

# **Joint Civil Society\*** **report on torture and other cruel, inhuman or degrading treatment or punishment in the Philippines**

**Presented to the UN Committee Against Torture (CAT) prior to the  
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\*Jointly submitted by NGOs with UN consultative status: Families of Victims of Involuntary Disappearance (FIND), the Philippine Human Rights Information Center (PhilRights); and without UN consultative status: Amnesty International-Pilipinas (AI), Medical Action Group (MAG), the Philippine Alliance of Human Rights Advocates (PAHRA), Task Force Detainees of the Philippines (TFDP), BALAY Rehabilitation Center Inc., People's Recovery, Empowerment and Development Assistance Foundation (PREDA) and Women's Education, Development, Productivity and Research Organization (WEDPRO), and endorsed by Albert Schweitzer Association Philippines, Inc. (ASAP), Asian Human Rights Commission (AHRC), Children's Rights Action Watch, Children's Legal Rights and Development Center Inc. (CLRD), Children Without Borders (KNK Network), Coalition to Stop Child Detention Through Restorative Justice (Philippines), International Justice Mission (IJM), Just Detention International (JDI), Justice and Peace Desk of Social Action Center (JPSAC) Diocese of Marbel, Kapatirang Komunidad People's Coalition, Kongreso ng Pagkakaisa ng mga Maralita ng Lunsod (KPML), Lanao Alliance of Human Rights Advocates (LAHRA), Legal Aid Center for Human Rights, Lingap Kababaihan Naglilingkod sa Bayan (LINGKOD), Moro Human Rights Center (MHRC), Movement for the Advancement of Student Power (MASP), Open Heart Foundation, Partnership for Agrarian Reform and Rural Development Services, Inc. (PARRDS), People's Partner for Development and Democracy (PPDD), Philippine Women's Network on Peace and Security (PWNPS), Pro Bono United Nations Shadow Reporting Program of International Human Rights Law, Indiana University School of Law, Indianapolis, USA, Rehabilitation and Research Centre for Torture Victims (RCT), Teacher's Dignity Coalition (TDC), Third World Movement Against the Exploitation of Women and Children, United Youth in the Philippines (UNYPHIL), Virlanie Foundation Inc. and Zone One Tondo Organization (ZOTO). This report is made possible through the support of the International Rehabilitation Council for Torture Victims (IRCT).

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## Executive Summary

1. This Joint Civil Society Report on the implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, referred to hereafter as the CAT, is being submitted in time for the consideration of the Philippine State Party's consolidated 2<sup>nd</sup> to 5<sup>th</sup> reports by the UN Committee Against Torture on its 42<sup>nd</sup> session from 27 April to 15 May 2009.
2. This submission is a collaborative effort of twelve non-governmental organizations (NGOs) and people's organizations (POs) facilitated by the Medical Action Group, Inc. (MAG) and supported by the International Rehabilitation Council for Torture Victims (IRCT).
3. It is worth noting that the Philippine Report covering the period from June 1989 to June 2007 is seventeen (17) years late, a clear neglect of State obligations under Article 19 paragraph 1 of the CAT.
4. Since the Committee Against Torture, referred to hereafter as the Committee, last reviewed the Philippines in 1989, torture of detainees and prisoners and ill-treatment of marginalized sectors such as women and children have continued unabated. The widespread and systematic use of torture in the Philippines could be mainly attributed to the unwillingness of the government to protect, promote, and fulfill the provisions stipulated under the CAT.
5. The government's dereliction of its obligations under the CAT could be seen primarily through its failure to enact a law criminalizing acts of torture. As a result, torture perpetrators have to be charged with lesser crimes under the Revised Penal Code (RPC) such as maltreatment, mutilation, physical injuries, administering injurious substances or beverages, grave coercion and/or violation of RA 7438<sup>2</sup>. This situation contravenes the CAT because the Committee emphasized that "in comparison to torture, ill-treatment differs in the severity of pain and suffering"; consequently, "it would be a violation of the Convention to prosecute conduct solely as ill-treatments where elements of torture are also present."<sup>3</sup>
6. The UN Human Rights Committee (HRC) in December 2003<sup>4</sup> also noted that the absence of a domestic law defining acts of torture as a crime is alarming since there is a "persistent and widespread use of torture" in the country.
7. Another indicator of the government's reluctance to seriously address torture is its non-implementation of the Committee's key recommendations back in 1989 such as instituting legal measures prohibiting torture, putting greater emphasis on training, education and information on human rights and on the monitoring process in preventing acts of torture.
8. Worse, the government itself through its counter-insurgency campaign, war on terrorism and dysfunctional administration of criminal justice system has further set the stage for the culture of torture and impunity in the Philippines to persist.
9. The Philippines has ratified major international human rights instruments<sup>5</sup> that in one form or the other prohibit the use of torture and other forms of ill-treatment. As a State Party to the CAT, the

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<sup>2</sup> An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigation Officers).

<sup>3</sup> CAT/C/GC/2CRP.1/Rev. 4, paragraph 9 and 10

<sup>4</sup> CCPR/CO/79/PHL, UN Human Rights Committee, Concluding Observations/Comments, 1 December 2003

<sup>5</sup> International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of Racial Discrimination

Philippines commit itself to ensure that under its criminal law all acts of torture, at any stage of commission, are offense punishable by appropriate law. The CAT establishes a regime of absolute prohibition on torture under any circumstances. Prohibition of torture is “absolute and non-derogable” and “no exceptional circumstances” whatsoever may be invoked by a State to justify acts of torture as stated by the CAT.<sup>6</sup>

10. Given these, the Philippines as a State Party is in breach of its duties and obligations under the CAT. It must take expeditious and decisive steps to correct this situation beginning with the passage of legislations criminalizing torture and invoking command responsibility of superior officers for the acts of their subordinates.
11. Although more than thirty years have passed since the Marcos dictatorship was overthrown, the police and the military still use the same torture methods employed during Martial Law. From February 1982 to October 1992, the Task Force Detainees of the Philippines (TFDP) recorded a total of 3,171 torture cases. The same group also documented 179 cases during the Ramos administration (1992-1998), and 53 cases during the Estrada administration (1998 to January 2001).
12. The decreasing trend in the occurrence of political torture from Marcos to Estrada administration was reversed during the present Gloria Macapagal-Arroyo government because of its war on terrorism and heightened counter-insurgency strategy. During the period of January 2001 to December 2008, TFDP documented 139 torture cases affecting 285 individuals.
13. While prohibition of the use of torture is enshrined in the 1987 Philippine Constitution, there are clear patterns that torture mainly occurs starting from the point of arrest, through interrogation and detention. The period between arrest and presentation of the arrested person before a judicial authority is a period conducive to torture and ill-treatment on the person arrested. It is a well-known fact that most of the persons arrested are subjected to torture and ill-treatment before they were brought to a judicial authority. Hence the need of necessary protection to the arrested person during this stage is considered to be crucial to prevent torture and ill-treatment.
14. Also, in most incidents in the Philippines, individuals ending up as torture victims were the ones initially arrested without warrant or merely “invited” for questioning and taken to detention centers, safe houses, and military camps. Although the law accords the same protection to both legally arrested and “invited” persons, the reality on the grounds tells otherwise.
15. Under the Rules of Court, Rule 122, persons arrested without a warrant may ask for a preliminary investigation where they can produce evidence in their defense, or request to be submitted to inquest proceedings to determine if they could be held in custody and charged in court. Moreover, individuals arrested without a warrant must be brought to a judicial authority within 36 hours for crimes such as rebellion.<sup>7</sup> However, in many circumstances, these safeguards are not respected.
16. Another contributing factor in the proliferation of torture is the lengthy pre-trial detention. In May 2005, a study by the Supreme Court (SC) found that an average trial takes over three years, a violation of Article 9 of the International Covenant on Civil and Political Rights (ICCPR) stating that “pretrial detention should be the exception and that bail should be granted, except in situations

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(ICERD), International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Rights of the Child (CRC) and International Covenant on the Protection of the Rights of all Migrants Workers and Members of their Families (CMW).

