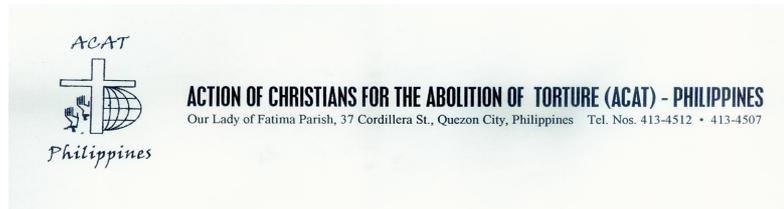


Fédération internationale de l'Action des chrétiens pour l'abolition de la Torture
International Federation of Action by Christians for the Abolition of Torture
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura



United Nations Committee against Torture

Review of Philippines second to fifth Periodic Report

April 28th and 29th 2009

FIACAT and ACAT Philippines' Alternative Report on the implementation of
the Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment

The Philippines

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Presentation of the NGO partners

➤ **Action by Christians for the Abolition of Torture in the Philippines (ACAT) - Philippines**

ACAT was set up in the **Philippines** in 1993. It is an ecumenical association.

It works to fight against torture and the death penalty by creating greater awareness among Christians and their churches of the intolerable nature of torture and the death penalty.

➤ **International Federation of Action by Christians for the Abolition of Torture (FIACAT)**

FIACAT is an international human rights NGO whose mandate is to fight for the abolition of torture and the death penalty

FIACAT was created by 10 ACATs on 8 February 1987.

The FIACAT network today consists of around thirty ACATs around the world - 25 of them are affiliated.

FIACAT has two main missions:

- **International representation of the network:**

Its mission is to represent the ACAT network before the international and regional bodies where it has consultative status: the United Nations, the African Commission on Human and Peoples Rights, the Council of Europe and the International Francophone Organisation.

It is also an active member of several large international coalitions:

- Coalition of International NGOs against Torture (CINAT);
- World Coalition against the Death Penalty (WCADP);
- International Coalition for the International Criminal Court (CCPI) ;
- International Coalition against Enforced Disappearances (ICAED).

- **Network Action:**

This helps keep the ACAT network alive by encouraging exchanges between different groups, suggesting actions and joint campaigns and organising regional and international seminars and training sessions.

Introductory note

On 18 June 1986, the Philippines ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In accordance with article 19 of this text, it recognised the jurisdiction of the Committee against Torture (CAT).

On April 28, 1989, Philippines Government has published its first review. It was expected by the Committee in June 1988.

FIACAT and ACAT Philippines are honoured to be able to present to the United Nations Committee against Torture (CAT) their concerns set out below regarding the implementation by the Philippines of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This report is to be delivered during the 42nd session of the Committee against Torture that will be held in Geneva between 27 April and 15 May 2009 during which Philippines second review will be examined, 16 years late. This review replaces the second, third, fourth and fifth periodic reviews.

This alternative report is divided into three parts:

- The introduction outlines the general international and legal framework on human rights protection and the political situation in the Philippines.
- Part two analyses, article by article, implementation nationally by the Philippines of the Convention against Torture.
- The report concludes with a series of recommendations made by FIACAT and ACAT Philippines to the Committee against Torture.

I – INTRODUCTION

Philippines have ratified the main Conventions on Human Rights:

- CAT-Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- CCPR-International Covenant on Civil and Political Rights
- CEDAW-Convention on the Elimination of All Forms of Discrimination against Women
- CERD-International Convention on the Elimination of All Forms of Racial Discrimination
- CESC-International Covenant on Economic, Social and Cultural Rights
- CMW-International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- CRC-Convention on the Rights of the Child
- CRC-OP-AC-Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- CRC-OP-SC-Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

Institutional framework and political context

The recent political history of Philippines - since independence in 1946 - has been characterized by a long democratic tradition on the one hand (with the exception of Marco's dictatorship), and by political instability (aborted coup attempts, destitutions, terrorists attacks, territorial claims) on the other.

The Philippines have a parliamentary democratic regime, regulated by the 1987 Constitution, and largely inspired by the United States model. The Parliament consists of a Senate (whose 26 members are elected for 6 years) and a House of Representatives (whose 235 members are elected for 3 years). The 1987 Constitution incorporates a respect for human rights, due process of law and the inculcation of international laws as a fundamental part of the domestic law.

Mrs. Gloria Macapagal-Arroyo was elected in May 2004 for a six-year presidential mandate. The electoral process was contested. Even if the elections are said to be free and fair in the Philippines, the opposition and civil society, as well as international electoral observers, were swift to denounce the elections as being characterized by fraud, cheating, vote buying and selling, intimidations and election-related violence¹. Further the presidency suffered from an unstable political climate, including a coup attempt in February 2006, destitution procedure in the Parliament). Nonetheless, her party won the May 2007 legislative elections.

The peace process in Mindanao has reached a deadlock. Hostilities intensified in August 2008 with the MILF (Moro Islamic Liberation Front) and negotiations with the NPA (New People Army) were broken off.

According to the European Commission, the main structural problems in the Philippines are *“global socio-economic inequity, the existence of political dynasties, the absence or lack of*

¹ See International Foundation for Electoral Systems, *2004 Philippines National Election*, August 2004

implementation of thematic programmes in political parties and inefficiencies in the judiciary [...] [and an] high inequality in the distribution of its resources”².

More indicators about the political context in the Philippines: corruption, press freedom, literacy and civil society

Corruption

The Government has undertaken some action to fight this phenomenon in cooperation with international organizations; nonetheless, corruption in the Philippines remains prevalent, even “institutionalized³, according to national and international reports⁴. Public and private sectors are implicated, including the three institutional pillars (executive, legislative and judicial) and the business, electoral, military and bureaucratic sectors. The prevalent practices of this so-called “grand corruption” are “*state capture, presidential graft, electoral corruption, ‘money politics’ and irregular practices in procurement projects*”. The “petty corruption” includes “*speed money for bureaucrats and the police and bribes for court officials*”⁵.

Press freedom

As an active counterbalance, the press in the Philippines has gained a reputation of being relatively free, due to the absence of governmental censorship. However, the killings of journalists who reported on sensitive issues, such as corruption, and the lack of proper accountability (these cases generally remain unsolved), make the Philippines, after Iraq, in 2002, 2004, 2005 and 2006⁶ the most dangerous country for journalists in the world. It ranks 139th in 2008 on the Press Freedom Index out of 173 states⁷.

Literacy and civil society

According to the UNDP, the country has a 93.3% adult literacy rate⁸. Further, the Philippines civil society is known to be pro-active and committed, despite the fact that it is targeted by human rights violations perpetrators.

The Philippines’ scope of international obligations and cooperation with human rights treaty-based bodies

Whilst the Philippines have ratified most of the main international human rights instruments and the death penalty was abolished in June 2006, the *implementation* of these commitments remains a real concern. It is significant that there are frequent delays on the reporting obligations to Treaty Bodies. There are significant and relevant treaties which have not been ratified, such as the Convention for the Protection of All Persons from Enforced Disappearance or the Rome Statute.

The Philippines and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

On 18 June of 1986, the Philippines ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (herein after “Convention against torture”); it came into force on 26 June 1986. No general reservation, declaration or objection has been

² European Union, *The Philippines Strategy Paper 2007-2013, s.d.*, p. 9

³ Term used by Transparency International in *National Integrity Systems: Country Study Report - Philippines 2006*, 2006, p. 8

⁴ The country is ranking 131 in 2007 on the Transparency International’s “Corruption Perceptions Index”, out of 171 countries. See Transparency International, *Annual Report 2007*, June 2008; Transparency International, *National Integrity Systems: Country Study Report - Philippines 2006*, *op. cit.*

⁵ Transparency International, *National Integrity Systems: Country Study Report - Philippines 2006*, *op. cit.*

⁶ Reporters Without Borders, annual reports available at :http://www.rsf.org/rubrique.php?id_rubrique=736

⁷ Reporters Without Borders, *World Press Freedom Index 2008*, available at : http://www.rsf.org/IMG/pdf/cl_en_2008.pdf

⁸ UNDP, *2008 Statistical Update*: http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_PHL.html

formulated or registered and therefore the Convention applies throughout the territory of the Philippines.

The Philippines has not however recognized the inter-State complaints provision (art.21), the individual complaints provision (art. 22) or the inquiry procedure provision (art. 20).

Shortly after the Universal Periodic Review of the State in April 2008, the President of the Philippines signed the Optional Protocol to the Convention against Torture, which is currently with the Senate awaiting ratification.

