



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

Distr.: General  
9 July 2013

Original: English

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Initial reports of States parties due in 2008**

**Thailand\***

[26 February 2013]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

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## I. Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to be later referred to as “the Convention”, constitutes one of the principal international human rights instruments adopted by the United Nations General Assembly’s resolution No. 39/46 on 10 December 1984. This Convention entered into force on 26 June 1987. On 2 October 2007, Thailand acceded as a State Party to this Convention, which entered into force for Thailand on 1 November 2007. As a State Party to the Convention, Thailand is bound by the obligations therein to implement the following:

- (1) Ensure actual realization of the rights prescribed in the Convention;
- (2) Implement steps to realize the rights recognized in the Convention in a progressive manner;
- (3) Disseminate extensively the principles of the rights specified in the Convention; and
- (4) Prepare country reports which give accounts of domestic situations, problems and obstacles as stipulated in the Convention, for submission to the Committee against Torture.

2. To implement the provisions of the Convention in compliance therewith, Thailand made an interpretative declaration upon accession pertaining to articles 1, 4 and 5; and entered a reservation pertaining to article 30 of the Convention, details of which are as follows:

(1) Article 1 – With regard to the definition of the term “torture”, Thailand’s Penal Code currently in force does not provide any specific definition thereof. Thailand therefore interprets the meaning of the term pursuant to its understanding thereof in accordance with the Penal Code currently in force.

(2) Article 4 – Regarding the provision that all forms of torture are criminal offences punishable under criminal laws, a principle also to be applied to any attempt at, complicity in and participation in an act of torture, Thailand interprets such cases pursuant to its understanding thereof in accordance with the Penal Code currently in force.

(3) Article 5 – In regard to the provisions for State Parties to implement measures which may be deemed necessary to enable them to establish jurisdiction over the offences referred to under article 4, Thailand’s interpretative understanding of relevant questions of jurisdiction shall be in conformity with the Penal Code currently in force.

(4) Reservation on article 30, paragraph 1 – Thailand does not undertake to be committed to the said article (which provides that disputes pertaining to interpretation, construction or application of the Convention may be brought to the International Court of Justice for deliberation and final ruling upon request of either party in the dispute). This reservation is put forward on the grounds that Thailand does not accept the jurisdiction of the International Court of Justice pre-conditionally, except when deemed appropriate after due consideration has been exercised on a case by case basis.

### **Report preparation process**

3. Thailand prepared this country report in conformity with the obligation under the Convention against Torture. The Cabinet issued a resolution on 7 August 2007, assigning the Ministry of Justice, the Office of the Attorney General, and the Ministry of Foreign Affairs as focal agencies for the preparation of this report in conformity therewith. In this

regard, the Ministry of Justice, in its turn, assigned the Department of Rights and Liberties Protection, in its capacity as the agency in charge of promoting the implementation of legal measures and international obligations related to rights and liberties protection and functioning as the focal point for coordination purposes in the implementation of obligations stipulated in the Convention, as provided in the Ministerial Regulation on the Administrative Department of the Rights and Liberties, the Ministry of Justice B.E. 2545 (2002), to prepare this report by applying the United Nations report preparation guidelines as a basis. The data and statistics in this report cover the period from 2007 to 2010.

4. In the first stage, the Department of Rights and Liberties Protection examined relevant information by collecting documentary data from agencies concerned, organizing workshops in conjunction with representatives from agencies concerned, NGOs, and members of the public affected by acts of torture as prohibited in the Convention. Moreover, the Department conducted fieldwork studies to collect data in each of Thailand's regions – the southern region (Songkhla), the central and eastern regions (Bangkok), the northern region (Chiang Mai) and the northeastern region (Khon Kaen and Kalasin), and collected statistical data on torture-related complaints from, inter alia, the Office of the National Human Rights Commission, the Office of the Ombudsman, Provincial Justice Offices, and the Lawyers' Council.

5. In the second stage, the Department of Rights and Liberties Protection collected further data from relevant agencies in the northern, southern, northeastern, as well as central and eastern regions between 17 February and 27 April 2010 as follows:

- (1) The Office of the National Human Rights Commission;
- (2) The Department of Corrections;
- (3) The Ban Mae La Temporary Shelter, Tha Song Yang District, Tak Province;
- (4) Tha Song Yang Police Station, Tak Province;
- (5) The United Nations High Commissioner for Refugees (UNHCR), Thailand Country Office in Mae Sod District, Tak Province;
- (6) The Immigration Checkpoint at Mae Sod District, Tak Province;
- (7) Trang Provincial Prison;
- (8) Riang Hong Temporary Prison, Muang District, Trang Province;
- (9) The 4th Army Battalion, 15th Army Infantry Regiment, Phraya Rassadanupradit Barrack, Huay Yod District, Trang Province;
- (10) The Immigration Checkpoint, Ranong Province;
- (11) The Provincial Police Training Center, Region 4, Khon Kaen Province;
- (12) Khon Kaen Provincial Court;
- (13) Khon Kaen Provincial Public Prosecutors' Office;
- (14) Muang Kalasin Police Station;
- (15) Kalasin Provincial Justice Office;
- (16) The Department of Special Investigation;
- (17) The Foreign Affairs Office, the Office of the Attorney General;
- (18) Thanyaburi District Prison, Pathumthani Province;

6. In the third stage, the Department of Rights and Liberties Protection hosted a meeting to obtain opinions and recommendations pertaining to the draft country report for

subsequent submission to the Inter-Agencies Committee on the Promotion of Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has been found that one major limitation in the preparation of this report in compiling complaints or lawsuit statistics is that such statistics have not been classified to indicate crimes of torture as defined in the Convention. This is due to the fact that Thai laws have not specifically stipulated any definition of the term ‘torture’ as such. This data collection exercise is based on comparison with cases of assault, battery and malfeasance in office, an approach which does not permit any definite classification of torture offences committed, or the nature of torture-related complaints to any substantial degree. Accordingly, in the future, the State’s data collection system should be developed to a point where complaints related to torture may be enumerated, pursuant to the definition in the Convention, before facts can be garnered in the form of aggregate statistics thereof.

7. This report is fundamentally based on collected documents, laws, rules, regulations, and practical guidelines. Data in case studies are gathered and compiled from fieldwork studies, court rulings, files on investigation of complaints conducted by the Office of the National Human Rights Commission, the Office of Ombudsmen, Justice Clinics, the Lawyers’ Council, and data from complaints filed by NGOs operational in this filed.

## **II Basic information**

### **A. Political structure**

8. Thailand is a Kingdom politically administered in accordance with the principle of constitutional monarchy, with the King as Head of State. The legislative, executive and judicial branches are separate.

9. Legislation is primarily enacted through the Parliament. Thailand’s Parliament operates pursuant to a bicameral system: the House of Representatives and the Senate. There are procedures for the enactment of laws in the form of organic acts, and the enactment of acts, as well as control of constitutionality in accordance with provisions under Sections 138-155 of the Constitution of the Kingdom of Thailand B.E.<sup>1</sup> 2550 (2007), to be later referred to as “the Constitution”.

10. The Parliament has the power to regulate the administration of state affairs by filing interpellations to ministers, requesting a general debate or a general debate for a no-confidence vote against the Prime Minister, in accordance with the regulations provided in the Constitution, Sections 156-158.

11. With regard to executive branch, the government is headed by the Prime Minister who leads the Cabinet comprising not more than 35 Ministers appointed by the King. The appointment of a Prime Minister is subject to the approval of the House of Representatives. The Speaker of the House of Representatives shall, within fifteen days as from the lapse of such period, present to the King for the issuance of a Royal signature appointing the person who has received the highest votes as Prime Minister.

12. As for judicial organizations, the King has the power to appoint and remove judges and justices.

13. The Courts are comprised of Courts of Justice, Administrative Courts, Constitutional Court and Military Courts.

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<sup>1</sup> B.E. = Buddhist Era, 543 years before Christian Era.

14. Judges are independent in deliberating judgments on all court cases in accordance with the Constitution and the applicable laws.

15. Additionally, there are various organizations under the Constitution whose duties are related to the protection of rights and liberties of the people and the handling of complaints as follows:

(1) The National Human Rights Commission (NHRC) consists of a Chairperson and six other Commissioners, each with a six-year tenure. The King appoints these National Human Rights Commissioners upon the recommendation of the Senate. The duty and authority of the NHRC is to protect the rights and liberties of the people pursuant to Section 257 of the Constitution, a mandate which authorizes the Commission to examine laws which contradict to human rights principles, and to subsequently submit those cases to the Court for deliberation and ruling;

(2) The Ombudspersons. Pursuant to the Constitution, Section 242, three ombudspersons shall be appointed by the King upon the recommendation of the Senate. The duty and authority of Ombudspersons is provided in Section 244 of the Constitution. The Ombudspersons may submit matters to the Constitutional Court or the Administrative Court if they are of the opinion that a law or an order is in contradiction to the Constitution or other relevant laws in accordance with Section 245;

(3) The Office of the Attorney General is recognized under the Constitution, Section 255, which sets forth the powers and duties of Public Prosecutors. Pursuant to the Criminal Procedure Code, Public Prosecutors have the power to file criminal cases in court. Additionally, Public Prosecutors have the power to request the Court to consider compensation for persons whose right to life, security of a human person and related freedoms are infringed, in accordance with the final paragraph of Section 32;

(4) The National Anti-Corruption Commission is an organization established in accordance with the Constitution. The Commission is composed of a Chairperson and eight other Commissioners, all appointed by the King upon recommendation of the Senate.

16. This Commission has powers and duties as provided in Section 250 (3) of the Constitution to inquire into and make decision on cases concerning whether or not state officials in the capacity of high-ranking officials or public servants holding the position of a division director, an equivalent position, or higher have acquired unjustifiably unusual wealth or have committed acts of corruption against their duties or have committed malfeasance in performing their official duties, or are engaged in abuses of power in a judicial capacity. The Commission is also authorized to take action against state officials or public servants of lower ranks who are involved in complicity as accomplices in offences committed by the afore-mentioned officers or persons holding political positions, or who commit offences deemed subject to action by the Commission in accordance with the Organic Act on the National Anti-Corruption Commission.

17. In addition to its duty to undertake legal proceedings against persons holding political positions or high-ranking government officials, the National Anti-Corruption Commission also handles inquiries in criminal cases involving state officials committing malfeasance prior to filing such cases in court pursuant to Section 157 of the Criminal Code. This power makes it possible to bring cases entailing complaints against police officers who commit a crime by means of torture or conduct unlawful search and/or arrest of suspected offenders to the attention of the Commission for subsequent identification of possible disciplinary action and criminal inquiry.

18. Thai legislation has evidently set the Parliament to enact legislation and regulate the government's administration so that it complies with the law. However, with regard to the protection of rights and liberties, there are established channels to enable members of the

public to file complaints to Ombudspersons, and the National Human Rights Commission. Additionally, the Constitution also provides for complaint submission for criminal and disciplinary action against state officials through the National Anti-Corruption Commission pursuant to established mechanisms. As to the possibility of compensation for cases of torture and cruel treatment, victims in such cases may institute legal proceedings through public prosecutors, or file their cases directly to either the Courts of Justice or the Administrative Courts, as appropriate.

