



COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

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COMMENTS ON THE CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST TORTURE (CAT/C/PHL/CO/2)

INTRODUCTION

This report was produced by the Commission on Human Rights of the Philippines (CHRP), a national human rights institution (NHRI) having “A”-status accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).¹

The report is based on data from the regional offices of the CHRP,² as well as the Study on the Human Rights Situation in Police Lock-up Cells in the National Capital Region³ (Study);

¹ See ICC, Report and Recommendations of the Session of the Sub-Committee on Accreditation, 26-30 March 2012 at pp. 24-26. Available at nhri.ohchr.org/EN/AboutUs/ICCaccreditation/Pages/SCA-Reports.aspx.

² Regions I, II, IV, V, VII, IX, X, XII and Cordillera Administrative Region (CAR).

³ A joint project of the CHRP and the PNP National Capital Region Police Office (NCRPO) with assistance from the Agencia Española de Cooperación Internacional para el Desarrollo (AECID). Published in April 2015.

the Torture Prevention Ambassador Project (TPA Project);⁴ and the Manual on the Human Rights Based Approach to Penal Management (Manual).⁵

The CHRP remains concerned at the dearth in the prosecution of cases of alleged torture, which remains an unfulfilled obligation of the State Party. The CHRP notes in this report some of the challenges faced by victims, such the insistence of public prosecutors on positive identification of the alleged torturer when, often times, the victim is blind-folded (Regions I, V, IX) and on the existence of a visible or permanent physical injury (Region IV).

The CHRP further laments that the use of torture and other cruel, inhuman or degrading treatment or punishment remains part of the practice of law enforcement officials of the State Party. The CHRP hopes that the Committee will strongly urge the State Party to take all necessary measures to ensure that its public officials receive the appropriate training, and to ensure the prompt investigation of complaints of torture and the prosecution of perpetrators.

COMMENTS ON CAT/C/PHL/CO/2

On the prompt, effective and impartial investigation of all allegations of involvement of members of law enforcement agencies in extrajudicial killings and enforced disappearances (para. 8) and torture and ill-treatment (para. 9) by an independent body (para. 15)

1. The CHRP notes the issuance by the Supreme Court of the Rule on the Writ of *Amparo*,⁶ a summary measure aimed at addressing violations or threats of violations to the rights to life, liberty and security,⁷ particularly cases of extrajudicial killings and enforced disappearances.⁸
2. The CHRP also notes the passage of the Anti-Torture Act of 2009,⁹ which entitles victims of torture to a prompt and an impartial investigation of their complaints by the CHRP, to be concluded within 60 days from the filing thereof,¹⁰ as well as to the speedy disposition of any pending writs of habeas corpus, *amparo* and habeas data proceedings.¹¹ The same law allows the CHRP to “render assistance ... in the filing of the complaint”.¹²

⁴ In collaboration with the Philippine National Police (PNP) and with assistance from the Association for the Prevention of Torture (APT) and the Asia Pacific Forum of NHRIs (APF). The CHRP issued four (4) human rights advisories on 28 December 2015 and presented these at a national summit held at the Rembrandt Hotel, Quezon City, on 4 February 2016.

⁵ With assistance from the United Nations Development Programme (UNDP). Publication forthcoming.

⁶ A.M. No. 07-9-12-SC.

⁷ *Id.*, sec. 1, first paragraph.

⁸ *Id.*, second paragraph.

⁹ Republic Act No. 9745.

¹⁰ *Id.*, sec. 9(a).

¹¹ *Id.*, sec. 10.

¹² *Id.*, sec. 11.