II – Analysis of the implementation of the Covenant, article by article

Article 1 – Article 4

Article 1: For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 4: State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Even if torture is prohibited under Article III of the Constitution, this is not reflected in the domestic criminal law, where no express offense or prohibition of torture is defined or stated. That leads to a low level of prosecution in terms of quantity, but also regarding the charges: suspected perpetrators are prosecuted for less serious offences.

There is neither reference to the legal responsibility of the officials in the chain of command, or obligation to investigate and prosecute to ascertain legal responsibility.

I - Status report

Because the Revised Penal Code of the Philippines does not include a specific offense of torture, such acts are punished under other offenses.

Maltreatment of prisoners is a criminal offense that carries a punishment of from 2 - 28 months imprisonment in addition to the liability of the acting public officer. If the purpose of the maltreatment is to extort a confession or to obtain some information from the prisoner, the offender is punishable by up to six years imprisonment, with a temporary special disqualification from public service and a fine, in addition to liability for the physical injuries or damage caused.

Other criminal offenses are **mutilation**, inflicting serious **physical injuries**, administering injurious substances or beverages, inflicting less serious physical injuries, inflicting slight physical injuries and maltreatment and **threats** and **coercion**, which carry penalties ranging from a fine to thirty years imprisonment.

Homicide and **murder** are punishable by from twelve to twenty years imprisonment or life imprisonment. **Rape** carries a punishment of thirty years imprisonment and, under aggravating circumstances, can include life imprisonment.

This penalty will be imposed if the victim is under the custody of the police or military authorities or any law enforcement or penal institution. It will also be imposed if the rape is committed by any member of the Armed Forces or para-military units, the Philippine National

Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime. Taking advantage of a public position constitutes an **aggravating circumstance** for any crime.

Concerning the two bills pending at the Senate

The Philippines State confirmed in the report addressed to the CAT⁹, that, as concerns the two bills before the Senate dealing with the prohibition on torture, that it intended to incorporate a definition of torture that “*approximates full conformity with definition of the Convention*”. The bills have been with the Senate awaiting ratification for over two years (since 2007), leading various NGOs to conclude that the bills “*appear to be meeting with resistance from within the Government*”¹⁰ or, alternatively, that the Government does not see the passage of these bills as a priority¹¹.

Consequently, whilst FIACAT acknowledges that the bills would represent undeniable progress toward the implementation of law to prevent and repress acts of torture, it continues to remind the Committee that the hoped for laws remain merely bills and, in addition, **bills likely to be partly criticized**¹².

Indeed, notwithstanding that the UNHRC makes clear in its General Comment on Article 7 of the ICCPR, that it was not desirable to “*draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment*”, the bills provide a **list of the acts to be considered as prohibited acts of torture**. Even though the list is preceded by the mention « torture shall include but not be limited to », no list of this kind can pretend to be exhaustive and could then lead some judges to exclude certain acts of torture.

They also establish a **hierarchy between physical and mental torture** according to the corresponding sentences; mental torture is punishable with only minor punishment¹³.

Furthermore, the bill does not give the domestic courts the power to exercise **universal jurisdiction** (neither to investigate nor prosecute) for crimes of torture committed in third countries when the suspected perpetrator is present on Philippine territory, as mentioned in the Convention (art. 5 §2).

II - The practice of torture persists in the Philippines

The word “endemic” is commonly used by human rights NGOs to describe the practice of torture in The Philippines¹⁴.

⁹ CAT/C/PHL/2, p.8

¹⁰ Asian Human Rights Commission, *Philippines: Torture is foremost about the state*, Press Release, 5 July 2006, AS-162-2006

¹¹ Philippine Alliance of Human Rights Advocates (PAHRA), *Joint submission by NGOs with UN consultative status and endorsed by 29 civil society organizations, UPR submission*, November 2007, p. 3

¹² REDRESS, *in Action against torture: A practical Guide to the Istanbul Protocol for Lawyers in the Philippines*, November 2007, p. 15-16

¹³ *Loc. cit.*

¹⁴ Asian Legal Resource Centre, *Submission by the Asian Legal Resource Center to the Human Rights Council's Universal periodic Review on human rights in the Republic of the Philippines*, November 2007, ALRC-UPR-06-003-2007, p. 4 ; Asian Human Rights Commission, *Philippines: Lack of law against torture and court delays deny redress for torture victims*, Press Release, 24 June 2007, AS-132-2007 ; Asian Human Rights Commission, *Philippines: Allegation of use of torture inside police headquarters must be investigated*, Press Release, 10 May 2007, AS-098-2007

In its compilation addressed to the Human Rights Council on March 2008 for the Universal Periodic Review of the Philippines, the Office of the High Commissioner for Human rights declared that: *“In recent years, the HR Committee, CRC and a number of special procedures mandate-holders have been concerned about reports of the persistent and widespread use of torture, incommunicado detention and solitary confinement of detainees by law enforcement officials”*.

Indeed, several times a year, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, delivers letters to the Government of the Philippines, indicating that allegations of torture have been received. For example, Theo van Boven and Manfred Nowak have, through the years 2003 to 2007, sent letters to the Government of the Philippines, asking for information about the allegations they have received and noting their concern about at least 105 individuals¹⁵ (8 of them were children) as well as 14 urgent or joint urgent appeals.

According to the Chairperson of the Commission on Human Rights of the Philippines (CHRP) Leila de Lima, torture is prevalent in the country’s prison system and her organization has documented over 300 cases of abuse in the past three years (September 2008 report).

Torture methods used in the Philippines

Through the testimonies of victims - arrested without warrant or with ordinary criminal charges or in anti-insurgency operations - some **“regular methods” of mental and physical torture** can be discerned¹⁶. The generally allegations appear to involve: physical beatings (*“assault, including being punched with fists, at times with bullets held between the interrogator’s fingers, beaten with rifle -butts or batons which may be wrapped in newspaper or other material -known as ‘mauling’-. Beating is often concentrated on the stomach area, which tends not to leave such visible bruising as elsewhere on the body”*.); electric shocks - *“directly onto the skin, or with water poured over the body and bare electric wires touched against the genitals, lips, ears, arms or legs”*; suffocation with plastic bags (known as “dry submarine” or “sinupot”) ; drowning ; “waterboarding” (*“at times, interrogators have simultaneously stood, or placed weight on the stomach, to intensify suffocation”*) ; dragging immersion in drum full of water ; mock executions ; deprivation of water, food and sleep ; threats with death (for example : *“placing pistol or rifle barrels against the detainee’s head or in his or her mouth and threatening the suspect with death while discharging firearms nearby”*) or against relatives ; burning of the skin (including the lips, nipples and ears) with cigarettes ; hitting of the detainee’s fingers and toes with metal pipes or gun barrels ; forcing drinking of excessive amounts of water or other liquids ; placing chili peppers on the suspect’s eyes or genitals or inserting the detainee’s penis into bottles containing gasoline mixed with chili ; *“placing bullets between the fingers and squeezing tightly”* ; forcing down detainee’s head into toilet bowls or into water containers *etc.*

The intensity and the duration of torture methods seem to be particularly serious in **cases of anti-insurgency and political cases**, designed to ‘break-down’ the victims. Body marks on the disappeared and those killed indicate that they have either been tortured until death or killed subsequently¹⁷.

¹⁵See E/CN.4/2004/56/Add.1, E/CN.4/2005/62/Add.1, E/CN.4/2006/6/Add.1, A/HRC/4/33/Add.1, A/HRC/7/3/Add.1

¹⁶ Asian Human Rights Commission, *The state of human rights in the Philippines*, AHRC-SPR-015-2008, 2008, p. 11, 13. The recorded interviews also provided from Task Force Detainees of the Philippines (TFDP), KARAPATAN, doctors from the Medical Action Group (MAG) and the Free Legal Assistance Group (FLAG).

Torture and ill-treatments are often committed in order to **extract confessions and information**, and administer **punishment**, but also for **‘personal gains’** (extortion and sexual satisfaction)¹⁸. When the police is under pressure to resolve a case quickly or “high profile cases” in general, they “*often use torture to extract confessions*”¹⁹ and obtain forced testimonies²⁰.

If the practice of torture applies to common criminals, some groups are more vulnerable to the associated procedural failings and are most at risk of torture and ill-treatment. Among these vulnerably groups are **child suspects**, who are “isolated” (street-children, ‘vagrants’ or those who are prey to substance-abuse) and those from poor and marginalized groups. These are more likely to be detained without access to lawyers or social workers, as demanded by Philippine law²¹. **Women** are more vulnerable to torture involving rape and sexual abuse. The particular situation of children and women in custody will be dealt with in more detail later in the report.

