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BACKGROUND

On 27 April 2020, the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) Director of Thematic Engagement, Peggy Hicks, warned States to continue respecting, protecting, and fulfilling non-derogable human rights, such as the absolute prohibition against torture, amidst the Covid-19 pandemic and emergency measures thereto (UN News, 2020)¹. Hicks's statement was a part of OHCHR’s response to reports claiming that States used the Covid-19 pandemic as a pretext to enact and employ exceptional and repressive steps that run counter to the enjoyment of fundamental human rights and freedom. According to OHCHR's Director of Field Operations, Georgette Gagnon, States had adopted "excessive and sometimes deadly force to enforce lockdowns and curfews" at the beginning of the Covid-19 pandemic (UN News, 2020)².

Approximately two months later, OHCHR's concerns were proven to be understated at best. During the commemoration of the International Day in Support of Victims of Torture on 26 June 2020, the UN Anti-Torture mechanisms, which comprises of the UN Committee against Torture, the UN Subcommittee on Prevention of Torture, the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture, claimed that the Covid-19 pandemic exacerbates the risk of torture and other ill-treatment globally (UNHRC, 2020)³. States' extreme measures regarding quarantines and curfews have led to cases of arbitrary arrest and detention. Such a custodial approach threatens, in particular, people in detention and others confined in closed spaces for a variety of reasons.

First, even before the pandemic, the environment upon which people in detention and others confined in closed spaces are located already limits them from adopting measures essential to prevent virus transmissions because of sanitary issues or the difficulty in accessing medical treatment and social distancing. Secondly, a custodial approach risks overcrowding the already packed places of detention, which, in turn, exacerbates the first risk (OHCHR, 2020)⁴. As a result, according to the mechanisms, around 78,000 prisoners in 79 countries contracted the Covid-19 virus, and at least 1,100 died as of mid-June 2020 (UNHRC, 2020)⁵.

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² Ibid
reported a 33 percent increase in the number of torture survivors requiring immediate assistance (OHCHR, n.d.).

Despite the shreds of evidence showing how the Covid-19 pandemic has aggravated the risk of torture, a report by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, said that States remained eager to deliberately and systematically deny the fact of and obstruct accountability for torture and ill-treatment (UNdocs, 2021). Published on June 2021, the report also claims that deficient legal provisions were one of the contributing factors that hinder efforts by those seeking to hold individuals and authorities accountable for torture and ill-treatment. Furthermore, the report suggests that the history of exempting alleged perpetrators from punishment for past wrongdoings or impunity "shapes present tolerance for such practices and drives future practices of torture, ill-treatment and further evasion of accountability (UNdocs, 2021)." The aforementioned claims are coherent with reports obtained by members of the Asia Alliance Against Torture (A3T) discussed below.

Thailand became a state party to the Convention against Torture (UNCAT) in 2007 and stated its intention to ratify its Optional Protocol (OP-CAT) by 2015 during the Committee Against Torture (CAT)'s first review of Thailand in 2014. However, it is still not a party to the Optional Protocol on the establishment of an independent body (a 'National Preventive Mechanism'). Furthermore, Thailand has ratified CAT but has only signed CED. According to a joint report by the Cross Cultural Foundation, Duayjai Group, Pattani Human Rights Networks, and Jasad in Thailand, torture is not recognized as a criminal offense in Thai domestic law. Although such a legal gap results in perpetrators being charged with ordinary criminal offenses to the commission or omission of acts that amount to torture. Moreover, concerning Covid-19-related emergency regulations, reports from Thailand claim that lèse-majesté laws were used to arrest those criticizing the government's Covid-19 response, which, as a consequence, subject the detainees to possible risks of torture. A Prevention and Suppression of Torture and Enforced Disappearance Act will come to force in Feb 2023, which has been delayed since the legislative process was disrupted due to the instability of Thai politics.

Similarly, in Indonesia, despite having ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1998 and the absolute prohibition of torture under Law 39/1999, torture is still not recognized under its penal code according to the Commission for the Disappeared and Victims of Violence (KontraS). Consequently, these lacunae in law result in, inter alia, the absence of a mechanism for an independent investigation on allegations

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7 UNdocs. (2021). Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer. Retrieved on February 3, 2022, from [https://undocs.org/A/76/168](https://undocs.org/A/76/168)

8 Ibid.


of torture and the continued violations of this particular peremptory norm. Regarding Covid-19-related emergency measures, reports proclaim that the government enacted various emergency regulations that allow law enforcement officials to arrest those violating quarantine or curfew measures. Likewise, such measures unnecessarily subject those arrested to torture risks.

In the Philippines, torture is prohibited under domestic laws and normative international human rights instruments which the Philippines is a state party including the UN Convention against Torture, the International Covenant on Civil and Political Rights, and the Optional Protocol to the Convention against Torture (OPCAT). The 1987 Philippines Constitution clearly stipulates the absolute prohibition of torture. Article III, Section 12 of the 1987 Philippine Constitution states that “no torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.” In 2009, the Philippines enacted the Republic Act. No. 9745 or the Anti-torture law which defines and penalizes the act of torture, as well as provides remedies and redress for torture victims. The crime of torture is now treated separately and distinctly from other crimes provided in the country’s Revised Penal Code (RPC), thereby making as the first domestic legislation in Asia that is compatible with the provisions of the UN Convention against Torture. This includes the right of detainees to have medical, and psychological examination and treatment as well as the establishment of a rehabilitation program for torture victims and their families. Other relevant laws include the Rights of Persons under Custodial Investigation Act (Republic Act No. 7438), that creates a duty to allow visits to places of detention, and the Anti-Enforced Disappearance Act (Republic Act No. 10353) that grants persons arrested the right to communicate with family members and lawyers. Since 2018, the Commission on Human Rights has undertaken the role of interim National Preventive Mechanism, with the support of national civil society organizations. In fact, the Philippines has not yet established the National Preventive Mechanism, required under the OPCAT, ratified in 2012. The NPM Bill is still being discussed in the House of Representatives and in the Senate.

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12 Article III, section 12(2), Bill of Rights, Philippines Constitution
THE STRUCTURE OF THE REPORT

This report showcases the adverse impact of the Covid-19 pandemic on torture and other ill-treatment in the Southeast Asia region, particularly in Indonesia, Malaysia, the Philippines, and Thailand. The report gathers data from A3T members in each country, analyzes the trends, and draws the recurring central theme.

In the first part, the report briefly explains the absolute prohibition of torture under various international standards. This part explains, inter alia, the prohibition of torture as a peremptory norm (jus cogens character of torture) and how, by virtue of such character, the prohibition of torture is considered to be holding greater supremacy over another body of law (lex superior) in which violation is owed to the international community as a whole (obligation erga omnes).

The second part illustrates the constitutive elements of torture in order to establish the report's limitations. This part explores the meaning of torture under UNCAT and its interpretations according to various jurisprudence. This part establishes, among other things, the degree of severity and means of torture, the primary perpetrator, which numerous jurisprudences entail the mandatory involvement of a public official or someone acting in an official capacity, how torture can occur by commission and omission, and States' accountability obligations.

The report's third part exhibits past, pre-pandemic torture cases, and situations thereafter in the States in question. Finally, in the last part, the report compares the findings from each state and concludes that the impunity culture exacerbates torture practices during the Covid-19 pandemic.
TORTURE IN INTERNATIONAL LAW

Characters and Consequences

According to the 2019 Report of the International Law Commission (2019 ILC Report)\textsuperscript{15}, torture is one of the universally condemned crimes, alongside, inter alia, slavery, apartheid, and genocide, making it impermissible in any circumstances, including in situations that may trigger public emergency, such as the Covid-19 pandemic (United Nations, 2019)\textsuperscript{16}. Its universal and robust acceptance renders the prohibition of torture part of the international peremptory norm or \textit{jus cogens}, which Article 53 of the Vienna Convention on the Law of Treaties (VCLT) defines as:

"[...] a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (United Nations, 2005a)\textsuperscript{17}.

Article 53 of the VCLT thus establishes the fundamental character of the peremptory norm, including the banning of torture, in which breach thereto "shakes the very foundation of human civilization (Abass, 2014).\textsuperscript{18} "Subsequently, due to the peremptory norm being universally accepted as fundamental, threefold consequences follow.

First, the prohibition of torture is considered to be holding greater supremacy over another body of law or \textit{lex superior}. In other words, if there is a law that does not prohibit torture or in the absence of such law, other laws, including international standards, that ban torture shall reign supreme over the former laws in question. Such superiority is also acknowledged under Article 53 of the VCLT, which claims, "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law (United Nations, 2005)\textsuperscript{19}.

Similarly, in the Prosecutor v. Furundžija case, the International Criminal Tribunal for the Former Yugoslavia (ICTY) trial judgment of 10 December 1998, Paragraph 153, notes:

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\textsuperscript{16} Ibid


"[...] Because of the importance of the values it protects, [torture] has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even "ordinary" customary rules (ICTY, 1998)."

Secondly, the breach of the absolute prohibition of torture is owed to the international community as a whole or, in other words, failure to respect, protect, and fulfill the enjoyment of the right to be free from torture triggers obligation erga omnes. Article 41(1) and 41(2) of the 2001 International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts (2001 ILC Articles) stipulates:

"[1] States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40 [on an obligation arising under a peremptory norm].

[2] No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation (United Nations, 2005b)."

Additionally, Conclusion 17(2) of the 2019 ILC Report obligates States "to invoke the responsibility of another State for a breach of a peremptory norm of general international law (jus cogens), in accordance with the rules on the responsibility of States for internationally wrongful acts (United Nations, 2019)." The Prosecutor v. Furundžija case also stresses a similar point, in which Paragraph 151 of the trial judgment of 10 December 1998 notes:

"[...] the prohibition of torture imposes upon States obligations erga omnes, that is, obligations owed towards all the other members of the international community, each of which then has a correlative right. In addition, the violation of such an obligation simultaneously constitutes a breach of the correlative right of all members of the international community and gives rise to a claim for compliance accruing to each and every member, which then has the right to insist on fulfillment of the obligation or in any case to call for the breach to be discontinued (ICTY, 1998)."