<sup>6</sup> CAT/C/GC/2CRP1/Rev. 4, 23 November 2007, paragraph 1 and 5

<sup>7</sup> Article 125, Revised Penal Code

where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party.”<sup>8</sup>

17. In torture situation, the detainee’s deprivation of liberty and the opacity surrounding places of detention such as military camps and safe houses create a situation of powerlessness and isolation on the part of the captive which in turn encourages the captors to use torture. A case in point was the horrible experience of Raymond and Reynaldo Manalo who were abducted by the military on 14 February 2006 on suspicion of being New People’s Army (NPA) members. They were subjected to various forms of torture and their tormentors kept transferring them from one military camp to another where they also witnessed the torture of Sherlyn Cadapan and Karen Empeño both missing to this day. After 18 months of detention, the Manalo brothers escaped from their abductors. Dr. Benito Molino of Medical Action Group (MAG) corroborated the torture accounts of Manalo brothers as he was requested by Families of Victims of Involuntary Disappearance (FIND) to conduct medical examinations on the victims after their escape<sup>9</sup>.
18. Meanwhile, women under arrest and in detention are also exposed to high risks of torture and other forms of cruel, inhuman and degrading treatment, including rape by State agents and even jail guards particularly between the time of arrest and detention at the police station or military camp. A contributing factor to sexual violence against women in detention is that contrary to Article 53 of the UN Standard Minimum Rules for the Treatment of Prisoners, male jail officers are allowed to supervise female inmates, to undertake body searches and to be present when female inmates are naked.<sup>10</sup>
19. Torture of children is also a widespread phenomenon in the Philippines. This is brought about by the glaring gap between the relatively sound policies promoting juvenile rights and welfare and what is actually happening in the field. For example, during clearing-up operations, police arrest and detain children as young as 11-12 years old in cells unfit for humans and sometimes with adult inmates but the law requires that minor offenders should be immediately turned over to rehabilitation centers. The “normal” delay in their transfer to these facilities is the most crucial moment wherein child offenders are most susceptible to torture and abusive treatment. Also in this situation, the rights of the child to have access to legal counsel, to medical treatment, their parents to be informed and to be separated from adult inmates are frequently violated.
20. Aggravating the torture situation in the country is the inadequate and unsystematic medical documentation and reporting of such incidents. Usually, human rights and health organizations are given the run-around and barred from jails and detention centers and when they are allowed to see the victims, they are prohibited from bringing medical and documentation equipment inside these holding facilities.
21. This difficulty and the non-availability of properly trained public health workers to assist victims often lead to non-recognition and non-reporting of torture cases. Furthermore, there is lack of medical documentation standards for torture cases and in some cases this has resulted to medical evidence being rejected by courts on grounds that it was not “scientific” enough.<sup>11</sup>
22. Related to this, the role of medical and health practitioners in torture must also be addressed. The UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in

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<sup>8</sup> International Federation of Human Rights (FIDH), International Fact-finding Mission Report, Terrorism and Human Rights in the Philippines, April 2008.

<sup>9</sup> SC, GR No. 180906, The Secretary of National Defense v. Manalo, October 7, 2008

<sup>10</sup> Ibid.

<sup>11</sup> Combating Torture: a manual for action, Chapter 8, Amnesty International.

the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment laid down the ethics of relations between health personnel, particularly physicians, and prisoners. Non-recognition of these standards, just like what's happening in the Philippines, clearly undermines the right to medical care and treatment of those vulnerable to torture and ill-treatment.

23. Under the CAT, the crime of torture is qualitatively distinguishable from the various forms of homicide and assault that exist in domestic laws and therefore should be separately defined as a crime. However, torture victims in the country cannot prosecute perpetrators in court for torture offenses because based on the existing penal code, acts of torture could not be recognized as a crime per se or under civil law, as an “actionable wrong” per se. As there is no law penalizing acts of torture, criminal cases have to be filed against perpetrators of torture for lesser crimes such as maltreatment, physical injuries, grave coercion and mutilation as provided by the RPC which fall short of the CAT definition of torture.
24. As a State Party to the CAT, the Philippines, primarily the government, has the duty to fully investigate allegations of torture and hold perpetrators accountable, through competent, independent and impartial prosecutorial and judicial authorities.<sup>12</sup> But, as pointed out earlier, a major impediment to this is the absence of an enabling law criminalizing torture and degrading treatment.
25. Furthermore, civil society groups believe that the country’s malfunctioning criminal justice system also strengthens the reigning culture of impunity of which torture is a major component along with extra-judicial killings, enforced disappearances and other human rights violations. Ironically, this distorted judicial system has increasingly focused on prosecuting the victims of torture instead of the torturers and perpetrators.
26. Similarly, the policies made by the Executive Department to improve the mechanisms in addressing complaints of alleged human rights violations by the police and the military are dubious and in fact impede the right of the victims to redress and effective remedy. An example is the deeply flawed implementation of the Witness Protection Program under RA 6981<sup>13</sup> which is supposed to play a crucial role in successfully prosecuting alleged human rights violators such as the police and the military. How could witnesses be encouraged to come forward if they feel threatened by the fact that the ones responsible for their security are linked or closely associated to the people they are accusing?
27. Against this backdrop, complaints and allegations of torture are not effectively investigated by concerned government agencies or even by the Commission of Human Rights (CHR) leaving victims without redress while perpetrators remain untouched by the law.
28. A positive development is the recent SC adoption of the Writ of Amparo,<sup>14</sup> a remedy for persons whose right to life, liberty and security have been violated or are threatened by an unlawful act or omission by public officials or employees and by private individuals or entities. However, the Philippine civil society believes that the best protection authorities can offer against torture and enforced disappearance is to penalize these humane and horrible acts.

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<sup>12</sup> CAT/C/GC/2CRP.1/Rev. 4, paragraph 26

<sup>13</sup> Witness Protection, Security and Benefit Act of 1991

<sup>14</sup>The Rule on the Writ of Amparo took effect on 24 October 2007.

## II. Comments on the Philippine Report and replies to the list of issues

### Article 2 Prohibition of torture

“As a State Party to the core human rights instruments, the Philippines has always been conscious of its obligation to respect, protect, promote and fulfill the rights of its citizens. This report will demonstrate that the Philippine government has not been remiss in its responsibility to prevent torture in all its forms. Although passage of a law on torture remains pending in Congress, there are enough legislative, judicial, and administrative measures that give effect to the provisions of the Convention.”

29. The Philippine Report contains inaccurate and incomplete information on the practice of torture and other cruel, inhuman or degrading treatment or punishment and on measures to prosecute the perpetrators. The report in paragraph 3 states that the Philippines has always been conscious of its obligation to respect, protect, promote and fulfill the rights of its citizens, and it has not been remiss in its responsibility to prevent torture but the reality on the ground indicates otherwise.

#### On the list of issues no. 1

30. Since the 11<sup>th</sup> Congress (1998-2001), anti-torture bills have been filed in Congress but it seems that it has never been included in the legislative priority of the administration because up to the 13<sup>th</sup> Congress (2004-2007), deliberations on this never went beyond the committee level. In the current 14<sup>th</sup> Congress (2007-2010), House Bill No. 5846 has been approved on third reading by the House of Representatives but in the Senate, the counterpart anti-torture bill, Senate Bill No. 1978, is still awaiting the endorsement of the members of the Committee on Justice and Human Rights.

#### On the list of issues no. 2 and Philippine Report paragraph 54

31. Although the government outlined how legal safeguards for detained persons as stipulated in Republic Act (RA) No. 7438 are applied, in practice things are quite different. Most torture victims are those under custodial investigation of the police or military in detention centers and camps. Normally, arresting officers do not have proper identification neither the required warrant of arrest. They merely “invite” the victim for questioning.

