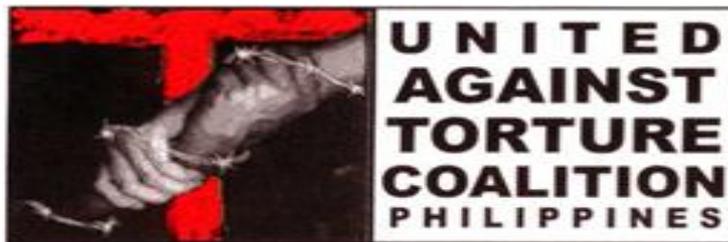


# Joint Civil Society Report on Torture and Other Inhuman or Degrading Treatment or Punishment in the Philippines



**Submitted by the United against Torture Coalition-Philippines (UATC) to the Committee against Torture (CAT) for its consideration during its deliberation of the report of the Government of the Philippines in its 57<sup>th</sup> Session on April 18- May 13, 2016**

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*This report has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of authors and can in no way be taken to reflect the views of the European Union*



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# Table of Contents

Introduction.....	4
Executive Summary.....	5
UATC Response to the List of Issues .....	6
UNCAT List of Issues: Issue 1.....	6
UNCAT List of Issues: Issue 2 .....	7
UNCAT List of Issues: Article 2, Issue 3 .....	14
UNCAT List of Issues: Issue 4 .....	19
UNCAT List of Issues: Issue 5 .....	19
UNCAT List of Issues: Issue 7 .....	21
UNCAT List of Issues: Issue 8 .....	25
UNCAT List of Issues: Issue 9 .....	25
UNCAT List of Issues: Issue 10 .....	25
UNCAT List of Issues: Issue 11.....	26
UNCAT List of Issues: Issue 12 .....	27
UNCAT List of Issues: Issue 18 .....	27
UNCAT List of Issues: Issue 19 .....	28
UNCAT List of Issues: Issue 21 .....	29
UNCAT List of Issues: Issue 22 .....	29
UNCAT List of Issues: Issue 24 .....	30
UNCAT List of Issues: Issue 25 .....	31
UNCAT List of Issues: Issue 28.....	31
UNCAT List of Issues: Issue 29.....	32
UNCAT List of Issues: Issue 30.....	33
UNCAT List of Issues: Issue 32 .....	34
UNCAT List of Issues: Issue 36 .....	35
UNCAT List of Issues: Issue 37 .....	35
UNCAT List of Issues: Issue 39.....	36
Recommendations.....	37
Annex A: Data on torture and ill-treatment in the Philippines.....	42

## **Introduction**

This report is being submitted by the United against Torture Coalition (UATC) to the UN Committee against Torture for its consideration during its deliberation of the report of the Government of the Philippines in its 57<sup>th</sup> Session between April 18 to May 13, 2016. This document seeks to offer an alternative response and recommendations related to some of the List of Issues prepared by the Committee prior to the submission of the third periodic report of the Philippines (CAT/C/PHL/3) and adopted by the Committee at its forty-eighth session from May 7 to June 1, 2012. It also takes into consideration the concluding observations from the previous reports submitted by the joint Civil Society to the Committee prior to the Philippines' second periodic report at the CAT 42<sup>nd</sup> session, from 27 April to 15 May 2009. The report also annexes data on torture and ill-treatment in the Philippines collected by the BALAY Rehabilitation Center through its provision of rehabilitation services to victims.

The UATC is a coalition of independent civil society organizations in the Philippines. Established in 2005, it has lobbied for the enactment of the Anti-Torture Act and successfully campaigned for the ratification of the Optional Protocol to the Convention against Torture in the Philippines. It has also engaged with the Commission on Human Rights, the Presidential Committee on Human Rights, and other executive agencies and the security sector and law enforcement organizations in the Philippines for torture prevention and the rehabilitation of torture victims.

The UATC members that contributed in this report are the following: Amnesty International-Philippines, BALAY Rehabilitation Center, Children's Legal Rights and Development Center (CLRDC), Families of Victims of Involuntary Disappearance (FIND), Medical Action Group (MAG), the Philippine Alliance of Human Rights Advocates (PAHRA), and the Task Force Detainees of the Philippines (TFDP).

The UATC has produced this report in response to the call of the Committee for non-governmental organizations to participate by providing direct country-specific information to the members of the Committee and to submit written information in respect of the follow-up on the concrete measures taken by the government in response to the Committee's Recommendations.

The report was produced with technical support from the International Rehabilitation Council for Torture Victims (IRCT).

## Executive Summary

This report notes with great concern that while the Philippine government prides itself for producing a progressive piece of legislation that criminalizes and prohibits torture in all circumstances, the existence of the legislative text known as the Anti-Torture Act, or Republic Act 9745, did not guarantee the end of impunity nor facilitate ease of access to justice and reparation for persons who have suffered from one of the most grave human rights violations in the Philippines.

Records gathered by UATC members indicate that torture remains pervasive though under-documented in the Philippines. Among the reasons behind this are the following: doubt of victims to the independence and integrity of mandated investigating agencies, fear of reprisal, costly and uncertain litigation process, and distrust on the justice system.

The majority of reports of torture gathered by UATC members involve police officers, members of security forces, and local peace keepers. Those most at risk are persons living in impoverished areas and in places where government security and peace and order operations against armed insurgency and violent activities of non-state armed groups are palpable. Children-in-conflict-with the law (child offenders) and suspected criminals, including those who may have been involved in shady deals with law enforcers are also at risk but are hardly documented by those mandated to do so by the Anti-Torture Act.

While the law contains progressive provisions on investigation, prosecution and victims support, victims and their relatives' lack adequate information regarding their rights under the law and the options available to them to lodge a complaint. Most of the accountability mechanisms are either unknown to victims and their families or are not easily accessible.

The process of investigating, prosecuting and granting redress to victims for torture and ill-treatment remains deeply flawed despite very strong legislation in the Anti-Torture Law. The right of victims to be examined and treated by an independent medical doctor is hardly observed by authorities. Neither do they inform the victims of this right under the law. Safeguards to the safety and integrity of independent medical examiners and even public doctors who are mandated to perform torture documentation are regarded as good on paper but are not felt by the practitioners. There are not enough health professionals trained in documentation of torture according to the Istanbul Protocol leaving many victims without access to much needed evidence of wrong doing.

Once such evidence is produced, prosecution rarely moves forward due to significant challenges in identifying perpetrators. There is frequent use of hoodings and the military has been seen to deny the existence of identified perpetrators. Finally, the very elaborate rehabilitation programme envisaged by the Anti-Torture Law is yet to be implemented in practice. While all relevant regulations are in place, the responsible agencies have taken little action to make it a reality for victims on the ground.

Meanwhile, undisclosed or secret places of detention where torture had been committed by law enforcers have been reported. High ranking military or police officers have escaped from command responsibility due to the apparent effort of their superiors to protect them from criminal accountability. UATC has cited in this report instances where law enforcers have not served warrants of arrest against those implicated in torture cases.

These, and other factors, constitute the main reasons why no torture case have seen the light of justice six years since the enactment of the Anti-Torture Act.

## UATC Response to the List of Issues

### UNCAT List of Issues: Issue 1

*In the light of the Committee's previous recommendations (para. 10),<sup>1</sup> please provide the Committee with the full text of the definition of torture contained in the State party's legislation. Has the definition of torture as found in article 1 of the Convention been incorporated into domestic law, in particular into the Penal Code or the Anti-Torture Act (RA 9745)? Please provide the Committee with information on any cases of direct application of the Convention by domestic courts?*

The definition of torture under the Convention against Torture (CAT) has been incorporated in the domestic law of the Philippines. The Republic Act 9745, otherwise known as “An Act Penalizing Torture And Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor,” (or the Anti-Torture Act or ATA) has defined torture as:

*“[A]n 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 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*

In addition, “other cruel, inhuman and degrading treatment or punishment” is defined in the ATA as a deliberate and aggravated treatment not listed as acts of torture under the law but which is inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement.

Following the enactment of RA 9745 in 2009, reports of torture continue to be gathered by civil society organizations. From January to March of 2016 alone, Balay Rehabilitation Center has recorded thirteen (13) cases of torture committed against individuals in Bicol, Davao, and Basilan, places where the government campaign against terrorism, criminality, and insurgency is pervasive. It has also interviewed around 20 so called children-in-conflict-with the law who have been subjected to different forms of cruelty and ill treatment by agents of persons in authority to punish and make them admit to the crimes they have allegedly committed<sup>1</sup>.

The Commission on Human Rights (CHR), in its initial report on the forceful suppression of protest by a special armed unit of the Bureau of Jail Management and Penology (BJMP) of inmates in Makati City Jail on March 9, 2016, has disclosed that “90 percent” of the 522 inmates bore injuries, with “bruises from nightsticks, etc.”<sup>2</sup> The incident took place when authorities moved in to control inmates who staged a noise barrage, destroyed government property and caused the power supply to be cut — all in protest of a crackdown on contraband. While the BJMP is yet to issue an official result of its inquiry, the United against Torture Coalition (UATC) has reminded authorities that the anti-torture law has to be

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<sup>1</sup>Most of the accounts of torture have taken place in 2015. The children who are confined in a government-run center for suspected child offenders have disclosed their narratives to Balay saying that they fear that authorities might harm them some more if they file a complaint.

<sup>2</sup>“90% of Makati inmates bruised after protest”. <http://newsinfo.inquirer.net/772681/90-of-makati-inmates-bruised-after-protest#ixzz43UHajkaT>

upheld in their investigation, including the “principle of command responsibility”, if applicable.

A number of torture cases have been filed in local courts since RA 9745 was enacted in 2009; some with the support from the Commission on Human Rights and members of the UATC. A few military personnel and police officers implicated in acts of torture have been dismissed from service. Some courts have also issued a warrant of arrest against perpetrators<sup>3</sup>. However, no one is known to have been convicted of torture in a Philippine court. Perpetrators of torture continue to act with impunity, as if they are above the law.

### **UNCAT List of Issues: Issue 2**

*Are all acts of torture classified as criminal offences with corresponding penalties under the Anti-Torture Act?*

Under the Anti-Torture Act, torture is a criminal act – unjustifiable under any circumstances. Torture is a distinct crime - separate and independent from all other crimes punishable under the Revised Penal Code and special laws. The filing of a complaint of torture is not subject to a time limitation and those convicted of torture are not allowed to benefit from a special amnesty law or similar measures exempting them from criminal proceedings and sanctions.

Penalty corresponding to the acts of torture committed and the degree of suffering, damage, or injury of the victim is meted out to perpetrators in line with Article 14 of the said law. For instance, the penalty of *reclusion perpetua* (maximum of 40 years imprisonment) shall be imposed upon the perpetrators of the following acts: (1) Torture resulting in the death of any person; (2) Torture resulting in mutilation; (3) Torture with rape; (4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and (5) Torture committed against children. of the said law.

*Please indicate whether the Act provides for liability for individuals in positions of command responsibility and specifically indicate whether any individual has been convicted on this basis.*

Section 13 of RA 9745 has determined that the following can be criminally liable for acts of torture:

a. Liable as principals

1. Any person who actually participated or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts
2. Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principals.
3. The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates.

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<sup>3</sup> For instance, two army personnel have been dismissed from service by the military for their involvement in the torture of a baker in Basilan in 2011. Known as the ‘Ajid Case’ the soldiers and the Army Captain implicated in the same case have not yet been brought to trial despite the arrest warrant issued by the trial courts in Basilan.

b. Liable for command responsibility

1. Any superior military, police or law enforcement officer or senior government official who has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission
2. Any superior military, police or law enforcement officer or senior government official who has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals.

c. Liable as accessory

1. Any public officer or employee who has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice takes part subsequent to its commission in any of the following manner:
  - (a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;
  - (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or
  - (c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment: Provided, That the accessory acts are done with the abuse of the official's public functions.

Despite the provision of the command responsibility in the Anti-Torture Act, UATC has noted that there seems to be a weak observance of this principle among the military and police establishment. For instance, in the torture case filed by Ronnel Cabais<sup>4</sup> in Bicol in 2010, the Armed Forces of the Philippines (AFP) has officially denied that the Army officer and soldiers implicated in the complaint are members of the military. This practically rendered ineffective the warrant of arrest issued by the trial court against them in 2011.

The military officer who led the arrest and torment of Cabais has signed his name as Lt. Joel Santos in the police log book when they turned over him for allegedly committing the crime of rebellion and violating the election gun ban. They also identified themselves as members of the 2nd Infantry Battalion of the Army's 9th Infantry Division operating in Bicol. A certain Corporal Bienvenido I. Ajero also testified against Cabais during his trial. The military has stood by their declaration that they do not know those implicated in the torture of Cabais.

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<sup>4</sup>During interrogation, the military electrocuted Cabais and covered his head with plastic. Many civilians saw the soldiers beating him up. A local government health unit has issued a certificate attesting to the injuries suffered by the victim. In August 2010, the International Rehabilitation Council for Torture (IRCT) sent a team composed of a forensic doctor and psychologist, who are both experts in documenting torture in the Philippines, to document the case. They produced a Medico-Legal report concluding that the victim's allegations of torture were highly consistent with the physical and psychological symptoms. This along with a Medico-Legal report produced by a local expert was submitted to the prosecution. UATC members have furnished information about this case to the CHR and the Human Rights Office of the Armed Forces of the Philippines.

This has raised suspicion of a possible “command conspiracy” to cover up for the alleged perpetrators.

*Please provide detailed information on the contents of the Act as well as the steps taken to ensure its implementation in practice.*

The Anti-Torture Act also includes, among others, the following provisions intended to prevent or deter torture and to provide redress to the victims:

1. Prohibits and punishes the establishment, operation and maintenance of secret detention places.
2. Renders inadmissible any confession, admission, or statement obtained through torture.
3. Mandates the Commission on Human Rights (CHR), the National Bureau of Investigation (NBI), the Department of Justice, and the Public Attorneys Office (PAO) to initiate and complete their investigation of torture cases within sixty (60) days and assist in the filing of complaints against perpetrators.
4. Law enforcement agencies, including the Philippine National Police, the Armed Forces of the Philippines (AFP), and the Bureau of Jail Management and Penology (BJMP), are required to make public a list of all detention centers and facilities, including list of detainees and related information.
5. Affirms the right of torture victims or any person under the custody of authorities or agents of persons of authorities to be informed of their right to be seen and attended to by a counsel and an independent and competent doctor of their own choice.
6. Provides financial claims or assistance to victims of torture.
7. Establishes a comprehensive rehabilitation program for torture victims and their families, and a parallel rehabilitation program for perpetrators.

The United against Torture Coalition has collaborated closely with the House Committee on Human Rights and the Senate Committee on Human Rights and provided direct support to the legislators who championed the anti-torture bill until it was enacted into law in 2009. In keeping with its commitment under Section 24 of the Anti-Torture Act, human rights organizations such as the Balay Rehabilitation Center, the Medical Action Group (MAG), the Task Force Detainees of the Philippines (TFDP), and the Philippine Alliance of Human Rights Advocates (PAHRA) and the Families and Relatives of Victims of Enforced Disappearance (FIND) provided invaluable inputs and, in some occasions, initiated the meeting of the technical working group that crafted the Implementing Rules and Regulations of RA 9745. The IRR was issued by the President on December 10, 2010 in Malacañang, with the Secretary of Justice, CHR Chairperson and United Nations representative as witnesses. The IRR took effect on the same date.

Moreover, in fulfillment of its task under Section 19 of the Anti-Torture Act, the Balay Rehabilitation Center, the Medical Action Group (MAG), and the Philippine Network against Torture (PNAT) provided significant inputs to and, some occasions, convened the technical working committee that drafted the Comprehensive Rehabilitation Program for Torture Victims (CRPTV). The Program was approved for implementation by the Department of Social Welfare and Development (DSWD), the Department of Health (DoH), and the Department of Justice (DoJ) in 2014.<sup>5</sup>

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<sup>5</sup>Other steps recently undertaken voluntarily by members of the United against Torture Coalition to promote torture prevention and rehabilitation in the Philippines, among others, include the following: The Medical Action Group organized, “Scientific conference on the management and rehabilitation of torture victims” together with the Department of Health on November 11-12, 2015. The activity gathered seventy (70) medical doctors and healthcare professionals from all over the country. Balay Rehabilitation Center, for its part, has provided technical assistance to the Bureau of Jail Management and Penology (BJMP) in drafting its Guideline on Torture Prevention, Documentation and Reporting in 2015. The Guidelines has been published in booklet form to be

Notwithstanding the voluntary efforts of UATC members to fulfill their role under Article 24 of RA 9745 and Section 42 of its IRR<sup>6</sup>, the primary responsibility to implement the Anti-Torture Act remains with the state and its agencies, including the CHR. Six years since the law was enacted, several deficits are still to be addressed by mandated agencies in order to fully implement the RA 9745. Some of these are:

1. **Slow activation of the Oversight Committee** – Section 20 of the Anti-Torture Act provides for the creation of an Oversight Committee, headed by the Commission on Human Rights (CHR), to “periodically oversee the implementation of the act.” To date, the committee members<sup>7</sup> have not yet begin to sort out the issues that impede the effective implementation of RA 9745 raised by the UATC in its earlier reports.
2. **Inadequate budget for torture prevention and rehabilitation** - Section 23 of the RA 9745, at its enactment in 2009, has appropriated five million pesos (Php5,000,000.00) to the CHR for the initial implementation of the Act. The UATC has not received a report that the CHR was able to secure or not additional funding from the state’s Annual General Appropriations in the succeeding years to sustain the activities for torture prevention and rehabilitation in the Philippines. The UATC has also not come across a report on how the initial budget was used. This is something that the Oversight Committee could have discussed if the CHR has convened it much earlier. The UATC has deemed this as quite important considering the growing number of cases that the CHR has declared in its annual reports.<sup>8</sup>

Section 40 of the Implementing Rules and Regulations instructs concerned government agencies to allocate resources particularly for the provision of rehabilitation services to torture victims and their family members. This has not been realized as well, except in the Department of Social Welfare and Development (DSWD) which has set aside a modest fund for the training of its social workers on the Anti-Torture Act “pilot testing” of its rehabilitation guidelines for torture victims starting in 2015.

