

## COMMITTEE AGAINST TORTURE

### Concluding Observations on the Third Periodic Report of the Philippines\*

#### ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the third periodic report of the Philippines (CAT/C/PHL/3) at its 1408<sup>th</sup> and 1411<sup>th</sup> meetings (see CAT/C/SR.1408 and CAT/C/SR.1411), held on 27 and 28 April 2016, and adopted the present concluding observation at its 1426<sup>th</sup> and 1427<sup>th</sup> meetings, held on 11 May 2016.

#### A. Introduction

2. The Committee appreciates the periodic report submitted by the State party under the simplified reporting procedure. The Committee welcomes the dialogue with the State party's delegation and the replies provided to the concerns raised by the Committee

#### B. Positive aspects

3. The Committee welcomes the State party's accession to and ratification of the following international instruments:

(a) The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 17 April 2012;

(b) The Rome Statute of the International Criminal Court, on 30 August 2011;

(c) The 1954 Convention relating to the Status of Stateless Persons, on 22 September 2011.

4. The Committee welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including:

(a) The enactment of the Anti-Torture Act (Republic Act No. 9745), in November 2009;

(b) Amendment of the Anti-Trafficking in Persons Act by the adoption of Republic Act No. 10364 expanding the list of acts considered as promoting human trafficking, on 23 July 2012;

(c) Enactment of the Magna Carta of Women (Republic Act No. 9710), in August 2009;

(d) Enactment of the Anti-Enforced or Involuntary Disappearance Act (Republic Act No. 10353), in December 2012;

(e) Enactment of "The Responsible Parenthood and Reproductive Health Act" (Republic Act No. 10354), in December 2012;

(f) Enactment of the Recognizance Act (Republic Act No. 10389), which institutionalized recognizance as a mode of granting the release of an indigent person in custody as an accused in a criminal case, 2012;

(g) Amendment of the Juvenile Justice and Welfare Act (RA 9344) of 2006 by RA 10630, in October 2013.

5. The Committee also welcomes the initiative of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Approval by the Supreme Court of the Revised Rule on Children in Conflict with the Law, in December 2009;

(b) The adoption of the Philippine Human Rights Action Plan for 2012-2017;

(c) The adoption of the 2012-2016 implementation plan of the Magna Carta of Women entitled "Women's Empowerment and Development towards Gender Equality";

(d) Issuance by the Presidents of the Implementing Rules and Regulations (IRR) on the Anti-Torture Act, on 10 December 2010;

(e) Establishment of the Human Rights Affairs Office (HRAO) and of the Human Rights Desk under the Directorate for Inmate Welfare and Development in every jail, by Memoranda of the Bureau of Jail Management and Penology (BJMP), on 27 September 2010 and 21 February 2011;

(f) Issuance by the President of Administrative Order No. 35, creating the Inter-Agency Committee (IAC) on Extrajudicial Killings, Enforced Disappearances, Torture and other Grave Human Rights Violations, on 22 November 2012;

(g) Issuance of Department Order 2013-20008 by the Department of Health instructing government doctors to perform their role under the Anti-Torture Act in line with the Anti-Torture Act and inspired by the Istanbul Protocol;

(h) Passing of Republic Act 10398 declaring 23 November as "National Consciousness Day for the Elimination of Violence against Women and Children", in March 2013.

(i) Issuance by the Bureau of Jail Management and Penology (BJMP) of a Memorandum banning the use and ordering the confiscation and destruction of sticks, paddles, belts, and similar devices in jails that could be used for corporal punishment of inmates, in August 2013;

(j) Issuance by the President of Executive Order No. 138 "Amending Executive Order (EO) No. 56 (S. 2001) Adopting the Comprehensive Program Framework for Children in Armed Conflict, Strengthening the Council for the Welfare of Children (CWC) and for other purposes", on 2 August 2013;

(k) The Committee commends the services provided by Foreign Service posts personnel to Filipinos overseas, including migrant workers and victims of trafficking.

### **C. Principal subjects of concern and recommendations**

*We note that almost all of the issues identified in the Concluding Observations of the Committee on Torture have been adequately addressed in the official responses of the Philippine delegation during the interactive dialogue on the occasion of the consideration of the Philippines' 3<sup>rd</sup> periodic report on the implementation of the Convention on 27-28 April 2016.*

*While the Concluding Observations made reference to the information submitted by the Philippines on 5 November 2010, it did not refer nor take into consideration the official responses delivered during the dialogue and more importantly the final written response submitted at the conclusion of the revalida.*

#### **Pending follow-up issues from the previous reporting cycle**

6. While noting with appreciation the information provided on 5 November 2010 by the State party under the follow-up procedure (CAT/C/PHL/CO/2/Add.1) on the implementation of the recommendations contained in paragraphs 7, 15, 16, 18 and 19 of the Committee's previous concluding observations, the Committee regrets the absence of additional information requested by the rapporteur on follow-up by letter dated 1 December 2011.

#### **Impunity as a result of ineffective implementation of legislation**

7. While welcoming the adoption of national legislation criminalizing torture, the Committee is concerned that obstacles continue to exist for the effective implementation of the Anti-Torture Act. The Committee is concerned that impunity for acts of torture continues to prevail, as illustrated by the fact that the number of cases of torture reported to the Commission on Human Rights has risen since the adoption of the Act, but only one person was convicted so far in 2016, more than six years since its adoption. It is also concerned that the Inter-Agency Committee (IAC) on Extrajudicial Killings, Enforced Disappearances, Torture and other Grave Human Rights Violations established in November 2012 to oversee the implementation of the Act has not done so to date (arts. 2, 4, 12 and 13).

*The State Party through the Department of Justice wishes to include the following legislations/issuances that showcase State Party's commitment to the promotion of human rights of prisoners by reducing period of detention:*

- a. *“Enactment of New Good Conduct Time Allowance Law (Republic Act No. 10592) that granted reduction of 20 to 30 days per month of good conduct including an additional 15 days per month if the offender shall engage in study, teaching or mentoring while in jail, plus an additional reduction of 1/5 to 2/5 of his sentence from the maximum period of the imposable penalty if on the occasion of calamity the offender escapes but returns within 24 hours after the passing of the calamity or opted not to escape. ”*
- b. *Issuance by the Supreme Court of Administrative Matter 12-11-2-SC by which the highest court sought the decongestion of holding jails by enforcing the right of accused persons to bail and to speedy trial. In addition, the administrative issuance provided critical guidelines to the judiciary on the implementation of the new Release on Recognizance Law (Republic Act No. 10389) which the UNCAT mentioned among its many positive observations.*
- c. *Effective implementation of the Bureau of Jail Management and Penology Paralegal Program which successfully facilitated the release of 117,591 inmates from a total number of 160,171 inmates released from 2013 to 2015 with the designation of highly-trained paralegal officers tasked to actively seek all legal avenues for early release of prisoners to ease jail congestion, improve living conditions in detention and reduce incidence of ill-treatment.*
- d. *Republic Act No. 7438 dated April 27, 1992. An Act Defining Certain Rights of a Person Arrested, Detained, or Under Custodial investigation as well as the Duties of the Arresting, Detaining, Investigating Officers and providing penalties for Violations thereof. Among the rights are the right to counsel and the right to be informed in a language understood by him of the charges against him.*
- e. *Republic Act No. 10389 or the Recognizance Act of 2012 which provides that all accused who are indigents shall before conviction in the Regional trial Court be released on Recognizance provided that he was in custody equal to or more than the minimum principal penalty prescribed for the offense charged.*