19. Another important mechanism is the submission of cases to the Constitutional Court for deliberation and ruling as to whether a law is contradictory to the Constitution. This serves as an additional measure in protecting the people's rights and freedoms in torture-related cases, because if the Constitutional Court rules that the law in question is contradictory to the Constitution, such law shall not take effect.

## **B. General principles of law for human rights protection**

### **Principles enshrined in the Constitution**

20. The Constitution which is currently in force provides guarantees for human rights as follows:

- "Section 3, paragraph two - The performance of duties of the Parliament, the Cabinet, the Courts, the Constitutional organizations and State agencies shall be in accordance with the rule of law.
- Section 4 – The human dignity, rights, liberties and equality of persons shall be protected.
- Section 5 – The Thai people, irrespective of their origin, sex or religion, shall enjoy equal protection under the Constitution.
- Section 26 – In the exercise of power by all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provision of the Constitution.
- Section 27 – Rights and liberties recognized by the Constitution explicitly, by implication or by decisions of the Constitutional Court, shall be protected and directly binding on the Parliament, the Cabinet, the Courts, the Constitutional organizations and all State organs in enacting, applying and interpreting laws.
- Section 28 – A person can invoke human dignity or exercise his rights and liberties in so far as it is not in violation of the rights and liberties of other persons, or contrary to the Constitution or decent public morals.

A person whose rights and liberties recognized by the Constitution are violated can invoke the provisions of the Constitution to bring a lawsuit or to defend himself in the Courts.

A person may bring a lawsuit against the State directly so that the State will act in compliance with the provisions in this Chapter. If there is a law enforcing the exercise of any right and liberty as recognized by the Constitution the exercising of that right and liberty shall be in accordance with such law.

A person shall have the right to be promoted, supported and assisted by the State in the exercising of rights under this Chapter.

- Section 29 – The restriction of such rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of the law specifically enacted for the purpose determined by the Constitution, and only to the

extent of necessity, and provided that it shall not affect the essence of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment shall also be mentioned therein.

The provisions of paragraph one and paragraph two shall apply *mutatis mutandis* to rules or regulations issued by virtue of the law.”

21. The provisions in Sections 26-29 expounded above are regarded as guarantees for the recognition of rights and liberties within the framework of the Constitution. They are meant to control the use of power by the State whereby regard shall be had to human dignity; to enable persons to invoke their rights and liberties in court for protection, either as injured persons or alleged offenders; and, to regulate the enactment of laws which may infringe a person’s rights and liberties, such legislation shall be implemented out of necessity and shall not violate the underlying principles of rights and freedoms enshrined in the Constitution. Therefore, it can be understood that the Constitution provides guarantees for rights and liberties in regard to human rights, and these are already binding on State organizations, the executive branches of government, the legislature, and the judiciary.

22. In addition, the provisions in the Constitution have prescribed a guarantee of equality as well as rights and liberties as follows:

- “Section 30 – All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health conditions, personal status, economic or social standing, religious beliefs, education or constitutionally political views, shall not be permitted.

Measures prescribed by the State in order to eliminate obstacles or promote persons’ ability to exercise their rights and liberties as other persons do shall not be deemed as unjust discrimination under paragraph three.”

23. The provision under Section 30, paragraph three, prescribes rules against discrimination, not only applying to discrimination by State officials, but also governing discrimination on the part of private entities, such as discrimination in recruitment for employment. It is, therefore, understood that the Constitution has already covered discrimination against persons pursuant to the definition of ‘torture’ in the Convention.

- “Section 32 – A person shall enjoy rights and liberties in his/her life and security of a human person.

Torture, inhumane acts or punishment by cruel or inhuman means shall not be carried out; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed punishment by a cruel or inhumane means under this paragraph.

Arrest and detention of persons shall not be made except by order or warrant issued by the Courts or if there is some ground as provided by the law.

Search of a person or an act affecting the rights and liberties under paragraph one shall not be made, except by virtue of the law.

In the case where an act affects rights and liberties under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to bring a lawsuit to the Courts so as to put an end to or



annul such act, and to impose appropriate measures to provide remedy for damage occurring therefrom.”

24. The provisions of Section 32 are a proven guarantee of persons’ right to life and security of a human person. In paragraph two, it is clearly stated that torture, cruel, inhuman or degrading treatment or punishment is not allowed. The meaning of this provision covers any act which may be committed by persons other than State officials. This provides guarantees which cover the meaning of ‘torture’ as prescribed in article 1 of the Convention. However, at the end of Section 32, paragraph two, the provision stipulates that punishment by the court’s judgment or pursuant to the provisions of the law such as capital punishment or life imprisonment is not regarded as cruel or inhuman punishment.

25. The final paragraph of Section 32 stipulates that the Court shall examine and issue an order in a case where a person is tortured or inhumanely treated to provide protection for such person. If such ground is proven true, the Court shall issue an order to put an end to or annul such act, and shall prescribe methods to remedy the damage thus caused to such person. This provision is in line with the principle which stipulates that injured parties subjected to torture shall obtain remedy for the damage inflicted.

26. In regard to the process of ensuring rights for injured persons and alleged offenders in light of acts of torture being committed, the Constitution stipulates the rights of persons in the justice process/system which are in line with the guarantees prescribed in the Convention as follows:

“Section 40 – A person shall have rights in the judicial process as follows:

(1) Right to access judicial process easily with convenience, promptness, and without discrimination;

(2) Fundamental rights in the judicial process which, at least, guarantees the right to openly conducted trials; the right to be informed of matters of fact and to examine relevant documents adequately; the right to testimony, contestation, and evidence in the case; the right to object to a judge who is not impartial; the right to have cases granted hearing en banc; and the right to be informed of grounds for the decision given in adjudication, judgment, or orders;

(3) Right to a just, prompt and fair trial;

(4) An injured person, alleged offender, plaintiff, defendant, interested parties, or witnesses to a case shall have the right to appropriate treatment in the judicial process, including the right to be investigated correctly, promptly and fairly, and not to testify against himself;

(5) An injured person, alleged offender, the accused, and witnesses to a criminal case shall have the right to necessary and appropriate protection and assistance from the State. Compensation, remuneration and expenses shall be provided by law;

(6) Every child, youth, woman, older person or person with disabilities shall have the right to appropriate protection in judicial processes, and shall have the right to appropriate treatment in cases related to sexual offences;

(7) An alleged offender, and the accused in a criminal case shall have the right to just, prompt and fair investigation or trial with adequate opportunity to defend his case, the right to examine or to be informed of evidence, the right to defense counsel, and the right to be released on bail;

(8) A person shall, in civil action, have the right to appropriate legal assistance from the State.”

27. From Section 40, it is evident that the Constitution has stipulated provisions to ensure that injured persons and accused persons are entitled to fair prosecution and protection through the rendering of justice and appropriate treatment in accordance with the principles enshrined in the provisions of the Convention. The disbursement of compensation, remuneration, and necessary expenses incurred shall be implemented pursuant to the provisions prescribed by applicable laws, details of which will be subsequently elucidated in various articles.

28. The provisions in the Constitution shed light on the prescription of measures which are binding on Parliament, the Government, officials and the Courts, ensuring that they shall undertake to protect persons' rights and liberties, including protection against acts of torture, cruel or inhuman treatment affecting the rights of individuals in their own bodies.

## **C. Principles in criminal laws and principles in criminal procedure laws**

### **1. Principles in criminal laws**

29. There are core provisions under the Criminal Code which stipulate liability and offences related to torture pursuant to article 1 of the Convention as follows:

30. Regarding offences pertaining to torture as prescribed in article 1 of the Convention, Thailand has made an interpretative declaration thereupon (i.e. on article 1) relating to the definition of the term "torture". Since Thailand's Criminal Code currently in force does not stipulate any specific provision on the definition thereof, Thailand's interpretation of the meaning of "torture" is based on its understanding pursuant to the Penal Code currently in force.

31. Regarding article 4 which provides that all forms of torture constitute offences punishable under criminal laws, with the implication that this principle shall be applied to any attempt, complicity and participation in an act of torture, Thailand construes the meaning of such cases in compliance with the Penal Code currently in force.

32. In this regard, there are provisions in Thailand's current Criminal Code concerning attempts at, complicity in committing, and participation in an offence as follows:

- "Section 80 – Whoever commences to commit an offence, but does not commit it continuously, or commits it through, but does not achieve its end, is said to attempt to commit an offence.

Whoever attempts to commit an offence shall be liable to two-thirds of the punishment provided by the law for such offence.

- Section 105 – Whoever attempts and commits a minor/petty offence shall not be punished."

33. Whereas an act taken as complicity or participation in such an offence is subject to the provisions in Sections 83-86 as follows:

- "Section 83 – In any offence committed by two or more persons, those taking part in the commission of such an offence are said to be principals, and shall be liable to the punishment provided by the law for such an offence.

- Section 84 – Whoever, irrespective of whether by employment, compulsion, threat, hire, asking as favor, or instigation, or by any other means, causes another person to commit any offence is deemed to be an instigator.

If the employed person commits the offence, punishment shall be imposed on the instigator as a principal. If the offence is not committed, irrespective of whether it is because the employed person does not consent to commit, or has not yet

committed, or by any other reason, the instigator shall be liable to only one-third of the punishment provided for such offence.

- Section 85 – Whoever advertises or announces to the general public to commit an offence and such offence is punishable with imprisonment of not less than six months, that person shall be liable to one-half of the punishment provided for such offence.

If the offence is committed due to the advertisement or the announcement according to the first paragraph, the person who made such advertisement or announcement shall be imposed with the punishment as a principal.

- Section 86 – Whoever, by any means, does any act to assist or facilitate the commission of an offence by another person, before or at the time of commission of the offence, even though the offender does not know of such assistance or facilitation, is said to be a supporter of such offence, and shall be liable to two thirds of the punishment provided for such offence.

- Section 106 – A supporter to the commission of any minor offence shall not be punished.”

34. In regard to interpretation pursuant to the Penal Code concerning participation in an offence, the wrongdoer must either have taken part in the criminal act as a principal who is involved in the action and exhibits collective *mens rea*; or as a person who employs or makes advertisement, and thus causes another person to commit an offence; or as a supporter who facilitates or renders assistance in the commission of an offence by another person with a view to provide support therein.

35. However, in the case of minor offences, any support therein shall not be punished. In addition, in the case where the criminal act is committed by a competent officer, and involves an accomplice who is not a competent officer status, any such accomplice may not be regarded as the principal or is not to be criminally liable as if he were the principal in such act. The accomplice in question shall only be criminally liable as a supporter on account of his not holding a competent officer’s capacity, thus rendering him free of the required constituent element as a principal thereof.