32. **Case.** PICOP 6. Artemio Ayala, Joseph Belar, Arnold Dangquiasan, Jovencio Lagare, Diosdado Oliver and Romualdo Orcullo, all workers of the Paper Industries Corporation of the Philippines (PICOP) were arbitrarily arrested on 14 October 2000 in Sta. Maria, Trento, Agusan del Sur allegedly by members of the Philippine Army 62<sup>nd</sup> Infantry Battalion (IB) led by a certain Corporal Rodrigo Billiones. The six workers were arrested on the suspicion that they were NPA members. They were brought to the Army’s 62<sup>nd</sup> IB camp. Witnesses who testified in court said the victims were heavily tortured and were tied with a rope upside down and allegedly their heads were beaten or smashed using iron pipes that caused their deaths. The victims’ bodies were never recovered since then relatives claimed.

33. Article 125 of Revised Penal Code (RPC) provides that no custodial investigation shall be conducted and the suspected person can only be legally detained by the investigating officer for the allowable period called “12-18-36 hours.”<sup>15</sup> A person subject of an arrest without a warrant must be delivered to the proper judicial authorities within 12-36 hours depending on the gravity of the alleged offense.

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<sup>15</sup> As per amendment under EO No. 272 dated 25 July 1987.

But in reality, pre-trial detention of suspects is not the exception but the rule. The combined time detainees spend in the police or military custody and remand confinement may amount to several months or even years.

34. **Case.** UMDJ 5. On 22 May 2006, members of the Union of the Masses for Democracy and Justice (UMDJ), a pro-Estrada<sup>16</sup> group were arrested without warrant while in the house of Ver Eustaquio, UMDJ chairperson, in Quezon City. Subjected to physical and mental torture were Eustaquio, Jim Lucio Cabauatan, Dennis Ibuna, Ruben Dionisio and Police Officer 3 Jose Justo Curameng. The military accused them of rebellion but they were released three days after the illegal arrest took place. One of the victims 60-year old Dionisio claimed his abductors took turns beating him while he was blindfolded and tied to a ceiling. He also complained that his head was covered with a plastic bag while electric shocks were administered to his genitals.

### **On the list of issues no. 3**

35. The 1987 Constitution guarantees that “no search warrant or warrant of arrest shall [be] issued except upon probable cause,” but the police and military on most occasions arbitrarily and excessively violate this with impunity. It has become a “systematic and widespread” practice by them to execute arrests and searches even without a lawful court order using justifications such as ‘hot pursuit operation.’
36. **Case.** In November 2005, Wenifreda Marigondon, then pregnant, was arbitrarily arrested by military men in ‘hot pursuit operation’ in Plaridel, Quezon on the suspicion that she was an NPA member. She was detained at a military camp for eight months without formal charge and was denied access to legal counsel and medical treatment. Presently, Marigondon is still detained at Metro Manila District Jail (MMDJ) for the crime of rebellion.
37. Four entities comprise the Philippine custodial system. The Bureau of Corrections (BuCor), a line agency of the Department of Justice (DOJ) is in charge of offenders whose sentence is above three years. While the Department of Interior and Local Government (DILG) oversees two custodial clusters mandated to detain suspects awaiting trial or those sentenced less than three years, the Bureau of Jail Management and Penology (BJMP) and the provincial jails managed by local government units (LGUs).

The BJMP and BuCor have a central registry of detainees and prisoners but the 76 provincial jails and 27 sub-provincial jails have been operating autonomously since the enactment of RA 7160<sup>17</sup>. It is unclear whether provincial LGUs submit a tally and statistical information to the DILG on a regular basis since local executives have the mandate to devise their own prison registry system.

### **On the list of issues no. 4**

38. The Human Security Act of 2007 or RA 9372 is a dangerous law, authorizing longer pre-trial detention, expanding the power of warrantless arrest, and allowing unchecked invasion of privacy, liberty and other basic rights.
39. Persons merely suspected of engaging in terrorism may be arrested without warrant and detained without charges up to 72 hours under Section 18 of this law. This provision virtually regulates a period during which the risk of torture is very high. Suspects may also be placed under house arrest, prohibited from using cell phones, computers and any other means of communication, even when

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<sup>16</sup> Former Philippine President Joseph Estrada

<sup>17</sup> Local Government Code of 1991

they are granted bail on the ground that evidence of guilt is not strong. They may also be subjected to surveillance and wiretapping, as well as examination, sequestration and freezing of bank deposits and other assets, on mere suspicion that they are members of a “terrorist organization”.

40. In the words of Martin Scheinin, United Nations (UN) Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, “... there are some positive aspects of the definition of terrorist acts in the Human Security Act but the end result is an overly broad definition which is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the International Covenant on Civil and Political Rights.”

#### **On the list of issues no. 5**

41. Sexual violence in detention, like other human rights violations, flourishes where it is surrounded by silence and secrecy. Few Filipino inmates are willing to come forward and report sexual abuse, but observers agree that this lack of formal complaints in no way indicates that facilities are safe. On the contrary, the Just Detention International (JDI) report<sup>18</sup> emphasized that the country’s detention facilities exhibit many of the conditions that have been found to be most likely to lead to sexual abuse, including severe overcrowding, lack of adequate supervision, failure to separate the most vulnerable inmates from likely predators, widespread homophobia, and a culture of silence around sexual abuse that results in impunity for corrupt officials. Current and former inmates, corrections and prison officials, and NGOs agree that it is fear, shame, and a belief among inmates that no help is available that prevents survivors of sexual abuse from speaking out about their experiences.
42. In one of the few official studies conducted on prisoner rape in the Philippines, four percent of 552 female jail inmates surveyed reported to the DILG that they had experienced sexual abuse while detained. Seven of the women had been raped, while others were subjected to conduct including sexual touching, kissing, corrections officials exposing their genitalia, and attempted rape. A more recent study found that ten percent of the women detainees surveyed had had sex with jail officials prior to their transfer to the Correctional Institution for Women (CIW), illuminating the widespread abuse of women inmates by corrections staff.
43. The same contempt infects the way the law is actually enforced against prostitution. Raiding bars, nightclubs, “prostitution dens” and other similar establishments has become a tool for extorting money and sexual favors. Women caught in such circumstances endure the humiliation of being pushed around while still unclothed, ridiculed, verbally abused, and ogled by police, TV news crew and bystanders. These are usual and continuing practices, unchanged from nearly ten years ago when the CEDAW<sup>19</sup> Committee called the government’s attention to the discriminatory application of laws against prostituted women and not the men involved as patrons, establishment owners, traffickers and pimps.<sup>20</sup>
44. Since prostitution is criminalized, women are subjected to all kinds of indignities, even with laws that are supposed to protect them from violence under police custody. One of these is Article 245 of the RPC, which forbids public officers from making sexual advances towards female detainees. Often violated, this provision is of little use to women who suffer various sexual abuses en route to the police stations and are held under duress and without the benefit of counsel. They are also

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<sup>18</sup> Report prepared by Just Detention International (JDI), an international human rights organization based in Los Angeles, California, that seeks to end sexual abuse in all forms of detention. *Sexual Violence in Philippine Detention Facilities*, Insert for Inclusion in Alternative NGO Report to U.N. Committee Against Torture, March 2009.