*It is requested that clarification be made on Part C, item 7 as the last sentence refers to the AO 35 Inter-Agency Committee (IAC) as the body responsible to oversee the implementation of the Anti-Torture Act of 2009. While the IAC plays a key role in addressing the issue of torture, it is respectfully submitted that the law provides for the creation of an Oversight Committee, as follows:*

*Section 20. Monitoring of Compliance with this Act. - An Oversight Committee is hereby created to periodically oversee the implementation of this Act. The Committee shall be headed by a Commissioner of the Commission on Human Rights (CHR), with the following as members: The Chairperson of the Senate Committee on Justice and Human Rights, the respective Chairpersons of the House of Representatives' Committees on Justice and Human Rights, and the Minority Leaders of both houses or their respective representatives in the minority.*

**8. The State party should:**

**(a) Put an end to the de facto situation of impunity that prevails in the country;**

*Objection is made on the statement that a “de facto situation of impunity prevails in the country”, it being derogatory.*

*There is no “de facto situation of impunity that prevails in the country” (No. 8 (a)). Perpetrators are duly charged in courts and are in various stages of trial, both administratively and criminally. It may be that the administrative cases are moving faster than the criminal case, but it does not and should not be construed as tolerating the abuse. The State Party is committed to pursuing human rights, and part of this commitment is to protect the rights both of the victims and the accused under the system of due process.*

**(b) Issue a public statement at the highest level affirming unambiguously that torture will not be tolerated and ensure that investigations will be carried out promptly in all cases and that prosecutions will be initiated against direct perpetrators of torture, including those with command responsibility; NOTED**

**(c) Establish an independent body to receive and investigate complaints regarding torture and ill-treatment by law enforcement officials and make this complaints mechanism publicly known;**

*A National Monitoring Mechanism was created as a tripartite body composed of the Philippines Commission on Human Rights, civil society organizations, and government agencies, particularly the Presidential Human Rights Committee Secretariat, Department of Justice, Department of the Interior and Local Government, Department of National Defense, Armed Forces of the Philippines, Philippine National Police, Department of Labor and Employment, Department of Social Welfare and Development, National Commission on Indigenous Peoples, Office of the Presidential Adviser on the Peace process, and Bureau of Jail Management and Penology.*

*The objectives of the NMM are: a) Effectively monitor human rights violations, primarily those involving extra-legal killings, enforced disappearance, and torture, in line with the Philippine government’s commitment to its ratified international human rights treaties; b) Address human rights violations, especially ELKs, EDs and torture, by the immediate provision of legal and non-legal services to human rights victims and/or their families that will ensure human rights promotion and protection and ensure the resolution of their cases; c) Develop and effective monitoring and coordination mechanism that will ensure that justice is served to human rights victims and/or their families, particularly those of ELKs, EDs and torture; d) Strengthen institutional mandates, capabilities and engagements in effectively resolving human rights violations, especially cases of ELKs, EDs, and torture; e) Provide venue, both at the national and local levels, where victims or their relatives can report cases of ELKs, EDs and torture, seek assistance, request immediate investigation, request for protection, or seek psychosocial services; and f) Raise public awareness and understanding of cases involving ELKs, EDs and torture to deter, minimize and prevent future incidents.*

*On December 16, 2014, a declaration of support for the NMM on Human Rights was signed in Quezon City and adopted by the member agencies and organizations. The members agree to form*

*technical working groups (TWGs) and draft protocols, as necessary, to further elaborate, implement and operationalize the mandate and objectives of the NMM as well as to expand its composition. An NMM operational guideline was drafted, approved and adopted after series of TWG meetings.*

*The establishment of local monitoring mechanism (LMM) to complement the works of the NMM was also agreed upon and in fact the NMM has already conducted workshops to develop LMM in regions XII and XI.*

**(d) Facilitate the Inter-Agency Committee to convene immediately and to meet at regular intervals. It should keep a database, systematically collecting information on the implementation of the Anti-Torture Act, including on investigations, prosecutions, access to medical evaluations, acts of intimidation and reprisals, the implementation of the rehabilitation programme as well as an inventory of detention centres and facilities under the jurisdiction of the Philippine National Police and the Armed Forces of the Philippines;**

*In addition to the regular meetings of the AO 35 IAC and TWG, meetings are held whenever there are concerns that require immediate attention, at the call of the Department of Justice. The AO 35 Inter-Agency Committee (IAC) likewise maintains a database on REPORTED torture incidents, that is updated based on the progress of the incidents and cases. This was in fact the basis for the statistics and case updates reported during the revalida and as contained in the written response.*

*However, it is respectfully submitted that access to medical evaluations, acts of intimidation and reprisals, the implementation of the rehabilitation program and the inventory of detention centers and facilities under the PNP and AFP are not covered by the mandate of AO 35 IAC (Part C, item 8d). The inventory of detention centers of the PNP, AFP, and other law enforcement agencies is already required under Section 7 of the Anti-Torture Law, to which the PNP, AFP, and concerned agencies regularly submit its inventory of detention centers and facilities to the CHR. The Comprehensive Rehabilitation Program for Torture Victims and their families, and those who committed torture and other cruel, inhuman and degrading treatment or punishment is being implemented by the Department of Social Welfare and Development, Department of Justice and Department of Health, pursuant to Section 19 of the law.*

**(e) Ensure that the Inter-Agency Committee regularly publishes updates on cases under consideration, including those pending preliminary investigation at the prosecutor level and those filed in court, document and report on reasons for delays and non-reporting, and provide assessments of possible systematic errors identified in the implementation of the Anti-Torture Act.**

#### **Fundamental legal safeguards**

*While the setting up of an AO 35 website is still undergoing the regular process for the approval and procurement of government projects, it should be emphasized that the Department of Justice, through the AO 35 IAC, has consistently shared information on case statistics and updates with other government agencies, civil society organizations and international organizations, upon*

direct request or as may be coursed through the Department of Foreign Affairs. In fact, the Operational Guidelines provide for the following, as follows (Part C, item 8d and 8e):<sup>1</sup>

a. Sharing of relevant information with IOs, NGOs, CSOs and other stakeholders, provided that the rights of the accused will not be violated or that the disclosure would not interfere with the administration of justice.

b. Assistance of IOs, NGOs, CSOs and other stakeholders, among others, in obtaining relevant information, promoting grassroots advocacy and strengthening the capacity of the AO 35 structures.

9. The Committee is concerned that detained persons, including minors, do not enjoy, in practice, all the fundamental legal safeguards from the very outset of their deprivation of liberty, in particular after arrest by police, and that register are not kept at all stages of detentions (arts. 2, 12, 13 and 16).

*The statement is vague and unsubstantiated. On the contrary, all detained persons, specially minors are given preferential treatment as they are being considered as one of the most vulnerable group in society.*

10. The State party should take effective measures to guarantee that all detained persons, including minors, are afforded in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including:

(a) To be informed about the charges against them and about their rights, both orally and in writing, in a language that they understand, and to sign a paper confirming that they have understood the information provided to them;

(b) To have their detention recorded in a register;

(c) To have prompt access to a lawyer from the very outset of deprivation of liberty and, if necessary, to legal aid, including during the initial interrogation;

(d) To have immediate access to an independent medical examination, free of charge and not in the presence of police officers;

(e) To notify a family member or any other person of their own choice of their detention immediately after apprehension and not only after seeing a judge;

(f) To be brought before a judge within the time frame prescribe by law.

