

CHAPTER SEVENTEEN

The Philippines

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Introduction

What is the relation between Philippine anti-torture laws and the incidence of torture? To what extent have measures to curb torture succeeded? This chapter critically examines torture in the Philippines between 1985 and 2014, and concludes that there are two faces of torture in the country – law and practice – which, to this day, diverge widely.

The chapter draws on reports by United Nations bodies such as the Committee against Torture, the United States Department of State, Amnesty International, Human Rights Watch, and other NGOs, and interviews with government officials and members of civil society.

Incidence of torture

The Marcos regime

Ferdinand Marcos's rule ended 14 months into the period under review. In the words of the Free Legal Assistance Group and Foundation for Integrative and Development Studies of the University of the Philippines: 'The Philippine military was the fist of former President Marcos' authoritarian rule. Between 1972 and 1986, elite torture units became his instruments of terror. Torture and execution without due process were widely practised by the state through a series of Presidential orders and decrees'.¹

These orders and decrees suspended safeguards and created conditions that considerably increased the risk of government abuse. They included

¹ The Free Legal Assistance Group and the Foundation for Integrative and Development Studies (FIDS), University of the Philippines, *Torture Philippines, Law and Practice* (FIDS, 2003), p. 16.

Presidential Proclamation no. 1081, which declared martial law and authorized detention of individuals charged with rebellion and similar offences (until the President ordered their release),² and General Order no. 2-A, which directed the Secretary of National Defense to arrest individuals for crimes such as conspiring to seize state power.³

Both orders were widely used to suppress dissent and political opposition to the regime, though their targets were the two principal armed insurgencies that have been active during the period, a national movement led by the Maoist Communist Party of the Philippines and its armed wing, the New People's Army, and a Muslim separatist insurgency in Mindanao.⁴

During this time, the most common forms of torture were the ashtray (burning the skin with cigarette butts), pulling out fingernails, *pompyang* or *el telefono* (slapping both ears simultaneously with great force), NAWASA⁵ (the water cure), wet submarine (submerging the victim's head in water or a toilet bowl), dry submarine (covering the victim's head with plastic to cause suffocation), MERALCO⁶ (electric shock), Russian roulette, rape or sexual abuse, solitary confinement, and psychological or mental torture.⁷

The Aquino administration

In February 1986, the Marcos regime was overthrown. Following mass protests, President Corazon Aquino replaced Marcos. Expectations ran high that the human rights and torture record of the Philippines would improve during her term (1986–92).

Unfortunately, the situation improved only slightly. According to Amnesty International, President Aquino took several steps to halt torture when she came to power.⁸ However, reports continued to emerge of

² Presidential Proclamation no. 1081, 1972 (Philippines).

³ General Order no. 2-A, 1972 (Philippines). See also C.A. Carag, 'The Legal Implications of the Lifting of Martial Law in the Philippines', *Philippine Law Journal*, 55 (1980), p. 449.

⁴ The New People's Army has a presence throughout the country and traces its origins to the *Hukbalahap*, anti-Japanese guerrilla forces formed by farmers during the Second World War. The principal Muslim secessionist groups in Mindanao in this period were the Moro National Liberation Front, the Moro Islamic Liberation Front, and the Abu Sayaff Group. Prior to Spanish rule, most of the inhabitants of the islands now known as the Philippines were Muslims. During 300 years of Spanish rule, Luzon and the Visayas became Christianized and Catholicism became the majority religion, while Mindanao remained predominantly Muslim.

⁵ An acronym that refers to the National Waterworks and Sewerage Authority.

⁶ An acronym that refers to the Manila Electric Company.

⁷ The Free Legal Assistance Group and FIDS, *Torture Philippines, Law and Practice* (FIDS, 2003), p. 17.

⁸ Her government ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

torture and ill treatment of political detainees during interrogation by police and military officials.⁹ The military denied such reports, arguing that they were part of the communists' propaganda war. Government officials admitted isolated instances of torture, but denied that its use was government policy.¹⁰ Human Rights Watch concluded that neither the government-appointed Commission on Human Rights nor independent monitoring groups had reliable statistics, but recognized that numerous cases of politically motivated killings, torture, disappearances, and unfair trials had been documented.¹¹ Sr Cresencia Lucero SFIC (Chair of the human rights organization Task Force Detainees of the Philippines) argued that the war waged by the Aquino government against rebels maintained the incidence of torture at a high level.¹²

The Ramos and Estrada administrations

During the terms of President Fidel Ramos (1992–98) and President Joseph Estrada (1998–2001), reports of torture declined. Nevertheless, government forces continued to ill-treat and torture individuals they suspected of belonging to or supporting the Communist Party of the Philippines/New People's Army or the Muslim insurgencies in Mindanao. Others to whom the labels of 'communist' or 'rebel' could be attached also became victims, including trades union activists, civil rights attorneys, other critics of the government, and sometimes innocent bystanders.¹³

Although acts of torture remained severe and geographically widespread, their *number* appeared to drop. Citing Task Force Detainees, the United States Department of State reported that the intensity of counter-insurgency operations had declined, and attributed this to efforts to raise military awareness of human rights.¹⁴ Amnesty International noted that some political prisoners had been released, that others remained in prison, that some new arrests had been made, and that some of those detained were reported to have been tortured or ill-treated.¹⁵ Human

adopted a new Constitution with a more extensive bill of rights; and established the Philippine Commission on Human Rights, discussed below.

⁹ Amnesty International, *Annual Report* (1989), p. 195.

¹⁰ Amnesty International, *Annual Report* (1990), p. 197.

¹¹ Human Rights Watch, *World Report* (1989).

¹² Interview with Sr Cresencia Lucero SFIC, Chair, Task Force Detainees of the Philippines, 4 September 2014, Quezon City, Luzon.

¹³ United States Department of State, *Country Reports on Human Rights Practices for 1992*, p. 637.

¹⁴ United States Department of State, *Country Reports on Human Rights Practices for 1992*, p. 637.

¹⁵ Amnesty International, *Annual Report* (1994), p. 242.

Rights Watch concluded that the Philippine government's human rights record was mixed. In the view of the Philippine Commission on Human Rights (PCHR) and human rights NGOs, violations declined on all fronts, although reports of abuses (including disappearances, extrajudicial killings, *incommunicado* detention, and arrests without warrant) continued to emerge.¹⁶

The Arroyo administration

During the term of President Gloria Arroyo (2001–10), human rights violations, including torture, increased somewhat. The number of extrajudicial killings and enforced disappearance (both of which are almost invariably accompanied by torture) rose sharply. According to Nilda Sevilla, Co-Chair of the NGO Families of Victims of Involuntary Disappearances, torture is intimately linked to enforced disappearance, and family members of the disappeared are haunted by thoughts of the torture their relative might have experienced.¹⁷ Following an official visit to the Philippines, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, cited a report that implied that General Jovito Palparan had command responsibility for many killings and disappearances.¹⁸

The US Department of State reported that members of the security services were responsible for extrajudicial killings, torture, disappearances, arbitrary arrest and detention, and other physical abuse of suspects and detainees, and identified issues of police, prosecutorial, and judicial corruption.¹⁹ Amnesty International drew attention to defects in the administration of justice, the torture and ill treatment of criminal suspects by police to extract confessions, extrajudicial executions of suspected drug dealers and others, and arbitrary arrests, torture, extrajudicial executions and disappearances in the context of military counter-insurgency operations.²⁰

The crimes reported included: rape and sexual assault of female prisoners; mistreatment of children; the torture or ill treatment of suspects by police or military personnel after arrest, during unlawfully extended

¹⁶ Human Rights Watch, *World Report* (1992).

¹⁷ Interview with Nilda Sevilla, Co-Chair, Families of Victims of Involuntary Disappearances, 12 January 2015, Quezon City, Luzon.

¹⁸ Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Addendum, Follow-up to Country Recommendations – Philippines*, UN DOC A/HRC/11/2/Add.8, 29 April 2009, p. 7.

¹⁹ United States Department of State, *Country Reports on Human Rights Practices for 2002*.

²⁰ Amnesty International, *Annual Report* (2002), p. 196.

periods of investigative detention, before filing of charges, and during interrogation; and denial of the right to have allegations of torture and other human rights violations investigated promptly, effectively, and impartially. Child suspects, especially street children and those involved in substance abuse, were frequently detained for extended periods without access to social workers or lawyers, and were vulnerable to torture and ill treatment. Public confidence in complaints bodies, including the Commission on Human Rights and the Office of the Ombudsman, was low.

