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Understanding and Practice of Torture in the Thai Context

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The article aims to provide a basic understanding about torture in Thailand and is divided into five parts including Part I) Definitions of torture, Part II) Thailand as a member of the UN Convention against Torture (UNCAT), Part III) Torture in Thailand, Part IV) Subcommittee against Torture, National Human Rights Commission (NHRC), and Part V) Some suggestions concerning torture.

Part I Definitions of “torture”

“Torture” is not a new term in Thai society. There could be, however, discrepancies between the typical understanding of torture in Thai society and its international notions and efforts should be made on clarification. Beating to extract confession is an act known for long time here, though there is no specific offence for such an act in the Thai Penal Code. The closest offence would be found in Title X Offences against Life and Body including Section 288 through to 300, i.e. physical assault. For example, the Penal Code’s Section 295 which stipulates that “Whoever causes injury to the other person in body or mind is said to commit bodily harm...” refers to a physical assault by anyone and against anyone else. It simply has to be an act against an individual or a group of individuals and the intention is to cause pain or injury to another individual or group of individuals. Yet, torture bears deeper and more specific meaning. According to international standards, torture specifically refers to certain types of perpetrators and particular intents of such an act.

As said, “beating to extract confession” is a commonly known term in Thai society and bears close meaning to torture. In general understanding, the “beating to extract confession” is an act carried out by officials (police) against the persons held in custody in order to acquire from them confession. It is generally known and accepted in Thailand that such an act does exist and has been practiced. However, there is no specific offence in the Penal Code providing for the act. References have to be made to Sections concerning Offences against Life and Body, and most importantly, the term “beating to extract confession” fails to completely covers meaning referred to in international norms.

Interestingly, the Royal Institute Dictionary B.E.2542 (1999) does not contain the term “torture”. The term could be found in a English-Thai dictionary, and in brief, the Thai rendition is put simply as “torture” with no further elaboration. From an English dictionary, “torture” should mean an act of causing somebody severe pain in order to punish them or make them say or do something.¹ Whereas in UNCAT, torture means;

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”²

The meaning of torture can be analyzed in its three major aspects including (1) what constitute an act of torture?; (2) purposes for such an act; and (3) who commit such an act of torture?

1. What constitute an act of torture?

¹ Torture / noun / the act of causing sb severe pain in order to punish them or make them say or do sth...from Oxford Advanced Learner's Dictionary: sixth edition.

² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

It is an act by which **severe pain or suffering, whether physical or mental**, is **intentionally** inflicted on a person. In *Ending Torture: A Handbook For Public Officials*, examples of potential torture are given such as beating; extraction of nails; burns; electric shocks; suspension of the body; suffocation; exposure to excessive light, noise, heat or cold; sexual aggression such as rape or other forms of sexual assault; forced administration of harmful drugs in detention or psychiatric institutions; prolonged denial of rest, sleep, food, water, sufficient hygiene, medical assistance; total isolation and sensory deprivation; detention in constant uncertainty in terms of space and time; threats to torture or kill relatives; total abandonment; and mock executions.³

In brief, an act of torture must be composed of (1) an intent, (2) the cause of severe pain or suffering which may include both; (3) physical and mental pain or suffering.

Nevertheless, any cruel, inhuman, or degrading treatment or punishment is also forbidden and examples of such an act include forcing a detainee to sleep shackled in leg-irons or handcuffs, keeping of a bright light shining in a detainee's cell 24 hours a day because it is a 'regulation,' etc.⁴

2. What are purposes for such an act?

In order to obtain (1) information, or (2) confession, or (3) to punish for an act he or a third person has committed, or (4) to intimidate, or (5) to coerce based on discrimination of any kind.

3. Who commit such an act of torture?

"...is inflicted by or at the instigation of or with the consent or acquiescence of a public official" means the perpetrator must be a public official or any person stimulated to do so with consent or acquiescence of a public official.

Torture prohibition is an absolute right meaning an act of torture is always forbidden in any circumstances including during the war time and torture is not allowed to use as a means of punishment in justice system. Nevertheless, certain sanctions are allowed and constitute aspects which are contended by human rights organizations as torture, and whether or not such a practice should be forbidden as well, i.e., capital punishment, or whipping. An exception is made in the Convention whereby "*It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions*" the interpretation of which is subject to the discretion under sovereignty of each party member.

