association for the prevention of torture

SEANF
THE SOUTH EAST ASIA NATIONAL HUMAN RIGHTS INSTITUTIONS FORUM

SOUTH EAST ASIA NATIONAL HUMAN RIGHTS INSTITUTIONS FORUM (SEANF)'S **GUIDELINES ON TORTURE PREVENTION**

Illustration by: ***Doaa Eladi***

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Illustration by: ***Randy Valiente***

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FOREWORD

1 FOREWORD

The National Human Rights Institutions (NHRIs) are without a doubt, one of the main proponents in the fight against torture. Their roles, succinctly postulated under the Vienna Declaration and Programme of Action 1993, reaffirmed the NHRI's important roles in preventing torture – their advisory capacity to the competent authorities, their mandates to prevent and remedy human rights violations as well as disseminate information and educate others on human rights.

In the South East Asian region, the NHRIs have demonstrate tremendous commitment, capacity and leadership at the country level in strengthening national efforts to promote, protect and uphold human rights. We are also responsible for ensuring adherence and respect for international human rights' commitment including those made under the United Nations Conventions against Torture, Cruel, Inhuman and Degrading Treatment (UNCAT) and its Optional Protocol (OPCAT).

The South East Asian NHRI Forum (SEANF) has been the leading regional platform for six NHRIs from Indonesia, Malaysia, Myanmar, Philippines, Thailand and Timor-Lesté to engage and cooperate. In the past, we have looked into common areas that includes prevention of human trafficking, human rights and business as well as rights of migrants. In 2017, we came to realize the great value of work that the members have done in torture prevention and embarked on producing this guideline. This guideline culminates empirically the six NHRIs' experiences and expertise in six key areas; mobilising for change, strengthening law and justice, increasing transparency in detention system, protecting persons in situation of vulnerabilities and engaging international community. These valuable lessons and reflections were further shaped into practical tips and tools, which hopefully, will be a useful reference for our NHRIs staff, national and regional partners, authorities, government agencies, civil society and the broader ecosystem of torture prevention. Furthermore, the guideline also addresses in a constructive manner, some of the more difficult issues that NHRIs in the region have to confront: universality of human rights, corporal punishment, terrorism, secret and incommunicado detention and migrants rights.

The guideline is now in your hands. We sincerely hope that it will provide practical guidance for the six NHRIs to strengthen existing cooperation, build new partnerships and embark on innovative efforts to combat torture. Only by combining our strengths and over coming our adversities together, can we build a world free from torture and ill-treatment.

Mr. Othman Hashim
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Human Rights Commission of Malaysia (SUHAKAM)

Mr. Ahmad Taufan Damanik
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National Commission on Human Rights of Indonesia (Komnas HAM)

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Provedor for Human Rights and Justice of Timor-Leste (PDHJ)

02

INTRODUCTION TO THE SOUTH EAST ASIA NATIONAL HUMAN RIGHTS INSTITUTIONS FORUM (SEANF) AND TORTURE PREVENTION

2 INTRODUCTION TO THE SOUTH EAST ASIA NATIONAL HUMAN RIGHTS INSTITUTIONS FORUM (SEANF) AND TORTURE PREVENTION

In 2004, the four National Human Rights Commissions in South East Asia – the National Human Rights Commission of Indonesia (KOMNAS HAM), the Human Rights Commission of Malaysia (SUHAKAM), the Human Rights Commission of the Philippines (CHRP), and the National Human Rights Commission of Thailand (NHRCT) – decided to come together as a united force to help fast track the establishment of an ASEAN human rights mechanism. The first formal meeting was held in Bangkok in October 2004. During their fourth Annual Meeting in Manila, Philippines on 29-30 January 2008, the body agreed to adopt ASEAN National Human Rights Forum (ANF) as their official name and at the 6th Annual Meeting of the NHRIs, the body agreed to change its name to South East Asia National Human Rights Institutions Forum (SEANF) to give emphasis to the geographical sub-region. After the ninth Annual Meeting, hosted by the NHRCT on 12-14 September 2012, SEANF received its fifth and sixth members, the Provedor for Human Rights and Justice of Timor-Leste (PDHJ) and the Myanmar National Human Rights Commission (MNHRC).

Since its inception, SEANF has been carrying out joint activities and programs in areas of common human rights concern. These cross-border issues and common concerns includes suppression of terrorism while respecting human rights; protection of the human rights of migrants and migrant workers; promotion of economic, social and cultural rights and the right to development; and, enhancement of human rights education. Furthermore, after the establishment of the ASEAN Intergovernmental Human Rights Commission (AICHR), a regional human rights mechanism, SEANF members continued their strategic engagement with the mechanism. During the 2015 Regional Workshop entitled “Preserving Human Dignity by Preventing Torture and Ill-Treatment in ASEAN”, SEANF members’ role in advancing and strengthening regional efforts in torture prevention were further reaffirmed by ASEAN member states and civil society.

In November 2017, during the SEANF annual meeting, members proposed the development of regional guidelines to help SEANF members to prevent torture effectively. The proposal was then further discussed in Bangkok in February 2018, where members agreed to proceed formally with the proposal. The Association for Prevention of Torture (APT) was invited to provide technical support to this important effort.

The SEANF members envision a set of guidelines that will consolidate and offer concise but effective ways for National Human Rights Institutions (NHRIs) to prevent torture. The guidelines are inspired by the Paris Principles, with the aim of complementing existing references on this topic[1]. The main user or beneficiaries of this document will be the SEANF members, which may refer, incorporate and implement the substances, strategies and tips recommended under the guideline in their daily roles and responsibilities in their respective contexts.

[1] Other references include the 2015 Advisory Council of Jurists (ACJ)‘s Reference on Torture, or *Preventing Torture: An Operational Guide for National Human Rights Institutions*, published by APT jointly with the Office of the High Commissioner for Human Rights (OHCHR), the Asia Pacific Forum (APF).

03
UNDERSTANDING TORTURE PREVENTION

3 UNDERSTANDING TORTURE PREVENTION

This section shall provide the basic definition of torture, cruel, inhuman and degrading treatment as well as the concept of torture prevention in line with international human rights standards. It will also touch on some aspects of regional developments relevant to human rights and torture prevention.

3.1 What is torture?

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," states Article 5 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948.

Torture is the opposite of respect for life and human dignity. The prohibition of torture is an internationally recognised *jus cogens* or peremptory norm of general international law. This means, like other international crimes such as genocide and slavery, states cannot derogate from their obligation to prohibit torture under any circumstances.

Definition of torture

The prohibition of torture and inhuman treatment can be found in universal and regional human rights instruments[2]. Nevertheless, The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides the most precise and comprehensive definition of torture under international law. Article 1 of the UN Convention against torture (UNCAT) provides the legal definition of torture:

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

This definition contains the following four cumulative elements:

- an act or acts causing severe pain or suffering, mental or physical;
- intentionally inflicted
- by a public official who is directly or indirectly involved
- for a specific purpose

The definition also excludes *"pain or suffering arising only from, inherent in or incidental to lawful sanctions"*. While the lawful sanction clause remains difficult to define and determine, it is resolved that this permitted exclusion refers only to sanctions that are considered lawful as determined by both national and international standards, and should be interpreted narrowly[3]. This approach recognises the absolute nature of the prohibition of torture and the need for consistency in its application. Practices such as corporal punishment infringe international human rights law and while they may be stipulated in domestic laws, they still amount to torture and ill-treatment.

[2] Prohibition of torture and ill-treatment can be found in the following human rights instruments; *African International Covenant on Civil and Political Rights (arts. 4, 7, 10) ,Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), Convention on the Rights of the Child (art. 37), Convention on the Protection of the Rights of Migrant Workers and Members of their Families (art. 10), United Nations Standard Minimum Rules for the Treatment of Prisoners (art. 31), Charter on Human and Peoples' Rights (art. 5), American Convention on Human Rights (art. 5) American Declaration of the Rights and Duties of Man (art. 27), Arab Charter on Human Rights (art. 8) Cairo Declaration on Human Rights in Islam (arts. 19, 20), Charter of Paris for a New Europe European Convention for the Prevention of Torture and Inhuman or Degrading Treatment European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3) Inter-American Convention To Prevent and Punish Torture.*

[3] 7 Rodley and Pollard, op. cit. 10, pp. 120 and 121; Association for the Prevention of Torture, The Definition of Torture: Proceedings of an Expert Seminar (Geneva, 10–11 November 2001), p. 28.

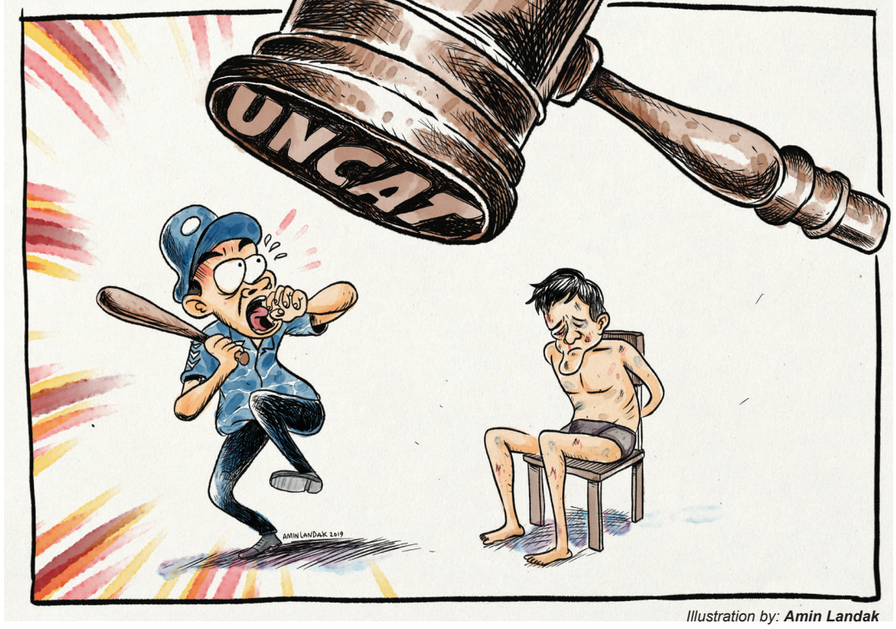

Illustration by: ***Amin Landak***

The four cumulative elements of torture stipulated above is further explained below:

- **An act or acts causing severe pain or suffering, mental or physical**
  There is no minimum threshold for what constitutes "severity" of the pain or suffering inflicted. A person's experience of pain and suffering is subjective, and will depend on the circumstances and context of a given case. Factors such as the sex and age of the victim, the duration of the act, or even religious and cultural background of the victims will be relevant to a case-by-case determination of the severity of "pain and suffering" experienced.

- **Intentionally inflicted**
  The intention of the perpetrator to inflict severe pain or suffering is required for an act to amount to torture. This distinguishes an act of torture from other forms of ill-treatment. In other words, a negligent act does not amount to torture. Furthermore, it is recommended in international law that the definition will not only cover "acts" but also "omission", in line with the object and purpose of the Convention. An example of this would be depriving a detainee access to medical care on purpose[4]. In its General Comment No.3, the Committee against Torture also advises that "acts and omissions" are included in the crime of torture[5].

- **By a public official who is directly or indirectly involved**
  The definition covers acts inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". However, the definition should not only be understood as covering public officials. It also includes actions committed by non-State or private actors if public officials knew or have reasonable grounds to believe that the non-state or private actors commit acts of torture and they fail to exercise due diligence to prevent, investigate, prosecute or punish such non-State or private actors. In this regard, the officials should be considered as authors, complicit or otherwise responsible for consenting to or acquiescing in such impermissible acts[6]. Furthermore, the Committee against Torture has also interpreted "acting in an official capacity", to include de facto authorities, including rebel and insurgent groups which "exercise certain prerogatives that are comparable to those normally exercised by legitimate governments"[7].

- **For a specific purpose**
  Torture is the infliction of pain with a special motive or purpose behind it. Article 1 of UNCAT lists the most commonly found purposes for torture to be perpetrated. However, this list is not exhaustive and may include or refer to other purposes that would fall within the definition. Furthermore, the purpose and intent requirements do not involve a subjective inquiry into the motivation of the perpetrators, but rather an objective determination, taking into account all the circumstances of the case.

[4] Please refer to p.13, APT-CTI Guide on Anti-Torture Legislation 2016. The Guide can be accessed at https://www.apt.ch/content/files_res/anti-torture-guide-en.pdf.
[5] p.14, Ibid.
[6] p.14, Ibid
[7] P.14, Ibid

3.2 What is "cruel, inhuman, degrading treatment or punishment" (CIDT)?

An act that does not fulfil a required element under Article 1 of the UNCAT (for instance, it is not intentional, or does not lead to "severe" pain or suffering), may still constitute CIDT. This is stipulated in Article 16 of the UNCAT:

"Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity…"

For example, while severely beating a detainee in order to obtain a confession during interrogation will always amount to torture; taunting or verbal humiliation, in cases where it does not lead to severe pain or suffering, will amount to cruel, inhuman, or degrading punishment. Nevertheless, States are obligated to prohibit and prevent both torture and CIDT. The Philippines, for example, prohibited both torture and CIDT through a stand-alone law; the Philippine's Anti Torture Act 2009. In the Act, "torture" and "CIDT" are both prohibited but distinguished based on the specific purpose and severity of the alleged act:

Definition of torture and CIDT under the Republic Act No. 9745 (Philippines)

Definition of Torture	Definition of CIDT
"Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.	"Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.

On the other hand, in Timor-Leste, torture and CIDT are both criminalised under Sections 167-169 of the Penal Code. The definition of "torture" and "CIDT" are combined in one provision and stipulated as follows:

> "Torture or cruel, degrading or inhumane treatment means any act consisting in inflicting severe physical or psychological suffering, acute physical or mental strain or employing, chemical products, drugs and other means, whether natural or artificial, with the intent to disrupt the victim's decision-making capacity or free expression of will."

Applying the definition in practice: South East Asian experience

While the legal definition of torture stipulated in Article 1 of the UNCAT is only incorporated in the domestic laws of the Philippines and Timor-Leste, the definition of torture under UNCAT remains an important and persuasive reference for the other countries in the region, including those that are not state parties to the UNCAT. The definition is very relevant in SEANF NHRIs' efforts to develop appropriate understanding, attitudes and measures to prevent torture. In practice, SEANF NHRIs may refer to or apply the definition in their daily work in order to ensure, maintain and increase understanding among stakeholders and the public on what torture means, in accordance with international human rights standards. This could also be a strategic way to build interest, knowledge and commitment among national actors on the need to prohibit torture in practice and law.

Illustration by: ***Ignacio Heiriku Lopez***

3.3 What is torture prevention?

3.3.1 Why prevent torture?

Torture represents the assertion of unlimited power over absolute helplessness, out of public eye and scrutiny. Not only the act rendered victims powerless at the hands of the perpetrator but family members and relatives of the victims will also experience psychological trauma from the incident[8]. This is the reason why torture is placed among the greatest affronts to human dignity.

Furthermore, States have the duty to prevent torture by undertaking positive measures to prevent its occurrence. This duty complements the traditional obligations of States to respect, to protect and to fulfil human rights. "In the case of torture, the requirement that States expeditiously institute national implementing measures is an integral part of the international obligation to prohibit this practice"[9].

Torture needs to be prevented because it is an act that dehumanises both the victims and the perpetrators, corrupts the states that use it and degrades the legal system that accepts it. Such a practice has no place in a modern society that preserves human dignity and respects the rule of law and human rights.