3. However, despite the foregoing, CHRP regional offices have had complaints dismissed by the public prosecutor, on the ground that the role of the CHRP is limited to extending assistance in the filing of complaints against torture and that the CHRP itself cannot file the complaint (Region IV).
4. The Committee may wish to recommend that that State Party review its treatment of cases directly filed by the CHRP, in accordance with the latter's constitutional mandate to provide legal assistance to the underprivileged whose human rights have been violated.¹³

On the definition of torture (para. 10), non-refoulement (para. 14), education programmes (para.20), redress, including compensation and rehabilitation (para. 22) and coerced confessions (para. 23)

5. The CHRP notes that these are specifically addressed in the Anti-Torture Act of 2009,¹⁴ which are referred to or quoted in third periodic report of the State Party.¹⁵
6. The CHRP regrets, however, that the provision on compensation to victims of torture, though stating that such compensation shall not be lower than 10,000.00 Philippine Pesos,¹⁶ refers the law creating the Claims Board under the Department of Justice,¹⁷ which sets the ceiling for compensation at 10,000.00 Philippine Pesos.¹⁸ This does not qualify as the "fair and adequate compensation" envisioned under article 14, paragraph 1 of the Convention.
7. The CHRP further regrets that the Anti-Torture Act of 2009 does not contain a provision embodying the principle "*aut dedere aut punire*", an obligation of the State Party under article 5 of the Convention.
8. The Committee may wish to recommend that the State Party pass the necessary amendatory legislation increasing the award of compensation and providing for the extradition of suspected torturers found within the State party or their prosecution on the basis of the Anti-Torture Act of 2009.

¹³ CONST., art. XIII, sec. 18(3). *See also* Export Processing Zone Authority v. Commission on Human Rights, G.R. No. 101476, April 14, 1992, in which the Supreme Court held that the provision of "legal aid services" refers to remedies the CHRP "may seek from the proper courts **on behalf of the victims of human rights violations.**"

¹⁴ *See* Republic Act No. 9745, secs. 3(a) and 4 (definition and acts of torture); sec. 17 (non-refouler); sec. 21 (education campaign); secs. 18-19 (compensation and rehabilitation); and sec. 8 (inadmissibility of confessions obtained from obtained through the use of torture).

¹⁵ *See* CAT/C/PHL/3, paras. 1 and 3 (definition and acts of torture); paras. 17 and 136 tables 5-7 (education programs); para. 200-201 (compensation and rehabilitation); and para. 205 (inadmissibility of confessions obtained through the use of torture).

¹⁶ Republic Act No. 9745, sec. 18.

¹⁷ Republic Act No. 7309.

¹⁸ *See id.*, sec. 4.

On the de facto practice of detention of suspects by the PNP and the AFP, especially lengthy pre-trial detention and arrests without warrants (para. 12)

9. The CHRP notes the assertion of the State Party that there is “immediate transfer of the suspect [from PNP] to BJMP custody”.¹⁹ However, according to the results of the Study, detainee transfers are often delayed by the lack of required court order, with commitment orders being issued immediately only 83 per cent of the time.²⁰
10. The findings in the Manual support the results of the Study: despite the 36-hour maximum holding period,²¹ some detainees spend an average of one (1) month in PNP lock-up cells, with the longest recorded period being two (2) years.²²
11. The Committee may wish to urge the State Party to implement measures to ensure that commitment orders are promptly issued.

On review of the 2007 Human Security Act (para. 13)

12. The CHRP has strongly advocated against the provision of the Human Security Act of 2007²³ allowing “a municipal, city, provincial or regional official” of the CHRP to extend indefinitely the period of detention of a suspected terrorist.²⁴
13. Moreover, the CHRP, while respecting the decision of the Supreme Court dismissing various petitions questioning the constitutionality of the same law,²⁵ laments that the same decision did not delve into the human rights ramifications of the same.
14. The Committee may wish to urge the State Party to pass the necessary amendatory legislation removing the power of the CHRP to approve extensions of detention periods.

On strengthening the independence and mandate, including unhampered and unrestrained access to detention facilities, including those under the jurisdiction of the military, of the CHRP (para. 16)

15. The CHRP notes the response of the State Party in relation to the visitorial power of the CHRP to conduct “spot checks” over detention facilities.²⁶ However, the CHRP mandate

¹⁹ See CAT/C/PHL/3, para. 30.

²⁰ See Study, p. 57, Table 10.

²¹ See REVISED PENAL CODE, art. 125.

²² See Manual, p.7, Table 1.

²³ Republic Act No. 9372.

²⁴ *Id.*, sec. 19.

²⁵ See Southern Hemisphere Engagement Network Inc. v. Anti-Terrorism Council, G.R. No. 178552, October 5, 2010.