In the context of counter-insurgency operations (against suspected Islamist ‘terrorists’, Muslim separatists, and communist insurgents), arbitrary arrests, torture, extrajudicial executions, and disappearances were reported.²¹ Civilians living in militarized zones, or areas targeted for counter-insurgency operations, were vulnerable to harassment, physical assaults, arbitrary arrest, and torture by the military. Individuals considered to sympathize with or to have assisted the New People’s Army were at particular risk. Harassment of human rights groups and activists affiliated with leftist causes by local security forces was also a concern.²² As military operations intensified, there were reports nationwide of arbitrary detentions, extrajudicial executions, enforced disappearances, torture, and harassment of civilians suspected of being Communist Party of the Philippines/New People’s Army supporters.²³

The enforced disappearance and torture of Raymond and Reynaldo Manalo, suspected of being members of the New People’s Army, demonstrates the nature of the human rights violations that took place in this period. The two brothers were charcoal gatherers living in San Ildefonso, Bulacan, a province outside Manila. On 14 February 2006, they were resting at home when soldiers took them into custody. When their families searched for them, officials denied knowledge of their whereabouts. A year and a half later, the brothers escaped from military custody and described their ordeal. In a later *amparo* court case,²⁴ they stated under oath that they had been transferred from one place to another, beaten, fed rotten food, doused with urine and hot water, hit with pieces of wood, slapped with a pistol, and burned. They testified that they had met General

²¹ Amnesty International, *Annual Report* (2004), p. 183.

²² Human Rights Watch, *World Reports* (2007), p. 316.

²³ Amnesty International, *Annual Report* (2007), p. 210.

²⁴ Under the Rule on the Writ of *Amparo*, section 1, the petition for a writ of *amparo* is available to any person whose right to life, liberty, and security is violated or threatened with violation in cases of extrajudicial killings and enforced disappearances.

Jovito Palparan, who they said had been one of their captors, and described seeing others who had undergone the same ordeal. Protective orders were subsequently issued in their favour.²⁵

The Benigno Aquino administration

During the term of President Benigno Aquino III (2010–13), while the number of reported incidents of torture and other violations of human rights appeared to decrease,²⁶ allegations of human rights violations nevertheless continued to mention torture, as well as violence and harassment against leftist and human rights activists by security forces, disappearances, warrantless arrests, and lengthy pretrial detentions. According to the PCHR and reliable human rights groups, excessive use of force and torture remained ingrained elements of the arrest and detention process.²⁷

Common forms of abuse during arrest and interrogation included electric shocks, cigarette burns, and suffocation. Suspected or captured members of the Abu Sayaff Islamic rebel group and the New People's Army were particular targets for abuse. Allegations of rape and sexual harassment were made against Philippine National Police officials. Reports of abuse by prison guards against detainees were common, though prisoners, fearing retaliation, rarely lodged formal complaints. Women in police custody were particularly vulnerable to sexual and physical assault by police and prison officials.²⁸

In January 2014, the media reported the discovery of a police 'torture wheel'.²⁹ At a secret detention facility in Laguna, a province near Manila, police officers reportedly used a roulette to determine how detainees (mostly drug offenders) were to be tortured, either to punish them or to coerce them into providing information. Punishments included a 'bat position' in which detainees were hung upside down for 30 seconds.³⁰ The 'wheel of torture' increased concern about the degree to which police officers understood, or took seriously, the absolute prohibition of torture in human rights law.

²⁵ *Secretary of National Defense vs. Manalo*, G.R. no. 180906, 7 October 2008.

²⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN DOC A/HRC/21/12, 9 July 2012, para. 22.

²⁷ United States Department of State, *Country Reports on Human Rights Practices for 2011*, pp. 5–8.

²⁸ United States Department of State, *Country Reports on Human Rights Practices for 2011*, pp. 5–8.

²⁹ At: <http://newsinfo.inquirer.net/571329/torture-chamber-in-laguna-closed>.

³⁰ At: <http://www.theguardian.com/world/2014/jan/28/philippines-police-wheel-of-torture-game>.

See also <http://www.bbc.com/news/world-asia-25923683>.

Frequency, severity, and geographical distribution

Torture took place in the Philippines consistently throughout the period under review, with almost the same frequency. The military and police were reportedly equally responsible. Slightly fewer cases of torture were reported in the post-Marcos era. The severity of torture was also essentially consistent. Throughout the period, there was a wide spectrum of different kinds of physical and mental torture. The victims of torture included individuals accused of common as well as political crimes.

In terms of geographical distribution, reports of torture occurred across the Philippines throughout the period. An archipelago composed of more than 7,000 islands, the Philippines has three major island groups: Luzon in the north, Visayas in the centre, and Mindanao to the south. The capital city, Manila, is located in Luzon, in the Visayas. The inhabitants of the Visayas are predominantly Catholic; the inhabitants of Mindanao are predominantly Muslim.

In northern Luzon, victims of torture included young adults and indigenous peoples.³¹ In Metro Manila, the rest of Luzon, and in the Visayas generally, they included those accused of common as well as political offences.³² In Mindanao, suspected members of Muslim rebel groups were particularly targeted for torture.³³

Detention law

The 1973 Philippine Constitution and the Revised Penal Code under Marcos

At the start of the period under review, detainees already enjoyed constitutional safeguards. The 1973 Constitution stated that: 'Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence'.

Philippine criminal laws also defined and established penalties for crimes such as arbitrary detention and delays in producing prisoners. Article

³¹ Interview with Attorney Beverly Longid, 7 June 2014, Baguio City, Northern Luzon.

³² Interview with Sr Cresencia Lucero SFIC, Chair, Task Force Detainees of the Philippines, 4 September 2014, Quezon City, Luzon.

³³ Interview with Nixon M. Alonzo, Special Investigator III, Regional Commission on Human Rights, and former Executive Director, Kapatutan Bahran, 27 May 2014, Zamboanga City, Mindanao.

124 of the Revised Penal Code provided for a range of penalties, including prison terms, for the crime of arbitrary detention, in which a 'public officer or employee', 'without legal grounds, detains a person'. Article 125 of the Code defined and punished, with imprisonment, the crime of delay in presenting suspects to the proper judicial authorities. A 'public officer or employee' committed this crime when he or she detained 'any person for some legal ground' and failed 'to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent'.³⁴ The same article required that a detained person be 'informed of the cause of his detention' and guaranteed the detainee's right 'to communicate and confer at any time' with his or her 'attorney or counsel'.³⁵

The ICCPR, UNCAT, and the 1987 Philippine Constitution

In 1986, the Philippines ratified or acceded to several international human rights treaties, notably the International Covenant on Civil and Political Rights (ICCPR), and the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT). When it ratified these treaties,³⁶ the Philippine government was required to guarantee the rights they affirm, thereby increasing the protection that detainees enjoy in law.

A new Constitution (approved by plebiscite in 1987) further strengthened safeguards for detainees. Going beyond the provisions of the 1973 Constitution, it explicitly guaranteed the rights of an individual under criminal investigation, affirming his 'right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice'; affirmed that a person who cannot afford the services of

³⁴ The Human Security Act, Republic Act no. 9372, 2007 (Philippines), permits slightly longer periods in the context of counter-terrorism; however, the same law's severe sanctions for abuse have discouraged officials from using it and prevented it from being fully implemented.

³⁵ Revised Penal Code, 1930, as amended (Philippines). These criminal provisions remain in effect.

³⁶ 1987 Philippine Constitution, Art. 7, section 21, states: 'No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate'. For an application of this provision, see *Pharmaceutical and Health Care Association vs. Health Secretary*, G.R. no. 173034, 9 October 2007.

counsel must be provided with one; and stated that his or her rights cannot be waived except in writing and in the presence of counsel.³⁷

The 1987 Constitution also prohibited torture, force, violence, threat, intimidation, or the use of any other means that vitiate free will, as well as secret detention places, and solitary, *incommunicado*, or other similar forms of detention. It affirmed that confessions or admissions obtained in violation of a person's rights were inadmissible as evidence.³⁸

Republic Act no. 7438

The Republic Act no. 7438 of 1992 (An Act Defining Certain Rights of Person Arrested, Detained or under Custodial Investigation, as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof) detailed the rights of persons arrested, detained, or under custodial investigation and criminalized violations of their rights. According to this law, any person arrested, detained, or under custodial investigation must be assisted by counsel at all times. Any public officer or employee, or anyone acting under the latter's order or in his or her place, who arrests, detains, or investigates any person for the commission of an offence should inform the detainee, in a language known to and understood by him or her, of his or her rights to remain silent and to have competent and independent counsel, preferably of his or her own choice, who must be allowed to confer privately with the person arrested, detained, or under custodial investigation at any time. If a suspect cannot pay for counsel, he or she must be provided with a competent and independent counsel by the investigating officer.³⁹

Republic Act no. 7438 also required that a custodial investigation report be written by the investigating officer. Before this report is signed (or thumb-marked) by suspects, it must be read and adequately explained to detainees by their counsel, or by the assisting counsel provided by the investigating officer, in a language or dialect they know. If this procedure is not respected, investigation reports are null and void. Any extrajudicial confession made by a person who is arrested, detained, or under custodial investigation must be made in writing and signed by him or her, in the presence of his or her counsel, or, in the latter's absence, upon a valid waiver, in the presence of his or her parents, older brothers and sisters, or spouse,

³⁷ 1987 Philippine Constitution, Art. 3, section 12.