The Department of Health (DOH), for its part, sponsored a training on the Istanbul Protocol in 2015 at Antipolo, Rizal. The training was fully funded by the DOH to comply with provision of the Anti-Torture Law. However, considering the budget appropriations in the Philippines is approved by the Congress and on annual basis thus, mandated agencies have to really consider more efforts to set aside funds for the promotion of the Anti-Torture Law and their obligations under its provision on the rehabilitation program.

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distributed to all jails covered by the BJMP Nationwide. It has co-organized a seminar for 251 BJMP officers in 2015. The activities were participated in by 80 wardens, 9 legal officers, 64 jail health officers, 58 human rights and paralegal officers, and 40 inmates welfare and development officers. It has also co-organized workshops with the Department of Social Welfare and Development (DSWD) towards the drafting of its policies and program for torture victims. Members of the UATC contributed in the establishment of the National Monitoring Mechanism (NMM) that aims to gather various government and non-government agencies in order to keep track and work for the prosecution of cases of torture, involuntary disappearance, and extra-judicial killings.

<sup>6</sup> Article 24 of RA 9745 mandates civil society organizations to help in the crafting of the Implementing Rules and Regulations of the law and in the dissemination of such rules and regulations to all officers and members of various law enforcement agencies. Section 42 of the IRR recognizes the role of civil society organizations in exercising oversight function.

<sup>7</sup> Other members of the Oversight Committee are the the Chairperson of the Senate Committee on Justice and Human Rights, the respective Chairpersons of the House of Representatives' Committees on Justice and Human Rights, and the Minority Leaders of both houses.

<sup>8</sup> In its annual reports from 2012 to 2014, the CHR has declared the following cases of torture that it has documented: 40 cases, involving 64 victims (2012), 110 cases (2013), 155 cases (2014)

3. **Limited reach of efforts to popularize the Anti-Torture Law** – Section 21 of RA 9745 calls on the CHR, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (DILG) to ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

While some efforts have been done to comply with this provision, a huge information gap remains to be filled in. For instance, the Department of Health has come out with an Administrative Order No. 2013-0008 in 2013 instructing government healthcare providers, particularly doctors, to document patients who may have suffered from torture. It also enjoins them to adhere to Section 19 of the Implementing Rules and Regulations of the RA 9745 in doing their medical documentation. Up to now, the AO No. 2013-0008 has remained unknown to most government doctors. Neither are they familiar with the Istanbul Protocol. Many law enforcers, security forces, and jail officers are not familiar with the Anti Torture Act as well, especially in places outside the cities or urban areas. It is not uncommon for those concerned agencies to cite lack of budget to fulfill their commitment under the law.

4. **Secret places of detention** – Despite the prohibition under the Philippine Constitution and the Anti Torture Law on the use of secret detention facilities, the use of unofficial and secret places of detention have been uncovered not too long ago. An example was a private residence in Binan, Laguna used by police to systematically subject persons in their custody to the so called “wheel of torture” in 2014. Around 40 detainees have suffered from torment in that undisclosed place until the CHR learned about it through lawyers of the Public Attorney’s Office who represent some of the detainees. At least ten police officers have been implicated in acts of torture and were subsequently relieved and meted with administrative sanctions. There was no report that someone was sanctioned for maintaining the secret place of detention.

One child arrested for robbery described to Amnesty International another unofficial place of detention called the “underground”, where police apparently regularly detain and torture persons arrested for minor offences, in some cases leading to deaths.<sup>9</sup>In an interview with Amnesty International researchers at the office of a child-care institution, the victim, aged 17, described a place called the “underground” which is underneath a police station outpost in Manila near Chinatown. The boy had been there once. He had been punched and beaten by police officers and kept overnight with five other children:

*“The incident in the “underground” scared me a lot. It is very dark and only had one light... The area is small, around 15x20 feet and full of things. There were lots of cobwebs which we had to clear. On the side of the room, there is a river. There is also a gate. This place is a little hidden. You have to go behind the outpost/station through the garden. There were things in the “underground”: some chairs, ropes, some long pieces of metal, and I saw human hair on the ground. There was another room there which we did not open.”*

The PNP, along with other law enforcement agencies, is required under the Anti-Torture Act to submit to the CHR a periodically updated list of detention facilities

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<sup>9</sup>Amnesty International, *Above the Law: Police Torture in the Philippines*, 2014

along with other details about the detainees, so that detention conditions and the treatment of detainees can be monitored. The CHR also conducts regular visits to detention facilities and jails. But as Amnesty International has noted, the CHR's efforts and the requirements under the law can be circumvented if the existence of the detention facility are tolerated, instigated, or covered up by authorities. If no one is convicted for violating the law, there is no guarantee that torture will be prevented.

5. **Under-reporting of torture cases** - Records collected by member of the United against Torture Coalition (UATC) indicate that many cases of torture are widely underreported to the CHR and other government investigative agencies. Reasons for this include their fear of reprisal, lack of knowledge about human rights and the reporting mechanisms, distrust of government agencies – including the Commission on Human Rights<sup>10</sup>, distrust in the justice system thinking that their complaints will not amount to something, lack of resources to pursue complaints.

Members of the police force rank on top of the list of alleged torture perpetrators. Others are member of the anti-drug enforcement agency, security forces, barangay tanods<sup>11</sup> and local executive officials. Those most at risk of torture and other ill-treatment are people from disadvantaged and marginalized backgrounds, including in particular: children (suspected juvenile offenders), suspected repeat offenders and criminal suspects whose alleged crimes have personally affected police officers. Police “assets” who have fallen out of favour with local police officers are similarly at risk, and so are suspected members or sympathizers of armed groups and political activists.

The excessive and inappropriate use of force by security forces and law enforcers against Muslims have also been noted in places where the risk of armed conflict and terroristic activities of non-state armed groups is high. For instance, Balay Rehabilitation Center has gathered the torture narratives of 116 individuals who were implicated in the armed hostilities between government forces and fighters of the Moro National Liberation Front (MNLF) during the so-called Zamboanga Siege in September 2013.<sup>12</sup> A number of them have submitted sworn statements to the Regional Human Right Commission (RHRC) citing the violence they suffered from authorities at the time of their arrest.

Records from UATC members show that among the methods of torture and other ill-treatment employed by perpetrators are: systematic beatings, punches and kicks to different parts of the body, hitting with truncheons, rifle butts or similar objects. Some victims have been blindfolded and handcuffed behind their backs, and forced

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<sup>10</sup>A civilian implicated in the armed conflict between government forces and fighters of the Moro National Liberation Front (MNLF) told Balay during an interview that they doubt the independence of the CHR. He said that at the time of his arrest, someone who identified himself as “from CHR” was asking him to admit that he was involved in the fighting. The civilian was among those freed by the court for lack of legal basis to link him to the hostilities. While this could not be independently verified, other human rights groups have actually went public in 2013 to ask the former CHR Chairperson to resign for “acting like the AFP-PNP spokesperson” (<http://www.karapatan.org/CHR+Chair+acting+like+PNP-AFP+spokesperson+should+resign>)

<sup>11</sup> The UATC is not aware of any consolidated report from the CHR, the Department of Justice (DOJ), nor the Presidential Committee on Human Rights (PHRC) showing the number of cases of torture filed nationwide and their current status. The CHR submits a list of “cases of special interest” to the National Monitoring Mechanism (NMM) that tracks the progress on particular complaints related to torture, enforced disappearance, and extra judicial killings. However, those information do not provide enough analytical basis to understand the trends in terms of prosecution of torture cases.

<sup>12</sup>Actually, the court has ordered the release of 42 out of the more than 270 individuals implicated in the so called Zamboang Siege. The judge found no probable cause to keep them in jail on the first place. They were set free in March 14, 2015, more than a year after they were arrested. Among them, 33 have told Balay that they were tortured or ill treated by authorities at the time of their arrest. Attach as annex is the summary of the Balay documentation using the Data in the Fight against Impunity (DFI) program.

to sit or lie in uncomfortable positions for long periods without food or water. Not a few were threatened at gunpoint or subjected to a kind of “Russian roulette” (where the alleged police officer took out some bullets from the gun, leaving at least one inside, and then aiming the gun at the victim and pulling the trigger) and warned that they would be killed if they refused to cooperate. One victim sustained serious burn when soldiers poured gasoline over his body face and set him on fire.<sup>13</sup>

*Please provide information regarding any case in which individuals have been charged with violating the act, including a summary of the allegations in the case, the outcome of any trials, the status of any ongoing trials, and details regarding any penalties imposed.*

Some examples are the following cases which have already been reported to the Committee earlier:

1. *Rommel Victor R. Cabais vs. Lt. Joel M. Santos, Cpl. Bienvenido I. Ajero, Cpl. Abelardo Reyes, Cpl. Sonie Delos Reyes, Cpl. Mark Ramos, Cpl. Alex D. Buban, Jr. and Pfc. Mark A. Zamora for Violation of Republic Act No. 9745* - On December 13, 2010, the CHR regional office in Bicol filed, on behalf of the victim, a case of torture against the soldiers involved and in January 2011, the Municipal Circuit Trial Court of Polangui-Libon-Oas in the province of Albay issued a warrant of arrest for several members of the 2nd Infantry Battalion of the Army's 9th Infantry Division. The Armed Forces of the Philippines (AFP) later wrote a letter to the CHR denying that the accused soldiers are members of the military. The suspects have not yet been located up to now despite official records indicating their names, rank, position, and unit.
2. *Abdul Khan Ajid y Balinting vs Col. Alexander Macario, Capt. Sherwin Guidangen, Sgt. George Awing, Sgt. Edgardo Santos, Staff Elmer Magdaraog and John Does for Grave Misconduct & Grave abuse of Authority* – According to records of Ajid's private counsel from the Free Legal Assistance Group (FLAG), three judicial complaints were filed against the accused military personnel before the Ombudsman in February 2012. The Ombudsman, in a resolution, found probable cause for the case of torture and recommended the filing of cases at the Basilan Regional Trial Court and dismissed Sgt. George C. Awing and SSgt. Elmer R. Magdaraog from military service.

Two other senior military officers implicated by Ajid in his torture were not included in the Ombudsman resolution. Based on the CHR Region IX Resolution dated April 18, 2012, Col. Alexander Macario and Capt. Arvin Llenares, were excluded from the charges under the principle of command responsibility as the resolution stated that “they (the Respondent Senior Officers of the military) were able to substantially explain their non-participation in the acts complained of and they neither consented nor had the knowledge of the alleged acts.”

Subsequently, the Ombudsman's resolution resulted in the issuance of warrants of arrest for Criminal Case No. 6335, Maltreatment of Prisoners; Criminal Case No. 6334, Violation of Section 4 of RA 9745 or the Anti-Torture Law; and, Criminal Case No. 1443, Delay in the Delivery of Detained Persons. Three warrants of arrest were issued by the Basilan Regional Trial Court for the three Criminal Cases.

Based on information from the AFP-Human Rights Office, Capt. Sherwin William S. Guidangen is at Fort Bonifacio while waiting for the resolution of the court martial

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<sup>13</sup> This refers to the “Ajid case” where the military set on fire their person they accused of being a member of a terrorist organization in Basilan in 2011. The warrant of arrest for the alleged perpetrators have not been served until now.

proceedings while Sgt. George C. Awing and SSgt. Elmer R. Magdaraog, dismissed from service, are at large. Ajid's counsel wrote the AFP Human Rights Office in 2015 to facilitate the serving of the warrants to the accused. UATC members have also sought the assistance of the Police Criminal Investigation and Detection Group (CIDG) and the CHR in bringing the accused before the court. The case has not moved until now.

Meantime, Ajid who is standing trial himself for a criminal case is detained in the Security Intensive Care Area (SICA 1) in Camp Bagong Diwa in Bicutan City. The monitoring of his health condition by a doctor and independent service provider of his choice in accordance with RA 9745 has not been sustained due to security procedures imposed by jail authorities.

### **UNCAT List of Issues: Article 2, Issue 3**

*In the light of the Committee's previous concluding observations (paras. 10 and 11) and the letter sent by the Committee's Rapporteur for follow-up on 1 December 2011, please provide updated information on the measures taken to prevent acts of torture during police or remand detention and during military operations, and to ensure that detainees are brought before a judge promptly and that all detainees are systematically registered.*

Incommunicado detention heightens the risk of torture of the suspects or when they kept in unofficial and "secret" detention facilities. It also tends to deny a torture victim the right to be treated and documented by an independent and competent doctor of his or her choice. A portion of the Amnesty International report below is an example:

*Tucked in a dark corner of a secret detention centre in the Laguna, a province south of the capital Manila, was a mock-up of the multicolor game show wheel. But rather than spinning for prizes and cash – it was used by police officers to decide how best to torture detainees for their own amusement.*

*One by one, detainees held in the centre would be taken out of their cells to another area in a secret detention facility where a police officer would spin the wheel and wait for a result. A "30 second bat position" for example, meant that the detainee would be hung upside down like a bat for 30 seconds. A "20 second Manny Pacquiao" meant non-stop punches for 20 seconds.*

*Rowelito Almeda, 45, who endured four days of torture in the detention centre in January 2014, says he vividly remembers the terrifying wheel... He narrowly escaped the wheel when a team from the country's Commission on Human Rights came to his rescue."<sup>14</sup>*

More than 40 detainees have been documented to have been subjected to that so-called "Wheel of Torture." Victims claimed they have been beaten up, electrocuted and hit by steel bars and baseball bats in the course of the officers' abuse. One said police pointed a gun at him, while another accused the authorities of threatening his relatives. An official investigation resulted in ten police officers being relieved from their posts. But beyond this administrative sanction, none of them have been convicted in court. Neither has been there a

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<sup>14</sup>Amnesty International, *Philippines: The "torture show"*, January 26, 2015, <http://www.amnestyusa.org/news/news-item/philippines-the-torture-show>

report that those responsible have been made accountable for maintaining a secret detention facility as well.

The Anti-Torture Act imposes a punishment of *prision correccional* upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, *incommunicado* or other similar forms of prohibited detention.

An instance where the denial of relatives to visit their detained kin may have resulted in the torture and death of a detainee has also been documented by the Task Force Detainees of the Philippines.

*“Abdulwahid was arrested by members of the National Bureau of Investigation (NBI) in Maasim, General Santos City on June 3, 2010. The authorities have taken him under their custody for investigation over an alleged crime. The authorities refused the request of Abdulwahid’s sister, Johaniya, to see him. They asked her instead to come back in a few days. Not long after, Abdulwahid’s body was found cemented in a drum. His hands were bound with nylon rope, his teeth were pulled out, his body wrapped in a laminated sack.”*

The TFDP believes that the cruel death of Abdulwahid may have been averted had the authorities respected the right of the detainee to be seen by his sister, in accordance with RA9745 and RA 7488, or the Act Defining Certain Rights of Arrested or Detained Persons or those Under Custodial Investigation, which provides for the right to visitation by detainees. The TDFP wrote appeals for an investigation of the incident. The Asian Human Rights Commission (AHRC) wrote the government September 3, 2010 to give justice to the victim and his family. The AHRC received a reply from the Philippine National Police almost a year later. The authorities said the death of Abdulwahid was a “case of mistaken identity.” that resulted in the killing of Abdulwahid. An arrest warrant was issued by the court on October 16, 2013 against two members of the NBI involved in the murder and torture of Abdulwahid. No further information was provided to the TFDP regarding this matter since then.