Part 2 Thailand as a member of the UN Convention against Torture (UNCAT)

Based on an awareness of torture being perpetuated in various countries around the world and that it becomes a prominent international issue, the United Nations developed an instrument called "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" and since 10 December 1984 has allowed countries to sign and become state parties. The Convention came into force on 26 June 1987, and currently 145 countries had made ascension to the treaty including Thailand and 74 countries had signed their names to support the Convention.

³ Ending Torture: A Handbook For Public Officials: Seeking reparation for torture survivors, Redress Trust, p. 3

⁴ Ibid, pp. 3-4

The Thai cabinet passed a resolution on 7 August 2007 to approve the ascension to Convention.⁵ On 2 October 2007, Thailand has submitted the instrument of accession regarding the Convention against Torture to the United Nations which has become effective since 1 November 2007. It obliges Thailand to submit an initial report to the Convention Committee within one year after the entry into force of the Convention for Thailand and as per Article 19 of the Convention. In other word, Thailand has to submit an initial report within 1 November 2008.

Before delving into specific implication of the Convention on Thailand, we need to have basic understanding about the Convention.

It is the aim of the Convention to enable states to realize the importance of fundamental freedom, equal rights, human rights and human dignity and to join hands in preventing, or combating, or monitoring any act of torture and other cruel, inhuman or degrading treatment or punishment of any forms in any circumstances. Torture must be made an offence as per the Convention. And the Committee against Torture shall be set up and all state parties shall issue legal measures and others as prevention against the commission of torture within the country.

Table: Essences of the Convention against Torture in Part 1, as per each article

⁵ 1. Approve the Ministry of Justice's request to be a state party of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as follows;

1.1 Thailand shall become a state party of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the interpretative declaration has been made in accordance with the Convention's Articles 1, 4 and 5 and a reservation on Article 30 of the Convention.

1.2 The Ministry of Foreign Affairs shall make the instrument of accession and submit it to the Secretary General later.

1.3 The Ministry of Justice, Ministry of Foreign Affairs and Office of Attorney General shall be chiefly responsible for writing the obligatory reports under the Convention.

2. The Ministry of Justice shall receive opinions from the National Human Rights Commission's Subcommittee against Torture and carry out activities based on such opinions.

Issues to be discussed by the 2nd Screening Committee include;

1. The accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as proposed by the Ministry of Justice shall provide for Thailand's image in upholding and protecting human rights and is in compliance with other obligations Thailand has toward the Universal Declaration on Human Rights.

2. The Committee to Review the Feasibility of being a State Party to the Convention holds that Thailand can become a state party without prior modification of its existing laws. But an interpretative declaration shall be made and annexed to the instrument of accession.

--The cabinet meeting of the coalition led by Gen. Surayud Chulanond (Prime Minister), 7 August 2007

Article	Interpretation
1	Definition of “torture”
2	Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
3	No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
4	Each State Party shall ensure that all acts of torture are offences under its criminal law.
5	Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences including the investigation and prosecution.
6	Taking into custody of torture perpetrators
7	Criteria concerning extradition and prosecution
8	Making “torture” an extraditable offence
9	International legal mutual assistance
10	Training to instill knowledge among competent authorities and law enforcement personnel
11, 12	Review, monitoring and investigation in order to prevent any cases of torture
13	The rights to complain of torture victims
14	Compensation, rehabilitation and reparation for the victims
15	Inadmissibility of evidence obtained through the methods of torture

Part II of the Convention concerns the establishment of the Committee against Torture (of the United Nations) and requirement that a state party has to submit an initial report after the entry into force of the Convention for the state party concerned. From then on, a state party shall submit further report every four years and that the Committee may respond with general observations as appropriate. And if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information. However, the whole process shall be conducted with confidentiality.

In addition, Article 22 allows the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. Otherwise, the mandate to investigate of the Committee shall be confined just to reviewing regular reports from state parties.

Thailand has become a state party without having to make any prior changes to relevant domestic laws. But an interpretative declaration has been made on Article 1 (definition of “torture”), Article 4 (criminalization of an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture) and Article 5 (universal jurisdiction over an offence of torture) and a reservation to Article 30 (the submission and arbitration of the interpretation or application of the Convention by the International Court of Justice).⁶ In addition, Thailand declares itself not bound by Articles 21 and 22 and thus the Committee is not allowed to receive communications directly from individuals or NGOs in Thailand.