³⁸ 1987 Philippine Constitution, Art. 3, section 12.

³⁹ Republic Act no. 7438, 1992 (Philippines), section 2.

or the municipal mayor, a municipal judge, district school supervisor, or a priest or minister of the gospel, as chosen by him or her. If this procedure is not respected, confessions are inadmissible as evidence in any proceeding. Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, should be made in writing and signed by this person in the presence of his or her counsel. If this procedure is not respected, the waiver is null and void.⁴⁰

Under Republic Act no. 7438, the authorities have a legal duty to ensure that any person arrested, detained, or under custodial investigation is allowed visits by or conferences with: any member of his or her immediate family; a medical doctor, priest, or religious minister chosen by him or her or any member of his or her immediate family; his or her counsel; any national NGO duly accredited by the Commission on Human Rights; or any international NGO duly accredited by the Office of the President. ('Immediate family' includes a detainee's spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.)⁴¹

Republic Act no. 7438, which guarantees the rights of those under custodial investigation, clarifies that the term 'custodial investigation' includes the practice of issuing an invitation to a person who is investigated in connection with an offence he or she is suspected of having committed. Furthermore, the inviting officer may become liable for any violation of law.⁴²

The Act goes further and imposes prison terms for: (a) an arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained, or under custodial investigation of his or her right to remain silent, and to have competent and independent counsel, preferably of his or her own choice; (b) a public officer or employee, or anyone acting upon the orders of such an investigating officer, or in his or her place, who fails to provide a competent and independent counsel to a person arrested, detained, or under custodial investigation for the commission of an offence, if the latter cannot afford the services of his or her own counsel; and (c) a person who obstructs, prevents, or prohibits any lawyer, any member of the immediate family of a person arrested, detained, or under custodial investigation, or any medical doctor, priest, or religious

⁴⁰ Republic Act no. 7438, 1992 (Philippines), section 2.

⁴¹ Republic Act no. 7438, 1992 (Philippines), section 2.

⁴² Republic Act no. 7438, 1992 (Philippines), section 2.

minister chosen by him or her, by any member of his or her immediate family, or by his or her counsel from visiting and conferring privately with him or her, from examining and treating him or her, or from ministering to his or her spiritual needs, at any hour of the day or, in urgent cases, the night.⁴³

Its provisions notwithstanding, Republic Act no. 7438 provides that any security officer with custodial responsibility over a detainee or prisoner may undertake reasonable measures necessary to secure his or her safety and prevent his or her escape.⁴⁴

Republic Acts no. 9745 and no. 10353

Legal protection for detainees was further strengthened in 2009, with the passage into law of Republic Act no. 9745, also known the Philippine Anti-Torture Act. The Act defines and punishes torture according to the standards of the UNCAT. It states that the right not to be subjected to torture is an absolute and non-derogable right and affirms that the rights it guarantees apply in all circumstances. A state of war or threat of war, internal political instability, other forms of public emergency, documents or determinations setting out an 'order of battle': none of these can be invoked to justify torture and other cruel, inhuman, and degrading treatment or punishment.⁴⁵

Republic Act no. 9745 also affirms the detainee's right to a medical examination;⁴⁶ prohibits secret places of detention, solitary confinement, *incommunicado*, or other similar forms of detention, where torture may be carried out with impunity; and requires the Philippine National Police, the Armed Forces of the Philippines, and other law enforcement agencies to make an updated list of all detention centres and facilities under their jurisdictions, with data on the prisoners or detainees detained in them (including names, dates of arrest and incarceration, and the crime or offence committed). The list should be made available to the public at all times, and a copy of the complete list should be available at the national headquarters of the Philippine National Police and the Armed Forces of the Philippines, and should be submitted by the Philippine National Police, Armed Forces of the Philippines, and other law enforcement agencies to the PCHR. The list is to be updated by the same agencies within the first five days of every

⁴³ Republic Act no. 7438, 1992 (Philippines), section 4.

⁴⁴ Republic Act no. 7438, 1992 (Philippines), section 4.

⁴⁵ Republic Act no. 9745, 2009 (Philippines), section 6.

⁴⁶ Republic Act no. 9745, 2009 (Philippines), section 12.

month at minimum. Every regional office of the Philippine National Police, Armed Forces of the Philippines, and other law enforcement agencies should maintain a similar list of all detainees and detention facilities within their respective areas, should make the list available to the public at all times in their respective regional headquarters, and should submit a copy, updated in the manner described above, to the appropriate regional office of the PCHR.

With regard to medical examinations, before and after interrogation, every person arrested, detained, or under custodial investigation has the right to be informed of his or her right to demand a physical examination by an independent and competent doctor of his or her own choice. If a suspect cannot afford the services of a doctor, the state is to provide him or her with a competent and independent doctor to conduct a physical examination. The state also has a duty to provide detainees with a psychological evaluation (if one is available under the circumstances). If the arrested person is female, she must be attended preferably [AQ1] by a female doctor. Any person arrested, detained, or under custodial investigation is entitled to adequate medical treatment immediately. The findings of each physical examination and psychological evaluation are to be set out in a medical report, duly signed by the attending physician. Medical reports should describe the suspect's medical history and the doctor's findings, and are to be attached to the custodial investigation report. They are to be considered public documents.⁴⁷

In December 2010, the Implementing Rules and Regulations of Republic Act no. 9745 were adopted, embodying the standards found in the Istanbul Protocol for medical examinations in torture cases. The Rules require both a physical and psychological examination. The medical report of a physical examination must include: pertinent case and background information; the victim's torture allegations; physical symptoms and disabilities; the findings of physical examination; photographs; diagnostic test results; an interpretation of findings; conclusions and recommendations; consultations; the physician's certification; the clinician's signature, date, and place; and relevant annexes. Reports of psychological examinations must include: the victim's psychological history; a report of his or her examination; an interpretation of findings; conclusions and recommendations; consultations;

⁴⁷ Republic Act no. 9745, 2009 (Philippines), section 12.

the physician's certification; the clinician's signature, date, and place; and relevant annexes.⁴⁸

In 2013 Republic Act no. 10353 (the Anti-Enforced Disappearance Act) became effective, raising further the legal protection of detainees. Apart from defining and punishing the crime of enforced disappearance, it explicitly guarantees 'the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition'.⁴⁹

Recordings and cameras

Audio and video recordings of interrogations provide evidence of testimony and the context in which it was obtained. They have the potential to make authorities think twice before resorting to torture; cameras in places of interrogation can help to deter acts of torture.

However, no Philippine law or regulation has addressed the subject of audio and video recording of interrogations. Nor does any Philippine law or regulation require cameras to film them. As one observer noted, the Philippine National Police budget for equipment is spent on purchasing a firearm for each police officer, rather than the purchase of audio and video devices for the protection of detainees.⁵⁰

Advances in detention law

In sum, detention-related laws in the Philippines steadily improved throughout the period under review. As of 1985, detainees were already entitled to a lawyer, and unofficial detention and failure to present detainees promptly before a court were both already criminalized. In 1992 a new law recognized the right of detainees to receive visits from immediate family, and from a doctor, priest, and counsel, and criminalized failures to respect it. In 2009 a further law required detainees to be informed of their right to a medical examination at arrest. In 2013, finally, a law was passed requiring family members (or persons chosen by the detainee) to be informed promptly after detention. In contrast, no law requires audio or video recordings of interrogations or the installation of cameras for that purpose.

⁴⁸ Implementing Rules and Regulations, 2010 (Philippines) of Republic Act no. 9745, section 24.

⁴⁹ Republic Act no. 10353, 2012 (Philippines), section 6.

⁵⁰ Interview with Lina Sarmiento, Chair, Human Rights Victims Claims Board, former Police General and Chair of the Philippine National Police Human Rights Affairs Office, 5 September 2014, Quezon City, Luzon.

