

Human Rights, Human Wrongs: Torture prevention, documentation and prosecution in the Philippines

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Abstract

This article presents an overview of the challenges faced by human rights organizations and survivors of torture in seeking justice despite the availability of an anti-torture law in the Philippines. Several legal, political, and security-related impediments are cited here to raise the challenge to state agencies to undertake steps to break the culture of impunity in the country by making the anti-torture law an effective remedy to prevent torture and for the victims to obtain redress. This paper draws lessons and recommendations from the insights generated by the authors in the course of their participation in the IRCT-led FEAT project.

Key words: impunity, torture, blindfolding, access to justice, medical documentation, forensic evidence, rehabilitation

Contextual Overview

Two soldiers armed with automatic rifles brought a man in handcuffs to a government clinic for a medical check-up. The doctor told the man – apparently a detainee, to sit down and casually examined his blood pressure. He asked the man how he is. The man looked at his escorts and said he is okay. When the doctor was done, the soldiers

thanked him and took their detainee back to their camp.

In a detention room inside the camp, the military interrogators blindfolded the man and took turns in beating and threatening him with death to force him to divulge certain information related to a crime that they were investigating. Through a small opening in the clothed that covered his eyes, the detainee recognized the leader of his torturers. When the investigators were done hurting him, they compelled him to sign a statement admitting responsibility to a murder case and owning the firearm allegedly used in the incident.

On the third day of his torment, his captors asked him to wear a pair of dark eye-glass, a long shirt that covered his arms, and a pair of pants. Two armed men brought him to the same government clinic for another round of medical examination. He was limping as he walked. His hands were bound by handcuffs behind his back. Now, another doctor was on duty, and the doctor asked him to sit down. The physician checked his blood pressure, and asked the military escorts to raise the man's clothes. The doctor saw his bruises and asked if he was in pain. He shook his head.

The doctor saw his broken hand and asked him if someone has caused its injury. He looked at his armed escorts and said no. The doctor said, "Okay." The soldiers then

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asked for a medical certificate which the doctor provided immediately. They soon brought him to the prosecutor's office to file a case of murder and illegal possession of firearms against him. The military men presented the medical certificate to the prosecutor together with the man's signed confession and other alleged "physical evidences." The prosecutor informed him about the charges against him and asked if he indeed committed murder and if he owned the gun presented as evidence against him. He insisted that he was innocent. A judge subsequently ordered his detention to a provincial jail to await his trial.

Not long after, his relatives arrived to see him inside the jail. Upon knowing about his ordeal and seeing his injuries, his family asked a pathologist to examine the detainee. On the basis of the independent medical report, they filed a case of torture against the military officer who instigated his torment. The prosecutor dismissed the complaint saying that the two medical reports earlier presented by the military indicated no signs of physical injuries, much less torture. He added that there is insufficient evidence to link the perpetrator to the allegation of torture.

This story is a familiar account among victims of torture in the Philippines. There are clear patterns that torture mainly occurs from the time of apprehension up to interrogation and detention of suspects. The period of arrest and presentation of the arrested person before a judicial authority is a period conducive to torture and ill-treatment. However, evidence backed by medical and scientific documentation prove that during the period immediately following the deprivation of liberty of a person the risk of torture and ill-treatment is at its greatest. Hence the need of necessary protection for the arrested person during this stage is considered to be crucial in preventing torture and ill-treatment.

Torture victims rarely have access to a legal counsel and a doctor immediately after arrest and during detention. The investigations conducted by police concerning allegations of torture are completely unreliable, if they document a torture incident at all. Victims couldn't get any justice for their torment because some doctors don't perform their medical examination properly either due to ignorance of forensic documentation of torture cases or because they are intimidated by authorities, or both. The lackluster consideration of prosecutors and judges of medical reports as evidence to litigate torture complaints is another reason why torture victims are discouraged from seeking redress anymore. This appears to be a predicament in a country where the rule of law is weak and the culture of impunity pervasive.

Enhancing forensic investigation and documentation

The International Rehabilitation Council for Torture Victims (IRCT) has supported its partners in the Philippines since 2009 in the promotion of the practice of high quality forensic documentation for increased reporting of torture. It is a multi-country undertaking where IRCT affiliates in the Philippines participated. Through the Forensic Evidence Against Torture (FEAT) project also aimed to popularize the use of, and victims' access to, forensic documentation as evidence in legal proceedings and to raise awareness about medical forensic evidence, victims' rights and state obligations under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and for the Committee Against Torture (CAT)¹ to properly investigate and prosecute perpetrators. Moreover, it intended to draw the attention and support of medical and legal professionals in the fight against torture.