Lastly, the prohibition of torture is considered to be part of customary international law. By virtue of the inclusion of a provision prohibiting torture in the 1948 Universal Declaration of Human Rights (UDHR) alone, which is considered as a source of customary international law, affirms such a fact. Furthermore, the customary character of the prohibition of torture is made clear under Conclusion 5(1) of the 2019 ILC Report that says, "Customary international law is the most common basis for peremptory norms of general international law (jus cogens) (United Nations, 2019)." Henceforth, as one of the sources of international law, according to Article 38(1)(b) of the Statute of the International Court of Justice (ICJ), States are legally bound under customary international law to respect, protect, and fulfill everyone’s right to be free from torture irrespective of whether or not they have ratified a specific treaty forbidding torture, such as UNCAT.

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Definition and Elements

Article 5 of the UDHR enshrines the right of everyone to be free from torture and cruel, inhuman, or degrading treatment or punishment. However, it does not define torture; neither do Article 7 of the first legally binding treaty banning torture, the International Covenant on Civil and Political Rights (ICCPR), nor its subsequent interpretation, General Comment No. 20 provide it. The Human Rights Committee (HRC), whose mandate comprises providing interpretations of the ICCPR, stated, "The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment (HRC, 1992)."

To understand the meaning of torture, one must then look into Article 1 of UNCAT, which defines 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 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 (United Nations, n.d.)."

Within Article 1 of UNCAT's definition, several elements can be explored. Regarding the intentional infliction of torture, the use of the term "intentionally" does not necessarily limit the application of Article 1 to only acts that denote the realized physical engagement of the perpetrator in committing torture, such as beating or strangling the victim, for such an informed and direct action will indisputably meet Article 1's threshold. The term, thus, also incorporates acts in which the perpetrator does not physically deliver the blow themselves. For instance, therefore, permitting or refraining from stopping an act committed by others may also trigger the threshold of harm under Article 1.

Concerning the term "severe pain or suffering," Article 1 does not confine torture to physical harm only; psychological acts are also included within the definition. As such, the act of threatening the victim may itself amount to mental torture. In other words, torture may occur either by commissions or omissions. Paragraph 6(j) of the Committee Against Torture's (CAT) Concluding Observations on Chile in 2004, for example, renders the practice of denying to provide emergency medical care to women suffering complications from illegal abortions, except if the women admitted to information about those who performed the abortions incompatible with UNCAT (CAT, 2004).

Such an understanding must be understood in conjunction with the term "such purposes as." The use of such wordings within Article 1 suggests a non-exhaustion, meaning that the list does not show every

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24 HRC. (1992). CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment). Retrieved on February 7, 2022, from https://www.refworld.org/docid/453883fb0.html


single thing that would otherwise belong on that list. To put it another way, there are numerous other purposes that are not included within Article 1’s definition that may still trigger its threshold. Thus, purposes of torture are not limited to only, say, obtaining information from the victim during an interrogation through intimidation as suggested within Article 1’s lexicon. Pursuits such as obtaining a confession, creating a deterrence effect, or purely sadistic quests may also meet Article 1’s threshold.

Next concerns the use of the term involvement of “a public official or other person acting in an official capacity.” Such wordings set forth at least twofold riffs in relation to accountability measures. First, the wordings imply that an act unquestionably constitutes torture when a State agent is involved. Such an interpretation is well set and, therefore, raises no apprehension regarding accountability measures: if a State agent is involved, then the State is responsible for their wrongdoings. Secondly, however, the wording may imply that only when a State agent is involved can an act be called torture, while a similar act committed by a private individual may not satisfy the definition of torture under Article 1, and, therefore, relieve the State from its accountability obligations.

Fortunately, issues arising from the second interpretation had been addressed in several CAT jurisprudence. For example, in General Comment No. 2, CAT highlights that indifference or inaction by the State can provide an incentive or de facto authorization for torture and ill-treatment committed by non-State actors. Such an omission that gives leeway for non-State actors to commit torture does not relieve a State from being held accountable for violating the right to be free from torture. Thus, CAT found that torture committed by non-State actors triggers State's accountability under UNCAT. Paragraph 18 of the said General Comment No. 2 declares:

“[...] where State authorities or others acting in an official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission (CAT, 2008)27.”

Similarly, in Paragraph 9.2. of CAT Communication No. 161/2000 on Dzemajl and Others v Yugoslavia, CAT reiterates that the failure of a State Party to respond adequately to private torturers amounts to “acquiescence” under Article 1 and is a clear violation of Article 16(1) of UNCAT that obligates States to prevent acts of cruel, inhuman, or degrading treatment or punishment (CAT, 2002)28. Accordingly, CAT’s view affirms that failure to take steps to prevent torture or cruel, inhuman, or degrading treatment or to prosecute private individuals responsible for such acts still gives rise to State accountability under UNCAT.

27 CAT. (2008). Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment General Comment No. 2. Retrieved on February 7, 2022, from https://www.refworld.org/docid/47ac78ce2.html
In holding the perpetrator accountable, States have several duties, including the duty to investigate and enact and enforce legislation prohibiting torture. Regarding the former, Articles 12 and 13 of UNCAT complement each other. Article 12 entails States duty to promptly and impartially investigate torture allegations, and Article 13 guarantees the right to complain to the competent authorities and that the State shall take steps to protect the complainant and witnesses against reprisal.

Concerning the promptness test within Article 12, CAT argues in Paragraph 8.2. of CAT Communication No. 59/1996 on Encarnación Blanco Abad v. Spain that a timely investigation " is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear (University of Minnesota, 1998)". In this case, CAT claims in Paragraph 8.5. that a period of almost three weeks between the initial report of ill-treatment and the initiation of an investigation failed Article 12's promptness test and, thus, constituted a breach of Article 12. Such a decision was due to the fact that several preceding jurisprudences have noted that investigation must not depend on the submission of a formal complaint. Instead, an allegation or other reasonable grounds coming from the victim or any sources are sufficient bases for the launch of investigations. In Paragraph 10.4 of Communication No. 6/1990 on Henri Unai Parot v. Spain, CAT observes that "It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation (University of Minnesota, 1995)."

Furthermore, not only that the investigation must be timely launched, but it must be effectively conducted by qualified personnel. For example, in February 1995, Milan Ristic was arrested, tortured, and eventually killed by three police officers. Ristic’s murder was examined by a pathologist who concluded that the death was caused by an injury to the brain as a result of a fall on a hard surface -- a conclusion that contradicts another examination conducted by personally-hired forensic experts who argued that it is almost impossible that a person falling from a height of more than 14 meters only suffered bruises on the left elbow and behind the left ear and not suffering any injury to the face, heels, pelvis, spine or internal organs, and without internal hemorrhaging. In July 1995, the pathologist said he was not a specialist in forensic medicine and, thus, he might have made a mistake or missed some details. Accordingly, in Communication No. 113/1998 on Radivoje Ristic v. Yugoslavia, Paragraph 9.6., CAT considers that "the investigation that was conducted by the State party’s authorities was neither effective nor thorough" because by virtue of the pathologist’s claim that he was not a specialist (University of Minnesota, 2001).

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Regarding States' duty to enact and enforce legislation banning torture and other ill-treatment, Articles 4 and 16 of the UNCAT respectively obligate States to "ensure that all acts of torture are offenses under its criminal law" and "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I (United Nations, n.d.)". National regulations must be compatible with and enforced according to CAT standards. For example, CAT observes that granting pardons or amnesties to the perpetrator may allow torture to go unpunished and incentivize its repetition. Thus, CAT's Report A/55/44 concludes that States must "ensure that amnesty laws exclude torture from their reach (UNdocs, 2000)." Nevertheless, no jurisprudence examines the appropriate length of the penalty. An author, however, observes that "a custodial sentence of between six and twenty years will generally be considered appropriate (APT & CEJIL, 2008)."

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**TORTURE IN SOUTHEAST ASIAN COUNTRIES**

**INDONESIA**

*Brief Historical Context*

To understand Indonesia's long history of torture, one must revisit the authoritarian period of the Soeharto-led New Order regime. Soeharto came into power in 1965 after securing a permit from his predecessor, Soekarno, to launch military campaigns against those alleged to be leftist or linked to the Indonesian Communist Party and implement measures that would restore the country's order in the aftermath of Soekarno's tumultuous years of being in office. The permit's mandates, given on 11 March 1965 and known as the 11 March Letter of Instruction (Surat Perintah Sebelas Maret/Supersemar), formally transitioned the political power from the Soekarno-led Old Order to the New Order regime. What immediately followed the Supersemar was 32 years of violent campaigns that curtailed the enjoyment of human rights and freedoms.

Between 1965-1966, the anti-communist military campaigns resulted in 500,000 to one million deaths. In addition, the New Order regime imprisoned more than one million others without trial, including writers, artists, poets, teachers, and ordinary citizens, routinely subjecting them to illegal detention, torture, and ill-treatment. According to KontraS (n.d.), the perpetrators were primarily military personnel and, in some cases, police officers, whose methods of torture include beatings, electrocution, kickings, beatings and crushings of arms and legs with sticks, chairs, or tables, burns with cigarettes, starvation, and many others. Instances of torture occurred upon arrest, interrogation, and detention, upon which the perpetrators aimed to force civilians to admit their affiliation with leftist or communist groups.

Soeharto's violent campaigns did not stop after 1965-1966. Soeharto consolidated his position by centralizing control under an authoritarian system filled with members of the military. The dual-function of the military, known as Dwifungsi ABRI, allowed the military to take command over public positions and adopt security approaches to quell those assumed to be anti-government by using violent means throughout Indonesia. As a result, activists working on issues such as labor, environment, or land were met with violent responses in addition to the systematic and widespread human rights violations against civilians in the context of military operations against independence movements in Aceh, East Timor, and Papua.