Detention practice

On one side, there is the law on detention; on the other, its practice. During the period under review, laws on procedures for arrest, investigation, and detention have not been followed and detainees' rights have not been respected. The Committee against Torture has expressed deep concern about the many credible and corroborated allegations of routine torture and ill treatment of Philippine suspects in police custody, notably for the purpose of extracting confessions or information for use in criminal proceedings.⁵¹

Despite the new legislation, there remain insufficient safeguards for detainees in practice. The Philippine authorities have failed to: (a) bring detainees promptly before a judge and have held them in custody for prolonged periods; (b) systematically register all detainees, including minors; (c) keep records of all periods of pretrial detention; (d) provide detainees with prompt access to lawyers and independent doctors; (e) notify detainees of their rights when they are detained, including their right to contact family members.⁵²

There is evidence that the Philippine National Police and the Armed Forces of the Philippines continue to detain suspects in secret detention centres, safe houses, and military camps. Although authorities are required to file charges within 12 to 36 hours after arrest without warrant (depending on the seriousness of the crime), lengthy pretrial detention remains a problem, due to the slowness of judicial processes. Many arrests are reportedly made without warrant. Criminal suspects arrested without a warrant are at risk of torture and ill treatment in the absence of effective judicial oversight.⁵³

Detainees experience a wide variety of human rights violations according to the Foundation for Integrative and Development Studies of the University of the Philippines. First, at arrest (both warrantless arrests, and in a large proportion of arrests in general), suspects are not explicitly informed of their rights; essentially, the criminal justice system neglects detainees' rights until confessions are obtained. At arrest and in detention,

⁵¹ Committee against Torture, *Concluding Observations on the Philippines*, UN DOC CAT/C/PHL/CO/2, 29 May 2009, para. 7.

⁵² Committee against Torture, *Concluding Observations on the Philippines*, UN DOC CAT/C/PHL/CO/2, 29 May 2009, para. 7.

⁵³ Committee against Torture, *Concluding Observations on the Philippines*, UN DOC CAT/C/PHL/CO/2, 29 May 2009, para. 12.

second, they are often subjected to torture. At arrest, some are beaten, verbally abused, or threatened in order to extract a confession, while others lose their valuables, or suffer sexual harassment. During investigation, suspects may be beaten again if they refuse to confess. Some are burned with cigarettes, given electric shocks, suffocated, strangled, or banged against a wall.

In the minds of arresting and investigating officers, the most important thing is to arrest and file charges.⁵⁴ Many consider human rights an obstacle to their work. They view alleged criminals as a subtype of the population, to whom different rules apply because they break the law and harm others. Some officers even allow victims of an alleged crime to beat up the individuals alleged to be responsible. Officials dehumanize suspects and exploit the power they have over them. Once a confession is obtained, torture decreases dramatically. Torture is a shortcut, a substitute for good police work. It is used because officials believe they can get away with it.⁵⁵

In sum, detention practice was extremely poor through the entire period under review. Despite laws to the contrary, unofficial detention was widespread. Families or others were not usually promptly informed of a person's detention. Detainees were usually not informed of their right to a lawyer. When they were informed, most detainees did not exercise this right, from ignorance or fear. Detainees were not usually promptly presented to a judge. Medical examinations did not take place or, if they did, they were compromised. Interrogations were not recorded electronically. Cameras were not used. Despite increasing use of other investigative techniques, confessions continued to have importance.⁵⁶

A major reason for this poor practice is that prosecutors, police, soldiers, and other personnel involved in the detention process receive little training, and much of the training that is given is inadequate.

Some training has been reported. The PCHR and the Medical Action Group (a human rights NGO) trained officials of the Bureau of Jail Management and Penology from 2003 to 2006. The Department of Justice

⁵⁴ The Free Legal Assistance Group and FIDS, *Torture Philippines, Law and Practice* (FIDS, 2003), pp. 56–59. This exploratory study of the practice of torture in the Philippines was based on interviews with detainees and custodial officers conducted by a team of 16 researchers and psychology professors.

⁵⁵ See previous footnote. [AQ2]

⁵⁶ Interview with Dennis Villa-Ignacio, former judge and Special Prosecutor, 20 January 2015, Manila, Luzon. According to Villa-Ignacio, technology is improving but is not being fully used; many officers still fall back on brutality. Some technologies remain unavailable: the Philippine police service must go to Hong Kong if it needs a voice identification machine, for instance.

and the Medical Action Group provided training to officials of the National Prosecution Service and Philippine National Police in 2013. The Commission on Human Rights has given lectures and talks on human rights topics, including torture, to up to 18,999 uniformed men and women.⁵⁷

These are important steps. Nevertheless, many jail officials, prosecutors, and police officers remain untrained, and it is unclear how much has been retained or how far the skills acquired have been communicated to other officials.

Prosecution law and practice

Crime of maltreatment

Until 2009, no law defined and punished the crime of torture. A provision of the Revised Penal Code defined and punished the crime of maltreatment of prisoners. This law continues to be in effect today. It imposes a graduated penalty (from *arresto mayor*⁵⁸ to *prision correccional*),⁵⁹ in addition to liability for physical injuries or damage, on any public officer or employee who exceeds his or her authority when restraining or handling a prisoner or detainee in his or her charge, by imposing punishment that is not authorized by regulations or inflicting such punishment in a cruel or humiliating manner.⁶⁰

According to the Revised Penal Code, if the purpose of the maltreatment is to extort a confession, or to obtain information from the prisoner, the offender is punished by *prision correccional*, temporary special disqualification, and a fine not exceeding 500 *pesos*, in addition to his or her liability for the physical injuries or damage caused.⁶¹

Limitations to the crime of maltreatment

There are several limitations to prosecution for the crime of maltreatment. First, the penalties for this crime are not substantial; at most, maltreatment incurs a penalty of six years' imprisonment. Second, it does not match

⁵⁷ PCHR, *2011 Annual Report*, p. 5. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2011_chr_annual_report.pdf&sa=U&ved=0ahUKewirmbTR153MAhVDVBQKHZrVCFsQFggFMAA&client=internal-uds-cse&usg=AFQjCNGfvrrOWdtZtfvDPXsVMF7aOfACTw.

⁵⁸ One month and one day to six months of imprisonment.

⁵⁹ Six months and one day to six years of imprisonment.

⁶⁰ Revised Penal Code, 1930, as amended (Philippines), Art. 235.

⁶¹ Revised Penal Code, 1930, as amended (Philippines), Art. 235.

the definition of torture in the UNCAT. Third, it is subject to a statute of limitations (ten or five years, depending on the circumstances).⁶²

The Philippine Supreme Court⁶³ has confirmed convictions for torture, though not for maltreatment, for crimes including murder, rape, and coercion. In *People vs. Torreja*,⁶⁴ the Court confirmed the conviction of a police officer for qualified rape of a female detainee. In *People vs. Alegarbes*,⁶⁵ the Court confirmed a soldier's conviction for murder following the torture and death of his victim. In *People vs. Ravelo*,⁶⁶ the Court confirmed the conviction of members of the Civilian Home Defense Force⁶⁷ for murder and frustrated murder, after they had tortured suspected rebels. In *Punzalan vs. People*,⁶⁸ *US vs. Pabalan*,⁶⁹ and *US vs. Cusi*,⁷⁰ the Court confirmed the conviction of a mayor and police officers for coercion after they maltreated suspects to extract a confession.

From 2009, Republic Act no. 9745 (the Anti-Torture Act) defined and punished torture in accordance with the standards of the UNCAT. The Act defines torture as:

an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her 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 person in authority or agent of a person in authority.⁷¹

According to Republic Act No. 9745, torture does not include pain or suffering arising from, inherent in, or incidental to, lawful sanctions.⁷² The law goes on to define cruel, inhuman, and⁷³ degrading treatment or

⁶² Revised Penal Code, 1930, as amended (Philippines), Art. 90.

⁶³ The country's highest court and court of last resort.

⁶⁴ *People vs. Torreja*, G.R. no. 132339, 4 February 2002.

⁶⁵ *People vs. Alegarbes*, G.R. no. L-49761, 21 September 1997.

⁶⁶ *People vs. Ravelo*, G.R. no. 78781-82, 15 October 1991.

⁶⁷ A paramilitary group under military jurisdiction.

⁶⁸ *Punzalan vs. People*, G.R. nos L-8820 and L-8821, 25 May 1956.

⁶⁹ *US vs. Pabalan*, G.R. no. L-13020, 20 December 1917.

⁷⁰ *US vs. Cusi*, G.R. no. 3699, 18 March 1908.

⁷¹ Republic Act no. 9745, 2009 (Philippines), section 3(a).

⁷² Republic Act no. 9745, 2009 (Philippines), section 3(a).