36. In regard to the deliberation upon grounds for offences stipulated in the Penal Code which lie within the scope of torture pursuant to the Convention, the Penal Code has established the following provisions on offences related thereto:

- “Section 290 – Whoever, without intention to murder, causes death to any person by inflicting the offence of battery on such person shall be liable to imprisonment from three years to fifteen years.

Where the offence is committed under any of the circumstances as listed in Section 289, the offender shall be liable to imprisonment from three years to twenty years.

- Section 295 – Whoever causes bodily or mental harm to another person is deemed to commit the offence of battery, and shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding four thousand Baht, or both.

- Section 296 – Whoever, commits the offence of battery under any of the circumstances as listed in Section 289 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding six thousand Baht, or both.

- Section 297 – Whoever commits the offence of battery, and thereby causes grievous bodily harm on any other person shall be liable to imprisonment from six months to ten years.”

37. Grievous bodily harm means any of the circumstances as follows:
- (1) Blindness, deafness, having been severed tongue or loss of the sense of smell;
  - (2) Loss of reproductive organs or ability;
  - (3) Loss of an arm, leg, hand, foot, finger or any other organ;
  - (4) Permanent disfigurement of face;
  - (5) Miscarriage;
  - (6) Permanent mental disorder;
  - (7) Disability or chronic illness which may last throughout life;
  - (8) Disability or illness with extreme suffering for more than twenty days or illness which causes inability to engage in daily life activities for more than twenty days.
- Section 298 – Whoever commits an offence in Section 297 under circumstances as prescribed in Section 289, shall be imprisoned from two years to ten years.

38. With regard to aggravating circumstances in accordance with Section 289, Sub-Section (5) contains wording that corresponds with the term “torture or cruel treatment” in the Convention, resulting in such increase in punishment. However, “torture” in the provision under Sub-Section (5) refers to acts causing sustained suffering by any such victim prior to death or bodily or mental injuries inflicted upon any such victim, or grievous injuries involving such severe pains and tribulations prior to death, such as subjecting victims to burning alive (Supreme Court’s Judgment No. 3305/2543). Inhumane treatment means an act which involves killing or an assault of a cruel inhuman character, such as killing an entire family, or using a wooden club to hit the head of the victim, breaking his skull, then throwing him into the water while still alive (Supreme Court’s Judgment No. 576-577/2545). Thus, such meaning differs from the definition of torture pursuant to the definition in article 1 of the Convention.

39. Furthermore, there are acts which constitute torture in accordance with the Convention, but are minor offences under Thailand’s Penal Code, for instance:

- “Section 391 – Whoever commits an act of violence not amounting to bodily or mental harm to another person shall be punished with imprisonment not exceeding one month or fined not exceeding one thousand Baht, or both. Section 392 – Whoever puts a person in fear or in fright by threat shall be liable to imprisonment for a term not exceeding one month or a fine not exceeding one thousand Baht, or both”.

## **2. Principles in Criminal Procedure Laws**

40. The Criminal Procedure Code establishes criteria pertaining to protection of injured persons from torture and in regard to prosecution against a defendant who is an officer committing an offence of torture, as well as criteria prohibiting use of torture to obtain a confession, and proscriptions against accepting evidence acquired by unlawful means as follows:

41. Thailand’s criminal procedure starts with investigation and inquiry by the police. After collecting all evidence, the police shall refer the case to public prosecutors for deliberation as to whether or not this case will be filed. In filing cases to court, either public prosecutors or injured persons may bring an action to court, or both parties may collectively proceed as joint plaintiffs.

42. After having filed a case to court, during trial, the Public Prosecutor shall first adduce evidences in court. The accused shall then adduce counter-evidences. The court

shall pass judgment after weighing the evidence gathered from the public prosecutor and the defense. The court may also require that further evidence be adduced. In passing judgment, the court shall have listened to the statements of all witnesses and examined all evidences to prove beyond reasonable doubt, to the court's satisfaction, that the accused has actually committed the crime. If any doubt remains, the court shall then give the benefit of the doubt to the defendant by dismissing the case.

**Protection of injured persons subjected to torture inflicted to obtain a confession**

43. Any person subjected to torture inflicted to coerce him to give statement during inquiry is regarded as an injured person in a criminal case which may involve an offence against such person's body or his liberty as provided by the Penal Code. Such person has the right to petition or file a case to court. In addition, an act of assault is regarded as a non-compoundable offence. Thus, if a witness has knowledge of such offence being conducted, such person may make an accusation to the inquiry official in order to press charges.

**Protecting the alleged offender's right to speedy, continuous and fair inquiry/trial**

44. The Criminal Procedure Code stipulates guarantees for the protection of the alleged offender as follows:

- The right not to be arrested, detained or searched without justification. To make an arrest, there needs to be a warrant or a reason as provided under Section 78. For a search in a public place to be conducted, there needs to be a good reason in accordance with Section 93. Detention shall be made only as deemed necessary, and the detention period shall not exceed the duration of time prescribed under Section 87. If the detention should last longer than the period provided thereby, permission has to be sought from the court pursuant to the provision under Section 87, paragraphs four-eight.
- The right to be released on bail, as the main underlying principle, with a guarantee constituted. No excessive accusation shall be charged against the accused offenders, nor shall he be demanded security in an excessively high amount pursuant to Sections 107-119.
- The right to request the *Habeas Corpus* pursuant to Section 90.
- The right to have access to a legal counsel's assistance during an interrogation, and the presence of a legal counsel or a trusted person during an interrogation in accordance with Section 8 and Section 134/1.
- The right not to be compelled to elicit a confession pursuant to Section 135.
- The right to prompt, continuous and fair interrogation in accordance with Section 134.

45. The provisions described above are, therefore, guarantees that are in line with the Convention which aims to ensure adequate guarantees for a fair trial in regard to offenders in torture-related offences.

46. In regard to the principle prohibiting hearing of evidence acquired by means of torture, Section 226 of the Criminal Procedure Code stipulates prohibition against acceptance of evidence acquired by unlawful means. This is already in line with the principle enshrined in the Convention.

47. Remedies for injured persons in criminal cases, Section 44/1 and Section 44/2 of the Criminal Procedure Code provide that injured persons in criminal cases may submit their appeals to court in cases where public prosecutors file charges against defendants in relation to criminal offences related to life, body, liberty, reputation or property. The appeals must be submitted prior to the start of the trial thereof so as to request the court to

order defendants to pay for compensation to the injured persons as appropriate. However, in such cases, if the injured persons are impoverished and are thus deprived of access to lawyers' service and counsel, the court may appoint lawyers for such injured persons. These measures provided in the Criminal Procedure Code constitute a way through which assistance may be accorded to injured persons such that they have access to remedies for torture and cruel treatment.

#### **D. Status of the Convention in Thailand's domestic laws**

48. As Thailand has acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is bound thereby to implement all the four obligations set forth in the Introduction.

49. However, as Section 32, paragraph two of the Constitution provides protection of rights and liberties in life and person, steps taken in compliance with the Convention may be implemented as they shall be binding on legislation promulgated by the legislature, the Government's administration and the Courts' decisions which shall not be in contradiction to Section 32, paragraph two of the Constitution.

#### **E. Guarantee for non-permission to cancel or revoke any prohibition against cruel, inhuman or degrading treatment or punishment**

50. Section 32, paragraphs two and five of the Constitution stipulates that "any act affecting rights and liberties as prescribed under paragraph one shall not be permitted unless a law stipulates a provision permitting such act." This means restrictions on liberties and acts of torture or abuse may be permitted only where a law authorizes such restrictions or acts. Also, in enacting a law, the sentence shall not be imposed so as to allow any cruel or degrading treatment or punishment which is in contradiction to Section 32, paragraph two of the Constitution.

#### **F. Implementation of provisions under the Convention by the courts or administrative officers**

51. The Constitution does not make any stipulation pertaining to the implementation of the provisions under the Convention by courts or competent officials. The Constitution only provides an overall framework under Section 27, which specifies that rights and liberties recognized by the Constitution shall be protected and are directly binding on Parliament, the Cabinet, the Court, as well as other constitutional organizations and state agencies in regard to the enactment of legislation, law enforcement and interpretation of all laws.

52. Concerning protection in order to implement those rights, Section 28 provides that any person whose rights or liberties recognized by the Constitution are violated can invoke this provision of the Constitution in exercising his judicial rights, or raise it as an argument in defending a court case. This means any person can exercise his judicial rights to directly compel the State to abide by the provision in this chapter of the Constitution. In exercising one's rights and liberties in any respect, if there are provisions under an existing law specifying details of the exercising of such rights and liberties already recognized by the Constitution, the actual exercising of such rights and liberties shall be in accordance with the law.

## **G. Overall implementation of the Convention, problems and obstacles**

53. In implementing provisions of the Convention, state agencies, especially at the executive level of agencies such as the Ministry of Defense, the Royal Thai Police, the Department of Corrections and the Department of Probation have been actively involved in implementation of the Convention. They each have issued circulars to inform their officers at the operational level of developments in this regard. Operational guidelines have also been established to preempt acts of torture, cruel treatment or discrimination. In addition, standards, especially professional ethics for the performance of duties, have been prescribed for implementation with a view to encourage officials to observe principles guaranteeing human rights.

54. Furthermore, many agencies, such as the Royal Thai Army and the Royal Thai Police, have integrated human rights courses in their training curricula to educate officers at the operational level in regard to fundamental principles of human rights for reference in performing their duties.

55. Certain problems and obstacles still arise in the implementation of the Convention during the accession stage. Due to the limited period of four years from the date Thailand acceded to the Convention and the preparation of the Initial Report (2006-2009), operational personnel and officers concerned still lacked knowledge, information and understanding about the scope of the obligations to be implemented under the Convention. In addition, no specific prosecution procedures have been established for use against torture-related offenders, forcing those in charge of collecting data on offences to resort to contrasting interpretations in regard to existing Thai laws in the determination of whether cases should be deemed as constituting offences pursuant to the Convention. As a result, no agencies have organized their information management system for the collection of evidence pertaining to actions constituting torture as stipulated under the Convention.

## **III. Implementation of the Convention by article**

### **Article 1- Definition of torture**

56. In Thailand, the term “torture” has been stated in several important laws, viz the Constitution, the Penal Code and the Criminal Procedure Code as follows:

57. Section 32, paragraph two of the Constitution, stipulates that, an act of torture, a brutal act or punishment by cruel or inhuman means shall not be committed; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed to be punishment by a cruel or inhuman means under this paragraph.

58. Meanwhile, the Penal Code does not specifically define “torture” as a particular offence in its own right, but provides that torture is a ground of a grave nature that leads to an increase in punishment in certain criminal offences, namely aggravated battery (Section 296), assault and battery causing grievous bodily harm (Section 298), murder (Section 289(5)), kidnapping for ransom (Section 313, paragraph two), and the offence of gang-burglary (Section 340, paragraph four and Section 340 bis, paragraph five). The Criminal Procedure Code, Section 135, stipulates that “In taking a statement of the alleged offender, the inquiry official is prohibited from making any arrangements leading to a guarantee, promise, threat, deception, torture, using force or any unlawful acts in order to induce the alleged offender to give any statement regarding the charge against him.”