*The conditions under para 10 (a to f) are strictly observed by the police officers in treating minors arrested for a crime for infraction of law. The Philippines passed Republic Act No. 9344 (AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER*

<sup>1</sup>Sections 1 to 2 of Article IX of the Final Operational Guidelines of Administrative Order No.35.

PURPOSES) which incorporates the International Standards mentioned in Section 21. In fact, according to the law, detention of a child is a last resort. The general rule is that within 8 hours from initial contact, a minor/child is required to be turned over to social welfare offices. The Philippines is compliant to International Standards with respect to treatment of children in conflict with the law.

### **Arrests without warrants**

11. The Committee is concerned at arrests without warrants carried out by police, military personnel and ordinary citizens. It is also concerned at concurring reports that certain arrests are made by police officers in civilian clothes and that many detained suspects were reportedly subjected to torture and ill-treatment with impunity. Arrests without warrants have reportedly also involved children (arts. 2, 11 and 16).

*On the issue of "arrests without warrants carried out by police, military personnel and ordinary citizens", we respectfully reiterate our response as stated in para 77 to 82 of the "RESPONSES OF THE PHILIPPINES TO THE ISSUES RAISED BY MEMBERS OF THE COMMITTEE AGAINST TORTURE DURING THE INTERACTIVE DIALOGUE AND CONSIDERATION OF THE PHILIPPINES' 3RD PERIODIC REPORT ON THE IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE (CAT)".*

*As regards the issue that certain arrests are made by police officers in civilian clothes, these are in the pre-text that the police officer is off duty and the conditions set forth in Rule 113 Section 5 of the Rules of Court occurs.*

*On the issue that many detained suspects were reportedly subjected to torture and ill-treatment with impunity, it has never been a policy to torture and ill-treat with impunity. These are mere unfounded allegation but nevertheless not tolerated by the police organization, the armed forces and other law enforcement agencies. Violations are dealt with in accordance with the law.*

*With regard to "Arrests without warrants have reportedly also involved children", the Rules of Court on warrantless arrests also applies to children. The Law (Republic Act No. 9344) use the term initial contact instead of arrest, and provide guidelines to law enforcements on the procedures to be undertaken during initial contact. The use of handcuffs is discouraged, and at all times. The apprehended children have to be turned-over to the DSWD within 8 hours from initial contact.*

12. The State party should:

(a) Take all necessary measures to put an immediate end to arrests without warrant and immediately register all arrested persons;

*Arrests without warrant pursuant to Section 5 Rule 113 of the Rules of Court is authorized under Philippine jurisdiction, it provides that:*

*"Section 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person under the following circumstances:*

- (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 and circumstances that the person to be arrested has committed it;
  - (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
- In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112"

To ensure strict compliance with the last paragraph of the aforementioned provision of the Rules of Court, arresting officers are duty bound under the Philippine National Police (PNP) Operational Procedures to immediately bring the arrested person to the police station for investigation without any delay. The arrested person shall then be subjected to inquest proceedings within the time prescribed under Article 125 of the Revised Penal Code. This rule also applies to the military and other law enforcement agencies.

On the registry of detainees, all PNP custodial facilities have official record of all persons under their custody. The Police Blotter is the official record of the Philippine National Police where all arrests conducted, to include all circumstances attendant thereto, are recorded. The information includes the details of the suspects and the police officer or civilian effecting the arrest and the circumstances to mention a few. Further, in compliance with the requirements of the Philippine Anti-Torture Law, all police custodial facilities are subjected to inventory and inspection to help ensure that rights of Persons Under Custody are respected and protected.

It is likewise maintained that Philippine law provides for limited and legitimate instances wherein warrantless arrests or citizen's arrests may be effected. As discussed during the revalida, there are sufficient safeguards relative thereto, as violators may be held liable for arbitrary detention or illegal detention in the case of private persons

(b) Hold criminally, civilly and administratively liable and bring to justice all officials who arrest persons without a legal basis;

To address the issue on officials who arrest without legal basis, the Philippine National Police (PNP) issued a Human Rights Advisory dubbed as Commission on Human Rights-A2011-001 "On Fake Arrest and Arbitrary Detention of Innocent Civilian by the Police". The purpose of the advisory is to provide information and timely reminders to all police personnel to strictly adhere to PNP Rules and Regulations, Police Operational Procedures, and Human Rights Laws including Human Rights Conventions/Treaties. It is also a supplement to the Commission on Human Rights Advisory which has cited the PNP involvement in certain human rights issues, in this case, alleged fake arrests and arbitrary detentions.

It must also be emphasized that police personnel found to be effecting arrest to a person without any legal basis will be dealt with accordingly and may be held criminally, civilly and administratively liable after affording him/her his right to due process.

Various laws are already set in place in the Philippines like Republic Act No. 10353 (Anti Enforced Disappearance Law), Republic Act No. 9745 (Anti Torture Law) and Republic Act No. 7438 (rights of person under custodial investigation), among others, to ensure that the rights of the person arrested will be observed and that they will not be subjected to any torture. Violation of the same by any police personnel may be held criminally, civilly and administratively liable after affording him/her his right to due process.

(c) All officials who have committed acts of torture against the arrested persons should incur individual and command criminal responsibility for such acts;

*The Philippine National Police has applied the Doctrine of Command Responsibility in the Biñan Laguna Incident (alleged secret detention facility in Laguna PIB) wherein Police Chief Inspector Arnold Formento was imposed a penalty of one rank demotion for Serious Neglect of Duty and Violation of EO 226 (INSTITUTIONALIZATION OF THE DOCTRINE OF "COMMAND RESPONSIBILITY" IN ALL GOVERNMENT OFFICES, PARTICULARLY AT ALL LEVELS OF COMMAND IN THE PHILIPPINE NATIONAL POLICE AND OTHER LAW ENFORCEMENT AGENCIES)*

*Also, an Administrative Case under the Doctrine of Command Responsibility was filed against PSUPT Rogelio Rosales and PSUPT Ernesto Tindero in view of their knowledge of the torture incident which occurred at the Manila Police District-PS2 Police Community Precinct (PCP) in Asuncion Tondo, Manila while PSI Joselito Binayug has been dismissed from the service and is now undergoing trial at the Manila RTC Branch.*

*Further, in 2011, the Office of the Chief, Philippine National Police issued a Memorandum on the Accountability of the Immediate Officer for the Involvement of His Subordinate in Criminal Offenses which directs all Police Commissioned Officers (PCOs) to closely supervise, coordinate, control, and monitor the activities of operating units under his or her jurisdiction, and to take preventive or corrective measures as may be warranted.*

*The memorandum likewise prescribes a "three-strike policy" which states that the immediate officer or superior shall be relieved if subordinates are involved in three (3) criminal offenses, whether or not corrective or preventive actions are taken. Moreover, the memorandum also states that the presumption of negligence is applied when an immediate officer or superior fails to take action against erring personnel within 24 hours from the time of the incident or offense.*

*As for military personnel who commit acts of torture against arrested persons, it has been reported to this Committee that the said personnel are proceeded against the military justice system which is separate and independent of the civil courts. Their liability is determined by their participation, and in conjunction with liability under the doctrine of command responsibility.*

(d) Provide redress and compensation to those who have been subjected to Ill-treatment during their detention;

*The Philippines is providing redress and compensation to those who have been subjected to Ill-treatment during their through the DOJ Victims Compensation Program*

(e) Better frame in law and in practice citizen's arrests without a warrant.