⁷³ The use of 'and' in the Act, rather than 'or' as in the UNCAT, does not appear to be significant: the Philippine law conforms to the UN Convention.

punishment as a deliberate and aggravated treatment or punishment (not considered torture) inflicted by a person in authority, or agent of a person in authority, against a person under his or her custody, which attains a level of severity, causing suffering, gross humiliation, or debasement to the latter.⁷⁴

Republic Act no. 9745 states that any person is liable as a principal if he or she participates in the commission of torture, or other cruel, inhuman, and degrading treatment or punishment, or induces others to commit such acts, or cooperates in the execution of such acts, beforehand or simultaneously.⁷⁵ Furthermore, applying the principle of command responsibility, an officer is also liable as a principal if he or she (a) knows – or, given the circumstances at the time, should have known – that acts of torture or other cruel, inhuman, and degrading treatment or punishment will be committed, are being committed, or have been committed by his or her subordinates or by others within his or her area of responsibility, and (b) does not take preventive or corrective action, despite such knowledge, before, during, or immediately after such acts occur, and (c) when he or she has the authority to prevent or investigate allegations of torture or other cruel, inhuman, and degrading treatment or punishment, but fails to prevent or investigate allegations of such acts, deliberately or by negligence.⁷⁶

Republic Act No. 9745 provides substantial penalties that are graduated (according to the severity of the torture). It imposes the longest prison term⁷⁷ for the following acts: (1) torture resulting in the death of a person; (2) torture resulting in mutilation; (3) torture with rape; (4) torture with other forms of sexual abuse where, in consequence, the victim becomes insane, imbecile, impotent, blind, or maimed for life; and (5) torture committed against children.⁷⁸

The act imposes slightly shorter prison terms⁷⁹ for acts of mental or psychological torture that cause the victim to go insane, to fear going insane, to experience complete or partial amnesia, or to have suicidal tendencies due to guilt, a sense of worthlessness, or shame;⁸⁰ and for acts of

⁷⁴ Republic Act no. 9745, 2009 (Philippines), section 3(b).

⁷⁵ Republic Act no. 9745, 2009 (Philippines), section 13.

⁷⁶ Republic Act no. 9745, 2009 (Philippines), section 13.

⁷⁷ *Reclusion perpetua*: imprisonment for between 20 years and one day to 40 years.

⁷⁸ Republic Act no. 9745, 2009 (Philippines), section 14.

⁷⁹ For these crimes, the Act imposes *reclusion temporal*: imprisonment for between 12 years and one day to 20 years.

⁸⁰ Republic Act no. 9745, 2009 (Philippines), section 14.

torture that result in other forms of psychological, mental, and emotional harm than those just described.⁸¹

Even lower penalties are imposed if, as a result of torture, a victim loses the power of speech, hearing, or smell; loses an eye, a hand, a foot, an arm, or a leg; or the use of any such member; or is permanently incapacitated and unable to work;⁸² becomes deformed, or loses another part of, or use of, his or her body than the parts cited above, or becomes ill or incapacitated and unable to work for a period of more than 90 days;⁸³ becomes ill, incapacitated, or unable to work for more than 30 days but not more than 90 days;⁸⁴ or becomes ill or incapacitated and unable to work for 30 days or less.⁸⁵

Criminal penalties are also imposed: for acts that amount to cruel, inhuman, or degrading treatment or punishment;⁸⁶ for establishing, operating, and maintaining secret places of detention, or holding detainees in solitary confinement, *incommunicado*, or in similar forms of prohibited detention, where torture may be carried out with impunity;⁸⁷ for failure to maintain, submit, or make available to the public an updated list of detention centres and facilities, and corresponding data on the prisoners or detainees they contain, as required by law.⁸⁸

The Philippine Commission for Human Rights, the Department of Justice, the Department of National Defense, the Department of the Interior and Local Government, and other concerned parties in both the public and private sectors, have a legal duty to ensure that education and information regarding the prohibition against torture and other cruel, inhuman, and degrading treatment or punishment are fully included in the training of civil and military law enforcement personnel, medical personnel, public officials, and other persons who may be involved in the custody, interrogation, or treatment of individuals who are arrested, detained, or imprisoned. The Department of Education and the Commission on Higher Education must

⁸¹ For these crimes, Republic Act no. 9745, 2009 (Philippines), section 14, imposes *prision correccional*: imprisonment for between six months and one day to six years.

⁸² For these crimes, Republic Act no. 9745, 2009 (Philippines), section 14, imposes *prision mayor*: imprisonment for between six years and one day to 12 years.

⁸³ For these crimes, Republic Act no. 9745, 2009 (Philippines), section 14, imposes *prision mayor*.

⁸⁴ For these crimes, Republic Act no. 9745, 2009 (Philippines), section 14, imposes *prision correccional* or *prision mayor*.

⁸⁵ For these crimes, Republic Act no. 9745, 2009 (Philippines), section 14, imposes *prision correccional*.

⁸⁶ Republic Act no. 9745, 2009 (Philippines), section 14.

⁸⁷ Republic Act no. 9745, 2009 (Philippines), section 14.

⁸⁸ Republic Act no. 9745, 2009 (Philippines), section 14.

also ensure human rights education classes are included in all primary, secondary, and tertiary level academic institutions nationwide.⁸⁹

Republic Act no. 9745 is an advance. It defines and punishes torture according to the standards found in the UNCAT. It also imposes stiffer penalties for torture than those imposed by the Revised Penal Code for maltreatment and varies the penalties according to the severity of the torture inflicted. Arguably, the Act makes torture, like maltreatment, subject to a statute of limitations. Although its Implementing Rules and Regulations state that there is no statute of limitations,⁹⁰ the Act itself contains no such provision; this suggests that a statute of limitations does apply, because Implementing Rules and Regulations cannot extend what an Act does not authorize. If this is so, even the most serious forms of torture are not prosecutable after 12 years and less serious forms of torture cannot be prosecuted after four to eight years.⁹¹

Obstacles to prosecution for torture

In the four years since Republic Act no. 9745 came into force, no person has been convicted of torture. A few have been charged. They include Police Senior Inspector Joselito Binayug et al., arrested and charged with the torture of Darius Evangelista, a suspected thief;⁹² the case is pending before the Regional Trial Court of Manila, Branch 1. Soldiers in the second infantry battalion of the army's ninth infantry division were charged with the torture of Ronel Cabais, a suspected member of the New People's Army;⁹³ warrants were issued by the Municipal Trial Court of Polangui-Libon-Oas, Albay, South Luzon, but so far no arrests have been made. Sergeant. George Awing, Staff Sergeant Elmer Magdaraog, and Captain Sherwin Guidangen were charged before the Regional Trial Court of Isabela City, Basilan, Mindanao, Branch 2, with the torture of Abdul-Khan Balinting Ajid, a suspected member of the Abu Sayaff group;⁹⁴ they too have not so far been arrested.

⁸⁹ Republic Act no. 9745, 2009 (Philippines), section 21.

⁹⁰ Implementing Rules and Regulations of Republic Act no. 9745, 2010 (Philippines), section 45.

⁹¹ Act no. 3326, 1926 (Philippines), section 1.

⁹² Evangelista was video recorded being beaten while string was attached to his genitals and pulled. See http://www.amnesty.org.uk/sites/default/files/philippines_torture_case_-_instruction___background_info_0.pdf.

⁹³ Cabais was beaten and given electric shocks. See http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS11_UPR_PHL_S13_2012_JointSubmission11_E.pdf.

⁹⁴ Ajid was beaten, submerged in water, and burned with petrol. See <http://hronlineph.com/2014/09/27/urgent-appeal-updated-information-regarding-the-situation-of-abdul-khan-balinting-ajid-tfdp/>.

The Medical Action Group suggests several reasons for why so few have been prosecuted, and none convicted. Prosecutors and public attorneys are insufficiently aware of Republic Act no. 9745, leading *de facto* to lengthy pretrial detention; the government does not allocate sufficient financial or human resources to prosecution because it is not determined to ensure that investigations are effective; and overburdened public attorneys who are busy defending their clients against criminal accusations have little time to spare for other duties, including those under Republic Act no. 9745.⁹⁵ Prosecutor Gail Maderazo has emphasized the inadequate training of public prosecutors and public attorneys. A round of training activities to inform public prosecutors about Republic Act no. 9745 took place in 2013, and a training workshop was held in 2014; but this training has not reached the whole of the National Prosecution Service of the Philippines, much less the Public Attorney's office. Many public prosecutors and public attorneys are not well informed about the law regarding torture.⁹⁶

Prompt medical examinations are rarely performed, although this is a legal requirement. Torture victims rarely assert their right to be seen by a doctor, because most are unaware that they have this right and the authorities do not inform them. For obvious reasons, the authorities are reluctant to bring victims of torture to a medical doctor for examination, and are under less pressure to do so if the victims are poor. Many torture victims are unable to see a doctor for days or weeks, compromising the quality of any investigation, since perpetrators have time to cover up their crime, and evidence at the crime scene and on the victim fades and eventually disappears. Medical examinations should be provided without cost if an arrested person cannot pay, but in practice suspects are often charged and, as a result, many waive their right to medical examination.⁹⁷

In addition, torture victims are frequently examined by doctors assigned to health facilities of the Philippine National Police, or Armed Forces of the Philippines. These doctors may give them only a cursory physical examination, and ask no questions about torture marks. Medical certificates are frequently summary, refer only to visible bruises or contusions, and

⁹⁵ Medical Action Group, *Torture Impunity: An Analysis of the Implementation of the Anti-Torture Law* (2014).