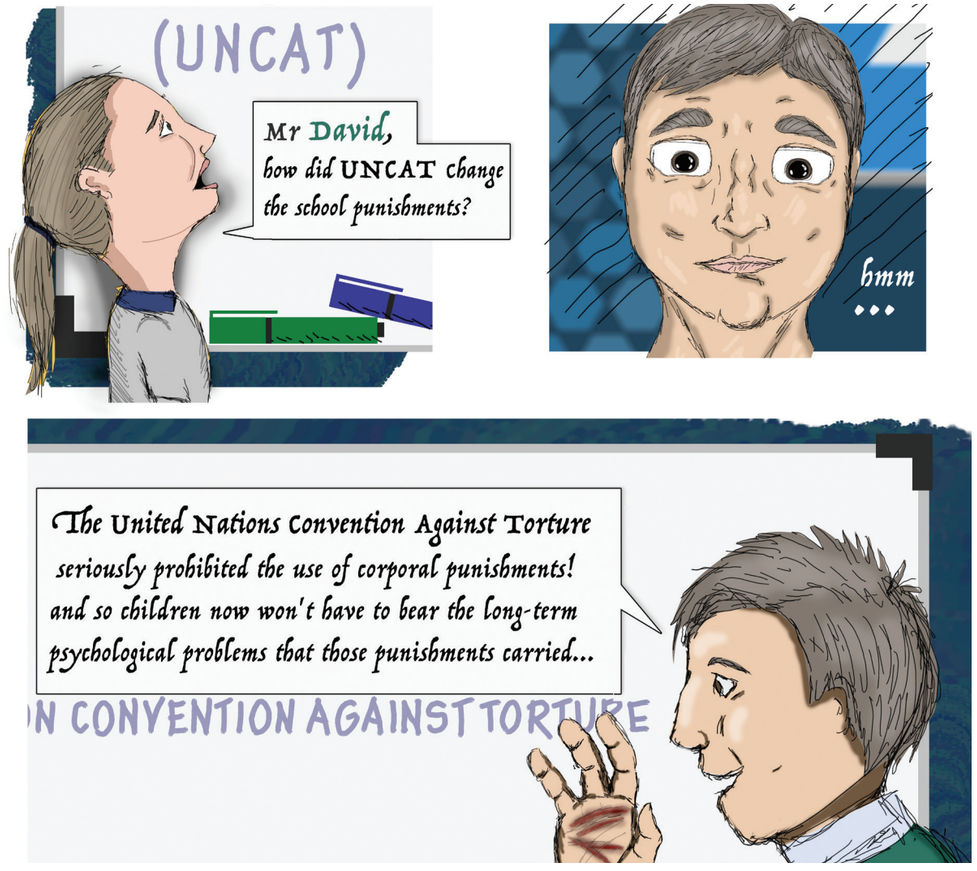

Illustration by: ***Ignacio Heiriku Lopez***

[8] Please refer to para.3 of the General Comment °3 by the Committee against Torture on Implementation of Article 1, CAT/C/GC/3, where the term "victim" also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.

[9] In its general comment No.31: The nature of the general legal obligation imposed on States Parties to the Covenant, the Human Rights Committee stated that "[a]rticle 2 requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations" (para. 7). It further added that "[i]n general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant" (para. 17)

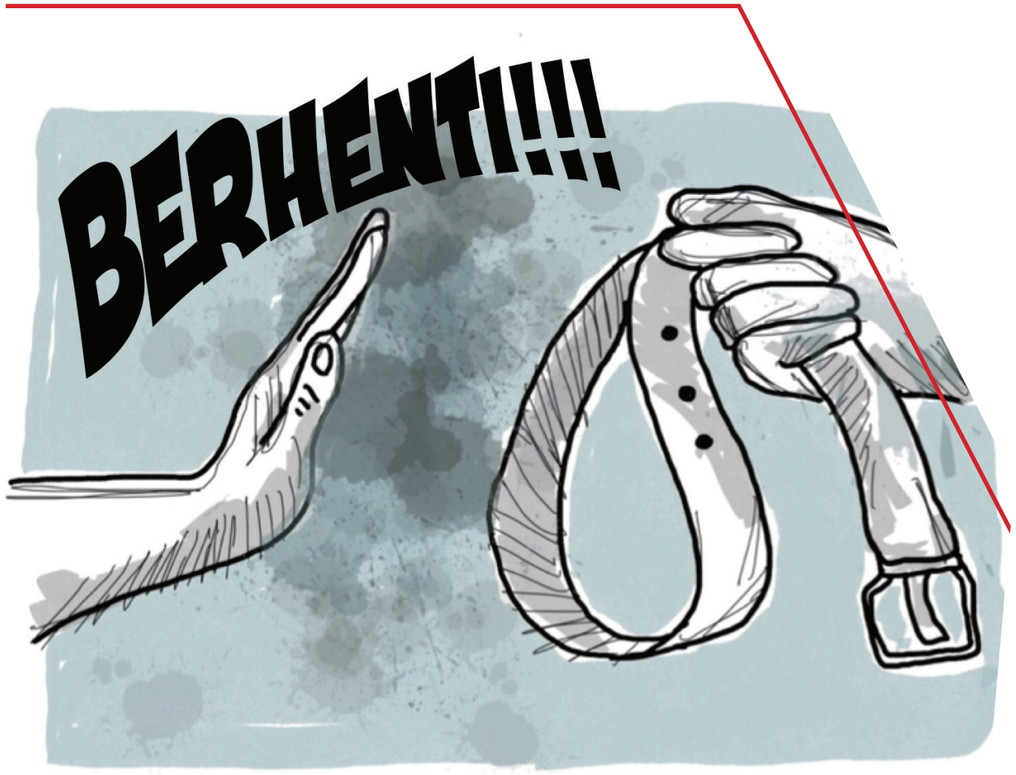

Illustration by: ***Shazeera Zawawi***

3.3.2 What is torture prevention?

Torture prevention aims to ensure that cruel, inhuman, degrading treatment and, ultimately, torture does not occur by creating an environment where these acts are less likely to happen. Therefore, torture prevention focuses less on the act itself than on the preservation of human dignity in the broadest possible sense. Consequently defining torture prevention is not an easy task. Previous attempts have distinguished between direct prevention and indirect prevention or primary, secondary and tertiary prevention.

As torture is a crime, this guideline proposes to use the definition of crime prevention stated in the 2002 UN Resolution on "Action to promote effective crime prevention":

"Crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential effects on individuals and society, including fear of crime, by intervening to influence their multiple causes".

As a whole, torture prevention consists of the following aspects:

a) Steps to address the causes, not the symptoms
Torture prevention aims at reducing the risks and addressing the systemic root causes, rather than the symptoms or the consequences. This can avoid repetition of acts of torture and eliminate the reasons why they occur. There can be multiple causes for torture and ill-treatment and they can be found at different levels.

b) A focus on risk reduction
Torture prevention requires identification and analysis of the highest areas of risks ("the risk analysis"). These areas are:

- Moments or circumstances when risks of torture are higher, e.g., during police interrogation or stop and search situations.
- Persons most at risk or vulnerable to discrimination and ill-treatment, e.g., women, children or ethnic minorities.
- Practices that condone or heighten the risks of torture, e.g., forced confession, corporal punishment or solitary confinement.
- Regions, areas or places where torture is likely to occur, e.g., unofficial secret cells, overseas or offshore detention facilities.

In addition to the four areas above, the broader and macro context that could enable risks of torture to flourish include: a lack of political will, conflict situations, external pressure to combat organised crime, a lack of democratic accountability or rule of law, authorisation of prolonged solitary confinement, strict or repressive public policies and institutional structures, culture and leadership.

c) The need for a combination of strategies and measures
Prevention requires a combination of diverse measures. Article 2 of the UN Convention against torture also makes this clear:

"Each State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture".

A proper legal framework is a necessary precondition, but has to be accompanied by implementation measures (such as training) or procedural safeguards (such as registers), institutional incentives and a broader human rights culture. In addition, oversight mechanisms, such as NHRIs, can play an important role in controlling the existence of the legal framework and its implementation.

d) An emphasis on dialogue and cooperation
Torture prevention seeks to address the causes of torture by engaging in dialogue with authorities rather than through denunciation or public condemnation. It is forward looking and often aims at achieving mid-term or long-term changes, based on concrete solutions that mitigate the risks of torture.

e) It is necessary everywhere and at all times
No State, whatever its legal, political and social context, is immune from the risk of torture. All States are therefore required to take measures and remain vigilant. The role of the NHRI in this regard is key. The ultimate objective of torture prevention is increased protection of all persons against the risk of ill-treatment and torture, to fulfil the right that "no one shall be subjected to torture".

04
SITUATION OF TORTURE PREVENTION IN SOUTH-EAST ASIA

4 SITUATION OF TORTURE PREVENTION IN SOUTH-EAST ASIA

4.1 Background and context – Prevention in South East Asia

ASEAN is one of the regions in the world with the lowest number of UNCAT and OPCAT ratifications. To date, six ASEAN countries; Cambodia, Indonesia, the Philippines, Thailand, Lao People's Democratic Republic and Vietnam have ratified UNCAT while only Cambodia and the Philippines have become State Parties to OPCAT. Brunei signed the UNCAT in 2016 while Timor-Leste signed the OPCAT in 2009. During Timor-Leste's 2017 UNCAT review, the Committee against Torture recommended that further steps are taken by the country to ratify OPCAT.

SEANF countries	Ratification of international human rights instruments (R: Ratification A: Accession S: Signature)									
	ICCPR	IESCR	CAT	OPCAT	CRC	CEDAW	CRPD	CED	ICERD	ICRMW
Indonesia	R	R	R		R	R	R	S	R	S
Malaysia					R	R	R			
Myanmar		R			R	R	R			
Philippines	R	R	R	R	R	R	R		R	R
Thailand	A	A	A		A	A	R	S	R	
Timor-Leste	R	R	R	S	R	R			R	R

ASEAN members that are state parties to UNCAT took steps to comply with their obligations that include criminalisation of torture[10]. Meanwhile countries that are States Parties to the OPCAT are in the process of establishing a National Preventive Mechanism to access places of detention and create greater space for constructive engagement with authorities and civil society on the issue of torture and ill-treatment[11].

[10] The Philippines adopted Anti-Torture Act in 2009 while in Thailand; the government has produced a draft law to prohibit torture and enforced disappearance that was discussed since 2015 by the government and civil society. To date, the draft law is still subjected to further review by the National Legislative Assembly.
[11] The Philippines is currently in the process of adopting their National Preventive Mechanism Bill, which was filed in Congress in November 2014.

Regional mechanisms and instruments

In 2009, a South East Asian regional human rights body known as the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established with the mandate to promote and protect human rights in the region[12]. This was followed by the adoption of the ASEAN Human Rights Declaration (AHRD) as the first regional human rights legal instrument in 2012. Article 14 of the AHRD mirrors Article 5 of the Universal Declaration of Human Rights (UDHR):

"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Civil society in the region has raised concerns that the ADHR undermines the concept of human rights as they are defined through the lens of governments that are hostile to human rights[13]. While these concerns are plausible, the ASEAN member states have pledged that the implementation of the AHRD should comply with the United Nations Charter, UDHR and international human rights instruments to which they are committed[14].

Apart from the AHRD, the regional commitment to prevent torture and ill-treatment is not strongly and explicitly featured in other ASEAN declarations or instruments. However, the ASEAN Convention on Counter Terrorism that came into force in 2007 stipulates that persons held under custody, shall enjoy all rights and safeguards in conformity with international human rights laws[15].

4.2 Culture of Prevention in South East Asia

In 2017, The ASEAN leaders adopted the Declaration on Culture of Prevention (CoP) for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society at the 31st AEAN Summit. CoP aims to promote and embed a culture of preventive mind-set at all levels to address the root causes of social issues including violence, environmental degradation and quality of life.

The CoP has six thrusts, namely:

1. Promoting a culture of peace and intercultural understanding;
2. Promoting a culture of respect for all;
3. Promoting a culture of good governance at all levels;
4. Promoting a culture of resilience and care for the environment;
5. Promoting a culture of healthy lifestyle;
6. Promoting a culture supporting the values of moderation[16].

The aims and approach of the CoP and prevention of torture are complementary. Both approaches tackle root causes that threaten peace and lead to torture and ill-treatment becoming widespread in society. This includes deprivation of mental and physical well-being, pervasive forms of violence that pose challenges to social stability, peace and security, violence against women and children (e.g. human trafficking), drug use and trafficking, youth and urban crime disenfranchisement, racial and religious discriminations, corruption, social injustices. Therefore, efforts that are aimed at preventing torture and ill-treatment – such as the strengthening of national oversight, effective implementation of a national human rights action plan, raising awareness on the threat of torture and ill-treatment to a peaceful society, capacity building of law enforcement officials in protecting and upholding the rights of persons in custody – will equally cultivate a culture of good governance, peace and respect for all, as envisioned by the CoP. This means the on-going efforts to prevent torture at both the regional and national level in South East Asia are in line with the ASEAN spirit and culture of prevention.

[12] Please refer to Item 4 of the Asean Intergovernmental Human Rights Commission's Terms of Reference
[13] Please refer to https://thediplomat.com/2012/11/human-rights-declaration-falls-short/
[14] Please refer to para. 3 of the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration which indicates that the implementation of the AHRD should be in accordance with the *"Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Program of Action, and other international human rights instruments to which ASEAN Member States are parties, as well as to relevant ASEAN declarations and instruments pertaining to human rights."*
[15] Please refer to Section 1-6 under Article VIII of the ASEAN Convention on Counter Terrorism. Document can be accessed at http://www.asean.org/news/item/asean-convention-on-counter-terrorism.
[16] Please refer to https://asean.org/wp-content/uploads/2018/05/10-CoP-Brochure-Final.pdf

4.3 Situational analysis by SEANF members

To understand the reality of torture and torture prevention, particularly in the six SEANF countries, the APT prepared a questionnaire to gather information from all SEANF members on their experience and challenges in preventing torture. The questionnaire was tailored to gather information based on the "risk analysis". Data collected were then analysed to provide a general overview of torture prevention efforts in South East Asia. The aim was to ensure that the guidelines are tailored to the needs and contexts of NHRIs functioning in the South East Asian region. The data gathered from the SEANF members helped the APT to identify the following trends:

- The general trends or patterns that influence torture prevention in the region.
- The most prevalent risks of torture, factors contributing to it and "hard issues" related to the risks.
- SEANF members' good practices and/or responses to addressing these risks of torture.

Overall, Indonesia, Malaysia, Myanmar, the Philippines, Timor-Leste, and Thailand are facing diverse political and socio-economic changes, challenges and transitions. Nevertheless, the countries also face common challenges in their efforts to prevent torture. This culminates in the weakening of public governance and law enforcement.

From the data collected, five common patterns were identified as factors influencing torture prevention in the region:

i) Significant gaps in states' ratification and implementation of their obligations to prohibit and prevent torture under international human rights treaties. For example, only two state parties to UNCAT, the Philippines and Timor-Leste, have criminalised torture in their national legislation.

ii) State policies and practices that lead to human rights abuses but receive popular public support. For example the "war against drugs" in the Philippines or the "war on terrorism" in Indonesia.

iii) The need for stronger mechanism and implementation of policies and practices that could reduce risks of torture against persons deprived of liberty.

iv) Lack of independent oversight in all types of detention places.

v) The need for a stronger guarantee for independence, adequate budget and transparent selection process of members to ensure the effectiveness of NHRIs, in line with the Paris Principles.

vi) The shrinking of space for human rights defenders and NHRIs, to exercise their freedom of expression and opinion.

These factors directly affect SEANF NHRIs. Some SEANF members have suffered from budget cuts, lack of trust and negative public perception over their work and role and, to a certain extent, risks of reprisal from government and the authorities. These issues pose significant threats to the effective functioning of SEANF NHRIs.

4.4 Framework and content of the guidelines

The findings from the questionnaires and consultations with SEANF NHRIs were further researched, analysed and clustered into five main chapters. These chapters represent different actions that SEANF NHRIs can undertake to prevent torture that are linked to their mandates and roles as NHRIs with practical examples and tips provided through "SEANF Stories" and "Tips for Action". Under each chapter, a section is also dedicated to address a "hard issue" in a more comprehensive manner. The summary of the findings from the questionnaire and how it is framed in the guideline can be found in the following diagram.