For instance, three years after the 1965-1966 tragedy, in 1969, Soeharto authorized military operations in Indonesia's easternmost island of Papua and used brute force to silence aspirations for independence. Similarly, in 1975, the security forces launched violent campaigns in East Timor that lasted until the late 1990s and, almost simultaneously, launched yet other military operations in Aceh in 1976 to combat the rising independence movement led by the Free Aceh Movement (Gerakan Aceh Merdeka/GAM). Several reports claim that the number of victims of violent military operations in Papua amount to 2,000 to 500,000 people. (Al Rahab, 2006; MacLeod, 2011; MacLeod, Moiwend, & Pilbrow, 2016).

On the other hand, the operations in East Timor resulted in the death of more than

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100,000 out of a population of less than one million. Additionally, ICTJ and KontraS (2011) assert that in the period of 1976 until before the 2004 Indian Ocean tsunami struck Aceh, thousands disappeared and were tortured, and 15,000 civilians were killed. In each of the aforementioned operations, the New Order regime employed a variety of torturous means to silence self-independence claims, including intimidation, famine, and destruction and burnings of villages (ICTJ & KontraS, 2011)\(^{37}\).

When the 1998 Asian financial crisis hit Indonesia, civil discontent ensued. Demonstrations demanding the government address unemployment, prices, and a shortage of basic goods were organized and met with violence. In May 1998, military members shot and killed four students at an anti-government demonstration at Jakarta’s Trisakti University. The shootings provoked larger and more violent demonstrations in the capital as well as in other cities. Over a three-day period, from 13\(^{th}\) to 15\(^{th}\) May 1998, the security forces tortured or did little to protect civilians from torture by private actors (ICTJ & KontraS, 2011)\(^{38}\). The May 1998 tragedy also claimed the lives of more than 1,000 people and led to Soeharto’s resignation on 21 May 1998.

The end of the New Order regime brought a momentary breath of fresh air. Signs of progress were made during Soeharto’s successor, Bacharuddin Jusuf Habibie, and Habibie’s successor, Abdurrahman Wahid. Under Habibie, investigations of human rights violations were launched, while Wahid removed some powerful generals from top military and civilian posts. However, both Habibie’s and Wahid’s terms in office did not last long. The public assumed that Habibie was still one of Soeharto’s cronies and demanded a public election that resulted in the appointment of Wahid in 1999. However, Wahid’s pro-human rights stance led to his impeachment in 2001 and cautioned the following presidents, Megawati Soekarnoputri, Susilo Bambang Yudhoyono, and incumbent Joko Widodo, about confronting still-powerful figures from the Soeharto era. Consequently, new torture cases continue to happen, efforts to establish effective accountability mechanisms have been compromised, and the impunity culture looms large.

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38 Ibid
Torture during the Pandemic

At the beginning of the Covid-19 pandemic, from December 2019 to May 2020, KontraS recorded at least 24 cases of torture: 19 cases perpetrated by the police, four cases of which the perpetrators were military personnel, and one case perpetrated by a warden (KontraS, 2020)\textsuperscript{39}. Employed methods of torture include punching, kicking, shooting, and electrocution, which happened upon arrest, interrogation, or detention, with the aim to punish or obtain testimony from people deprived of liberty. Those acts claimed the lives of three people and severely wounded the rest, including contusion, rendering victims unconscious, gunshot wounds, and mental and psychological distress.

Reports from the following months bear an eerie resemblance, if not worse. Between June 2020 to December 2021, at least 42 torture cases were recorded by KontraS (KontraS, 2021a)\textsuperscript{40}. Military-perpetrated cases led to two deaths in addition to one case of death where wardens failed to provide medical care for the victim, while the rest of the cases whose offenders were police officers left the victims severely injured. However, in addition to the police, military, and warden, Aceh's Office of the District Prosecutor surfaced as yet another perpetrator. During this period, Aceh's Office of the District Prosecutor authorized 34 canings, a method of criminal punishment unique to the province by virtue of its Special Autonomous Region status that allows the enforcement of Sharia law which permits such a torturous method.

The internet is increasingly being used to systematically target individuals through remote intimidation, harassment, surveillance, public shaming, and slander, which may potentially lead to targeted individuals or groups feeling anxious, stressed, isolated from the social environment, experiencing prolonged depression, and even increasing the risk of suicide. - KontraS

Nevertheless, the numbers mentioned above are sourced only from KontraS' media monitoring desk. By combining the aforementioned figures with information that KontraS obtained from other sources, such as other civil society organizations (CSOs) monitoring data that KontraS re-verified, one will see the number of cases increasing. From June 2020 to May 2021 alone, the figure climbed to 80 cases with a total of 182 victims, including 16 deaths (KontraS, 2021b)\textsuperscript{41}. In addition to beating, shooting, and electrocution, a method long used by the New Order regime, burning with cigarettes, reappeared during this period as well as methods amounting to sexual harassment.

Furthermore, the figures above do not consider acts amounting to cyber torture. According to KontraS (2021b), under Widodo, the Internet is increasingly being used to systematically target individuals through remote intimidation, harassment, surveillance, public shaming, and slander, which may potentially lead to targeted individuals or groups feeling anxious, stressed, isolated from the social environment, experiencing prolonged depression, and even increasing the risk of suicide. For instance,

\textsuperscript{40} KontraS. (2021a). Penyiksaan 2020-2021 [monitoring desk].
such a tactic was allegedly used to silence those criticizing the government’s Covid-19 response at the beginning of the pandemic.

Worse still, all estimates above arrive with prejudices. KontraS (2021b) suggested:

"That figure certainly does not rule out the possibility that the real number of cases is greater [than 80 cases]. This is because we see that the [media] coverage of torture cases has decreased compared to previous years. The issue of torture may be less popular than other issues that attract more public attention, such as issues related to Covid-19, natural disasters, transportation accidents, corruption in social assistance. In addition, the lack of information relating to the torture we had also expected concerning the obstruction of access for families to provide information for fear and pressure from the authorities."

KontraS (2021c) argues that there are four enabling factors pertaining to the continued torture practices. The first is weak monitoring. KontraS pays particular attention to the security forces superintendents' acquiescence and omissions to torture carried out by their subordinates. Secondly, the failure of law enforcement in producing deterrent effects. Thirdly, the normalization of the culture of violence. On the one hand, KontraS observes an emerging trend within the public sphere in supporting State-sponsored torture that targets petty criminals. Nonetheless, on the other hand, there is an absence of governmental efforts to educate the public regarding the absolute prohibition of torture. The fourth factor is the existence of a legal gap. Although Indonesia is a State Party to UNCAT and Law 39/1999 on Human Rights has a clause prohibiting torture, the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) does not have any provision on torture. Alas, acts amounting to torture are charged merely as an ordinary criminal offense.

KontraS’ Head of Human Rights Advocacy Division, Andi Muhammad Rezaldi, adds another enabler distinctive to the Covid-19 context. Rezaldi assumes that the level of panic created by the pandemic may have exacerbated torture, particularly during the early months of the pandemic. "The 'emergenciness' created by the pandemic," Rezaldi said in an interview on 10 February 2022, "may have contributed to the arbitrariness of police actions." Indeed, KontraS (2021c) recorded at least 17 cases of torture, arbitrary arrest and detention, intimidation, and the use of excessive force to disperse crowds between April 2020 and June 2021. The custodial measures adopted by the police resulted in 326 civilians being arrested and put in detention, and subjected to risks of torture. Ironically, most of the victims are from the lower-income group who faced difficulties ensuring livelihood were they quarantined.

THAILAND

Brief Historical Context

The year 1932 marked the end of the absolute monarchy in Thailand and transitioned the country to a constitutional monarchy system. The years that followed were marked with political instability brought about by a series of coup d’etat, changes of government, constitutional amendments, and human rights violations.

The civilian government led by Prime Minister Phraya Manopakorn Nititada immediately after the 1932 transition lasted less than a year. In June 1933, one of the military members of the People's Party, General Phraya Phahon, led Thailand’s first military coup and regime that lasted until 1938, before being replaced by Field Marshal Plaek Phibunsongkhram, who held the office until 1944

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(Thailand Information Center, n.d.43; University of Central Arkansas, n.d.)44. Some forms of civilian government made a brief return in Thailand between 1944 to 1947. Between November 1947 to April 1948, a military group that called itself khana thahan ("military group") staged a coup, installed a civilian prime minister in Khuang Aphaiwong, forced Khuang to resign, and replaced him with Phibunsongkhram for his second term in office that lasted until September 1957 (Haberkorn, 2018; University of Central Arkansas, n.d.)45.

During Phibunsongkhram’s second term, one of khana thahan members, Colonel Phao Sriyanond, rose to prominence after being named Deputy Director of police in 1947 and the Director-General of police in 1951. As a prominent figure within the security forces, Colonel Phao carried out torture, murder, and disappearance of civilians (Haberkorn, 2018). For example, Tieng Sirikan, a progressive politician from northeast Thailand, and Porn Malitong, a politician whom Phao considered an enemy, disappeared in 1952 and 1954, respectively (France24, 202046; Justice for Peace Foundation, 201247). Both were strangled, Tieng’s body was burned, and Porn’s body was thrown into the Chao Phraya River (Haberkorn, 2018)48.

In September 1957, Field Marshal Sarit Thanarat launched a coup against Phibunsongkhram. Sarit died in 1963 and was replaced by Field Marshal Thanom Kittikhachorn. During Thanom’s reign in power, thousands accused of being communists were arrested, tortured, and killed in Phatthalung, south of Thailand, in 1972. After being beaten, citizens were placed in empty two-hundred-liter oil drums, drenched with oil, and burned alive (Haberkorn, 2018). The killings, which claimed around 1,000 to 3,000 lives, are known as the thang daeng (red drum) tragedy (Zipple, 2014)49. Further down south, similar but less well-known killings occurred in the Narathiwat area during the same period. Thanom was forced out of power following the 14 October 1973 movement in demand for democracy (BBC, 1973)50.