<sup>19</sup> Convention on the Elimination of All Forms of Discrimination against Women

<sup>20</sup> An alternative report to the CEDAW, 2006.

physically lumped together with male detainees because there are no separate quarters for men and women in many police stations. Some arrests are not even officially registered. This is a clear violation of Philippine prisons rules and regulations and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

45. Although documentation of sexual violence in Philippine detention facilities has focused predominantly on women detainees, juveniles, and political prisoners, there is growing evidence that sexual abuse is a common occurrence throughout the country's detention facilities.<sup>21</sup>

#### **On the list of issues no. 6**

46. Women in prostitution and trafficked women are particularly at risk for violence at the hands of government officials since being part of prostitution gives space for undue discrimination by law enforcement agencies. However, there are no instances known wherein these cases are filed in court. Moreover, most of these women are locked up in jails where other criminal offenders are jailed. The numerous reported incidents of trafficking of women and children in the Philippines both within the country and across its borders characterized the inefficient measures taken by the government despite an existing legislation (RA 9208 or Anti-Trafficking in Persons Act) to prevent trafficking and to provide assistance and support to the victims.
47. In 1998, the International Labor Organization (ILO) estimated around 400,000-500,000 Filipino women (aged 15-20) working as prostitutes. Others place the number of prostituted women to be about the size of the country's manufacturing workforce. Government is yet to establish a systematic monitoring system for gathering data, another one of its unfulfilled commitments under the CEDAW General Recommendation No. 12 (VIII). Building national baseline information on trafficking and prostitution of Filipino women and children is already hampered by the clandestine nature of these industries and lack of awareness among public officials, among others.
48. According to the Philippine Report to the Human Rights Council for the Universal Periodic Review<sup>22</sup>, the PNP and the NBI conducted 25 rescue operations and investigated 109 cases of trafficking for the period 2003-2005. The Department of Justice (DOJ) received a total of 114 cases of trafficking in 2005, 60 cases in 2004, and 12 cases in 2003. Since RA 9208 was enacted in 2003, ten persons have been convicted. However, to date, no large scale syndicates of traffickers have been brought to justice, and trafficking continues to be a major national and international problem. Corrupt and unscrupulous officials in various levels of the national and local bureaucracy have been reported to be either directly involved in trafficking in persons or as coddlers of traffickers.

#### **On the list of issues no. 7**

49. Official statistics and data collected by local NGOs confirm that domestic violence against women (VAW) is a widespread problem in the Philippines. The following statistics represent only the incidents reported to authorities and do not include the thousands (perhaps millions) of undocumented cases.<sup>23</sup>

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<sup>21</sup> Luz Rimban and Chit Balmaceda-Gutierrez, Philippine Center for Investigative Journalism (PCIJ), No Justice for Women Raped in Jail (7 December 1998), (quoting Romeo Pena, then-director of the PNP Directorate for Investigation, as stating that "there are cases of men getting raped [in prison]," even while denying that sexual violence against female detainees is common; see also, Raymung E. Narag, Freedom and Death Inside the Jail, A look into the condition of the Quezon City Jail 63, (2005).

<sup>22</sup> A/HRC/WG.6/1/PHL/1, 7 March 2008

<sup>23</sup> Aside from "under reporting" It is important also to note that there are instances of double counting when victims-survivors approach agencies without mentioning that they have reported to other agencies, and there is no relational database that aggregates unique data.

In surveys done by the Philippine National Police (PNP) and the Department of Social Welfare and Development (DSWD) from 1999 to 2002, the top three most common reported cases of VAW are physical injuries, rape and acts of lasciviousness. In 2001, the PNP and DSWD reported a total of 16,417 VAW cases. Physical injuries that include wife battering comprise most of the cases registered, with 54.8% and a little more than 38.2% recorded by the PNP and DSWD respectively. The surveys done by the PNP in 2000 revealed that females comprised more than 90% of all the victims of all forms of abuse and violence. In more than 80% of these reported cases, the women's intimate partners were the perpetrators, with husbands accounting for 27% of the cases and live-in partners at 7.6%. In terms of areas where these crimes were committed, majority, 70% happened at home, with the remaining 30% occurring elsewhere including open and public spaces.

### **On the list of issues no. 8 and Philippine Report paragraphs 7 and 122**

50. The Philippine government has instituted measures that would further limit NGO and civil society participation in governance instead of strengthening it. One example is the reconstitution of the Presidential Human Rights Committee (PHRC) through Administrative Order (AO) No. 163<sup>24</sup>. It expanded the committee's membership and functions by assigning specific departments to monitor government compliance with UN core treaties. However, it has resulted to arbitrary removal of the Philippine Alliance of Human Rights Advocates (PAHRA) and Families of Victims of Involuntary Disappearance (FIND) that have been active in the PHRC since 1998.

### **Article 3 Prohibition of refoulement**

#### **On the list of issues no. 9 to 11**

51. Article 3 of the CAT prohibits the government from forcibly sending a person to another country where he or she would be at risk of torture or ill-treatment but up to now, no domestic law has been enacted to give effect to this.

### **Article 4 Torture as a criminal offence and Philippine Report paragraph 35**

52. The Philippine civil society is concerned that despite the numerous pronouncements and recommendations made by the HRC and Committee Against Torture of the necessity to enact specific legislation incorporating the provisions of the Convention into domestic law, the Philippine government persists in declaring that: "[t]he basic legal provision which penalizes acts of torture is contained in the RPC."<sup>25</sup>

### **Article 10 Education and information and Philippine Report paragraph 53**

53. The vilification campaign or "labeling" and "order-of-battle approach" adopted systematically by the Armed Forces of the Philippines (AFP) and the PNP against civil society and human rights organizations as "enemies of the state" undermines the purpose of the Human Rights Offices of the AFP and the PNP. In fact, former head of the AFP Human Rights Office, Army Col. Jose Benedicto in a meeting with human rights groups has branded the TFDP openly as a communist front.

### **On the list of issues no. 16 and Philippine Report paragraphs 51 and 54**

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<sup>24</sup> Administrative Order No. 163, entitled, "Strengthening and Increasing the Membership of the Presidential Human Rights Committee, and Expanding further the Functions of Said Committee." Issued last 8 December 2006.

<sup>25</sup> Philippine Report, paragraph 35

54. Not only are torture victims denied the option of filing criminal complaints against their alleged perpetrators, they are also denied access to medical treatment. In practice, the victims have no access to legal counsel and a doctor immediately after arrest and during all stages of detention. The investigations conducted by the police concerning torture are either completely inconclusive or unsatisfactory. The police lack the ability to conduct forensic investigations and professional gathering of evidence to build a strong case that will stand in court. Their ability to secure vital pieces of evidence in solving cases of torture is also not satisfactory due to non-application of international standards prescribed in the Istanbul Protocol<sup>26</sup> in preparing medical reports.
55. However, suspects who have been tortured and are still in police custody rarely assert their right to see a doctor, especially if they are ordinary suspects from poor communities whose everyday access to doctors has been limited. Some report that they were taken to a government hospital for a medical examination after arrest but before interrogation to protect police officers from subsequent charges of ill-treatment. Others reported that police facilitated a medical examination after inquest, but they were seen by doctors assigned to major PNP or AFP health centers or to government hospitals who gave them cursory “check-list” physical examination with no questions about how any marks may have been inflicted—or searching queries about maltreatment which may not have left marks but had or was causing pain.
56. Medical certificates are frequently summary in nature, referring only to visible bruises or contusions with a formulaic assessment of how long the examinee is likely to need medical treatment. In many cases suspects do not see a doctor until days or even weeks after the alleged torture, when families or human rights groups have finally gained access or filed a complaint with the Commission on Human Rights (CHR) which dispatch investigators and doctors to the place of detention, but by this time visible marks have already faded or disappeared.
57. From 2002 to 2005, the Medical Action Group (MAG) and the CHR in cooperation with DILG particularly BJMP, DOJ, DOH and DSWD conducted nationwide nine workshops on the “Role of Medical and Allied Professionals and Jail Personnel on Recognition, Documentation and Reporting of Cases of Torture”. In all these workshops, BJMP personnel complained of inaccurate medical certificates attesting that arrested suspected felons are fit for commitment to BJMP jails. When the data in the certificate do not jive with the physical or mental condition of the person to be committed, investigations are conducted by the BJMP personnel. This, however, does not mean that doctors always willingly falsified the medical certificates.
58. Investigations showed instances wherein doctors are tricked into giving medical certificates by requesting police personnel. This is done in several ways: 1.] the police may present another person, better known as switching; 2.] the person was presented for examination before torture or infliction of injury was done; 3.] the person was presented right after the commission of torture or infliction of injury; 4.] the doctor was under duress; 5.] the doctor was just asked to sign a certificate that was prepared for him or her; and 6.] the doctor’s signature was forged.
59. There is no national standard on the investigation, documentation and reporting cases of torture. The Istanbul Protocol is not a commonly used tool amongst lawyers and medical doctors in the Philippines. Each investigative entity makes use of its own methods and formats. So far, only the CHR and MAG have been utilizing the Istanbul Protocol for their work. It is worth to mention that medical reports based on the Istanbul Protocol made by Dr. Ben Molino of MAG proved to be an

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<sup>26</sup> Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

important piece of evidence in the recent decision of the SC granting writ of amparo to Manalo brothers.