MOST PREVALENT ISSUES	• Pre-trial detention • Terrorist suspects • Political detainees, marginalised or poor • LGBTI • Refugees • Human rights defenders • Criminal suspects	• Interrogation by law enforcement • First hours of police custody • Pre-trial detention	• Police lock-up secret detention cells • Military detention • Immigration detention, psychiatric institutions, school facilities	• Extracting confession using force • Excessive use of force in policing
CONTRIBUTING FACTORS	• Public opinion and perception	• Lack of investigation skill among police officers • Heavy reliance on confession in criminal justice system • Lack of poor implementation of legal safeguards prolonged detention period under preventive laws	• Overcrowding of official detention places • Implementation of security and emergency laws • Limited access to detention places for oversight bodies	• Lack of knowledge and technology in forensic science lack of oversight on law enforcement operation and work • Standard Operating Procedures are not made public
"HARD ISSUES"	• Terrorist suspects • Insurgent suspects criminal suspects	• Time or crisis of emergency • Lack of law enforcement in remote or geographically challenging area	• Military detention prison	• Solitary confinement • Disciplinary sanctions • Corporal punishment • Widespread of impunity

Guiding actions	Thematic briefings on hard issues
• Mobilising for Change • Strengthening Law and Justice • Increasing Transparency • Protecting Persons in situations of vulnerabilities • Going Local to Global	• Saying NO to Corporal Punishment against Children • Torture and Terrorism • Ending Secret Detention • Migrants are rights too • Human Rights and National Sovereignty

05
MOBILISING FOR CHANGE

5 MOBILISING FOR CHANGE

5.1 Influencing law enforcement agencies

In the South East Asian region, cruel, inhuman and degrading treatment or punishment such as whipping or other forms of disproportionate use of force and restraints against persons deprived of liberty are still implemented[17]. This is due to three factors. First, these practices can still be found in law or criminal procedures; hence, they are widely used by law enforcement agencies such as the police, prison and penitentiary officials and in some contexts, the military. Secondly, the use of torture, particularly during interrogation and investigation, becomes part of the working culture and is perceived to have helped law enforcement officers achieve the goals of their work. In addition, there is still a strong public support for punitive measures against criminals as an act of deterrence for example in the war against drugs or terrorism. These factors reinforce the use torture and other forms of ill-treatment within the criminal justice system.

Law enforcement officers needs to understand that the use of torture and other forms of ill-treatment will lead to the following issues:

- **Infringe the principles of presumption of innocence**; according to which everyone is innocent until proven guilty. This underlines the principle that everyone, including persons deprived of liberty and in contact with the criminal justice system, have rights.
- **Cause physical and psychological damages**. Practices such as judicial corporal punishment are proven to inflict long-term bodily harm and psychological degradation[18].
- **Counterproductive to the law enforcement's work**; there are risks that persons who are ill-treated under custody will not cooperate or possibly fabricate information out of fear and mistrust of the authorities. Furthermore, evidence obtained through torture and ill-treatment is, more often than not, inadmissible in court.

SEANF NHRIs should incorporate the issues above in their dialogue and engagement with law enforcement agencies as a first step towards initiating a discussion and helping them change their mindset.

Furthermore, these efforts to change law enforcement's mindset can be better informed and reflect the realities on the ground when they include former detainees and police officers' inputs and participation. In some jurisdictions[19], police officers are recognised as important experts and agents of change within the system. Their professional experience and sense of camaraderie would be an asset for peer-to-peer exchange and dialogue with the law enforcement.

[17] Please refer to SUHAKAM's statement calling for the end of corporal punishment in Malaysia at https://www.malaymail.com/news/malaysia/2018/09/04/suhakam-end-corporal-punishment-in-malaysia/1669244 or statement calling canning of children as derogatory under UNCAT: https://www.freemalaysiatoday.com/category/nation/2017/07/06/caning-students-considered-derogatory-punishment-under-un- convention/. KOMNAS HAM 2017 Annual Report p. 35, para. 1 reported that: "KOMNAS HAM received complaints related to arbitrary arrest and detention, disproportionate use of force, abuse and allegation of torture against detainees" The report can be accessed at https://www.komnasham.go.id/files/20180914-laporan-tahunan-komnas-ham-2017-$80XP.pdf

[18] Please refer to some cases documented under A Blow to Humanity: Torture by Judicial Canning in Malaysia, Amnesty International (November 2010), ASA 28/013/2010. Among physical and psychological effects reported are losing control over urinary and bowel functions, disintegration of flesh and losing the muscle control of buttock. Please also refer to "Inflicting Harm: Judicial Corporal Punishment for drugs and alcohol offences in selected countries", Harm Reduction International (2011), p.9 where it was mentioned that corporal punishment also resulted in death in Bangladesh. Report can be accessed at: https://www.hri.global/files/2011/11/08/IHRA_CorporalPunishmentReport_Web.pdf

[19] In the development of the UNCAT Training Manual in Indonesia, the Directorate General of Human Rights, Ministry of Law and Human Rights include former senior police officers in its drafting team to ensure that the manual will take into account the practical experience of law enforcement. The Norwegian Human Rights Centre's main human rights programme for law enforcement, particularly the training on investigative interviewing conducted in Indonesia, Thailand and Vietnam are led by former senior crime investigating officers who are capable to build strong rapport and trust with their police trainees.

SEANF STORIES: THE "ACT4CAT" CAMPAIGN IN MALAYSIA

Since 2016, SUHAKAM has been collaborating with the APT, Suara Rakyat Malaysia (SUARAM), Amnesty International Malaysia (AIM), the Bar Council and Lawyers for Liberty (LFL) to implement a national campaign against torture. The campaign helped intensify the government's readiness to sign the UNCAT in a near future. SUHAKAM also conducted UNCAT awareness raising campaign with key stakeholders, including the authorities, using issues such as treatment of detainees under pre-trial detention as entry points for advocacy.

Through the national campaign, SUHAKAM reiterated strongly that *"a cultured, civilised, moderate and progressive society would not resort to fear and humiliation as a legitimate method or tool for education," and that "the convention helps us work at that process better in a more systematic way."*[20]

Furthermore, SUHAKAM's research into the issue of deaths in police custody culminated in a national campaign to address the issue of torture in police custody. Research also pointed out that the problem was due to a lack of political will, widespread impunity and the lack, or poor implementation, of legal safeguards during first hours of police custody.

[20] https://www.malaymail.com/news/malaysia/2018/09/04/suhakam-end-corporal-punishment-in-malaysia/1669244 and https://www.freemalaysiatoday.com/category/nation/2017/07/06/caning-students-considered-derogatory-punishment-under-un-convention/

TIPS FOR ACTION

a) **Build trust with the authorities.**
Incorporate strategies and activities that will help the institution and authorities develop understanding and trust on the goals of your advocacy effort. This does not mean establishing a relationship that is "too close for comfort" but rather, supportive and cooperative.

b) **Join forces with others.**
Mobilise different stakeholders and civil society organisations in the country to be part of the advocacy efforts with authorities. This will broaden outreach, increase support and help bring together various perspectives and strategies that are useful for advocacy efforts.

c) **Focus on the positives.**
Highlight the benefits of changing policies and practices that condone torture and ill-treatment to authorities and the public, particularly in achieving their goals of effective policing.

d) **Engage!**
Build opportunities and platforms to engage authorities on thematic issues or priorities relevant to prevention of torture. Show that SEANF NHRIs are always ready to dialogue and discuss as opposed to imposing their will and being confrontational.

e) **"What about us?"**
Ensure that advocacy for change is not only focused on the persons deprived of liberty, but also look into the needs and well-being of the authorities, such as their daily challenges at work, the need for capacity building or salaries and other professional benefits.

5.2 Changing public mindsets

Promoting public awareness of and respect for human rights is one of the core functions of NHRIs. Article 3 of the Paris Principles states that NHRIs have a responsibility "to publicise human rights" by increasing public awareness, especially through information and education and by making use of the media. Through their mandate to educate the public and raise awareness of human rights, SEANF members can contribute to changing community attitudes and cultures, as well as to influencing decision-makers.

Public education and awareness raising is a powerful tool to establish support for torture prevention, particularly in relation to building positive perceptions around the benefits of torture prevention and those who work on the issue. Currently, negative media and other public portrayals of human rights could lead to misconceptions about the role of NHRIs and human rights defenders in the society[21]. SEANF NHRIs need to establish messages that can refute misconceptions that prevention of torture is a western invention or a tool that serves only specific political, economic or religious interests. More positive narratives need to be developed and disseminated that explain how torture prevention promotes good governance and accountability, and benefits penitentiary and criminal justice systems.

In addition to clear and positive messages on torture prevention, the following are important elements to ensure the effectiveness of public advocacy around this issue:

a) **Target their public education and awareness raising efforts at people of all backgrounds**, including the poor and those belonging to disenfranchised groups – as these are often the least likely to know their rights, as well as being the most vulnerable to abuse.

b) **Define clear objectives and target groups**. Based on these objectives, SEANF NHRIs can develop simple messages that communicate their key points in ways that their audiences are most likely to understand.

c) **Time or link campaigns to important human rights days**, such as 26 June, the international day in support of victims of torture.

d) **Translate** materials and tools into local languages.

e) **Produce campaign and advocacy materials in various formats** that include amongst others, Braille, audio visual and other forms of interactive platforms.

f) **Choose appropriate strategic partners**. This may include civil society groups, schools or the education ministry, journalists and media organisations, or professional associations and corporations that can help SEANF members NHRIs achieve the goals of their public advocacy.

[21] Please refer to https://bangkok.unesco.org/content/32bn-people-living-countries-where-civic-space-under-threat where Senior Human Rights Advisor for the United Nations Development Group, Heike Alefsen, noted that according to some estimates, there were 3.2 billion people living in countries where civic space is under threat. Furthermore, in 2018, the CHRP for example, faced a threat of budget cut from the government when the House of Representative of the Philippines initially approved only 1000 pesos for their 2019 annual budget.

SEANF STORIES: BRIDGING THE LOCAL AND LGBTI COMMUNITY IN TIMOR-LESTE

In Timor-Leste, the PDHJ created a network with LGBTI groups, including delivering training and positively influencing public opinion regarding LGBTI persons.

In a national seminar supported by APF and hosted by the NHRI, youth, teachers and local leaders met to identify a range of practical strategies to counter discrimination and harassment of lesbian, gay, bisexual, transgender and intersex (LGBTI) students. As APF noted in their report on the event, "police commanders and community leaders also pledged to strengthen their relationships with LGBTI communities and involve them in their activities" and that "all participants noted that a key factor contributing to discrimination and harassment is the lack of clear and accessible information for the community on sexual orientation, gender identity and gender expression[22]."

TIPS FOR ACTION

a) **It is all in the message!**
It is important to ensure the right messages are conveyed when raising public awareness on a certain issue:

- Check who the audience is and what we want them to understand.
- See if they care about the message.
- Make sure the message is clear and easy to understand.
- Translate it in several languages if it is meant for a diverse audience.
- Test the message with the audience to assess if it is effective enough.
- Ensure that the tone and style reflect the institution.
- Do not forget to proofread it!

b) **"A picture is worth a thousand words"**
Use visuals or artwork that could communicate messages to a wider range of people. Visuals are powerful and effective in conveying difficult messages such as torture and human beings have a robust visual memory too!

c) **Tell a story**
While data and statistics provide concrete details, stories humanise an issue and appeal to human emotions and beliefs. Use more story telling in awareness raising activities and highlight personal experiences relevant to the issue and relatable to the public.

d) **The Multiplier Effect**
Build strong allies with influential partners for awareness raising campaigns so they can also support or promote the efforts to their own organisations or constituencies.

[22] https://www.asiapacificforum.net/news/countering-discrimination-against-lgbti-young-people/

TAKING ACTION ON HARD ISSUES: SAYING NO TO CORPORAL PUNISHMENT AGAINST CHILDREN

In South East Asia, corporal punishment is implemented as a form of legal sanction inherited from the colonial era or as a religious and cultural method for discipline and social order. Where disciplining a child is concerned, common practices in the region includes spanking, whipping, slapping, pinching, pulling ear and hair. There are even local sayings such as *"Sayangkan Bini Tinggal-Tinggalkan, Sayangkan Anak Tangan-Tangankan"*[23] which is equivalent to "Spare the rod and spoil the child" that reinforce culturally the use of corporal punishment against children. To this day, countries in the region continue to allow the practice of corporal punishment in their civil and syariah justice systems as well as in educational, rehabilitative and family settings. Ending all forms of corporal punishment, particularly against children[24] is the first step towards combating all forms of violence in the society. Below are key arguments on why corporal punishment should be fully prohibited, especially against children:

Corporal punishment is not effective as a disciplinary measure
Global studies[25] have proven that corporal punishment is not only ineffective as a disciplinary measure but also causes negative health and social impacts. Children who are spanked or beaten suffer from poor moral internalisation and impaired cognitive activity. They may also develop delinquent and antisocial behavior as well as low self-esteem during their childhood.

Implementing corporal punishment does not ensure peace and security in the society
The use of corporal punishment against children perpetuates a vicious cycle and normalisation of violence in society. Adults who were physically punished as a child were found to hold positive attitudes on the use of corporal punishment, tended to abuse their children or spouse and be a lot more receptive towards the use of violence in public life; this includes supporting harsher sentences for crimes or owning a gun[26].

Religion does not condone the use of all forms of violence, including corporal punishment
Religious texts are frequently used to justify the use of corporal punishment against children[27]. Nevertheless, there is no consensus on the use of corporal punishment among religious leaders and scholars. In fact, over the years, there has been a positive development within different local contexts and religious communities to review and call for the abolishment of such practices due to the harmful effect on children[28]. Such progress needs to be more widely disseminated in the South-East Asian region as prohibition of corporal punishment requires more than the mere banning of such practices, but rather a change in mindset among policy-makers, custodial authorities, caretakers, teachers and parents.

Furthermore, there is a global momentum spearheaded by religious leaders and scholars towards abolishing corporal punishment against children:

- In 2006, more than 800 religious leaders and scholars from different major faiths of the world adopted a Multi-Religious Commitment to Confront Violence against Children (the "Kyoto Declaration"). The Declaration reiterated the religious communities' commitment to uphold the child as a person with rights and dignity and to synergise efforts in promoting methodologies, experiences and practices in preventing violence against children. Furthermore, it also called for the prohibition of all forms of violence against children including corporal punishment in law and practice, asserted the religious communities' readiness to participate in the effective implementation, and monitoring of these measures[29].
- In 2009, the Organisation of the Islamic Conference (OIC) organised a conference on the Convention on the Rights of the Child and Islamic jurisprudence. One of the key resolutions from the Conference is the recommendation for all OIC Member States to prohibit corporal punishment and other forms of cruel, inhuman and degrading treatment of children in all settings, linking law reform with the promotion of positive, non-violent forms of discipline[30].
- In conjunction with International Children's Day on 20 November 2018, the Islamic Educational, Cultural and Scientific Organisation (ISESCO), a body under the OIC, called for the banning of corporal punishment and harmful traditional practices by OIC members. It also called members to launch awareness campaigns to promote the values of humane treatment of children and spread a culture of non-violence[31].