However, the October 1973 movement was only the first among many similar civilian uprisings, for the military continued appropriating Thai politics through coups and violence while civilian governments failed to investigate past abuses and fell short of attaining legitimacy. In January 1974, under the civilian administration of Sanya Thammasak, the village of Ban Na Sai, located in the northeast of Thailand, was burned to the ground by security forces, for they believed that it was a communist bastion (Haberkorn, 2018). From February to March 1974, State-led and independent investigations on the Ban Na Sai village burning were conducted, and the findings claimed the involvement of security apparatus. However, the government refused to release its investigations’ conclusion to the public (Haberkorn, 2018). A year later, the truth about the thang daeng tragedy was made public by victims and survivors two years after its occurrence.

As a result, in 1976, students organized a series of protests demanding accountability for past abuses. However, on 6 October 1976, the armed forces called for mobilization and raided around 4,000 protesters at Thammasat University en masse (Satha-Anand, 2007\textsuperscript{51}; Haberkorn, 2018 \textsuperscript{52}). Students and activists were beaten, hanged, and killed by state and parastate forces, and Thailand experienced another coup and massacre, which paved the way for the National Administrative Reform Council (NARC) to be in power (Haberkorn, 2018). NARC military junta then administered several executive orders to consolidate its power, including the regulation authorizing the detention of individuals deemed a \textit{phai to sangkhom} ("danger to society"), Order 22. Under Order 22, NARC carried out numerous arbitrary arrests and detentions targeting those deemed a danger to society and intimidated, humiliated, and tortured the detainees (Haberkorn, 2018). Measures under Order 22 were carried out almost without contest during the first four years post-1976 massacre under Thanin Kraivichien, a NARC-installed independent prime minister, and General Kriangsak Chomanan, and from 1980 to 1988 when General Prem Tinsulanond took over.


In the early 2000s, Thaksin Shinawatra took Thailand by storm. The entrepreneur-turned-politician Thaksin adopted a populist approach during the 2000 election, when his political vehicle, the Thai Rak Thai (TRT) party, promised universal health coverage and decentralization, among other things. However, after being elected in February 2001, Thaksin's human rights approach was no better than those of his predecessors. For example, between February to April 2003, Thaksin's War on Drugs claimed the lives of almost three thousand people (Human Rights Watch, 2008\textsuperscript{55}; Bangkok Post, 2013\textsuperscript{56}). In March 2004, a human rights lawyer and activist, Somchai Neelapaijit, filed a report to the police regarding allegations of torture subjecting five people charged with national security crimes

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\textsuperscript{55} Human Rights Watch. (2008). Thailand's 'war on drugs'. Retrieved February 21, 2022, from \url{https://www.hrw.org/news/2008/03/12/thailands-war-drugs}

\textsuperscript{56} Bangkok Post. (2013). Thaksin's 'war on drugs' a crime against humanity. Retrieved February 21, 2022, from \url{https://www.bangkokpost.com/opinion/opinion/384560/thaksin-war-on-drugs-a-crime-against-humanity}
(Human Rights Watch 2019\textsuperscript{57}, Protection International, 2020\textsuperscript{58}; Lawyers for Lawyers, 2021\textsuperscript{59}). The day after, Somchai was pulled out of his car by five police officers and then disappeared. However, despite the existence of witnesses who saw Somchai being pulled from his car, a host of evidentiary and procedural problems and interference led to the Appeal and the Supreme Court overturned the indictment of the police officers and exonerated them all (Haberkorn, 2018).

Furthermore, three provinces in southern Thailand, namely Yala, Pattani, and Narathiwat, were placed under martial law in January 2004 and an emergency decree in July 2005. The two measures were adopted to counter the rising Islamic insurgency in those areas, for Yala’s, Pattani’s, and Narathiwat’s populations are predominantly Muslim, unlike the remaining seventy-four provinces in Thailand in which most residents are Buddhist. The combination of the two measures allows, among other things, for the pre-trial detention of a total of thirty-seven days of people accused of being affiliated to or members of the rebellion (Haberkorn, 2018). In pre-trial detention, detainees are not allowed visitation, deprived of their right to legal counsel, subjected to torture, and even disappear (Haberkorn, 2018)\textsuperscript{60}.

Thaksin was ousted through a coup led by Council for Democratic Reform under Constitutional Monarchy (CDRM) in September 2006, a year after he won an election in a landslide manner. From this point onward, the lèse-majesté was used to curtail human rights while military operations in the southern regions persisted. Between April to May 2010, at least ninety-four people were killed and more than two thousand injured in a military crackdown targeting “red shirt” protesters, i.e., those deemed anti-Monarchy who during this period staged several protests calling for elections and more significant space for political participation (Bangkok Post, 2020)\textsuperscript{61}. In April 2011, Somyot Prueksaksensuk was arrested and charged with violating Article 112 of the Criminal Code (lèse majesté), and the following year, a man was arrested and charged under the same criminal offense (Haberkorn, 2018\textsuperscript{62}; Reuters, 2018). In October 2004, eight people were shot by the security forces, and seventy-eight others were crushed and suffocated in the military trucks on their way to a military base for detention following arrest in a tragedy known as the Tak Bai massacre, which took place in Pattani province (Aljazeera, 2019\textsuperscript{63}; Bangkok Post, 2021\textsuperscript{64}).

On 22 May 2014, the current Prime Minister, General Prayuth Chan-och, led yet another coup d’etat. The new regime, the National Council for Peace and Order (NCPO), was quick to follow its predecessors in using draconian laws to crack down on civilians and curtail the enjoyment of human rights. Mass summons ensued, targeting people at their houses and university staff and students, and those arrested experienced intimidations, threats of murder, and torture. Upon release, detainees


\textsuperscript{61} Bangkok Post. (2020). UDD marks 10 years since deadly unrest. Retrieved February 21, 2022, from https://www.bangkokpost.com/thailand/politics/1920948/udd-marks-10-years-since-deadly-unrest


were forced to sign a statement confirming, inter alia, that they were not tortured or coerced while in detention (Haberkorn, 2018). Failure to comply means rearrest.

**Torture during the Pandemic**

According to Thai A3T member, the Cross Cultural Foundation (CrCF), the Covid-19 pandemic brings additional risks of torture that disproportionately impact those living in the southern region. Such risks were due to the combination of pre-existing and newly enacted emergency regulations that enable government officials, namely the security forces, to impose measures that hinder the enjoyment of human rights and freedom.

As mentioned above, since 2004, the Thai government has placed Thailand's southern region under the 1914 Martial Law. The regulation gives permission to the authority to detain the accused without having to show any arrest warrant or charge, and they are not required to take accountability.

The following sections promulgate such permission (Thai Law Forum, n.d.):

"Section 15 bis [8]: If there is a reasonable ground to suspect that any person is the enemy or violates the provisions of this Act or the order of the military authority, the military authority shall have the power to detain such person for inquiry or for other necessities of the military. Such detention shall be no longer than seven days.

Section 16: No compensation or indemnity for any damage which may result from the exercise of powers of the military authority as prescribed in sections 8 to section 15 may be claimed from the military authority by any person or company, because all powers are exercised by the military authority in the execution of this Martial Law with a view to preserving, by military force, the prosperity, freedom, peace and internal or external security for the King, the Nation and the religion."

According to CrCF, between 2004 and April 2021, approximately 7,000 people experienced incommunicado detention, different degrees of force confession, and provided false information to arrest more Muslims accused of being members of the insurgency movement, one of which was the torture of Masukri Salae (CrCF, Duayjai Group, Pattani Human Rights Networks, & Jasad, 2021). Masukri was detained in a military camp on 14 March 2019 for being a suspected member of a violent movement in Pattani Province. Before his release a week later, Masukri was forced to stand still for three days and only allowed to sit when he prayed or ate, kicked in his legs and hit in the head by a baton wrapped in cloth, and sleep-deprived, leading to a fall in a bathroom. Furthermore, he was reportedly forced to fingerprint several documents while exhausted (CrCF et al., 2021).

In addition to the 1914 Martial Law, the southern region is also subjected to the 2005 Emergency Decree on Public Administration in Emergency Situations (hereinafter, the 2005 Emergency Situations 65 Haberkorn, T. (2018). In Plain Sight: Impunity and Human Rights in Thailand. University of Wisconsin Press.


67 CrCF, Duayjai Group, Pattani Human Rights Networks, & Jasad. (2021). Accountability for Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [submission to the UN Special Rapporteur on Torture].
The 2005 Emergency Situations Decree has similar provisions to the 1914 Martial Law permitting warrantless arrest and detention and immunity to the arresting officials. Its Section 12 permits the arrest of 'suspected persons' and "custody for a period not exceeding seven days," and, upon grounds "to remedy the emergency situation," the Criminal Court may extend the detention "by seven days at a time, provided that the total period shall not exceed thirty days (Refworld, 2005)."

It is apparent that the 1914 Martial Law and the 2005 Emergency Situations Decree unnecessarily expose civilians to risks of torture, which is prohibited under UNCAT. Moreover, CrCF argues that these preexisting regulations encourage and condone State officials to continue their act of torture. To make matters worse, Thai criminal law does not constitute any section regarding the penalty for offenders, even though these illegal acts could adversely impact one’s physical and psychological integrity.

Furthermore, CrCF’s Director, Pornpen Khongkachonkiet, claims several other enabling factors that exacerbate torture practices during the pandemic. First is the culture of impunity. The long history of unaccounted human rights abuses, coupled with the absence of a law prohibiting torture and existing regulations being used as leeways that enable torture, makes it "almost impossible to prosecute" the offenders, renders it difficult for victims and their families to speak up, and, in turn, creates the culture of exempting the offenders from punishment. For example, in 17 years after the imposition of martial law in the southern border provinces, only one case convicted an army sergeant of "assault" with a sentence of four months of imprisonment with probation and a THB 1,500 (USD 50) fine -- a number far below the total of 7,000 reported cases of incommunicado detention and torture documented by numerous local NGOs (CrCF et al., 2021).