⁹⁶ Interview with Prosecutor Gail Stephanie Maderazo, Department of Justice, 8 September 2014, Manila, Luzon.

⁹⁷ Medical Action Group, *Torture Impunity* (2014).

contain a formulaic assessment of how long the victim is likely to need medical treatment.⁹⁸

Finally, few health professionals in the Philippines have the necessary skills to document torture thoroughly, and even those who do often avoid documenting torture for fear of reprisals. Police officials are often present during physical and medical examinations; in some cases, they supervise doctors' work. No safeguards guarantee the confidentiality of medical reports, protect health personnel from police intimidation, or ensure that health personnel can examine patients in private (without the presence of police).⁹⁹

Proper medical evaluation is usually carried out by health professionals affiliated with NGOs. Because law enforcement agencies usually bar human rights NGOs from entering jails and detention centres, such evaluations usually occur after a considerable delay. In many cases, even when NGO experts are allowed to see and examine victims, they are prohibited from bringing medical and documentation equipment into detention centres. The effect, obviously, is to prevent a proper forensic examination until injuries have healed.¹⁰⁰

When acts of torture are prosecuted, victims also need to deal with the legal construct of 'presumption of regularity' in the performance of official duties.¹⁰¹ The actions of government officials are presumed to be regular. Torture is presumed not to have taken place. The burden of proving a torture allegation rests heavily on the victim, which discourages torture victims from coming forward. Though many complaints of torture are recorded by human rights organizations and reported in the media, very few are prosecuted.¹⁰²

In addition, the government often invokes exceptional circumstances and threats to national security as a defence. The authorities frequently arrest innocent civilians, often without a lawful court order, and there are many cases of mistaken identity, notably of Muslims who share similar or identical names. Incentives (rewards and promises of promotion) also encourage officers to take shortcuts or resort to torture and ill treatment. These problems have been particularly acute in Mindanao.¹⁰³

⁹⁸ Medical Action Group, *Torture Impunity* (2014).

⁹⁹ Medical Action Group, *Torture Impunity* (2014).

¹⁰⁰ Medical Action Group, *Torture Impunity* (2014).

¹⁰¹ Rules of Court, 1964, as amended (Philippines), rule 131, section 3(m).

¹⁰² Medical Action Group, *Torture Impunity* (2014). Interview of Prosecutor Gail Stephanie Maderazo, Department of Justice, 8 September 2014, Manila, Luzon.

¹⁰³ Medical Action Group, *Torture Impunity* (2014).

When the authorities cannot or will not identify and locate alleged perpetrators, this evidently makes it harder for torture victims to obtain justice and redress. The common practice of blindfolding, itself a form of torture under Republic Act no. 9745, makes it difficult for victims to identify their perpetrators. The reluctance of prosecutors to use or allow voice identification has the same effect.¹⁰⁴ In Pampanga, Luzon, five political detainees who had been blindfolded saw the case against their police captors dismissed because prosecutors rejected the voice identification they submitted.¹⁰⁵ Authorities often block cases because they are reluctant to cooperate in the prosecution of colleagues.¹⁰⁶ Examples include the failures, already mentioned, to implement warrants for the arrest of the soldiers charged with the torture of Ronel Cabais,¹⁰⁷ and those charged with the torture of Abdul-Khan Balinting Ajid.¹⁰⁸

Torture survivors, their families, and support groups (including doctors and lawyers) say that many torture survivors and witnesses are also reluctant to cooperate with torture prosecutions because they fear reprisals and threats of retaliation by relatives, friends, and colleagues of the alleged perpetrators.

The failure to prosecute is a systemic problem, aggravated by the fact that torture victims and their witnesses are often charged with insurgency-related activities and trumped-up offences.¹⁰⁹

Though the Department of Justice's National Bureau of Investigation and the PCHR both have witness protection programmes, they have rarely been used effectively because of lack of funding and support staff. Moreover, protection only starts when charges are filed. Witnesses have complained that protection is guaranteed during trial, not afterwards, leaving them open to retribution.¹¹⁰

During interrogation, torture victims are subjected to threats and physical pressure, and are forced to sign statements whose content and purpose are not explained to them. Later, they realize that they have

¹⁰⁴ Medical Action Group, *Torture Impunity* (2014).

¹⁰⁵ At: <http://www.amnesty.org/en/news-and-updates/philippine-police-responsible-torture-must-be-prosecuted-2010-08-18>. [AQ3]

¹⁰⁶ Medical Action Group, *Torture Impunity* (2014).

¹⁰⁷ At: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS11_UPR_PHL_S13_2012_JointSubmission11_E.pdf.

¹⁰⁸ At: <http://hronlineph.com/2014/09/27/>

urgent-appeal-updated-information-regarding-the-situation-of-abdul-khan-balinting-ajid-tfdp/.

¹⁰⁹ Medical Action Group, *Torture Impunity* (2014).

¹¹⁰ Medical Action Group, *Torture Impunity* (2014).

signed a waiver that legitimizes their confessions. When the document surfaces, victims find themselves obliged to prove that they signed it under torture.¹¹¹

Civil liability

A criminal case generally generates a civil case. According to the Philippine Rules of Court, when a criminal action is instituted it generally triggers a civil action for the recovery of civil liability arising from the offence, unless the offended party waives civil action, reserves the right to institute it separately, or institutes a civil action prior to the criminal action.¹¹²

A separate civil case is also possible. In *Aberca vs. Ver*,¹¹³ the Philippine Supreme Court confirmed that an injured party has grounds to institute a separate civil action for damages arising from human rights violations, including torture. In reaching this opinion, the Court relied on the New Civil Code,¹¹⁴ which makes any public officer or employee or private individual who directly or indirectly obstructs, defeats, violates, or in any manner impedes or impairs any of the enumerated rights and liberties of another person, liable to the latter for damages. These rights and liberties include: freedom from arbitrary or illegal detention; the right to equal protection under the law; the right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures; the right not to be compelled to witness against oneself; the right not to be forced to confess guilt; the right not to be induced to confess guilt by a promise of immunity or reward (except when the person confessing becomes a state witness); freedom from excessive fines or cruel and unusual punishment, unless the same are imposed or inflicted in accordance with a statute that has not been judicially declared unconstitutional; and freedom of access to the courts. Because of technical defences, the litigation in *Aberca v Ver* has not yet been completed. Twenty-six years have passed since the case was initiated but the plaintiffs have yet to receive any form of reparation for the injuries they suffered, which included torture.

A Board of Claims, through an expedient administrative procedure, grants awards to victims of violent crimes that include torture. These

¹¹¹ Medical Action Group, *Torture Impunity* (2014).

¹¹² Rules of Court, as amended, Revised Rules of Criminal Procedure, 2000 (Philippines), rule 111, section 1.

¹¹³ *Aberca vs. Ver*, G.R. no. L-69866, 15 April 1988.

¹¹⁴ Republic Act no. 386, 1949, as amended (Philippines), Art. 32.

awards are rather small.¹¹⁵ A similar administrative body, the Human Rights Victims' Claims Board, grants larger amounts, but its jurisdiction is limited to victims of human rights violations by the Marcos regime.¹¹⁶

Complaints and monitoring law and practice

Tanodbayan

In 1985, at the beginning of the period under review, no national human rights institution existed that could serve as a complaints or monitoring body. An Ombudsman (Tanodbayan) could investigate complaints committed by an administrative body, advise the legislature on possible remedial measures, and prosecute erring government officials.¹¹⁷ In her study of the Tanodbayan between 1979 and 1981, Irene Cortes (a law professor and subsequently Supreme Court Justice) calculated that the Tanodbayan received over 3,000 cases per year, including 300 on administrative bodies; she did not indicate how many involved torture.¹¹⁸

In 1986, a Presidential Committee on Human Rights was created.¹¹⁹ Its functions included the investigation of allegations of torture; but it could only make recommendations to the President. The US State Department reported that 27 torture allegations were brought to the attention of the Committee in 1986.¹²⁰

Commission on Human Rights

The 1987 Constitution of the Philippines established a national human rights institution, the Philippine Commission on Human Rights (PCHR). Its powers are considerably broader than those of the Presidential Committee on Human Rights. Its independence is constitutionally guaranteed.¹²¹ The automatic and regular release of its approved annual appropriations

¹¹⁵ Republic Act no. 7309, 1992 (Philippines).

¹¹⁶ Republic Act no. 10368, 2013 (Philippines). The funds came from an award in a civil case filed by victims of human rights violations against President Marcos before a Hawaii court under the United States Alien Tort Act.