59. However, the three important laws described above do not give any specific definition of the term “torture”. In Thailand’s interpretative declaration made upon accession as a State party to the Convention, it was stated that the country had not as yet

adopted any specific definition of the term ‘torture’ that would correspond to the definition given in the Convention as such. Therefore, Thailand in the meantime interprets the meaning of the term ‘torture’ as per its Penal Code. However, the country shall subsequently undertake legal amendments to bring its internal laws further in line with the Convention.

60. At the time of the preparation of this report, however, Thailand, through the Office of the Attorney General and the Ministry of Justice, was endeavoring to draft a bill to amend the Penal Code by adding a chapter on offences related to torture specifically, with a definition of the term ‘torture’ in line with the Convention. In addition, the draft bill stipulates higher levels of punishment, and prescribes that attempts at and participation in offences of torture shall be deemed as tantamount to completion of the act of torture as such, or to undertaking to commit an act of torture per se. The drafting of the Act on the Amendment of the Penal Code clearly represents Thailand’s appreciation of the significance of torture prevention, and its commitment to undertake amendments to bring internal laws in line with the Convention to the greatest extent, as propounded in the interpretative declaration made during its accession as a State Party to the Convention.

61. The said legal revision is a result of unwavering attempts on the part of the public sector and NGOs operational in the field of human rights, who collectively champion this cause. This represents engaged participation in a bid to achieve mutual understanding in Thai society, which is an essential *modus operandi* for attaining knowledge of and achieving a true appreciation *vis-à-vis* effective torture prevention.

## **Article 2, paragraph 1- Establishing efficient measures for the prevention of torture**

### **1. Legislative measures**

62. The Criminal Procedure Code states the following

- “Section 84 stipulates that the person under arrest shall be immediately brought to the office of the inquiry official, and the accused has the right to medical treatment in case of illness in accordance with Section 7/1(4).

- Section 7/1 endorses the right of the accused person detained or imprisoned to meet his relatives or trusted persons anytime from the time of the arrest and inquiry, and the accused person detained or imprisoned may request the officer in charge to facilitate arrangements in notifying his relatives or trusted persons thereof at no cost.

Where the alleged offender is a foreigner, Section 13 provides that the Inquiry Official, the Public Prosecutor, or the court shall make necessary arrangements to provide an interpreter to the accused without delay. Pursuant to the Inquiry Regulations of the Royal Thai Police, it is prescribed in a rule that the Foreign Affairs Division of the Royal Thai Police shall be informed on the first occasion within 24 hours, so that the Division may inform the embassy of the foreign national thus accused within 24 hours.

- Sections 7/1(2), 83, 134/3 and 173 recognize the right of the accused to meet and consult with his lawyer in every stage of the judicial process. State officials in charge must notify the accused of this right.

- Section 135 prohibits the Inquiry Official from committing any acts of torture against the accused so as to make him give a statement.

- Section 86 and Section 87 prescribe that detention of arrested suspects shall be implemented only as deemed necessary so as to prevent escape and as deemed suited to the circumstances of the case.

- Section 90 prescribes that whenever a claim is made that any person is being unlawfully detained in a criminal case, the following persons have the right to file a motion



to the local court exercising jurisdiction over criminal cases, requesting the release of such person:

- (1) The detainee per se;
- (2) A public prosecutor;
- (3) An inquiry official;
- (4) The commander or warden of the prison.
- (5) The husband, wife, or a relative of such detainee, or any other person acting on behalf of the detainee.”

*The Corrections Act B.E. 2479 (1936)*

63. Section 10 prescribes measures in recognition of detainees’ right to appropriate medical examination upon their entry into or release out of prisons without being under supervision of the officials enforcing relevant laws. Detainees are also entitled to request that they have access to medical examination by independent external physicians.

64. In addition, where wounds or illnesses are detected, the corrections official must record the detainee’s statements pertaining to such bodily assault, the nature of the wounds or symptoms detected, and take photos thereof which record the wounds or traces of any bodily assault. He must issue a letter along the line of command to the superior officer of the official(s) who deliver(s) the detainees to him, and also notify the Department of Corrections, the National Human Rights Commission, and the Department of Rights and Liberties Protection thereof.

65. The Martial Law Act B.E. 2457 (1914), and the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) do not prohibit any person from visiting detainees. Detention of suspects pursuant to the Emergency Decree shall be implemented only by court order. In addition, measures for the monitoring of treatment vis-à-vis persons under arrest have also been established.

## **2. Administrative measures**

66. Public agencies have endeavored to prescribe measures for torture prevention, placing an emphasis on public officials’ appreciation of human rights principles, the prevention of torture, as well as cruel, inhuman, degrading treatment and punishment. Agencies in charge of detaining offenders or children have developed measures for supervising and preventing their officials from committing any act of torture or cruel, inhuman or degrading treatment or punishment on persons under control. These state agencies have also issued regulations or orders across the board – to rank and file staff and executives alike – to refrain, in accordance with the Convention, from applying measures which are virtually acts of torture. Additionally, training courses and courses which disseminate knowledge on human rights have been organized to enhance officials’ awareness in connection with human rights in the performance of their duties, thus preempting any commission of acts of torture or cruel, inhuman or degrading treatment or punishment in various state agencies.

## **3. Judicial measures**

67. The Courts can play the most important role in preventing torture through examining the legality of confinement or detention by officers in the capacity of justices pursuant to Criminal Procedure Code, Section 90.

68. In addition, the gathering of evidence by wrongful means, e.g. torturing the accused or intimidating the accused for the purpose of obtaining a confession or any other information, all of which are regarded as unlawful acts in accordance with Criminal

Procedure Code Sections 135 and 226, prohibits the court from admitting any evidence so derived.

#### **Other measures**

69. These include creating opportunities and enhancing inter-agency cooperation, engaging such independent organizations as the National Human Rights Commission, and NGOs. They are encouraged to inspect the functioning of agencies in charge of tasks susceptible to involving torture. This is a measure that can significantly minimize the occurrence of torture. This method has a two-fold function since, apart from the fact that it may preempt torture, it may also contribute to protecting the fundamental rights of persons under arrest.

#### **Article 2, paragraph 2- Preventive measures against torture in a state of war, threat of war, lack of internal political stability, or any other public emergency**

70. In regard to the issues under article 2, paragraph 2 of the Convention, the Thai legal framework through provisions under Section 32 of the Constitution clearly and affirmatively stipulates that “A torture, brutal act or punishment by a cruel or inhuman means shall not be made; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed punishment by a cruel or inhuman means under this paragraph.” Under this provision, torture is prohibited under Thai laws. As the Constitution clearly stipulates a provision prohibiting torture, acts or subsidiary laws or orders which contradict such principle shall not take effect.

71. Additionally, current Thai laws do not authorize competent officers to perform acts constituting torture by claiming that such acts are undertaken out of necessity or for any other reason, for instance under circumstances of war, lack of political stability or any other emergency situations. The prohibition under this provision applies to invoking such laws as the Martial Law Act B.E. 2457 (1914), the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005), and the Internal Security Act B.E. 2551 (2008), or any other laws.

#### **Article 2, paragraph 3- Orders from superior officers’ or by the authority of public officials as well as military power may not be invoked as justifications for torture. A person is also prohibited from invoking orders issued by one’s superior officers as justifications for committing offences of torture**

72. Acts of torture are not permitted under the Constitution. Therefore, invoking the power of superior commanders and military authorities to justify acts of torture or superior orders is not permitted under the Constitution and the Penal Code. Persons committing acts of torture pursuant to superior orders shall be liable to punishment in accordance with the Penal Code, which is a practice in line with article 2 of the Convention.

73. Based on the provisions and regulations described above, it is evident that Thai laws and regulations have been developed with the aim of preventing torture undertaken with a view to obtaining confession or any other information, and preempting inhuman treatment against the convicted. In regard to the prevention of excessive abuse of power on the part of public officials, information materials have been produced to introduce guidelines on the use of force towards arrested persons in accordance with Rules of Engagement (RoE) which conform to international standards.

#### **Article 3- Prohibition against expulsion, repatriation or extradition of persons to countries where they may be subjected to torture**

74. Thailand has not stipulated any specific provision in this regard as yet. However, if such cases involve victims of human trafficking, the Human Trafficking Prevention and

Suppression Act B.E. 2551 (2008), Section 38 specifically provides that in repatriating foreign victims of human trafficking to their countries of residence or their home countries, Thailand shall have regard to the safety and wellbeing of such persons.

75. Pertaining to repatriation, Thai law has prescribed approaches to the exercising of discretion on the part of competent authorities. In practice, military officers, police officers, immigration officers, public prosecutors, and officers of other public agencies have acquired the understanding of the non-refoulement principle whereby foreign nationals shall not be sent from or forced out of the country if there appear to be convincing grounds that any such person thus forced out of the country might be subjected to danger or torture. Thailand's adherence to this principle is widely acknowledged and has accordingly earned Thailand recognition internationally.

76. The repatriation of the Hmong Laotian immigrants was implemented pursuant to the agreement concluded between the Lao Government and the Royal Thai Government. The Lao Government places an emphasis on the principle of national consensus and is pleased to welcome the Hmong Laotian immigrants residing in Thailand's Hmong Laotian control areas back to Lao PDR. The Lao government assured the Royal Thai Government that those immigrants would neither be prosecuted nor persecuted upon their return. Instead, they shall be provided with land for them to till, as well as the required expertise and appropriate funding in order to enable them to earn their living in their own heartland where they were born and once lived. Thailand takes this stance as a government-level promise to preempt any maltreatment or torture of the Hmong Laotian immigrants repatriated thereby.

77. The repatriation was handled in a cautious and discrete manner, avoiding any harsh measures. Authorities concerned undertook every possible step to prevent any cases of family members becoming separated during the repatriation process. The mission was successfully implemented. The Hmong Laotian immigrants have now settled in areas allocated by the Lao Government with accommodation and farming land handed over to them. These areas are fully equipped with the necessary basic infrastructure. As of now, there have been no reports of any repatriated Hmong Laotians being subjected to danger or being prosecuted. This state of affairs has been confirmed by members of the diplomatic corps and representatives from international organizations who have visited the areas to inspect the livelihood and ensure the safety of the repatriated Hmong Laotians.

#### **Article 4- Making or attempting to make torture a criminal offence, and setting punishment on acts of torture**

78. Even though no Thai legislation stipulates "torture" as a specific offence per se, close examination of Thai criminal law reveals that certain offences therein fall into the scope of the meaning of "torture" pursuant to the definition stipulated in article 1 of the Convention – i.e.

(1) Offences of assault causing bodily or mental harm, viz offences under Sections 391, 295, 297 and 290 (of the Penal Code), which are offences intentionally committed through acts of assault on other persons, causing bodily or mental harm, serious harm or injury, or death on the persons so inflicted. If an act of torture is involved, that will establish grounds for increasing the punishment of offenders pursuant to Section 296 or Section 298, as the case may be.