Torture and ill-treatments in conflict zones: an increased crisis²²

People suspected to be part or sympathizing with groups hostile to the army or the State, for example, the New People’s Army (armed wing of the Communist Party of the Philippines- or the Abu Sayyaf Group), or Muslim secessionists in Mindao, are targeted as groups by state actors practicing torture²³.

The results of fact-finding mission undertaken by a coalition of 52 civil society organizations from local to national level in the provinces of Lanao del Norte and Lanao del Sur describe several cases of human rights violations – among them torture and ill-treatment – committed by members of the security forces²⁴. Available sources tend to show that torture is more often committed by the **Philippine Army**, and is concentrated in the **Mindanao region**.

¹⁷ See “Rotten to the core: Unaddressed killings, disappearances & torture in the Philippines”, in *Special Report: The Criminal Justice System of the Philippines is Rotten, Article 2*, February 2007, Vol. 06, No. 01, p. 29-116

¹⁸ Free Legal Assistance Group (FLAG) and Foundation for Integrative and Development Studies (FIDS), *Torture Philippines*, Law and Practice, 2003

¹⁹ Amnesty International, *Philippines: Submission to the UN Universal Periodic Review*, 28 November 2007, ASA 35/006/2007, p. 3

²⁰ Asian Human Rights Commission, *The state of human rights in the Philippines*, *op. cit.*, p. 12,13

²¹ FLAG and FIDS, *quoted by REDRESS*, *op. cit.*, p.13 ; PREDA Foundation, *Minors in jail case studies - The Philippines*, 6 September 2002

²² Amnesty International, *Philippines: Shattered Peace in Mindanao: The human cost of conflict in the Philippines*, 29 October 2008, ASA 35/008/2008 ; TFCP, MPPM, PAHRA, and others human rights NGOs, *Unraveling stories of human rights violations in Lanao del Sur, Lanao del Norte, North Cotabato and Maguindanao provinces: Fact-Finding Mission Report - October 12-22 2008*, October 2008 ; Philippine Alliance of Human Rights Advocates (PAHRA), *Human Rights and the Peace Process*, Press Release, 10 December 2007.

²³ Amnesty International, *Philippines: Submission to the UN Universal Periodic Review*, *op. cit.*

²⁴ TFCP, MPPM, PAHRA, and others human rights NGOs, *op. cit.*

Article 2

§1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

I - Concerning the specific safeguards in places of detention and rights of persons arrested and deprived of liberty:

1- **Safeguards for persons arrested and deprived of liberty are *de jure* provided for by the Philippines legal framework but they have *de facto* failed to prevent human rights violations during arrests and in places of custody.**

a) *The right of not been subjected to arbitrary arrest*

The Philippine Rules of Criminal Procedure outline: the prohibition on the use of unnecessary force during arrest²⁵, the right to be informed about the cause of the arrest (in cases of arrest without warrant)²⁶ and the right to be informed of the right to remain silent and to be assisted by counsel²⁷.

In practice, arrests with excessive violence and detention in secret places where torture takes place²⁸ are frequently denounced. NGOs have documented cases about abductions by handcuff and blindfold, arrests without warrant or knowledge of the charges (sometimes by agents in plain-clothes), *incommunicado* detention, torture in secret locations or military camps before being brought into “official” detention centers for charge on alleged rebellion or murder cases²⁹.

The **use of fabricated charges** is alleged to be a “*method to keep targeted persons in unjustifiable detention*”³⁰. The Philippine civil society submitted to the Office of the High Commissioner for Human Rights (OHCHR) and among its finding is that from January 23, 2001 to September 14, 2007, cases of illegal arrests and illegal detentions numbered 409 case and 1,460 individuals as victims as recorded by Task Force Detainees of the Philippines (TFDP)³¹. For the first semester of 2008, the same organization has documented 28 cases of illegal arrest and detention involving 41 victims. A case documented involved two victims who were members of an organization of the Agta ethnic (indigenous) group. Erick Avellaneda and Rannie Rutaquio were suspected of being subversives, members of the New People’s Army. It happened on February 9, 2008 at General Nakar, Quezon province.

Indeed, as concerns the carrying out of arrests without warrant, Amnesty International have expressed its concern about **the abuse and overuse of provisions that allow arrests without warrant** in specific circumstances (when they occur during or following a crime), for

²⁵ Rule 113, Section 2

²⁶ Rule 113, Section 8

²⁷ R.A. 7438, Section 2 (b)

²⁸ FLAG and FIDS, *op. cit.*

²⁹ KARAPATAN Alliance for the Advancement of People’s rights, *op. cit.*; Asian Human Rights Commission, *The state of human rights in the Philippines, op. cit.*

³⁰ Asian Human Rights Commission, *The state of human rights in the Philippines, op. cit.*

³¹ PAHRA, *Joint submission by NGOs with UN consultative status and endorsed by 29 civil society organizations, UPR submission, op. cit., quoted by* Office of the High Commissioner for Human Rights, Summary prepared for the Universal Periodic Review of the Philippines before the Human Rights Council (summary of stakeholders submissions), *op. cit.*

See also: Inter-Parliamentary Union, Committee on the human rights of parliamentarians, *Report of the delegation on its mission to the Philippines*, 6 October 2007, CL/181/11(a)-R.3 ; Asian Human Rights Commission, *Philippines: Arbitrary arrest that become de facto legal is endemic*, Press Release, 9 July 2008, AHRC-STM-187-2008

example Rule 113 of the Revised Rules of Court³². Amnesty underlined the risks involved in “*an extensive jurisprudence that has interpreted certain crimes, including ‘rebellion’, as ‘continuing offenses’*”³³.

There is also a *de facto* **common practice of “invitation” for questioning**, most common in the countryside, which is a *de facto* form of detention. There is still a propensity of police authorities to effect warrantless arrest, many of which are apparently made in the guise of invitation for questioning. “*The ‘invitation’ highlights a common practice of police agenda. Police officers who suspect a certain individual as having committed a crime but who have no evidence to support a request for the issuance of a warrant of arrest may decide to simply ‘invite’ him for questioning. The ‘invitation’ is a convenient way of fishing for evidence and avoiding the delay and difficulties attendant to securing a warrant of arrest*”, as former Supreme Court Justice Gutierrez stated.

There is hardly any difference between a person who is apprehended and a person who is merely invited for questioning. Though, there is a law in 1992 known as RA 7438, “*An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof*”.

From the law practitioners, human rights advocates in the NGOs and civil society’s point of view, this kind of questioning or “interrogation”, that is like a “fishing expedition” by the military to extract statement from the suspect in the absence of his own legal counsel to defend himself against self-incrimination.

The number of hours of being “illegally detained” may vary from cases documented. However, when the person is detained between 6 hours to 36 hours without his willful knowledge, the crime of illegal detention already exists.

b) *The right of access a lawyer of one’s choice and to confer privately with him*

The non-respect of the right of access to a lawyer of ones’ choosing not only undermines the right to receive a fair trial but also increases the risk of torture and a culture of impunity for the perpetrators of torture. As under Philippine Law, the basic legal safeguards to detained persons are prescribed in Article III, Section 12(1) of the 1987 Constitution which stipulates that: “*Any person under investigation shall have the right to be informed of his right to remain silent and to have a competent and independent counsel preferable of his own choice*”. Section 2(a) of the Republic Act No. 7438 or ‘An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violation thereof’ stipulates that: “*Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.*” This assistance is explained in Section 2(b) as a: “*Right [...] to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested. If such person cannot afford the service of his own counsel, he must be provided with a competent and independent counsel by the investigating officer*”.

Further safeguard are provided in Section 3(c): “*In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provision of Article 125 of the Revised Penal Code*”.

³² Section 5, Rule 113 provides that “A peace officer or a private person may, without warrant, arrest a person: a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it [...]”

³³ Amnesty International, *Philippines: Submission to the UN Universal Periodic Review, op. cit.*

Furthermore, Rule 113, Section 14 of the Rule of Court ‘Right of attorney or relative to visit person arrested’ stipulates that: “*Any member of the Philippine Bar shall, at the request of the person arrested or of another acting in his behalf, shall have the right to visit and confer privately with such person in the jail or any other place of custody at any hour of the day or night*”. The Juvenile Justice and Welfare Act also provides for the “*right to prompt access to legal and other appropriate assistance.*”

The jurisprudence of the Supreme Court makes clear a suspect is entitled to have access to a lawyer at all stages of the procedure³⁴.