¹¹⁷ 1973 Philippine Constitution, Art. 13, section 6; Presidential Decree no. 1487, 1978 (Philippines); Presidential Decree no. 1630, 1979 (Philippines).

¹¹⁸ Irene R. Cortes, 'Redress of Grievances and the Philippine Ombudsman (Tanodbayan)', *Philippine Law Journal*, 57 (1980), pp. 1–14.

¹¹⁹ Executive Order no. 8, 1986 (Philippines).

¹²⁰ United States Department of State, *Country Reports on Human Rights Practices for 1986*, p. 794.

¹²¹ 1987 Philippine Constitution, Art. 13, section 17(1). See also Executive Order no. 163, 5 May 1987, preamble.

is constitutionally assured.¹²² With regard to torture, the Commission is empowered to act both as a complaints mechanism and as a monitoring body.

Under the 1987 Constitution, the PCHR can investigate, on its own initiative or following a complaint by any party, all forms of human rights violations that involve civil and political rights. It can adopt its own operational guidelines and rules of procedure, and cite for contempt if these guidelines and rules are violated, in accordance with the Rules of Court. It can adopt appropriate legal measures to protect the human rights of all persons in the Philippines, as well as Philippine citizens residing abroad, and develop preventive measures and legal aid services for under-privileged individuals whose human rights have been violated or need protection. It has authority to visit jails, prisons, and detention facilities. It can grant immunity from prosecution to any person whose testimony, or whose possession of documents or other evidence, is necessary or convenient for determining the truth in any investigation that it conducts or that is conducted under its authority. It has the power to request the assistance of any department, bureau, office, or agency in the performance of its functions.¹²³

The PCHR as a complaints mechanism

As a complaints mechanism, the PCHR has many powers under the 1987 Constitution. It has the authority to receive complaints of torture and investigate them. It can carry out investigations on its own initiative. It is independent: other government branches and official bodies are not entitled to exert any formal influence over it. The Commission has no power to compel the production of evidence, but can request the assistance of other government offices, and has power to cite in contempt. It can refer a case to an investigative authority,¹²⁴ but has no power to bind that authority. It can similarly recommend redress, but its recommendation is non-binding.

The PCHR faces a number of issues. In the period under review, it referred several cases to public prosecutors, having investigated complaints, but some of these were dismissed. Some of the PCHR's recommendations

¹²² 1987 Philippine Constitution, Art. 13, section 17(4). See also Executive Order no. 163, 5 May 1987, section 5.

¹²³ 1987 Philippine Constitution, Art. 13, section 18. See also Executive Order no. 163, 5 May 1987, section 3.

¹²⁴ Authorities that can investigate criminal liability for torture include the National Prosecution Service (under the Department of Justice), and the Ombudsman, an independent body (created by the 1987 Philippine Constitution, Art. 12, section 18) that addresses complaints against public officials.

of redress were similarly set aside by other agencies. Greater cooperation between the Commission, public prosecutors, and other agencies should be explored.

The Commission publishes its findings as part of its procedure and prepares annual reports that summarize its work.¹²⁵ In 2012, the PCHR reported that it had documented torture incidents involving 64 victims.¹²⁶ In 2011, it combined figures for extrajudicial killings, enforced disappearances, and torture, and reported that it had documented 183 such incidents, involving 225 victims.¹²⁷ It stated that 183 incidents, involving 408 victims, had occurred the previous year. In 2010, it reported 114 cases of torture.¹²⁸

PCHR as a monitoring body

The PCHR is authorized to monitor places of detention. The 1987 Constitution does not say what kinds of visit the Commission is entitled to make, but the PCHR's powers are broad enough to include unannounced visits. No law grants the Commission immunity for its monitoring-related activities.

In the early years of its existence, from 1987 onwards, PCHR visits were obstructed, even though the Constitution specifically entitled it to make visits. Prison authorities commonly obliged its officials to wait, on the grounds that clearance had to be sought, and sometimes refused them entrance altogether. The PCHR found it most difficult to enter military sites of detention; these even occasionally claimed that they had no detention facilities. It had slightly less difficulty entering police prisons, and had the least difficulty visiting national, provincial, city, and municipal prisons. When the Commission began to show prison officials a copy of the Constitution, the receptions improved.

With regard to its visiting powers, the PCHR has made certain advances.

¹²⁵ Interview with Karen Dumpit, Director, Government Linkages, PCHR, 22 January 2015, Quezon City, Luzon.

¹²⁶ PCHR, *2012 Annual Report*, pp. 1 and 8. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2012_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDCBoKHc0eBWIQFggEMAA&client=internal-uds-cse&usg=AFQjCNHRtch714pWTcMBWBVfqaT_7seNNg.

¹²⁷ PCHR, *2011 Annual Report*, p. 2. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2011_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDCBoKHc0eBWIQFggLMAM&client=internal-uds-cse&usg=AFQjCNGfvrrOWdtZtfvDPXsVMF7aOfACTw.

¹²⁸ PCHR, *2010 Annual Report*, p. 11. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2010_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDCBoKHc0eBWIQFggIMAI&client=internal-uds-cse&usg=AFQjCNERYaX69wIzqzLF30Fb4HostSr9A.

On 18 May 2009, it adopted *Implementing Guidelines on Jail Visitation*;¹²⁹ on 23 June 2009 it signed a *Memorandum of Undertaking* with the Philippine National Police, facilitating access to police detention facilities; on 16 September 2009, the Bureau of Jail Management and Penology issued a *Memorandum Circular* granting the Commission access to its jails. A *Memorandum of Agreement* between the Commission and the Armed Forces of the Philippines that would facilitate visits to military detention facilities has been drafted, but the Armed Forces of the Philippines has yet to sign it.

The PCHR has also agreed its procedure for conducting visits. All visits are made by authorized officers and personnel, covered by a *Mission Order*.¹³⁰ Within five days of a mission, the officer or the team that conducted the visit must submit a comprehensive post-mission report to the official who issued the *Mission Order*. A copy of the report should be furnished to the Commission's Assistance and Visitorial Office,¹³¹ which submits to Members of the Commission regular monthly reports on all visitation activities, as well as special reports that may be required. The Assistance and Visitorial Office submits consolidated annual reports on its services and related programmes and projects.¹³² State authorities, their agents, or any person acting in their stead or by acquiescence, who deliberately or without just cause disregard or refuse to obey the authority of the Commission to enforce its visitorial power, are liable for contempt.¹³³

Republic Act no. 10353 of 2012 (the *Anti-Enforced Disappearance Act*) strengthened the visiting powers of the PCHR. Under this law, the Commission or its duly authorized representatives are mandated and authorized to make regular, independent, unannounced, and unrestricted visits to, and to inspect, all places of detention and confinement.¹³⁴

During the period under review, the PCHR conducted many announced and unannounced visits. When Commission officials succeeded in obtaining entry to detention facilities, they were able to interview detainees. Visitation reports are summarized in the Commission's annual reports. For example, the 2011 annual report calculated that the PCHR had reached a

¹²⁹ Commission on Human Rights of the Philippines Resolution CHR (IV) no. A2009-053-F.

¹³⁰ PCHR, *Rules of Procedure, Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance* (April 2012), Rule 17, section 4.

¹³¹ PCHR, *Rules of Procedure* (April 2012), Rule 17, section 5.

¹³² PCHR, *Rules of Procedure* (April 2012), Rule 17, section 6.

¹³³ PCHR, *Rules of Procedure* (April 2012), Rule 17, section 7.

¹³⁴ Republic Act no. 10353, 2012 (Philippines), section 13.

total of 46,170 prisoners during regular and on-the-spot visits.¹³⁵ In 2010, the annual report stated that the Commission conducted 520 jail visits.¹³⁶

Since it was founded, PCHR staff have received a certain amount of training. From 2003 to 2006, the Medical Action Group co-organized a training for PCHR staff and other officials on how to identify, document, and report torture cases. Training increased after the passage of Republic Act no. 9745 (the Anti-Torture Act), which requires anti-torture training.¹³⁷ In 2010, the Association for the Prevention of Torture organized a training workshop for PCHR staff. A key point that emerged was the distinction between preventive and reactive visits: the PCHR teams that make preventive visits are now separate from teams that visit in response to a complaint.¹³⁸

The PCHR's annual reports cite other training activities. In 2010, for instance, supported by the Australian government, it embarked on a four-year project to strengthen its investigative capacity with the help of a Peruvian forensic anthropology team.¹³⁹ In 2011, the Commission and three NGOs (the Balay Rehabilitation Center, the Medical Action Group, and Task Force Detainees of the Philippines) organized training on preventive monitoring of torture and ill treatment.¹⁴⁰ In 2012, staff participated in a crime scene investigation training course in Bangkok.¹⁴¹

Other complaints bodies

A number of bodies, in addition to the PCHR, can receive and investigate complaints of torture. Most have a mandate to investigate violations of law by public officials. They include the Ombudsman, an independent

¹³⁵ PCHR, *2011 Annual Report*, p. 2. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2011_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDcBoKHc0eBWIQFggLMAM&client=internal-uds-cse&usg=AFQjCNGfvrOWdtZtfvDPXsVMF7aOfACTw.