Meanwhile, suspected child offenders who have been brought to police stations or offices of the *barangay tanod*<sup>15</sup> belong to the population-at-risk of being tortured but are hardly given attention by authorities. Records of the Children’s Legal Rights and Development Center (CLRDC) indicate that almost all of the minors (between 11 to 18 years old) have complained of being tortured or ill treated by authorities for their alleged infractions of the law. Electrocution, systematic beating, hitting with hard object on the sole of their feet (*falanga*), threat of deaths, and other forms of physical and verbal abuse are among the kinds of torture cases that have been documented by CLRDC.

From March 2015 to February 2016 alone, CLRDC has documented nineteen cases of torture from three holding centers for CICL operating in three cities in Metro Manila. In these 19 cases, no case has been filed as the minors are fear for their lives because their perpetrators are police officers and they don’t feel assured that the government can protect them. One particular case was the placing of the minor in a secret isolated detention place located six feet under a bridge near a market place. This experience caused trauma to the said minor.

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<sup>15</sup>A barangay tanod, also known as a barangay police officer -- and sometimes as BPSO (which can stand for barangay peace and security officer, barangay peacekeeping and security officer, or barangay police safety officer) -- is the lowest level of law enforcement officer in the Philippines. He is a watchman for a barangay who is supervised by the barangay chairperson (head of the smallest geo-political administrative unit in the Philippine) and performs a variety of police functions. According to the Department of Interior and Local Government (DILG), tanods are "frontliners in the preparation and response to any type of atrocities, public disorders, emergencies and even disasters or man-made calamities that threaten peace and order and public safety".

Republic Act 10630 or the amended Juvenile Justice and Welfare Act (the original law is known as Republic Act 9344) prohibits the torture or ill treatment of children-in-conflict with the law. It also mandates law enforcers to immediately turn over the minors to the nearest office of the Department of Social Service and Development (DSWD) for their custody and corresponding proper action. However, it is seldom that the social workers screen those minors for possible torture or ill treatment. In many instances, the children opt not to speak of their ordeal as they fear that authorities can get back at them and make them stay longer in confinement and suffer some more.

The Juvenile Justice and Welfare Act also prohibits the confinement of child offenders in regular jails and called for their separation from adult detainees. However, many so called CICL are confined in government-run “children’s homes” or “residential centers” that are not unlike the regular detention places as the children are kept and locked behind bars with very limited space or facilities to engage in developmental activities. The windows in one of those “children’s homes” have actually been covered thus depriving the young detainees sunlight and fresh air. The administrators of the center cited security reasons for their measures and are now looking forward to move to a more spacious building with better facilities.

*Please clarify whether detainees are guaranteed the right to contact a lawyer of their choice and a family member at the time of their detention, and whether inmates have the right to an examination by an independent doctor upon request at the time of their detention and thereafter? Please indicate where these rights are provided in law, how the State party ensures they are afforded in practice, and how detainees are made aware of them*

Section 2 of Republic Act 7488 or the Act Defining Certain Rights of Arrested or Detained Persons or those Under Custodial Investigation guarantees the right of a detainee to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

The Anti-Torture Act, in its Section 9, also provides that a torture victim has the right to have a prompt and an impartial investigation by the Commission on Human Right and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and the Armed Forces of the Philippines (AFP). A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available.

The same section provides that “any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment”.

Moreover, Section 12 of the Anti-Torture Act also guarantees that”

*“Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the*

*person arrested is a female, she shall be attended to preferably by a female doctor.”*

The UATC acknowledges those institutional guarantees to protect the rights of the accused and torture victims. It notes that the Human Rights Affairs Office of the PNP has exerted efforts recently to promote the so called Miranda Warning when effecting arrests, particularly informing arrested persons of their right to remain silent and right to counsel of choice. The Bureau of Jail Management and Penology (BJMP), in its 2015 Guidelines on Torture Prevention, Documentation, and Reporting, has recognized the right of detainees under their facilities to be seen by their preferred private doctors as well. However, there remains certain gaps and lapses in the implementation of the law, such as the following issues, that need to be looked into and addressed:

1. **Lack of information on the right to independent medical treatment and documentation-** Arrested persons and detainees are hardly informed that they have a right to be seen by an independent and competent doctor of their choice. It is seldom that they can access the service of doctors that are competent enough to conduct a medical examination in line with the Istanbul Protocol and the provision of Article 12 of the Anti-Torture Act and Sections 19 to 24 of its Implementing Rules and Regulations. This is one of the reasons why many incidents of torture are hardly documented and reported.
2. **Inadequate information on legal rights and status of cases** - According to the CLRDC, so-called children-in-conflict-with-the law confined in “children’s centers” or “residential facilities” are technically still under pre-trial detention. While most are represented by the Public Attorneys Office (PAO), they seldom see their lawyers nor are they provided with proper information regarding their legal rights nor the legal implications of the charges against them. They are neither informed of their right to seek the services of an independent doctor of their choice to validate their torture narrative. Many other inmates have raised the same complaints.
3. **Conditional entry of doctors in jails** - Independent doctors, defined by the Anti-Torture Act as “physicians who do not belong to agencies that are involved in the arrest and detention of the victims, unless the victims specifically allowed it and when the circumstance require,”<sup>16</sup> can also be denied access to detainees by jail authorities. This is due to the provision under Section 4.b of the Republic Act 7488 that states that “*any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.*” While this provision looks reasonable, it is also open to the wide discretion of authorities to decide which situation would disallow entry of health professionals and relatives of inmates as can be gleaned in the complaint by the Health Action for Human Rights (HAHR) against a jail warden for barring them from attending to the political prisoners who have been weakened by their hunger strike. A portion of the statement released by Dr. Julie P. Caguiat on January 12, 2015, stated that:

*“[O]n the third day of the hunger strike, HAHR was informed that a number of political prisoners needed medical attention. As a regular and acknowledged health service provider of the SICA political prisoners, we responded. The treatment we received from the jail officials was appalling and disgusting. For two consecutive days on January 12 and 13, I and a paralegal personnel of the human rights group KARAPATAN were barred from entering the*

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<sup>16</sup>Section V. Definition of Terms, Republic Act 9745

*jail for the reason that we had no clearance from the National BJMP office...*

*Despite explaining that never before the past years were we required to secure clearance and also referring to the posted jail policy that there are no limitations to visits of doctors lawyers and religious advisers, we were still forbidden to enter. We even cited Republic Act 7438 - Rights of Arrested, Detained- but to no avail...We learned later that we were reported as disturbing the peace and order of the heavily guarded facility”*

In a separate incident, the officials of the Makati City Jail have suspended the entry of relatives and independent service providers to their facility following the violence that marred the protest of inmates on March 9, 2016 over alleged irregularities committed by jail management and deplorable jail conditions. The GMA TV news network showed a video of jail officers beating with wooden clubs the protesting inmates who have already been restrained. A report of the CHR said that “90 percent” of the 522 inmates bore injuries, with “bruises from nightsticks, etc.” An inmate died in the aftermath of the melee. The BJMP said it will release a report once it is done with its own investigation. It added that the public should refrain from making harsh conclusions as they have no idea as to the actual circumstances aside from what was shown in media reports.

The United against Torture Coalition (UATC) has issued a statement reminding the BJMP to allow independent doctors and investigators to examine the injured detainees and to uphold the Anti-Torture Act in the conduct of their inquiry and actions against those found responsible for using excessive force to punish the protesting inmates.

4. **Lack of skills in torture documentation** - In the Philippines, only a few doctors and healthcare professionals have the necessary skills to thoroughly document torture and ill-treatment. Those who have been interviewed by Balay Rehabilitation Center have expressed their reluctance to get involved in torture documentation for fear that their life could be endangered and their practice put in peril if they will confirm the excessive use of force by authorities. In one medical report obtained by Balay from a torture victim, the document states “physical injuries” but did not mention torture, which is an entirely different case. Doctors said that they would rather refer the victims to the National Bureau of Investigation or the Commission of Human Rights rather than do the investigation themselves contrary to what they have been mandated to do by the Anti Torture Act and by the AO No. 2013-0008 of the Department of Health.
5. **Burden of paying for medical costs** - Many victims of torture came from impoverished families. And yet, they are still required to pay the medical services despite it being a demandable right that must be accessible to the victims at no cost as per Section 19 and 20 of the Implementing Rules and Regulations of the Anti Torture Act.

The Amnesty international, in its 2014 report *Above the Law: Police Torture in the Philippines*, noted that those deviation from law by State institutions manifests clearly the continued neglect of laws and agreements in places that protect the rights of the accused. It cited that the lack of resources for the necessary forensic and investigative procedures often results in the use of torture by the police to extract information from suspects, albeit effective as a “shortcut” to solving a particular case or sometimes just to appear to have solved a case regardless of the veracity of the “confession” obtained. On the other hand, it attributed the non-observance of the human rights law to the lack of knowledge of the rights of the victims or their relatives. Their ignorance of the various complaint mechanisms and of the options available to them to seek justice and accountability, fear of retaliation by the police at them or their families, or harsher punishments are also factors why impunity exists,

according to Amnesty. Another glaring problem is the lack of confidence to the criminal justice system resulting to the acceptance of the suspected or convicted criminals that their allegations would not be taken seriously.

#### **UNCAT List of Issues: Issue 4**

*According to information before the Committee, in many cases, persons brought to police stations by Philippine National Police (PNP) officials are not formally arrested before they are brought in, and therefore are not afforded the protections provided by article 125 of the Penal Code. Please comment on these allegations and indicate what measures the State party has taken, other than inspections of police station lock-ups and prison visits by judges, to ensure that detainees are not held longer than the period allowed by law.*

Despite the efforts of the PNP to ensure the accuracy of the information recorded in the police blotters even launching the so-called “E-blotter System” or the “Crime Incident Reporting System (CIRS)” allowing all records to be digitalized and made accessible to police stations nationwide, it calls for a more effective mechanism to monitor relevant detailed information of persons deprived of liberty. FIND believes that a mandatory maintenance of an official up-to-date register of all persons detained or confined under the anti-enforced disappearance law and the ATA is imperative. This register should include all data and information sited in the anti-enforced disappearance law, including victim’s physical, mental and psychological condition, date, time, location of arrest and, if applicable, release and/or transfer. The law requires that all information in the register be regularly or upon request reported to the Commission on Human Rights (CHR) or any agency of government tasked to monitor and protect human rights, and to which persons with legitimate interest shall have access.

A serious problem arise, however, when detainees are brought to undisclosed detention facilities which render the arrest procedure entirely flawed. In January 2014, the CHR exposed a secret detention facility in Laguna, a province south of Manila, in which police officers appeared to be torturing detainees for entertainment. The CHR found a large roulette wheel on which were written descriptions of various torture methods and positions. Forty-three detainees were found inside the secret detention facility, and marks indicating torture were found on many of these detainees. 23 among these filled their complaints and have yet to be given resolution at the office of the prosecutor as of October 2014.

#### **UNCAT List of Issues: Issue 5**

*What safeguards are in place to ensure that medical personnel are not subject to police intimidation and are able to examine victims independently of the police and to maintain the confidentiality of medical reports, and how does the State party monitor the implementation of such safeguards to ensure they are afforded in practice?*

The Administrative Order 2013-0008 of the Department of Health, in keeping with its commitments under RA 9745, has provided for the following set of principles to be observed by its medical examiners:

- a. “The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedure is suspected, accused or guilty, and whatever the victim’s belief or motives, and in all situations, including armed conflict and civil strife.
- b. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.
- c. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment are used or threatened.
- d. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor’s fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.

Moreover, the DOH has provided for the organization of health facilities that will enable its medical examiners to perform their duties adequately under the ATA. However, the Medical Action Group (MAG) and the Amnesty International note that it is not uncommon for law enforcers or members of security forces to bring a person under their custody to their own medical or health facility. This, according to them, contravenes the very essence of having an “independent and competent doctor” which is defined by the Anti Torture Act as “physicians who do not belong to agencies that are involved in the arrest and detention of the victims, unless the victims specifically allowed it and when the circumstance require.”

In instances where a detainee or an arrested person is brought to a civilian government hospital for a medical check-up, MAG and Amnesty International have monitored that doctors often simply undertake a “cursory physical examination” without bothering to ask how an injury may have been sustained by the patient or not including in their report a finding that a torture may have been committed against the detainee. MAG particularly notes that some medical personnel experience pressure from authorities allegedly involved in torture cases as well. It cited incidents where police officials are present during physical and medical examinations and, in some cases, supervise the work of medical doctors themselves.

MAG added that there are no real safeguards in place to ensure that health personnel are not subjected to police intimidation, are able to examine victims independently of the police, and able to maintain the confidentiality of medical reports. Below is a case example to illustrate this point:

*“Abdul-Khan Ajid suffered grave physical and mental injuries under the military who accused him of being a member of the Abu Sayyaf Group. After filing a writ of habeas corpus, the family of Abdul-Khan Ajid was able to bring him to the Basilan Community Hospital and later transferred to the Zamboanga City Medical Center for treatment of third degree burns. Doctors who examined him were first reluctant to issue their findings related to torture for fear of reprisal from authorities. MAG asked a medical consultant to perform an independent investigation. The report was subsequently used by human rights groups to facilitate the filing of the case against the perpetrators.”*

Not a few torture victims interviewed by Balay Rehabilitation Center claimed that it took days before they were taken to any doctor for medical examination allowing the torture marks to heal. And if any medical examinations were to be done to the victim, it would happen before the torture. Others also claim that the medical attention given was perfunctory; the victims merely being asked questions of how they are and medical personnel never bothering to conduct a thorough examination of the victim. Many victims claimed that they never saw their medical records and if ever these records were made available it would only contain a note stating that they are physically in good condition. But what is more alarming is coupling these numerous cases of violations of human rights under the ATA is the prevailing discrimination against these victims that are often judged as “criminals” and often treated with suspicion or disbelief.

*Please comment on the cases of Jedil Esmael Mestiri, who was allegedly tortured by military intelligence personnel on 26 June 2011; and RahmanTotoh, who was allegedly tortured following his detention on 28 July 2011 by members of the Special Action Force (SAF). Please comment on reports that no investigation has been opened into these claims on the grounds that the medical examinations they received do not meet the standards required by the Anti-Torture Act to initiate a prosecution.*

The UATC has elaborated these cases through their submission of the Joint Civil Society Report during the 13<sup>th</sup> session of the Universal Periodic Review of the Philippines last May 2012. The Medical Action Group (MAG) also submitted a similar report on allegations of harassment and intimidation on human rights defenders working in the health organizations during the visit of Mr. Michael Forst, Special Rapporteur on the situation of human rights defenders in the last Asian Regional Human Rights Defenders Forum in December 2014.

The torture case of Jedi EsmaelMestiri and RahmanTotoh reflect the clear violation of all provisions under the ATA and its implementing rules and regulations. The State brushes this off with their reply to the UNCAT list of issues by stating that all protocols were followed and dismissed all counts of torture insisting that the authorities adhered to lawful “standard technique” in performing arrest and claiming that their officers were performing their duties with “regularity.”

Both these cases reflect that “presumption of regularity” is often used to justify torture and provide impunity to members of security forces accused of torture and/or arbitrary detention of torture victims. Such perpetrators are protected from prosecution even before allegations against them can be investigated, because accountability mechanisms which are invoked as check on human rights violations have been rendered ineffectual in dealing with such issues since they are able to invoke the ‘presumption of regularity’ to exonerate such persons before investigations are conducted and concluded. This presumption is meant to apply only when the performance of the officers’ duties has been regular, but members of the security forces are misusing it to unjustifiably cover all acts. Even in cases in which serious allegations have been made concerning irregularities in the performance of duties of authorities, authorities have still invoked the “presumption of regularity.” Even worse, the burden of proving torture allegation rests heavily on the victim and investigations into allegations of torture against the security forces are not taken seriously.

#### **UNCAT List of Issues: Issue 7**

*Further to the Committee’s previous concluding observation (para. 8) and the State party’s acceptance of recommendations made in the universal periodic review CA/HRC/8/ 28/Add.1, paragraph 2 (e) and (f), please provide updated information on measures taken to address extrajudicial killings and enforced disappearances, and particularly:*

*(a) Measures taken or envisaged to address unresolved cases of extrajudicial executions and enforced disappearances from the last decade, including 621 outstanding cases reported by the Working Group on Enforced or Involuntary Disappearances (A/HRC/19/58 and Rev 1, para. 468); and to address allegations sent by the Working Group on Enforced or Involuntary Disappearances, in December 2008, concerning dismissal by the Court of Appeals of Amparo petitions on the grounds of the supposed failure of the petitioners to prove that their rights to life, liberty or security were violated or under threat (A/HRC/13/31 and Corr. 1, paras. 416 ff.; A/HRC/16/48, para. 395);*

A number of measures have been instituted by the government to address extra-judicial killing and enforced disappearance including mechanisms such as the Task Force Usig under the PNP in 2006, the human rights affairs office both in the AFP and the PNP in January and June 2007, and the issuance of Administrative Order 35 on November 22, 2012 establishing an inter-agency committee on extra-judicial killing, enforced disappearance, torture and other grave human rights violations. However, the UATC members do not see the effectiveness of these state measures to address past and on-going cases of human rights violations.