## Pretrial detention and overcrowding

13. The Committee is concerned at the excessive length of pre-trial detention, sometimes exceeding the maximum penalty for the offence, including up to 16 years. It is also concerned that persons in pretrial detention may account for at least 85 to 90 per cent of detainees, a situation resulting largely from the strict application the Comprehensive Dangerous Drugs Act of 2002 (RA 9165), which results in overcrowding. The Committee is concerned at the huge backlog of cases in the judiciary. The Committee is also concerned at the preponderant role of the Department of the Interior and its impact on the independence of the judiciary whose role thereby appears reduced. It is also concerned at the insufficient number of judges (art. 2 and 11).

*On the observation that the strict implementation of RA 9165 resulted to overcrowding, the Philippines proposes a policy review of RA 9165 particularly to study the propriety of decriminalizing drug use and drug possession to reduce prison overcrowding and to appropriate more effective measures such as medical intervention/rehabilitation in lieu of criminal prosecution.*

*On the recommendation to urgently release those persons whose pre-trial detention has exceeded the maximum imposable penalty (Sub para a); "the State Party thru the Bureau of Jail Management and Penology reiterates its report that detention of all pre-trial detainees under its jurisdiction are strictly monitored to prevent overstay or prevent detention beyond the period equal to the maximum imposable penalty. This monitoring is an integral part of its paralegal program which actively seeks the early release of detainees thru the intervention of trained paralegal officers in order to decongest jails. For the past three years, not a single detainee was found to have been in detention in excess of the maximum imposable penalty.*

*Moreover, the Supreme Court has issued Administrative Matter No. 12-11-2-SC, entitled Guidelines For Decongesting Holding Jails By Enforcing The Rights Of Accused Persons To Bail And To Speedy Trial which provides that an accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, motu proprio or on motion and after notice and hearing, on his own recognizance.*

*The guidelines also established local Task Force Katarungan at Kalayaan with the purpose of eliminating unnecessary detention by tracking and keeping a record of the progress of the criminal cases of all detained persons within their jurisdiction. These task forces are comprised of a first and second level magistrate, the chief prosecutor in the locality, and the local head public attorney. The assistance of the BJMP and the provincial governor may also be enlisted.*

*Under the guidelines, each court is mandated to maintain a "Detainees Notebook," which shall contain a record of the date of detention of the accused, the date when his detention becomes equal to the minimum imposable penalty, the date when it becomes equal to the maximum imposable penalty, and such other data as may be essential to the monitoring of his or her case. One (1) copy of the notebook shall be attached to the record of the case and another copy kept by the jail warden, which copy shall be brought with the accused at the hearing. The branch clerk of court is also instructed to update the two copies of the notebook at every hearing by stating what action the*

*court has taken in it, the next scheduled hearing, and what action the court will further take on the case.*

*Also, under the New Guidelines on Jail Visitation and Inspection (A.M. No. 07-3-02-SC) as promulgated in Office of Court Administrator Circular No. 107-2013, Executive Judges are mandated to personally conduct visitation and inspection of provincial or city jails as well as other youth detention homes and youth rehabilitation centers within their respective jurisdictions on a quarterly basis, and to submit a report on matters such as the duration of detention and health condition of the prisoners to the Office of the Court Administrator of the Supreme court. A total of 1,548 jail visits conducted by the judiciary since this new guidelines took effect in August 2013.*

*These same judges are also mandated to require the submission of reports from the presiding judges within their administrative areas, on the total number of detainees whose cases are pending in their sala, which shall include information on the name and age of the detention prisoner, case number, crime charged, first day of detention, duration of detention and status of the case.*

*Finally, the Executive Judge is required to immediately act on cases involving detention prisoners who have been detained for a period equivalent to or beyond the maximum period of the impossible penalty.*

**14. The State party should:**

- (a) Urgently release those persons whose pretrial detention exceeds the maximum penalty for the offence;**
- (b) Review the legality of pretrial detention of all persons thus detained;**
- (c) Urgently deal with the backlog of cases in the courts;**

*The Supreme Court has embarked on several innovative decongestion efforts which aim to decrease trial times and ensure that detainees are given a speedy resolution of their case.*

*Among these programs is the Hustisyeh program, a decongestion program where a thirty percent (30%) reduction of caseload was recorded in Quezon City, where the program was piloted. Just this year (2016), provision for the hiring of six hundred thirty-five (635) court decongestion officers was approved by the Supreme Court in the hopes of building on the success of the program. Furthermore, the Supreme Court has formed Assisting courts to address the disproportionate allocation of courts in various parts of the country. Under this program, less congested courts from nearby jurisdictions are tasked to help overburdened courts deal with the latter's heavier caseloads.*

*The Philippine Judiciary has also started linking up with other government agencies to speed up case processing. An example of this is the eSubpoena. The eSubpoena is an automated notification system where the courts are able to send out electronic subpoenas, and duly received by the concerned police officer through their national headquarters. Based on initial reports, there is a ninety-seven percent (97%) compliance rate of policemen attending trial in Quezon City, where the system is currently being piloted.*

At the same time, the Court approved the development of the eCourt, an automated case management system developed for the trial courts that is expected to not only increase efficiency in case processing and monitoring, but also enhance transparency in court operations and records integrity. It aims to speed up decision-making through automated monitoring of cases; cut case backlogs through a dashboard that provides information like the aging of cases, pending deadlines, and new case incidents that require action; increase public access to information through computers in public kiosks that are found at the entrance of the different halls of justices; and bolster transparency as the raffling of cases is done electronically.

The Supreme Court has also actively utilized Alternative Dispute Resolution as a means to resolve cases in an expeditious manner. To date, the Philippine Judiciary has established 126 mediation units nationwide (with 4 more units to be established in 2016), and trained 650 accredited mediators. As of October 2015, Court-Annexed Mediation has successfully mediated 205,674 cases since 2002 or a success rate of 62.50%.

**(d) Amend legislation and take all necessary measures to shorten the duration of pre-trial detention, which should be used as an exception, applied for limited periods of time;**

The Philippines as a State Party to the OPCAT has long recognized the need to improve the handling of persons deprived of liberty, especially during the pre-trial period. Over the reporting period, at least three (3) laws have been put in place to creatively lighten, if not shorten pre-trial detention.

Recognizance Act of 2012 or Republic Act No. 10389 was enacted on 14 Mar 2013 to institutionalize recognizance as a mode of granting the release from custody of an indigent person on trial as an accused (i.e., before conviction) in a criminal case, except for those crimes punishable by death, reclusion perpetua or life imprisonment.