Part III Torture in Thai context

3.1 Case samples of torture in Thailand

Torture cases in the Southern border provinces

It could be said that issues of torture has been brought to serious attention during the past four to five years after the disappearance of Somchai Neelaphaihit, a human rights lawyer on 12 March 2004. Complaints and efforts to campaign the issue have been made with the presumption that his disappearance has something to do with his prior efforts to help his clients who were accused of stealing guns from the Development Battalion 43 or Pileng Camp in Narathiwat province.⁷ Based on exhaustive investigation, it is confirmed that more than 23 alleged offenders held for the theft of guns have been tortured and forced to confess to charges.

"1. With respect to the term "torture" under Article 1 of the Convention, although there is neither a specific definition nor particular offence under the current Thai Penal Code corresponding to the term, there are comparable provisions under the aforesaid Thai Penal Code applicable to acts under Article 1 of the Convention. The term "torture" under Article 1 of the Convention shall accordingly be interpreted in conformity with the current Thai Penal Code.

The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 1 of the Convention at the earliest opportunity.

2. For the same reason as stipulated in the preceding paragraph, Article 4 of the Convention which stipulates: 'Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture,' shall be interpreted in conformity with the current Thai Penal Code.

The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 4 of the Convention at the earliest opportunity.

3. Article 5 of the Convention which provides: 'Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4.....' is interpreted by the Kingdom of Thailand to mean that the jurisdiction referred to in Article 5 shall be established in accordance with the current Thai Penal Code.

The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 5 of the Convention at the earliest opportunity."

Reservation:

Reports of torture in Southern border provinces have been constantly made including cases known to public such as the application of burning cigarette at the genital of Mr. Muhammad Aming Yusoe and then chaining him to sleep with dogs during the detention in an army camp in Yala province on 30 October 2006.⁸ The case was raised in an article written by Prof. Nidhi Eawsriwong concerning torture in Southern border provinces.⁹ Another case is Mr. Ashari Sama-air who died during being held in custody under the Operation Krong Pinang in Ban Jaroa Seepo, Tambon Sa-ae, Krong Pinang district, Yala province on 22 July 2007. According to the officers, he fell to the ground while attempting to escape the arrest, though according to the forensic report, it was ascertained that his death was caused by brain contusion, and bruises have been found on his face and body. In addition, the other four suspects arrested together with Mr. Ashari Sama-air including Mr. Suriya Waeng, Mr. Marokee Salair, Mr. Mahama Sori, and Mr. Sapri Barakaya, upon their transfer to Wiwat Santi Center, the Ingkayudha Boriharn Army Camp, they were taken by the army officers for medical examination at the Ingkayudha Boriharn Army Camp Hospital. The medical doctor confirms existence of physical injuries including wounded mouths, bruised eyes, and other wounds. Then there is a case of Mr. Arminudeen Kachi, an Ustaz from Rungroj Pittaya Pondok School in Chana district, Songkhla province, who was tortured by border patrol police officers from the Special Border Patrol Police Taskforce 43 on 6 February 2008.¹⁰ And one of the most well known cases is Mr. Yapha Kaseng, an Imam from Ban Kator Masjid in Moo 5, Tambon Rueso, Rueso district, Narathiwat province who was arrested and tortured to death on 21 March 2008 during his being held in custody by the Special Taskforce 39 together with several other detainees including his own son who provided information as witnesses to the incidence.¹¹

The Southern border provinces under the unrest covering Pattani, Yala, Narathiwat and four districts in Songkhla province including Thepha, Chana, Na Thawi, and Saba Yoi have been put under the rule of special instruments including the Martial Law Act B.E. 2457 (1914), Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), Penal Code, and Internal Security Act B.E. 2550 (2007). Under the laws, government officials are authorized to hold in custody the invited

"The Kingdom of Thailand does not consider itself bound by Article 30, paragraph 1, of the Convention."