FIND has noted that the report of the CHR that the cases of enforced disappearance and extra-judicial killing are on a downturn might be inaccurate. It cited that the CHR also takes cognizance of and documents other forms of deprivation of liberty, i.e., kidnapping, illegal detention, abduction, that are not cases of enforced disappearances as they are committed by non-state actors (NSAs) or private individuals and not by agents of the State. This means

that the rise or decline in the total incidents of enforced disappearance/abduction as reported by the CHR may not truly reflect the actual number of enforced disappearances which are lumped together with deprivations of liberty perpetrated by NSAs.

Moreover, it reiterated that notwithstanding the effectivity of RA 10353 that penalizes enforced disappearance as a distinct special crime and that clearly provides for independent criminal liability of perpetrators, a prosecutor admitted that they still file murder instead of an enforced disappearance complaint because they are not aware of decided cases on enforced disappearance that consider the continuing character of the offense. This, despite the existence of a wealth of international case laws on the subject and the Supreme Court's definitive finding of enforced disappearance as defined under the Declaration/Convention on Enforced Disappearance in the Jonas Burgos case.

FIND also reiterates the inadequacy of these measures - such as the Task Force Usig - to properly document or even attend promptly to cases of human rights violations reported to their offices. Glaring issues pointed out by FIND includes the absence of a centralized database on ballistics, missing persons, case monitoring, and the failure of personnel to observe procedure, rules of engagement, and provisions of the law. It cited the disappearance of Najir Ahung Rasdie Kasaran and Yusup Mohammad in 2012<sup>17</sup> as examples of the inability of the State's so-called protective measures to guarantee the security and safety of individuals.

The three Islamic scholars were residents of Basilan in Mindanao. They boarded a plane from Zamboanga City to Manila. Their relatives lost contact with them when they reached the Ninoy Aquino International Airport. Their disappearance occurred at wake of the controversy over the "300 John Doe" mentioned in the complaint-affidavit filed by the AFP against residents of Al-Barka, Basilan against suspected terrorists. It added that even the Supreme Court was rendered ineffective for not being able to issue a Writ of Amparo citing lack of evidence and any reasonable indication that the military may have custody of the missing men. The denial of this writ pushed through despite an earlier Supreme Court case, *Razon v Tagitis*, that allowed a more flexible ruling in favor of issuing a Writ of Amparo allowing circumstantial evidence and hearsay as acceptable evidences<sup>18</sup>.

FIND also cites that despite the National Summit on Extrajudicial Killings and Enforced Disappearances spearheaded by the Supreme Court last 2007, many of the recommendations formulated in that meeting have not yet been carried out. These include: 1) ratify the International Convention for the Protection of All Persons from Enforced

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<sup>17</sup>In January 2012, the families of three Islamic scholars, Najir Ahung, Rasdie Kasaran, and Yusup Mohammad, reported that the three students disappeared after disembarking from the Air Philippines Zamboanga to Manila flight. Upon arrival at the Ninoy Aquino International Airport on January 3, 2012, Najir Ahung was able to send a message to his brother, Barangay Captain Jamih Arawi of Barangay Guinanta, Al-Barka, Basilan confirming that they have arrived in Manila. The families of the students repeatedly tried to contact them but they could no longer be reached.

The families strongly believe that government authorities must have taken the students in custody. The three scholars are Muslims and residents of Al-Barka, Basilan. Their disappearance occurred in the wake of the controversy over the "300 John Doe" complaint-affidavit filed by the AFP against residents of Al-Barka, and amidst government's claim of a terrorist attack during the Feast of the Black Nazarene on January 9, 2012.

<sup>18</sup> In confronting evidentiary difficulties, the Supreme Court earlier in *Razon v Tagitis* relaxed the standards of evidence and established the rule that "presumes governmental responsibility for a disappearance if it can be proven that the government carries out a general practice of enforced disappearances and the specific case can be linked to that practice." Citing the Inter-American Court of Human Rights' decision on *Velasquez* that relied on circumstantial evidence including hearsay testimony, the Court held: "*Velasquez* stresses the lesson that flexibility is necessary under the unique circumstances that enforced disappearance cases pose to the courts; to have an effective remedy, the standard of evidence must be responsive to the evidentiary difficulties faced...we reduce our rules to the most basic test of reason - i.e., to the relevance of the evidence to the issue at hand and its consistency with all other pieces of evidence adduced. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test."

Disappearance; 2) make State security policy consistent with pluralism and tolerance; 3) establish a comprehensive political, cultural, social set of reforms to address the root causes of insurgency; 4) adopt the three-day rule, concrete action (investigation, evidence gathering, prosecution, etc.) on reported incidents within three days; 5) enact law defining extrajudicial killing; 6) deputize private prosecutors and human rights organizations during the preliminary investigation of cases involving extrajudicial killings and enforced disappearances.

It also cast doubt on the effectiveness of the Inter-Agency Committee created under Administrative Order 35 as it, too, was not able to uphold the anti-enforced disappearance law by omitting the necessary element of the concealment of fate and whereabouts of the victim. The omission of this element, according to FIND, renders the IAC incapable of assessing cases of enforced disappearance. It noted that the Operational Guidelines of Administrative Order No. 35, B. New Cases, Section 10 (b) states that for an act to constitute enforced disappearance, all three constitutive elements of: 1) deprivation of liberty, 2) involvement of State authorities, and 3) refusal to disclose the fate and whereabouts of the victim must be present. Prolonged concealment is the principal basis of the unique continuing character of enforced disappearance. Disregarding this has resulted in the filing of murder in lieu of enforced disappearance by A.O. 35 prosecutors.<sup>19</sup> This is clearly detrimental to the independent criminal liability in enforced disappearance cases even as it derogates the unique nature of an enforced disappearance that calls for a distinct response from government, more particularly in the prosecution/justice system.

An enforced disappearance is an enforced disappearance. It is not murder or kidnapping or serious illegal detention, which common crimes are punishable under the Philippines' Revised Penal Code. Enforced disappearance is now penalized under a special law (R.A. 10353), which recognizes enforced disappearance as a distinct crime separate from murder, kidnapping and serious illegal detention, arbitrary detention, torture and allied crimes. Disregarding this has resulted in the filing of murder in lieu of enforced disappearance. This, among the many glaring problems of the IAC, resulted in the dismissal of most of the cases of enforced disappearance filed to the IAC by FIND. It is alarming that many enforced disappearance confront these issues within the judiciary system. Many enforced disappearance cases have not only been denied the primary evidence, whereabouts of the victim or the victim's body, but have also met difficulties in engaging the police and military to perform *moto proprio* investigations before formal complaints are filed.

Although human rights civil society organizations have engaged the Human Rights Office of the Armed Forces of the Philippines (AFP) and the Human Rights Affairs Office of the Philippine National Police (PNP), investigations into reported incidents of enforced disappearances remain inadequate and ineffective due to the refusal of the security and police sectors to conduct *motu proprio* investigations into reported enforced disappearances as they await formal complaints to be filed. It is, however, difficult for families of the disappeared to file formal complaints due to the absence of witnesses who are courageous and cannot be intimidated by the perpetrators and their colleagues who are generally armed, well-organized, and can use the vast machinery of the State to escape responsibility/accountability.

Additionally, there is concealment not only of the most important direct evidence – the body of the disappeared including his/her fate and whereabouts, but of the identities of the direct perpetrators as they are shielded from responsibility by their colleagues and superiors.

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<sup>19</sup> FIND cites the case of the families of six disappeared workers from Agusan del Sur (PICOP 6 case) who filed an enforced disappearance complaint under RA10353 with the National Prosecutor's Office in Manila in May 2015, the public prosecutor handling the case dismissed it as he completely ignored the continuing nature of the offense and considered RA 10353 as an *ex-post facto* law relative to the subject enforced disappearance that began in 2000, but authorities have refused to disclose information about the fate and whereabouts of the victims up to the present.

Command responsibility is not exercised. Effective investigation that respects the right to truth of the disappeared and his/her family is consequently denied the victims.

It is imperative of the State party to institute reforms in the justice system starting from the conduct of investigations. It should be mandatory for investigating authorities to conduct inquiries upon receipt of reports of enforced disappearance and other human rights violations even before the filing of formal complaints. The state has all the financial and logistic capacity to perform prompt investigations upon receipt of complaints. The state feigns concern when they would still ask specific information to verify and validate the claims as reflected on the disappearance of 70 people in Central Luzon Region, all confirmed enforced disappearance cases, and all without immediate investigation from the State. The consistently slow and unresponsive nature of the State party in handling the numerous cases of enforced disappearance and extra-judicial killings were also reflected on the cases of Cadapan, Empeno, Merino, and Burgos<sup>20</sup>.

All these cases have been grinding slow, despite the many detailed reports and narratives gathered and only in the past three years have these cases indicted a specific party and even then the struggle for justice continue file criminal cases to all parties involved in the case and all who were involved in the cover up . The excruciatingly slow process of pursuing justice for enforced disappearance and extra-judicial killings and other various human rights violation is exactly what puts lives in danger. FIND calls on the state party and all its institutions to partner with concerned civil society organizations and families of the victims to have a cooperative and collective effort to end this culture of impunity and safeguard human rights as an interest of all parties

When President Aquino signed into law RA 10353 or “An Act Defining and Penalizing Enforced or Involuntary Disappearance” on December 21, 2012, he signed into law the first of its kind in Asia, a strong law as it is consistent to international convention for the Protection of All Persons from Enforced Disappearance<sup>21</sup>. However, given the many issues stated in this report, the FIND believes that this law will remain a reflection of hypocrisy of

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<sup>20</sup>After her March 2013 victory in the Court of Appeals, the battle for justice continues for Jonas Burgos' mother, Edita Burgos. In April 2013, Mrs. Burgos filed a criminal case with the Department of Justice against Maj. Harry Baliaga Jr., Lt. Col. Melquiades Feliciano, Col. Eduardo Año, and other members of the Army's 56th Infantry Battalion, for the abduction of her son and those involved in the cover-up of the crime. The Department of Justice in September 2013 found probable cause in filing charges against Baliaga and three John Does and one Jane Doe for arbitrary detention against Jonas but exonerated two other respondents, Feliciano and Año. Following the Burgos camp's discovery of new evidence and subsequent filing of motion to reopen the case, the Supreme Court upheld the findings of the Court of Appeals but denied the motion. It directed the Department of Justice (DOJ) to look into the evidence and file appropriate charges against “proper parties if such action is warranted by evidence.”

In November 2014, Edita Burgos filed a Petition to cite top military officials for indirect contempt for filing false returns under Section 16 of the Rule on the Writ of Amparo. These officials include: Ret. Gen. Hermogenes Esperon, Ret. Gen. Eduardo Oban, Ret. Lt. Gen. Arturo B. Ortiz, Ret. Lt. Gen. Alexander Yano, Ret. Police Director General Avelino Razon, Lt. Gen. Romeo P. Tolentino, Police Senior Superintendent Roberto B. Fajardo, Lt. Col. Noel Clement, Lt. Col. Melquiades Feliciano, Maj. Harry A. Baliaga, Jr. To date, the Burgos camp still awaits the action of the Department of Justice on the order of the Supreme Court to investigate the new evidence, and the Supreme Court on the Petition to Cite in Contempt. Perpetrators in these two cases of enforced disappearances continue to enjoy impunity in the form of special treatment and promotions. Palparan has been transferred to the Philippine Army headquarters from the Bulacan Provincial Jail by the order of the Malolos Regional Trial Court. Similarly, Baliaga, Año and Feliciano were granted promotions despite pending allegations against them. Baliaga, despite his indictment, was assigned an administrative officer post in the Army camp in Taguig. Año was named Commanding General of the Philippine Army in July 2015, and Feliciano as Armed Forces of the Philippines deputy chief of staff for civil-military relations.

<sup>21</sup> Legal experts agree that the Philippines' Anti-Enforced or Involuntary Disappearance Act (RA 10353), the first and only one of its kind in Asia, is a very strong law even as it is consistent with and complements the International Convention for the Protection of All Persons from Enforced Disappearance. However, a law is only as good as its implementation. Since RA 10353 is not fully and strictly implemented, it is as yet far from achieving its objectives to: prevent, suppress, investigate, and penalize enforced disappearance as a separate crime with distinct elements; provide victims and their families effective machinery for reparation and redress; strengthen public accountability and command responsibility; and break impunity and uphold the rule of law.

the State party as it is far from achieving its objectives. FIND would also like to comment on the uselessness of the Truth Commission that President Aquino created since it is only limited to addressing issues of graft and corruption and never to address the many grave forms of human rights violations. It has already been declared unconstitutional by the Supreme Court for violating the equal protection clause under Section 1, Article 3 of the Philippine constitution. FIND would also like to call on the State party to repeal Executive Order 546<sup>22</sup> that directs the police to support the military in counterinsurgency operations. The combined military and police is believed to have exacerbated the commission of enforced disappearance and other related human rights violations.

#### **UNCAT List of Issues: Issue 8**

*Further to the Committee's previous concluding observations (para. 9), please describe measures taken to fight impunity for disappearances, torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement or military personnel. Please provide detailed data on investigations, prosecutions and convictions for torture and ill-treatment and on the penal or disciplinary sanctions applied, if any.*

The State party has been consistently true to its nature of demanding specific information from all the concluding observations and UNCAT list of issues to verify and validate the claims and allegations against them. It is clear in this report given all the previous cases of human rights violations gathered with the utmost diligence for the past years that the State party has been constantly refuting and delaying these alarming cases. The CSOs have documented and cited specific cases and have appended others in this report for the benefit of providing a more comprehensive and specific reply to the committee.

#### **UNCAT List of Issues: Issue 9**

*In the light of the Committee's previous concluding observations (para. 12), please provide updated information on measures taken to address the practice of arrests without warrants and lengthy pretrial detention by PNP and AFP, especially by reducing the duration of detention before charges are brought, reducing the duration of pretrial detention and developing alternatives to deprivation of liberty.*

A specific case in point here is an interview by Amnesty International<sup>23</sup> with “Frank” and “Rolando” (not their real names), both arrested and tortured by police officers without warrant and held in detention pretrial. Despite the assertion of the State that any PNP personnel found guilty of arresting without legal basis will be criminally, civilly and administratively held liable, many of the cases cited in this report involving police officers were never put to justice.

#### **UNCAT List of Issues: Issue 10**

*Pursuant to the Committee's previous concluding observations (para. 25), please provide updated information on:*

*(a) The measures taken to prevent, combat and punish violence against women, including domestic violence. In this respect, please indicate if such violence is criminalized;*

*(b) The measures taken to ensure effective implementation of the Magna Carta of Women (Republic Act No. 9710);*

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<sup>22</sup>Executive Order 546 directs the police to support the military in counterinsurgency operations including deputization of *barangay tanods* (village watchmen) as force multipliers. It does not authorize the use of private armies in counterinsurgency operations. Nonetheless, this executive issuance should be repealed as the military is mandated to protect and promote internal and external security while the police is responsible for the maintenance of peace and order and public safety.

<sup>23</sup> Frank was arrested in Pampanga and Rolando in Quezon City. Both were confirmed to have been arrested by police officers and were subjected to different means of torture such as beating and electrocution. Both were charged with crime without sufficient evidence and were not given the chance to see lawyers in the whole process.

*(c) Statistical data on complaints relating to violence against women, including rape and sexual harassment, and on the related investigations, prosecutions and penal sanctions, as well as on any compensation provided to victims;*

*(d) Data on the number of victims of such acts who have received protection, including access to medical, social and legal services and temporary accommodation, and the specific form of protection they received.*

The UATC notes the many laws passed by the State party to address violence against women however, the many cases of human rights violations included in this report clearly reflect a more heightened danger and abuse to women by the State. Many cases gathered by interview and researches of Amnesty International, reveal that although many of the survivors of human rights violations are men, women do not speak as vocally and willingly about their experience as much as men do. The experience of any form of torture and detention is never equal to men<sup>24</sup> as many cases of women are raped, abused, put into a cell with male detainees, and inadequate medical attention and examination especially to female detainees who are pregnant. Amnesty International notes cases of Althea and Alfreda<sup>25</sup> that highlight specific problems in the treatment of women detainees in the Philippines. The UN Standard Minimum Rules for the Treatment of Prisoners requires that women detainees and prisoners should be kept separate from men (8a) and should be attended and supervised only by women officers (53.3). The treatment of both of the women contravened the Standard Minimum Rules: Althea was detained in a cell with male detainees, putting her at risk of rape and other sexual crimes, and Alfreda was searched by a male “asset”.

The abuse heightens with gender and all forms of human rights violations done on the basis of gender is a clear violation of CEDAW. CLRDC also notes the many cases of holding centers that do not subscribe to the proper handling of women, especially CICLs and have appended in this report the different detention centers alleged to violate the rights of women in Metro Manila. Many detention/holding centers do not have separate cells for homosexuals, lesbians are mixed with girl detainees, while gays are mixed with boy detainees. Human rights concerns of homosexuals inside the detentions have not been addressed, most of the times homosexual detainees suffer more in terms of abuses committed against their persons.