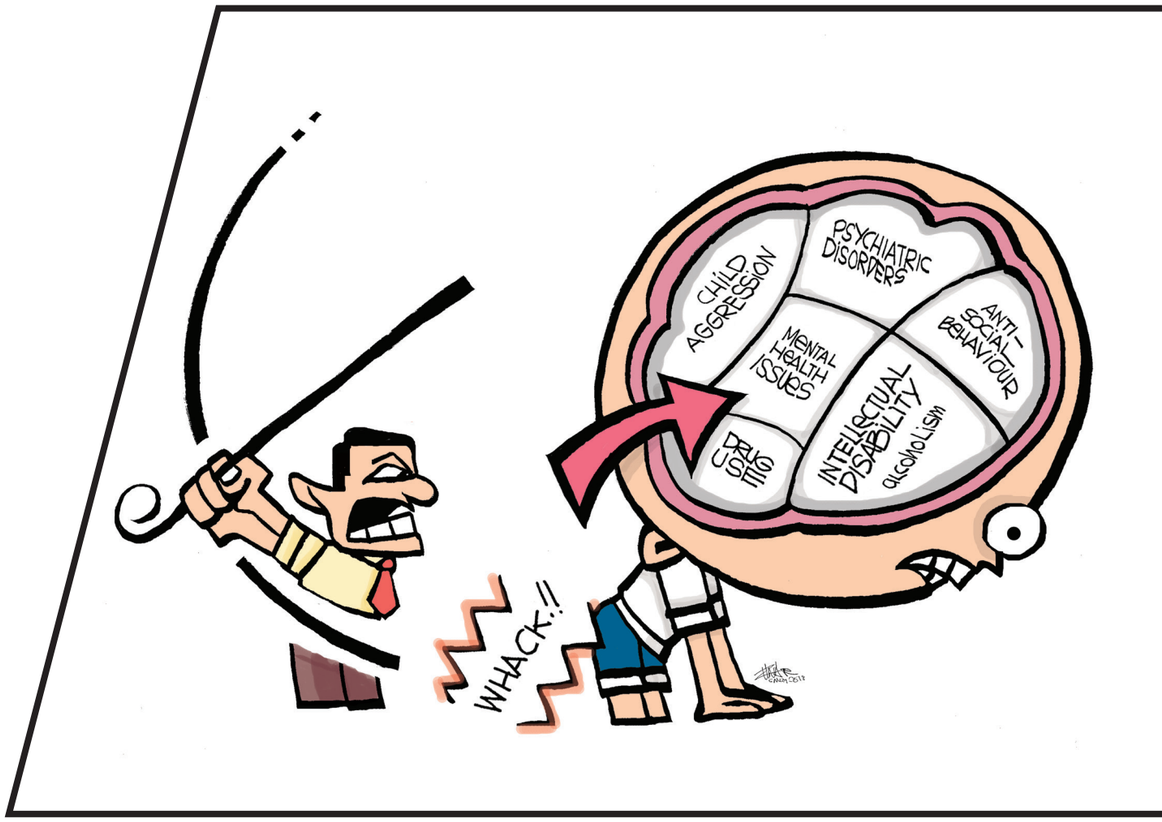

Illustration by: ***Zunar***

[23] The English translation of this Malay saying is neglect your wife and beat your child if you love them.
[24] During their Universal Periodic Review cycles, Indonesia and Myanmar rejected recommendations to prohibit corporal punishment while the Philippines, Thailand and Timor-Leste accepted the recommendations to review and prohibit corporal punishment. The U.N CRC Committee also made specific recommendation or observation to all SEANF members to prohibit all corporal punishment of children; Myanmar in 1997, 2004 and 2012, Timor-Leste in 2008, Malaysia in 2007, Indonesia in 2004, Thailand in 1998, 2006 and 2012 and the Philippines in 2005 and 2009.
[25] Please refer to the Global Study on Corporal Punishment against Children (June 2016) conducted by the Global Initiative to End Corporal Punishment. The research can be accessed at http://endcorporalpunishment.org/wp-content/uploads/research/Research-effects-summary-2016-06.pdf
[26] Please refer to findings from U.S research on this mentioned at https://www.reuters.com/article/us-health-children-punishment/physical-punishment-of-kids-tied-to-antisocial-behavior-in-adulthood-idUSKCN1PO2K9. A similar study conducted in South Africa also supports the association between corporal punishment and culture of violence in a society; news report can be accessed at https://mg.co.za/article/2018-04-26-00-corporal-punishment-feeds-the-violence-in-society
[27] There are several hadith in Islam that discusses corporal punishment against children. One of them is a hadith that narrated Prophet Muhammad as saying, "Ask your children to pray at the age of six years. If they don't listen to your repeated warnings, you may beat them". In another hadith, Imam Jaafar says, "Whoever whips another person once; Allah will shower the fiery whip against him." Similarly, some texts in Bible refers to the use of corporal punishment against children too; "Whoever spares the rod hates his son, but he who loves him is diligent to discipline him" (Proverbs 13:24) or "Folly is bound up in the heart of a child, but the rod of discipline drives it far from him" (Proverbs 22:15).
[28] Hademibe Ould Saleck, President of the Network of Imams, Islamic Republic of Mauritania stated, "The evidence that corporal punishment of children is forbidden in Islam is clear and abiding on us all." He also urged everyone to apply Shari'a to protect children". Please refer to the info page", Religious Leaders call for ending corporal punishment in Mauritania" at www.unicef/infobycountry/mauritania_49593.html accessed 30 August 2019)
[29] Please refer to http://endcorporalpunishment.org/wp-content/uploads/thematic/Kyoto-Declaration-Guide-2016.pdf for the full document.
[30] Please refer to https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/political_declarations/cairo_declaration.pdf
[31] https://www.isesco.org.ma/blog/2018/11/17/in-a-statement-on-universal-childrens-day-isesco-calls-for-launching-campaigns-in-the-islamic-world-to-raise-awareness-of-the-dangerous-effects-of-various-forms-of-violence-against-children/

What are the messages to convey?

- Corporal punishment should be prohibited because it is not effective as a measure to discipline and regulate social order.
- Corporal punishment has no place in a community that promotes peace and security and upholds religious, cultural values and human dignity.
- Corporal punishment is not in line with ASEAN values. ASEAN's Culture of Prevention promotes respect for all, values of moderation and the need to understand and tackle the root causes of all forms of violence.

What can SEANF NHRIs do?

- Engage religious leaders and scholars in its campaign to end corporal punishment and convince them to use their religious platforms e.g. sermon sessions, issuance of fatwa and religious dialogues, pre-marital classes to raise awareness on the benefit of using non-punitive peaceful measures to discipline children.
- Bridge regional and international efforts and movement led by ASEAN, OIC and Global Initiative to End All Corporal Punishments with national initiatives.
- Call for an immediate moratorium for corporal punishment with relevant stakeholders and parliamentarians. The moratorium could act as an interim measure for governments to seek and work on effective replacement for such practices.
- Cooperate with governments, authorities, schools, child experts and religious leaders in developing model standard operating procedures for combating violence against children in all settings.
- Propose incentives and reward systems for schools and educational institutions that prohibit the use of corporal punishment and other degrading practices. The Ministry of Education could regard these schools as "child-friendly zones" or "model institutions".
- Remind states of their existing obligations or pledges under the United Nations Convention on the Rights of the Child (UNCRC), United Nations Convention against Torture (UNCAT), United Nations Convention on Rights of Persons with Disabilities (CRPD) and International Covenant on Civil and Political Rights (ICCPR) to prohibit corporal punishment.
- Disseminate and promote the benefits of positive non-violent methods for disciplining children. This includes treating the cause and not symptoms of disobedience, use positive reinforcement and rewards for good behavior, train children to use productive ways to seek attention and empower children to express their views in school and at home.

06
STRENGTHENING LAW AND JUSTICE

6 STRENGTHENING LAW AND JUSTICE

6.1 Advocating for criminalisation of torture

Article 4 of UNCAT obliges every State party to "ensure that all acts of torture are offences under its criminal law". This means State parties are required to criminalise torture as a specific crime, separate from other types of offences found in criminal law. In its General Comment N°2, the Committee against Torture emphasised that torture must be made a distinct crime, as this will "directly advance the Convention's overarching aim"[32].

International human rights jurisprudence recommends the following standards for states intending to criminalise torture:

- A separate and specific crime of torture in national legislation is to be adopted.
- The definition of torture in national law is to encompass, at a minimum, the elements contained in the article 1 definition of UNCAT.
- National legislation is to contain provisions affirming the absolute nature of the prohibition of torture; the defence of superior order is to be excluded.
- The penalty for the crime of torture is to take account of the grave nature of the crime. In order for the penalty for the crime of torture to be commensurate with the gravity of the crime, a minimum penalty of six years is to be imposed.
- States may also include acts of non-state and private actors in the definition of torture.
- National legislation also criminalises cruel, inhuman or degrading treatment or punishment[34].

To date, only two countries in the South East Asian region have criminalised torture and ill-treatment in their domestic laws i.e. The Philippines and Timor-Leste. Other countries such as Indonesia and Thailand are still deliberating their draft bill at the ministerial and cabinet level. While SEANF countries may have laws that prohibit human rights violations, incorporate exclusionary rule or provide redress for victim of human abuses in general, these laws do not stipulate all the necessary standards and elements to prosecute perpetrators of torture or provide adequate remedies for torture victims.

The absence of anti-torture law can lead to several issues:

- There is no legal definition of torture and ill-treatment that could guide national policies and practices to prevent and prohibit torture. In some jurisdictions, this gap hinders law enforcement and national oversight bodies from having a clear understanding of what torture is and limits their capacity to detect and handle allegations of torture effectively.
- There is no legal framework of due process to prosecute alleged perpetrators in court appropriately. As a result, the perpetrators of torture either escape prosecution or at most, face administrative sanctions that are disproportionate to the crime committed. This in reality will deny torture victims, justice and their right to access remedies.
- It may contribute to a widespread culture of impunity and social acceptance of torture practices. Having legislation that criminalises torture is an important message from the state that torture is an act that will not be tolerated under any circumstances. This is a key step towards deterring law enforcement and others from resorting to torture.

Making recommendations for law reform is one of NHRIs' essential roles. This mandate requires SEANF NHRIs to develop a strong, and to a certain extent, formal cooperation, with lawmakers in their respective jurisdictions such as the Parliament, Attorney-General offices or the legal and policy department in relevant ministries. SEANF NHRIs can undertake several actions to ensure that criminalisation of torture is included in the national legislative reform agenda[35]:

- Provide substantive inputs to the parliament and other relevant lawmakers on the content and applicability of a proposed new law to criminalise torture in line with international human rights standards.
- Participate in the national legislative process of criminalising torture, including by providing evidence and advice about the human rights compatibility of proposed laws and policies.
- Make proposals of amendments to legislation where necessary that could incorporate the elements needed to criminalise torture, in order to harmonise domestic legislation with both national and international human rights standards on prohibition of torture.
- Promote the legislating of human rights obligations, recommendations of treaty bodies and human rights judgments of courts that are linked to prohibition of torture by the parliament and other relevant lawmakers.
- Help parliament and other relevant lawmakers develop human rights impact assessment processes to assess the effective implementation of the anti-torture legislations, especially on prosecution and conviction of perpetrators and remedies provided to victims.

SEANF Stories: Torture is a Crime in the Philippines and Timor-Leste

The CHRP played an important role in supporting the national campaign for an anti-torture law in the Philippines. Together with the national civil society coalition, United against Torture Coalition (UATC), a draft anti-torture law was developed and lobbied with the House of Representatives. The consolidated and consistent effort paid off with the adoption of the Philippines Anti-Torture Law in 2009.

Article 167 (3) of the Penal Code of Timor-Leste broadly prohibited and defined the infliction of torture and CIDT by everyone. As a result, the PDHJ developed a set of indicators that could help their investigators assess complaints containing allegations of torture more effectively and appropriately to its functions. The PDHJ's mandate is to monitor and respond to maladministration committed by public officials. The indicators are:

- the alleged act is committed by public authorities
- legality of the act
- arbitrariness of the act
- whether the act aims at achieving specific objectives
- severity of impact of action
- seriousness of action committed

The indicators also helped PDHJ investigators to deliberate on the gravity of the allegations and formulate recommendations proportionate to the cases.

TIPS FOR ACTION

a) **Sending the right messages to the lawmakers.**
Criminalising torture is not a reactive but rather, a proactive act to deter acts of torture from occurring. Remind the government that prohibition of torture is a jus cogen and that it is imperative for all states to take concrete actions at the national level to prohibit torture in their law.

b) **Avoid a "one size fits all" approach.**
Whether to adopt stand-alone legislation or to amend existing laws, assess the national situation first and think of the most realistic and practical way of advancing the agenda. It is always advisable to learn from experiences and challenges of criminalising torture in other countries. Consult relevant stakeholders to identify the best way to move forward.

c) **Mobilise political support, increase political will.**
Build stronger endorsement for criminalisation of torture among parliamentarians and other lawmakers. Develop joint campaigns for the inclusion of criminalisation of torture in the national legal reform agenda and encourage local constituencies to write or ask their member of parliaments to include criminalisation of torture as one of their human rights commitments.

[32] CAT, General Comment N°2: Implementation of Article 2 by States Parties (24 January 2008) UN Doc. CAT/C/GC/2, p. 11
[33] For a comprehensive reference on criminalization of torture in international human rights jurisprudence and examples of domestic practices from different countries, please refer to the APT-CTI Guide on Anti-Torture Legislation. The guide can be accessed at : https://www.apt.ch/content/files_res/anti-torture-guide-en.pdf
[34] Ibid, p.22
[35] These strategies are adapted from the Belgrade Principles, a set of principles that define the relationship between the National Human Rights Institutions (NHRIs) and parliaments, with a view to strengthening and better describing the 'effective cooperation' stipulated in the Paris Principles. The document can be accessed at: https://www.forum-asia.org/uploads/wp/2017/01/Belgrade-Principles-Final.pdf

6.2 Building the capacity of law enforcement

One of the key factors that contributes to law enforcement's continuous reliance on practices that could amount to torture and ill-treatment is the lack of knowledge and skill sets that could help them do their work in a more effective way. Additionally, the criminal justice system in the region still relies heavily on confession as a means of advancing justice in court and this has led most law enforcement officers to resort to the use of force and coercion as a way to obtain confessions from persons in their custody. The importance of ensuring that law enforcement are well-equipped in undertaking their roles and responsibilities are further stipulated under Article 10 of the Convention against Torture that states party to the convention shall "ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel." Furthermore, human rights should be seen as an integral part of law enforcement's training or educational programme as every law enforcement official has the fundamental role in protecting and respecting the human rights of every individual[36].

The NHRIs in general are mandated to disseminate and strengthen understanding on human rights. The Paris Principles list the "formulation of programmes for the teaching of… human rights" as among the responsibilities of NHRIs. There are broad ranges of strategies that NHRIs can undertake to ensure that authorities are well trained as key actors to prevent torture in detention facilities. This includes advocating for improved standards for detention facilities, developing training tools, contributing to curricula development and revision, delivering training courses, monitoring, and evaluating the effectiveness of training programmes. As a regional coalition, the SEANF can also build on one another's national experience in training authorities, particularly in sharing training materials and connecting national authorities with potential experts from other countries, particularly from the region.

For a start, SEANF NHRIs can propose and provide expert input on relevant topics of torture prevention that could be covered during law training or education programmes for law enforcement. These topics may include but not be limited to the following:

- Definition of torture and ill-treatment in line with international human rights standards.
- Risky practices that condone torture and ill-treatment. This could include practices in non-traditional detention settings such as psychiatric institutions and juvenile rehabilitation centers.
- The use of force and security equipment by law enforcement in line with international human rights standards and exemplary practices.
- Implementation of legal safeguards during the first hours of custody and how law enforcement could ensure these safeguards for detainees effectively
- Why and how law enforcement can conduct effective investigations without resorting to coercion, physical and mental aggression. An interrogation technique called investigative interviewing is increasingly being introduced to police officers in the South East Asian region. An effective technique helps officers build rapport with the interviewee and, by doing so, improves the collection and reliability of information for the investigation.

To maximize their engagement with law enforcement, SEANF NHRIs can collaborate with existing training and educational programmes to deliver the training. This might include conducting "training of trainers" workshops, and developing curricula that include key human rights messages, in order to reach a larger audience. SEANF NHRIs should also ensure that the training they conduct is clearly linked to their own institutional and strategic priorities.

[36] p.3, Guidelines on Human Rights Education for Law Enforcement Officials, OSCE/ODIHR 2012. Please refer to https://www.osce.org/odihr/93968?download=true for the full Guidelines.

Illustration by: ***Shazeera Zawawi***

SEANF STORIES: LAW ENFORCEMENT TRAINING IN MALAYSIA, THE PHILIPPINES AND THAILAND

In Malaysia, SUHAKAM has conducted training programmes for various enforcement agencies, exposing participants to the nine core international human rights instruments and their principles. The objective was to integrate the concept of human rights into the daily duties of these officials, with particular emphasis on their role in promoting and protecting human rights[37].

The Philippines Commission on Human Rights (CHRP) has trained members of the security sector on human rights and the anti-torture Law (R.A. No. 9745). According to the CHRP, human rights education for the police is an effective strategy because many police officers have almost no knowledge of human rights, the anti-torture law nor how they relate to their work.

In Thailand, the NHRCT has conducted annual training on torture prevention for law enforcement officers that aimed at increasing their awareness on the problems and consequences of inflicting torture and ill-treatment as well as changing the authorities' mindset and attitude on the importance of preventing torture in their daily roles and responsibilities.

[37] https://www.suhakam.org.my/training-for-enforcement-agencies/

TIPS FOR ACTION

a) Get their peers onboard.
Peer-to-peer training or exchange are known to be the most effective way of building trust and participation. Identify senior officers that are still in service or retired who could be your potential trainers or experts in the training. It is even better if they could provide their perspectives and experiences in the training curricula and course materials.

b) New Skills, New Working Culture
Collaborate with law enforcement training colleges to integrate new investigation skills, implement legal safeguards and address the use of force in policing. Provide opportunities for police officers to be seconded to NHRIs as part of their capacity development programme. Law enforcement needs to be exposed to new skills, innovation and culture that can help their professional work and development. Proposals for change should be seen as a positive development and not a burden.

6.3 Handling and investigating allegations of torture

There is a strong climate of impunity across the region where risks of torture and ill-treatment remain high during the first hours of custody. Authorities are also at times unable or unwilling to conduct effective investigations into torture allegations themselves. The lack of criminal investigation into torture allegations made prosecution of perpetrators and redress for victims difficult[38]. In such a context, SEANF NHRIs have a key role to play in bringing the authorities' attention to torture allegations through its own investigative mandates.