⁷ Detail of the disappearance case of Lawyer Somchai Neelaphaijhit and the complaints against alleged torture in "*Where has justice gone?: The abduction of Lawyer Somchai Neelaphaijhit*", Human Rights Defender Taskforce, Duan Tula Publishing House, March 2006

⁸ *Khao Sod*, 13 February 2007

⁹ Please see "Prisoners of Martial Law"

http://www.ahrc-thailand.net/index.php?option=com_content&task=view&id=198

¹⁰ Please see "Association of Pondok Schools in Songkhla making complaints in Bangkok concerning the case of torture of an Ustaz in Chana district" 18 February 2008, TJA News

http://www.isranews.org/cms/index.php?option=com_content&task=view&id=3215&Itemid=47

¹¹ Please see more detail, <http://www.isranews.org/>

persons or suspects up to 30 days without having to press any charges against them. And if the Internal Security Act comes into force, any individual can be summoned to participate in the training organized by the state for up to six months. However, one of the most controversial regulations is the prohibition of visits by relatives and lawyers within the first three days of the detention. Even though such a ban has been revoked by the Internal Security Operations Command Region 4, but it is still subject to the discretion of concerned officials whether or not such a visit can be granted. It is thus common that most tortures reportedly occur during the first 3-10 days of the detention during which the visits are banned.

Torture cases in other parts of the country

Torture does not exist just among the Southern border provinces, but other parts of the countries as well. In just the past 4 – 5 years, there have been successive cases of torture reported to public and subject to investigation such as the case of the electrocution of genital of Mr. Ekawat Simanta, on 2 November 2004¹² which became very controversial for a while. After that there were more complaints such as the physical abuse in Ayudhaya province including the case of Mr. Anek Yingnuk and his friends who were allegedly tortured during 9 – 10 September 2004,¹³ the case of Mr. Urai Srineh who was electrocuted at his genital by police officers at the Provincial Police Station Region 2 and it caused him to die of renal failure on 24 May 2005, the case of Mr. Thongchai Promthongchai who was tortured to death on 9 December 2006 while being detained by the army officers at the army camp in Ban Jabo, Tambon Pangmapha, Pangmapha district, Maehongson province, and Mr. Som Hom-on who was arrested together with Mr. Thongchai and suffered severe injury, or the case of Mr. Supot Sookcharoensit who was severely injured by paramilitary officers in April 2007 in the Nai Soi Temporary Shelter for Refugees, Muang district, Maehongson province.¹⁴

Forms of torture in Thailand

Based on documentation of torture victims in Thailand, various forms of torture or treatment which is cruel, inhumane and degrading have been used. Apart from slapping, kicking, punching and beating at various parts of the body, other violent methods include;

- Electrocution at genitals
- Urinating into mouths
- Hooding and suffocation
- Handcuffed to flying helicopter
- Applying burning cigarette to genitals
- Being detained in a freezing room
- Being forced to stay naked
- Sexual harassment against women
- Waterboarding
- Whip body with glass bottle
- Crush the ears with both palms to damage the eardrums and in a long run it might permanently impair hearing

¹² Read more from newspapers printed after the incidence took place

¹³ Please see www.ahrchk.net

¹⁴ Based on a briefing prepared Subcommittee against Torture, National Human Rights Commission

In case where the suspects or alleged offenders are Muslim, torture which shows disrespect to religious sensitivity has been applied such as;

- Being chained with dogs
- Being detained in a room where one does not know the times of prayer
- Being forced to consume alcohol

All these forms of torture may not just intend to cause physical pain, but to humiliate and degrade human dignity.

3.2 Justice system and torture

The Thai justice system provides no effective mechanisms to ensure that torture victims will see justice done under the rule of law.

Even though the rights to be free of torture is an absolute right and no derogation can be made in any circumstances, but the burden of proof in torture cases is not an easy task. Without obvious wounds or certification of medical doctor, torture claims may not carry enough weight and may not be litigable. It is thus common that officials responsible for holding in custody the invited persons or suspects shall not provide medical examination to the detainees. Only when they are held as prisoners in the prisons, then they may have access to medical examination as per the rule of the Department of Corrections. Thus, without help from relatives or lawyers, detainees generally have no way to prove the torture by means of medical examination. By forbidding the visits by relatives or lawyers, the rights to medical examination or treatment among the detainees are virtually suppressed.

This yet includes torture that causes no wounds, or the mental torture or any cruel and inhumane treatment that may not constitute as torture yet. How can the burden of proof be carried out given the current procedures in the justice system?

In many torture cases in Thailand, the victims are blindfolded, and thus are unable to identify the perpetrators or the places where torture took place.

Torture is often carried out by several officials making the victims confused as to who the perpetrators are. Thus, the identification of perpetrators during the prosecution becomes difficult, though in a conventional criminal procedure, the victims need to be able to pin down the persons who carry out such an act. Without being able to identify suspects, they have to refer to liability of superior officers, in other word the litigation has to be shifted toward the superior officers or particular authorities, and only civil suits can be brought against them.