In light of the committee’s comment on restitution, none of the torture victims interviewed by Amnesty International have received any form of restitution, rehabilitation or compensation from the Philippine government other than financial assistance given by the CHR in some cases. Further, due to supposed limited resources, the CHR can only give a one-off PhP10,000 per victim, irrespective of the extent of the victim’s needs.

#### **UNCAT List of Issues: Issue 11**

*In the light of the Committee’s previous concluding observations (para. 18) and the letter sent by the Committee’s Rapporteur for follow-up, please provide updated information on the measures taken to prevent sexual violence in detention, particularly:*

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<sup>24</sup>The CLRDC notes specific instances during their monitoring visits of gender-based violence of children in conflict with the law where girls in custody of holding centers were bleeding profusely; allegedly they have been induced abortion when they were suspected to be pregnant.

<sup>25</sup>In October 2014, Leila (not her real name), a 29-year-old who worked at a nightclub, accused a senior police officer of raping her while in police custody. According to media reports, the police raided a nightclub and during this raid asked more than 60 workers, including Leila, to a police station, ostensibly for work permit verification. Meanwhile, Amnesty International spoke to Althea (not her real name), aged 40, inside a prison in Pampanga, a province north of Manila. Althea, who previously worked as a waitress in a bar, told Amnesty International researchers that she was sleeping at a friend’s house in August 2013 when four policemen in civilian clothes and a female police “asset” broke through the door at 4:00 a.m.. Althea said the “police asset” punched her on the face, causing her mouth to bleed. The police searched the house but found nothing. They handcuffed Althea’s hands behind her back and brought her to the Drug Enforcement Unit (DEU) at a police camp in Pampanga.

- (a) *The number of complaints of sexual abuse in custody received, whether any resulted in prosecution, the title of any official prosecuted, the sentence in any prosecution that resulted in conviction and any redress provided to victims.*
- (b) *Measures taken to inform the public, and particularly women and children, of the function of Women's and Children's Protection Desks (WCPDs, CAT/C/PHL/CO/2/Add.1, para. 57) and to expand the number of WCPDs and increase the number of police officers assigned to them. Please provide the number of claims of abuse received, disaggregated by geographic location and nature of abuse, and indicate whether WCPD personnel are permitted to receive and investigate complaints;*
- (c) *The current status of the Prison Rape Elimination Act (para. 18).*

CLRDC notes specific instances during their monitoring visits of gender-based violence of children in conflict with the law where girls in custody of holding centers were bleeding profusely; allegedly they have been induced abortion when they were suspected to be pregnant. Girls in detention suffer psychological and mental torture as their reproductive health rights have not been properly addressed.

Along with the many cases attached in this report that share in the characteristics noted in this specific issue by the UNCAT, the CLRD stresses the difficulty of documenting cases of sexual abuse of children in custody centers because there are no structured monitoring system of all children being taken to custody for alleged offenses. Coupled with this logistical problem, many of the cases of rape or abuse are no longer pursued by the victims themselves because of fear of the influence and power of the offender, many of which are police officers and high-ranking government officials.

#### **UNCAT List of Issues: Issue 12**

*In the light of the Committee's previous concluding observations (para. 26), please provide information on the measures taken to implement the current laws combating trafficking, in particular the Anti-Trafficking in Persons Act (RA 9208), and provide protection for victims and their access to medical, social rehabilitative and legal services, as appropriate. This information should include the number of trafficking cases reported to the police and other authorities, the number of resulting investigations and the status and findings of all such investigations, including any resulting penalties.<sup>11</sup>*

The CSOs, although seeing the accessibility of the National Bureau of Investigation (NBI) as it maintains offices in different regions, assert that the lack of agents (only 500 all over the country) and their selective attention to only high profile cases show the incapability of the NBI to facilitate complaints of torture from criminal suspects. Further, the NBI is limited to divisions handling human trafficking and violence against women and children, it has no particular division dedicated to investigating torture and other forms of human rights violations.

#### **UNCAT List of Issues: Issue 18**

*18. In the light of the Committee's previous concluding observations (para. 20) and the State party's acceptance of the recommendations made in the course of the universal periodic review (A/HRC/8/28/Add.1, para. 2 (b)), please provide detailed information on the human rights instruction and training provided for (CAT/C/PHL/CO/2/Add.1, paras. 40–42, 65–69):*

- (a) *Persons involved in the custody, interrogation or treatment of persons under State or official control, including law enforcement and military personnel, with respect to the treatment of detainees, the absolute prohibition of torture, non-coercive investigatory techniques and gender-sensitivity;*
- (b) *Judges and prosecutors, particularly training on the specific obligations under the Convention;*
- (c) *Medical personnel involved with detainees, on the guidelines to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).*

The MAG welcomes that the Department of Health (DOH) has issued the Administrative Order No. 2013-0008, Guidelines for the Implementation of Section 19 of the Implementing Rules and Regulations of Republic Act No. 9745 otherwise known as the Anti-Torture Act of 2009. MAG has made significant efforts to engage City and Municipal Health Officers and the DOJ through the National Prosecution Services in connection with capacity building of public medical doctors and prosecutors on effective documentation and investigation of torture cases through the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). However, there is still a lot of work to be done to ensure documentation of torture cases are done diligently by authorities and that doctors and prosecutors will make reference to the Istanbul Protocol in their medico-legal report, legal pleading, and that the court will cite such standard in their evaluation of evidence in torture cases.

#### **UNCAT List of Issues: Issue 19**

*Please indicate measures taken to address the reported lack of forensic investigation capacity in the Philippines, rendering prosecution highly dependent on witness testimony.*

With an estimated 147,190 members for the whole country, the PNP suffers from a severe shortage of officers and a corresponding shortage of forensic capability to conduct thorough investigations into criminal offences. Combined with the pressure to crack a string of unresolved cases, particularly those that receive attention from the media, police officers at times respond by resorting to unlawful “shortcuts” or extracting “confessions” – regardless of evidence or the truth of the matter – in order to appear to have solved the crime.

The PNP depends on an overstretched police force which, coupled with an underdeveloped forensic investigative capacity and dependency on testimonial evidence, means that personnel are often predisposed to taking “shortcuts” in their arrests and criminal investigations. This has facilitated the use of torture and other ill-treatment to extract “confessions” or information from criminal suspects, whether as a “shortcut” to solve a case or sometimes just to appear to have solved a case regardless of the veracity of the “confession” obtained. This is particularly true in cases which attract wide media coverage, where the police’s public reputation is at stake.

But despite these weaknesses in place, MAG asserts that the institutions of the state supposedly in-charge of investigation, legal processing, and facilitations of any human rights complaint to act to fullest of their capacity while campaigning and engaging with the state to address these weaknesses swiftly. We also recommend the state to strictly comply with all protocols listed in the IRR of the Anti-Torture Act.

The CHR also has limited capacity for forensic examination, with only a handful of medical doctors conducting forensics work for all human rights violations in the entire country. As the Forensic and Medical Division is based at the central office in Metro Manila, it takes time to respond to calls from remote areas of the country to promptly document physical abuse and medical conditions of human rights victims. In addition, the CHR has to seek assistance from NGOs in conducting psychological examinations of torture victims, as none of their doctors are experts in this field.

Despite trainings funded by international organizations still CHR’s investigations lack due diligence. The DOJ through its PAO also had trainings on Forensic but this is not their primary concern. Moreover, there are only five laboratories that cater to forensic investigations; all of them are in Metro Manila: four are lodged in security agency, and one in a university.

This inadequacy tend to render prosecution of cases highly dependent on witness testimony. To strengthen the cases of torture, gathering of physical evidence although is a must. This is more often than not contested, unless the one handling the evidence misinterprets or misrepresents the collected physical evidence. However, if this happens, other experts could provide other interpretation.

Thus, the training of forensic experts or investigators in the proper collection of physical evidence in cases of human rights violations, especially torture has two objectives: 1. Proper collection and handling of physical evidence and 2. Developing a pool of experts who could help provide the true interpretation of collected physical evidences.

The proper collection of physical evidence will help ensure attainment of justice. However, there are situations wherein victims are not that accessible, thus the need to involve the vulnerable and their relatives in early stage of documentation.

To help the experts or investigators, the victims themselves or their relatives could provide the much needed information or documents. This will start from the victim's him/herself or his/her relatives. Camera is major documentation equipment. Cellphones with cameras are very accessible now. They have to be advised on the use of photography, especially colored in documentation. Video documentation is also welcome.

#### **UNCAT List of Issues: Issue 21**

*Please provide information on the measures taken to establish consistent and comprehensive standards for independent monitoring mechanisms for all places of detention at the local or the national level, with a strong and impartial mandate and adequate resources.*

It is incumbent upon the government, as a party to the OPCAT, to set up the National Preventive Mechanisms, which includes a mandate to inspect and monitor all detention centers. House Bill no. 2401 (An Act Establishing a National Preventive Mechanism Against Torture in the Philippines) is currently being reviewed by the Congress. Along with this, in April 2014 a draft bill providing for the creation of an independent NPM attached to the CHR was prepared by the CHR in partnership with civil society groups and several government institutions. Again, this bill is under evaluation as of writing.

The United Against Torture Coalition requests the Committee Against Torture to help encourage the Philippine Senate and House of Representatives to prioritize the passage of the NCPT bill and to ask the executive branch and the Commission on Human Rights to strengthen their efforts to press and support the legislature in pursuing the enactment of the legislation. The UATC also requests the Committee to emphasize to the Philippine Government and legislature the importance of ensuring that the future NPM has sufficient funding and to publicly and widely promote the recognition of its authority, mandate and powers among all Philippine institutions and in particular agencies overseeing and managing places of deprivation of liberty

#### **UNCAT List of Issues: Issue 22**

*22. In the light of the Committee's previous concluding observations (paras. 16 and 27) and the letter sent by the Committee's Rapporteur for follow-up, please provide updated information on steps taken to enhance the independence, resources, and free access to all detention facilities of the Commission on Human Rights of the Philippines and its members. Please provide updated information on: (a) The status of the Commission's Charter, Senate Bills No. 106 and 297(b) The investigatory function of the Commission and the conditions under which it has primary jurisdiction to investigate alleged human rights violations; (c) The process by which a victim of torture or ill-treatment may bring a complaint to the Commission, and how their right to do so is made known to the public. Please provide the Committee with further information on the number of cases of torture*

or ill-treatment, that the Commission has investigated and prosecuted since 2008 and their outcomes, including information on the number of convictions and associated punishments, and the number of victims who obtained redress and in what forms and amounts; (d) The outcome of the investigation, if any, into complaints submitted by the Asian Human Rights Commission to the Commission in February 2010 alleging that military personnel of the 730th Combat Group, in Palico, Batangas, had tortured three community organizers, Charity Diño, Billy Batrina and Sonny Rogelio, in November 2009.

The TDFP sites that in 2007 the National Police Commission issued a uniform set of procedural rules in filing administrative complaints or NAPOLCOM Circular No. 2007 -001. With this rules, victims or their representative could file a “citizen’s complaint” on account of an injury, damage or disturbance sustained as a result of an irregular or illegal act or omission of a PNP member. However, in under the PNP, there are numerous disciplinary authorities such as the (a) city or municipal mayors; (b) chief of police or equivalent supervisors; (c) provincial directors or equivalent supervisors; (d) regional directors or equivalent supervisors; (e) People’s Law Enforcement Board (PLEB); (f) Chief of the PNP and (g) National Commission En Banc (NAPOLCOM). The fact that the NAPOLCOM has many venues for complaint should help victims in seeking redress however, in reality it does not. To an improperly informed complainant, the varied option may cause confusion in deciding to choose the correct forum, and may even result to several complaints being filed with different disciplinary authorities... that may ultimately lead to a dismissal of complaint.

Part of the Uniform Rules requires a *Principle of Exclusivity* and has strict *Prohibition Against Forum Shopping* that could lead to dismissal of complaint. The complicated rules in determining the proper forum to file the complaint also lead to dismissal in case the victim happens to choose the wrong venue.

On the issue of reparation, last February 25, 2013, President Benigno Simeon Aquino III signed Republic Act No. 10368 or Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime. Victims of Arbitrary Arrest and Detention, Torture, Extra Judicial Killing could file an application on the Human Rights Victims Claims Board who will assess the validity of the cases. Monetary reparation from the ten billion pesos plus accrued interest from the fund transferred to the Philippine Government by the Order of the Swiss Federal Supreme Court from the Marcos ill-gotten wealth is the source of reparation. Non-monetary Reparation is also included in the law. Originally, the projected distribution for the claims was around December 2015. However, at the end of the application period in May 2015, there were a total of 75, 730 applications. The Human Rights Victims Claims Board have asked for an extension since they are yet to finish the deliberation for the applications.

#### **UNCAT List of Issues: Issue 24**

24. Please provide information on the status of any investigation into the following cases in which police or military personnel are alleged to have committed torture:

(a) Darius Evangelista, who was arrested and reportedly tortured in police custody in March 2010 in Tondo, particularly following the publication of video footage that appears to show him being tortured;

(b) Lenin Canada Salas, who, along with three associates, was reportedly tortured in police custody on 3 August 2010. The Committee understands that charges filed against the officials believed to be responsible were later dropped on the grounds that Mr. Salas and his associates were blindfolded during the torture and thus unable to identify the perpetrators. Please indicate whether any investigation into these allegations continues, what steps the State party is taking to ensure that the victims obtain redress and what measures the State party is taking to ensure that public officials are prohibited from blindfolding detainees during interrogation, in law and in practice; (c) Abdul-Khan Balinting Ajid, who was arrested and allegedly tortured from 23–26 July 2011 by members of the AFP 39th Scout Rangers in Sumisip, and into whose allegations the military reportedly launched an investigation;

*(d) MisuariKamid, who was arrested on 30 April 2010 and reportedly subjected to torture to compel him to confess to a crime and who reportedly remains in detention on charges stemming from his confession.*

The primary reason for the difficulty of identifying the suspects of torture is the common practice of blindfolding that renders the victims incapable of visually identifying the perpetrators. Hooding or blindfolding is a prohibited act under RA 9745. The military's reluctance to cooperate with the prosecutor's office in producing alleged perpetrators within their ranks who have been identified by name and association is also a means of escaping justice. This has been especially true in several cases noted in this particular UNCAT issue: cases of Salas, Cabais, and Ajid. This constraint is coupled with the lack of focus and diligence at the investigative and prosecution stage. The Ajid case mentioned previously in this report reflect this particular concern. Added to the exclusion of charges of Col. Alexander Macario and Capt. Arvin Llenaresas, respected lawyers from the University of the Philippines College of Law found this part of the resolution to have significant flaws in relation to the section on command responsibility. If command responsibility was effectively pursued in all cases, it is likely that military commanders would be more likely to facilitate the identification and location of alleged perpetrators thereby increasing the possibilities for providing legal remedy to victims.

Coupled with non-existing or weak investigations including medical examinations, the victims are put in a very difficult position. It is worth noting that the International Forensic Expert Group (IFEG) has found hooding to constitute torture or ill-treatment in itself.<sup>26</sup> In the cases where victims have good evidence, usually provided by NGOs, and they are able to identify the perpetrator, a number of additional obstacles occur. These relate to a lack of corporation from the military and lack of diligence from the side of the prosecutor. Concretely, this means that the military refuses to acknowledge the existence of named perpetrators and the prosecution fails to pursue command responsibility, which is clearly provided for in the law.

#### **UNCAT List of Issues: Issue 25**

*25. Please provide data on the number of police personnel who have been suspended from duty pending investigations into allegations that they committed torture or ill-treatment. Please comment on the case of John Paul Nerio, who alleged that he was tortured by PNP Special Weapons and Tactics personnel in December 2010, that the alleged perpetrators were not suspended from duty during the investigation and that they subjected him and his family to intimidation.*

In the six years since the enactment of ATA, Amnesty International regrets to inform the UNCAT that despite the growing number of reports of torture by the police, not one person is known to have been convicted for the crime of torture. In 2013, CHR recorded 75 cases of alleged torture, the highest number reported in any year thus far. In the 60 of these cases, police officers were implicated as perpetrators.