²⁶ See CAT/C/PHL/3, para. 22.

is inaccurately described as “unrestricted”,²⁷ as the CHRP has to seek permission to access certain facilities and has no power to enforce this mandate *suo motu*.

16. The Committee may wish to urge the State Party to prioritize and ensure passage of the bill on the CHRP Charter, granting the CHRP unrestricted, unhampered and unannounced access to all places of detention.²⁸

On efforts to alleviate the overcrowding of penitentiary institutions and improving living conditions in the detention facilities (para. 17)

17. The CHRP recalls its human rights advisory under the TPA Project on the lack of standard police stations and lock-up cells in some municipalities/cities,²⁹ which recommends the fast-tracking of the donation of lots by local government units (LGUs) towards making accessible and adequate detention facilities at the local level.
18. According to the Manual, lack of space and facilities is a problem experienced by all agencies involved in the handling of persons deprived of their liberty (PDLs). The Bureau of Corrections (BuCor), for example, has 44,000 inmates under its care nationwide, but its facilities can only accommodate 18,000 inmates.³⁰ On the other hand, the facilities of Bureau of Jail Management and Penology (BJMP) can accommodate 19,000 detainees, but has 96,000 detainees in its custody.³¹
19. The CHRP also notes with concern that an investigation by the CHRP regional office (Region VIII) into the fire at the Abuyog Penal Colony on 8 October 2015 revealed that the facility, which was built to house 500 inmates, had a population of 1,256 at the time of the conflagration. The combination of over-crowding and faulty electrical wiring led to the death of 10 inmates.
20. The CHRP further recalls its human rights advisory under the TPA Project on the right to adequate food of PNP detainees,³² which recommends that adequate measures be taken by the State Party to ensure that the necessary budgetary allocation be made to ensure the right of PDLs to adequate food.
21. In this regard, the Manual also identifies lack of resources as a problem. The BuCor and the BJMP have a budget of 50 Philippine Pesos per day per inmate for the provision of food, while the PNP has no budgetary allocation for the purpose,³³ since detainees are supposed to be immediately transferred from the latter to the BJMP.

²⁷ See *id.*, para. 34.

²⁸ See, e.g., House Bill No. 238 (filed July 1, 2013), sec. 29(d): “enter and inspect the premises of any government agency ... without need of prior permission.” Available at www.congress.gov.ph/download/basic_16/HB00238.pdf.

²⁹ CHR (V) A2015-006 (December 28, 2015).

³⁰ See Manual, p. 8.

³¹ *Id.* at p. 9.

³² CHR (V) A2015-005 (December 28, 2015).

³³ See Manual, p. 11.

22. The Committee may wish to urge the State Party:

- to encourage LGUs to donate lots suitable for the construction of adequate detention facilities;
- to ensure that all detention facilities comply strictly with the Fire Code³⁴ and other building safety standards;³⁵ and
- to provide the necessary budgetary allocation to the PNP, BJMP and BuCor to ensure that PDLs enjoy the right to adequate and accessible food.

On effective measures to prevent sexual violence in detention, ensuring separation of juvenile detainees from adults, and of female detainees from males (paras. 18 and 19)

23. Although the latest State Party periodic report correctly states that, by provision of law,³⁶ children in conflict with the law (CICL), when detained, are mandated to be separated from adult detainees,³⁷ the CHRP notes that the results of the Study show that detainee segregation is not always implemented.³⁸
24. Moreover, while the Study notes that female detainees have separate lock-up cells, **the separation of male and female detainees does not always ensure privacy**, as when the cells are only separated by iron/steel bars.³⁹
25. The Committee may wish to urge the State Party to strictly implement the provisions on segregation of detainees and to ensure that female detainees are completely separated from their male counterparts and afforded privacy.

On the compilation of statistical data relevant to the monitoring of the implementation of the Convention at the national level (para. 27)

26. The CHRP notes statistics provided by the State Party on cases of violence against women,⁴⁰ child abuse⁴¹ and inhumane treatment of inmates.⁴² However, it laments the lack of coherent statistical data on cases torture.⁴³
27. Records before the CHRP show that, from the time the anti-torture law came into effect on 2010, complaints of alleged torture were filed with the CHRP **totaled 64 in 2010; 83**

³⁴ Republic Act No. 9514.