Secondly, the socio-economic backgrounds of the victims in and of themselves perpetuate the impunity culture. According to Pornpen, most torture victims in Thailand are poor drug users and, particularly in the south, members of insurgency. The aftermath of torture renders the victims too scared of retaliation or death threats, making them unable to complain, file a report, or prosecute the offenders because by doing so, the victims risk being re-prosecuted or rearrested, which, in turn, endanger their livelihood. Such was the case when in 2016, Rithirong Chuencit attempted to file a police report against police officers who forced him to confess to pickpocketing charges on 28 January 2009. The defendants were sentenced to one-year imprisonment and THB 8,000 (USD 250) fine. Unfortunately, in 2019, a police senior sergeant major filed a lawsuit against Rithirong on false accusation charges (CrCF et al., 2021).

Other cases of police brutalities such as Mr. Abdulloh Esormusor, a suspected military insurgent who was arrested and detained who died from pneumonia and septic shock following oxygen deprivation to the brain a month later, Mr. Wanchalearm Saksaksit who went missing in Phnom Penh in broad daylight, and Mr. Joe Ferrari, who was suffocated to death using a black plastic bag whose footage was released to the public later on, called for greater attention for reforms.

Recently in August 2022, the torture/enforced disappearance act passed the review of both senate and the lower house with enormous support which will hopefully result in effective investigation, adequate remedies and prevention measures.69

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69 Information shared by Asia Alliance Against Torture member country organization, Cross Cultural Foundation (Thailand).
Brief Historical Context

The Federation of Malaya was established in 1967. In 1963, the incorporation of Sabah, Sarawak, and Singapore gave birth to the Federation of Malaysia, although two years later Singapore separated and established an independent State. In its early days, Malaysia was led by Prime Minister Tun Abdul Rahman who, similar to many other neighboring leaders during this period, were facing the threat of communism. Alas, Malaysia's approach in quelling those accused of being affiliated with communism echoed the policies of its next-door proximates: through repression and acts of violence.

In 1959, Tun Abdul Rahman introduced the Prevention of Crime Act (POCA) and, in 1960, with the support of his soon-to-be successor, the then Deputy Prime Minister and the Home Affairs Minister, Tun Abdul Razak, the Internal Security Act (ISA). The former aimed to prevent organized crime, especially those relating to the triads, secret societies, and repeat offenders (SUARAM, 2021). The latter, Tun Abdul Razak claimed, was specifically enforced to combat the subversive activities of the Communist Party of Malaya (CPM) and assured the public that the regulation would not be abused (Taya, 2010; Khoo, 2014). However, not only was ISA used to arbitrarily arrest and detain members of the CPM but also individuals from other opposition parties as well as labor activists and members of the Socialist Front (Khoo, 2014).

Another deemed-problematic legislation passed during Tun Abdul Rahman's term in office was the 1966 Societies Act. The law differentiates between "political" and "friendly" civil society organizations (Khoo, 2014; Shapiro, Mirchandani, & Jang, 2018). Its Section 7(3)(a) also allows a Registrar to refuse to register a non-governmental organization if such an organization "is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia (Mercy Malaysia, n.d.)." Based on this Act, the government prohibits the Communist Party and affiliated organizations (Taya, 2010).

Nevertheless, understanding Malaysia's human rights history requires one to touch upon the country's racial composition and its resultant tensions, as well as the role of religion and colonial history. Half of

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72 Ibid
73 Ibid
Malaysia’s population are of Malay descent, one-third Chinese, around ten percent Indian, and indigenous peoples located on the east. Subsequently, political parties are organized along racial lines, "with protection and advancement of Malays a cornerstone of state policy (Eldridge, 2002)." Furthermore, the country’s national religion is Islam, although many other religious beliefs are permitted with certain limitations (Eldridge, 2002). As such, several regions implement the Islamic law (Sharia) and continue implementing practices left by the British colonizer that identify with Islamic teachings, such as punishment by caning. Consequently, it is common to see caning, or 'whipping,' used as a judicial punishment for criminal offenses across different laws and regulations in Malaysia.

Alas, in May 1969, tensions between different racial groups in Malaysia turned into an all-out riot centered in Kuala Lumpur. The consequences of the 1969 riot were twofold. First, Tun Adul Rahman responded by declaring a state of emergency, suspending the parliament and the constitution, and enacting the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (POPO) (Khoo, 2014). Both ISA and POPO allow the government to detain suspects without judicial review or the filing of formal charges and arrest without warrant for up to sixty days of persons considered as present or potential threats to national security, and such a provision was used to curtail the enjoyment of human rights for years to come (Eldridge, 2002; Taya, 2010). Secondly, ethnic politics became a civil society’s agenda for the foreseeable future.

The state of national emergency continued until Tun Abdul Razak took the prime ministerial office in 1970 and ended in 1971. Tun Abdul Razak's administration witnessed the 1974 Baling Demonstration co-organized by students, urban squatters, and farmers. Protestors demanded the government eradicate poverty, hunger, and control inflation. However, protestors were met by excessive force in which more than 1,000 students from Universiti Malaya, Universiti Kebangsaan Malaysia, and Kolej Mara were arrested (New York Times, 1974; Khoo, 2014; Coconuts, 2015). Among those arrested, at least twenty were arrested under the ISA, including Anwar Ibrahim, the then President of Angkatan Belia Islam Malaysia (ABIM) and now prominent opposition leader (Khoo, 2014).

In 1981, Mahathir Mohamad came to power in replace of Tun Hussein Onn. Mahathir’s stance in human rights matters was at first and at best ambiguous. At times, Mahathir appeared to be willing to accommodate civil and political rights into his modernist and tolerant interpretations of Islam (Eldridge, 2002). Nonetheless, Mahathir seemed ready to derogate civil and political rights in favor of economic, social, and cultural ones (Khoo, 2014). For instance, Mahathir was a proponent of Malaysia's New Economic Policy (NEP) introduced in 1970. NEP aimed to “fast track Malays’

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advancement in business and education” and “increase Malay capital from 2 to 30 percent by 1990” on the one hand (Eldridge, 2002). On the other hand, Mahathir introduced several regulations that may hinder the ease of doing business during his administration. For example, in 1984, Mahathir introduced the Printing Presses and Publication Act. The regulation prohibits the publication of ‘malicious news' and empowers State authorities to ban or restrict publications through suspending or revoking permits (Taya, 2010).

However, in 1985, Mahathir’s problematic human rights outlook became more apparent. For instance, provisions under the 1985 Dangerous Drugs (Special Preventive Measures) Act bestowed powers unto State authorities to arrest and detain suspected drug traffickers without trial, and, additionally, detainees may be held without charge for successive two-year intervals (Taya, 2010). Furthermore, Mahathir continued using ISA to violate freedom of expression and conscience. In November 1985, ISA was used to arrest and detain 36 alleged Muslim extremists under the leadership of Ibrahim Libya in Kampung Memali, Baling, at Kedah (Khoo, 2014). ISA was also used to silence political opposition. In October 1987, in the midst of political turmoil that could potentially displace Mahathir from prime ministership within the United Malays' National Organisation (UMNO), a political party of which Mahathir was a member, he launched crackdowns on oppositions in a security operation called Operation Lalang (FMT, 2021). Authorized under ISA, Operation Lalang arrested, detained without trial, and exposed more than 100 people to risks of torture, including UMNO and ruling coalition members (Khoo, 2014; SUARAM, n.d.). Permit of several publishers, namely The Star and the Sin Chew Jit Poh and two weeklies, The Sunday Star and Watan, were also reneged during Operation Lalang (Khoo, 2014).

Glimpses of distrust toward Mahathir peaked in the late 1990s. In 1997, affected by the Asian Financial Crisis, the ringgit dropped from RM2.4 per USD1 to RM4.9 (Lim & Goh, 2012). The public demanded Mahathir restore Malaysia’s economy, which he failed to do. In an attempt to find a scapegoat, Mahathir fired his Deputy Prime Minister and Finance Minister, Anwar Ibrahim; the former ABIM President arrested under ISA the 1974 Baling Demonstration. Mahathir’s decision backfired: Anwar Ibrahim counter-attacked his firing by embarking on a nationwide tour calling for the end of the long-overdue Mahathir administration. Ibrahim secured public support in a movement known as Reformasi, a name that bears similarity to the anti-Soeharto democratization movement in Indonesia.

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during the same period. Unfortunately, Mahathir was unmoved. In September 1998, government forces arrested Ibrahim under ISA during a press conference in his house (Coconuts, 2015). On his first night in custody, Ibrahim was beaten and tortured by the former Inspector-General of Police, Rahim Noor (SUARAM, 1999). In February 1999, fashion designer Mior Abdul Razak bin Yahya released an affidavit stating that he was threatened and abused while in police custody in 1998, which resulted in him falsely confessing to having sexual relations with Anwar Ibrahim. Abdul Malek Hussein also filed police reports and released an affidavit stating that he was tortured physically, including beating him unconscious and forcing him to drink their urine, while detained under the Internal Security Act in 1998 (SUARAM, 1999).

In 2003, Mahathir resigned as the prime minister and was replaced by his deputy, Abdullah Ahmad Badawi. Under Badawi's administration, one of the most notable riots happened in 2007. Responding to Kuala Lumpur City Government's decision to tear down Hindu temples in 2006, Hindus and activists in the capital and all over Malaysia established the Hindu Rights Action Force (HINDRAF) and staged several protests from 2006 to 2007. However, the peaceful rally of 25 November 2007 was responded to with tear gas and water cannons, and more than 240 people were detained (Coconuts, 2015).