Nevertheless, in practice this right is denied even for ordinary criminal suspects³⁵.

The Supreme Court has repeatedly affirmed that a detainee is “*entitled to effective, vigilant independent counsel at every stage of the proceedings*”. However, this jurisprudence only applies where a person is under “arrest”, which has resulted in a practice of authorities ‘inviting’ those arrested in order to deny access to a lawyer and to avoid being prosecuted for arbitrary arrest/illegal detention.

In 2003, the Human Rights Committee made the recommendation directly to the Philippine Government that they guarantee free access to a lawyer immediately after the arrest and at all stages of the procedure.

c) *The prohibition of secret detention places and the right to notify the detention to a third person*

The dispositions contained in the Constitution³⁶, and the Republic Act No. 7438³⁷, even if they clearly recognize them, are not precise or specific concerning when this must be done. It is clearly essential that these rights be respected at the earliest stages of the procedure in order to prevent acts of torture. *In practice*, various NGO state that secret detention places, commonly known as “safe house”, where victims are detained *incommunicado* and tortured, exist and that the right to communicate to a third person is frequently denied, even when detention takes place in “official” detention places³⁸. The Asian Legal Resource Centre notes that: “*a number of victims of forced disappearances have been later found in the police or military’s custody*”³⁹.

³⁴ See for example: *People of the Philippines v. Peralta et al.*, GR No. 145176, 30 March 2004; *People of the Philippines v. Rufino Bermas*, GR No. 120420, 21 April

³⁵ Asian Human Rights Commission, *The state of human rights in the Philippines*, *op. cit.*

³⁶ Safeguard to the right to communicate with and notify a third person of detention is thereby enshrined in Article III, section 12 (2) of the Constitution which prohibits: “*Secret detention, place, solitary, incommunicado, or other similar forms of detention.*” Section 2(f) of Republic Act No. 7438 provides that: “*Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national NGO duly accredited by the Commission on Human Rights or by any international NGO.*”

³⁷ Section 2(f) of Republic Act No. 7438: “*Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national NGO duly accredited by the Commission on Human Rights or by any international NGO.*”

³⁸ KARAPATAN Alliance for the Advancement of People’s rights, *op. cit.* ; Asian Human Rights Commission, *The state of human rights in the Philippines*, *op. cit.*

³⁹ Asian Legal Resource Centre, *Submission by the Asian Legal Resource Center to the Human Rights Council’s Universal periodic Review on human rights in the Republic of the Philippines*, *op. cit.*

d) *The right to access a doctor*

The same problem can be pointed out concerning the right of access to a doctor: even though this right is recognized in law⁴⁰ (and even through the jurisprudence of the Supreme Court⁴¹), the said disposition suffers from being too vague to ensure any effective protection from torture. In 2003, the Human Rights Committee made the recommendation to the Philippine Government to guarantee free access to a doctor immediately after the arrest and at all stages of the procedure⁴².

e) *The right of Habeas Corpus*

In addition to the right of habeas corpus recognized by the Constitution⁴³ and the Rules of Court⁴⁴, and the right – in case of arrest without warrant – to be brought within 36 hours before the inquest officer to challenge the lawfulness of detention (so-called “inquest procedure”) as stipulated by the Rules of Criminal Procedure⁴⁵, the Supreme Court promulgated an important safeguard known as “the Writ of Amparo” (which means “protection”).

Spurred by the recent spate of extrajudicial killings and enforced disappearances, the Supreme Court sponsored a National Summit to address these serious human rights violations. It was attended by justices, activists, militant leaders, police officials and prelates. The first proposal in the Summit’s summary of recommendations was for the **Writ of Amparo** to be operationalized in the Philippines. The Supreme Court promulgated A.M. No. 07-9-12-SC on September 25, 2007 which took effect on October 24, 2007, the anniversary of the founding of the United Nations.

The Writ of Amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof. The Writ of Amparo may be availed by the aggrieved party, by any qualified person or entity in the following order and which order must be observed: any member of the immediate family of the aggrieved party, namely: the spouse, children and parents.

Even if it is too early to appreciate the consequences on the practice of torture of this new legal tool, there is hope that it could go some way to remedying or ameliorating the lack of safeguards in the law, as discussed above. Some NGOs have nevertheless already expressed their skepticism about its capacity to help victims of ‘vigilante action’⁴⁶ and about the fact that the Administrative Order No. 197 (October 2007) which calls for “*legislation [...] for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security*” threatens its effectiveness.

Another important contribution to human rights advocacy during illegal arrests and detention is the Rule on the **Writ of Habeas Data**. It roughly translates to “you should have the information”. It is both an independent remedy to enforce the right to informational privacy

⁴⁰ Republic Act No.7438, Section 2(f)

⁴¹ Morono v. Lomeda, MTJ-90-400, 14 July 1995

⁴² CCPR/CO/79/PHI, para. 12

⁴³ Article III, Section 15

⁴⁴ Rule 102

⁴⁵ Rule 113 (Section 5) ; Rule 125

⁴⁶ See « The Writ of Amparo is unable to help the victims of vigilant action », Asian Human Rights Commission, *The state of human rights in the Philippines, op. cit.*

and the complementary “right to truth,” as well as an additional remedy to protect the right to life, liberty, or security of a person.

The writ makes available to any person whose right to privacy in life, liberty and security is violated or threatened by unlawful acts or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

The “inquest procedure” is the occasion for the fiscal to determine the lawfulness of the arrest, and for the detainee - through his lawyer – to provide the first opportunity to complain about ill-treatment or torture, to challenge the validity of any forced confession and to request a medical examination. Nevertheless, **various factors affect the practical exercise of these rights.**

First of all, the fiscals in charge of the hearings - and who act throughout as judicial officers - are public prosecutors, under the direct supervision of the Department of Justice, who operate under the executive branch. It is questionable whether and to what extent these prosecutors are able to operate independently.

Amnesty International have criticized the common practice whereby the ‘inquest procedure’ is considered to be a mechanism for the filing of charges; in these cases, *“frequently, the fiscal’s role, in practice, is to assess whether or not there is sufficient evidence to move towards trial and conviction, not to safeguard the well-being of the detainee or to rule on the legality of detention”*. This is particularly reinforced by the *“widespread assumption among police and prosecutors that, following inquest, the physical filing of an information with a Clerk of Court within 36 hours of arrest does indeed represent the fulfillment of detainee’s right to be brought promptly before a ‘judicial authority’”*. As a result, it is not uncommon for a detainee to only meet a judge for the first time at the Arraignment (entry of a plea of guilt or innocence), which can take place weeks or months after the filing of the information. At this time any physical marks of torture have disappeared and there exists no medical report. Naturally the loss of this evidence creates huge disadvantages and reduces the willingness to raise the issue in front of the judges.

Indeed, it is also the case that the presumed victim of torture will be fearful of raising the issues. It is important to stress that even if the presumed victim denounces acts of torture at the stage of the ‘inquest procedure’ or at the Arraignment, he will be returned to the same officials that have been accused of torture. *“In practice accused suspects, who are disorientated, intimidated or may have already been psychologically ‘broken’ by torture, often remain silent, believing that the fiscal, police and any assisting lawyer (frequently state-appointed) may be in collusion”*⁴⁷.

As a result, it has been noted that witnesses have been reluctant to raise allegations during the proceedings “out of fear”; the lack of witness statements make it difficult for the presumed victim to obtain justice. The combination of these lapses and the lack of safeguards offered by the law and by police forces, means that the arrested person becomes vulnerable to self-incrimination, especially after ill treatment or torture. Unfortunately, the non- respect of one of these safeguards undermines the efficiency of the whole system of protection. Accordingly the custodial investigation period carries the highest risk for detainees, as torture and ill-treatments occur more often at this time, rather than later when the detainee is eventually detained in jail.

⁴⁷ Amnesty International, *Philippines - Torture persists: appearance and reality within the criminal justice system, op. cit.*

2- Political prisoners

According to KARAPATAN there were still **235 political prisoners** detained in the Philippines and charged with criminal cases instead of political ones - and many of them who have been arrested without warrant - as of October 2007. 29 of them were women, and 204 have been arrested by the Arroyo Government. The Philippine Alliance of Human Rights Advocates estimates that they were 223 in 2007, 6 of them were minors, 7 were women and 66 were Muslims⁴⁸.

3- Disappearances and extrajudicial killings: the evidence of the non-application of the law to its worse extent.