Moreover, Revised Penal Code was amended via Republic Act No. 10592 dated 29 May 2013 to provide for the accreditation of preventive imprisonment or pre-trial detention as service of sentence or term of imprisonment, except in the case of recidivists with twice or more convictions, and in case of failure to surrender voluntarily during execution of sentence. Noteworthy is also the new mandate of law that authorizes prison superintendent or the head of the Bureau of Corrections (BUCOR) as well as the head of the Bureau of Jail Management and Penology (BJMP) to motuproprio grant the accreditation, which does away with the circuitous red tape of the past. This law also expands the provision on good conduct time allowance (GCTA) which is now actionable at the level of the BUCOR and BJMP Heads. Thus, GCTA, as provided under this law is granted as follows:

- 20 days for each month of good behavior during detention in the first 2 years of imprisonment;
- 23 days in the 3<sup>rd</sup> to 5<sup>th</sup> year; 25 days up in the succeeding years to 10<sup>th</sup> year;
- 30 days from the 11<sup>th</sup> and successive years;
- Additional 15 days for each month of study, teaching or mentoring service time rendered. An appeal by the accused shall not deprive entitlement for GCA.
- Special time allowance for loyalty if a prisoner (deduction of 1/5 of period of sentence) returns within 48 hours after end of a calamity; or (2/5) if he stays in his confinement during calamity.

- *The preventive imprisonment for a prisoner convicted of reclusion perpetua shall be deducted from a term of 30 years.*

*Republic Act No. 10707 was likewise enacted as recently as on November 26, 2015 to introduce amendments to the "Probation Law of 1976". The old law used to perpetrate injustice for decades by precluding a prisoner with pending appeal of conviction from applying for probation, or vice versa. It was clear case of limiting the option for relief of the prisoner to only either one or the other. Now, the application for probation is available even when an appeal of conviction has been perfected, provided the modified penalty is within the probationable term of 6-8 years. Moreover, the new law totally extinguishes the criminal liability of an offender who has been successfully terminated from probation supervision by order of court and did not commit any crime for 10 years thereafter.*

*Even while these new laws are in place, the government continues to explore possible alternatives to imprisonment which will redound to decongesting detention facilities. House Bill No. 3565, mandating the court to require community service in lieu of imprisonment for the penalties of arresto minor and arresto mayor, was actually passed by the House of Representatives in December 2014 but unfortunately, the Senate failed to act on House Bill No. 3565 nor its counterpart bill, Senate Bill No. 1165.*

*A bill of wider scope, HB 3476 proposing alternatives to imprisonment such as the adoption of community service, restitution, reparation or indemnification, fine, destierro, house arrest and other restorative justice measures and processes including compliance to attached conditions, i.e., counseling, institutional or non-institutional rehabilitation, was filed as early as December 2013 but this time, the House Committee on Justice to which the bill was referred could not find time to act on the bill.*

**(e) Ensure that pretrial detention is regulated clearly and subject to judicial supervision at all times in order to guarantee fundamental legal and procedural safeguards;**

*The Rule of Court mandates all Regional Trial Court judges to conduct regular visits to jails.*

**(f) Strengthen the independence of the judiciary and ensure that vacancies are filled as a matter of urgency; and strengthen the capacity of the judiciary system and ensure that it clears the backlog of existing cases;**

*In 2004, the Supreme Court of the Philippines has issued A.M. No. 03-05-01-SC adopting a New Code of Judicial Conduct for the Philippine Judiciary. The said code was an adoption of the universal declaration of standards for ethical conduct of judges embodied in the Bangalore Draft as revised at the Round Table Conference of Chief Justices at The Hague on 25-26, November 2002.*

*The Bangalore Draft is founded upon a universal recognition that a competent, independent and impartial judiciary is essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law; that public confidence in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance in a modern democratic society; and that it is*

*essential that judges, individually and collectively, respect and honor judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.*

*Included in the judicial reform program are the Justice Sector Coordinating Council (JSCC) and the Justice Zones.*

*The JSCC was organized to serve as a joint forum for dialogue on issues of common interest and mechanism for effective coordination and sharing of information in support of planning and implementation of joint initiatives among justice sector institutions specifically the Supreme Court (SC), the Department of Justice (DOJ) and the Department of Interior and Local Government (DILG) while at all times respecting and preserving the independence of the Office.*

*In 2014, the Council launched its flagship project called the justice zone. It is an area or locality where a minimum number of inter-agency coordinative reforms are present, rendering the said area or locality fully compliant based on the rating system to be established.*

*The justice zone was developed due to the need to address delay and inefficiencies through sector-wide coordinative efforts while respecting the independence all of institutions concerned. It is guided by the Justice Zone Strategy Map, an operations flow chart that depicts the following:*

1. *Entire lifetime of a criminal case*
  - i. *Case start-up (complaint, arrest, investigation, case build-up);*
  - ii. *Case adjudication (filing, prosecution, pre-judgment detention, decision);*
  - iii. *Post-judgment incidents (probation, parole, service of sentence)*
1. *Overall track targets and milestones*
2. *Each agency's respective track activities and targets; and*
3. *inter-agency coordination on interesting activities*

*Some of the key reform projects of the justice zone include (1) eSubpoena, an automated notification system. Because of this system, there is a 97% compliance rate of policemen attending trial in Quezon City where the system is currently being piloted; (2) sector-wide capacity building provided to all justice sector actors such as Joint Forensic Training of Judges, Prosecutors, and Public Attorneys conducted by the Philippine National Police; (3) synchronized calendar containing all information (e.g., training) on official activities of the justice sector actor and disseminated among them to avoid compromising trial dates due to the said official activities; and (4) single marking system which is a system currently being developed by a technical working group comprised of members from the judiciary, Philippine National Police, National Bureau of Investigation, among others, to improve evidence handling and marking to ensure that chain of custody is not lost.*

*In ensuring that the vacancies in the judiciary are filled up, this is a priority program of the Supreme Court of the Philippines. This is however, affected by several factors like lack of qualified applicants and the vacancies are in areas with very low case load like sharia courts with only 5 or 20 caseload.*

**(g) Ensure that all pre-trial detainees are brought before a judge without delay and expedite the cases of persons held under the Comprehensive Dangerous Act of 2002 (RA 9165);**

**(h) Consider replacing pre-trial detention with non-custodial measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

*On the recommendation that amendment to legislation to shorten pre-trial detention and to consider replacing pre-trial detention with non-custodial measures (sub para d and h); The State Party thru the Bureau of Jail Management and Penology respectfully reiterates its report that a legislative bill on Alternatives to Imprisonment based on the Tokyo Rules or UN Standard Minimum Rules on Non-Custodial Measures has been crafted in 2013 and is currently pending at the House of Representatives. A counterpart Alternatives to Imprisonment bill can be proposed to the Philippine Senate for sponsorship and priority legislation.*

**(i) Ensure that redress and compensation are provided to victims of unjustified prolonged pre-trial detention.**

*Redress and compensation are provided to victims of unjustified prolonged pre-trial detention through the DOJ Victims Compensation Program.*

#### **Torture and ill-treatment**

15. The Committee is concerned at the continued reports of widespread torture and ill-treatment of suspects by law enforcement, security, penitentiary and military personnel. The Committee is alarmed at reports that the overwhelming majority of reported torture cases take place in police stations, in order to extract confessions or information to be used in criminal proceedings. It is also concerned that the Internal Affairs Service of the Philippine National Police (PNP IAS) is supervised by the Office of the Chief of Police (arts. 2 and 16).