³⁵ See, e.g., Presidential Decree No. 1096, sec. 303 (on the issuance of building permits).

³⁶ Juvenile Justice and Welfare Act, Republic Act No. 9344, sec. 46.

³⁷ See CAT/C/PHL/3, paras. 218, 224 and 247-248.

³⁸ See Study, p. 23 n.85.

³⁹ See *id.*, n.86.

⁴⁰ CAT/C/PHL/3, para. 86.

⁴¹ *Id.*, para. 102.

⁴² *Id.*, para. 105.

⁴³ See *id.*, para. 249.

in 2011; 75 in 2012; 95 in 2013; 68 in 2014; and 69 in 2015. The corresponding number of victims totaled 164, 118, 119, 106, 84 and 90, respectively, for the years between 2010 and 2015 inclusive.⁴⁴ CHRP statistics also show that, in all complaints of torture filed with the CHRP since 2001, **members of the PNP represent 67 per cent of the respondents.**

28. Several CHRP regional offices note with concern that **cases are settled by the victims** with the alleged perpetrators, **either before the CHRP** (Regions I, II, VII, IX, X and CAR) **or the public prosecutor** (Regions I, II, IV, X) and that **only 7 cases are pending in court** (Regions IV, V, IX, X, XII and National Capital Region), **with no conviction to date under the Anti-Torture Act.**

29. Of particular concern is **the insistence of some public prosecutors on positive identification of the alleged torturer** when, often times, the victim is blind-folded (Regions I, V, IX) **and on the existence of a visible or permanent physical injury** (Region IV) for probable cause to be found. The latter situation adds an element that is not required by the Anti-Torture Act of 2009 and overlooks the provisions on mental torture and cruel, inhuman and degrading treatment or punishment.

30. The Committee may wish to urge the State Party:

- to ensure that its law enforcement, investigation, and prosecution officials receive the necessary training on the provisions of the Convention and the Anti-Torture Act of 2009;
- to ensure the prompt and independent investigation of torture cases and the equally prompt prosecution of perpetrators;
- to pass the necessary amendatory legislation proscribing the settlement of torture complaints and the automatic dismissal of complaints upon desistance of the victims, as embodied in other domestic human rights legislation.⁴⁵

OTHER MATTERS

On the enforced disappearances of Sherlyn Cadapan, Karen Empeño and Manuel Merino

31. The CHRP notes the efforts of the State Party in prosecuting retired Major General Jovito Palparan, Jr. (and three other military personnel) in connection with the enforced disappearances of Cadapan, Empeño and Merino.⁴⁶ Palparan is currently being tried for serious illegal detention (kidnapping) before the Regional Trial Court of Malolos City, Branch 14.

⁴⁴ From 2010 to 2015, there were 454 complaints filed with the CHRP affecting 681 victims.

⁴⁵ See, e.g., Anti-Trafficking in Persons Act, Republic Act No. 9208, sec. 8(c), as amended by Republic Act No. 10364, sec. 11: "Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victim of their parents or legal guardians.

⁴⁶ See CAT/C/PHL/3, para. 51.

32. However, the whereabouts of Cadapan, Empeño and Merino remain unknown.
33. The Committee may wish to recommend that the State Party continue its efforts in prosecuting retired Major General Jovito Palparan, Jr. and in locating Cadapan, Empeño and Merino.

On the enforced disappearance of Jonas Burgos

34. The CHRP notes the positive development that the complaint on the enforced disappearance of Jonas Burgos is no longer undergoing preliminary investigation⁴⁷ and that the prime suspect, Major Harry Baliaga, Jr., is currently being tried for arbitrary detention before the Regional Trial Court of Quezon City, Branch 216.
35. In addition, the Inter-Agency Committee (IAC) constituted under Executive Order No. 35⁴⁸ is currently studying the possibility of filing charges under the Anti-Enforced or Involuntary Disappearance Act of 2012,⁴⁹ which came into effect after the constitution of the IAC.
36. The CHRP has provided assistance to both the RTC (members of the CHRP investigation team are witnesses in the criminal case) and the IAC (lawyers from the CHRP investigation division have met with state prosecutors tasked to study the possibility of filing charges under the Anti-Enforced or Involuntary Disappearance Act).
37. The Committee may wish to recommend that the State Party continue its efforts in prosecuting Major Harry Baliaga, Jr., and that it promptly resolve its inquiry into the possibility of filing charges against Major Harry Baliaga, Jr. under the Anti-Enforced or Involuntary Disappearance Act.