#### **UNCAT List of Issues: Issue 28**

*28. Please provide information on the measures taken to promptly, impartially and effectively investigate the allegations of arbitrary arrest and detention and torture of human rights defenders by public officials and killing of, violence against and intimidation of human rights defenders by private parties in all cases raised with the State party by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture (A/HRC/19/55/Add.2, paras. 285–290; A/HRC/16/52/Add.1, para. 168–170; A/HRC/16/44/Add.1, paras. 1927–1946).*

It is regrettable that independent NGOs, human rights defenders and advocates that help the many victims of torture in the country have also experienced a form of torture done to them

<sup>26</sup>[http://www.irct.org/Files/Filer/TortureJournal/21\\_03\\_2011/Statement-on-hooding-3-2011.pdf](http://www.irct.org/Files/Filer/TortureJournal/21_03_2011/Statement-on-hooding-3-2011.pdf)

by State agents. Many human rights defenders are at risk of experiencing the same threats and attacks suffered by other victims of human rights violations. Some of the challenges they face are judicial harassment which is characterized by filing of trump up charges against HRDs to impede their work and criminalization of human rights work. In some instances, libel charges have been filed against them by non-State actors or private corporations. These patterns not only endanger the physical integrity and undermine the work of human rights defenders, but also impose a climate of fear and send an intimidating message to society at large.

An example is the case of Mr. Antonio “Apung Tony” Tolentino, a barangay chairperson of Brgy. Hacienda Dolores, in Porac, Pampanga. He was arrested due to charges filed by a private land developer and detained since April 16, 2014. Brgy. Chair Tolentino is also one of the leaders of Aniban ng Nakakaisang Mamamayang Hacienda Dolores (Aniban), a farmers group from Porac, Pampanga, claiming ownership of Hacienda Dolores by virtue of the Comprehensive Agrarian Reform Program (CARP).

In many cases, complaints by human rights defenders at risk about alleged violations of their rights are not investigated or are dismissed without justification. For instance, complainants and witnesses to the killing of human rights defender Mr. Sixto Bagasala Jr.<sup>27</sup> fear for their life and had to go into hiding, while witnesses are both in fear being discovered and worry about their safety. Meanwhile, violence continues in the area where the complainant and witnesses, reside and in many situation wherein physical location of witnesses are accessible to perpetrators.

#### **UNCAT List of Issues: Issue 29**

*29. In the light of the Committee’s previous concluding observations (para. 22), please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families, since the examination of the last periodic report in 2009. This information should include the number of requests made, the number granted, the amounts of compensation ordered and those actually provided in each case. Please also provide information on the accessibility and availability of rehabilitation programmes for victims of torture, ill-treatment, trafficking and domestic and other sexual violence, including medical and psychological assistance. Please indicate the status of implementation of section 19 of the Anti-Torture Law, which mandates the formulation of a rehabilitation programme and specifically indicate whether all relevant agencies have participated in its development and implementation, the amount of resources allocated to it and measures the State party is taking to ensure that it is implemented throughout the territory of the State party.*

Section 19 of the Anti-Torture Law mandates the formulation of a rehabilitation program within one year of the law taking effect. A Technical Working Group (TWG) composed of representatives from the Department of Social Work and Development (DSWD), DOH, DOJ and other concerned government agencies was supposed to develop the Rehabilitation Program for Torture Survivors. However, the TWG has not actually convened though some agencies, such as the DSWD, has proceeded in developing its own rehabilitation program under the ATA.

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<sup>27</sup>Mr. Sixto “Ka Jun” V. Bagasala, Jr. was killed allegedly by hired goons identified with a private landowner on February 15, 2014 at a flea market in between Brgy. Catmon and Brgy. Tonsuya in Malabon City. The documentation made by the Medical Action Group (MAG) and Task Force Detainees of the Philippines (TFDP) had established that the killing of Mr. Bagasala believed to be linked to his legitimate work in defending the rights of informal settlers in Malabon City as President of the Samahang Mamamayang Maralita sa Malabon (Local Association of Urban Poor Communities in Malabon) and as a human rights defender. Likewise, the case was brought to the attention of Margaret Sekaggya, then UN Special Rapporteur on the situation of human rights defenders in her report (A/HRC/27/38) to the 27th session of the Human Rights Council, Agenda items 2 and 5, August 27, 2014.

A governmental lead agency is yet to be designated to implement it. Aside from the DSWD, there is no detailed step-by step plan and concrete commitments from the relevant government agencies on how it will be put to effect. The absence of a coordinating agency creates a risk that rehabilitation services will become compartmentalized within the different responsible agencies and thus not fulfill the objective of taking a holistic approach to the victim's needs. This lack of specificity creates a risk that government agencies that have already demonstrated a lack of interest and ability in providing specialized rehabilitation services to torture survivors will not diligently implement the program.

As to funding, each mandated agency is expected to come up with their respective budget to implement their obligation under the law. This opens the door for government agencies to consider torture victim's rehabilitation as one of the many service components that they are already undertaking without establishing the necessary expertise and capacity of its human resources.

Despite the DOH's programs to decentralize health services, medical services are still mostly centered in urban areas. Rural health units (RHUs) catering to those who live in far flung areas are usually manned by volunteers health workers who could only give palliative management such as paracetamol etc. for fever, etc. Lacking the diagnostic skills of a medical practitioner, there is then the need to refer patients to centers that might pose difficulties, particularly in cases that would need a series of follow-ups. However, despite these difficulties in availing medical services, infrastructure or set up for the delivery of medical services are better than the set-up of psychological services. Most of the psychiatrists/psychologists have their practices in highly urbanized areas. It is difficult to refer patients coming from rural areas. Compared to physicians, whose free services could be made available in government hospitals in municipal, provincial or regional levels, there is dearth of psychiatrists/psychologists/counselors who would be able to provide free assistance/help to patients, more so for patients who have been traumatized, i.e. torture victims. Most of the mental health professionals are in private practices if ever their services are available in cities. Rehabilitation programs are practically non existent in areas other than in major cities and municipalities of the country.

Environmental factors and lack of security or stability that impede or prevent access will render available services inadequate. Many torture survivors don't feel safe and secure enough to approach and access rehabilitation services believing that the concerned government agencies will be biased against them and may even aggravate their psychological fear. For example, in places where conflict or political instability is ongoing, torture survivors may run the risk of discrimination, and further harassments from authorities.

Independent service providers, too, may face some security risks. In these situations, the availability of rehabilitation service providers such as by NGOs is compromised. Since NGOs are bridging the gap by providing the majority of torture rehabilitation services. One important question that have to be take into consideration by government is what changes are needed in the torture victim's environment to facilitate a full rehabilitation. In practice the services will vary greatly in terms of the components, activities, availability of professionals and the local needs in each context. There is no single intervention that is guaranteed to work for everyone in any given context.

### **UNCAT List of Issues: Issue 30**

*30. Pursuant to the Committee's previous concluding observations (para. 23), please provide information on the measures taken to ensure that, in practice, evidence obtained by torture shall not be invoked as evidence in any proceedings. Please provide information on cases in which legal provisions concerning the prohibition of against using a statement obtained under torture as evidence, including section (d) and (e) of Republic Act 7438 and section 25 of the 2007 Human Security Act, have been applied. Please also indicate the number and percentage of criminal cases*

*where the primary evidence of guilt was a confession. Please indicate if the courts have found any cases of wrongful conviction based on evidence obtained through torture and any redress provided to victims.*

Section 8 of the Anti-Torture Law sets out the general prohibition of the admissibility of evidence obtained through torture but there are reports and credible allegations that such prohibition is not respected in all circumstances and that the immediate use of violent force appears to be applied systematically to obtain information from suspects. During interrogation, reportedly, victims are being subjected to threats including the use of moderate physical pressure and forced into signing sheets of paper without properly explaining to them either its content or purpose of its use. Later victims come to know that the document they forcibly signed was used as a 'waiver' to legitimize testimonies they made under duress. In practice, once this waiver document is submitted in court as evidence or proof of a confession, the burden of proof as to whether the statement has been made as a result of torture rests with the suspect, not the prosecution. In that regard, the Supreme Court ruled in 2004<sup>28</sup> that "the confessant bears the burden of proof that his confession is tainted with duress, compulsion or coercion by substantiating his claim with independent evidence other than his own self-serving claims that the admissions in his affidavits are untrue and unwillingly executed. Bare assertions will certainly not suffice to overturn the presumption." It is yet often difficult for the victims to prove the use of torture when physical signs are no longer conspicuously visible thus impeding the right to an effective remedy for victims<sup>29</sup>.

### **UNCAT List of Issues: Issue 32**

In the light of the Committee's previous concluding observations (para. 19) and the letter sent by the Committee's Rapporteur for follow-up, please provide updated information on steps taken to address conditions of detention of children, in particular:<sup>15</sup>

(a) The measures taken to fully segregate detained children from adults. Please comment on reports that despite the protections called for in Juvenile Justice and Welfare Act (RA 9344; CAT/C/PHL/CO/2/Add.1, paras. 70 ff.), children continue to be held with adult inmates in police lock-up cells. Please clarify what oversight mechanisms are in place to ensure that children are separated from adult inmates;

(b) The measures taken to ensure de facto implementation of provisions regarding children in detention, including the Juvenile Justice and Welfare Act and the Revised Rule on Children in Conflict with the Law. The Committee notes the concerns raised by the Committee on the Rights of Child in 2009, in relation to the number of detained children and the lack of effective legal safeguards and access to medical care for children in conflict with the law (CRC/C/PHL/CO/3-4, para. 80);

<sup>28</sup>SC, G.R. No. 145566, People of the Philippines vs. Dindo "Bebot" Mojillo, March 9, 2004

<sup>29</sup>As regards the case of Lenin Salas, Rodwyn Tala, Jose Gomez, Daniel Navarro and Jerry Simbulan, a motu proprio investigation was conducted by the CHR Region III. Based on the sworn statements and the results of the medical examination conducted by MAG and Balay including the CHR Forensic Team, a case for violation of the Anti-Torture Act of 2009 was filed before the Office of the City Prosecutor of San Fernando City, Pampanga against P/Supt. Madzgani Mukaram and several John Does of Camp Diosdao De Leon of PNP City of San Fernando, Pampanga.

The case at hand was among the first case of torture that reached the prosecutor's office. The complainants were five political detainees who claimed that they have been badly beaten and threatened with death by their police captors whose names appeared on official records. The alleged torture and ill-treatment was documented by forensic experts and the visual marks were captured by a TV crew from Al Jazeera television visiting their detention facility. The complaint was filed on September 21, 2010 at the Office of the City Prosecutor of the City of San Fernando, Pampanga. The Office of City Prosecutor of the City of San Fernando, Pampanga issued resolutions dated July 21, 2011 and November 21, 2011 dismissing the complaint against respondents. The case was dismissed on the ground of insufficiency of evidence. According to the Prosecutor, the victims failed to positively identify respondent Mukaram as the person who allegedly tortured them since at the time the respondent (police) were talking to the victims, they were all blindfolded.

- (c) The measures taken to address the high number of reported cases of torture, inhuman and degrading treatment of children in detention and the low number of cases which have resulted in prosecution and conviction (CRC/C/PHL/CO/3-4, paras. 40 and 41).
- (d) The total number of child detainees, disaggregated by age, gender, sentence, and type of detention facility in which they are held;
- (e) The number of juvenile correctional institutions and juvenile courts and their geographic location.

The Juvenile Justice and Welfare Act was supposed to be the law that promotes the human rights of children in detention and of children at risk, including but not limited to the segregation of females from males, of adults from children. CLRDC noted several cases that this law is not implemented in various holding cells considering that alleged minor offenders continue to suffer both physical and mental torture. The said law also expressly prohibits committing children in jail, and established an intensive juvenile intervention program for children. Other international human rights documents such as the Riyadh Guidelines also expressed the same intention.

The CLRDC has noted the following observations of some holding centers that serve as “residential facilities” for so-called child offenders in Metro Manila:

1. Inadequate intervention program for the CICL to address their developmental and psychosocial needs.
2. Physical facilities do not meet the standard of a ‘residential facility’ – not enough space for recreational and therapeutic activities; children are behind bars not unlike ordinary prison cell; stringent regulations that deprive the children rights to play and engage in creative expression.
3. The CICL upon reaching the age of 18 are often transferred to adult prison center. Upon recommendation of the Social Worker, majority of the so-called Family Courts order the transfer of the minors, ignoring what was expressly prohibited by law. Rule 66 a., paragraph 4 of the Implementing Rules and Regulation of Republic Act 10630 which provides: “A CICL who reaches the age of 18 while in the custody of an institution for the youth, during the pendency of the criminal case, shall NOT be transferred to an adult jail.” Once they are transferred, the CICL will again suffer another ordeal of psychological sufferings from the adult detainees as usually called “baptism of fire” or “takal” for new comers. Torture committed by adult detainees to CICL who was just transferred are being tolerated by the government officers supervising the BJMP. The failure of the government to address this is itself violation of the Anti-Torture law and other international human rights instruments.

#### **UNCAT List of Issues: Issue 36**

*36. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and describe how it has ensured that those measures comply with all its obligations under international law. Please indicate to what extent the 2007 Human Security Act has been reviewed and amended in conformity with international human rights standards. Please describe the number and types of persons convicted under the Human Security Act and the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice. Please clarify what measures are taken to investigate reports that civilians suspected of supporting insurgents are subject to torture, extrajudicial executions and enforced disappearances.*

In the implementation of RA 9372 or Human Security Act of 2007, reportedly a case was filed against an indigenous people but later found by the court that the arrest unlawful, the victim has yet to receive payment of damages from the authorities as mandated by RA 9372.

#### **UNCAT List of Issues: Issue 37**

*In the light of the Committee’s previous concluding observations (para. 28) and the State party’s acceptance of the recommendations made in the universal periodic review (A/HRC/8/28/Add.1,*

*para. 2 (c)), please clarify measures taken to ratify the Optional Protocol to the Convention and whether the State party has set up or designated a national mechanism to conduct periodic visits to places of deprivation of liberty regarding preventing torture or other ill-treatment or punishment?*

The Philippine Senate finally ratified the OPCAT in 2010. It was the culmination of the lobby work initiated by the Balay Rehabilitation Center starting with the National Summit on the OPCAT in 2007 when the then Executive Secretary Ermita declared the intention of the Philippine government to opt out of Article 3 of the OPCAT once it ratified the protocol. To date, the National Preventive Mechanism is yet to be established by legislative action. Balay and other members of the UATC have initiated a series of consultations to build a multi-stakeholder consensus on an NPM model that would be effective in the Philippine context. This has contributed in the establishment of the Philippine OPCAT Working Group (POWG) under the auspices of the Presidential Committee on Human Rights (PHRC).

The UATC facilitated the filing of a bill creating the National Committee for the Prevention of Torture (House Bill No. 2401) on August 13, 2013. In April 2014, the Coalition submitted a revised bill that seeks to create an independent NPM attached to the CHR in partnership with CSOs and several government institutions. The proposed legislation does not only sought to establish the Philippine NPM by defining its organizational structure, mandate, powers and functions; it also provides a framework for the state's implementation of other OPCAT obligations. It prescribes the establishment of an institution attached to but functionally separate from the Commission on Human Rights to be composed of a committee with nine expert members serving on a staggered basis and a robust secretariat and support staff.

Faithful to Article 18 of the OPCAT and the Paris Principles, it seeks to guarantee through strict requirements that the NPM expert members have the required capabilities, knowledge and commitment to human rights. It also sets forth that the NPM is ensured pluralism, gender balance and the various facets of independence - functional, financial, personal and even perceived. The draft proposal also bars authorities from taking criminal, disciplinary or administrative sanctions against those who have communicated information to the NPM and SPT, and requires them to proactively prevent other forms of reprisals which may stem from preventive monitoring work.

The CHR has expressed support to the "consensus bill" but laid open its option to be designated as the NPM itself in case the legislators would not accede to the proposal of the UATC. Civil society groups have raised apprehension that the investigative function of the CHR and, the "violations approach" intrinsic in its mandate could defeat the purpose of the NPM as a preventive non-adversarial mechanism. The current set-up of the CHR seems to be also not congruent to the multi-disciplinary feature of the NPM as stated in the OPCAT guidelines. The UATC is concerned over who will monitor the performance of the CHR if it will appropriate the role of the NPM as well.

### **UNCAT List of Issues: Issue 39**

*39. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.*

One measure undertaken by the state is the issuance of Department of Justice (DOJ) Department Order No. 726 dated September 30, 2013. The order sought to "identify prosecutors from all over the country that will be designated to handle cases involving extralegal/extrajudicial killings, enforced disappearance and torture." This is in consonance with the Administrative Order No. 35 signed by President Benigno S. Aquino III on

November 22, 2012, which created the (IAC) composed of key government agencies which is led by the DOJ, as Chairperson.

The Inter-Agency Committee, dubbed as the "super body", serves as the mechanism of the government "designed to ensure effective investigations and successful prosecutions of grave human rights violations." Reports that reached PAHRA indicate that the mechanism has resolved 17 cases out of 700, including International Humanitarian Law (IHL) related case.

However, MAG has expressed curiosity on the effectiveness of the IAC, saying that it is unclear what the "resolved cases" mean. As PAHRA reported, the case of the Capión massacre where the court martial proceedings of the members of the Army's 27th Infantry Battalion was temporarily suspended because it was placed under the jurisdiction of the IAC.