In most instances, torture cases are filed and then nothing happens, and the issues fade away. Most torture victims express their wish not to have anything to do with the public officers, particularly police or army officers. This allows the officers to apply extra-legal measures to settle the cases and it is most common that they will opt for negotiating with the victims and offering some compensation to trade off with the prohibition of prosecution.

Part 4 Subcommittee against Torture, National Human Rights Commission (NHRC)

In most cases, torture victims dare not complain or act against the perpetrators, most of whom are public officers, particularly police and military officers in the Southern border provinces as well as other paramilitary troops. Nevertheless, the first domestic mechanism through which torture victims can resort to in order to enter the justice system is to raise complaints with the police officers. But if the perpetrators are the police themselves, most victims would not dare report the cases to the police as in so doing, they might have to face undesirable consequences. For example, the case of Mr. Anek Yingnuk, his mother, Ms. Yont Chamnongsap, and sister, Ms. Duangnet

Thongthai, were sued back by the police for slandering and reporting false information. This becomes an impediment for the filing of torture cases with the court. At present, the only mechanism through which torture complaints can be directly raised is the Subcommittee against Torture, National Human Rights Commission (NHRC).

The Subcommittee against Torture was founded in 2007 and was chaired by Mr. Wasant Panich (currently resigned from the post), Vice Chairperson and other members, altogether seven. They are tasked to receive complaints and carry out investigation by summoning for information and testimony of concerned people as well as write reports and recommendations and submit to the cabinet. Until now, 19 cases have been received and investigated by the Subcommittee, 14 of which are cases concerning the Southern border provinces, and the rest other areas. One obstacle to the investigation of torture victims is a lack of prompt access to the crime scene and the rescue of victims since most of them are held under custody by the officers. The visit request has to be made and pass through a number of steps, and eventually such a request is rejected due to different reasons. Without the chance to access the crime scene and the victims promptly, all the evidence related to torture can be gone making further legal action impossible.

Since the term of the current National Human Rights Commission will soon end, the Subcommittee has decided not to receive any new cases, and currently is preparing a report of all complaints and investigation as well as the recommendations to be submitted to the cabinet.

When the term of the current Subcommittee is due, there seems to be no other mechanisms to replace it. Victims have to resort to the conventional justice system and the same futile cycle will resume from reporting the cases to the police and then the court hearing, the process of which is plagued with problems as already explained.

Part 5 Some suggestions concerning torture

It is interesting as to what would be the next steps of torture work in Thailand. After Thailand became a state party to the Convention against Torture, there seems to be efforts by various private and governmental officers to campaign and educate public officers and public. But the major factor that will contribute to the reduction of torture is still the justice system which unfortunately has not been developed to provide easier access to the system among the torture victims. There can be three suggestions here as to the legal aspects of torture.

1. Criminalization of torture: As of now, the Thai laws do not provide a specific and direct offence for torture. Since Thailand has become a state party to the Convention, it is therefore appropriate to modify or issue domestic laws that specifically deal with torture cases. A Bill can be passed to prohibit torture and provide for all conditions stipulated in the Convention including definition of torture, criminalization of torture, and the reparation and remedy for torture victims, etc.

In Asia, Hong Kong and Sri Lanka have enacted laws to make torture a criminal offence. According to the Sri Lankan laws, any public officers found to have committed an act of torture may face up to six year imprisonment. Nepal has not enacted any law to criminalize torture, but has passed the Torture Compensation Act since 2005.

2. Related to the first suggestion, the burden of proof in torture cases should be shifted to the detaining officers since they have to answer to questions during the justice process as to why the persons held under their custody have sustained injury or died instead of the victims having to prove the causes of the injury and death.

3. An independent mechanism should be established to bring perpetrators to justice system and for compensation of torture victims. As already explained, in Thailand, there is no independent organization or mechanism to effectively tackle torture cases. Thus, an independent organization such as Thailand Committee against Torture should

be set up and backed by the government and its members should come from various sectors including private and governmental sectors. A study can be made as to the operation of the UN Committee against Torture and this mechanism can become an effective mechanism to address the needs of torture victims.

All the above is just an initial assessment and suggestion. More efforts should be made to promote torture work in order to effectively stop torture in Thailand.

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