On summary killings in Davao City in 2009

38. The CHRP notes that the submission of the State Party that the cases of summary killings in Davao City in 2009 are “*sub judice*”⁵⁰ is erroneous. Currently, there is no case pending before any court of law in the Philippines related to the summary killings, as the matter is still being studied by the Department of Justice.⁵¹

⁴⁷ See CAT/C/PHL/3, para. 52.

⁴⁸ See CAT/C/PHL/3, paras. 40(d), 57(b), 160, 174.

⁴⁹ Republic Act No. 10353.

⁵⁰ See CAT/C/PHL/3, para. 53.

⁵¹ See Mike Frialde, “Duterte to face raps for Davao killings?”, THE PHIL. STAR, March 12, 2016 at pp. 1 and 12. See also Catherine S. Valente, “Duterte faces raps over killings”, THE MANILA TIMES, March 12, 2016, at A1-A2.

39. In this regard, the CHRP conducted four (4) public inquiries in Davao City⁵² and issued a resolution embodying its finding on the killings attributed or attributable to the so-called Davao Death Squad.⁵³
40. In said resolution, the CHRP recommended that the Office of the Ombudsman (OMB) investigate the possible administrative and criminal liability of then Davao City Mayor Rodrigo Duterte (Duterte) and several members of the Davao City Police Office (DCPO). However, no charges were filed against Duterte and the charges filed by the OMB against the members of the DCPO were dismissed by the Court of Appeals.
41. The Committee may wish to urge the State party to promptly resolve its inquiry into the possibility of filing charges against those responsible for the summary killings in Davao City.

On the Makati City Jail incident of 9 March 2016

42. The CHRP notes with concern the use of force by jail officials in response to the noise barrage of inmates at the Makati City Jail on 9 March 2016.
43. Preliminary results of the investigation conducted by the CHRP's Forensic Center show that inmates were taken out of their jail cells at about 3 o'clock in the morning and made to lie down face to the ground, while jail officials beat the inmates with truncheons. Most of the inmates examined showed signs of beating to the back and abrasions to the chest, consistent with being beaten while lying down face to the ground. At least one inmate bore the mark of having been hit at the back of the neck with a rubber bullet.
44. The Committee may wish to urge the State Party to promptly investigate and prosecute the jail officials responsible, and to ensure that personnel having custody over PDLs receive the appropriate training on the provisions of the Convention and the Anti-Torture Act of 2009.

On the submission of reports to the CHRP

45. While the CHRP acknowledges that reports on the condition of detainees under PNP custody are submitted to the CHRP,⁵⁴ it laments that these reports are often late and are usually submitted only upon request of the CHRP.
46. The CHRP recalls the human rights advisory under the TPA Project on the PNP's compliance with the U.N. Standard Minimum Rules for the Treatment of Prisoners,⁵⁵ which recommends that the PNP "regularly submit the list of detainees" to the CHRP.

⁵² 30-31 March, 17 April, 22 May and 25 September, all in 2009.

⁵³ Issued on 28 June 2012.

⁵⁴ See CAT/C/PHL/3, para. 18.

⁵⁵ CHR (V) A2015-004 (December 28, 2015).

47. The Committee may wish to recommend that the State Party ensure the timely submission of reports to the CHRP.

On the recommendations and findings of the SPT

48. The CHRP notes with appreciation the efforts of the State Party in hosting the country visit of the Subcommittee on the Prevention of Torture (SPT) on 25 May to 3 June 2015. However, the CHRP regrets that the State Party has not made public the recommendations and observations of the SPT.⁵⁶

49. The Committee may wish to recommend that the State Party make public the recommendations and observations of the SPT.

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⁵⁶ See OPCAT, art. 16(1): The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.