MAG also raise concern that there is no representation of CSOs neither in the IAC nor in the Presidential Human Rights Committee (PHRC). It argues that the exclusion of independent human rights NGOs can weaken those bodies as it denies them a platform to engage the state agencies in constructive dialogue and public participation.

Based on PAHRA, the Executive's Second Philippine Human Rights Plan (PHRP II) which was presented by the PHRC at "Ugnayang Bayan" in November 2015 which contained information about its accomplishments based on UN Treaty Bodies and their responses to the questions raised by CSOs on how the PHRP II have been developed, which was a source of grave concern to the CSOs community due to lack of transparency and public participation.

The Executive finalized the Philippine Human Rights Action Plan without the knowledge and participation of CSOs. The civil society groups only come to know about the document when the Department of the Interior and Local Government (DILG) presented it to the public, including its accomplishments, in November 2015.

## Recommendations

### For the Commission on Human Rights

1. Convene the Oversight Committee with the meaningful participation of civil society organizations. This is to discuss the issues and recommendation raised by the United against Torture Coalition (UATC) earlier regarding impediments to torture prevention, prosecution, rehabilitation, and information dissemination.
2. Consider deputizing suitably qualified civil society organizations to serve as a network of documenters, monitor, and service providers. This is to address the documentation deficit and to assist the CHR in reaching out distant places where human rights violations, particularly torture, are likely to take place.
3. Come up with a public report regarding the appropriation and use of funds for the promotion of RA 9745.
4. Produce an analysis of torture cases filed in the court, and determine why there has not been a conviction of a perpetrator thus far. Discuss with the civil society groups the results and come up with actionable recommendations.
5. Strengthen leadership over the National Monitoring Mechanism (NMM) by ensuring that actual cases of torture are consistently taken up and actions are taken by concerned agencies based on agreed course of action.

### On secret or undisclosed places of detention

1. For the Commission on Human Rights, in collaboration with civil society organizations, to initiate an independent inquiry on the specific reports of Amnesty International, the Children Legal Rights and Development Center (CLRDC), and other members of the UATC on secret places of detention. The results of the investigation should lead to prosecution and sanction of those found to be responsible, including high-ranking officers implicated in the maintenance or concealment of the detention place. The Human Rights Affairs Office of the Philippine National Police should take steps that concerned police officers will fully cooperate in the investigation. The CHR should also make sure that informants are properly secured and are insulated from possible reprisal or harassment by authorities.
2. Appropriate charges in line with RA 9745 should be filed against police officers involved in the torture and maintenance of the secret detention place in Binan, Laguna where the so-called “wheel of torture” had taken place.
3. The Philippine National Police, the Armed Forces of the Philippines, and the Bureau of Jail Management and Penology, the Bureau of Corrections and other law enforcement agencies have to submit to the CHR periodically an updated list of their detention facilities. The list should also be made public in compliance with Section 7 of the Anti-Torture Act. The list should contain, among others, the names, date of arrest and incarceration of the detainee. Moreover, other data and information sited in the Anti-Enforced Disappearance Act, including the victim’s physical, mental and psychological condition, date, time, location of arrest and, if applicable, release and/or transfer, must be included in the register.

### On children, women, and torture

1. The Barangay Council for the Protection of Children (BCPC) and the Women and Children Protection Desks have to be sensitized on the Anti-Torture Act and the amended Juvenile Justice and Welfare Act. Persons in authority and their agents found violating the absolute prohibition on torture and ill treatment of children and young people have to be prosecuted.
2. Social workers who document cases of so called children-in-conflict with the law and manage “residential homes” for alleged child offenders must be made aware on the Anti Torture Act and trained to screen, document, and report cases of torture of children that come to their attention.
3. Specific cases raised by members of the UATC in the report should be investigated and addressed. This includes the improvement of the physical facilities and the provision of developmental and psychosocial enrichment activities for children kept in those residential homes. Concerned government agencies named in the report should be reminded not to take the report against civil society organizations who provided the information – such as denying them access to residential homes and marginalizing them – in order to uphold their rights as human rights defenders.
4. Preventive monitoring visits by domestic visiting mechanism (and the National Preventive Mechanism once it is finally established) should be undertaken with the cooperation of concerned agencies and local government units managing the residential homes for children.
5. The Public Attorney’s Office (PAO) can consider the designation of a unit or a pool of public defenders that specializes on cases of so-called CICL, including those who have been tortured. This is to promote child-rights sensitive legal practice and promote torture prevention as well.
6. Address the issue of detention/holding centers that do not have separate cells for homosexuals and lesbians which can give rise to gender-related concerns, including discrimination, harassment, bullying, or even violence.

7. Establish a structured monitoring system of all children being taken to custody for alleged offenses in order to screen, document, and report gender-based violence and abuse, especially against girl-children. Victims should be assisted in seeking redress and accessing justice, including access to rehabilitation services.
8. Domestic visiting mechanism, such as the CHR, should conduct random inspection of the “residential facilities” where child offenders are being kept.

#### On torture monitoring and documentation

1. The Public Attorney’s Office (PAO) should conduct a purposeful training of its members on torture screening, documentation and coordination with the CHR and human right CSOs. As public defenders who handle cases of individuals who have encounters with the police, they are in a good position to inquire whether the right of their client has been violated or not, especially as regard RA 9745.
2. The Bureau of Jail Management and Penology (BJMP) has to make sure that its jail officers are familiar with the Anti-Torture Act and its own Guidelines on Torture Documentation, Monitoring, and Reporting. Any jail personnel found violating the ATA has to be prosecuted. Those implicated in the use of excessive use force against protesting inmates in Makati City Jail, including senior officers who have been implicated in torture or ill treatment of the subdued detainees, have to be mad accountable under the ATA.
3. Domestic visiting agencies, including independent human rights organizations, must be allowed reasonable ‘ease of access’ to jails and other detention facilities in order conduct preventive and protective visits.
4. Training of doctors should be willfully undertaken by the DOH in line with its commitment to RA 9745. Institutional protection for medical examiners must be actually instituted to encourage physicians to perform their task free from fear of harassment or intimidation.
5. Competency enrichment for forensic investigators must be promoted. Logistical and equipment support must be provided to them as well.
6. Torture documentation, including the observance of the Istanbul Protocol, must be taught in medical schools.

#### Effective investigation of allegations of torture and ill-treatment

1. Ensure that all allegations or other indications that torture and ill-treatment has taken place are effectively investigated in accordance with “Section 12 of the Anti-Torture Act and Sections 19 to 24 of the implementing rules and regulations and the standards of Istanbul Protocol.
2. Persons arrested or under the custody of law enforcement agencies have to be properly informed of their right to be seen and examined by an independent doctor as provided for by Section 12 of the Anti-Torture Act. The so-called Miranda Warning read by police when effecting an arrest should also inform arrested persons of this right.
3. The right of torture victims to be seen and attended to by independent doctors in line with Section 12 of the ATA and Section 20 of its IRR must be respected. Stringent security requirements of jail authorities must be reconsidered in a manner that will not impede the right of torture victim.
4. Ensure that all relevant mechanisms involved in the investigation of torture and ill-treatment are trained on the standards of the Istanbul Protocol and that the Istanbul Protocol is included in university curriculum for legal and health professionals.

### On enforced disappearance

1. It should be mandatory for investigating authorities to conduct inquiries upon receipt of reports of enforced disappearance and other human rights violations even before the filing of formal complaints. Authorities should investigate promptly and *motu proprio* reported enforced disappearances and other human rights violations upon receipt of reports or knowledge of the transgressions without waiting for the filing of a formal complaint. Immediate investigation is imperative as time is of the essence in enforced disappearance.
2. Prosecutors should recognize the continuing nature of the crime of enforced disappearance and refrain from treating RA 10353 as an *ex-post facto* law.
3. Authorities should recognize enforced disappearance as a distinct crime separate from murder, kidnapping and serious illegal detention, arbitrary detention, torture and allied crimes. Perpetrators should be charged accordingly under RA 10353
4. FIND particularly calls on the State party to repeal Executive Order 546<sup>30</sup> that directs the police to support the military in counterinsurgency operations. The combined military and police is believed to have exacerbated the commission of enforced disappearance and other related human rights violations.
5. Prosecutors and other investigating authorities engaged in case build-up should partner not only with law enforcement agencies but with concerned civil society organizations, and families of the victims as well. Vesting the CHR with prosecutorial powers should be explored as in the course of its investigations, it is able to gather evidence to support prosecution.

### On the right to rehabilitation

1. Fully implement Section 19 of the Anti-Torture Law to ensure that specialized and appropriate rehabilitation services are available and promptly accessible to all victims of torture and ill-treatment in the Philippines without discrimination.
2. Convene the Technical Working Group (TWG) consisting of experts from the DSWD, DOH, DOJ, and the CHR to address issues on coordination mechanism, case management, integrated and effective bio-psychosocial service delivery, capacity development, monitoring, and funding. As torture rehabilitation is a matter of right, the CHR may be designated as the lead convener of the TWG, unless other mandated agencies agree to be named as main convener. The TWG can invite members of civil society organizations to be part of the process.
3. In accordance with Section 37 of the Implementing Rules and Regulations, ensure that victims can access the rehabilitation programme based on the recommendations of an examining physician without pursuing judicial remedies.
4. Continuously monitor and evaluate the full implementation of Section 19 of the Anti-Torture Law with due respect for victims right to confidentiality of their medical and psychological records.

### On the National Preventive Mechanism

1. The State should establish without further delay an NPM that conforms with the criteria set by the OPCAT and the Paris Principles.

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<sup>30</sup>Executive Order 546 directs the police to support the military in counterinsurgency operations including deputization of *barangay tanods* (village watchmen) as force multipliers. It does not authorize the use of private armies in counterinsurgency operations. Nonetheless, this executive issuance should be repealed as the military is mandated to protect and promote internal and external security while the police is responsible for the maintenance of peace and order and public safety.

2. The preventive mechanism should be agreed upon by different stakeholders through a process of inclusive consultation that takes into account the views and recommendations earlier put forward by the UATC to the CHR and the Congress.

#### On prosecution of cases and command responsibility

1. Sanction law enforcers , security forces and other agents of persons of authority who practice hooding. Officers who have knowledge of this practice and have not done anything to stop this or penalize those who practice blindfolding has to be made accountable for command responsibility.
2. The military or the police authorities have to show good faith in investigation of torture cases by providing “after operation reports,” when requested by the CHR, especially when necessary to identify their members who are implicated in torture cases or reports of enforced disappearance.
3. The Armed Forces of the Philippines (AFP) should shed further light on the identities and whereabouts of the military men implicated in the Cabais case. As stated earlier, the names, rank, and units of the soldiers have been cited in public records which can provide a basis to pursue a more transparent inquiry into the matter.
4. The AFP and other law enforcement agencies should facilitate the serving the warrants of arrest against the soldiers and an Army Captain implicated in the torture of Ajid as cited in this report.
5. The Inter-Agency Committee created by the government under Administrative Order 35 should consider allowing civil society organizations to participate in its meetings in order to have a more transparent, participatory, and effective resolution of human rights cases of special interest. It should also come out with a public report on the status of the cases that it is handling with an analysis and actionable recommendations to address the obstacles or difficulties in their successful prosecution.

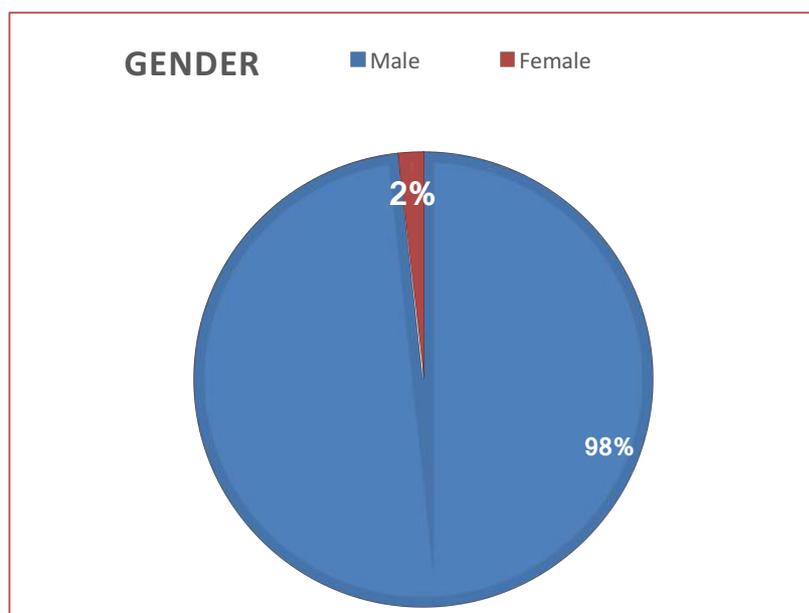
## Annex A: Data on torture and ill-treatment in the Philippines

Below is a set of data collected from 116 torture victims receiving rehabilitation services from Balay Rehabilitation Center during the period March 2014 to November 2015. The data provides an overview of the face of torture in the Philippines as experienced by victims supported by Balay. They consist mostly of persons implicated in the armed conflict between the government troops and dissident forces in Mindanao.

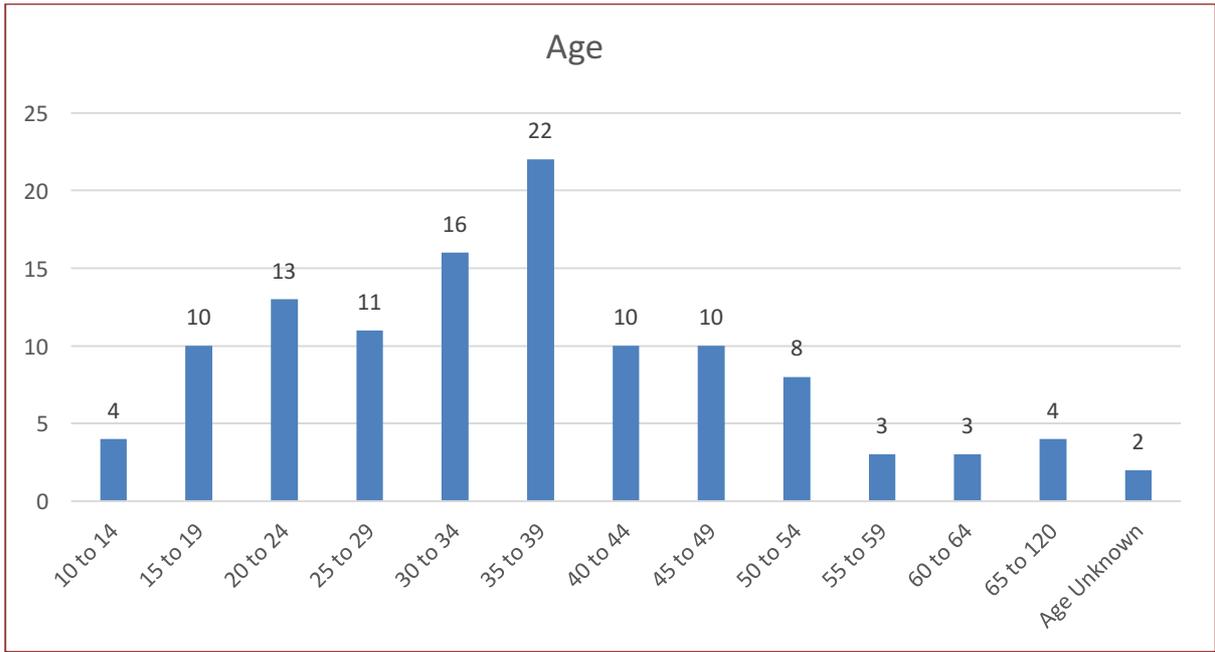
The information about the injuries suffered by the victims is still only partial as this is still being documented and encoded into the client database. Other torture cases recently documented are not included in this report as well. This should not be understood as a comprehensive overview of torture and ill-treatment in the Philippines.

Nevertheless, it may provide the Committee with a basis for inquiring about the trends shown in the data and whether there are any existing efforts by the Government to collect data on torture and ill-treatment, which could be used to check and verify the indications below.

