

Report No. 125/2560 on right to life and body in a case of which it was claimed that a person was tortured by officials while being detained

Complainant: Mr. S

The accused: A ranger from Ranger Regiment 43 based in Nong Chik District, Pattani Province

Actions the complainant claimed to happen came only from injured person's words without any other evidence. Moreover, the complainant and injured person could not be contacted to seek for more information. On the other hand, the accused, which was a government agency, did not respond at all despite being requested three times to explain related facts. However, when reports of physical examination conducted by forensic physicians at the Southern Border Provinces Forensic Science Center in Yala Province and physicians at Yala Center Hospital were taken into consideration, it is believed that wounds on the injured person's body were really created while he had been detained by the accused as claimed by the complainant. Even if physical fact did not show any act of torture according to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which defines the term "torture" as 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, action of the accused, however, was violation of the right to life and body, a form of human rights violation according to Section 4 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) protected by Section 32 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). That action of the accused was therefore violation of human rights. The National Commission on Human Rights thus came up with measures to solve the problem of human rights violation according to Section 28 of the National Human Rights Commission Act B.E. 2542 (1999) and proposed to the Internal Security Operation Command of Region IV to take actions.

A complainant submitted a petition, recorded as petition no. 160/2558 dated 18th March 2015, to the National Human Rights Commission requesting the commission to check a case of which it was claimed that on 26th February 2015, an injured person, who was a younger brother of the complainant, was restrained by military personnel and taken to the Ranger Regiment 43 in Nong Chik District, Pattani Province. The complainant was later told by the injured person that while being detained at office of the accused from 26th February 2015 to 5th March 2015, he was tortured by several methods, such as being kneed and punched at belly, chest and forehead, being forced to stand under the sun, being forced to unclot and hit by rubber band at testis, being tied at the back with a chair and having feet soaked in ice-cold water, being forced to hold water in the mouth and having head covered with a bag, causing him unable to breath and lost consciousness with traces found at wrists and swollen right eye. Later on 5th March 2015, the complainant's younger brother was sent to be detained at Peace Guarding Center, Southern Border Province Police Operation Center, and

on 10th March 2015, he was sent for physical check-up at Yala Center Hospital. From this case, the complainant then requested the commission to check.

The National Human Rights Commission took this case into consideration and saw that actions the complainant claimed to happen came only from injured person's words without any other evidence. Moreover, the complainant and injured person could not be contacted to seek for more information. On the other hand, the accused, which was a government agency, did not respond at all despite being requested three times to explain related facts. This situation resulted in the National Human Rights Commission did not hear facts from both parties.

However, facts that came out from explanation of the Southern Border Province Police Operation Center, which was the agency that admitted the injured person for detention since 5th March 2015 after he had been detained by the accused, indicated that when the Peace Guarding Center, Southern Border Province Police Operation Center, admitted the injured person for detention, they had the injured person physically checked immediately by nurses and physicians. Results from the physical check showed that the injured person had been injured with wounds in several places. Record of physical check-up by forensic physicians at the Southern Border Province Forensic Science Center in Yala Province gave details of types and sizes of these wounds, indicating in particular that the wounds were "one-week old", pointing that these wounds had occurred one week before the physical check-up. Evidence from physical check-up at Yala Center Hospital on 10th March 2015 also indicated traces of wounds as well. When the "one week" age of the wounds indicated by physicians was taken into consideration, the injured person's wounds should occur around 28th February 2015 when the injured person was detained by the accused. Therefore when records of physical check by forensic physicians at the Southern Border Province Forensic Science Center in Yala Province and by physicians at Yala Center Hospital were taken into consideration, it was believed that these wounds truly occurred when the injured person had been detained by the accused as claimed by the complainant. The National Human Rights Commission saw that physical attacks and threat to force a confession from the injured person while he was detained by the accused, which was an indication of torture, were results of actions taken by the accused to perform their duties using authority given by special security law to arrest and detain suspects. Even if the law gave authority to officials to restrict rights and liberties of persons by detaining the persons for interrogation over a specified period of time, in using the authority, the accused still needed to respect and take into consideration rights and liberties guaranteed and protected by the Constitution; torture against any person could not be done. Even if physical fact did not reveal any act of torture according to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which defines the term "torture" as 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, action of the accused, however, was violation of the right to life and body, a form of human rights violation according to Section 4 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) protected by Section 32 of the Constitution of the Kingdom of Thailand B.E. 2550

(2007). That action of the accused was therefore violation of human rights. The National Commission on Human Rights thus came up with measures to solve the problem of human rights violation according to Section 28 of the National Human Rights Commission Act B.E. 2542 (1999) and proposed them to the Internal Security Operation Command of Region IV to take actions within 60 days as follows:

(1) Consider checking officials who use their authority to invite and detain persons, resulting in injuries, to observe principles in Article 12 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(2) Order officials who have to perform a duty concerning detention under special security law to strictly take into consideration human rights principle concerning right to life and body and principles according to Article 11, Article 12 and Article 16 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which require state parties to employ various measures to prevent any act of torture within their jurisdiction and agree to prevent other actions that are cruel, inhuman or degrading treatment or punishment that are not up to the level of torture.

(3) Order officials to perform their duties by strictly applying measures to solve the problem recommended by the National Human Rights Commission in its report on results of investigation on human rights violation no. 275-308/2553 about rights in the justice process in case of a claim that there had been torture and inhuman treatment or punishment in the Southern border provinces, report on results of investigation on human rights violation no. 67-89/2555 about rights in the justice process in case of a claim that there had been torture and inhuman treatment or punishment in the Southern border provinces, and report of results of investigation on human rights violation no. 161-193/2558 about rights in the justice process in case of a claim that there had been torture and inhuman treatment or punishment in the Southern border provinces, especially measures in term of human rights protection mechanism and measures in term of justice process.