## **Article 11 Interrogation and custody**

### **On the list of issues nos. 17-19**

60. The custodial system in the Philippines is structured in a fragmented way. The DOJ maintains seven correctional facilities under its line bureau, the BuCor. While the DILG oversees the 76 provincial jails and 27 sub-provincial jails which are autonomously administered by provincial LGUs and the 1077 jails of its line bureau, the BJMP. The PNP also has remand jails where individuals are confined temporarily before endorsement to the BJMP or provincial jails. The Department of National Defense (DND) also has special detention centers for people under military custody.
61. Prison conditions are rudimentary and sometimes harsh. Provincial jails and prisons are overcrowded, lack basic infrastructure, and provide prisoners with an inadequate diet. Jails managed by the BJMP in Metro Manila operated at 240 percent of designed-capacity in 2006, compared with 390 percent last year.<sup>27</sup>
62. Such a decentralized system and local government autonomy make it difficult for government to implement measures to monitor and prevent acts of torture and cruel, inhuman or degrading treatment or punishment most especially in provincial and district jails which are obscure places from the national government's vantage point. Provincial jail administration has no comprehensive programs and lacking in standards in terms of methods of operations. Programs for inmates, food jail condition and budgetary provisions in these jails are dependent on the Office of Governor.
63. LGUs are in charge of operating 76 provincial jails and 27 sub-provincial jails in the country. Local executives or governors are left to decide how these facilities operate and are responsible for ensuring that living conditions and treatment of inmates are humane. Unfortunately, most local officials have no interest in upholding the rights of detainees. Many custodial officers in provincial jails are untrained and unqualified and are appointed by the incumbent governor.
64. An on-going jail decongestion program by BJMP resulted in the early release, using applicable laws, of more than 3,500 inmates. BJMP's establishment of new facilities for female inmates and its implementation of the new law on juvenile justice also contributed to the decrease in jail overcrowding from 2005.
65. In 2005 the BJMP had a budget of P2.25 billion, an increase of 16 percent from the 2004 budget. A daily subsistence allowance of about P40 per prisoner, up from 2004. Prison inmates often depended on their families for food because of the insufficient subsistence allowance and the need to bribe guards to receive food rations.<sup>28</sup>
66. The slow judicial process exacerbated the problem of overcrowding. Some inmates took turns sleeping, and others slept on their feet. Some prison wardens reportedly allowed wives or children to move in with inmates or stay in the prison compound because they could help feed the prisoners. Lack of potable water and poor ventilation continued to cause health problems in jails.
67. Indeed, conditions in detention facilities across the country breed torture and various forms of other cruel, inhuman or degrading treatment and punishment such as "takal" system. Many of these

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<sup>27</sup> International Rehabilitation Council for Torture Victims (IRCT), Country Assessment Report, The Philippines, 2007.

<sup>28</sup> Ibid.

troubling conditions have been well documented and at the acquiescence of jail authorities. For example, in many provincial jails, officials continue to house women with male inmates, and male corrections officers continue to guard women inmates in violation of prison rules and regulations. Gangs hold tremendous sway in Philippine detention facilities, and corrections officials often cede power to so-called “mayores” or gang leaders due to corruption or in an effort to preserve institutional order.<sup>29</sup> Detainees most vulnerable to abuses and extortion regularly seek protection from the gangs, often providing money or sex in return.

68. On 16 May 2006, President Arroyo signed the Juvenile Justice and Welfare Act (RA 9344) which, among other reforms, changed the age of criminal responsibility from nine to 15 years of age. Under the new law, children caught committing crimes are to be turned over to juvenile justice and welfare councils to be placed in programs supervised by local social welfare officers, and also prohibits the detention of minors in jails while undergoing trial.
69. International monitoring groups, including the International Committee of the Red Cross (ICRC), were also allowed access to jail and prison facilities however with permission from prison officials.
70. **Case.** On 15 March 2005, the siege at Metro Manila District Jail in Camp Bagong Diwa, Bicutan, Taguig resulted to the extrajudicial killing of 26 inmates and the wounding of other prisoners. Members of the PNP-Special Action Force swooped down the jail premises and fired upon on those inmates. This police operation was led by then-DILG Secretary Angelo Reyes (now DND Secretary).
71. CHR investigated this case and reported that there was no life that was in danger or there was no real threat to life that can be considered to justify the use of excessive force against the inmates who staged the failed escape attempt. Aside from this, there were detainees who were not involved in the escape attempt but were summarily executed while some inmates were also maltreated after the police assault, which, were not necessary to the success of the operation.<sup>30</sup>

#### **On the list of issues no. 20 and Philippine Report paragraph 87**

72. In cognizance of the provisions of the Convention on the Rights of the Child (CRC), legislative gaps and issues requiring review, reform and enactment have been identified in the 2005 UN Committee on the Rights of the Child Concluding Observations. The issues include a) minimum age of criminal responsibility, b) minimum age of sexual consent, c) prohibition of torture, d) lack of comprehensive juvenile justice system, e) discrimination against children born out of wedlock, f) use of children for pornography, and g) corporal punishment, among others.
73. RA 9344 has been enacted to keep children in conflict with the law out of jails and to divert them into rehabilitative programs, and to accord them the highest possible protection. However, as shown by the research and investigations carried out by People’s Recovery, Empowerment and Development Assistance Foundation (PREDA), the law is not being effectively implemented.
74. Evidences show to a large extent that diversion is rarely used as children in conflict with the law are usually detained in the company of adults and subjected to torture. Despite their respective mandates to establish detention and rehabilitation centers in cities and municipalities throughout the Philippines, the DSWD, the DILG and LGUs have not satisfactorily carried out this obligation. As a result, many areas in the country do not have this facility, and children awaiting trial are

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<sup>29</sup> Raymung E. Narag, *Freedom and Death Inside the Jail, A look into condition of the Quezon City Jail 130* (2005); Asian and Pacific Conference of Correctional Administrators; 23<sup>rd</sup> Annual Meeting Discussion Paper: Philippines 14 (2003), available online at [http://www.apcca.org/Pubs/23/Philippines/Discussion%20Paper%20\(Philippines\).PDF](http://www.apcca.org/Pubs/23/Philippines/Discussion%20Paper%20(Philippines).PDF) (last visited Feb. 27, 2009).

<sup>30</sup> Commission on Human Rights final report on the March 14-15, 2005 Camp Bagong Diwa incident.

detained together with adult detainees for prolonged periods of time where conditions of detention may amount to cruel, inhuman and degrading treatment.