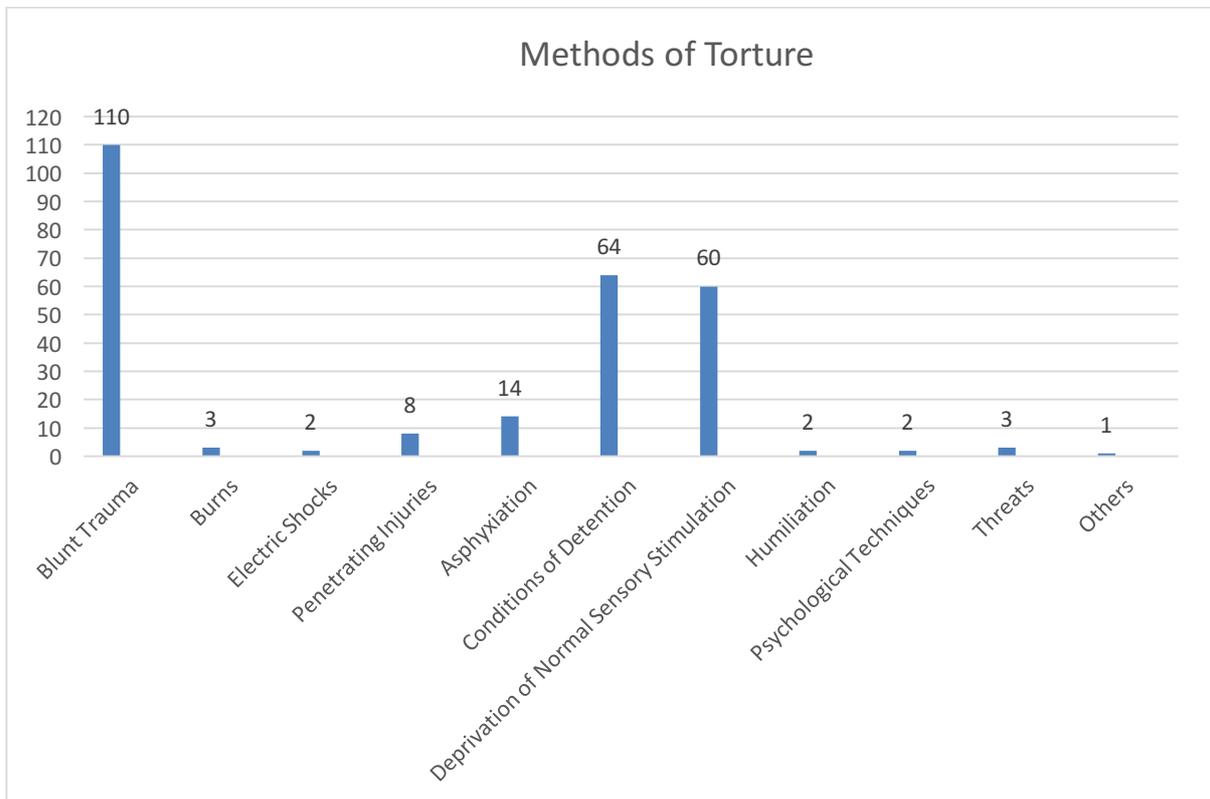
### Graphical presentation



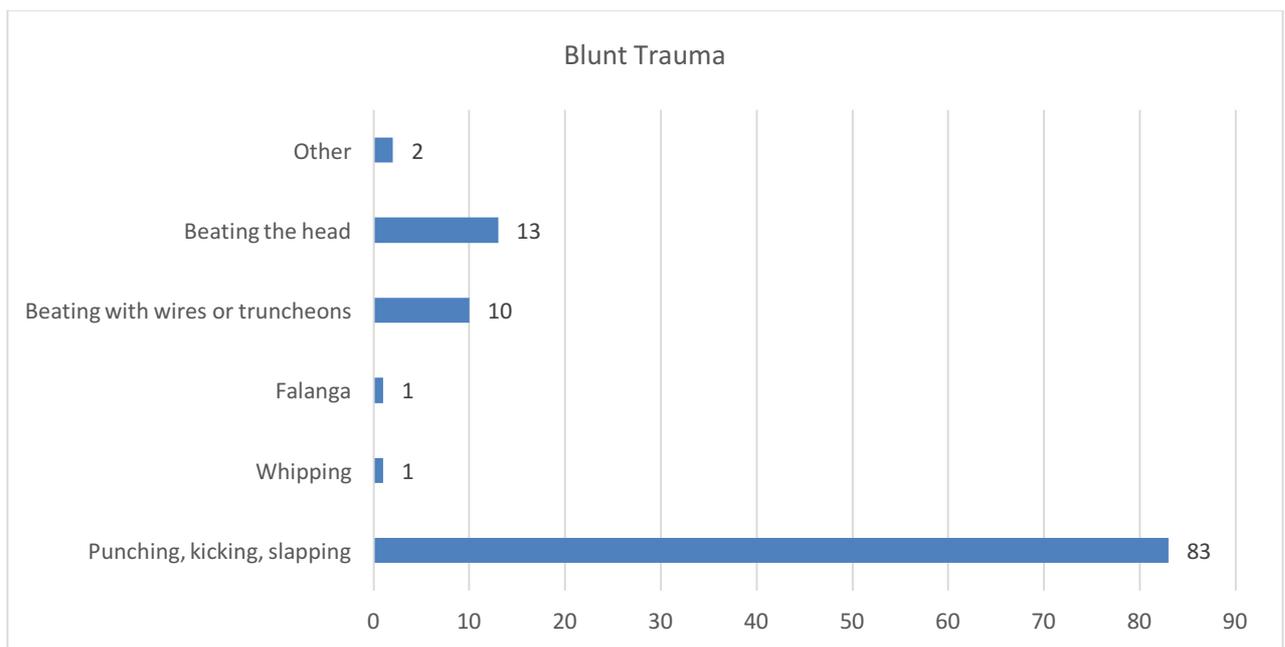
Out of the 116 documented torture cases, 98% are male while 2% are female.



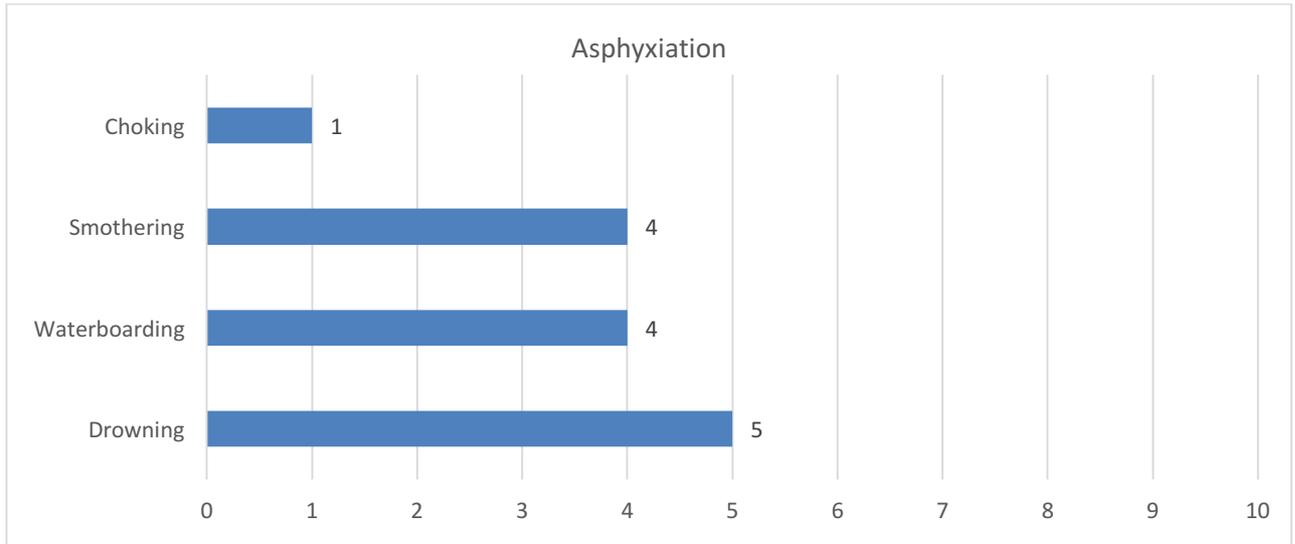
The data indicate the age distribution of the 116 documented cases which is between 35 to 39 years old. Notice that 14 of the torture victims were minors at the time of their arrest. Majority of the documented clients are of working age as seen in the skewed distribution of the clients' age to the left. Two of the clients do not know their age and do not have supporting documents to for verification. (some victims live in distant places in southern Philippines where birth registration is not a practice).



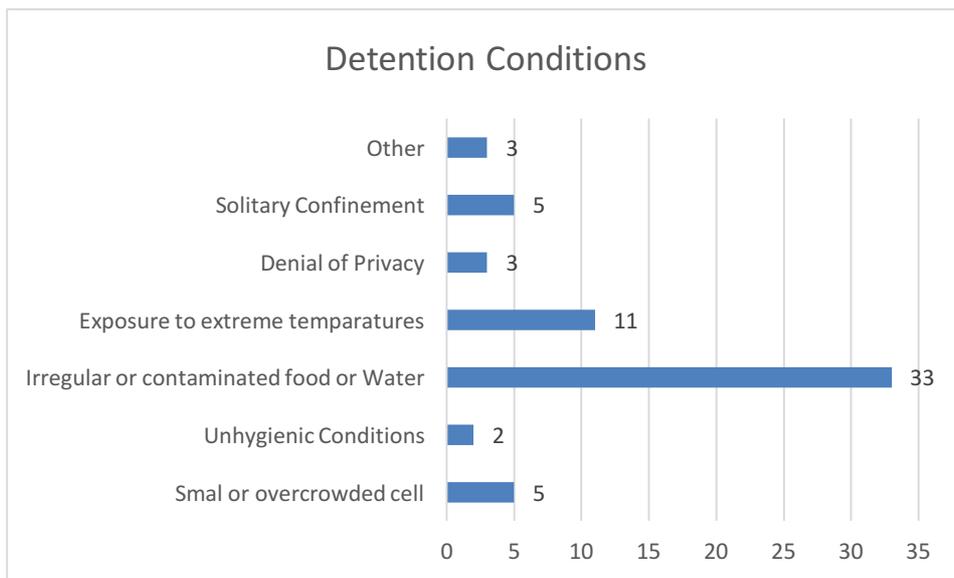
Beating is the most common method of torture with 110 reported cases among the 116 clients. 64 clients reported having experienced inhumane conditions of detention. 60 reported of undergoing deprivation of normal sensory stimulation. Fourteen clients reported of suffering from asphyxiation from their torturers. Eight penetrating injuries were reported by the clients as seen on the scars they have on their bodies. One still suffers from a bullet lodged in his hand as of the date of documentation. A few reported to have suffered burns and psychological techniques of torture.



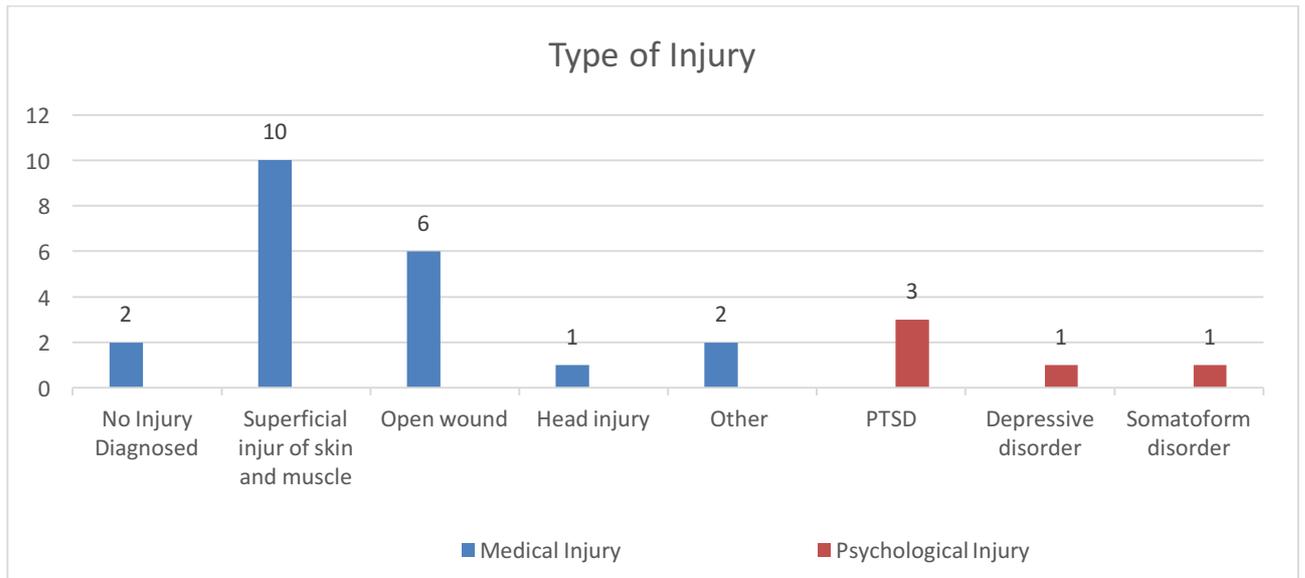
The graph shows a breakdown of the methods of beating as reported by the clients. Note that the methods are not mutually exclusive; some of the clients have suffered from two or more forms of torture. The data shows that punching, kicking and slapping are the most common method of beating with 83 reported cases. It is followed by thirteen reported cases of beating the head. Ten clients reported of having suffered from being beaten by truncheons. One client suffered whipping and one suffered falanga or systematic hitting of the soles by a hard object. The two cases cannot remember the specific form of beating they suffered but was certain that blunt trauma or beating was inflicted upon them.



The graph shows the particular methods of asphyxiation reported by the clients. Drowning was the most commonly used method of asphyxiation with five reports. It is followed by smothering and waterboarding with four reports each. One client reported that his torturers choked him.

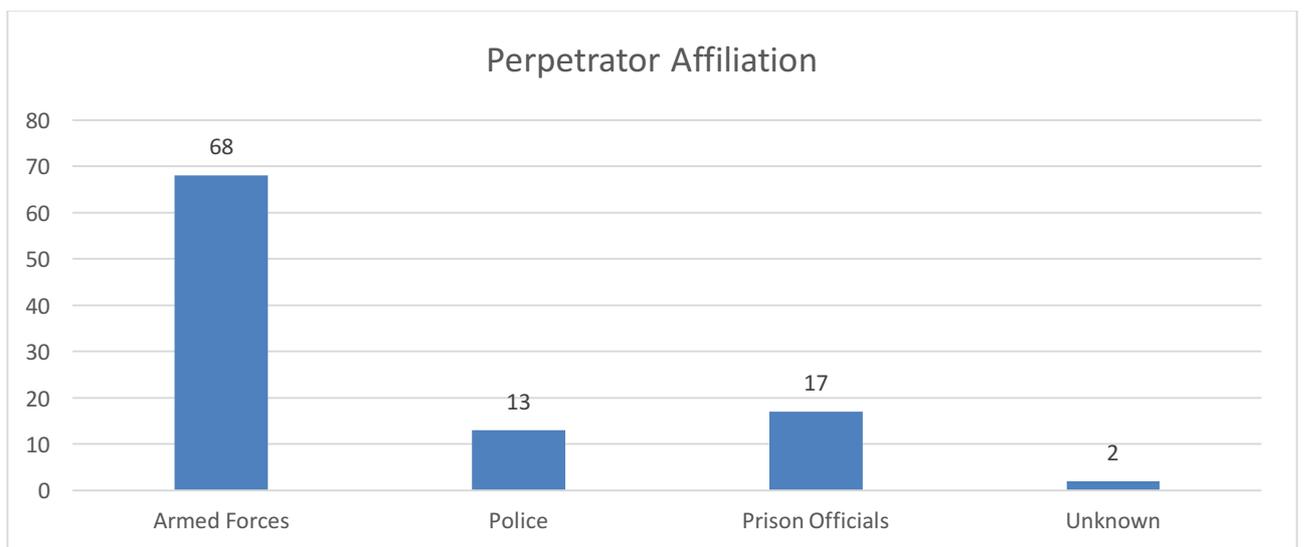


The figures indicate the deplorable conditions of detention facilities where the clients were taken following their arrest or capture. The most common reported case of CIDT is the serving of alleged contaminated food in a detention facility (33 cases). Eleven clients reported of having been exposed to extreme heat while undergoing detention. Overcrowded cells and Solitary Confinement (detainee was separated from other persons deprived of liberty) were also reported having five reports each. Three clients reported of being denied of privacy. Two clients reported of the unhygienic conditions in jails.



The table shows the type of injury suffered by the clients. These data were based on available results of the medical examination and psychosocial assessment conducted to the clients. Additional data are being encoded as of this report. For physical injuries, 10 were seen to have suffered from superficial and/or muscular injuries, six suffered from an open wound, and one was diagnosed with head injury. Two clients were diagnosed of not having suffered any physical injuries.

As to the psychological assessment, the data is based from tests using the Harvard Trauma Questionnaire and the Hopkins Symptoms Checklist. Three clients have been diagnosed to be symptomatic of post-traumatic stress disorder at the time of their psychological screening. One client was diagnosed to be symptomatic of depressive disorder. One client was also diagnosed to have somatoform disorder.



The graph shows the affiliation of the perpetrator of the alleged torturers as reported by the clients. Sixty eight clients identified that their torturers were members of the Armed Forces of the Philippines. Thirteen clients suffered torture from the police. Two clients were unable to identify the affiliation of the perpetrators. It must be noted that all the clients were arrested during the armed encounters between security forces and alleged members of a

dissident group. Seventeen clients reported of having suffered inhumane conditions in jails under the watch of jail officials.