[38] Please see Asia Justice and Rights (AJAR)'s statement on the prevalence of torture in four Asian countries; Indonesia, Timor-Leste, Myanmar and Sri Lanka where one of the root causes is lack of government accountability at https://asia-ajar.org/2016/06/press-release/. Furthermore, in July 2016, Dr. Richard Carver and Dr. Lisa Handley published the results of their APT-commissioned research, "Does torture prevention work?" where their study in 16 countries including Indonesia and the Philippines showed the correlation between the spread of risks of torture in absence of preventive measures such as detention safeguards, prosecution of perpetrators, monitoring and complain mechanism. Please see the following link for further details: https://www.apt.ch/en/resources/yes-torture-prevention-works-insights-from-a-global-research-study-on-30-years-of-torture-prevention/?cat=59

In general, SEANF NHRIs have the power to handle complaints on human rights abuses that includes the powers to receive and assess complaints, investigate, refer complaints for further action from relevant government agencies and draft or publish a report on the complaint[39]. This is in line with the Paris Principles, where NHRIs should "hear any person and obtain any information and any documents necessary for assessing situations falling within their mandate". SEANF members' power to handle complaints is "quasi-judicial" in nature; while they have the power to receive and determine complaints, they do not generally make binding, enforceable decisions. As a result, they would generally refer the complaint for final determination or action to governmental bodies that are in the position to resolve and provide remedy to the aggrieved parties in the complaint[40]. In some jurisdiction, the NHRI has the power to refer its findings to court once the investigation is completed. KOMNAS HAM for example, will transmit its findings to the Attorney General Office once the initial investigation on a case is completed. While the Attorney General has the power to reject the findings on substantive grounds or refuse to initiate criminal proceedings, so far the Attorney General has examined three out of nine cases of alleged gross violation of human rights. This indicated that the investigative role of the NHRIs is crucial in highlighting human rights violations to authorities.

Furthermore, NHRIs have the power to conduct a national inquiry into a specific systemic human rights violation. While the Paris Principles do not refer to national inquiries, conducting a national inquiry allows the institution to conduct investigations into a serious human rights issue as well as pursue other core functions of the institution. So far, there are no national inquires conducted by SEANF NHRIs that explicitly examined torture allegations.

While SEANF NHRIs' mandate to handle and investigate allegations of torture in the region stemmed from their general functions, it is important for SEANF NHRIs to capitalise on some of their distinctive characteristics that would make them an important institution to investigate torture allegations:

a) The power to access places of deprivation of liberty and make the first impartial contact with potential torture victims or cases within the system.
b) The position to initiate "suo moto" inquiry into complaints that contain torture allegations, expose such allegations, recommend remedies or necessary steps to address allegation and refer or cooperate closely with state agencies in solving the complaint.
c) The power to initiate a national or public inquiry, which enables SEANF members to conduct systemic investigations into a specific human rights violation. Such power will also allow members to summon and question law enforcement officials and gather evidence that will support their findings and recommendations.
d) The power to protect the identity of their complainants[41] from reprisals. Such power is essential to build public confidence and encourage torture victims to lodge complaints with the institution.

SEANF STORIES: FORENSIC INVESTIGATION OF TORTURE ALLEGATION IN THE PHILIPPINES

The CHRP has established an in-house forensic facility to enable it to independently investigate and analyse evidence relating to cases of torture and extra-judicial killings. The facility is led by four doctors who are also trained to examine injuries inflicted by torture, in line with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol").

In 2016, the CHRP helped authorities in investigating allegations of torture perpetrated by police officers against a bus driver who was visiting his family in the province of Pampanga. The forensic evidence from the investigation led to the first ever conviction under the anti-torture law in the Philippines[42] which is currently on appeal.

[39] The National Human Rights Commission of Malaysia's power to inquire into complaints can be found under Section 4(4) and Section 12 of SUHAKAM Act 1999, National Commission on Human Rights of the Philippines' mandate can be found under Article XIII, 1987 Philippines Constitution, KOMNAS HAM's mandate to investigate is stipulated by the Human Rights Law of 2000 (No.26), National Human Rights Commission of Myanmar has the power to verify and inquire into complaints under Section 22(c) of the Myanmar National Human Rights Commission Law No. 21/2014, the Provedor of Justice of Timor-Leste's power is enshrined in Article 2 and 23 of the PDHJ Statute, Law No 7/2004 and the National Human Rights Commission of Thailand's mandate is stipulated under the Thai Constitution of 2018.

[40] Please refer to Asia Pacific Forum Fact Sheet 7 on "Responsibilities and functions of NHRIs: Complaint Handling" at https://www.asiapacificforum.net/support/what-are-nhris/fact-sheet-7-complaint-handling/

[41] Section 15 (1) of SUHAKAM Act for example, ensures all person who gives evidence are entitled to the privileges of a witness while sub-section (2) protect a person giving evidence to the Commission from civil and criminal action.

[42] Manila Standard, First conviction under anti-torture law since 2009, THE STANDARD, 03 April 2016, available at http://manilastandard.net/news/-provinces/202777/first-conviction-under-anti-torture-law-since-2009.html (last accessed 30 August 2019).

TIPS FOR ACTION

a) **Build capacity to investigate.**
Ensure that relevant NHRI staff are equipped with the necessary knowledge and skills to investigate torture allegations, in line with relevant laws, standards and procedures, for example, the Istanbul Protocol.

b) **Investigate, Triangulate and Respond.**
When confronted with allegations of torture, ensure that all information relevant to the allegation is gathered as evidence. This might include interviews, information collected during visits to places of deprivation of liberty, medical evidence, and physical and psychological signs of torture.

c) **Document findings.**
Properly and formally record information relating to allegations of torture, both directly through detention visits and interviews, as well as indirectly, from court cases, reports of non-governmental organisations (NGOs) and the media, and reports of international or regional human rights bodies. Invest in the right kind of equipment or database system to collect and store information securely.

d) **Go to the root causes!**
Make recommendations that go beyond individual cases and address the real root-causes of abuses. Observe the patterns in the allegations and work to reform the laws and policies that underlie abuse.

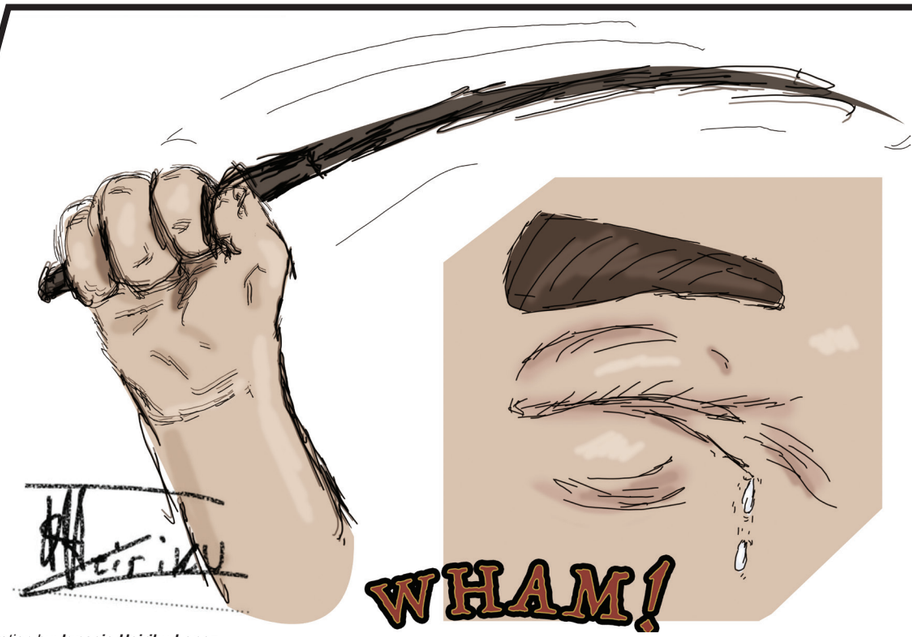

Illustration by: ***Ignacio Heiriku Lopez***

TAKING ACTION ON HARD ISSUES: TORTURE DOES NOT STOP BUT FUELS TERRORISM

Terrorist attacks are monstrous crimes that undermine human rights. International human rights law requires states to respond appropriately to prevent and respond to acts of terrorism, in order to ensure public security and safety. Nevertheless, measures taken to combat terrorism must always comply with irrevocable human rights obligations and the rule of law.

Across South East Asia, incidents of torture or death in custody involving terrorist suspects who are detained by the police, the military and by elite counter-terrorism units still occur. This is despite the fact that states across the region have committed, including in the ASEAN Convention on Counter-Terrorism, to ensure that:

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the laws of the Party in the territory of which that person is present and applicable provisions of international law, including international human rights law[43].

While states and law enforcement officers are under extreme pressure to stop terrorist attacks, tactics that resort to violence and ill-treatment not only violate fundamental human rights but have also been proven ineffective. There is a need to demonstrate that effective security measures to combat terrorism and the protection of human rights are mutually reinforcing and contribute to the same complementary goals.

Below are some of the key arguments for why countering terrorism must also mean respecting human rights.

The right to be free from torture and cruel, inhuman or degrading treatment or punishment is absolute.

Torture and ill-treatment are absolutely prohibited under international law, regardless of whether states have ratified one of more of the relevant conventions. All states must comply with this absolute prohibition and take effective measures to prevent any acts of torture or cruel, inhuman or degrading treatment or punishment. They must ensure that allegations of such treatment are promptly, effectively and independently investigated, perpetrators are brought to justice and that victims have access to effective remedies and reparations. States must also ensure that statements and other information obtained through torture and ill-treatment are inadmissible as evidence in court.

Torture is not only wrong but also ineffective

There is a popular belief in the region, and beyond, that torture is an effective way of gathering useful information. This belief often stems from misleading political narratives and false depictions of "what works" in popular television and film. However, scientific evidence now clearly shows that torture is never the solution to solving crime or obtaining reliable information from suspects[44]. Empirical evidence clearly shows that coercion and torture produce false and unreliable information, which not only undermines the credibility of law enforcement but also leads to loss of public confidence in public institutions.

Furthermore, relying on false and inaccurate confessions also leads to injustices where there is a high likelihood that innocent people will be convicted while the real perpetrators walk free.

Finally, as the UN Secretary General in his report on Preventing Violent Extremism, as well as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have both pointed out, "individual experiences of human rights violations, such as torture or violations of due process rights, can play a role in an individual's path to radicalisation[45]".

The fallacy of the ticking bomb scenario

When the absolute prohibition of torture is questioned on the grounds of security or counter-terrorism, the arguments are often based on the so-called "ticking bomb" scenario. In this scenario, a bomb is usually about to go off in a busy city, the police have a suspect who knows where it is and they have no choice but to use torture to prevent a terrible tragedy. In real life situations, however, one or more of the assumptions that are contained in the scenario are always invalid. The story assumes for example that the suspect will provide valuable information under torture when, in reality, torture does not lead to accurate information. Professional interrogators have repeatedly emphasised that interrogation can be conducted much more effectively without the use of torture. Furthermore, justifying torture in fictional "extreme" cases leads to a slippery slope, where the act of torture might be used in even more common circumstances.

Nevertheless, despite the overwhelming evidence to the contrary, the supposed effectiveness of torture and the fallacy of the ticking bomb scenario are constantly reinforced by popular culture. Television series like 24 and films like Zero Dark Thirty show intelligence agents getting vital information from suspects using torture and coercion. These help to fuel popular misconceptions, including among law enforcement agents themselves.

[43] ASEAN Convention on Counter-Terrorism, Article VIII
[44] See for example, Shane O'Mara, Why Torture Doesn't Work, Harvard University Press
[45] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 22 February 2016, A/HRC/31/65

What are the messages to convey?

- Combatting terrorism and protecting human rights are mutually reinforcing goals.
- Torture and ill-treatment are absolutely prohibited in all situations.
- Scientific evidence and the testimony of professional interrogators both conclude that torture and coercion are ineffective ways of gathering accurate information.
- Torture fuels terrorism and radicalisation, including by providing a justification for the use of violence and encourage a culture of martyrdom among terrorist groups.
- Torture leads to false confessions that will more likely let the real perpetrators go free and see innocent people convicted.
- The “ticking bomb” scenario is based on misleading assumptions that do not exist in reality. Hollywood portrayals of the scenario have no basis in reality.

What can SEANF NHRIs do?

- Combat public acceptance of torture and ill-treatment in relation to terrorism suspects, by countering false perceptions in television, film and other forms of popular culture.
- Advocate for criminalisation of torture with key safeguards in place, both in law and practice, including for those held under terrorism charges. This can include publicising the stories of professional interrogators who know that “in the real world” torture does not work.
- Train law enforcement (including through curriculum development and training of trainers) on the effectiveness and use of “investigative interviewing” techniques that have been proven to work, and the promotion of key safeguards in the first hours of custody.

Illustration by: ***Zunar***

07
INCREASING TRANSPARENCY

7 INCREASING TRANSPARENCY

7.1 Increasing transparency in places of detention

All SEANF NHRIs are mandated in law, to make regular visits to detention places. These visits are conducted either in response to complaints made by the public and civil society or as general visits to observe treatment of detainees, detention conditions, or collecting data for research. Where preventive monitoring is concerned, only one state has ratified OPCAT and worked towards designating a National Preventive Mechanism, while others have only signed the Optional Protocol or are paving the way towards ratification.

Detention monitoring is important to ensure that persons deprived of liberty are not being subjected to ill-treatment and could still maintain contact with the outside world. NHRIs may be one of the only national independent actors with the necessary powers to access and scrutinise these closed institutions[46].

In general, SEANF NHRIs have differing levels of access to detention places. Access to detention places are not only defined by the NHRIs legal mandates, but also depend on the openness of the authorities to allow access, working relations between the NHRIs and detaining authorities as well as the severity of offence i.e. national security related crimes. While SEANF NHRIs are mostly allowed to access prison facilities and police lock-ups, they still have limited access to high-security facilities that are used to detain terrorist suspects and political detainees as well as military facilities. In addition, due to the broader issue of irregular and forced migration in the South East Asian region, most SEANF NHRIs also have experience in monitoring immigration detention and deportation centers, as well as shelters for victims of trafficking. These factors add further complexity to the role of SEANF NHRIs in detention monitoring.

To increase access to detention places, SEANF NHRIs need to build trust and confidence with law enforcement authorities. It is essential for authorities to understand that detention monitoring does not aim at naming and shaming law enforcement. Instead, detention monitoring will enable NHRIs to make impartial observation and constructive recommendations on the overall condition of the detention system. These recommendations will not only help improve the conditions of persons deprived of liberty but will also aim at ensuring the proper and effective functioning of the criminal justice system.

In addition to increasing authorities' confidence in the benefits of detention monitoring, SEANF NHRIs can also collaborate and engage with civil society organisations to disseminate the findings of detention visits and gain their help in following up on the relevant recommendations. Some civil society organisations also have specific expertise that could benefit SEANF NHRIs in their detention monitoring activities. For instance, organisations working on the rehabilitation of torture victims or those supporting persons with disabilities could help SEANF NHRIs build their understanding and knowledge of these aspects and develop a more realistic monitoring plan. Furthermore, engaging with the media can also help to raise awareness of what NHRIs have found in detention and put pressure on the authorities when they fail to implement NHRI recommendations. Media reports on detention monitoring can also build stronger public understanding of the importance of increasing transparency in closed detention facilities.

Detention monitoring can be a demanding and stressful activity. As a result, SEANF NHRIs staff might suffer from fatigue, stress or burnout if not given the appropriate institutional support. The World Health Organization has developed a healthy workplaces framework that provides guidance that are relevant to SEANF NHRIs roles and functions. The framework stipulates the need for employers to ensure physical and psychosocial health and safety at work; a positive workplace culture; supporting and encouraging healthy lifestyles; and working with the community to improve the health and wellbeing of staff, their families and the communities where they work. Where detention monitoring is concerned, particular attention can be given to offering staff time off and flexible working hours, in-house psychosocial support and counseling and opportunities for detention monitors to go for trainings or relevant residencies to enhance their motivation and expertise from time to time.