75. As the cases illustrated below shall show, the principles behind RA 9344 remain, to a large extent, on paper. Diversion is rarely used and conditions in detention centers continue to worsen, and they are becoming more overcrowded by the day. Children are subjected to violence, both from guards, and by fellow inmates, without intervention from the authorities.
76. **Case.** In a visit to Manila Youth and Reception Center (MYRC) in July 2007, it was noted that there were four cells, each desperately overcrowded with more than 31 boys. Since there were no beds in any of the cells, the children were forced to sleep on bed mats and on the floor. In terms of sanitation, there was one toilet bowl, and one large water bucket which proved to be insufficient as evidenced by the foul smell from an overwhelming stench of excrement, and bodily fluids. It was further noted that the floors, walls and the bars on the cells were extremely unclean. Wall fans were busted and windows were without mosquito nets. In terms of recreation facility for the children, the one television set for boys, which is located outside their detention cell. The facility has basketball court. Where education should be a priority, there is only one classroom inside the facility.
77. Despite the prohibition of RA 9344, it is common and standard practice that minors, upon arrest, are thrown into holding cells in police stations which are overcrowded with adult inmates. Most often parents of the children are not contacted immediately. It is during this period especially girls get tattooed and subjected to various forms of ill treatment including rape and sexual abuse. Healthcare and medical facilities were extremely poor. Only one doctor attending to the health needs of the children twice per week, but many children suffer from scabies and other fungal diseases, respiratory infections—one child in particular had been diagnosed with tuberculosis, dental problems, infected wounds, one child was a schizophrenic, and aural infections. For such an array of illnesses, the healthcare provision is totally inadequate. PREDA staff heard that a year ago, 9 children died in the facility within 15 days but it was not reported at all.
78. Police child detention is an institutionalized practice that has been going on for decades. In its periodic report to the CAT, however, the government, just like before, omitted any mention of this PNP standard operating procedure and state norm in dealing with children at the precise point of arrest, in contravention of the CAT and various human rights treaties and child protection laws.
79. The reason police child detention still persists is this: There exists a DSWD and BJMP requirement for a court-issued commitment order to be first produced by police officers before they can turn over children to the DSWD or BJMP custody. It takes weeks and even months for the commitment order to be processed and issued by the judge, destroying the child in the interim.
80. The institutionalized jailing of children in the company of adult crime suspects has been swept under the rug by the Philippine government and boasted that the establishment of the Center for Restorative Activities, Development and Learning Activities (CRADLE) is the answer to the international outcry against this widespread practice. However, as Humanitarian Legal Assistance Foundation (HLAF) reports confirm, this institutionalized police child detention still persists.
81. According to the Philippine Report, the President has signed Executive Order (EO) No. 633 providing for the immediate release of detained children in conflict with the law (CICL) as declared under RA 9344 but data shows that 10 children (convicted) are still detained at national penitentiaries<sup>31</sup>.

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<sup>31</sup> Bureau of Corrections' data as June 30, 2008.

### **On the list of issues no. 21**

82. Women in detention are also reportedly the victims of torture and other forms of ill treatment, including rape and sexual abuse, by prison officials with impunity. A clear contributing factor to sexual violence against women in prisons is that despite the recommendations of Article 53 of the UN Standard Minimum Rules for the Treatment of Prisoners, male and female inmates are to be held in separate facilities and, in national prisons, overseen by guards of the same sex; however, there were anecdotal reports that these regulations were not uniformly enforced. Another underlying source of sexual violence is the situation with regard to the non-separation of female and male detainees. In provincial and district jails, male guards sometimes supervise female prisoners directly or indirectly. Although prison authorities attempted to segregate children, in some instances they were held in facilities not fully segregated from adult male inmates. It is alleged that in certain jails in the Philippines, female and male detainees are not held in fully segregated areas which is a violation of Article 8 of the UN Standard Minimum Rules.<sup>32</sup>
83. Only 223 out of 1,100 jails managed by the BJMP and the PNP had separate cells for minors, while 345 jails had separate cells for females. During the year the BJMP established two detention centers exclusively for women. Approximately 1,200 women inmates were transferred to these new facilities, located in Metro Manila and in Cebu City. More than 300 minor inmates were transferred to three youth centers in compliance with RA 9344.

### **Articles 12 and 13 Investigation and complaints**

#### **On the list of issues nos. 22-23 and Philippine Report paragraphs 61-65 and 76-77**

84. The Philippine Report stated that institutions are in place to investigate complaints of human rights violations committed by public officials, including reports of torture, i.e. the Office of the Ombudsman, the PNP-Internal Affairs Services (IAS), the CHR, the Human Rights Offices of PNP and AFP and the human rights desk of the National Bureau of Investigation (NBI). The Philippine civil society seriously doubts that these mechanisms and initiatives are functioning effectively, as very few perpetrators have been prosecuted so far.
85. The Office of the Ombudsman, created by RA 6770<sup>33</sup>, received 44 complaints from 2002 to 2006 alleging extrajudicial executions attributed to State agents but the government report concluded that said agency was unable to act on even a single case. Such delays, compound the problems caused by ineffective and flawed witness protection mechanisms. While such a result in relation to five or even ten cases might be justifiable, when it reaches the level of 44 cases the conclusion must be that the office is failing in its responsibilities.<sup>34</sup>

### **On the list of issues no. 25**

86. The SC upheld the 26 December 2007 decision of the Court of Appeals (CA) which granted the privilege of the writ of amparo to brothers Raymond and Reynaldo Manalo who escaped from their abductors after 18 months of detention. Dr. Benito Molino of MAG, the examining physician, prepared a written report on his findings. The report described the ordeal suffered by the two, their

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<sup>32</sup> UN. Doc. E/CN.4/2002/Add.1., Report of the Special Rapporteur on Violence Against Women to UN Human Rights Committee, 2002.

<sup>33</sup> The Ombudsman Act of 1989

<sup>34</sup> Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston to the Philippines, Human Rights Council, 4<sup>th</sup> session, 22 March 2007.

present complaints, physical findings, remarks and recommendations. It being well-nigh obvious from the testimonies of Manalo brothers they were tortured by military officials, at the acquiescence of retired Army General Jovito Palparan, Jr., former chief of the Army's 7<sup>th</sup> Infantry Division.

#### **On the list of issues no. 26 and Philippine Report paragraphs 6(b) and 73**

87. RA 6981 put in place the Witness Protection Security and Benefit Program but despite this reports indicate that witnesses are still systematically intimidated and harassed and that this mechanism is underused and not sufficiently implemented. The abject failure of the witness protection program due to lack of resources, in terms of budget and personnel, is among the major reasons that investigations are mostly unsuccessful.
88. President Arroyo's efforts such as certifying as urgent the bill strengthening the Witness Protection Program and forming a team of prosecutors to handle cases of human rights violations should be complimented by effective investigation, prosecution and conviction of perpetrators. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Prof. Philip Alston, on his visit in the Philippines last 21 February 2007 stressed the link between impunity and the absence of effective witness protection system in the country.

#### **Article 14 Compensation of victims**

#### **On the list of issues no. 27 and Philippine Report paragraph 78**

89. RA 7309 provides for a Board of Claims for victims of unjust imprisonment or detention, and victims of violent crimes. According to the Philippine report, a total of 22,469 applications for compensation have been granted by the Board from 1992 to June 2006. The Philippine civil society is not aware of any case where compensation has been awarded to victims. For example, despite repeated appeals, no compensation, medical attention or rehabilitation treatment were afforded to torture victim Omar Ramalan.
90. **Case.** Omar Ramalan was arrested without a warrant by Philippine Army 64<sup>th</sup> Infantry Battalion (IB) in January of 2004 and was subjected to various forms of torture by his abductors. Ramalan was blindfolded, stripped naked, hogtied, electrocuted, molested (his genital licked by a dog) and forcibly fed with spoiled food. He was released after being incommunicado for three days when the prosecutor found no sufficient evidence to lodge a case against him. On 23 February 2004, TFDP assisted Ramalan in filing a complaint to the provincial prosecutor for warrantless arrest, torture and illegal detention against Army Captain Joey Quirones and elements of the Army's 64<sup>th</sup> IB. To date, the case is still pending and Ramalan have not received any compensation and rehabilitation from the government as provided by RA 7309.

#### **On the list of issues no. 28 and Philippine Report paragraph 80**

91. The Philippine government does not have specific rehabilitation program for victims of torture. The Philippine Report should only report its own activities and not that of the initiatives done by NGOs.
92. BALAY Rehabilitation Center and MAG have rehabilitation programs for victims of torture and their families. These community and jail-based programs are often implemented in partnership with the CHR and the custodial authorities. In order to improve their services to the clients they are serving, government should allow NGOs like these improved access to detention centers and grant specific liberties that would make their programs more efficient.