It is difficult to give an estimation of disappearances and extrajudicial killings although they are, according to the Melo Commission, “undisputed facts”⁴⁹. Cases of extrajudicial killings and disappearances seem to be reported more often than cases of torture⁵⁰.

For FIACAT, the wide practice in the Philippines of enforced disappearances and extra-judicial killings remains indubitable evidence of the same wide practice of the denial of rights and of the failure to provide practical and effective safeguards, as provided in the law and examined in this section.

II - These concerns are deeply increased regarding to the provisions contained in the Human Security Act

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, expressed his concern to the Human Rights Council and the Philippine Government about the Human Security Act, approved by the Philippine Congress on 19 February 2007 following pressure from the W. Bush administration.⁵¹ According to him, many dispositions of the law “*could have a negative impact on human rights in the country and undermines the rule of law*” since “*many provisions of the Human security Act are not in accordance with international human rights standards*”:

- The “**overly broad definition**” does not fulfill the requirements of the principle of legality, *nullum crimen, nulla poene sine lege*, and thereby incompatible with article 15 of the International Covenant on Civil and Political Rights (*hereinafter* ICCPR) (“*a large number of ordinary crimes [are] listed in the Act*” ; “*reference to complete statutes [...] in the form of references to certain presidential decrees and republic acts [...] does not meet the requirement of clear and precise provisions so as to respect the principle of legal certainty of the law*”). It was stressed that one of the three cumulative conditions for qualifying a crime as terrorist crime, that is to say, that the crime committed must be “*deadly or otherwise serious violence against members of the general population or segments of it*”, had been ignored.

⁴⁸ Philippine Alliance of Human Rights Advocates (PAHRA), *Coercive environment remains nursing a culture of fear and breeding tolerance to impunity*, updated on 29 February 2008

⁴⁹ Melo Commission, *Melo Commission Report*, January 2007, p. 4-5

⁵⁰ FIDH, *Human rights in the Republic of the Philippines, Submission for the first session of the Universal Periodic Review, op. cit.*

⁵¹ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Communications with Governments, 28 November 2007, A/HRC/6/17/Add.1

- The Human Security Act stipulates that any person found guilty of one of the offenses contained in the definition of terrorist acts shall be punished by forty (40) years imprisonment. The strict application of this penalty, according to the Special Rapporteur, “*undermines judicial discretion in individual cases and may result in a **disproportionate punishment** due to the broad definition of terrorist acts*”
- **Judicial competences**, such as reviewing detention, **are given to the executive body members** (members of the municipal, city, provincial or regional Human Rights Commissions), instead of an independent judicial one, as provided by the procedural guarantees of article 9 of the ICCPR. The Special Rapporteur recalled that The Human Rights Committee, in its general comments⁵², reaffirmed that the right to not be subjected to arbitrary arrests or detention must be protected at all time, even during a state of emergency.
- The aforementioned law also allows **restrictions on movement**, including the imposition of house arrest, “*in cases where evidence of guilt is not strong*”. According to the Special Rapporteur, the legal basis should be rather “*positive suspicion or a higher evidentiary threshold*”.

In addition to these criticisms, many Human Rights Organizations expressed their concern that:

The broad and vague definition is able to be applied to peaceful protest actions (those aimed at Government policy or actions, for example) under the definition of acts that “create extraordinary fear and panic” or pursuant to the prohibitions against being an “accessory” to the crime of “terrorism”. Many organizations expressed the fear that the anti-terrorism law could be used as a tool to silence or target political opponents and human rights activists, as had occurred in other countries committed to engagement alongside the United States in the “fight against terrorism”. The Commission on Human Rights of the Philippines (CHRP) has raised alarm over what it sees as a pattern of **arbitrary arrests and the filing of criminal charges against activists by the police and the military**. CHRP Chairperson Leila de Lima issued an advisory to call the attention of government agencies and the institutions and the public on this practice (PDI February 16, 2009). “This is alarming because it shows a pattern of repression through a “legal offensive”. The most number of arbitrary detentions and filing of cases against activists were recorded in Southern Tagalog, Central Luzon and the Visayas regions in the country.

In most cases, the activists are abducted and surfaced two or three days later with a police or military announcement that they have been arrested. “The activists do not undergo preliminary investigation or issued notices of the investigation,” Chairperson De Lima added. This happened to the 27 activists who were arrested and charged with frustrated murder and arson for the burning of a Globe cell site in Lemery, Batangas in August 2008. In some cases filed in court, De Lima said the hearings had been delayed through rescheduling of arraignment and hearings that had resulted in the prolonged detention of the activists.

The arrest had been carried out “under the cloak of judicial processes” which give them an apparent legitimacy.

- In these cases of arbitrary arrests and detention, the threat of torture is always there.
- The arrests without warrants can be legalized on dubious grounds, and the period of detention without charges can be extended beyond three days; torture occurs most often in these circumstances (*v. supra*).

⁵² N° 29 of 2001

- Suspected terrorist organizations can be listed and “*the terrorist branding of an organization also treats all its members guilty by association*”⁵³.
- There are contradictory provisions on what rules the arresting officer must follow taking custody of a person. One is citing to present the very person to the sala or residence of the nearest judge and one not with the arrested person but only a written notice to the judge is already enough to warrant a detention.
- Since no provision is made about the burden of proof, and given the actual case law of the Supreme Court in this domain, a person who alleges he has been a victim of torture while presumed to be a terrorist would bear the burden to proof.
- Members of the FIDH mission in the Philippines have been told by some officials that the law is “*not likely to be used in practice*” because it contains provisions to prevent police and army abuses, for example, one that prescribes the payment of an approximate 12 500 \$ a day in case of an acquittal of an individual charged with terrorism (or in case of the dismissal of the charges against him). Members of civil society have pointed out however that this provision could have a pernicious effect: instead of taking such risks “*members of the law enforcement agencies could prefer to kill the suspect*”⁵⁴.

A NGOs coalition quotes, among others, the cases of Marilou Aligato and Kaharudin Talib Usman, arbitrarily arrested, detained and tortured, to show that the “war against terror” has already led to serious human rights violations: fighting terrorism and insurgencies is commonly used as a pretext to violate the rights of the persons arrested and detained⁵⁵.

Indeed, some stress a parallelism: “extrajudicial killings increased sharply in 2006” and “this coincided with President Arroyo’s June declaration of “all-out war” against the New People Army”: the President had given the Armed Forces a two year deadline to have done with the insurgency⁵⁶.

[...]§2. *No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

There exists no Philippine law that explicitly establishes the prohibition of torture as a non derogable right. Indeed, the absence of law or regulation that “*allows the derogation of the prohibition during exceptional circumstances*” – as stated in the State report – does not seem enough to effectively prevent the practice of legal derogations that, by definition, is bound to occur outside the traditional frame of the law.

⁵³ KARAPATAN Alliance for the Advancement of People’s rights, *op. cit.*

⁵⁴ Fédération Internationale des droits de l’homme [International Federation for Human Rights], *Human rights in the Republic of the Philippines, Submission for the first session of the Universal Periodic Review, op. cit.*

⁵⁵ Philippine Alliance of Human Rights Advocates (PAHRA), *Joint submission by NGOs with UN consultative status and endorsed by 29 civil society organizations, UPR submission, op. cit.*

⁵⁶ Human Rights Watch, *Universal Periodic Review of the Philippines*, 6 April 2008

[...] §3. *An order from a superior officer or a public authority may not be invoked as a justification of torture.*

Additionally **no law or regulation prohibits** “*a subordinate officer to invoke an order from a superior officer or a public authority as a justification of torture*”. Even though the Philippine State argues that “there is no law or regulation that *allow*” it, this would appear to be insufficient to guarantee that *de facto* orders from a superior officer would not be considered as mitigating circumstances during any step of the procedure.

Article 3

1. *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*
2. *For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

The Human Security Act stipulates concerning extraordinary renditions that:

SEC. 57. Ban on Extraordinary Rendition. - *No person suspected or convicted of the crime of terrorism shall be subjected to extraordinary rendition to any country unless his or her testimony is needed for terrorist related police investigations or judicial trials in the said country and unless his or her human rights, including the right against torture, and right to counsel, are officially assured by the requesting country and transmitted accordingly and approved by the Department of Justice.*

Even entitled "Ban on Extraordinary Rendition", it is clear that the **provisions contained in this law do not give enough guarantees to effectively protect individuals**: they may "*be rendered to countries that routinely commit torture, as long as the receiving government provides assurances of fair treatment*"⁵⁷. The assurances of fair treatment that a government can provide are only *diplomatic* and insufficiently constraining.

