/she may receive.

An injured persons or, in case of incapacitation, their appointed representative, can submit their request for remedies to the Committee within one year as from the date the injured persons know the commission of offence.

To oppose the Committee's decision on remedies, the injured persons can appeal to the Appeal Court within 30 days as from the date receiving the Committee's decision. The Appeal Court decision is final.

6. Provide information about the protections afforded to persons being forcibly returned to a country in which they may face torture or other forms of ill-treatment.

In case of Thailand, the Thai government has been much credited for their humanitarian assistance in offering temporary asylum for hundreds of thousands of people who flee armed conflicts from neighbouring countries for several decades. There has been co-operation with the UNHCR to provide shelter or person-of-concern immigrants, and other countries/international organizations to provide continued assistance, including the settlement in the third country.

Nevertheless, the country is still not party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. The Thai government frequently expressed its concerns over the tremendous financial and administrative burden as well as security problems.

Occasionally, there were reports on the precariousness of situation along the borders. International organisations and human rights NGOs reported that groups of people who fled into the country were forcibly returned to the country of origin amidst the concerns that they might not be safe and even at risk of degrading treatments, torture or death threats. However, the authorities concerned always reaffirm their policy and practice not to send them back until such time that they can leave for the country with safety and dignity. No security policy guidelines and strategies can be in contradiction with the Constitution provisions.

In terms of the Commission, after receiving reports or complaints that there might be refugees/displaced persons forcibly returned to their country, we immediately visited the place for fact-finding, co-ordinated with authorities/organisations concerns, and liaised with the government to prevent any forcible return, if possible.

7. Have the national courts been asked to consider any cases of alleged torture that have taken place outside the territory of your country and not involving citizens of your country? If so, please describe the position of national courts in exercising their jurisdiction in such cases. For example, General X was a Balkan military officer accused of torturing civilians during the regional conflict. He is currently holidaying in your country. What would the position of your national courts be if they were asked to try him for torture?

Section 7 of the Criminal Code states that any person who commits against

national security, fraudulence, robbery in high seas shall be prosecuted within the jurisdiction of the national Court despite the commission of act occurred outside the territory. Section 8 states that the crime against life and body integrity by torture or other cruel means by a Thai citizen shall also be prosecuted within the jurisdiction of the national Court although the commission of act occurred outside the jurisdiction. The Thai Court shall also be able to prosecute a non-citizen who commits such crime when the injured person is a Thai national or the Thai government and requests the Court to do so. In sum, the Thai Court cannot exercise its jurisdiction in the case concerning torture committed outside the country and not involved with Thai citizen(s).

8. Have the national courts considered the extent of their jurisdiction over international intervention forces? If so, please provide details of the cases and copies of the judgments, if possible.

See answer to question 7.

9. Describe the nature and extent of procedures and safeguards, both legal and practical, in place to protect against torture by non-state actors.

The acts of torture is regarded an offence under Thai Criminal Code. As a result, those who commit torture, be they state or non-state actors, will be subject to penalty under the law. Nevertheless, it is subject to condition as stated in answer to question 7.

This is the end of the questionnaire. Thank you for taking the time to respond.