Finally, SEANF NHRIs can strongly advocate for OPCAT ratification and implementation in order to ensure that a NPM is established. Having a functioning preventive mechanism that has the power deriving from an international treaty to make unannounced visits to all places of deprivation of liberty will further strengthen national oversight and complement SEANF NHRIs existing monitoring mandate.

SEANF STORIES: DETENTION MONITORING PROGRAMME IN INDONESIA, MALAYSIA, THE PHILIPPINES AND THAILAND.

In 2017, the CHRP discovered a secret detention cell inside a police station in Manila. Following discovery of the cell, where one of the detained persons complained of experiencing torture and others suffered from high risks of trauma and ill-treatment, the CHRP filed a criminal and administrative case against Manila Police District-Raxabago Police Station 1 personnel. CHRP also returned twice to the same location to ensure that the secret cell was no longer being used. It also monitored the case of a detainee who was subjected to torture, provided counselling for him, and referred his family to the Department of Social Welfare and Development to ensure that they receive support from the Comprehensive Rehabilitation Program for Torture Victims and their Families.

In Indonesia, KOMNAS HAM has also signed a Memorandum of Cooperation with the Police Force, Department of Corrections and UNHCR as a way to develop mutual trust and build effective cooperation with the authorities. The MoU clearly defined KOMNAS HAM's monitoring roles and responsibilities.

In Malaysia, SUHAKAM conducted joint visits with other national oversight bodies such as the Commission on National Integrity of Law Enforcement to immigration centers as a way to strengthen the monitoring team's capacity.

In Thailand, the NHRCT has regular adequately funded visiting programme to high-security detention places such as the military camps in the southern border provinces, to monitor potential risks of human rights violations. In 2016, the NHRCT issued a thematic report detailing its experience and observations during its visits to these high-security detention places.

[46] See APT Briefing Paper: *Yes Torture Prevention Works https://www.apt.ch/content/files_res/apt-briefing-paper_yes-torture-prevention-works.pdf*

TIPS FOR ACTION

a) Research! Plan! Go!

- Map out all types of detention places (e.g. prisons, psychiatric institutions), particular issues (e.g. the use of solitary confinement, access to healthcare) or categories of detainees (e.g. Pre-trial detainees, persons with disabilities)[47].
- Assess, identify and determine priorities based on the information gathered about detention places.
- Develop a strategic monitoring plan that reflects the main priorities and responds to the biggest risks. The plan not only refers to the programme of monitoring but also strategies for follow-up and potential collaboration with other local partners in this regard.

b) Develop a monitoring checklist.

Identify what needs to be monitored in detention places and develop a checklist that could be referred to by monitoring teams. Indicators could be built from past monitoring experiences, baseline studies, standards stipulated by relevant international human rights treaties and instruments, human rights reports or recommendations from treaty bodies. Make sure that aspects to be monitored are holistic and covers all areas relevant not only to persons deprived of liberty but also concerns the wellbeing of the personnel, facilities, regulation and governance of the detention place so that recommendations made from the visits are comprehensive.

c) Visit the places where the risks of torture are highest.

Prioritise detention places with the highest risk of torture. There are many methods to determine this: consult national stakeholders, analyse patterns of human rights violations from complaints or gather evidence from baseline studies, parliamentary debates in Hansards or media reports.

d) Build partnerships.

Work with other oversight bodies and civil society to make sure no places of detention are not visited.

e) Advocate for OPCAT!

Advocate for OPCAT ratification, to ensure that a future NPM is established with the power and resources to conduct preventive monitoring and complement the existing mandate of the SEANF NHRIs.

[47] See APT Guide on monitoring and LGBTI persons deprived of liberty https://apt.ch/content/files_res/apt_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf Given that all SEANF states have ratified CEDAW, they also have a particular responsibility in relation to promoting and protecting the rights of women and girls – often among the most vulnerable in detention.

Illustration by: ***Manik***

TAKING ACTION ON HARD ISSUES: ENDING SECRET AND INCOMMUNICADO DETENTION

Torture happens behind closed doors, in cells and institutions that are beyond the reach of lawyers, families, doctors, and independent oversight institutions. In some countries, the state operates unofficial, secret detention places, where they can operate above the rule of law. Even in designated places, however, people are often held in incommunicado detention under special rules or laws. People held in incommunicado detention and in secret and unofficial places are among those that are most at risk of torture.

Across South East Asia, people are held in incommunicado detention in a range of contexts, despite the fact that the UN Working Group on Arbitrary Detention has called secret and incommunicado detention the "most heinous violation of the right to liberty" under customary international law[48]. Furthermore, in some countries in the region, the military are involved in detaining large numbers of people, particularly in regions where they are involved in counter-terrorism and counter-insurgency operations. In these contexts, special laws allow the exemption of existing legal safeguards against torture provided for by law. This includes notification and access to family or access to a lawyer. In some areas in the south of Thailand, the martial law and the emergency decree has been enacted in the mostly same period of time. According to the martial law, the competent official under the law can initially detain a person as a military necessity for a period of not more than 7 days without the provision for an extension of detention. However, detention can be continued by virtue of the emergency decree, in which the competent official has authority to arrest and detain suspected persons for no more than 7 days, and in the case where it is necessary, the competent official shall request the court to extend the period of detention for a period of not more than 7 days at a time, but the total detention period must not exceed 30 days. If necessary, the detention can continue in accordance with the Criminal Procedure Code. However, suspects of insurgents may be detained for about 6 months.

Furthermore, law enforcement agencies have also been found to operate secret facilities and keep detainees out of "regular" detention by interrogating them in police vehicles and other places where their detention is not subject to legal scrutiny. Additionally, procedural requirements or judicial review relating to detention can be waived in certain circumstances, making incommunicado detention possible. This is widely practiced in cases involving threats to national security, such as with terrorist suspects.

To reduce the risk of torture it is important to prohibit secret detention, to open all places to regular monitoring by independent institutions and to allow those held in custody to have contact with their family, independent lawyers and doctors.

Below are key arguments on why secret and incommunicado detention should be ended:

Secret and incommunicado detentions are illegal in all circumstances

There is no legal nor moral justification for secret and incommunicado detention. International law prohibits any form of secret detention; any detention that involves concealment of the whereabouts of the person, even if located in an official place of detention, that persists for more than a week or two or otherwise has the purpose or effect of placing a person outside the protection of the law; any announced but incommunicado detention without continuous and effective supervision by an independent judicial authority and private access to independent counsel; any unannounced or unacknowledged detention that lasts for more than a "matter of days"; and any unannounced or unacknowledged detention where the failure to announce or acknowledge the detention is not demonstrably necessary to the investigation of a suspected crime or to protecting individuals from a specific and imminent threat to life or health. Incommunicado detention is justified under international law for very rare and exceptional cases and subject to oversight and judicial review[49].

Secret and incommunicado detentions increase the risks of torture and ill-treatment against detainees.

Article 9 of the UDHR 1948 stipulates that no one should be subjected to arbitrary arrest, detention or exile. Whereas the UN General Assembly and UN Commission on Human Rights have both declared that "detention in secret places" can "facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment" and that it can "in itself constitute a form of such treatment[50]." Secret and incommunicado detention encourage the use of methods and practices that violate the prohibition of torture and other forms of ill-treatment and extrajudicial punishments. These forms of detention are not subject to legal scrutiny, strip detainees off their rights and sever any contact that the detainee should have with their family and lawyer. Secret detention, in particular, enables the spread of impunity. The facilities are not open to oversight and not registered as a valid place of detention that should comply with proper human rights standards. The United States Senate Select Committee on Intelligence (SSCI)'s key findings from the study on the Central Intelligence Agency's Detention and Interrogation Program indicated that detainees kept in "black sites", or secret cells, experienced torture and in at least six cases, torture was used on suspects before evaluation was made on whether they would be willing to cooperate.

Secret and incommunicado detention is not an effective measure to address threats to public and national security.

Secret and incommunicado detention has been proven to produce unreliable evidence when seeking to counter threats to national security such as terrorism. More often than not, the rationale for permitting such short-term incommunicado or unacknowledged detention is that the detainee would otherwise alert co-conspirators allowing destruction of evidence, flight of accomplices, or other interference that will thwart the criminal investigation[51]. However, this rationale would only undermine the law enforcement's professionalism and expertise in crime investigation as they rely heavily on the information provided by the suspect, rather than gathering stronger evidence through other means such as forensic analysis. On principle, it might be argued that only where there is a demonstrable imminent, specific and serious threat to human life or health that can be avoided through such secrecy, can the State justify overriding the rights of the individual detainee in this regard. Furthermore, since the detainee's involvement in terrorism will not have been proven at the time, and they may in fact be innocent, there is a high likelihood that any evidence obtained would be false and unhelpful.

[48] Report of the Working Group on Arbitrary Detention (A/HRC/22/44), Part III, Deliberation No. 9 concerning the definition and scope of 'arbitrary deprivation of liberty' under customary international law, para 60.

[49] Please refer to pp. 2-3 of APT's paper on "Incommunicado, Unacknowledged and Secret Detention under International Law that can be accessed at https://www.apt.ch/content/files_res/secret_detention_apt1-1.pdf

[50] UN General Assembly, UN Doc. A/RES/60/148, 16 December 2005, Article 11; UN Commission on Human Rights, UN Doc. E/CN.4/RES/2005/39, 19 April 2005, article 9

[51] Please refer to p.9 of APT's paper on "Incommunicado, Unacknowledged and Secret Detention under International Law that can be accessed at https://www.apt.ch/content/files_res/secret_detention_apt1-1.pdf

What are the messages to convey?

- Secret detention must be prohibited in all cases.
- Detainees in secret detention are at high risk of being tortured and secret detention in itself constitutes torture and ill-treatment.
- Key safeguards for detainees under custody such as information about their rights, notification of arrest to family and access to a lawyer should be afforded to all detainees and not suspended in any unreasonable, illegal and inhumane circumstances.
- One of the three main thrusts of the ASEAN Declaration on Promoting a Culture of Prevention is on "promoting a culture of good governance at all levels." The foundation of good governance is the rule of law. This is undermined when authorities use unofficial or secret detention sites or delay the legal access of detainees to their lawyers, family members or independent oversight mechanisms.
- Emergency decrees giving additional powers to the police or the military to detain persons incommunicado should only be applied in response to specific threats that are clearly defined and will still be subjected to judicial review or oversight. In any case, their use never justifies violations of fundamental human rights – including protections against torture and ill-treatment, which are unlawful in all circumstances.

What can SEANF NHRIs do?

- Conduct regular visits to all places where people are detained or may be detained, including sites run by the military or special police units.
- Conduct interviews with persons who have recently been released from police or military detention in order to gather more information about possible use of incommunicado detention and associated rights violations.
- Maintain regular contact with families of detained persons, legal aid organisations and relevant civil society groups in order to document cases and campaign for reforms in laws, practice and procedures.

08
PROTECTING PERSONS IN SITUATIONS OF VULNERABILITY

8 PROTECTING PERSONS IN SITUATIONS OF VULNERABILITY

8.1 Protecting vulnerable groups from torture

Everyone deprived of their liberty is vulnerable due to the power imbalance between them and the detaining authority. Among those in detention, certain groups already experience or suffer from particular situations of vulnerability. Nevertheless, it is possible to identify several risk factors that make vulnerability significantly more likely. These include[52]:

1. Personal factors: age, gender, level of education, nationality, ethnicity, physical or mental health, legal situation, economic situation, lack of information, low self-esteem, past or present trauma (including torture, domestic and sexual violence), and life experiences, among others.

2. Environmental factors: the attitude of prison personnel, personnel/detainee ratio, other prisoners' attitudes, access to and competence of healthcare, legal and social services, informal systems of privileges, prison lay-out, possibility of redesigning/ accommodating the space, absence of family ties, and overcrowding, among others.

3. Socio-cultural factors: the attitude of society and the media towards persons deprived of liberty, stigmatisation and social exclusion, social invisibility, attitude towards minorities, and corruption, among others.

In the ASEAN region, vulnerable groups in society have been defined as including (although not limited to): to persons with disabilities, older people, youth, women, children, undernourished, victims of disasters, migrants, and their families and communities[53]. To give some examples in the context of detention, Amnesty International has reported that in Indonesia, "criminal suspects from poor and marginalised communities and peaceful political activists were particularly vulnerable to violations by police[54]." Likewise, in the Philippines, women in police custody are reportedly particularly vulnerable to sexual and physical assault by police and prison officials[55]. In addition, combinations of these factors can multiply vulnerabilities. So that, to take the examples above, while women and the poor may be more vulnerable, poor women may be at even greater risk.

One of the most important ways in which SEANF NHRIs can protect vulnerable groups is to bring a vulnerability perspective to all of their work relating to detention. This means, that strategic and operational plans take account of risks related to vulnerabilities when choosing priorities. In practice too, it means bringing representatives of groups in situations of vulnerability into every stage of their work, from planning, to detention visits and follow-up. Some examples of this would be ensuring that civil society groups representing groups in situations of vulnerability take part in any NHRI technical or advisory committees; that NHRI staff is fully representative, both including a gender balance, as well as members of different minorities or other groups often at risk; and also that experts from different groups are contracted to take part in visits and detention monitoring work.

SEANF STORIES: PROTECTING THE DISADVANTAGED GROUPS IN INDONESIA, MALAYSIA, THE PHILIPPINES AND TIMOR-LESTE

In Malaysia, SUHAKAM carries out awareness campaigns on the risks faced by pre-trial detainees with key stakeholders including authorities. SUHAKAM also visits pre-trial detainees during periods of detention and conducts investigation when complaints of torture are received.

In the Philippines, the CHRP reports that "victims of torture are generally poor and [have often] not finished formal schooling." Among their strategies for dealing with groups in situations of vulnerability is ensuring that their visiting teams are multidisciplinary.

In Timor-Leste, the Provedor raised public awareness about the situation of LGBTI persons, including the conditions they face in detention places. In this regard, they have conducted trainings and public seminars to put forth positive views about LGBTI persons.

SUHAKAM and KOMNAS HAM have signed a Memorandum of Understanding (MoU) with the CHRP acting as an observer, to formalise and strengthen cooperation to address the issue of statelessness in Sabah, Malaysia, from a human rights perspective. This will be achieved by fostering closer collaboration with their respective governments and conducting a joint research project to understand the geopolitical nature and historical context of this issue.

Illustration by: ***Shazeera Zawawi***

TIPS FOR ACTION

a) **Research the issue.**
Conduct research that aims at understanding the key risks and vulnerabilities in society and in detention and ensure that SEANF NHRI's strategic and operational plans are responding to these risks.

b) **Giving voice to the voiceless.**
Involve representatives of vulnerable groups and relevant civil society organisations at all levels of work, including planning and strategy and detention monitoring.

c) **Diversity starts at the institution!**
Ensure NHRI staff are fully representative, including not only a gender balance but also staff from a range of social, religious, and other backgrounds.

[52] See APT Detention Focus Database for a more detailed discussion and standards relating to vulnerable groups in prison. www.apt.ch/detention-focus

[53] ASEAN Regional framework and action plan to implement the ASEAN declaration on strengthening social protection, 2013, https://www.asean.org/wp-content/uploads/images/2015/November/27th-summit/ASCC_documents/ASEAN%20Framework%20and%20Action%20Plan%20on%20Social%20ProtectionAdopted.pdf

[54] Cited in Advancing a Culture of Torture Prevention in Southeast Asia, APT, December 2018, https://apt.ch/en/resources/advancing-a-culture-of-torture-prevention-in-southeast-asia/

[55] Cited in Advancing a Culture of Torture Prevention in Southeast Asia, APT, December 2018, https://apt.ch/en/resources/advancing-a-culture-of-torture-prevention-in-southeast-asia/

TAKING ACTION ON HARD ISSUES: MIGRANTS HAVE RIGHTS TOO!

The South East Asian region has a massive and vibrant migrant population. Overall, there are nearly 10 million international migrants in the region. In addition, there are around 20 million migrants from the region. Of that number 6.9 million migrated to other countries within the South-East Asian region for political and socio-economic reasons[57].

The high proportion of irregular migration in the region also exposes migrants, particularly women and children, to risks of exploitation, torture and ill-treatment[58]. In 2019, a report[59] jointly published by the Human Rights Commission of Malaysia and Fortify Rights exposed the crimes of a human trafficking syndicate that operated in Malaysia and Thailand from 2012 to 2015. Twenty-eight human trafficking camps and a number of unmarked graves containing bodies of trafficked Rohingyas and Bangladeshi were founded in Wang Kelian, an area in the Northern part of Malaysia. Further investigation into the case indicated involvement of corrupt border officials as well as denial of basic needs and the use of torture against victims by traffickers that led to their deaths.