⁵⁷ Front Line, The International Foundation for the Protection of Human Rights Defenders, *Submission for the UPR*, 19 November 2007

Article 5

[...] §2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.

Neither the legislation in force or the bills with the Senate ensure an effective **exercise of universal jurisdiction for torture crimes**.

Concerning the legislation in force:

Even if, as stated by the State in his report “*penal laws [...] shall be obligatory upon all who live or sojourn in Philippine territory*”, the absence of any express qualification of torturous acts as crimes in Philippine penal law, prevents an effective exercise of universal jurisdiction and thereby the prosecution or investigation of these crimes.

Concerning the bill in the Senate:

As mentioned above, the bill with the Senate does not give the Philippines Court the power to exercise universal jurisdiction for crimes of torture committed in third countries, even when nonetheless the suspect is present on Philippine territory.

Article 10

1. *Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*
2. *Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.*

FIACAT insists that there exists in the Philippines a **deep-rooted practice of torture** embedded in the background of dictatorship and repression: the training and education of security forces on the prohibition of torture is particularly necessary in this case.

Numerous human rights NGOs reports illustrate how much the practice of torture has been part of recent Philippine history, as well as it being a “common practice” among military and police agents, shaping habits and influencing the perception of norms.

The new Constitution adopted in 1987, among others measures showing the willingness to better protect human rights, has not put an end to the practice of the torture among security forces agents. Under Corazon Aquino, and the presidencies of Fidel V. Ramos, then Joseph Ejercito Estrada, and now Gloria Macapagal-Arroyo, torture has persisted: the numbers of *reported* cases of torture have respectively been 102, 179, 53 and 88⁵⁸ (only for the period January 2001 - June 2003).

Law practitioners like judges are required to undertake the training program as provided by the Philippine Judicial Academy. It is a requirement to widen the information of these men and women of judicial robes to be aware of the latest information on cases pertinent to judicial reforms, human rights and important procedures in the attainment of justice and resolutions of cases. Regarding the **medical profession**, the Commission of Human Rights of the Philippines (CHRP) is apparently regularly training its own medical personnel to handle cases dealing with detained persons. The latest was a training held by some NGOs where the CHRP was part of last year on the Istanbul Protocol contained in its Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. These important provisions were pertinent to handling of cases against torture and were diligently studied with the help of experts from the international human rights community like the Redress Trust and Consultancy from Geneva.

⁵⁸ Cases recorded by Task Force Detainees of the Philippines and Medical Action Group, *quoted in* Task Force of the Detainees in the Philippines (TFDP), Women’s Education, Development, Productivity and Research Organisation (WEDPRO), PREDA Foundation, *coordinated by* the Word Organization Against Torture (OMCT), *State violence in the Philippines: an alternative report to the United Nations Human Rights Committee*, September 2003, p. 16

Article 12 - Article 13

Art. 12: Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Art. 13: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

In 2003, the Human Rights Committee was already expressing its “preoccupation about the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against leftist activists, human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators”. It was concerned as well by “reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated”⁵⁹. As a result, it recommended legislative and other measures to prevent such violations.

So far, in 2009, reports by NGOs and a number of special procedure mandate-holders continue to record the same violations and pattern of impunity. In 2007, the Special Representative of the Secretary-General on the situation of human rights defenders noted, that in most cases of communications relating to alleged killings reported to the Government, “preliminary measures of investigation have been taken” but “no perpetrators of violations have yet been brought to justice”⁶⁰.

Even whilst some Government measures have been taken, it is clear that their efficiency is highly questionable.

I - A “culture of impunity”

The question of the impunity concerning crimes of torture in the Philippines must be seen in light of the general background of the **extremely low rate of conviction of state forces responsible for serious violations of human rights** (even if some issues are specifically related to torture, as we well see), contributing to a wide “impunity culture”. According to Human Rights Watch, no more than two cases leading to the conviction of four defendants have been successfully prosecuted among hundreds of killings and “disappearances” committed over the past five years⁶¹. The “Judicial Research Study Program” of Transparency International Philippines is examining court cases filed by the office of the Ombudsman to the Sandiganbayan court against government officials; only one conviction resulted out of thousands of cases filed every year for the past 27 years⁶².

⁵⁹ Quoted by Office of the High Commissioner for Human Rights, Summary prepared for the Universal Periodic Review of the Philippines before the Human Rights Council (summary of stakeholders submissions), *op. cit.*

⁶⁰ A/HRC/4/37/Add.1, para. 557

⁶¹ Human Rights Watch, *Universal periodic Review of the Philippines*, *op. cit.*

⁶² Transparency International, *Annual Report 2007*, June 2008, p. 9

The inefficiency of the justice system in tackling impunity is generally explained by the “systemic problem” of the judicial body.

Lawyers that accept a case against members of the public forces, and even **judges** in charge of similar cases, are often threatened and become **victims of pressure and harassment**⁶³. They are also targets of extrajudicial killing. According to the Dutch Lawyers for Lawyers Foundation - since 2001, 10 judges and 15 lawyers have been murdered in the Philippines⁶⁴.

The willingness of victims to come forward is undermined by the **predictable and excessive delays**, as well as the resulting financial considerations: “*the length of time and resources they have to expend to get redress and prosecute the perpetrators [...], in the end, results in a meaningless and exhausting exercise for them*”⁶⁵. According to Transparency International, detainees wait an average of two years to be charged, and trial times for grafts cases are six to seven years⁶⁶.

As regards the issue of impunity in the Philippines, two main elements have to be taken into consideration: on the one hand, the absence of willingness from the State to investigate the cases; on the other hand, the fear of victims to pursue justice because of the absence of any real protection or effective guaranties that would provide them with an **effective** right to lodge a complaint.

II – The newly created human rights’ courts and offices

As reported by the State, **99 Special Courts** have been designated by the Chief Justice of the Supreme Court, with the mandate of dealing with human rights violations cases (with particular deadlines to be followed in order to avoid excessive lengthy proceedings). In practice this initiative is more symbolic than any effective measure against impunity: no relevant case has been heard by the Courts and the only convictions were not linked with politically-motivated killings⁶⁷. Moreover the cases concern only a small fraction of political killings and other serious human rights violations cases, while the big majority of them are in fact still handled by regular courts⁶⁸.

Human Rights offices that in theory investigate cases of human rights violations have been created both within the police and the military. However, the impartiality of such offices are questionable: “*there are cases in which those accused of committing violations are the same persons who investigate them*”⁶⁹. Also, the absence of disciplinary sanctions against officers involved in violations or their suspension when they the subject of investigation to ensure the independency of it, are some examples of the defaults that make these institutions structurally unable to act as a real tool against impunity.

⁶³ FIDH, *Human rights in the Republic of the Philippines, Submission for the first session of the Universal Periodic Review, op. cit.*

⁶⁴ Dutch Lawyers for Lawyers Foundation, *From Facts to Action – Report on the Attacks against Filipino Lawyers and Judges*, 24 July 2006

⁶⁵ Asian Human Rights Commission, *Philippines: lack of law against torture and court delays deny redress for torture victims*, Press Release, 24 June 2007, AS-132-2007

⁶⁶ Transparency International, *National Integrity Systems: Country Study Report - Philippines 2006*, 2006, p. 24

⁶⁷ Asian Legal Resource Centre, *Submission by the Asian Legal Resource Center to the Human Rights Council’s Universal periodic Review on human rights in the Republic of the Philippines, op. cit.* ; Philippine Alliance of Human Rights Advocates (PAHRA), *Joint submission by NGOs with UN consultative status and endorsed by 29 civil society organizations, UPR submission*, November 2007

⁶⁸ Human Rights Watch, *Universal periodic Review of the Philippines, op. cit.*

⁶⁹ Asian Legal Resource Centre, *op. cit.*

The first step of an institution, truly engaged in putting an end to impunity, would be the *recognition* of such problem. Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions concluded in his report that “*the Armed Forces of the Philippines remains in a state of almost total denial [...] of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them*”; adding that he met a bigger lack of acknowledgement of the seriousness of the problem at the executive and operational level than at the very top⁷⁰. The Philippine National Police and other government agencies (the Inter-Agency Legal Action group (IALAG); the Department of Justice (DOJ); the Government of the Republic of the Philippines - Monitoring Committee (GRP-MC); the Department of Social Welfare and Development) are also accused of **denying any accountability** despite various independent and credible reports (the ones of the Melo Commission, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on Indigenous Peoples) indicating the responsibility of military agents⁷¹.