16. **The State party should:**

**(a) Acknowledge publicly the occurrence of torture and ill-treatment and unequivocally condemn all such acts;**

**(b) Ensure that investigations are systematically carried out, that perpetrators are prosecuted and convicted in accordance with the gravity of their acts, in keeping with article 4 of the Convention; and that victims are afforded appropriate redress;**

**(c) Establish an independent mechanism to exercise oversight over the PNP IAS so that there is no institutional or hierarchical connection between the investigators and the alleged perpetrators; and ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;**

*Discipline is one of the key factors that make the PNP credible. It ensures that all Philippine National Police personnel who are charged of human rights violations such as torture shall be undergo preventive suspension and shall be entitled to a formal hearing as stated in the National Police Commission (NAPOLCOM) Memorandum Circular 2000-001. The Philippine National Police Internal Mechanism is definitely one of the Philippine National Police's most important tool in helping the appointed Philippine National Police disciplinary authorities administer sanctions against erring Philippine National Police personnel who fail to abide by the rules and regulation of the Philippine National Police. More importantly it helps raise the competence of our police pre-charge evaluators and summary hearing officers who are tasked to keep the Philippine National Police Disciplinary Mechanism running and expedite the resolution of administrative cases involving Philippine National Police personnel.*

**(d) Establish a database on the number of investigations, prosecutions, convictions, sanctions and compensation granted to victims of torture and members of their families, and report on these figures to the Committee in its next report.**

*The Philippine National Police has an E-Blotter System which was further enhanced and now called CIRAS or the Crime Incident Reporting and Analysis System. As the name implies, CIRAS has a crime analysis capability aside from its crime reporting feature. Based on the report submitted by The Directorate for Investigation and Detective Management (DIDM), in the year 2014, there were 71 personnel with administrative cases. With regard to the status of these personnel, six (6) were under pre-charge evaluation, 29 were under summary proceedings, 13 were dropped and closed, one (1) case dismissed, 20 were exonerated, one (1) was suspended, and one (1) was withdrawn. While in the year 2015, there were 30 personnel with administrative cases. With regard to the status of their case, 13 were under pre-charge evaluation, eight (8) were under summary hearing proceeding, and nine (9) were dropped and closed.*

### **Coerced confessions**

17. While noting that the Anti-Torture Act provides for the inadmissibility of an confession, admission or statement obtained as a result of torture, the Committee is concerned at numerous reports of confessions extracted under torture and ill-treatment by law enforcement officers. It is also concerned at the reported shortage of police officers and lack of capabilities to conduct investigations (art. 15).

*The Philippine National Police personnel is strictly observing proper procedures and measures in handling suspects in its investigation of all crimes as well as heinous and sensational crimes, and in arrests of Most Wanted Persons as required in the Convention Against Torture (CAT).*

*Under the Police Operational Procedure all police personnel are mandated to inform all persons arrested, detained, or under investigation about their rights under the law most especially their Right to Counsel and the Right to Physical, Medical and Psychological examination after arrest, and before and after custodial investigation/interrogation.*

*Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand a physical examination by an*

*independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation shall have the right to immediate access to quality medical treatment.*

*As to the issue on the reported shortage of police officers and lack of capabilities to conduct investigations, two types of courses on Investigation are conducted regularly, namely: Criminal Investigation Course (CIC) for Police Non-Commissioned Officers and Investigation Officers Basic Course (IOBC) for Police Commissioned Officers and these training programs, initially implemented in 2010, are regularly conducted nationwide on a yearly basis.*

*Since its initial implementation in 2010, 394 classes for CIC were conducted that produced a total of 20,966 police graduates and 54 classes of IOBC were conducted with a total of 2,607 police graduates.*

*In addition to the two basic courses, all Police Regional Offices have conducted the following seminars/workshops from 2013 to 2015:*

- 2-Day Automated Fingerprint Identification System Seminar: 194 classes with a total of 9,368 graduates*
- 5-Day Crime Scene First Responders Seminar/Workshop: 158 classes with a total of 7,432 graduates*
- 12-Day Women and Children Protection Desk Specialized Course (WCPD):168 classes with a total of 7,624 graduates*

**18. The State party should:**

**(a) Take immediate and effective measures to guarantee that coerced confessions or statements are inadmissible in any proceedings, except when invoked against a person accused of torture;**

**(b) Review cases of convictions based solely on confessions, since many of these may have been based on evidence obtained through torture or ill-treatment and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures;**

**(c) Ensure that persons convicted on the basis of coerced evidence or as a result of torture and ill-treatment are afforded a new trial and adequate redress;**

**(d) Ensure that law enforcement officials, army personnel, judges, prosecutors and lawyers receive training on how to detect and investigate cases in which confessions are obtained under torture;**

The Philippine National Police has formulated new and amended existing policies, procedures and guidelines to enhance the capacity and effectiveness of its personnel in the conduct of investigations. This includes publication of new and revised investigation manuals both for criminal investigation and administrative proceedings as supported by the European Union through the European-Philippines Justice Support Program (EPJUST) program and from other donors, to serve as a guide and reference materials for investigators and case managers in the investigation of high profile crimes and administrative cases.

On the other hand, The School for Investigation and Detective Development (SIDD) Directorate for Investigation and Detective Management (DIDM) of the PNP is responsible in the conduct of training for personnel who will be handling investigative positions in the PNP.

These training programs provide career enhancement among investigators, detectives, case managers and supervisors handling cases in their units/offices. The investigators, detectives and case managers are not only equipped with the skills and competencies for the job at hand, but have largely contributed in improving the Crime Solution Efficiency of the whole PNP, which is the main objective of the said courses.

The implementation of these courses in the National Headquarter level is catered by School for Investigation and Detective Development (SIDD) and in the regional level, it is implemented by the Regional Investigation and Detective Management Division (RIDMD) thru an Investigation Training Committee (ITC) headed by the Deputy Regional Director for Operations (DRDO), with the supervision of SIDD. Since its initial implementation in 2010, one class of Training Of Trainers-Criminal Investigation Course (CIC); 393 regular classes for CIC; one class of TOT-Intelligence Officers Basic Course (IOBC) and 53 regular classes of IOBC were conducted.

**(e) Ensure that officials who extract such confessions, including persons liable under the principle of command responsibility, are brought to justice, prosecuted and punished accordingly;**

***The Philippine National Police has applied the Doctrine of Command Responsibility in the incident of the alleged secret detention facility in Biñan, Laguna wherein Police Chief Inspector Arnold Formento was imposed a penalty of one rank demotion for Serious Neglect of Duty and Violation of EO 226 (INSTITUTIONALIZATION OF THE DOCTRINE OF "COMMAND RESPONSIBILITY" IN ALL GOVERNMENT OFFICES, PARTICULARLY AT ALL LEVELS OF COMMAND IN THE PHILIPPINE NATIONAL POLICE AND OTHER LAW ENFORCEMENT AGENCIES)***

Also, an Administrative Case under the Doctrine of Command Responsibility was filed against PSUPT ROGELIO ROSALES and PSUPT ERNESTO TINDERO in view of their knowledge of the torture incident which occurred at the Manila Police District-PS2 Police Community Precinct (PCP) in Asuncion Tondo, Manila while PSI Joselito Binayug has been dismissed from the service and is now undergoing trial at the Manila RTC Branch

Further, in 2011, the Office of the Chief, PNP issued a Memorandum on the Accountability of the Immediate Officer for the Involvement of His Subordinate in Criminal Offenses which directs all Police Commissioned Officers (PCOs) to closely supervise, coordinate, control, and monitor the

activities of operating units under his or her jurisdiction, and to take preventive or corrective measures as may be warranted.