Badawi was replaced by Najib Abdul Razak in 2009. During Najib's administration, Malaysia witnessed the abolition of ISA in 2012. However, the government enacted the 2012 Security Offences (Special Measures) Act (SOSMA), a regulation that, according to many, resembles ISA (SUARAM, 2021). Under SOSMA, an individual can be detained for no more than 28 days for investigation. As an added measure, anyone detained can be denied access to legal counsel and access to their family for up to 48 hours. Furthermore, detainees are by default denied bail with no discretion afforded to the trial judge and could potentially be incarcerated until the conclusion of all trial proceedings, including appeals (SUARAM, 2021).

Additionally, the government passed the 2015 Prevention of Terrorism Act (POTA) three years later. Both in form and function, POTA is essentially similar to the 1959 Prevention of Crime Act (POCA) (SUARAM, 2021). The only difference is the 'target': while POCA is allegedly meant to address threats posed by organized crimes, POTA has been specifically introduced to address the threat of terrorism. In terms of its powers, POTA largely resembles -- if not identical -- POCA with its power to detain for 24 hours, followed by 21 days and further extension of 38 days. If found 'guilty' by the administrative board, an individual can be served with two years' detention orders or placed under house arrest (SUARAM, 2021). Both SOSMA and POTA are Najib's pernicious legacy that further obstructs the respect, protection, and fulfillment of human rights in Malaysia until today.

**Torture during the Pandemic**

According to SUARAM (2020), throughout 2020, a total of 828 individuals were detained under SOSMA, including the detention of twelve individuals alleged to be supporters of the Liberation Tigers of Tamil Eelam (LTTE) for 135 days from late 2019 to February 2020. In detention, at least five of them were subjected to mistreatment, torture, and intimidation during the initial 28-days detention period,

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99 Ibid
with one detainee claiming that he was forced to say that he was an LTTE member. Additionally, family members and associates of the detainees were also subjected to varying degrees of harassment.

Elsewhere, POCA was used to arrest, detain, or investigate 84 individuals from early to October 2020. The following year, the number almost doubled, with 150 individuals detained between January and September 2021 (SUARAM, 2021)\(^\text{102}\). However, upon closer look, the numbers of POCA detainees between 2014 and 2020 suggest a discriminatory trend: the law was used to disproportionately target individuals of non-Malay descent. Out of 1,811 detainees, around 80% or 1,458 individuals were Malay or Chinese, Indian, and other ethnic backgrounds (SUARAM, 2020).

Closer examinations also suggest another alarming trend resulting from the use of SOSMA, POCA, and other similar regulations: a phenomenon named by SUARAM as 'chain remand.' Interviewed in February 2022, SUARAM's Documentation and Monitoring Coordinator, Kenneth Cheng, described chain remand as the re-arrest of individuals after completing a certain pre-trial detention period, either by the same detaining power but under a different offense, by a different detaining unit under the same offense, or the combination of both. For instance, in September 2020, 25 individuals were detained and remanded under SOSMA for 11 days as a part of an investigation into a shootout that occurred at Banting, Selangor (SUARAM, 2020). However, upon release, they were rearrested and detained for an additional period by the Serdang District Police Headquarters and Putrajaya District Police, with some facing rearrests under POCA and others under the 1966 Societies Act.

The trend of chain remand continues in 2021. For example, Mitheswaran Kumar was initially remanded for three days under section 12(2) of the Dangerous Drugs Act 1952 for drug possession in April 2021. Mitheswaran's family was initially informed that 5 grams of methamphetamine were found in his possession, only for the police to revise such a claim to only 0.5 grams when the family probed further. At the end of the 3-day remand period, the family was informed that Mitheswaran would be further remanded for six days for 'housebreaking' under section 457 Penal Code, an offense bearing no relation to drugs previously used to detain Mitheswaran. According to SUARAM, the above-mentioned cases show that the chain remand is often used to ensure that the accused remains in "possession" of the police to either extend the investigation of the case or hold the accused under custody indefinitely (SUARAM, 2021)\(^\text{103}\).

The use of chain remand as a tactic to hold those accused of offense clearly exacerbates torture risks, for exposing individuals to an uncertain pre-trial detention period would synchronously prolong the duration for Malaysian law enforcement officials to employ torturous means of investigation. Shreds of evidence have shown that Malaysian police had inflicted torturous means of investigation, resulting in psychological and physical damage in many cases precluding chain remand. For instance, in July 2020, former Youth and Sports Minister, Syed Saddiq, spent about 11 hours with the Malaysian Anti-

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\(^\text{102}\) Ibid

Corruption Commission investigators just to give a statement regarding the RM250,000 that was allegedly missing from his house (SUARAM, 2020). Such an interrogation method could potentially result in mental fatigue of the interrogatee, which, in turn, makes the interrogatee even more susceptible to ill-treatment by the questioning officers. Additionally, investigation circumstances precluding chain remand had exposed the victim to physical violence. Such was the case when, in February 2021, 20-year-old Lim Xiang Hui was assaulted by the police because of smuggling activities, an allegation which Lim claimed to know nothing about. Lim was initially arrested by police who failed to identify themselves, handcuffed and beaten, driven to a jungle area, and interrogated throughout the process with a gun pointed at his head.

Thus, imagine when accused individuals must face the additional risks resulting from chain remand: psychological and physical torture may lead to the loss of lives. The gruesome deaths of A. Kugan, N. Dharmendran, and S. Balamurugan while in custody may be a common occurrence shall the chain remand persists (SUARAM, 2020).

PHILIPPINES

Brief Historical Context

In the Philippines, despite the safeguards against violence and unnecessary force in the constitution, authorities still use torture techniques to assert authority, instill fear, inflict immediate punishment, disorient and coerce. The air of impunity for torturers is endemic: shreds of evidence are covered up, victims are denied access to remedies, investigations are ineffective, the complicity of fellow officers is rampant, the legal framework for punishing torture is inadequate, judicial rulings are flouted, impunity is sometimes enshrined in law and there are no sure mechanisms to ensure accountability.

The history of torture and impunity in the Philippines is more or less the same with its neighboring States, if not worse; at least dating back to the authoritarian rule of Ferdinand Marcos that began in 1965. In 1972, Marcos imposed martial law under Proclamation 1081, which gave the military total control that lasted until the next decade to repress civilians and those accused of opposing the government, often through violent means. Military members grew from 55,000 in 1972 to 250,000 in 1984 (Chua, n.d.)\(^{104}\). Subsequently, the military budget swelled from P608 million in 1972 to US$8.8 billion in 1984 (Chua, n.d.)\(^{105}\). The military, like those in Indonesia and Thailand, quickly took control over public and private positions, and implemented media censorship, corporate management, provincial administration, and public incarceration.

In the weeks following the declaration of Proclamation 1081, around 30,000 people were arrested and detained, and the figure increased to approximately 50,000 in 1975 (Amnesty International, 1975)\(^{106}\). By the end of Marcos’ presidency in 1986, a total of 70,000 people were detained under the allegation of "crimes of insurrection or rebellion" and 35,000 of those subjected to torture and other ill-

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105 Ibid

treatment (Amnesty International, 1975; McCoy, 2001). The military deployed numerous torture tactics such as electrocuting the genitalia of the victims, the 'San Juanico Bridge' where the victim lies between two beds and is beaten if he/she falls, an injection of a serum that makes the victim half-conscious during interrogation, loading a bullet into one chamber of a revolver, spinning the cylinder, and then forcing the victim to pull the trigger while the gun is pointed at his/her own head (the "Russian Roulette"), and strangulation, among others (Chua, n.d.).

Reports of sexual harassment were also recorded. For example, a torture survivor turned politician, Loretta Ann P. Rosales, was stripped naked, suffered the Russian Roulette, electric shocks, strangulation, and candle burns when she was accused of being an anti-Marcos (Chua, n.d.). Or when Hilda Narciso, the former Executive Director of Claimants 1081, an NGO working on holding Marcos accountable for past abuses, was arrested, detained, fed with soup of worms and rotten fish, and raped (Chua, n.d.).

In 1986, Marcos was deposed after a period of civil unrest known as the People's Power Uprising. Marcos' successor, Corazon Aquino, immediately made a promise to restore democracy and human rights. Within a month, Aquino released around 500 political prisoners detained during the Marcos era (LA Times, 1988). Soon after, the Philippines became a State Party to the UNCAT. In 1987, a new constitution was enacted, in which torture, force, violence, threat, and intimidation were prohibited and were subject to penal and civil sanctions.

However, the emergence of an armed opposition group allegedly associated with the Communist Party, the New People's Army (NPA), upon Aquino's ascension hindered efforts to end torture practices once and for all. As a result, the Philippines' armed forces and pro-State armed civilian groups stepped up violent anti-insurgency campaigns that targeted not only NPA members but also civilians accused of being communist "sympathizers (LA Times, 1988; Amnesty International, 2003). An International Commission of Jurists

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107 Ibid
110 Ibid
111 Ibid
113 Ibid
report claims that civilians were subjected to numerous torture methods, such as a "handshake" in which pencils, bullets, or other solid objects were placed between the victim's fingers and their hands were then squeezed, and "water masking" in which victims were forced to lie with their heads looking up while "a cloth was placed over their faces and liquid was poured on the cloth so that they experienced difficulty in breathing."

Aquino’s term in office ended after the 1992 election that elected Ferdinand Ramos, a former military vice chief during the Marcos period who supported Aquino’s ascension. One challenge that Ramos faced similar to that of his predecessor was to bring political stability to a State filled with insurgency movements. Not only did Ramos need to address the issues with the NPA, but he was also tasked to face the mounting pressure from the Muslim Moro National Liberation Front (MNLF). Ramos, thus, introduced a national reconciliation policy and initiated a peace process with the two rebel groups.