## **Article 15 Coerced statements**

### **On the list of issues no. 29 and Philippine Report paragraph 15**

93. The use of torture is common or even standard practice by the police and the military to extract information and admission from the victims and to coerce them to cooperate in an investigation. The strong reliance on confessions as court evidences exerts pressure and at the same time encourages unscrupulous members of the police and the military to resort to torture.
94. The difficulty in obtaining evidences that torture took place arise frequently when physical signs are no longer conspicuously visible thus impeding the right to an effective remedy for victims. Legally, evidence is not admissible if it was proven that it was obtained by torture but the burden of proof rests on the shoulders of the alleged victims that they were indeed coerced into admitting responsibility for an offense.
95. This jurisprudence was based on a SC ruling saying 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.”<sup>35</sup>

## **Article 16 Other cruel, inhuman or degrading treatment or punishment**

### **On the list of issues nos. 30**

96. In response to the concerns raised by certain sectors specially the international community regarding extrajudicial killings and enforced disappearance of political activists allegedly perpetrated by military agents, the government created the Task Force Usig and the Melo Commission. Civil society groups criticized the Task Force Usig for its lack of impartiality and poor performance as it publicly admitted that witnesses cannot be located or unwilling to cooperate and the victims’ families were skeptical and reluctant to help the investigation process. This hesitation on the part of the witnesses and victims’ families came as no surprise since the police themselves have been implicated in the abductions and killings.
97. Prof. Alston also pointed out that in practice, the country’s Witness Protection Program is deeply flawed and would seem only to be effective in a very limited number of cases. He further said that one expert suggested to him that 8 out of 10 strong cases or 80 percent fail to move from initial investigation to actual prosecution stage due to unwillingness of witnesses to testify for fear for their lives and security.

### **On the list of issues no. 31**

98. Initially, the government refused to publish the Melo Commission report until Prof. Alston criticized this move since the justifications given for withholding the results of the investigation were unconvincing. In its report, the Melo Commission recommended the investigation of the retired Army General Jovito Palparan for his possible complicity with numerous human rights violations such as torture, summary killings, and enforced disappearances of human rights activists in areas where he was assigned.<sup>36</sup> But instead of being prosecuted, Palparan was publicly praised by Pres.

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<sup>35</sup> SC, G.R. No. 145566, People of the Philippines vs. Dindo “Bebot” Mojillo, March 9, 2004

<sup>36</sup> 7<sup>th</sup> Infantry Division, Central Luzon; 8<sup>th</sup> Infantry Division, Eastern Visayas and 2<sup>nd</sup> Infantry Division, Mindoro

Arroyo in her 2007 State of the Nation Address for his role in the counter-insurgency campaign. He is now being considered to be appointed as strategic adviser of the Dangerous Drugs Board (DDB).

### **On the list of issues nos. 32-33 and Philippine Report paragraph 66**

99. RA 7610 declared children to be “zones of peace” and RA 8371<sup>37</sup> also prohibits the recruitment of “children of indigenous cultural communities or indigenous peoples into the armed forces under any circumstances”. However paramilitary groups such as Civilian Armed Forces Geographical Unit (CAFGU) have reportedly recruited children under the age of 18. The government’s initial report to the UN Committee on the Rights of the Child on the Optional Protocol stated that, especially in remote areas, “children are being recruited into paramilitary structures to provide security and protection against ordinary criminal elements such as cattle rustlers, thieves and other armed bandits”, and that these organizations, notable among which were the Civilian Volunteer Organization (CVO) and CAFGU, “are also fielded to fight guerrilla insurgents”.<sup>38</sup> The Philippine civil society remains concerned that because of the difficulties in ensuring adequate birth registration in remote areas and among indigenous groups, there is high risk of individuals under the age of 18 be recruited to these armed groups.
100. The UN Guiding Principles on Internal Displacement (UNGPID) clearly states, “[e]very human being has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”
101. But in Mindanao, thousands of families have been displaced for decades due to armed conflict between the military and Muslim rebels asserting their right to self-determination. The conflict in Central Mindanao intensified even more when the Memorandum of Agreement on Ancestral Domain (MoA) signing was aborted last 4 August 2008 with the issuance of a Temporary Restraining Order (TRO) by SC. The fighting then spilled over to the provinces of Lanao del Norte, Sarangani and Maguindanao which caused more displacement of civilians- especially the women, children and the elderly, disruption of community life especially the people’s economic activities and the education of the children. The National Disaster Coordinating Council (NDCC) on its 8 September 2008 report said the cumulative total affected number of persons in Mindanao reached 88,243 families with 423,772 individuals. Cases of deaths and wounding among civilian population, women, men and children as they were caught in the cross fire, and those who got sick and died in the evacuation centers also increased as the conflict continued.<sup>39</sup>
102. **Case.** According to a fact-finding mission<sup>40</sup> by human rights organizations, the Army’s 32<sup>nd</sup> IB, 1<sup>st</sup> Infantry Tabak Division, under 104<sup>th</sup> Brigade Commander Captain Alonto Maamo, committed atrocities against the communities in Poona Piagapo, Lanao del Norte. These atrocities include destruction of properties, burning of houses, killings, arbitrary arrest and detention, and torture. There were two civilians killed, including a 15-year old, during military operations in Poona Piagapo. Nine civilians, five of whom were minors, were arrested on 19 August 2008 in Poblacion 1, Poona Piagapo town during the hot-pursuit operations of the Army’s 32<sup>nd</sup> IB lead by Captain Maamo. They were detained and allegedly tortured in the military facility of the 104<sup>th</sup> Brigade, Ditucalan, Iligan City. They were deprived of food for four days since their arrest and were subjected to regular interrogation and torture every three hours. They were also forced to drink their urines.

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<sup>37</sup> Indigenous Peoples Rights Act of 1997

<sup>38</sup> CRC/C/OPAC/PHL/1, 7 November 2007, paragraph 9.2.6

<sup>39</sup> Fact-Finding Mission Report, Task Force Civilian Protection (TFCP), Alyansa Ng Mga Mamamayan Para Sa Karapatang Pantao (AMKP), Mindanao Peoples’ Peace Movement (MPPM) and Philippine Alliance of Human Rights Advocates (PAHRA), October 12-22, 2008.

<sup>40</sup> Ibid.

### **On the list of issues no. 35 and Philippine Report paragraph 29**

103. The Optional Protocol to the UN Convention Against Torture (OPCAT) ratification has stood third in the Senate Committee on Foreign Relations's priority list for several months already and two other treaties had overtaken it since. Members of the United Against Torture Coalition (UATC)<sup>41</sup> have been lobbying Senator Miriam Defensor-Santiago as Chair of the Senate Committee on Foreign Affairs to schedule the OPCAT for public hearing and the PHRC to recommend to the President to certify it as an urgent legislation. Unfortunately, on 23 September 2008, Executive Secretary Eduardo Ermita announced the possibility of the Philippines opting to defer of its obligations under Articles 3 or 4 of the OPCAT as made available to States under the Treaty's Article 24.
104. The government has not indicated which article it plans to defer, OPCAT Article 3 on the establishment of the National Preventive Mechanism or Article 4 on recognizing the mandate of the Sub-Committee on Prevention to conduct visits. It has nonetheless indicated two reasons why they are considering a declaration to opt-out and these are to make necessary improvements of conditions in places of detention and harmonize domestic laws in order to conform to the OPCAT.
105. The Philippine campaign for the OPCAT ratification is closely monitored and supported by the Rehabilitation and Research Centre for Torture Victims (RCT) based in Copenhagen and the Association for the Prevention of Torture (APT) based in Geneva. These two human rights institutions have been following and backing the initiatives of local human rights organizations to advance the installment of the OPCAT since late 2005. The Royal Netherlands Embassy and the European Union (EU) Delegation to the Philippines have been very active in urging the Philippine Government to adhere to the instrument. The OPCAT campaign in the Philippines is also being funded by the EU.

