

Report to Propose Policy and Legal Recommendations

Re: The policy and legal recommendation related to capital punishment and human rights principles

Introduction

The concept of capital punishment, nowadays, focus on behavior change of the criminal by mental and behavior rehabilitation which is the fruit from the criminal's awry perception leading to the crime. At the moment, most countries all over the world have revoked the capital punishment and given the opportunity to the criminal to rehab and return to society. Based on human rights principles, the capital punishment is breach to right to life. In contrast, the theory of criminology supports the concept of capital punishment as it could prevent or restrict any persons not to conduct a similar crime. The Human Rights Council: HRC who made recommendations through the Universal Periodic Review (UPR) have called Thailand to restrict, change into other penalties or revoke the capital punishment.

As a result, the National Human Rights Commission, hereby, has studied the guideline on capital punishment what Thailand's direction should go. If there is revocation on capital punishment in Thailand, the question would be whether and how relevant agencies should have measure for institutionalization. Also, the Commission would prepare the policy and legal recommendations to the Parliament (the National Legislative Assembly) and the cabinet in order to promote and protect human rights.

Substantive matter

1. Capital punishment and human rights principles

Any crimes with the punishment of execution do not guarantee less numbers of the crime, but it is risen up. This reflects that the capital punishment does not actually prevent the crime. Therefore, the National Human Rights Commission agrees to propose the policy and legal recommendations to the cabinet and relevant agencies for further promotion and protection in human rights.

2. Policy recommendation

2.1 The cabinet through the Ministry of Justice and other relevant agencies should have a campaign to raise awareness for Thai society about the capital punishment which is significantly impractical for minimizing and preventing the crime in all circumstances, as well as the crime related to drug. Also, the capital punishment is breach to right to life which is regarded as the fundamental rights. Without capital punishment, alternative penalty could be replaced which can be useful to prevent and to protect society from the crime likewise.

2.2 The cabinet through the Ministry of Justice (the Department of Corrections and the Department of Probation), the Ministry of Public Health (the Department of Mental Health) including the Court of Justice and the relevant agencies should improve their systems and judicial process as follows:

1) It should promote the restorative justice which is regarded as judicial process focusing on relationship restoration with the related persons or stakeholders who are injured by the crime. The injured person, criminal, official, and both families and communities will involve in restorative plan and change the criminal's behavior so that the criminal could be accountable its wrongdoing by redressing or compensating to the injured person because of the existing crime directly. Meanwhile, the injured person may forgive the criminal, and finally the society may have an attitude on capital punishment revocation.

2) It should have more roles for the family and community to control the criminal's behavior. In addition, such control should be subject to the warden's supervision and court order and decision.

3) It should develop the physical and mental restoration such as implementing the cognitive behavior therapy aimed to change attitude and perception of reality, as well as an experience and future foresight. The rehabbee should see the current problem and the reality that is cognitive distortion so that it could have better behavior replacing the illegal one.

2.3 The cabinet through the Ministry of Justice, the Royal Thai Police and other relevant agencies including the Court of Justice should improve the judicial process to

be effective, prompt and correct without taking too long for each prosecution. It should assure that the penalized person is the criminal, while the penalty should be based on proportion. The criminal who is sentenced to the capital punishment should have human rights protection which is met with the international standards so that the people could trust in the judicial process. Once the judicial process is effective, the people will obey the law without linking with the gravity or severity of penalty. In other words, the rate of penalty gravity is less important.

2.4 The cabinet should consider to adopt the Second Optional Protocol to the International Covenant on Civil and Political Rights which is focused to revoke the capital punishment within 2018 and to promote the public bodies and other related agencies to seriously follow the 3rd National Human Rights Plan by revoking the capital punishment for all crimes when factors and considerations are crystalized and set fully in order to meet with the right to life which is regarded as a foundation of human rights.

2.5 The cabinet should vote “approval” upholding the resolution related to capital punishment suspension during the relevant UN meetings. As in 2004-2013, Thailand did not sentence capital punishment for the crimes that have capital punishment attached for ages, unless it was related to the drug case that 2 criminals were executed in 2009. Since 2010 up to now, no capital punishment has been ordered.

2.6 The cabinet through the Ministry of Justice (the Department of Corrections) should reform the prison system for the executed criminal in the case where the criminal’s penalty is changed into life sentence. The prison should be firm and sound without violating human rights belonged to the criminal, those who have to be imprisoned for long-term in particular.

2.7 The cabinet through the Ministry of Justice should have replaceable measure and condition when the capital punishment is revoked. Such measure and condition could change from the capital punishment into life sentence instead. Such duration of imprisonment should be greater than or equal to from twenty-five year up to thirty years. The criminal has right to submit the application for pardon or grace according to the legal mechanism as provided.

3. Legal recommendation

3.1 The cabinet should consider amending additionally some provisions attached with the capital punishment in the criminal code, especially for the crimes that the criminal has no intention to kill or to cause someone's fatality such as Section 148, Section149, Section201, Section202, Section218, Section 220, Section 222, Section313 and Section 314.

3.2 The cabinet should not provide capital punishment in the law in case of new law drafting and enactment.

3.3 The cabinet should consider amending and extending some laws attached only the capital punishment such as capital punishment or life sentence or other penalties as it deems appropriate so that the court will have more discretions to sentence instead of ordering only capital punishment. Section 65 and Section 93 of the Narcotics Act B.E. 2522 (1979) is an example.

3.4 The cabinet should amend the law by revoking the capital punishment at all crimes when the social perception is fully cognitive and ready for revocation in order to meet with the right to life which is regarded as a foundation of human rights.

Proposition

The National Human Rights Commission requests the Prime Minister to propose the report to the cabinet for further consideration and to assign the relevant agencies to consider following the recommendations in order to promote and protect human rights in practice hereafter.