(2) Offences of violations against liberties, which are offences under Section 309 and Section 392, committed through forcing others to undertake a certain course of action by intimidating them, or to refrain from undertaking such course of action, or being forced into such a condition. Even if the injured person does not succumb, such acts constitute an offence of intimidation and an attempt against other persons' liberties.

(3) Offences committed by persons in the capacity of public officials performing or failing to perform duties unlawfully pursuant to Section 157.

(4) Attempts to commit the aforementioned offences are offences pursuant to the Penal Code when invoked in conjunction with Section 80. However, Section 105 prescribes that the punishment imposed on a person attempting to commit the offence of intimidating or threatening others under Section 392, and the offence of attempting, even unsuccessfully, to commit bodily assault under Section 391, when invoked in conjunction with Section 80, shall be exempted from punishment under Section 105.

(5) Joint responsibility in offences committed by other persons, in cases whereby the public official does not commit an act of torture himself, but by instigation or by acquiescence allows other persons to commit an act of torture, such official is still subjected to the penalty imposed in such case as a principal, employing person, and supporter in the commission of a criminal offence in accordance with Sections 83, 84 and 86.

79. There are circumstances regarded as constituting acts of torture pursuant to the Convention, but whether or not such acts are criminal offences under Thailand's Penal Code is a matter of interpretation – i.e. cases where a person commits an act of torture with a public officer's acquiescence. The term "acquiescence" is much broader than the term "support" under Penal Code Section 86. Thus, if the person committing an act of torture is not aware of the public officer's acquiescence, the act on the public officer's part shall not be deemed as an act of complicity therein. As such, the public official in question shall not be held responsible for any criminal offence (under Thai law). However, the act actually committed by the person responsible is still deemed to be torture by means of his acquiescence, as actually is the case.

80. Accordingly, it may be summarized that even though Thailand has not stipulated a specific definition of the term "torture" that incorporates expressly the term "torture" as defined in the Convention, acts of torture pursuant thereto under article 1 are, generally, acts constituting offences under current Thai criminal law. Further implications thereof include more stringent punishment for certain types of offences, as appropriate. However, this does not yet cover all potential cases.

81. Although Thai legislation has not stipulated any specific offences of torture as such, current Thai laws are adequate for punishing public officers who commit acts of torture. Examples in this regard include Supreme Court judgment no.1399/2508 pertaining to a case in which a public officer inflicted bodily harm on the accused for the purpose of obtaining a confession and Supreme Court judgment no.706/2516 punishing a public official who inflicted bodily harm on the offender for the purpose of punishing a person without legal authority.

#### **Article 5- Courts jurisdiction in trying offences related to the act of torture pursuant to article 4**

82. Section 4, paragraph one of the Penal Code provides that Thailand has jurisdiction over all criminal offences committed in the Kingdom.

83. All offences committed outside the kingdom, but committed on board on Thai vessels or Thai aircraft may be sanctioned against by Thai courts in accordance with Section 4, paragraph two.

84. In acts other than those under Section 4, or those deemed by Thai laws as being committed in the Kingdom pursuant to Section 5 and Section 6, if either the offender or the injured person is a Thai national and requests that a sentence be delivered by a Thai court, Section 8 of Thailand's Penal Code provides that Thailand has the authority to try and

sentence offenders of crimes related to life and body, as well as offences against liberties committed outside the kingdom subject to the following conditions:

(1) If the offender does not hold Thai nationality, Thailand can sentence the offender only when an injured party presents himself, or when the country where the offence occurs lodges a request. In this case, Thailand cannot initiate the justice process by itself.

(2) If the injured person holds Thai nationality, Thailand can punish the offender only upon a request from the injured person himself/herself.

85. Section 9 of the Penal Code provides that Thailand shall carry out the criminal procedure and sentence the offender who is a public official of the Thai government who commits an offence by wrongfully performing or by failing to perform his/her duties outside the Kingdom.

86. Current Thai laws are partially in line with article 5 of the Convention in that Thai courts may take legal action regarding acts of torture that occur within the kingdom or on board Thai vessels or Thai aircraft. However, where acts of torture occur either outside the kingdom or on board other than Thai vessels or Thai aircraft, Thai laws cannot be invoked to sentence offenders in cases involving torture under these circumstances. In particular, an action in which Thai laws are invoked may be initiated only when one condition is satisfied: an injured person must lodge the request for legal action.

87. At present, Thailand has undertaken necessary steps to amend the Penal Code, by adding provisions to Section 7, which originally stated that “Whoever commits the following offences outside the Kingdom shall be liable to sentences in the Kingdom.” Sub-Section (3/1) shall be added with the provision therein outlining offences which meet the conditions set forth in Section 7. Therefore, the prescription is: “(3.1) offences related to torture as provided in Section 308/1, Section 308/2 and Section 308/3.” Such amendment of the Penal Code, once completed, will enable the application of Thailand’s Penal Code and judicial process to any act of torture, and to the prosecution and punishment of offenders, irrespective of whether the offences in question occur inside or outside the kingdom. This principle still applies, even though such acts of torture may not involve any point of connection with Thailand. In other words, even though both the offender and the injured person do not hold Thai nationality, Thailand may nonetheless implement this requirement in accordance with international punishment standards, in line with the provisions clearly stipulated in article 5 of the Convention.

**Article 6- Investigation and questioning of offenders pursuant to article 4, and the process of conducting prompt and objective inquiries once acts of torture occur, pursuant to article 12**

88. The Criminal Procedure Code stipulates guarantees in this regard as follows:

89. As torture is a criminal offence under Thai criminal laws, Section 84/1 and Section 87 of the Criminal Procedure Code authorizes investigating officers to detain alleged offenders, but only for the limited period of time deemed necessary to suit the behavioral circumstances of the case. The laws prescribe criteria for the classification of offences and the determination of what is the warranted corresponding length of detention. Also, courts shall regularly monitor detention implemented under these provisions.

90. In accordance with Section 84/1 and Sections 106-112 of the Criminal Procedure Code, the courts and the investigating officers are authorized to consider cases where it may not be necessary to detain the accused at the office of the relevant investigating officer during the inquiry. In such cases, the accused may be released pro tempore on bail upon a

deposition of cash or assets to guarantee that the accused is still under the supervision of said investigating officer.

91. In regard to the requirement that State Parties shall conduct an investigation immediately if and when a complaint is filed reporting a torture case in Thailand, action can be taken under Thai laws to comply with the provisions under this article. Following the principles set forth in Section 130 of the Criminal Procedure Code, an inquiry shall commence without delay. Section 134 prescribes that an inquiry shall be conducted promptly, continuously and fairly. Additionally, other assurances are laid down to provide assistance to those persons detained, enabling them to contact representatives of their respective governments as mentioned earlier in the analysis presented under article 2 of this Convention.

92. As for the issue that if a person accused of committing an act of torture appears in Thai jurisdiction and is detained in Thailand, Thailand shall inform the government where the offence occurred of the facts and reasons as to why the person accused of committing an act of torture was detained or questioned in Thailand. This measure is required under the Convention, but it is not stipulated in Thai legislation that Thailand shall have to inform the said country of such developments.

#### **Implementation in response to complaints on torture**

93. After Thailand's accession as a State Party to this Convention, inspection/survey was conducted regarding the handling of complaints by state agencies concerned with such charges. It has been found that the number of complaints on torture has decreased. This is because each agency has taken a more active stance/role in this regard. Agencies have laid down ethical standards for officials to observe in performing their duties and to enhance their understanding thereof. Each agency has also conducted on-going regular training to disseminate knowledge on human rights to their officials. Their operations are subject to regular inspection processes by independent domestic and foreign organizations. This development encourages high-ranking executives and operational supervisors to closely supervise their operations, to preempt any violation of the Convention, and to take disciplinary and criminal action against offenders. Complaints on torture have decreased accordingly. Verification by private non-governmental agencies points to the same conclusion, i.e. that torture statistics have decreased in comparison to the state of affairs prior to Thailand's accession to this Convention.

94. Additionally, a survey to examine facts/fact-finding pertaining to torture from the agencies directly handling human rights complaints, e.g. the Office of the National Human Rights Commission and the Office of the Ombudsman has shown that in certain cases, there is evidence of torture. Under the mandate, recommendations have been issued that disciplinary action be taken against officials in agencies in which offences are found to have occurred. For example, complaints have been lodged and verified by the Office of the National Human Rights Commission, and recommendations have been made to the agencies concerned. Generally, corrective measures have been undertaken, and in some cases, offenders have been prosecuted. Simultaneously, complaints at the Office of the Ombudsman pertaining to torture in prisons have been addressed and redressed by the Department of Corrections per se. It can therefore be inferred that measures have been established and implemented to reasonably control torture to a certain degree.

95. In addition, a review conducted by the Lawyers' Council of complaints pertaining to torture, as provided in the Convention, shows that in the cases of torture inflicted by public officials in government agencies, the Lawyers' Council has stepped in to provide assistance by filing actions against the relevant officials and respective government agencies. It has also been found that in cases where the Lawyers' Council has undertaken proceedings to assist injured parties in handling legal cases in this regard, such injured parties have mostly

been accorded due legal support. This could well serve as a form of guarantee to ensure that injured parties have access to legal remedy in the event of torture or assault.

**Article 7- Filing legal cases and guarantees the right to fair treatment for persons accused of committing offences of torture**

96. Under Criminal Procedure Code, the judicial procedures instituted against accused perpetrators of torture offences shall be administered in the same vein as prosecution against other offences. It can, therefore, be inferred that Thailand has already established measures very much in line with the obligations stipulated under article 7 of the Convention.

**Article 8- Processes regulating extradition of suspected perpetrators in torture offences, and relevant treaties concluded between Thailand and other countries**

97. The criteria governing extradition of criminals according to the Criminal Extradition Act B.E. 2551 (2008), Section 7, specifies which categories of offences qualify for extradition of criminal offenders. These are criminal offences under the laws of the requesting country and of Thai law as well. They carry sentences of capital punishment, life imprisonment, or other forms of limitations on liberty for not less than one year. This is irrespective of whether or not these offences are classified as belonging to the same category of offences, or whether or not this applicable legislation carries the same name in either country.

98. In offences which carry sentences of imprisonment, or limitations on liberty for less than one year, a request for extradition of criminals in such cases may be lodged if the offences in question are in connection to offences for which extradition had already been granted earlier. A further request can be made in conjunction with a first request or subsequent requests.