Irregular migrants are also at risk of being detained, deported or whipped as illegal entry is an offence in most countries in the region[60]. As a result, Immigration Detention Centres (IDC) in the region are overcrowded and suffer from poor conditions due to the growing number of migrants detained. Migrants also die in custody due to contagious diseases or suicide, committed due to severe mental health problems[61].

Although migrants are vulnerable and require protection, they are further isolated and discriminated against due to negative public perceptions. Migrants are accused of stealing jobs from the locals, increasing criminal rates or are perceived as a threat to social cohesion[62]. Emerging studies and data conclude that these perceptions are far from accurate. The arguments to counter these misconceptions are summarised below:

Migrants do not steal jobs but bring economic prosperity to the country they reside in.

Migrants fill the gap for unskilled labour work in construction, manufacturing industries, retail and service-based trade. While locals tend to avoid such jobs or seek employment in technical, managerial or professional occupations. A case study of migration in Malaysia, over the period of 20 years showed how immigration stimulated the creation of higher-skilled jobs for locals in sectors and areas that attracted immigrants. Immigration also had a modest positive impact on the wages of locals, increasing the wage premium obtained by higher levels of education[63].

The Sustainable Development Goals 2030 (SDG 2030) recognises migrants' contribution to development. In addition to specific goals such as ending abuse, exploitation, human trafficking and smuggling and ensuring labour rights as well as safe and secure working for migrant workers, migration is also seen as a powerful poverty reduction tool, which can contribute to all SDG Goals. This includes increasing autonomy and socio-economic status of women, increased wages and greater economic growth through higher incomes, contribution to services and increased government budgets through taxes and social security contributions[64].

Migrants are not a threat but contribute to positive diversity and social cohesion

Growing migratory flows generate questions about how to manage the changing composition of societies. More often than not, the alleged threats that migrants posed to social cohesion derived from the lack of coherent national policies and programmes that would enable migrants to integrate better in the society. A lack of integration can threaten social cohesion, which in some cases even translates into political instability. Poor integration would not only impend social cohesion, but also affects migrants' contribution to the development of their host societies[65]. The ASEAN Consensus on The Protection and Promotion of the Rights of Migrant Workers for example, emphasises the importance of social inclusion. Receiving States in the region are urged to promote harmony and tolerance by ensuring that migrant workers are able to integrate with local communities as well as exercise their religions, customs and traditions.

There is no co-relation between the increase of crime rate and migrants

There is no conclusive link to support the argument that migrants cause increased crime rates. Evidence does suggest undocumented migrants or those without good opportunities are likely to commit property crimes. However, this is also true for local disadvantaged groups[66]. The public's concern that migrants are potential criminals is further fueled by the way migrants are portrayed in the media; framing migrant issues as a "law and order" or security issue or using dehumanising language in reports such as "illegal", "bogus" or "terrorists"[67]. At the same time, the media's choice not to report on or highlight migrants' narratives, as happened in Australia in the 1970s, can be equally problematic and can contribute to negative sentiments and policies against migrants[68].

[56] pp.62-64, International Organization for Migration, World Migration Report 2018 https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf
[57] Pp.63, Ibid
[58] pp. 7-8 , International Labour Organization (ILO), "Thematic Background Paper for the 10th ASEAN Forum on Migrant Labour (AFML)", 25-26 October 2017. Document can be accessed at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_631089.pdf
[59] See Fortify Rights & National Human Rights Commission of Malaysia, "Sold Like Fish- Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015", March 2019. Report can be accessed at https://www.fortifyrights.org/downloads/Fortify%20Rights-SUHAKAM%20-%20Sold%20Like%20Fish.pdf
[60] Please see Article 85 of Indonesian Immigration Law UU6-2011 or Section 6(3) of Immigration Act 1959/1963 and Section 29 of the Thai Immigration Act 1979 that stipulate penalties and administrative detention for undocumented persons entering these countries.
[61] See Indonesia's and Malaysia's Country Profile at https://www.globaldetentionproject.org/countries/asia-pacific/indonesia and an exclusive coverage on 100 deaths in migrant detention: https://www.reuters.com/article/us-malaysia-detention-deaths/exclusive-more-than-100-die-in-malaysian-immigration-detention-camps-in-two-years-idUSKBN1710GR
[62] p.1"How and Why Does Immigration Affect Crime? Evidence from Malaysia" Caglar Ozden, Mauro Testaverde, and Mathis Wagner, The World Bank Economic Review, 32(1), 2018, 183–202. Go
[63] http://www.worldbank.org/en/news/feature/2013/11/12/Debunking-the-Myths-of-Global-Migration
[64] https://www.odi.org/sites/odi.org.uk/files/resource-documents/12421.pdf
[65] P. 38, OECD/ILO (2018), How Immigrants Contribute to Developing Countries' Economies, ILO, Geneva/OECD Publishing, Paris, https://doi.org/10.1787/9789264288737-en.
[66] Bianchi, M., Buonanno, P., Pinotti, P. "Do immigrants cause crime?" Journal of the European Economic Association 10:6 (2012): 1318−1347.
[67] pp.193-195, International Organization for Migration, World Migration Report 2018 https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf
[68] Ibid, p. 202

What are the messages to convey?

- Migrants are vulnerable to human rights abuses, require further support and protection from the local communities and host country.
- Migrants are not a burden but contribute to economic prosperity of the host country.
- Irregular migration needs to be curbed by combating human trafficking and smuggling activities, protecting migrants from exploitation under the labor laws and enhancing cross border cooperation to ensure migrants' safe mobility and well-being.
- Detention should be a measure of last resort for irregular migrants.

What can SEANF NHRIs do?

- Promote an open and evidence-based public discourse on migration and migrants in partnership with all parts of society to demystify negative stereotypes attached to migrants and encourage constructive dialogues around issues related to migration in the region.
- Sensitise and educate media professionals on migration-related issues and terminology, particularly with the aim of promoting a more balanced and positive narrative as well as denouncing acts of violence or incitement of hatred against migrants.
- Advocate for the use of immigration detention as a measure of last resort and recommend the use of non-custodial alternatives that follow due process and are in line with international human rights standards.
- Include fair and ethical recruitment and safeguard conditions for migrant workers as one of the priorities of the SEANF members' human rights and business thematic issues.
- Develop bilateral or multilateral cooperation among members to coordinate joint responses on issues of irregular migration, to share national information and data and strengthen the capacity and impact of detention monitoring in the region.
- Disseminate the outcomes of the "Wang Kelian incident" more widely in the region to highlight the importance of preventing and eradicating human trafficking through stronger cross-border cooperation.
- Enhance SEANF members' voice and participation as national human rights institutions in the implementation of regional and international frameworks and mechanisms that are relevant to irregular migration. This includes ASEAN Declaration against Trafficking in Persons, ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, ASEAN Declaration on Transnational Crime, the Bali Process and the Global Compact for Safe, Orderly and Regular Migration.
- Support social cohesion and integration for migrants by promoting their stories and culture through social media and other popular mediums.

Illustration by: ***Ratan***

09
FROM LOCAL TO GLOBAL

9 FROM LOCAL TO GLOBAL

9.1 Engaging the international community for national impact

SEANF NHRIs are uniquely placed to act as a bridge between the international human rights world and the domestic human rights system due to their status within the international human rights system. Based on their mandates under the United Nation's Paris Principles, NHRIs' can provide international mechanisms with independent and authoritative information on national situations and promote and monitor follow up to recommendations resulting from the UN system. Being in such a position also means that SEANF NHRIs have an important role in translating and applying international human rights standards and obligations to their national contexts and needs. This poses a different challenge to SEANF NHRIs. Public discourse and understanding of human rights in SEANF societies remains low and the public and stakeholders require further convincing that torture prevention, and human rights as a whole, is a universal framework that is not ingrained in any particular one history, geographic interest, culture or political ideology. The SEANF NHRIs are in an important and strategic position to explain and dialogue with national actors on the need to harmonise human rights with local contexts and how this can benefit, protect and ensure society's political, economic and social well-being.

At the international level, the SEANF NHRIs can engage at different levels with United Nations Treaty Bodies or Special Procedures of the Human Rights Council, as follows:

a) With treaty bodies including the Committee against Torture (CAT Committee), the Human Rights Committee, Committee on the Rights of the Child (CRC Committee), Committee on the Rights of Persons with Disabilities (CRPD Committee) and Committee on the Elimination of Discrimination against Women (CEDAW Committee), SEANF NHRIs can;

   i) Provide comments to or submit List of Priority Issues prior to reporting.

   ii) Provide specific information on the level of domestic implementation of treaty provisions and propose recommendations through parallel reports.

   iii) Participate in treaty body sessions.

   iv) Engage in dialogue with treaty body experts. This is particularly useful in looking into the intersectionality of rights and issues that could amount to torture and ill-treatment such as violence against woman or violent extremism.

   v) Raise awareness at the national level on the concluding observations made by the treaty bodies, through dissemination and public seminars.

   vi) Follow-up with the relevant government agencies on the implementation of the recommendations made under the concluding observations. This is especially important with recommendations that needs to be addressed within one year after the country report is examined by the treaty body.

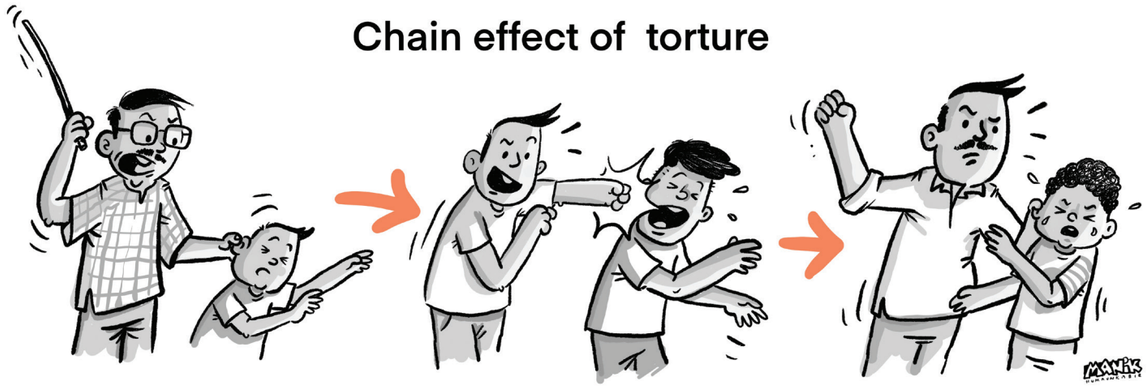

Illustration by: ***Manik***

b) With Special Procedures of the United Nations Human Rights Council including the Special Rapporteur on Torture and Ill-treatment:

   i) Encourage States to invite them or extend open invitations for in-country visits.

   ii) Prepare and follow up on visits, including e ngaging in dialogue with Special Rapporteurs during their visits to provide information relevant to torture and ill-treatment.

   iii) Raise awareness on the content of the Special Procedure's thematic or country reports and disseminate them through media-ops, SEANF NHRI's websites, blogs or annual reports.

   iv) Present individual cases to Special Procedures if needs be.

   v) Contribute to invitation for inputs from Special Procedures on relevant themes and whenever necessary or appropriate, build a case on how such issue can be framed as torture and ill-treatment.

   vi) Follow-up with the relevant government agencies on the implementation of the recommendations made by the U.N Special Rapporteur on Torture and Ill-Treatment in his country or thematic reports.

c) Within the framework of the United Nations Human Rights Council:

   i) Propose an inclusive and participatory process in preparation and following up the country's Universal Periodic Review (UPR) report involving civil society organisations.

   ii) Participate in the UPR process include submitting an independent report, be involved in the pre session and make an intervention during the adoption of the country report session if needed,

   iii) Organise meetings or discussions with the in-country troika representatives,

   iv) Collaborate with the government in organising follow-up to UPR recommendations and call for stronger commitment from government to implement recommendations that include but are not limited to ratification of UNCAT and OPCAT, criminalisation of torture, penitentiary reform, criminal justice reform, strengthening of national oversight including NHRIs and protection of human rights defenders from reprisals,

At the domestic level, SEANF NHRIs could raise awareness among stakeholders and civil society on the international processes, outcomes and reports and the importance of participating and contributing to these efforts. This can be achieved by organising national consultations or workshops that include all relevant national actors, aiming towards preparation of shadow reports for treaty bodies, follow-up to concluding observations or UPR recommendations. Furthermore, to broaden dissemination and outreach in the country, these documents should be translated into local languages or simplified for public understanding.

In addition to international multilateral engagements, there are also emerging opportunities to engage human rights mechanisms at the ASEAN level as well as through country sponsored human rights dialogues. At the ASEAN level, SEANF NHRIs are increasingly considered as leading national human rights institutions and are invited for activities or engagements with the ASEAN Intergovernmental Human Rights Commission (AICHR), The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) or ASEAN Committee on Migrant Workers (ACMW). There is a need to formalise and institutionalise these engagements at the regional level to ensure that SEANF NHRIs could contribute its experiences on the ground to these regional processes. Additionally, bilateral human rights dialogues sponsored by the European Union or countries such as Switzerland are an opportunity for SEANF NHRIs to dialogue and build strategic partnerships on torture prevention. Switzerland's Federal Department of Foreign Affairs Action Plan against Torture is an example of a constructive foreign policy that could be the basis of further dialogue and cooperation as it strongly espoused Switzerland's priorities and support for combating torture. The EU Human Rights Dialogue on the other hand, is a strategic platform that SEANF NHRIs can use to raise specific issues on torture and ill-treatment. Such inputs could help inform the EU's strategic engagement in the region not only on domestic human rights issues but also on the broader considerations around political, security and socio-economic engagements.

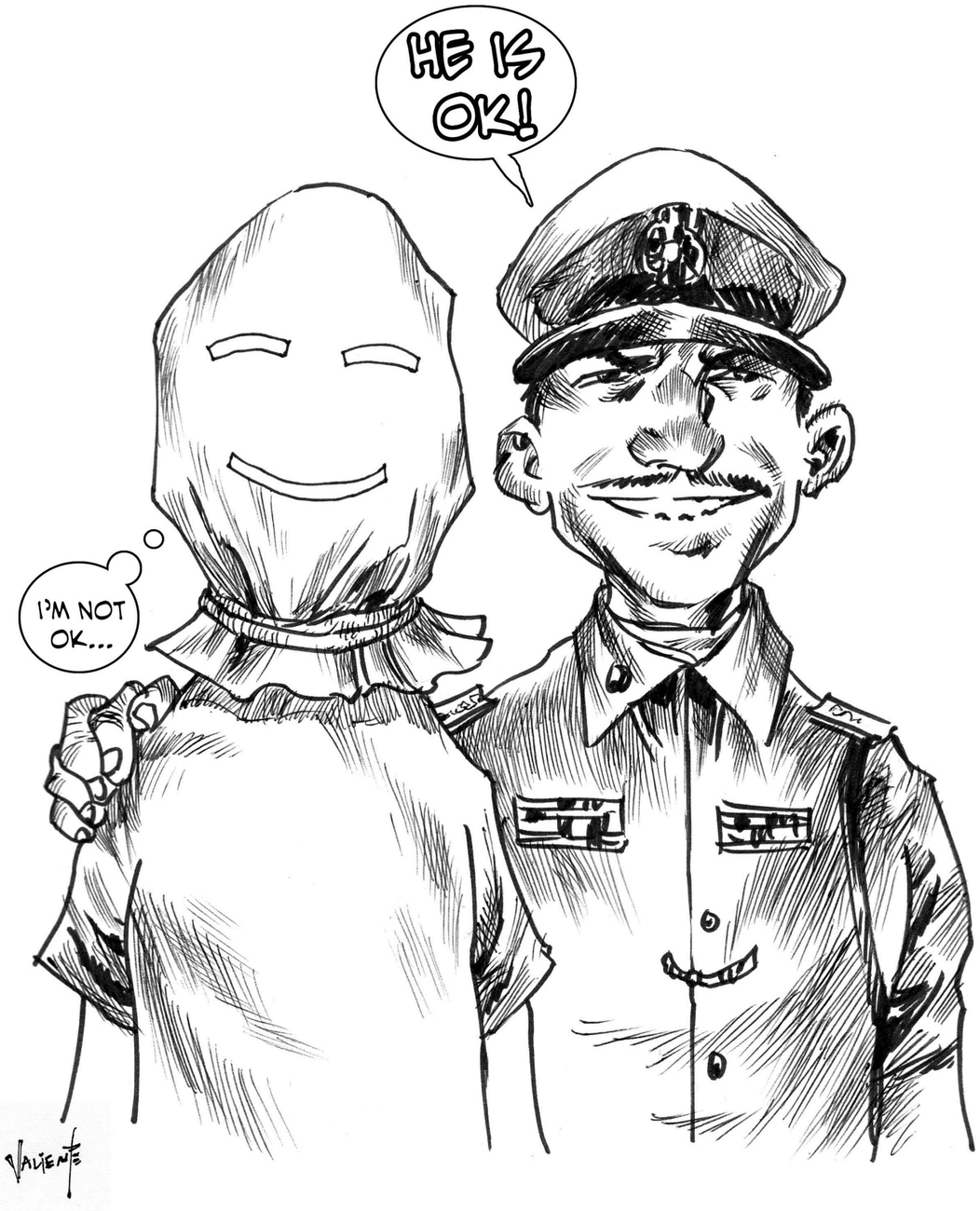

Illustration by: ***Randy Valiente***

SEANF STORIES: UNCAT AND OPCAT ADVOCACY IN MYANMAR AND THE PHILIPPINES

In the Philippines, the Human Rights Commission presented a Parallel Report to the CAT for the 57th Session of the Committee Against Torture relating to the discovery of a secret detention cell in a Manilla police station. As the only state party to OPCAT, the CHRP had also helped build national awareness and momentum around the Sub-Committee on Prevention of Torture (SPT) visit to the country in 2015 by organising a national OPCAT awareness workshop for relevant stakeholders and civil society. This example is crucial for the South East Asian region, particularly in shifting the mindset that visits from international oversight are a threat to national sovereignty.