Nonetheless, on a more operational level, torture practices were perpetuated. The Philippines National Police (PNP) continued torturing those accused of engaging in insurgency activities. Most torture cases happened during the so-called "administrative detention" period, in which arrest and the laying of formal charges are permitted under the Philippines law for between 12 and 36 hours (Amnesty International, 1998). Victims were coerced to confess their affiliation with rebel groups and name accomplices during such a period. The "handshake" method continued to be used alongside other means, such as putting and holding tightly plastic bags over the victims' heads so as to make them suffocate during interrogation (Amnesty International, 1998).

In 1998, former actor Joseph Estrada won the election in a landslide and replaced Ramos. His competence was questioned by many, but Estrada seemed eager only to duplicate what his predecessors had done without adopting any meaningful novel reform (ICTJ, 2021). For instance, Estrada continued using violent means to quell dissidents, namely an MNLF's breakaway faction, the Moro Islamic Liberation Front (MILF). In 2000, Estrada authorized military operations against MILF and raided its stronghold, Camp Abubakar, which, in retaliation, MILF responded by launching several bombings in the name of jihad (ICTJ, 2021).

Estrada's term in office was short-lived, as he was forced to resign after military and police defection, upon which Gloria Macapagal Arroyo seized to gain control over the presidency. One of Arroyo's achievements in the human rights area happened in 2009 when the Philippines recognized torture as a separate crime by enacting the standalone Anti-Torture Law, which legally defines and penalizes the act of torture, as well as provides remedies and redress for its victims. Nevertheless, like her predecessors, Arroyo did not actually have a firm stance on human rights matters as she resumed violent campaigns against insurgencies, along with petty criminals and journalists.

For instance, in 2008, Arroyo's government and MILF co-created the Memorandum of Agreement on Ancestral Domain as an attempt to resolve the protracted conflict between the two parties. However, the Supreme Court deemed the memorandum unconstitutional on the grounds that the proposed

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119 Ibid
peace agreement would create an independent State (Inquirer, 2019)\(^{120}\). Aggravated by the Court’s decision, MILF attacked the Lanao del Norte town of Kauswagan in 2008, to which the government responded by launching military operations. As a result, approximately 500,000 people were internally displaced and 1,000 individuals killed between August 2008 to July 2009 (University of Central Arkansas, n.d.; ICTJ, 2021)\(^{122}\). Additionally, in 2009, 58 individuals, most of the media workers, were murdered in the town of Ampatuan, Maguindanao, in a massacre known as the Maguindanao Tragedy (ICTJ, 2021)\(^{123}\). Ironically, the two tragedies occurred only months apart from each other and around the same time when the Anti-Torture bill was introduced and passed. Furthermore, in total, there were at least 245 unlawful killing cases during Arroyo’s administration (ICTJ, 2021)\(^{124}\). As a result, Arroyo’s administration further cemented the Philippines’ global reputation as a State known for unresolved torture and unlawful killings (Simbulan, 2005)\(^{125}\).

After almost a decade in office, Arroyo stepped down in 2010 to be replaced by Benigno “Noynoy” Aquino III. During his campaign, Noynoy pledged "to end serious violations of human rights in the Philippines (Human Rights Watch, 2011)." Nonetheless, while his promise was strong, Noynoy failed to materialize it. For instance, the use of local government-backed "death squads" to target petty criminals, such as the killings of around 300 individuals in Davao City by armed security officers on motorbikes, was largely ignored by Noynoy (Human Rights Watch, 2012; Human Rights Watch, 2016). Similarly, the use of such a squad to carry out human rights abuses continued during Rodrigo Duterte’s leadership, the successor of Noynoy, who took office in 2016. The slight difference was on the subject matter upon which such an operation was carried. Under Duterte, the premise justifying the use of death squads was his infamous War on Drugs. Furthermore, if death squads were largely backed by local governments during Noynoy’s era, under Duterte, the central government’s support enabled the operation, for the PNP is not authorized to use lethal force in dealing with suspected drug users and dealers. Human rights violations under Duterte are so grave that they triggered the International Criminal Court’s (ICC) jurisdiction over the Philippines under the charges of crimes against humanity in 2021.

The Task Force Detainees of the Philippines (TFDP) monitored and documented cases of torture and other cruel, inhuman or degrading treatment or punishment across the different administrations, including 5,531 cases under the Ferdinand Marcos Sr. administration (September 1972-February 1986); 1,082 under the Corazon Aquino administration (February 1986-June 1992); 266 under the Fidel Ramos administration (June 1992-June 1998); 55 under the Joseph Estrada administration (June 1998-January 2001); 480 under the Gloria Arroyo administration (January 2001-June 2010); 212 under the Benigno Aquino III administration (June 2010-June 2016); and 166 under the Rodrigo Duterte

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\(^{123}\) Ibid

\(^{124}\) Ibid


administration (June 2016-June 2022), two of which are still monitored. In 2020, TFDP monitored 16 torture cases from March to June 2020, mostly for alleged COVID-19 quarantine violations.

According to the Commission on Human Rights of the Philippines, members of the security forces and police were accused of routinely abusing and sometimes torturing suspects and detainees. Common forms of torture or ill-treatment during arrest and interrogation reportedly included electric shock, cigarette burns, and suffocation. Given the lengthy criminal procedure in the Philippine legal system, after a decade, this case remains pending today. Notwithstanding the creation of the specific committee tasked with periodical overseeing the implementation of the Anti-Torture Act, the implementation of the Act and related Philippine laws remains questionable. Despite the many reports of torture, the conviction in the case of torture survivor Jerryme Corre thus far is the only conviction under the Philippine Anti-Torture Act. The absence of other cases of convictions tends to indicate a lack of serious commitment on the part of the authorities to adhere to the prohibition of torture.

Torture during the Pandemic

Unfortunately, torture and ill-treatment continue to occur in the country during the Covid 19 pandemic as a result of the government’s militaristic public emergency response. The Medical Action Group (MAG) has documented around 542 cases of torture between 2018 and 2020 involving police officers, community peace forces, and local government officials. Since March 2020, the police have already arrested hundreds of people in Manila and other parts of the country for allegedly violating the curfew and other “social distancing” and quarantine regulations including not wearing of facemask, loitering, and going out without quarantine passes.

Duterte enacted and enforced two emergency laws to respond to the pandemic: the Heal as One Act (Bayanihan 1) and the Recover as One Act (Bayanihan 2). Both special laws aimed to mitigate the pandemic’s impact on the economy while also giving security forces the power to arrest and detain civilians violating curfews and quarantine. According to an interview with Jerbert Briola from the TFDP and Medical Action Group’s (MAG) Edeliza Hernandez, the PNP and the municipal police (Barangay Tanod) have the authority to arrest and detain those “perceived” to be violating the two laws.

Such a loosely defined authorization has led to cases of unfounded arbitrary arrests. For instance, PNP has failed to differentiate between an arbitrary violation of Bayanihan 1 and 2 and circumstances outside one’s control that force him/her to still mobilize after curfews.

Such was the case when the PNP arrested a worker on the way home after working a night shift. Additionally, those arrested and detained have been subjected to torture. Children were put in cages and exposed to "sunning," where they were gathered in a field, standing outside underneath the hot sun, and feet on the burning hot ground. In another report, the curfew violators were ordered to sit in the intense midday sun after they were arrested. There was also a report of a man being killed by the police for allegedly avoiding the police checkpoint. While some members of the LGBTQI who were arrested for violating the curfew were detained inside the barangay hall where the police and some members of the local security forces made fun of them by ordering them to kiss each other. Some violators also experienced public humiliation by being forced to publicly parade while chanting their promises not to go out again. Furthermore, torture is usually carried out under the context of the

government’s “war on drugs” even during Covid 19 pandemic, as there is no investigation conducted and perpetrators go unpunished leaving the victims and their families without appropriate redress or reparation. Most of the surviving victims and their families opted not to complain for fear of retaliation and harassment from the police and local officials. Those who are brave enough to seek remedies are usually under continuing threats and intimidation.\textsuperscript{128}

Moreover, arrests and detentions under the Bayanihan laws were accompanied by the lack of detaining authorities’ transparency. MAG encountered difficulties securing permits for jail visitation despite having a standing Memorandum of Agreement (MOA) with the National Bureau of Jail Management and Penology (BJMP) Office to conduct regular medical and psychological assessments of persons deprived of liberty as well as to provide health kits for COVID-19 prevention. Most of the BJMP regional offices and jails claimed to have no knowledge of the MOA and outrightly rejected any request for a jail visit. Even if the request for a jail visit is granted, there is no private space provided for the conduct of in-take interviews and medical and psychological examinations. Most of the time, medical consultation is done in the hallway or just outside the detention cell.\textsuperscript{129}

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In 2021, there were 356 cases wherein 312 were cruel, inhumane, and degrading treatment and punishment and 44 cases torture, those numbers must be construed with prejudice. – Medical Action Group
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Such a lack of transparency and access to persons deprived of liberty also makes it extremely challenging for CSOs to monitor and investigate allegations of torture. Thus, although MAG reports that in 2020 there were 79 torture cases wherein 43 were cruel, inhumane, and degrading treatment and punishment and 36 were torture, and in 2021, there were 356 cases wherein 312 were cruel, inhumane, and degrading treatment and punishment and 44 cases torture, those numbers must be construed with prejudice. As of June 2020, the Commission on Human Rights of the Philippines had investigated 27 cases of alleged torture involving 34 victims; it suspected police involvement in 22 of the cases\textsuperscript{130}. The results of these investigations are not publicly available. For 2021, a total of 21 cases of alleged torture had been investigated involving 25 victims, as of August 2021; it suspected police involvement in 17 of the cases\textsuperscript{131}. Cases of insurgency and War on Drugs-related torture also continued to be reported during the pandemic. MAG’s Contribution to the 4th Cycle of the Universal Periodic Review (2020)\textsuperscript{132} suggests that human rights activists are subjected to prolonged interrogation through repeated questioning about their alleged affiliation or membership to rebel or terrorist groups. Some also experienced psychological torture as their interrogators threatened to harm their families. Suspected drug traffickers also experienced being forced to drink bottled water before undergoing a drug test which usually made them positive of drugs. Most of the time, they were detained in a police station or in secret detention facilities for more than three days, without any legal charges, allegedly being extorted money in exchange for their freedom or through “palit-ulo” a scheme wherein the suspect is forced to give a name of a drug user or supplier in return of lesser charges. Again, given the lack of transparency and access to people in places of detention, these were done without the presence of a lawyer.

\begin{footnotesize}
\begin{enumerate}
\item[128] Information shared by Asia Alliance Against Torture, Medical Action Group (Philippines).
\item[129] Ibid.
\item[131] Ibid.
\end{enumerate}
\end{footnotesize}
Trends, Analysis and Recommendations

Torture leaves a deep and lasting scar not just on the flesh and psyche of the victims and their families but on the very foundations of our society.

