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26 June - International Anti-torture Day

News Release

Regarding the case of tortured Yala students, Southern Thailand

The lawyer submitted the medical and forensic psychiatry report in supplementary to the claim that the tortured survival has been affected physically and psychologically

The Administrative Court designated 20 June 2011 as the completion day of the court enquiry process regarding to the case No. 187, 188/2552 filed by Mr. Issma-air Teh, the 1st complainant, and Mr. Ahmeezee Manak, the 2nd complainant, against the Royal Thai Army and the Ministry of Defense.

In this regard, the lawyer submitted the medical report on the physical and psychological examinations of Mr. Issma-air Teh, the 1st complainant, in order to claim his physical and psychological damages resulted from the assault and torture for the purpose of obtaining his confession. The 1st complainant and the 2nd complainant were students of a university in Yala Province. They were involved in students' activities during the years 2007 – 2008. They became suspected and their house was searched followed by their detention under the Martial Law. Later on, they were released without any criminal charge.

This is the first case ever that the persons who were tortured while being detained by virtue of the Martial Law, which has been enforced in the Southern Border Provinces, has exercised their judicial right with the court in order to hold the government agencies (the Royal Thai Army and the Ministry of Defense) accountable for the execution of duties by their subordinate officials in the Southern Border Provinces that caused damages to the people, pursuant to the Act on Liabilities for Wrongful Acts of Officials B.E. 2539. The lawsuit was filed with the Civil Court on 14 January 2009 and subsequently transferred to the Songkhla Provincial Administrative Court as the power under the Martial Law decided that this case falls under the jurisdiction of the Administrative Court. The Court conducted the enquiry process and fact finding process for over 2 years with both the complainants and the defendants.

Torture is universally considered to be a serious crime since it is committed by law enforcement officials. The present forms of torture often leave no trace on the body leading to legal obstacles to proving the damage and claiming for compensation. Nevertheless, in the event where no physical evidence is found in a victim of torture, the signs of psychological effect sustain for a long period.

Accordingly, the question of effect of torture under such circumstance can be answered by the examination of PTSD (post-traumatic stress disorder) by an expert.

As in this case, Mr. Issama-air underwent the PTSD examination from which a report was made by two independent expert physicians who are members of the International Rehabilitation Council for Torture Victims - IRCT), which has the headquarters in Copenhagen, Denmark, and has the objectives to enhance the understanding of and improve the work on forensic science and forensic psychiatry for the benefit of torture victims worldwide, in accordance with the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Protocol prescribes the international standard for the effective documentation of torture and serves as a guide for the effective protection and reparation for victims of torture.

The international mechanism for protecting and preventing a person from torture will help to reduce the gap and the flaw in the investigation of torture cases in Thailand. Whereas PTSD has not been used in the consideration of reparation for a torture victim, it however can be used as the essential evidence to confirm the gravity of torture that it psychologically affects the victim in the longer period than the physical effect and as such resulting in the lack of fair reparation or compensation for the victim and further in the arbitrary action of the official because of the impunity. In addition, the commanding agencies may neglect their supervisory duty resulting in the deteriorated and annulled guarantee for the rights and liberties of the people living in the unrest situation.

Consequently, this is the first case thereto the torture-related medical report has been submitted for consideration by the Court and as the guide for determining remedial measures pursuant to Section 32 of the Constitution of the Kingdom of Thailand, which provides for the right of a person to be free from torture and the right to receive appropriate remedies¹ for such damage occurred.

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¹ **Section 32.** A person shall enjoy the right and liberty in his life and person.

A torture, brutal act or punishment by a cruel or inhumane means shall not be made; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.

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

Search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law.

In the case where there is an act affecting right and liberty under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to bring lawsuit to the Courts so as to stop or nullify such act and to impose appropriate measure to alleviate damage occurred therefrom.