The IRCT and its partners commenced with the activities shortly after the adoption of the Anti-Torture Act in November 2009.² The law, formally known as Republic Act (RA) No. 9745, was enacted 22 years after the government ratified the UNCAT in 1986. The persistent lobby work of the civil society organizations (CSOs) and their allies in government in and out of the country have made the passage of the law possible. Among others, the law defines and criminalizes torture based on the UNCAT.¹ Moreover, it imposes punishment to perpetrators who are persons in authority or agents of a person in authority and sets a range of punishment, the maximum of which is life imprisonment for torture which results in the mutilation or death of the victim, or is committed with rape and other forms of sexual abuse, or when committed against children. The law also prohibits and punishes the establishment, operation and maintenance of secret detention places and renders inadmissible any confession, admission, or statement obtained as a result of torture. Inspired by the framework of restorative justice. It also seeks to establish a comprehensive rehabilitation programme for torture victims and their families, and a parallel rehabilitation programme for perpetrators as well.

Obstacles to redress

Under the anti-torture law, victims can demand their right to medical, psychological evaluation and treatment right before and after interrogation. It also obliges the concerned authorities to inform the detainees or other torture victims of their rights to be examined or attended to by a doctor of their choice, and that they could only waive this right on free will, and in writing, and with assistance and presence of counsel. The medical report should be duly signed by a physician and must include basic personal

data about the victim, name and address of nearest kin, name and address of persons who brought the victim for evaluation or treatment, nature and probable cause of victim's injury, pain, disease or trauma, approximate time and date when injury, disease or trauma was sustained, time, date, place of treatment, and the diagnosis, prognosis, or disposition of victim.

However, detainees in police custody rarely assert their right to access the services of an independent doctor because they are not aware of their rights and the authorities don't have the initiative to have them seen by an independent health professional.³ This particularly is the situation for those who are poor. In many cases they unable to see a doctor until days or even weeks after their alleged torture, when their family members or human rights groups have finally gained access or filed a complaint with the Commission on Human Rights (CHR) which dispatch investigators and doctors to the detention facilities. But by that time visible marks have already faded or disappeared.⁴

In some cases, arresting police officers facilitate medical examination after inquest, but they were seen by doctors assigned to major police or military health centers or to government hospitals who gave them cursory "check list" physical examinations with no questions about how torture marks may have been inflicted. Thus, the medical certificates they issue are frequently summary in nature referring only to visible bruises or contusions with a formulaic assessment of how long the torture victims is likely to need medical treatment.⁵

There is inadequate and unsystematic medical documentation and reporting of alleged cases of torture.⁶ Usually, CSOs that promote health and human rights are given the run-around or are barred from entering jails and detention centers and when they

are allowed to examine the victims, they are prohibited from bringing medical and documentation equipment inside these detention facilities as well.

There is no national standard on the investigation, documentation and reporting cases of torture either. The Istanbul Protocol⁷ is not commonly used by medical doctors in assessment of persons who are allegedly tortured or ill-treated in the Philippines. Different government investigating agencies make use of their respective methods and formats for documenting alleged cases of torture.

The enactment of the anti-torture law provided the FEAT project a favorable legal mechanism to find out if proper forensic investigation and documentation would make a dent in breaking the chain of impunity in the Philippines. Balay Rehabilitation Center and MAG acted as the IRCT partners in undertaking the FEAT project. They are both members of the United Against Torture Coalition (UATC) that lobbied for the passage of the law. It is now headed by Balay as the secretariat.

Illustrative cases

Both organizations were able to support two cases of torture against members of the security forces and police officers. The first was about the torment of Lenin Salas and four other artists whom their police captors labeled as members of a clandestine communist organization. The incident happened shortly after the anti-torture law took effect in November 2009; it was probably the first torture incident that was reported since President Benigno Aquino II rose to power. The regional office of the CHR presented the complaint to the prosecutor's office in the province of Pampanga. In their affidavits, the complainants claimed that they have been badly beaten and threatened with death by their police captors. The physical and psycho-

logical marks of their suffering were well documented by an experienced Filipino forensic practitioner and a medical expert and mental health specialist from Turkey who were sent by IRCT to the Philippines. The signs of the violence they suffered were also captured by the camera of Al Jazeera television and was reported by local media as well. The CHR included the reports of the forensic experts and the media to back up the case. In July 2011, the prosecutor dismissed the complaint saying that the victims were unable to identify their alleged torturers as they were blindfolded at the time of their torment. He ignored the overwhelming medical evidence that torture had indeed happened and did not consider that blindfolding itself is an act punishable under the anti-torture law.