In 2014, the National Human Rights Commission of Myanmar (MNHRC) organised an UNCAT Workshop for government officials in cooperation with the Raoul Wallenberg Institute.

TIPS FOR ACTION

a) **Engage regional bodies.**
Engage with regional human rights bodies, including AICHR. SEANF NHRIs experiences in preventing torture on the ground can enrich regional discussions and dialogues on the issue. For a start, SEANF NHRIs can lobby and build a stronger relation with the Country Representative to the AICHR to recommend the inclusion of torture prevention as an institutional priority for AICHR.

b) **Submit reports to treaty bodies!**
Make independent submissions alongside state reports to the United Nations Treaty bodies, including, where relevant, the UNCAT, CRC, CRPD, ICCPR.

c) **Make SEANF NHRIs' voice heard at the UPR.**
Engage with the Human Rights Council by monitoring and highlighting acceptance of recommendations by states related to efforts to prevent or prohibit torture during the Universal Periodic Review Process in NHRI annual reports, periodic publication, media statements, and websites.

d) **Make the UN System more effective!**
Support State candidacy to the Human Rights Council where there is a positive record in preventing torture or linked to a push for pledges on torture prevention for States candidates.

e) **Build a stronger international alliance**
NHRIs are increasingly seen as key human rights institutions around the world. Build connections with NHRIs from other regions, identify common strategies and join forces to build a stronger NHRIs movement to prevent torture.

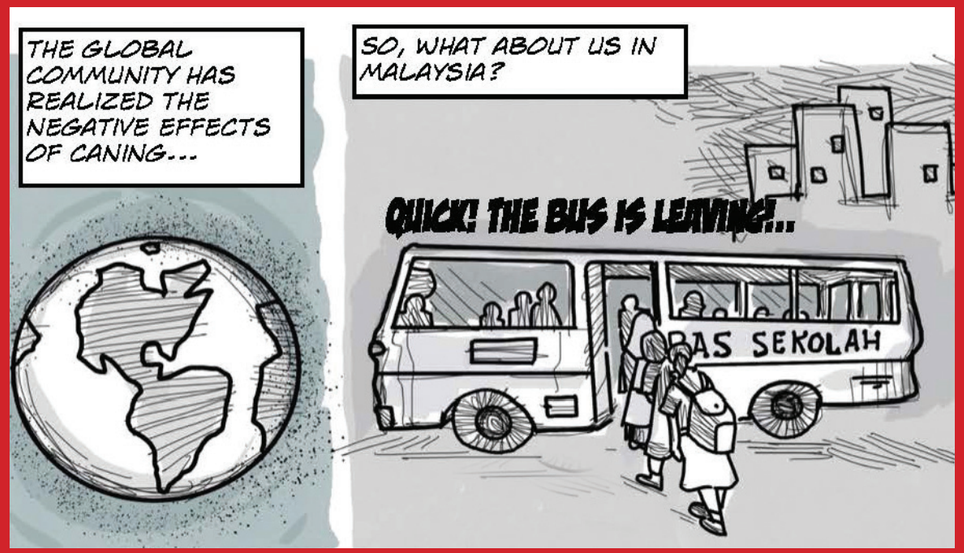

Illustration by: ***Shazeera Zawawi***

TAKING ACTION ON HARD ISSUES: HUMAN RIGHTS FOR ALL.

While the South East Asian countries[69] show more openness to engage with the United Nation's treaty bodies and independent experts, the region still has the lowest number of ratifications, implementation and reporting of their obligations under the international human rights treaties. At the local level, debates around human rights and cultural relativism challenge efforts to promote, adhere and engage with these international human rights mechanisms. The debate often "hinges on how human rights is a western concept, reflect Western interests and are therefore, a weapon of cultural hegemony or a new form of imperialism[70]." In a recent debate on whether Malaysia should become a State Party to the International Convention on Elimination of Racial Discrimination (ICERD), those who opposed the idea alleged that ratification would threaten national sovereignty and force government into abolishing affirmative actions for the Malay population. This grave misconception is not limited to the Malaysian context. It reflects the general attitude and perception of human rights in the region. The following are arguments to address these misconceptions in order to ensure a better informed human rights engagement at both the national and regional level in South East Asia:

[69] Over the years, countries such as Indonesia and Malaysia has received visits from several U.N Special Rapporteurs on Water, Health, Torture and Ill-Treatment and Right to Education. Furthermore, Malaysia, recently during its 3rd UPR cycle, extended an open invitation to all U.N Special Rapporteur to visit the country. At the same time, other countries such as Thailand, continues to postpone visits from the U.N Special Rapporteur on Torture and Il-Treatment since 2014.

[70] Please refer to "Is "Human Rights" a Western Concept?" at http://www.theglobalobservatory.org for the full article.

Human rights is not a foreign concept, it is built on a collective experience with injustice around the world.

Opposing parties to human rights continue to argue that the theory and practice of human rights was historically and anthropologically developed in the West and thus, a foreign concept. Such an argument denies the experience of injustice from the oppressed throughout the world, including in the South East Asian region that later gave rise to human rights reforms. The fight for self-determination from colonial powers, the people rising up against dictatorship, the global struggle against famine and poverty in the African, Latin American and Asian regions were significant moments in history, where such demands for recognition of human rights have contributed to the development of international human rights principles and standards.

Furthermore, those who subscribe to this argument handpicked the modern codification and conceptualisation of human rights in response to the World War II's atrocities as the definitive origin of human rights. This is a flawed argument as those efforts do not reflect or articulate any specific philosophical assumptions or any single cultural references or theories. "They are the outcome of diplomatic initiatives, involving political strategy and negotiated agreements[71]."

In addition, the historical development of the Universal Declaration on Human Rights and other international human rights treaties indicated that these international documents were formed with significant contribution and influence from non-Western countries. The Arab states and the Soviet bloc spearheaded the inclusion of social and economic rights in the declaration. The Egyptian delegate, Omar Lutfi, inspired the reference to "universality" of human rights. He made such proposals in order to ensure that the rights under the declaration could also be exercised by "nations and people that were not autonomous", referring to persons who were still under colonial rule at the time[72]. Furthermore, the Covenant on Civil, Political Rights and on the Economic, Social and Cultural Rights were both approved by unanimous vote of the General Assembly while there are other clear historical events proving the leadership roles of the "Global South" in advancing recognition and the establishment of international human rights norms, mechanisms and framework[73].

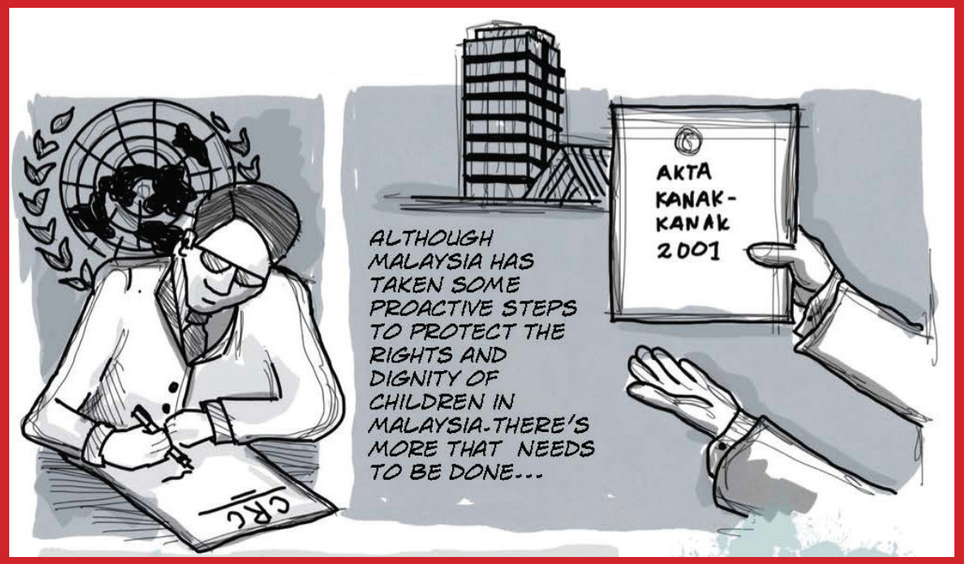

Illustration by: ***Shazeera Zawawi***

[71] (The global Observatory)
[72] Waltz, Susan. "Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights." *Third World Quarterly*, vol. 23, no. 3, 2002, pp. 437–448. JSTOR, www.jstor.org/stable/3993535.
[73] (The global observatory)

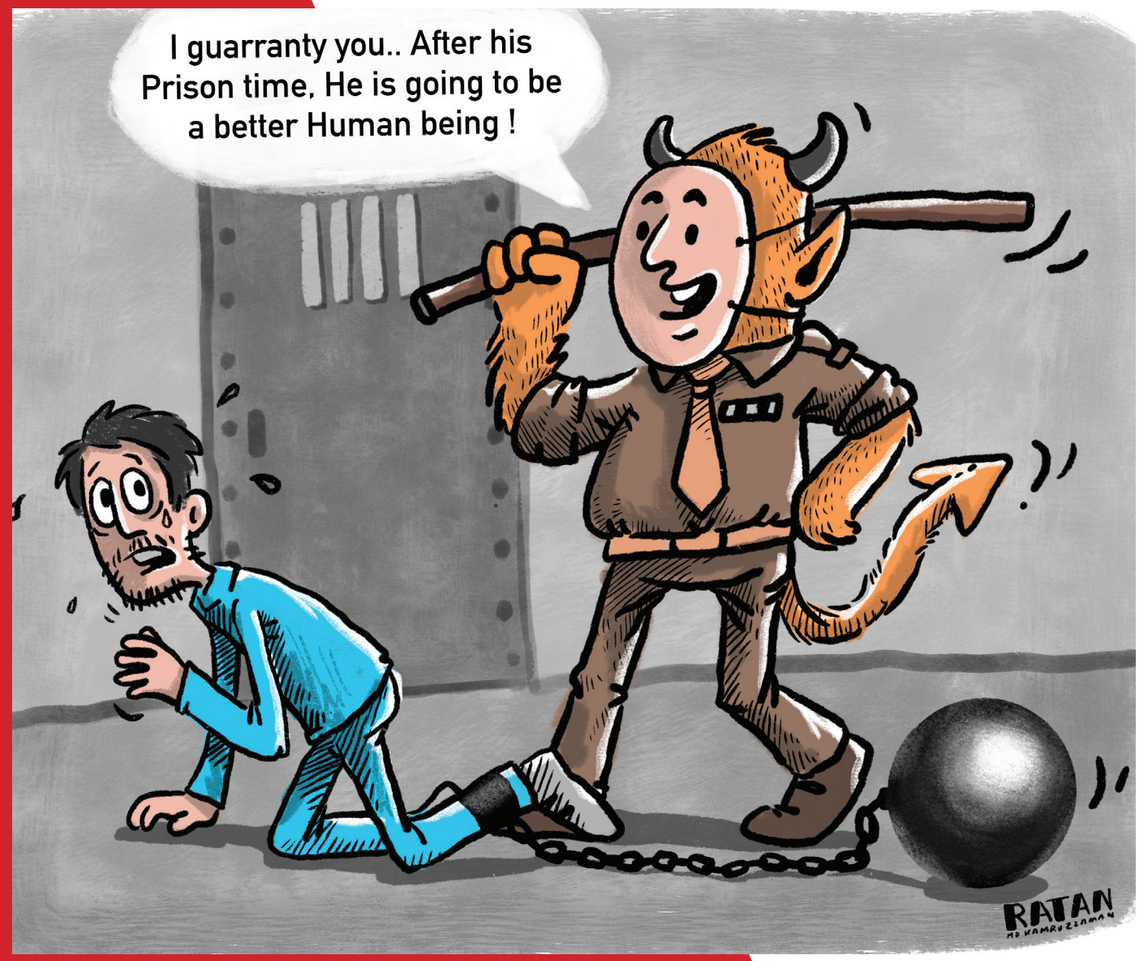

Illustration by: ***Ratan***

Ratification of international treaties represents "an exercise of sovereign power, not the diminution of it"[74].

A State's decision to ratify international human rights treaties will not undermine its autonomy as a free and independent country. In the era of globalization, political, social and economic interests are expanding beyond national borders. A State's participation in international human rights treaties represents a positive and confident exercise of sovereign power. It is a strategic decision to serve national interests and ideals. This necessitates ratification as a State's moral obligation to be part of the global movement of human rights and counters the argument that ratification is not needed if countries could or already comply with international human rights obligations.

[74] Please refer to "With U.N Treaties, there are two ways of looking at sovereignty" by Jenny.S Martinez at https://www.nytimes.com/roomfordebate/2012/12/06/have-treaties-gone-out-of-style/with-un-treaties-there-are-two-ways-to-look-at-sovereignty

Participation in international human rights treaties and mechanisms could also be a tool to strengthen state sovereignty. For example, strong international standards for socio-economic human rights could enable States to protect their citizens against the actions of other States or private actors such as transnational corporations[75]. In the context of the South East Asian region, this is crucial for countries in addressing cross-border issues such as irregular or forced migration, treatment of domestic workers and human trafficking in women and children.

Furthermore, by becoming a party to international human rights treaties, a State could potentially increase its resources, jurisdiction and influence in shaping and advancing human rights norms and practices for its country and the international fora. For example, State parties to international human rights treaties have the opportunity to influence the composition and membership of treaty bodies and to enrich the discussions and engagement with other state parties around human rights norms and practices. State parties could propose candidates from their countries to be elected as part of the treaty committees or be more involved in the deliberations and setting of standards related to the treaties.

What messages to convey?

- The perspective "human rights is a western concept" is inaccurate, dated and counter-productive to countries' efforts to advance people's interests and well-being at the local and international level.
- Becoming part of international human rights treaties is a sign of national strength and not weakness or subordination to Western interests and power.
- Regionalisation of human rights in ASEAN should be seen as a step for "building bridges and not building walls" with international human rights standards.

What can SEANF NHRIs do?

- Develop a network of human rights experts, figures and change agents from the region that are more familiar with local contexts and arguments against human rights.
- Produce, translate and disseminate more narratives that demonstrate the Global South's role and contribution to human rights.
- Introduce a course on international human rights law to public servant trainees and university students.
- Publicise, broaden coverage and telecast the United Nations human rights treaty body sessions in the local print and electronic media.

[75] Please refer to"Does Human Rights limit State Sovereignty?" By Cristina Lafont at https://www.globus.uio.no/news/2018/lafont-human-rights.html

Illustration by: ***Vispavada***

STOP torture and other acts of cruel, inhuman or degrading treatment or punishment!

doaa eladl

Illustration by: ***Doaa Eladi***

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