Additionally, human rights programs - that are to be implemented for example in the newly created human rights Office of the Armed Forces of the Philippines - should be handled with a judicial perspective and not as through a political one. Nonetheless it is common practice for Armed Forces agents to associate and treat human rights organizations as “enemies of the state” Indeed, it is easy to see that the wide definition of terrorism in Government public statements, as well as the reductionist dichotomy between friend and enemy that prevails among the anti-terrorism fight theory (that entails a subjective description of the political word) is more propitious for this kind of digression.. For example, as Col. Benedicto Jose did with the Task Force Detainees of the Philippines, stating in a public meeting with human rights NGOs, that it was a front organization of the Communist Party of the Philippines. This is instructive: Col. Benedicto Jose is the head of the Human Rights Office of the Armed Forces of the Philippines.

Human Rights Watch has reported on the lack of cooperation of the military institution when the police investigate its agents⁷².

III – The inefficiency of police investigations is an obstacle for victims seeking redress

The police investigations are considered as “*a major obstacle for victims seeking redress*”⁷³. Additionally, the case law of the Supreme Court is considering that when a person alleges he has been a victim of torture or duress in order to elicit confessions on specific facts, he will bear the burden of proof and the quality of the police investigations are described as “*poorly conducted*” (for example they fail to visit promptly the scene of the crime and interview key witnesses)⁷⁴. The families of some victims reported to Human Rights Watch that they have been asked to produce themselves evidences and witnesses when they reported the case to the police⁷⁵.

⁷⁰ Special Rapporteur on Extrajudicial, summary or arbitrary executions, Philip Alston, Report: Mission to Philippines, 16 April 2008, A/HRC/8/3/Add.2

⁷¹ KARAPATAN, *op. cit.*

⁷² Human Rights Watch, *Scared Silent: Impunity for Extrajudicial Killings in the Philippines*, 27 June 2007, p. 4

⁷³ For a more detailed study, see Asian Human Rights Commission, “Systemic failure of investigations aggravates rights abuses”, *The State of Human Rights in Eleven Asian Nations – 2007*, December 2007

⁷⁴ Asian Legal Resource Centre, *op. cit.*, p. 2 ; REDRESS, *op. cit.*

See a more detailed analysis on how the investigations are led by the police in the *Melo Commission report*, January 2007, p. 84

⁷⁵ Asian Human Rights Commission, *The state of human rights in the Philippines*, *op. cit.*

Other problems arise during police investigations: poor wages and no accountability for such illegal acts encourage to corruption and extortion (the judiciary received for example less than 1 per cent of the 2005 proposed budget). The 2005 report on Human Rights Practices of the U.S. State Department described the Philippine judiciary as being “*encrusted with corruption and inefficiency*”. According to Transparency International, half out of the 440 lawyers they have met confessed to be “*aware of judges in their localities who received bribes from litigants*”. Politicization of judicial appointments is also denounced since 12 out of 15 justices have been appointed by President Aquino, and then President Arroyo.⁷⁶

The difficulties in securing **medical reports** – as mentioned above – create other problems; they ought to be key pieces of evidence in cases of torture and yet detainees are not informed about their right to see a doctor, medical examinations are conducted only before interrogations or after physical signs of torture have disappeared, medical reports are not detailed or substantial due to a lack of doctors expertise or tools - they ignore forms of torture which do not leave physical traces (for example in cases of psychological torture).

As a result, victims do not perceive the police as able to perform investigations and “*such distrust has become the rule rather than the exception in the Philippines, leading to a dearth of registered complaints*”⁷⁷. Complaints which are not able to rely on forensic evidence, or do not produce witnesses, are generally dismissed before being heard in court.

IV - The inefficiency of Government protection programs is a cause of and victims and witnesses’ fear

The **fear of retaliatory acts** (especially when alleged perpetrators are government agents) is due to the inefficiency and weakness of the so-called “Witness Protection, Security and Benefits Programme”⁷⁸: even when victims need urgent protection and assistance and are repeatedly asking for it, it is denied⁷⁹. For Diakonie, it is a fact, that in reality, victims prefer often to seek the protection of the church, rather than benefit from Government protection programmes, which are considered less safe. A lack of financial resources can also be an obstacle as the persons under protection are “*expected to cover the costs of the police escorting them, by for example providing food and transportation*”⁸⁰.

And even though the protection of victims and witnesses remains a crucial issue in the Philippines: “*threats and intimidation are commonplace, in particular at the local level, and witnesses of serious violations, in particular extra-judicial killings have been killed after coming forward*”⁸¹. The Asian Legal Resource Center have reported that a human rights activist and witness, Siche Bustamante-Gandino, who spoke with the Special Rapporteur on extrajudicial, summary or arbitrary executions, when the latter was visiting the Philippines, was killed a few days later. The Asian Human Rights Commission reports the case of a

⁷⁶ Transparency International, *Country Study Report – Philippines 2006*, 2006 p.24

⁷⁷ Asian Human Rights Commission, *The state of human rights in the Philippines*, *op. cit.* ; Human Rights Watch, *Philippines: Climate of Fear Impedes Probe Into Killings*, Press Release, 28 September 2006

⁷⁸ Philippine Alliance of Human Rights Advocates (PAHRA), *Joint submission by NGOs with UN consultative status and endorsed by 29 civil society organizations, UPR submission*, November 2007 ; Diakonie and Action Network Human Rights – Philippines, *Philippines: Extrajudicial Executions, Impunity and the Role of the Security Services*, 19 November 2007

⁷⁹ Asian Legal Resource Centre, *op. cit.*

⁸⁰ *Ibidem*

⁸¹ “Rotten to the core: Unaddressed killings, disappearances & torture in the Philippines”, in *Special Report: The Criminal Justice System of the Philippines is Rotten*, Article 2, February 2007, Vol. 06, No. 01, p. 29-116

journalist called Dennis Cuesta, who died on 9 August 2008 shot by unidentified armed men, as a typical example:

*“Before Dennis' murder, it is reported that he had been receiving death threats for testifying in a land dispute case against an influential person and for being critical in his radio programme. The police did not afford him protection and security. All they did was offer to issue him with firearms by enlisting him as a “police asset” so that he could protect himself. However, he was killed before even such an evidently flawed arrangement was put into place.”*⁸²

The inefficiency of witness protection programs, combined with the fear felt by victims (and their relatives and witnesses) and the mistrust of the offices created with the same institutions to which the alleged perpetrators belong, have led to reluctance and resistance to providing the type of information which could contribute to resolving cases of human rights violations.

The Asian Human Rights Commission recalls that even though the Office of the President promised in April 2008 to strengthen the witness protection programme, no draft of the said legislation was published at the time of the writing of their report (December 2008).

V - Two emblematic impunity cases: The “Manalo Brothers” and the “Abadilla Five”

Two of the more infamous cases about torture in the Philippines, characterized by total impunity, are those which concern the “Manalo Brothers” and the “Abadilla Five”.

The farmers Raymond and Reynaldo Manalo, forcibly abducted by night from their house by uniformed and armed soldiers on 14 February 2006 in San Ildefonso Bulacan, were unlawfully detained for 18 months, during which time they were repeatedly tortured and subjected to inhuman treatment. They were compelled to confess to being members of the New People’s Army; sometimes they were at the mercy of drunken jailers. On 13 August 2007, at the second attempt, they succeeded in escaping their captors. Once they surfaced, they provided detailed testimonies concerning their captivity, including the names of persons and places they have been brought to and even names and places of the military camps, officials and militaries who interrogated and/or tortured them. Seeking the protection of the Supreme Court, the latter issued a temporary restraining order (TRO)⁸³ on the Department of National Defense (DND) and the Armed Forces of the Philippines (AFP), ruling by a unanimous vote that the Write of Amparo should apply. Unfortunately there is nothing which suggests that any independent or Government initiated investigations have been commenced.

In the case of the “Abadilla Five”, in which the Commission of Human Rights found that five men were tortured by police to confess to murdering a senior police officer (and sentenced to death for this alleged crime), the complaints of the recognized victims have been pending for eleven years and have not yet reached a Court. Senior Superintendent Bartolome Baluyot, quoted in the complaint as one of the police officers that committed the torture, was accused three years later of torturing other unrelated suspects. He, nevertheless, retired from the police without having to face any of these torture allegations.