The memorandum likewise prescribes a "three-strike policy" which states that the immediate officer or superior shall be relieved if subordinates are involved in three (3) criminal offenses, whether or not corrective or preventive actions are taken. Moreover, the memorandum also states that the presumption of negligence is applied when an immediate officer or superior fails to take action against erring personnel within 24 hours from the time of the incident or offense.

(f) Provide the Committee with information on any cases in which confessions were deemed admissible on the grounds that they were obtained through torture and indicate whether any officials have been prosecuted and punished for extracting such confessions.

### **Blindfolding**

19. The Committee is concerned at reports that persons detained by security forces are blindfolded. It is also concerned at the reported insistence of public prosecutors on positive visual identification, which prevents victims of torture who were blindfolded from identifying the perpetrators, even if their allegations are consistent with physical and psychological symptoms of torture and visible or permanent physical injury (arts. 2, 11 and 16).

20. The State party should:

(a) Increase awareness among the security forces about the prohibition of blindfolding under section 4(b)(1) of the Anti-Torture Act;

(b) Sanction all instances of blindfolding;

*On the issue of Blindfolding, the Philippine National Police Human Rights Affairs Office crafted a Memo on the Strict Adherence to the Prohibition on the Blind-Folding of Suspects under Police Custody reiterating that "Blind-Folding of Suspects" which is a form of "Mental/Psychological Torture" as explained under Section 4 (b) (1) of RA 9745 and is an act calculated to affect or confuse the mind/or and/or undermine a person's dignity and morale. Thus, a person in authority or agent of person in authority, who shall commit this act, shall be prosecuted under the existing Law (Republic Act No. 9745. Moreover, the Philippine National Police also recommended the inclusion in all Police Information Continuing Education (PICE) Sessions the topic on "Strict Adherence of Philippine National Police personnel to the Prohibition on the Blind-Folding of Suspects" and to hold a dialogue with the members of the Press Corps and other media groups to work on how to comply with certain provisions of RA 9745.*

(c) Consider amending the rules of evidence evaluation to increase the possibility of identifying perpetrators in the prosecution of cases of torture and ill-treatment through other means than visual verification and consider adopting a non-restrictive approach which also allows for voice identification in cases where blindfolding was used;

**(d) Make it mandatory for prosecutors to carry out a full investigation of possible command responsibility in cases where the identification of primary perpetrators is impaired by the use of blindfolds.**

### **Secret places of detention**

21. The Committee is deeply concerned at reports of the existence of secret places of detention where persons have routinely been subjected to torture. It is particularly concerned at reports of the existence of secret security facilities, including where children are abused, harassed and exploited, such as the one in Laguna province where torture was committed routinely, including through the use of a so-called "wheel of torture" to determine the type of torture to inflict on the detainees (arts. 2, 11 and 16).

22. **The State party should:**

**(a) Immediately close all secret places of detention;**

**(b) As a matter of priority, ensure the application throughout the country section (c) of the Anti-Torture Act which stipulates that "secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited";**

**(c) Conduct investigations and prosecute all persons responsible for committing acts of torture in secret places of detention.**

*In order to prevent the existence of secret custodial facilities, the PNP issued a Directive dated February 11, 2014 requiring all Regional Directors of Police Regional Offices (PROs) and Directors of National Support Units (NSUs) to sign and submit an Affidavit of Undertaking stating primarily that all facilities are properly reported, and that no secret detention places, solitary confinement, incommunicado or other similar forms of detention expressly prohibited by Section 7 of RA 9745 (Anti-Torture Act of 2009) exists within their areas of responsibility and that they are taking full responsibility for any omissions or inaccuracies in the reporting thereof.*

*Enshrined in the said Directive is a caveat that any misrepresentation, omission or act of dishonesty or for any fraudulent, falsified or tampered documents on their part will render them administratively and criminally liable (perjury) as provided by Republic Act Nos. 9745 and 6713, the Revised Penal Code and other applicable Rules, Regulations and Issuances".*

### **Extrajudicial killings and enforced disappearances**

23. While noting the adoption of legislation and other efforts made by the State party, the Committee remains concerned that extrajudicial killings and enforced disappearances implicating police and military personnel as well as armed militias have continued to take place (2, 12, 13).

The recommendations of the CAT in its Concluding Observations relative to contemplated laws are well appreciated. As a matter of fact, advocacy efforts on the part of the Executive Branch of the Philippine Government to expedite the passage of such proposed measures during the reporting period have been unrelenting and impassioned in the present Congress. However, given the intricacies of law-making and the dynamics of executive-legislative relations in the context of Philippine setting, time-lag has always been an unpredictable variable in the legislative process. Worse yet, after a 3-month long recess that gave way to the conduct of the national elections, Philippine Congress will resume at the final stretch of its life for a last-ditch attempt to optimize legislative output. Admittedly though, Congress may not be able to focus much on the performance of its regular function during its final nine (9) session days as it carries out a parallel Constitutional mandate to serve as the National Board to canvass votes cast for President and Vice-President.

Nonetheless, given the State policy enshrined in the Philippine Constitution that “values the dignity of every human person and guarantees full respect for human rights”, it is with high hopes that we stand at this crossroad in our life as a nation. Resolutions to better the life of every Filipino in all aspects reverberated in the campaign trails, but the nation’s set of new leaders are duty-bound, as they are inspired, to pursue such resolve into fruition with a deeper sense of commitment and infused with vigor.

It is in this light that a good measure of optimism may spring from a successful conduct of a consensus building process projected to be undertaken after the political transition. This may be designed to deliberately bring together all the stakeholders, both the key duty-bearers of the newly-installed Administration of presumptive President-elect Rodrigo “Rody” Duterte (who takes over the reins of government from noon of June 30, 2016 pursuant to the Philippine Constitution) on the one hand, vis-à-vis the rights-holders across the spectrum of strategic sectors and policy actors on the other, aimed at forging a “meeting of hearts and minds” towards a shared agenda to prevent torture, improve law-enforcement, and protect human rights. Perhaps, this activity will serve as litmus to assess as well the level of internalization of the Human Rights Based Approach (HRBA), which the Philippine Government has endeavored to mainstream in the policy-making process.