The CHR Office in the province of Bicol filed the second torture case that was supported by Balay and MAG. It stemmed from the complaint of Ronel Cabais whom the military picked up while attending the wake of his grand mother. The soldiers said he is a member of the New People's Army. They beat him up in front of his relatives before bringing him to the army detachment where they continued to harm him. He suffered from electrocution and he nearly lost his breathe when the soldiers covered his head with plastic. They later turned him over to the police who filed a case of unauthorized possession of a firearm during the election period. He did not receive any medical treatment right after his torture. Before he was taken to jail, a public health officer had examined the injuries he sustained. When Balay and MAG learned of his suffering, they arranged for a check up by a team of independent medical experts to back up his torture narrative. The prosecutor who studied his complaint found enough basis to put the accused soldiers on trial. The Municipal Circuit Trial Court in Ligao, Albay

has issued a warrant of arrest for his alleged tormentors. Police records identified them to be members of the 2nd Infantry Battalion of the Army's 9th Infantry Division. However, the accused remain at large as the military authorities denied knowing those named in the arrest order despite official records indicating their names, rank, and the military unit to which they belong.

Cabais eventually posted bail to enjoy his liberty while awaiting the result of his trial for alleged unlawful possession of a firearm. Not long after, his relatives reported that members of the security forces implicated in his torture complaint were asking about him. He felt that his security was at risk. He tried to seek sanctuary from the CHR but the commission turned him down because it has no support programme to offer to torture victims who continue to be at risk. He has thought about the witness protection programme of the Department of Justice, but felt discouraged by unflattering reports he heard about it. Some of his supporters offered him a temporary place to stay.

Advocacy engagements

As a measure to make both cases prosper, Balay conducted legal consultations and public forums regarding the anti-torture law. It provided legal support for the representation of the complainants and coordinated with the legal counsels, the CHR, and the relatives and support groups of the torture survivors. They also participated in rallies and other street movements to draw attention to torture prevention, and had some media engagements to popularize the issue. Balay also initiated dialogues with the human rights affairs officers of the armed forces to seek their assistance in persuading their accused members to show themselves in court and face trial. MAG's active and critical engagement with the Department

of Health (DoH) has gained headway in mainstreaming the prevention of torture in the national health system. To this effect, the crafting of the DoH's Administrative Order (AO)⁸ in the implementation of certain provisions of the anti-torture law in relation to medical aspect i.e. Sec. 12 of RA 9745 and Sec. 22 of its IRR has pushed the process forward. The draft AO, if approved, will provide for the establishment of a special anti-torture management unit and anti-torture help desk in specific health facilities.

Section 22 of the Anti-Torture Act Implementing Rules and Regulations (IRR) states that all medical examiners conducting the examinations described in these rules and regulations are under a legal and ethical obligation to conduct a diligent and complete medical examination. Any violation of this obligation by conduct or omission shall be referred to the relevant authorities and medical associations for further investigation. All medical reports must be duly signed by the examining physician.⁹

In particular, MAG is actively working with associations of medical and health professionals, for example, the Association of Municipal Health Officers of the Philippines (AMHOP), for the institutionalization of the practice of torture documentation using the Istanbul Protocol as basis. The AMHOP issued a declaration of support in the implementation of the anti-torture law and emphasized their role as medical doctors in the prevention of torture. In the policy level, the MAG and Balay were among the main CSOs that participated in the drafting of the IRR of the Anti-Torture Act which insisted on the adoption of an investigation and documentation process based on the Istanbul Protocol.