99. In summary, the criteria governing extradition of Thai national criminals must fall under one of the following conditions:

- (1) When a treaty on extradition of criminals is concluded between Thailand and a requesting country so stipulates;
- (2) The person in question gives his consent for the requested extradition;
- (3) When extradition is granted as an agreement which Thailand has concluded with a requesting country, based on the principle of reciprocity. In regard to cases in which Thailand requests that a criminal be extradited from another country back to Thailand, Sections 29-31 provide the following criteria:

100. In a case involving a criminal offence which carries a sentence of capital punishment pursuant to Thai laws, but a lesser sentence in the country to which the request is lodged, and the government is obliged to guarantee that the offender shall not be executed, negotiations should be made so as to conclude an agreement based thereon that the guarantee is mutually accepted. In such cases, if the court imposes a sentence of capital punishment, the government shall undertake appropriate proceedings which conform to the applicable legal provisions to enforce the same court ruling by imposing a sentence of life imprisonment in lieu of execution. The convicted offender in such a case shall not be entitled, under any circumstance, to any amelioration of such sentence other than where a Royal pardon is granted (Section 29).

101. In order to request extradition of a criminal to Thailand, the public prosecutor or state agency requesting the said extradition must file a proposal to the Central Authority (the Office of the Attorney General). If the Central Authority deems it appropriate, the public prosecutor in charge shall prepare a criminal extradition request dossier together

with other supplementary documents. The preparation of the formal request and enclosed documents shall be in compliance with the regulations prescribed by the Central Authority, pursuant to Section 30, paragraph three.

102. The Central Authority shall submit a formal request for extradition of a criminal to Thailand through methods provided in a treaty concluded between Thailand and the country in question, if such a treaty already exists, or through established diplomatic channels where no such treaties thereon between both parties exist.

103. As of now, Thailand has concluded extradition treaties with ten countries: i.e. the United Kingdom (including Canada, Malaysia, and Australia), Belgium, the Republic of Indonesia, the Republic of the Philippines, the United States of America, the People's Republic of China, the Republic of Korea, Democratic the People's Republic of Laos, the People's Republic of Bangladesh, and the Kingdom of Cambodia.

104. The provisions in the ten afore-mentioned treaties and Section 7 of the Criminal Extradition Act B.E. 2551 (2008) stipulate that a criminal extradition agreement must concern criminal offences which, pursuant to the laws of both the requesting country and Thailand, carry sentences of capital punishment or life imprisonment, or other forms of limitation on liberty for not less than one year. This is irrespective of whether or not these offences are classified as belonging to the same category of offences, or whether the relevant laws carry the same name in either country. Also, these offences must not be of a political or military character.

105. Offences involving physical assault, offences against liberties, and offences related either to unlawful performance or failure to perform public duties on the part of public officials are all offences which carry sentences of imprisonment for at least one year. These offences are, therefore, not subject to prohibition against submission for extradition requests.

106. As such, there are no limitations in the laws or concluded treaties that bar Thailand from extraditing criminals for offences of "torture", since pursuant to this Convention, torture already constitutes a criminal offence under Thai laws. However, there are no provisions in Thai laws that specifically establish torture as an offence. This also means that Thailand may send criminals to other countries. If the other country is one with which Thailand has not yet concluded a treaty, Thailand may still hand over criminals to another government, based on the principle of reciprocity in conjunction with criteria provided for in the Criminal Extradition Act B.E. 2551 (2008).

**Article 9- Criminal cooperation between Thai courts and other State Parties in offences related to torture and crimes involving attempts, complicity or participation in acts of torture.**

107. The implementation of this article complies with Act on Mutual Cooperation in Criminal Matters B.E.2535 (1992) under the supervision of the Office of the Attorney General in the capacity of Central Authority who may extend cooperation with foreign countries in gathering evidence in Thailand to be sent to requesting countries so as to sentence offenders in such countries. The fundamental relevant criteria are as follows:

**1. Methods for requesting assistance**

108. Section 8 stipulates methods for requesting assistance in matters pertaining to proceedings in investigations, inquiries, prosecutions, forfeitures of property, and other proceedings in connection with criminal cases. Countries which have concluded cooperation treaties with Thailand shall forward request forms to the Central Authority. As for countries without such treaties with Thailand, requests should be made through diplomatic channels.



## **2. Criteria for the provision of assistance**

109. In principle, for Thailand to provide assistance to foreign countries, there should be bilateral treaties which pledge mutual assistance in bringing criminals to justice between Thailand and a country requesting assistance. Alternatively, without such treaties, it must be apparent that the country making the request will extend the same assistance to Thailand. The offences which are the grounds for requesting assistance must be offences under Thai laws, except where there is a treaty which states otherwise. Thailand may refuse to do so if the provision of the assistance requested undermines the country's sovereignty, security, public interests, or if the offences in question are political or military offences.

## **3. Methods for providing assistance**

110. The Act on Mutual Legal Assistance in Criminal Matters B.E.2535 (1992) stipulates that the Attorney General shall be the Central Authority. The Central Authority shall receive requests from foreign countries and make the initial consideration as to whether or not such requests meet the criteria prescribed in the law. If they do not meet the criteria, the Central Authority shall inform the requesting countries accordingly. If the requests meet the criteria prescribed by the law, the Central Authority will transmit the requests to the competent authorities, which means officers to whom Thai law assigns authority and duties, e.g. the Commissioner General of the Royal Thai Police, or the Director General of the Department of Corrections. After completing the proceedings, the competent authorities will return the matter to the Central Authority for transmission to the requesting country.

111. The decision of the Central Authority is final, unless the Prime Minister orders otherwise.

## **4. Requesting assistance from foreign countries**

112. State agencies may request foreign cooperation in criminal matters. Similar criteria have been set forth, based on principles very much in the same vein as those prescribed for the provision of assistance to foreign countries, whereby matters shall be transmitted to the Central Authority for deliberation. Extradition in accordance with Thai laws has been practiced since 1929, whereas mutual legal cooperation in criminal matters was established much later. Extradition involves stakes for each individual country, while mutual legal cooperation in criminal matters has a more international character. Extradition involves requesting court orders which will permit defendants to be placed in custody for subsequent extradition. However, mutual legal cooperation in criminal matters requires administrative power. Matters carried out in court are only part of the proceedings for the requested provision of assistance.

113. In practice, no case of extradition or extension of mutual legal cooperation (in criminal matters) has been found to have caused any harm to any person extradited. This is in the main due to regard for humanitarian considerations and the principles stipulated in the Convention.

## **Article 10- Training for public officials, medical personnel, judicial officials or personnel concerned with matters in relation to torture**

114. In Thailand, training courses on human rights are conducted for military officers, police officers, corrections officials, and personnel in other concerned agencies, both at executive and operational levels. Some of these courses incorporate consideration of the issue of torture. In addition, certain non-governmental organizations such as the International Commission of Jurists (ICJ) also offer courses on the Convention and compliance thereto periodically. At present, the Department of Rights and Liberties

Protection is in the process of developing courses on prohibition against torture to be delivered to all agencies concerned.

115. Information on training for military officers, police officers, public prosecutors, or personnel in other agencies concerned

116. On 22 September, 2000, the Ministry of Defense set up a committee for the promotion of human rights through military courses at all levels. Although these training courses are not directly related to torture, prohibition against torture is incorporated in them.

117. In regard to training for police officers, human rights are incorporated as one of the subjects in the training curriculum. Such training courses are conducted for officers at all levels, from inspectors to commanders. The Department of Rights and Liberties Protection, which is the central authority in charge of the Convention in Thailand, has regularly offered human rights courses for officials of concerned agencies. In 2000 and 2011, six graduating classes of the course on human rights were organized for competent law-enforcement authorities operating in the South. The Convention was, of course, an integral part of the curriculum.

118. The Ministry of Foreign Affairs and the Ministry of Defense jointly produced a human rights handbook for distribution to soldiers stationed in the Southern Border Provinces. A soldier card was also produced for the rank-and-file military personnel in that region to carry with them at all times. The phrase "Prohibition of Torture" is clearly written on the card. In addition, training courses on human rights which specifically include matters related to torture are organized for military men. Military commanders are actively engaged in this regard and encourage participation by all military units.

119. In addition, the Ministry of Defense, through the Judge Advocate General's Department, and the Royal Thai Army, via the Army Directorate of Intelligence, in conjunction with the Ministry of Foreign Affairs, organized training on human rights for Thai military peacekeeping forces stationed in various countries. The authorities also produced a Handbook on Military Operation Protection Law, which addresses matters on human rights protection, and international humanitarian laws. Other agencies have included human rights as a subject in their training curricula for officials at operational levels. While not treating torture as a specific topic, the curricula generally covers a broad scope on human rights.

**Article 11- Revision of laws, rules or regulations on detention and treatment toward persons under arrest or detention; various forms of imprisonment for the prevention of torture and cruel, inhuman or degrading treatment or punishment**

**1. Laws regulating detention, acts causing deprivation of liberties, and inspection**

120. The Constitution expressly lays down standards for the treatment of persons under circumstances of arrest, detention and imprisonment. Provisions which guarantee rights, liberties and human dignity are stipulated in Section 4. In this regard, Section 27 and Section 28 prescribe obligations for organizations under the Constitution as well as State agencies to protect the rights and liberties of individuals. If any individual's rights, liberties or human dignity is violated, he can exercise his prerogative through the judicial system and demand his rights.

121. Section 32 also expressly prohibits acts of torture, cruel, inhuman treatment or punishment. Arrest and detention of persons in such a way that might affect their rights and liberties may only be conducted subject to court order or a warrant, or based on other grounds provided by the law.

122. The Criminal Procedure Code stipulates provisions recognizing the rights of individuals. Section 78 provides that arrest of persons by administrative officials or police officers is permitted only when warrants or court orders are issued therefore. State officials shall not exercise their authority simply for the sole purpose of making arrests of individuals, except on grounds specifically provided by law. However, any such arrest must be carried out promptly, in accordance with the law, and officials must not detain arrested persons for a period longer than necessary, pursuant to Section 87. If any person is unfairly detained, he may file a petition to the court to request a release, as per Section 90.

123. Therefore, with regard to arrest and detention, the Criminal Procedure Code fully and comprehensively provides for protection of individual rights. There are strict measures to prevent acts of torture during detention. The administrative official or the police officer who made the arrest must bring the arrested person to court to request court permission for detention within 48 hours, commencing from the time the arrested person arrives at the office of the investigating official.

124. Pursuant to the Military Prisons Act B.E.2479 (1936), prison officials previously had authority to take disciplinary action against prison inmates as provided in Sub-section (4) and Sub-section (5), by confinement in dark rooms and caning. However, since 22 April 2007, Thailand has amended the Act. Section 4 of the Military Prisons Act (No.3) B.E.2550 (2007) repeals the provision which grants such authority to prison officials. Therefore, at present military prison officials are no longer authorized to punish prison inmates by confinement in dark rooms or caning.

125. On the issue of the application of instruments of restraint to prisoners in accordance with Section 14 of the Corrections Act B.E.2479 (1936), a regulation was issued prohibiting the use of instruments of restraint on certain types of inmates, or even in some cases where all the criteria have been met for the order to apply instruments of restraint. The Department of Corrections has issued guidelines on the use of instruments of restraint on inmates with special consideration given to the use of instrument while inmates are, in particular, on the premises of prisons. There has been an agreement between the Department of Corrections and Office of Ombudsmen whereby the use of instruments of restraint shall be limited and shall be used as becomes necessary only. In addition, the current tendency is very much in favor of the application of technology in lieu of instruments of restraint so as to conform to international standards. This represents a further step towards greater protection of inmates' rights. Major developments in this regard are as follows:

- No instrument of restraint shall, under any circumstances, be applied to inmates for the purposes of imposing disciplinary punishment;
- A committee was appointed to monitor and evaluate the condition of inmates upon whom instruments of restraint are being applied. The use and removal of those instruments shall be reviewed every 15 days, etc.