### **On the list of issues no. 37**

106. The Philippine government has been remiss of its international human rights commitment for seeking justice and redress for victims of human rights violations by sitting on the ratification of the International Criminal Court (ICC). In mid-2003, a petition was filed before the SC by human rights organizations and individuals, including two legislators; seeking a court order requiring the Executive department to transmit to the Senate the instruments of the ICC ratification. Unfortunately, said petition was denied.

### **On the Philippine Report paragraphs 105-119**

107. For nearly 13 years, the torture complaint filed by "Abadilla 5"- Lenido Lumanog, Augusto Santos, Cesar Fortuna, Joel and Rameses de Jesus-, allegedly tortured by police officers to admit the murder of former Colonel Rolando Abadilla is still pending before the Office of Ombudsman for Military and Other Law Enforcement Offices (MOLEO). The five are still detained at the National Bilibid Prison (NBP) and their case is still pending review by the SC<sup>42</sup>. Despite the CHR conclusion that the five victims were tortured and recommended that charges be filed against members of the defunct Task Force Rolly including Police Senior Superintendents Romulo Sales and Bartolome Baluyot, none of the respondents ever faced prosecution.

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<sup>41</sup> UATC is a broad coalition of NGOs and individuals that work together against the use of torture and other forms of cruel, degrading treatment or punishment in the Philippines.

<sup>42</sup> SC GR No. 182555

## Conclusions and Recommendations

108. The Philippines is a State Party to UDHR, ICCPR and the CAT. These international human rights instruments provide that no one within a state party's jurisdiction shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The right not to be subjected to torture is an integral part of the State obligations to respect, protect and fulfill human rights.
109. Existing domestic legislation pertaining to the prohibition of acts of torture are not in accordance or are not in sufficient compliance with the CAT. In particular, the government's inattention or disregard of the observations of the CAT Committee in 1989 and the HRC in December 2003 on the absence of a domestic law criminalizing the acts of torture constitute a grave breach of its international obligations.
110. The Philippine civil society, in the spirit of helping improve State Party compliance with the CAT and defending the rights of the citizens to be free from torture, submits the following recommendations to the Philippine Government through the UN Committee Against Torture:
- a. To enact a law criminalizing acts of torture in accordance with the provisions of the CAT, criminalizing enforced disappearance; and imposing severe penalties on perpetrators;
  - b. To immediately ratify and effectively implement the Optional Protocol Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT);
  - c. To ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
  - d. To strengthen the Witness Protection Program under the Witness Protection, Security and Benefit Act (RA 6981) that will guarantee the safety of witnesses to torture incidents and other human rights violations. The government must give the highest priority to the funding of said program;
  - e. To repeal the Human Security Act of 2007 (RA 9372) as it authorizes preventive detention, expands the power of warrantless arrest and violates other basic constitutional rights;
  - f. To amend the Philippine National Police Law (RA 6995 or PNP Law) to ensure thorough and impartial investigation by an independent body of police officers accused of committing human rights violations;
  - g. To enact a law strengthening the Commission on Human Rights (CHR) with respect to its acquisition of quasi-judicial powers, enhanced investigative authority, other ancillary capacities, full-operational autonomy and independent nomination procedures in order to increase its ability to promote and protect human rights and improve its compliance to the Paris Principles<sup>43</sup>;
  - h. To ensure that all reports and complaints of torture against the police and military are investigated promptly, impartially and effectively, there must be a body independent from the PNP and the AFP who will conduct the investigation;

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<sup>43</sup> Principles relating to the status of NHRI defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

- i. To ensure inadmissibility of confessions obtained under duress in all cases in conformity with Article 15 of the CAT;
- j. To re-evaluate government's counter-insurgency campaign which encourage or facilitate extra-judicial killings of activists and human rights defenders and to put an end to the vilification campaign or "labeling" and "order of battle approach" adopted systematically by the AFP and the PNP against legal organizations;
- k. To enact a law punishing superior officers administratively and criminally for the acts of their subordinates or other persons subject to their control under the principle of command responsibility;
- l. To institutionalize the use of the Istanbul Protocol and its inclusion in the 5-year National Human Rights Action Plan currently being formulated;
- m. To continue and strengthen measures aimed at the physical and psychological recovery and social reintegration of torture victims including providing financial resources for the development and effective functioning of rehabilitation, reintegration and compensation through a legislative act;
- n. To address trafficking in women more effectively by enhancing bilateral, regional and international cooperation with countries of origin, transit and destination and to prosecute and punish traffickers and those exploiting women for prostitution, and provide protection to victims of trafficking;
- o. To enforce the provisions of Special Protection Against Child Abuse, Exploitation and Discrimination Act (RA 7610) and the Indigenous Peoples Rights Act (RA 8371) to ensure that indigenous children are not recruited by armed forces or armed groups, including vigilante groups;
- p. To enforce the existing procedures that handcuffing of children is prohibited and to direct the DSWD, DILG and PNP that all police and inquest proceedings of Children In Conflict with Law (CICL) should be held at DSWD and/or BJMP facilities;
- q. To establish diversion as the country's preferred method of rehabilitating minors. The reluctance to use diversion is linked with lack of public financing and investment for setting-up and running diversion programmes;
- r. To allot adequate budgetary requirements for the implementation of the Juvenile Justice and Welfare Act (RA 9344);
- s. To ensure that military codes, manuals and other military directives are in accordance with the provisions of the CAT and other international human rights instruments to which the Philippine government is a State Party;
- t. To ratify the Rome Statute of the International Criminal Court (ICC);
- u. To extend standing invitation to UN Special Procedures, and invite in particular the UN Special Rapporteur on Torture, the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the UN Working Group on Enforced and Involuntary Disappearance, as well as the UN Working Group on Arbitrary Detention.

## Abbreviations

<b>AFP</b>	Armed Forces of the Philippines	<b>IAS</b>	Internal Affairs Service
<b>BJMP</b>	Bureau of Jail Management and Penology	<b>ILO</b>	International Labor Organization
<b>CAFGU</b>	Civilian Armed Forces Geographical Unit	<b>IHL</b>	International Humanitarian Law
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women	<b>LGU</b>	Local Government Unit
<b>CHR</b>	Commission on Human Rights	<b>MILF</b>	Moro Islamic Liberation Front
<b>CICL</b>	Children in Conflict with the Law	<b>MOLEO</b>	Military and Other Law Enforcement Offices
<b>CIDG</b>	Criminal Investigation and Detection Group	<b>NBI</b>	National Bureau of Investigation
<b>CPP</b>	Communist Party of the Philippines	<b>NDCC</b>	National Disaster Coordinating Council
<b>CRADLE</b>	Centre for Restorative Activities, Development and Learning Activities	<b>NDF</b>	National Democratic Front
<b>CRC</b>	Convention on the Rights of the Child	<b>NGO</b>	Non-Government Organization
<b>CVO</b>	Civilian Volunteer Organization	<b>NHRI</b>	National Human Rights Institution
<b>DFA</b>	Department of Foreign Affairs	<b>NPA</b>	New People's Army
<b>DILG</b>	Department of Interior and Local Government	<b>OPCAT</b>	Optional Protocol to the UN Convention against Torture
<b>DOH</b>	Department of Health	<b>PHRC</b>	Presidential Human Rights Committee
<b>DOJ</b>	Department of Justice	<b>PNP</b>	Philippine National Police
<b>DND</b>	Department of National Defense	<b>RA</b>	Republic Act
<b>DSWD</b>	Department of Social Welfare and Development	<b>RPC</b>	Revised Penal Code
<b>EO</b>	Executive Order	<b>RTC</b>	Regional Trial Court
<b>HRC</b>	Human Rights Council	<b>SC</b>	Supreme Court