The MAG has collaborated with the CHR in the training of medical professionals on proper documentation of torture cases. The Balay medical consultant and social

workers also make use of the protocol as basis for determining if an injury or physical and psychological complaint of a person is related his or her torture experience or not. The MAG is as of the moment lobbying the DoH to develop a medico-legal curriculum to enable health professionals to effectively investigate and document torture and ill-treatment. The curriculum will include comprehensive guidelines for performing clinical examinations to detect physical and psychological evidence of torture and ill-treatment. Although the requirement for submission of a forensic and medico-legal report under RA 9745 deserves appreciation as a development in the field of human rights and law, it is problematic in practice. The MAG realized that there are some executive policies which have implications on the implementation of the Anti-Torture Act. Thus, a consultation forum was conducted by the MAG in an attempt to harmonize executive policy i.e. Executive Order No. 212 dated July 10, 1987 amending Presidential Decree No. 169.

Balay, for its part, provided psychosocial support for the survivors and their family members and relatives who are in distress as well. It also organized seminars for prison authorities and custodial officers on the anti-torture law and introduced a psychosocial approach in attending to the welfare of inmates, including the torture survivors. This influenced the Bureau of Jail Management and Penology (BJMP) to call the attention of its regional offices to observe that anti-torture law. It also supported the ratification of the Optional Protocol to the Convention Against Torture (OPCAT).

Moreover, Balay held a forum with the directors of the CHR regional offices from across the Philippines to strengthen the cooperation of the commission and CSOs in terms of torture monitoring, documentation and prosecution. It has organized case con-

sultations regarding the two cases of torture that they are supporting under the FEAT project. Moreover, it introduced the anti-torture law to the military officers and distributed primers to educate them. It provided training to community-based human rights monitors in some areas in Central Luzon and Caloocan City where human rights violations are deemed to be on the rise.

The prompt reporting of Balay and MAG in coordination with local human rights NGOs to the media of the torture of a civilian in Basilan, southern Philippines in July 2011 has resulted in the court martial proceedings for four members of the Scout Rangers who were implicated in the arrest, maltreatment, and burning of the victim. The survivor and his relatives are collaborating with CSOs for the filing of the case against the perpetrators. Balay has provided psychosocial support for the relatives of the victims and organized legal conferences for the case preparation as well.

Insights and issues

The two cases supported by the FEAT project have affirmed the importance of medical documentation of torture cases using internationally recognized instruments such as the Istanbul Protocol. The experience of the medical consultant of Balay and MAG underscored the need to be thorough in the medical and legal documentation to include, as much as possible, the identity of the perpetrator and the place, time and circumstances when the torture happened, laboratory reports, and photographs to corroborate the findings of the physical and psychological examination. The description of the sequelae of torture is deemed essential as well. The victims of torture, because of the psychological sequelae from which they suffer or the pressures on them, are often unable to formulate by themselves

complaints against those responsible for the torture and ill-treatment they have undergone. This is just some of the information that is expected to be included in the medical investigation and documentation as cited in the implementing rules and regulations of the anti-torture law. The absence of documenting acts of torture may be considered as a form of tolerance thereof and of non-assistance to the victims.

In addition, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹⁰ states that “a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.”

Access to justice

The FEAT project has enabled Balay and MAG to generate the following observations and insights on issues that have to be addressed in order to make the anti-torture law an effective instrument in preventing torture and prosecuting those who continue to engage in such kinds of criminal acts:

1. Limitations on the victim’s right to choose his or her medical doctor – authorities hardly notify the torture survivors (mostly poor people who are often suspected of committing a crime or being involved in anti-government activities) of their right to medical examination and treatment. This is because the authorities are ignorant of the provision of the anti-torture law or do not care at all. There is an apparent bias against the torture victims as well because of their status as alleged law breakers or enemies of the state. The victims are not aware of their rights themselves.
2. Insufficient medical doctors with capabilities and commitment to document alleged cases of torture – the CHR has only four doctors who are all based in its central office. Medico-legal experts in the provinces are few, and they are not necessarily trained in forensic investigation. In the provision of the anti-torture law on the role of medical practitioners in torture documentation is not widely disseminated among health professionals. A more crucial dilemma for doctors is making the decision of whether to be involved in a delicate matter such as torture documentation and the prospect of participating in a perilous litigation proceeding. The prospect of testifying against security forces, politicians, and other powerful personalities who can make their professional career suffer and put their lives at risk is a source of discouragement to them. Between preserving their prestige, wealth, and comfort and standing by the side of tortured criminals, terrorists, and communists, the likely choice of most medical professionals is obvious.
3. Lack of professional independence, especially for those employed by the Armed Forces and the Forensic Investigative Bodies of the government doing documentation of physical injuries, including torture – medical examiners preferred by the security forces are likely to be biased in favor of the authorities. They tend to be cursory in their work and would usually issue a medical certificate that has no use for torture victims who wish to file a complaint.
4. Failure of fiscals or prosecutors to give primary importance to a medical report done by the medical doctors chosen by the victims – this may have something to do with the pressure exerted on them by security forces; unless the case is high profile or politically sensitive, the

prosecutor appear to be disinterested in defending the case unless higher government authorities would intervene to see that the case would move on. However, as most cases of torture involves impoverished individuals and those who are generally looked down upon by society, they are hardly given priority compared to cases that would have high political value or would bring about certain rewards.