126. At present, problems related to the use of instruments of restraint have been significantly alleviated. In the past, the Department of Corrections had to repeatedly issue letters or memoranda to ensure that all parties concerned reached a common ground – i.e. the Department does not entertain the idea of applying instruments of restraint on inmates due to the regard the Department has for human dignity and the rights and liberties of individuals. That is, with the exception of grounds and necessity as provided by law, rules and regulations. It was often the case that prison officials placed instruments of restraint on inmates for illegitimate reasons such as severe offences, concurrence of offences, or being of foreign nationality. The Department has monitored the functioning of prison superintendents or directors and subjected them to imminent action if complaints are lodged and injury caused. Currently, there are signs of improvement. However, such letters are still

issued which closely supervise the functioning of prisons to ensure that the prison administration conforms closely to the Department's instructions.

127. Regarding the use of instruments of restraint on accused persons or unconvicted inmates, restraints are still necessary when taking them outside the prison for court hearings or other matters. It is at the discretion of officials in order to prevent attempts at escape or assaults on officials. Also, Section 204 of the Penal Code prescribes punitive measures on officials who, through negligence, allow prisoners to escape. Thus, in practice, officials tend to use instruments of restraint when taking prisoners outside prisons, and this is deemed a necessary measure. However, the Department of Corrections is deliberating on the use of alternative methods in lieu of shackles for the purpose of preventing inmates from escaping, and is currently studying practices in other countries.

128. In response to past complaints of inmates lodged to the Office of Ombudsmen pertaining to the use of instruments of restraint, examination of the operation of the prisons in question were carried out. Then guidelines were prescribed emphasizing that corrections officials cautiously apply discretion to the use of instruments of restraint and only as necessary. These guidelines were sent out in the form of circulars. Officials were then dispatched to verify and monitor the operations. Advice and training on discretionary use were also provided to ensure that prison officials truly understand and appreciate treatment towards inmates, in line with international standards, and to prevent any operation which might affect human dignity, or lead to excessive use of official discretion pertaining to the application of instruments of restraint more than was absolutely necessary. It is evident that the Royal Thai government has implemented measures to prevent the use of instruments of restraint. The government has also ensured that the officials concerned exercise their power in this matter with greater prudence.

## **2. Disciplinary punishment**

129. Regarding disciplinary punishment, prison officials may not punish inmates by caning as this form of corporal punishment as been discontinued by virtue of a regulation repealing previous regulations on caning. Therefore, at present, prison officials may not conduct caning, since enforcement of the provisions of the Corrections Act is to be implemented in accordance with the provisions stipulated in the Ministerial Regulation thereto.

130. In regard to confinement in dark rooms, although the Department of Corrections has not as yet issued any regulation lifting confinement in dark rooms, in practice, newly-built prisons do not include areas allocated for the purposes of confinement in dark rooms. As for long-existing prisons with dark rooms, such rooms are no longer used for such purposes. Rather, they are now used for other purposes such as storage rooms.

131. Apart from the principles discussed above, under Thai laws, prison inmates who are of the opinion that they are subjected to unfair treatment have the right to file motions to prison officials, the Director General, the Minister, or submit their petitions to the King. If the petitions are intended for external persons or agencies, the prison administration shall have to deliver those petitions as requested by the person filing them. Any such submission of motions shall be reported to the Department of Corrections. This serves as an efficient monitoring measure through which external parties may initiate monitoring to verify as to whether or not inmates are subjected to torture.

### **Article 12- Investigation and inquiry in torture cases must be performed promptly and without bias**

132. Section 40 of the Constitution recognizes the people's rights to access the justice system readily and promptly. Such rights include the right to lodge petitions and to be

promptly informed of the results of the deliberations thereupon; the right to accurate, prompt and fair inquiries into one's own legal cases (Section 59); and the determination and implementation of court trial proceedings according to the same principles as those enshrined in Section 197.

133. In addition, Section 81 requires that the State oversee, supervise and ensure that such all matters are implemented and executed accurately, promptly, fairly, and extensively, as provided by law.

134. Section 131 of Criminal Procedure Code affirms that officers shall conduct inquiries objectively rather than with a view to eliciting grounds for incrimination from the suspect. In performing their duties, officers shall attend carefully to the monitoring of the task of searching for balanced evidence from all perspectives, including proving the innocence of the suspect.

135. Apart from investigation and inquiry in criminal cases, there are occasions when injured parties may not wish to undertake criminal proceedings for various reasons. They may then lodge petitions to different agencies. For example, petitions pursuant to Section 244 of the Constitution should be lodged with Ombudsperson; petitions in accordance with Section 257 are addressed to the National Human Rights Commission, complaints to internal offices of the Department of Corrections or other agencies, as appropriate. Those agencies which are required by law to handle complaints shall undertake fact-finding investigations without delay, as stipulated in the Constitution and according to the relevant laws.

136. However, there are, at present, no special provisions in Thai legislation which call for the implementation of fair and objective criminal investigation in response to charges lodged for acts of torture. This is because the Criminal Procedure Code is applied, as a normal course of practice, throughout the criminal investigation process. Admittedly, staff of agencies invested with the power to carry out criminal investigations may well be involved in acts of torture against the accused. In any such case, requests may be lodged to have the inquiry official in question replaced, or an official placed in charge of the case who has no relation to the accused, as appropriate.

**Article 13- Guarantees for the rights of victims of torture to file petitions and investigation in a prompt, fair and objective manner and the right of witnesses to be protected without intimidation**

137. Section 58 of the Constitution recognizes the rights of persons to file petitions, to be informed of the results in due course, and to establish an organization for the purpose of handling petitions. Victims of torture may resort to the petitioning mechanism to demand justice and to ensure prompt and objective handling of the matter.

138. In addition, the Constitution also provides that independent organizations be set up to handle complaints pursuant to applicable laws, including matters related to torture. Those specific organizations are the National Human Rights Commission, established by virtue of Section 257, and the Office of Ombudsmen, established by virtue of Section 244. Furthermore, there are other disciplinary agencies which handle such complaints through use of their administrative power, e.g. the Service Center of the Office of the Permanent Secretary to the Prime Minister, the Damrong Dhamma Centre of the Ministry of Interior, Provincial Justice Offices, the Legal Assistance Office in the Office of the Attorney General, the Department of Rights and Liberties Protection in the Ministry of Justice, etc. These are general agencies with administrative authority to receive complaints, irrespective of whether or not the matters concerned lie directly within their mandate. In some cases, lawyers are also provided when legal assistance is called for.

139. In addition, other types of agencies authorized to handle complaints related to torture exist – i.e. internal agencies charged with receiving complaints on matters under their jurisdiction. These agencies are mostly in the office of the particular minister, the office of the permanent secretary in each ministry, or in departments or other government bodies within the same ministry, etc. These agencies are normally invested with the power, as part of their duties, to handle complaints on matters under or related to their jurisdiction or responsibility.

140. Creating opportunities for members of the public or persons faced with difficulties to appeal to these particular independent organizations and public agencies serves as a guarantee that those lodging appeals on torture-related cases will be attended to with prompt investigations and inquiries. In practice, these independent organizations attach special attention to complaints and actively undertake steps to conduct investigations and inquiries into these matters.

141. Thailand's witness protection measures are implemented according to the Criminal Case Witnesses Protection Act B.E.2546 (2003), Section 6 and Section 7, which provide general protection measures for witnesses in criminal cases. For example, they arrange for witnesses to be harbored in safe places, preventing disclosure of the witnesses' names, family names, addresses, photos or other information which may lead to their identification. Arrangements can also be made so as to have administrative officers or police officers on guard for their protection, subject to the prior consent of the witness or the consent of persons in question.

142. There are special witness protection measures which are applied in important cases as specified by law, such as changes of residence, names and surnames, and identification registration documents which can be used to identify witnesses, etc.

143. Because Thai laws have no provisions naming torture as a specific offence, the special witness protection measures may not be applied in these cases as they are not covered under specific offence categories listed by the law for such purposes. However, witnesses in these cases are entitled to protection through general measures which are capable providing them with efficient protection.

144. One major concern lies in the fact that an organization in charge of protecting witnesses may well be the organization with which the public official accused of torture is affiliated. This may potentially cause unfairness and bias in rendering witness protection. A process should therefore be developed whereby other agencies are able to take charge of witness protection in such cases in which conflict of interests might occur between the witness being protected and the organization providing protection. However, as for complaints on non-criminal cases, e.g. complaints requesting disciplinary action, etc., to which measures under the Witnesses Protection Act may not be applied could well constitute a loophole in the provision of protection to petitioners in torture cases pursuant to article 13 of the Convention. Administrative orders should therefore be issued to agencies concerned, or to agencies which handle complaints such that these agencies provide further protection to petitioners in torture cases as per the spirit of article 13.

#### **Article 14- Remedial processes for damage inflicted on victims of torture with fair compensation payment and rehabilitation**

145. At present, remedies for damage caused by unlawful acts under Thai law, is regulated by the title on tort in the Civil and Commercial Code, Section 420.<sup>3</sup> According to this provision, victims of torture may file a lawsuit for compensation as protection for civil rights under Section 420. Specific rights are protected across the board – i.e. rights in life, body, health, liberties, property and other rights which include protection against damage to the mind.

146. In exercising the right to compensation for wrongful acts in civil cases, as torture is a criminal offence, injured persons may invoke the provision under Section 44/1 of the Criminal Procedure Code to lodge motions, and thereby, request courts hearing criminal cases to consider their civil motions for compensation without having to initiate new cases

147. At present, Thailand still enforces the Compensation and Expenses for Injured Person and the Accused Act B.E 2544 (2001). The Act contains provisions endorsing the rights of the following two types of persons:

(1) 'Injured persons' which means persons inflicted with damage in criminal offences committed by other persons, causing loss of life, or bodily or mental harm. Not themselves involved in the commission of such offences, the said injured persons do not have access to remedies through other means.

(2) 'Defendants' refers to persons, against whom legal action is filed, accusing them of committing criminal offences and putting them in custody during trial. If the courts' final judgments in any such cases, based on evidence taken and facts heard during hearings, rules that such persons are not guilty of the crimes, or that the persons' acts are not criminal offences, and while in detention such persons are subjected to torture with a view to obtaining a confession, if they suffer bodily or mental harm, or are assaulted and thereby lose their lives, or suffer loss of liberty without having committed offences, such persons or their legal representatives may invoke such provision to demand compensation as stipulated in the law.<sup>6</sup>

148. It is, therefore, evident that Thai law recognizes the obligation to injured persons in acts of torture. The Thai law provides protection to such injured persons, opening the way for them to file law suits and exercise their judicial rights, demanding tort-feasors to make compensation for damage. As such, the Thai law is completely in line with this article.