The Commission of Human Rights in the “Abadilla Five” investigation, concerning allegations of torture and maltreatment by policemen using electric shocks, suffocation with

⁸² Asian Human Rights Commission, *The state of human rights in the Philippines, op. cit.*

⁸³ *The Secretary of National Defense, et al. Vs. Manalo*, G.R. No. 180906, October 7, 2008, available on : <http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/180906.htm>

plastic bags, severe beating and other assaults, found *prima facie* evidence to charge 21 individuals, 15 of them were policemen. Five years after the case was filed to the Prosecutor, the police had not concluded the preliminary investigation and moreover some documents of the case file were missing, having been lost by the Prosecutor at home. The case was then transferred to three special prosecutors who resolved it in one month; dismissing the complaint and the Commission's recommendations on the basis of the *sub judice* rule, finding that since the Supreme Court was at that time reviewing the sentence to death of the five accused (pronounced by a local Court for the murder of Abadilla), whereby it was being alleged that they had confessed due to torture. The case was reopened one year later by the Secretary of the Department of Justice, after several appeals of the complainant's legal counsel. On March 2004, the prosecutor finally closed the preliminary investigations and issued charges against the respondents in court, however no charge relating to torture was maintained. The Ombudsman has now to decide on the merit of the case.

Article 16

1. *Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.*

According to ACAT-Philippines, there is **ill-treatment** in detention centers, including **overcrowding, substandard facilities and lack of facilities**.

The Bureau of Corrections (BuCor), which is an agency of the Department of Justice (DOJ) in charged with the custody and rehabilitation of National Offenders and sentenced to 3 years imprisonment or more. Among these national prisons units is the New Bilibid Prison in Muntinlupa City. For women, the Correctional Institute for Women in Mandaluyong City. Those meted with lighter sentences and pending cases with the lower court are confined in provincial jails; while those awaiting trials in municipal trial courts or serving light penalties for infraction of city or municipal ordinances are detained in the Municipal or District jails under the Bureau of Jail Management and Penology (BJMP).

Juvenile delinquents are normally sent to Youth Rehabilitation centers under the Bureau of Child and Youth Welfare, unless the sentencing judge specifically orders for them to be confined at the National Penitentiary for grave offense. There is however concerns (expressed for example by the Committee on the Rights of the Child⁸⁴) about the non separation with adults criminals (that would concern 1000 children⁸⁵), consequential risk of physical and sexual abuse, sub human conditions of detention, spread of diseases due to overcrowding conditions and sanitations problems⁸⁶.

Statistics and trends show that the number of admissions is rising above the number of release, causing the prison population to grow at an average of 5.66% per year since 1995. As of June 30, 2003, national prisons had maintained 25,948 inmates, 4% of whom are women. According to the data gathered by the Bureau of Jail Management and Penology (BJMP), as of September 30, 2008, there are 62,203 inmates. Ninety-five percent (95%) of this figure or 59, 903 are considered detainees or persons detained while waiting or undergoing preliminary investigation, trial of promulgation of judgment.

About 60% of national prisoners are between 22 to 39 years old, mostly come from the Philippine main urban center or Metro Manila. Congestion is glaring. In New Bilibid Prison alone it continued to suffer with overcrowding in a rate of 87% more than its recommended capacity.

⁸⁴ See Committee on the Rights of the Child, Concluding Observations, 21 September 2005, CRC/C/15/Add.259; 24 October 1994, CRC/C/15/Add.25

⁸⁵ Asian Indigenous and Tribal Peoples Network, *quoted by* Office of the High Commissioner for Human Rights, Summary prepared for the Universal Periodic Review of the Philippines before the Human Rights Council (summary of stakeholders submissions), 11 March 2008, A/HRC/WG.6/1/PHL/3, p. 4

⁸⁶ Amnesty International, *Philippines: Submission to the UN Universal Periodic Review*, 28 November 2007, ASA 35/006/2007

For a detailed analysis on conditions of detentions of minors, see PREDA Foundation, *Minors in jail case studies - The Philippines*, 6 September 2002 ; See also *Philippine Alliance of Human Rights Advocates (PAHRA)*, *Joint submission by NGOs with UN consultative status and endorsed by 29 civil society organizations*, UPR submission, November 2007

According to BJMP and DILG totally jail population could reach 89,000 in 2008, 101,250 in 2009, and 114,930 in 2010, way beyond the jail's capacities.

Most Philippine prisons are like slum dwellings. A cell meant for 8 is occupied by 20-30 prisoners. Crammed like sardines. In Quezon City jail which was intended for only 800 occupants is now housing more 3000 detainees.

Detainees had to squat, be tied to railings, to the stairs to sleep in the cement floor, in the basketball court if there is one or along the passage ways. They have to fight every space to sleep and had to do sleep by batches.

The food budget of PHP40.00 per day or \$0.83 for three meals is worst and so meager. Its food is just one shade away from pig slop. There is also the issue of one Peso-a-day for medicine.

Slow judicial processes results to overcrowding. There is also widespread corruption among guards, including drug and sex trades in jails.

Detainees are often exposed to diseases and contaminations. Population rise by 13% per year. Higher bail bonds for drug offenders up to 60% are observed in the national prison population.

In September 29, 2008, the Bishops complained about overcrowded prisons and long delay in the trials and long processes for the resolution of the detainees' cases. Despite the transfer to penal colonies in the provinces, to penitentiaries for agricultural production, congestion remained a big problem in the urban prisons.

A long delayed promise and lobby at the Congress to establish integrated jail facilities in Metro Manila and other highly urbanized cities remained a far distant reality.

While waiting for that law that would make this a reality, the Department of Interior and Local Government Secretary ordered the Bureau of jail Management and Penology (BJMP) to coordinate with the Public Attorney's Office (PAO) to offer legal counsel to indigent inmates to speed up the resolution of their cases. Secretary Puno said many inmates remain in jail not because of the gravity of their crimes but because they cannot afford to pay for lawyers aggravating the long delay of their cases' resolutions and causing more jails to be congested.

However, a recent development initiated by the BJMP with the Catholic Bishops Conference of the Philippines (CBCP)'s Episcopal Commission on Prison Pastoral Care (ECPPC), detainees whose cases have not yet been resolved have asked the Commission on Election (Comelec) to allow them to vote for the 2010 National and local elections. Commissioner Rene V. Sarmiento accepted the prisoners' petition on behalf of the Comelec saying he fully support it.

Regarding **separation of female and male** detainees, this is being practiced. State party has taken policy to ensure that women prisoners are guarded exclusively by female prison staff.

III – RECOMMENDATIONS

FIACAT and ACAT-Philippines recommend the following to the Philippine Government:

1. *Regarding the ban on torture and ill treatment within domestic legislation*

FIACAT and ACAT-Philippines believe that it is necessary to define torture and cruel, inhuman and degrading treatment and punishment in order to implement the Convention properly nationwide.

The Philippines cannot limit themselves to banning torture without defining those actions that constitute it as set out in Article 4. Torture cannot be viewed as an aggravating feature of an offence; it must be considered a crime in itself.

The Philippines must adopt as soon as possible the two draft bills which have been pending before the Senate for almost three years. These bills have to comply with all the international standards and mainly with articles 1 and 4 of the Convention.

2. *Regarding the Human Security Act 2007*

FIACAT and ACAT-Philippines stress that the Human Security Act 2007 must be reviewed to comply with international Human Rights standards. It has *inter alia* to fulfil the requirements of the principle of legality and an independent judicial body must be competent to review the detention of the suspected terrorists.

3. *Regarding the right to a fair trial*

According to FIACAT and ACAT-Philippines, the infringement of this right not only undermines the right to receive a fair trial but also increases the risk of torture and of impunity for the perpetrators of torture.

Thus, FIACAT and ACAT-Philippines recommend that the Philippine Government:

- guarantee the right not to be subjected to arbitrary arrest;
- guarantee to right to legal counsel of ones choice;
- guarantee the right to notify the detention to a third person to avoid secret detention;
- grant the right to access a doctor;
- protect the right of Habeas Corpus.

4. *Regarding prevention of acts of torture in places of detention*

To prevent properly acts of torture being perpetrated in places of detention, the Philippines must ensure detainees are given full rights as set out in the law.

FIACAT and ACAT-Philippines invite the Philippine government to adopt practices that satisfy minimum rules for the treatment of detainees.

5. *Regarding the fight against impunity*

According to the reports of a number of different grassroots NGOs based on eye witness accounts, punishments are mainly perpetrated by those responsible for law and order. To date, very few officials have been taken to court following such actions.

The Philippines must ensure that those responsible for human rights violations are tried and convicted.

FIACAT and ACAT Philippines recommend that the Philippine Government:

- Set up proper procedures to ensure cases are brought to court. The victim must not be afraid of taking legal action;
- Make provision for proper sanctions;
- Guarantee protection to victims of acts of torture and to any witness when they take legal action against their torturers.