¹³⁶ PCHR, *2010 Annual Report*, p. 23. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2010_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDcBoKHc0eBWIQFggIMAI&client=internal-uds-cse&usg=AFQjCNERYaX69wIzqzLF30Fb4HostSr9A.

¹³⁷ Republic Act no. 9745, 2009 (Philippines), section 21.

¹³⁸ Interview with Dr Renante Basas, Director, Assistance and Visitorial Office, Commission on Human Rights, 4 September 2014, and 18 September 2014, Quezon City, Luzon.

¹³⁹ PCHR, *2010 Annual Report*, p. 66. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2010_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDcBoKHc0eBWIQFggIMAI&client=internal-uds-cse&usg=AFQjCNERYaX69wIzqzLF30Fb4HostSr9A.

¹⁴⁰ PCHR, *2011 Annual Report*, p. 82. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2011_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDcBoKHc0eBWIQFggLMAM&client=internal-uds-cse&usg=AFQjCNGfvrOWdtZtfvDPXsVMF7aOfACTw.

¹⁴¹ PCHR, *2012 Annual Report*, p. 59. At: http://www.chr.gov.ph/MAIN%2520PAGES/about%2520us/PDF/2012_chr_annual_report.pdf&sa=U&ved=0ahUKewju4-Gi253MAhWDcBoKHc0eBWIQFggEMAA&client=internal-uds-cse&usg=AFQjCNHRtCH714pWTcMBWBVfqT_7seNNg.

body created by the 1987 Philippine Constitution to consider the criminal and administrative liabilities of public officials who violate the law,¹⁴² and the Civil Service Commission, an independent body created by the 1987 Philippine Constitution to serve as the central personnel agency of the government.¹⁴³ The Civil Service Commission only considers the administrative liability of public officials.

It may be useful to explore the possibility of streamlining these mechanisms and how cooperation between them might be improved.

Other agencies receive complaints against police officers and consider their administrative liability. They include the Philippine National Police Command, which exercises control over serving police;¹⁴⁴ the National Police Commission, which exercises administrative control and operational supervision over the Philippine National Police;¹⁴⁵ the People's Law Enforcement Bureau, the principal office receiving citizens' complaints against the police;¹⁴⁶ and the Philippine National Police Internal Affairs Service, which carries out investigations.¹⁴⁷

The Optional Protocol to the UN Convention against Torture

The Philippines acceded to the Optional Protocol to the UN Convention against Torture in 2012. It is premature to assess its effect. The government has recognized the competence of the Subcommittee on Prevention of Torture to carry out unannounced and unrestricted visits, but it inserted a reservation that postpones such visits.¹⁴⁸

¹⁴² 1987 Philippine Constitution, Art. 12, section 18. According to Anatolio Alejandrino (Associate Graft Investigation Officer at the office of the Ombudsman), the Ombudsman has handled torture cases (interview on 23 January 2015, Quezon City, Luzon). Information on these cases is not disaggregated but some information is available in the Ombudsman's annual reports. (For instance, case RAS-C-04-1516 involved a police officer charged with grave misconduct for pistol-whipping and kicking civilians in Manila.) The Ombudsman's annual reports are available at its main office. Annual reports from 2004 to 2012 are online at: <http://www.ombudsman.gov.ph/index.php?home=1&navId=Ng=&subNavId=NDg>.

¹⁴³ 1987 Philippine Constitution, Art. 19B, section 3.

¹⁴⁴ Republic Act no. 6975, as amended, 1990 (Philippines), section 23.

¹⁴⁵ Republic Act no. 6975, as amended, 1990 (Philippines), section 14.

¹⁴⁶ Republic Act no. 6975, as amended, 1990 (Philippines), section 43.

¹⁴⁷ Republic Act no. 6975, as amended, 1990 (Philippines), section 39.

¹⁴⁸ The Philippine reservation reads: 'In accordance with Part V, Article 24 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Republic of the Philippines hereby declares the postponement of the implementation of its obligations under Part III of the Optional Protocol, specifically Article 11 (1)(a) on the visitations by the Subcommittee on Prevention to places referred to in Article 4 and for them to make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment'.

The Optional Protocol to the UN Convention against Torture requires states parties to establish an independent and adequately resourced national preventive mechanism to prevent torture, which should have the power to carry out unannounced and unrestricted visits. The grace period for establishing this body has passed. Congress is studying a draft bill that would create a national preventive mechanism, but it has not yet been approved.

Torture has two faces

With respect to torture, Philippine practice diverges markedly from Philippine law. On one hand, measures to curb torture have steadily improved. Largely due to unrelenting campaigning by civil society,¹⁴⁹ laws relating to torture have become more sophisticated, culminating in Republic Act no. 9745 (the Philippine Anti-Torture Act)¹⁵⁰ which defines and punishes the crime of torture in accordance with the standards set out in the UNCAT. The PCHR has also progressed as a complaints and as a monitoring body. Because its independence is constitutionally guaranteed, the PCHR is potentially able to make effective use of its powers to investigate torture and visit prisons and detention centres. Moreover, Republic Act no. 10353 (the Anti-Enforced Disappearance Act)¹⁵¹ enables it to carry out unrestricted and unannounced visits.

Practice is another matter. The military and police have continued to commit torture as if they have no reason to stop. During the period under review, the incidence of torture improved slightly after the Marcos regime fell, but its frequency, severity, and geographical spread have remained high. Law enforcement officials continue to belittle or disregard the rights of detainees and to ignore the absolute prohibition of torture.

This dysfunction appears to be deeply entrenched. Three hundred years of Spanish colonial rule, followed by half a century of American colonization, complemented by Japanese occupation during the Second World War and the martial law rule of President Marcos, help to explain the wide divergence between law and practice. The Philippine military and police do not have roots in a solid tradition of sound and accountable law

¹⁴⁹ Interview with Sr Crescencia Lucero SFIC, Chair, Task Force Detainees of the Philippines, 4 September 2014, Quezon City, Luzon.

¹⁵⁰ Republic Act no. 9745, 2009 (Philippines).

¹⁵¹ Republic Act no. 10353, 2012 (Philippines).

enforcement. The attitudes this history has engendered will not change, or be changed, overnight.

In addition, long-standing conflicts with Muslim secessionists and with the New People's Army continue to tempt military and police officers to use national security considerations to justify torture. The Cabais, Salas, and Ajid cases (cited in this chapter) are evidence of this – while the Evangelista and 'wheel of torture' cases (also cited) show the degree to which the security forces torture suspects of common crimes.

Philippine law enforcement needs to change. A harsh colonial past and a history of martial law do not excuse torture. The Philippines' violent history should induce those responsible for law enforcement to take the opposite direction, and firmly abjure and oppose torture. The law can light the path ahead. It has the potential to show 'what could be' and eventually guide practice. For the moment, unfortunately, this remains an aspiration in the Philippines, and there is no indication when it might be realized.

Conclusion

The people of the Philippines have an expression: *doble kara*.¹⁵² It means 'of two faces'. The law says one thing; what happens is another. The country is an example of good law but very poor practice. Torture persists in spite of numerous international and domestic measures adopted to prevent it and, to date, those measures have had little effect on what happens upon arrest, at interrogation, and in places of detention.

Some measures, such as the Optional Protocol to the Convention against Torture, and Republic Act no. 10353 (the Anti-Enforced Disappearance Act), are new and will take time to have effects. Nevertheless, though the Republic Act no. 9745 (the Anti-Torture Act) has helped to raise official and public awareness of the prohibition of torture, the continuing practice of prolonged detention prior to filing charges, despite the criminalization of this practice,¹⁵³ promotes acts of torture.

A variety of reasons explain why the law has little effect. They include the sense of impunity of police officers and the military; the fear of reprisals felt by victims, witnesses, lawyers, and doctors; the absence of immunity for officials of the PCHR when they perform their monitoring duties; failure to apply the law equally to those who lack legal, medical, financial, and

¹⁵² The term is Spanish in origin.

¹⁵³ Revised Penal Code, 1930, as amended (Philippines), Art. 125.

other resources; the non-binding nature of PCHR referrals of torture to public prosecutors, and its recommendations of redress; and the shortfall in training provided to police officers, prosecutors, public attorneys, and officials of the PHRC.

Much remains to be done before the two faces of law and practice in the Philippines coincide, bringing torture to an end.