Why the Emerging Human Rights Regime against Torture in Southeast Asia is Faltering

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Southeast Asia lags behind the rest of the world in setting regional human rights standards to combat torture. The ASEAN Intergovernmental Commission on Human Rights (AICHR), the human rights organ of ASEAN, only began focusing on developing regional norms against torture last year. Moreover, only Cambodia and the Philippines are States Parties to both the 1987 United Nations Convention against Torture and its 2006 Optional Protocol (OPCAT). Political science research suggests that Southeast Asian

states increasingly diverge in their commitment to and compliance with international human rights standards. Such diversification may be occurring in anti-torture standards; the experience of Cambodia and the Philippines with the OPCAT provides compelling evidence in favour of this argument. The implementation of the OPCAT in the two states suggests that the emerging ASEAN human rights regime against torture will be weaker than existing Southeast Asian human rights regimes.

OPCAT implementation in Cambodia and the Philippines has vastly differed. In Cambodia, the 2007 ratification of the OPCAT may have served to portray the government as compliant with international human rights law. Cambodia is constitutionally obligated to adhere to international human rights instruments because of the 1991 Peace Agreements. Moreover, ratifying the OPCAT has not affected torture prevention policy or practice in the state. Cambodia has established a national preventive mechanism (NPM) under the OPCAT—the National Committee Against Torture (NCAT). However, the body is non-compliant with the treaty. While it may conduct preventive visits, the NCAT lacks pluralism and independence it is functionally subordinate to the Cambodian Ministry of the Interior. Additionally, harassment of civil society organisations (CSOs) may have stifled the attempts of the latter to engage with the OPCAT and leverage the terms of the treaty to effect positive change in torture prevention in Cambodia.

In contrast, the OPCAT may have positively affected torture prevention policy and practice in the Philippines. The Philippines acceded to the OPCAT in 2012. When its deadline to establish an NPM lapsed in 2016, the Philippine national human rights institution—the Commission on Human Rights of the Philippines (CHRP)—created an "Interim National Preventive Mechanism" (INPM) to fulfil this role. The INPM enjoyed functional and financial independence from the Philippine government and a plural composition of CHRP members, experts on torture prevention, and CSO representatives. The INPM also conducted several preventive visits between 2018 and 2021. Successful CSO engagement may have been crucial for producing this result. Through continuous dialogue and collaboration with the CHRP, CSOs are likely to have leveraged OPCAT ratification to create a positive shift in torture prevention policy and practice in the Philippines. The long-term success of their efforts depends on the passage of two new bills, which aim to create an OPCAT-compliant NPM, in the Congress of the Philippines.

In line with regional trends regarding international human rights law, Cambodia and the Philippines increasingly diverge in their approaches to international anti-torture standards. Despite its failure to establish an NPM as of July 2024, the Philippines has moved closer to becoming compliant with the OPCAT than Cambodia. The more the two states diverge in their commitment to and compliance with the OPCAT, the more they may disagree in the negotiations developing the new regional human rights regime. Additionally, the eight other ASEAN Member States that have not ratified

the OPCAT may push the new regional human rights regime away from compliance with the treaty. As such, future negotiations may generate a regional human rights regime that gives substantial deference to Southeast Asian states concerning torture prevention. Short of producing accountability, new ASEAN anti-torture standards may sanction the practices of Southeast Asian states.

The most potent counterargument to this point lies in the history of successful transnational civil society involvement in international human areas in Southeast Asia. Transnational civil society involvement in ASEAN dialogues, meetings, and negotiations about the new human rights regime may balance out the lack of CSO presence and mobilisation concerning torture prevention in some ASEAN Member States. The degree of transnational civil society participation in ASEAN events may help define the scope and strength of the new human rights regime. The most recent AICHR multistakeholder dialogue on realising Southeast Asia as a torture-free region involved several influential CSOs, including the Association for the Prevention of Torture and the Task Force Detainees of the Philippines. Unfortunately, it lacked the participation of CSOs based in the European Union. If the EU seeks to live up to its promise of leading a values-based foreign policy, it must also become more active in engaging with ASEAN on international human rights topics like torture prevention.

As Southeast Asia sets regional standards to combat torture, the experiences of Cambodia and the Philippines may serve as guidance for determining what an ASEAN human rights regime against torture will resemble and who it will protect. Torture prevention in Cambodia has stagnated since its government ratified the OPCAT, while the Philippines has gradually moved closer to compliance with the treaty. Increasing divergence in their approaches to the OPCAT suggests that ASEAN may find it challenging to agree on regional standards to combat torture. Additionally, the relative inexperience of the other ASEAN Member States with the OPCAT may also complicate the negotiations. Transnational civil society, incorporating global and Southeast Asian members, may play a crucial role in helping facilitate dialogue between ASEAN states and ensuring their contacts produce a regional human rights regime that reflects the scope and content of international human rights law against torture.