Torture is one of the most abhorrent assaults on human dignity. Torture is a violation of human rights. In whatever form or manner torture is committed – from beating to electroshocks, from physical injuries to sexual abuse. Torture leaves a deep and lasting scar not just on the flesh and psyche of the victims and their families but on the very foundations of our society. Torture brutalizes everyone in society.

One obvious trend emerges upon examining the States: torture and other cruel, inhuman, and degrading treatment or punishment were used in an unprecedented amount even before the COVID-19 pandemic. States seemed eager to subject their civilians to acts amounting to torture in numerous contexts under different leaderships in the past, at least dating back to their respective independence.

In Indonesia, Soeharto’s authoritarian New Order regime, which came to power in the 1960s, tortured hundreds of thousands of civilians. His successors, despite promising to improve human rights, also fail to put an end to such inhumane practices. In Thailand, various military coups and regimes used torture as a means to silence opposition and quell insurgent movements, namely in the Deep South. Additionally, the end of the absolute monarchy system in the early 1930s failed to bring a meaningful change as lese-majeste law still exists today, and the means of enforcement of the said law often include torturing the violators. In Malaysia, archaic regulations, such as the 1959 POCA, which was enacted to hunt down alleged communists, are still being used as a justification to arrest, detain, and torture political oppositions and petty criminals, alongside newer regulations such as the 2012 SOSMA. In the Philippines, Marcos’ successors perpetuated torture practices during his era, particularly in dealing with the Bangsamoro insurgencies. Moreover, the use of “death squads” under Noynoy continues under Duterte’s War on Drugs. Torture is further normalized, for under Duterte’s administration the PNP seems to be authorized to use any means in dealing with drug traffickers.

As implied in the First Chapter, past abuses may act as a yardstick in tolerating and driving present and future torture practices. Numerous research has warned us about such a possibility. For instance, A3T was established in 2011 due to the fact that Asian countries shared a similar pattern of unresolved past torture practices. Such a trend is concerning because each failure to stop torture practices and investigate or bring those responsible to trial reinforces the perpetrators’ conviction that they are standing above the law.

Such a worry turned out to be justified as the second trend suggests that the pandemic seems to exacerbate torture practices by virtue of its “urgency.” When COVID-19 was declared a global pandemic in the early months of 2020, States worldwide were urged to implement healthcare measures to restrict its transmission. The novelty of the virus created global pandemonium as there were uncertainties regarding vaccination and the scale of its impact on politics and economics. Soon enough, States use health care rationales, such as curfews, social distancing, and quarantine, to enact and enforce new emergency laws that, unfortunately, often give law enforcement officials outstanding power to monitor said laws’ implementation and hold into account the violators.

In Indonesia, numerous emergency laws, such as the Large-Scale Social Restriction (PSBB) law and the Enforcement of Restrictions on Community Activities (PPKM) law, adopt a custodial measure, wherein
the police were given the authority to arrest and detain offenders. Similarly, Bayanihan Law 1 and 2 in the Philippines permit the PNP to arrest and detain those accused of violating the curfew. Consequently, both States' emergency laws and the subsequent custodial approach subject civilians to risks of torture, as seen in the case of the Philippines, where members of the LGBT+ community were forced to perform sexual acts upon being detained, and children were subjected to "sunning." Furthermore, such an emergency measure defeats the very purpose of social distancing as new detainees were usually put in already overcrowded and unhygienic prisons or other places of detention. Such exposure to the overcrowded and unhygienic places of detention risks the detainees to the COVID-19 transmissions, which, in and of itself, may amount to cruel, inhuman, and degrading treatment or punishment.

Another surfacing trend is that State actors are the primary perpetrator of torture, either in the past or present. The military was the main torture perpetrator during Soeharto's authoritarian era in Indonesia. Presently, both the military and the police are playing an active role in perpetuating torture practices. On the one hand, the military continues violent campaigns in Indonesia's easternmost region, Papua. On the other hand, the police were given additional power to enforce the law in various regions, including the enforcement of COVID-19 emergency laws. In Thailand, the military continues its operations in the Deep South, authorized under the 1914 Martial Law and the 2005 Emergency Situations Decree, which permit persons suspected to be affiliated with insurgency movements to be arrested and detained. Similarly, in Malaysia, SOSMA and POCA permit the arrest and detention of suspected criminals, but by the police. The two laws were used to put arrested civilians in an indefinite length of pre-trial detention known as the chain remand. In the Philippines, the PNP continues using excessive force in enforcing Duterte's War on Drugs or the Bayanihan laws.

A3T members also claim that most torture cases went unresolved. The penal codes of Indonesia, Thailand, and Malaysia do not recognize torture as a punishable crime, which, in turn, makes it impossible to hold perpetrators committing torture accountable. In the Philippines, although there is an Anti-Torture law, law enforcement officials' lack of understanding of the said law and the weak accountability mechanism makes the pursuit of justice challenging. The use of torture in the past and the culture of impunity, thus, act as a precedent for current leaders to continue using torture as a means of law enforcement and omitting perpetrators from accountability. Nevertheless, as stated in the Second Chapter, irrespective of whether a State has a domestic regulation prohibiting torture or not, or whether a State is a Party to international standards banning torture, the jus cogens character of torture alone binds States to the obligation to carry out a prompt, independent, impartial, and effective investigation. Those suspected of criminal responsibility should be prosecuted in proceedings that meet international fair trial standards upon sufficient admissible evidence.

Thus, it is imperative for countries in Southeast Asia to adopt at least the following recommendations

1. Immediately put an end to all acts of torture and ill-treatment;
2. Adopt UNCAT and OPCAT for all States that have not adopted them.
3. Amend respective domestic laws of each country to accommodate for better international standards regarding the elimination of torture and ill-treatment;
4. Guarantee the protection of fundamental human rights, including the right to be free from torture and other forms of cruel, inhuman degrading treatment or punishment, during public emergencies and refrain from violating human rights as justification for enforcing any public health emergency measures;
5. Any public emergency response must conform to human rights standards and norms; the focus must be on healthcare provisions rather than security measures;
6. Over congestion in jails must be addressed to prevent jails and prisons from becoming the epicenter of virus infection; and prison health should form part of the national health emergency program including public health care delivery;

7. Where domestic anti-torture law exists, take measures to promote compliance with the anti-torture Law through education of all government agencies and, military and law enforcement units on the law and torture prevention measures

8. Reform the law enforcement system with a more preventive perspective on torture and ill-treatment and break the chain of impunity by holding the perpetrators accountable through a transparent and efficient mechanism;

9. Establish independent institutions and mechanisms with strict supervision, monitoring, protection, and redress mandates for the prevention and accountability of torture;

10. Ensure that all investigations and prosecutions of allegations of torture adequately cover the possibilities for pursuing command responsibility including by obtaining all relevant records of all officials on duty particularly those holding senior positions that are alleged to have planned, commanded or perpetrated acts of torture and by utilizing the full of the law when it comes to non-compliance by the relevant institutions with the investigation.

11. Consider rules of evidence that may need to be amended to increase the possibility of identifying perpetrators through other means than visual verification. Likewise, make it mandatory for prosecutors to carry out a full investigation of possible command responsibility where identification of the primary perpetrator is impaired by the use of blindfolds.

12. Adopt necessary measures to ensure that all persons who allege or otherwise show indications of having been tortured or ill-treated are offered a prompt, thorough, impartial and independent medical examination. These include but are not limited to: ensuring adequate protection of health professionals documenting torture and ill-treatment from intimidation and other forms of reprisals; and ensuring that health professionals are able to examine victims independently and to maintain the confidentiality of medical records.

13. Provide specific training to all healthcare professionals and public prosecutors in coordination with medical and legal professionals associations and individual experts on how to identify signs of torture and ill-treatment, to document alleged torture cases and how to establish evidence that can be used in legal or administrative proceedings against those responsible for torture through the use of the Istanbul Protocol and other relevant international human rights standards.

14. Develop & strengthen witness protection programs ensuring high priority is given to adequate resourcing of the program and providing expanded rights and benefits to prospective witnesses to help the authorities prosecute torture cases and to ensure that it affords effective protection against reprisals and other harassment to all witnesses to torture acts and other cases of human rights violations.

15. Establish a mechanism to systematically collect information on the implementation of anti-torture laws where they exist, including on investigations, prosecutions, access to medical evaluations, acts of reprisals, implementation of the rehabilitation program and the submission of inventory of all detention centers and facilities under the jurisdiction of the relevant law and security enforcement agencies.

16. Welcome and guarantee full cooperation with international investigation mechanisms to look into the human rights situation in the country including advancing efforts for prison reforms.
17. Human Rights Defenders (HRDs) Protection laws must be enacted to stop political persecution, recognize and provide protection to HRDs in the country as well as ensure their meaningful participation in governance;

18. Over congestion in jails must be addressed to prevent jails and prisons from becoming the epicenter of virus infection; and prison health should form part of the national health emergency program including public health care delivery;

19. Incorporate the experiences of the pandemic and particular risks to marginalized groups in assessing and developing the overall protection framework against torture and ill-treatment;