149. On the issue of fair and adequate compensation<sup>7</sup>, Thai laws have set forth the criterion that the court shall determine the amount of compensation. The law does not prescribe the minimum or ceiling amount of compensation, leaving it for the Court to deliberate upon the appropriate amount as suited to the actual damage in each case, with regard exercised in relation to the circumstances and severity of the tort involved, funeral ceremony expenses (in case of the victim's loss of life), medical expenses, loss of benefits, loss of earning opportunities as a result of the victims not being able to perform their work. If injured parties lose their employment or cannot work, they may as well demand compensation. Such compensation is not limited only to calculation in monetary terms, but also includes other forms of compensation.

150. In regard to persons who have suffered damage to their reputation, apart from claiming compensation in monetary terms, they are also entitled to demand that the tort-feasors take steps to repair the damage they have caused to an otherwise good reputation.

151. In cases where injured parties lose their lives as a result of act of torture, Thai laws expressly endorse that if such loss of life entails loss of financial support on the part of any person as a result thereof, such person is entitled to compensation, which shall also include the laborer's lost wages.

152. Although the Compensation and Expenses for Injured Person and the Accused Act B.E 2544 (2001) is in force, the process for claiming such compensation is plagued with three major difficulties which make it more difficult for injured persons to actually have access to remedies provided by law. These three major problems are:

153. Firstly, the law limits the types of offences, stipulating that only the injured persons, as a result of the offences listed at the end of the Act, shall be entitled to such compensation. The offences listed are offences under Part 2 (Specific Offences) of the Criminal Code – i.e.

- Title 9 Offences Relating to Sexuality, Sections 276-287;
- Title 10 Offence Relating to Life and Body;
- Chapter 1 Offences against Life, Sections 288-294;
- Chapter 2 Offences against Body, Sections 295-300;
- Chapter 3 Offences of Procuring Abortion, Sections 301-305;
- Chapter 4 Offences of Abandonment of Children, Sick Persons or Older Persons, Sections 306-308.

154. Accordingly, certain injured persons are not entitled to such compensation – i.e. injured persons in offences without bodily or mental assault, but related to violations against liberty, such as persons injured in offences under Section 309 or Section 392.

155. Considerations pertaining to compensation shall be made by a committee in charge of determining whether or not the injured persons shall be entitled to compensation. If the committee decides in favor of the injured person(s), the amount of compensation due, taking into consideration the circumstances and severity of the offences, conditions of the damage inflicted, and opportunities for the injured parties to obtain remedies for the damage through other means.

156. Secondly, limitations specified by the law stated that claims for compensation had to be submitted within one year. In such a period of time, although victims of torture are no longer being tortured, they might still live in the area or still be under the influence of the offenders. Additionally, failure to effectively inform the public meant that victims were not aware of their rights. As a result, injured parties did not always exercise their rights, or they would attempt to exercise their rights after the one-year deadline had expired.

157. Furthermore, the final paragraph of Section 32 under the Constitution provides the Court with the power to order remedies for victims of torture in cases where certain acts have violated the rights and liberties of persons pursuant to paragraph one. The injured persons, through the Public Prosecutor or other persons acting on their behalf in torture cases, have the right to file a motion to the court to issue orders to put an end to or annul such acts. The court may also prescribe methods deemed appropriate to provide remedies to compensate for damages thus caused.

158. At the time of preparing the draft of this report, the Office of the Attorney General and the Ministry of Justice are in the process of drafting a Bill on the Amendment of the Criminal Procedure Code so as to render more effective and comprehensive the remedies for damage caused by violations of rights and liberties under Section 32 of the Constitution. This also constitutes a guarantee that despite any revision of the Constitution, these principles shall still be applied for the protection of victims against violations of their rights and liberties concerning life and security of the persons. Therefore, Section 90/1 of the Criminal Procedure Code is being drafted with the following provisions:

“Section 90/1- Where a claim stating that a person’s rights in life, in liberty and in their own body have been violated, the following persons shall have the right to file a motion, to the local Court having jurisdiction over criminal cases, requesting that it put an end to or annul such acts.

- (1) The injured person himself;
- (2) A public prosecutor;
- (3) Other persons acting on behalf of the injured person.”

159. In issuing an order to put an end to or annul the acts under paragraph one, the court may also prescribe appropriate methods or order remedies for the damage thus caused.



160. The eventual passage of the amendment of the said law will clearly constitute a guarantee that persons whose rights to life and security in persons are violated shall be protected against violations of rights to life, and that torture inflicted on the human body constitutes an offense expressly forbidden by law. Hence, such injured persons or persons may request that the court prescribe methods and remedies for damages they have suffered. In this regard, remedies are provided in conformity with article 14 of the Convention.

161. While the bill referred to above is yet to enter into force, Thai laws endorse claims for compensation related to torture comprehensively and systematically. However, certain limitations may still exist. In claiming compensation for damage under Thai law by any method, it is prescribed that the defendants causing such damage shall have to be identified. If a defendant cannot be found, no claim for compensation may be made. In most torture cases, injured persons hardly see the faces of the persons committing such torture. Even if the faces of the persons committing torture are seen, the injured persons often do not know who their tormentors are: they might not be able to make the necessary identification. In such cases, practical difficulties exist in regard to bringing perpetrators to trial.

162. The process or measures required for the purpose of establishing remedies in torture cases have to cover a range of offences related to torture in all respects. The relevant laws must provide remedies in a comprehensive manner, including remedies for mental suffering and damage and legal counseling. Setting a statute of limitations on time and duration in such cases will have to be determined appropriately, taking into consideration the specific conditions of torture and the circumstances in which the injured person was victimized. In addition, Thai laws still do not contain provisions pertaining to rehabilitation programs for persons who have been tortured. Further studies are needed and efficient systems in this regard have yet to be created. In fulfilling its obligations under article 14 of the Convention, Thailand shall stipulate legal provisions in line therewith. At present, further challenges remain to be redressed.

#### **Obtaining compensation from the State or from prosecution**

163. As yet, there is no compilation of civil cases in which injured persons have themselves filed complaints accusing particular defendants and claiming they had been tortured and suffered inhuman treatment. Cases filed to demand compensation from the Criminal Court are recorded as such in the courts' case-lists, but the court's records do not specifically classify cases of torture. Even under the assault category, no classifications are made as to whether or not the injuries involved were caused by the kinds of acts stipulated as torture in the Convention. Further development of data collection system is required in this regard.

164. Additionally, the statistics from Annual Reports of the Department of Rights and Liberties Protection pertaining to claims by injured parties for compensation in cases of bodily assaults, or on behalf of victims who died as a result of assault shows that the available statistics do not classify which cases are or are not caused by torture pursuant to the Convention. Therefore, no conclusive statements may be established at this point.

#### **Rehabilitation programmes for victims of torture**

165. Rehabilitation for victims of torture is neither clearly specified in Thai legislation nor readily visible in practice. However, in cases of where the accused or the convicted are injured, the investigating officers or corrections officers shall send them for medical treatment according to the principle set forth under the Criminal Procedure Code, Section 7/1 or pursuant to the Regulations of the Department of Corrections, as described earlier. It is to be emphasized that as yet no clear-cut remedial measures to help victims of torture to proceed towards rehabilitation have been established.

**Article 15- Testimony resulting from torture shall not be used as evidence in any court procedure, except against the defendant accused of committing the act of torture**

**Prohibitions under the Criminal Procedure Code**

166. The Criminal Procedure Code, Section 135, stipulates prohibition against intimidation or torture, coercion by use of force, or other wrongful acts to compel or commit any unlawful act to induce the defendant to give a statement. Section 226 prohibits the Court from hearing any evidence obtained by means of intimidation, deception, coercion by use of force or any other unlawful act. This includes evidence which, in itself would normally be admissible in court, but was obtained by officials using wrongful means. Wrongful means naturally include serious assault on body or mind, which also constitutes torture in accordance with the definition in this Convention. Therefore, as these prohibitions are stipulated affirmatively in the Criminal Procedure Code, it may be inferred that Thailand has already established a legal framework which is in line with and in accordance with article 15 of this Convention in this respect.

**Article 16- The State is bound to prohibit acts which constitute cruel, inhuman degrading treatment or punishment**

167. The Constitution, Section 32 clearly and affirmatively stipulates that torture or cruel, inhuman punishment is not acceptable to the Thai legal system at any level. As such, the principle is already enshrined in the Constitution, the supreme law of the land. Furthermore, committing assault on other persons' bodies or minds is a criminal offence pursuant to the Penal Code. Therefore, Thai laws are already in line with the obligations stipulated under article 16 of this Convention.

#### **IV. Summary on implementation of the Convention and ways forward for Thailand's implementation**

168. The approaches Thailand has undertaken in conformity to the articles stipulated in the Convention reflect its determination to formulate measures in line with the Convention. Furthermore, efforts have been made to implement measures for practical application, especially in the form of specific laws, training for officials, prescribing regulations or guidelines for officials within a framework designed to preempt any violation of the Convention. In this regard, the future direction of the Royal Thai Government will be toward embarking upon greater and more engaged compliance with the Convention, and will involve the following measures:

(1) Deliberating upon draft legislation proposals with provisions which clearly define 'torture' and 'offences of torture' in a manner conforming to the provisions stipulated in the Convention;

(2) Creating independent and specialized mechanisms to conduct investigations, inquiries and forensic examinations by forensic physicians, investigating officials, and public prosecutors. These personnel may not be the same persons as any officials against whom accusations are filed;

(3) Prescribing specific methods in regard to the process of claiming compensation for injured persons in cases of torture committed by State officials, which exhibit features different from those stipulated in the Criminal Procedure Code and Act on Remuneration for Injured Persons and Compensation and Expenses for Defendants in Criminal Cases, B.E. 2544 (2001). Prescriptions are needed because the proceedings under these laws are subject to various limitations. These specific methods should be in line with the principles enshrined under the last paragraph of Section 32 in the Constitution;

(4) Developing publicity materials used for disseminating information about the Convention and guidelines for competent officials in the implementation of obligations under the Convention. This information must be distributed to officials and to members of the public to enhance understanding and awareness related to rights and duties. It is one of the Government's duties to extensively so inform and educate members of the public and officials in conjunction with NGOs already operating in the field of human rights. Measures are needed to promote public knowledge regarding their right not to be subject to torture. Educating the public will, at the same time, enhance the awareness of officials of their duties and of the caution to be exercised in the performance of those duties;

(5) Developing training for trainer courses, as well as courses for the dissemination of the Convention, so as to produce regular resource staff within each agency. These resource staff should become models for training purposes within these agencies;

(6) Organizing training for all personnel across the board, in all sectors and at all levels, continuously, on an annual basis, especially for officials in law enforcement, so as to ensure that they understand the provisions of the Convention correctly and are capable of applying them efficiently.

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