5. Reluctance of government medico-legal practitioners under the National Bureau of Investigation and the Philippine National Police to include in their forensic reports, in their analysis and conclusions whether torture has been committed or not.
6. Non-cooperation of security forces – the military and the police leadership have both publicly declared their adherence to the principles of human rights; however it is rare that they initiate the surrender of their colleagues who are charged with a human rights violation to civilian authorities unless the situation has become sensational or too politically charged for them to contain anymore, and that refusing to do so would be untenable any longer.
7. Harassment of victims and support groups – the relatives of Salas and his companions have been placed under surveillance by security forces. Some of them have even intruded in the homes of the families of some detained torture victims. This happened to the relatives of Cabais in Bicol as well. A Balay staff who observed the trial of Cabais has been questioned by armed men himself.
8. Need for rigor in documentation and closer cooperation between the Commission on Human Rights and human rights NGOs – not all CHR regional offices are proactive in documenting and reporting torture cases. As in the case of the Cabais complaint, little is heard of the CHR ini-

tiative to make the military do something to produce the soldiers cited in the arrest warrant.

9. Lack of state support for the rehabilitation needs of survivors – the anti-torture law mandates the state agencies to establish a national rehabilitation programme for the rehabilitation of torture victims a year after the law takes effect. A draft programme has been produced by a technical working group, but it is still far from fulfilling the provision of the law.

Conclusion

The adoption of the Anti-Torture Act in November 2009 that explicitly criminalizes all forms of torture is a significant improvement to the legal environment that would prevent torture in the Philippines. However, more than two years since the law took effect, the number of cases brought to court against torturers remain a drop in the bucket. This is perceived as due to the weak public knowledge of the law and underreporting of torture incidents, the harassment and intimidation of complainants and their relatives, the lack of rigor in investigation of torture reports, the gap in cooperation between civil society and the CHR, the lackluster attention given by prosecutors on torture cases, and the non-cooperation of the security forces.

There is a need to educate and train the public prosecutors regarding the Anti-Torture Act. Since its enactment, the implementation of the law is far more desirable because there are cases in which the prosecutor fails to comply with the provisions of the law and their vulnerability to pressure from authorities undermines their impartiality.

This indicates that the successful prosecution of the alleged torturers requires proper forensic investigation and documentation as it entails the resolution of legal and political

impediments that render medical documentation non-effective. While monitoring and documentation is a good strategy for torture prevention and prosecution, the justice system and the security establishment, two institutional pillars that can make a difference in promoting a human rights culture in the Philippines, have to be influenced to demonstrate ardor in giving justice to the victims as well. Hence, it is imperative that the Armed Forces of the Philippines, through its Human Rights Office, is able to show results in its commitment to help turn over the accused military to the civilian courts as in the case of the Cabais torture. The Department of Justice may have to show more political will itself by instructing its prosecutors, including the Public Attorneys Office, to stand by the side of torture victims and to act with the resolve of successfully prosecuting the perpetrators in the same way that its prosecutors have acted swiftly and boldly on high profile cases such as the charge of electoral sabotage against former President Gloria Macapagal Arroyo and former Election Commission Chair Benjamin Abalos and the case of kidnapping of activists filed against Major General Jovito Palparan.

In terms of a rehabilitation programme for victims of torture, the more fundamental issue on this is that the structures and processes of the programme are not yet in place.

The efforts of the CHR and its civil society partners to work together must result in the compilation of all records of torture on their list, a review of the status of the respective cases, and the coming up of a time-bound action plan to provide justice to the victims. The oversight committee composed of lawmakers and the CHR must also be convened soon, and all government agencies cited in the Republic Act 9745 should take measurable and verifiable steps in fulfillment of their mandate as provided for by the law.

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