**24. The State party should:**

**(a) Take effective measures to enforce relevant legislation and prevent extrajudicial killings and enforced disappearances;**

**(b) Ensure the regular functioning of the special oversight team of investigators and prosecutors under the Inter-Agency Committee to effectively help law enforcement agencies conduct fact-finding investigations for prosecution of cases of enforced disappearances and extrajudicial executions with a view to resolving them;**  
**NOTED**

**(c) Ensure that all alleged perpetrators of these crimes are effectively and promptly investigated, prosecuted and, if convicted, punished with appropriate sanctions;**  
**NOTED**

**(d) Ensure that the families of victims of these crimes receive adequate compensation; NOTED**

**(e) Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

*The Administration of President Benigno Aquino III has adopted the Whole-of-Government Approach as well as the concept of Complete Staff Work from previous administrations in the handling of matters of policy impact. Such is the case of the International Convention for the Protection of All Persons from Enforced Disappearance which has not reached the Senate as reporting period, and has been under review by concerned agencies in light of the recent enactment of Republic Act No. 10353 a.k.a. the "Anti-Enforced or Involuntary Disappearance Act". Furthermore, the Department of Justice (DOJ) has recommended the drafting of an amendatory bill that seeks to bring under the ambit of the law and make accountable non-state actors for their acts of enforced disappearance.*

### **Reporting acts of torture and witness protection.**

25. The Committee is concerned that victims of and witnesses to torture have been reluctant to report cases because of a lack of adequate information regarding their rights under various laws and the options available to them to lodge a complaint; out of fear of harassment and reprisals from the perpetrators; and lack of protection. The Committee is also concerned at reports of inadequate witness protection and the reluctance of government doctors who examine the victims to indicate findings of torture on their medical certificate for fear of intimidation or reprisals (arts. 2, 12, 13, 14 and 16).

26. **The State party should:**

**(a) Provide comprehensive information to victims of torture and their families regarding the laws and options available to them to lodge a complaint; and provide ample protection to victims of torture, their families and witnesses, with due consideration to the urgency of the need for protection from threats to their lives and security;**

**(b) Strengthen the Witness Protection Programme (WPP) through amendments of the Witness Protection, Security and Benefit Act (RA No. 6981), by according high priority to the funding of the programme and providing expanded rights and benefits to prospective witnesses, including secure housing and financial or livelihood assistance, to help the authorities prosecute cases of torture; and provide effective protection against reprisals and other forms of harassment to all witnesses of torture and ill-treatment;**

*To encourage and better protect witnesses, the Witness Protection Program (WPP) has been strengthened. It received additional funding from the government, and in turn increased financial assistance to witnesses and their families and enabled it to acquire additional vehicles, firearms and armor vests, pistols, communication equipment and Kevlar helmets, as well as provide VIP Security Training for its security units. The Program intends to lease and develop farmlands and*

convert them into "witness colonies," wherein witnesses and their families can do farming, poultry, goat or cattle raising.

One of the centerpiece programs of the Administration of President Aquino is the anti-corruption. The concerted campaign in the first 3 years in office could not be ignored. The successful prosecution of cases of corruption against "big fishes" may be attributed to the presentation of prima facie evidence and direct testimonies of state witnesses. Hence, a measure seeking to enhance the Witness Protection Program was included in the priority agenda of the President immediately and a draft was submitted to Congress.

Although the bill gained considerable headway through the legislative mill during the reporting period, it failed to complete the entire legislative process before the conclusion of the session of Congress. The measure will be presented to the next Administration for its consideration as a priority measure in the succeeding Congress.

The salient features of the proposed Administration-sponsored bill include among others the following:

- A monetary-based rewards system for the benefits of informers
- Provision of tertiary education in state colleges through scholarship program to all dependents including allowance
- Provision of medical and hospital benefits
- Protection for informants against reprisals and against civil or criminal liability when they make public disclosures which are made to the proper public entity and not the media
- Protection of witnesses in legislative investigations
- Change of identity which may include physical appearance

**(c) Ensure adequate protection of health professionals documenting torture and ill-treatment from intimidation and other forms of reprisals, including by ensuring that they are not hierarchically subordinated to the head of the detention facility or other security organs;**

**(d) Ensure that health professionals are able to examine victims independently and to maintain the confidentiality of medical records.**

### **Conditions of detention**

27. The Committee is concerned at the persistence of appalling conditions of detention prevailing in the State party, both in police lock-up cells and the jails and detention facilities run by the Bureau of Jail Management and Penology (BJMP), which do not meet minimum international standards and may by themselves constitute ill-treatment or torture. It is particularly concerned at the persistence of critical and chronic overcrowding of all detention facilities, which can be as high as 380 per cent. Conditions in all places of deprivation of liberty including dilapidated and small cells, in some of which detainees are forced to sleep while sitting or standing, unsanitary conditions, inadequate amounts of food, poor nutrition, insufficient natural and artificial lighting and poor ventilation which cause inter-prisoner violence and the spread of infectious diseases such as tuberculosis whose incidence is extremely high. The Committee is particularly

alarmed at information that tuberculosis eradication programs were not a priority in the past because of their lack of relevance to the maintenance of security. The Committee is concerned at sexual violence against detained persons as well as at the treatment of detainees belonging to minorities (arts. 2, 11 and 16).

*The difficult condition of inmates in jails brought about by overcrowding is a recognized reality; the State Party reiterates its prior submission that the substantial improvement in the living condition of inmates is being actively sought by the State Party with the appropriation by the Philippine Congress for 2016 of a substantial amount of PHP373 Million (equivalent to around USD 8 Million) for the construction of additional space especially in the most congested jails under the Bureau of Jail Management and Penology. Significantly, a PHP 50 Billion (about USD 1.1 Billion) correctional facility for the convicted inmates of the Bureau of Corrections is to be completed in the next three years and is expected to substantially ease if not totally eradicate prison congestion. As the Philippine economy improves, higher budgetary appropriations can be reasonably expected in the next few years that requires an additional PHP8 Billion (equivalent to around USD178 Million) to attain at least a 100 percent occupancy rate equivalent to zero jail congestion in BJMP-manned facilities. The State Party reiterates its report that thru the Bureau of Jail Management and Penology (BJMP), 73 percent of the total 160,171 inmates were released from 2013 to 2015 through the BJMP Paralegal Program, a palliative but highly effective measure that effectively mitigates congestion in jails. Also, the State Party reiterates its report that TB DOTS is actively implemented for the past five years in jails with the concerted action of Philippine public health officials, jail authorities, local government functionaries with the support of the International Committee of the Red Cross (ICRC) that require mandatory pulmonary tuberculosis (PTB) diagnostic tests of suspected carriers upon commitment in jail, isolation of PTB-positive patients and mandatory medical treatment that include administration of complete array of PTB medicines free of charge. As a result a substantial reduction in deaths due to PTB has been attained.*

28. **The State party should make public the findings and implement scrupulously the recommendations of the United Nations Subcommittee on Prevention of Torture based on its visit to the country in 2015.**

### **Children in conflict with the law and Holding Centers**

29. The Committee is deeply concerned at the situation of children in conflict with the law, in particular in the Metro Manila and Mindanao regions, who are detained in Holding Centers or Houses of Hope, and where there is often no separation between girls and boys, some of whom have not even committed crimes, and who are held in preventive detention for long periods without access to a lawyer, in overcrowded cells with poor lighting and ventilation, which do not conform to minimum international standards. It is also concerned that child offenders are kept in regular prisons and are not separated from adult detainees (arts. 2, 11 and 16)

*It is not correct to use the term "Holding Centers or Houses of Hope" to refer to institutions or centers for children in conflict with the law (CICL) mentioned in paragraph 29, if indeed there are institutions as these that have been found not to conform with the minimum international standards.*

*The Houses of Hope constructed under the juvenile justice law are required to be licensed, registered and/or accredited by the Department of Social Welfare and Development (DSWD). The JJWC through its member agencies, strictly monitors the Houses of Hopes from their setting up and their eventual operation. There are strict guidelines and standards set both by the JJWC and the DSWD for construction and operation of Houses of Hope.*

*Local Government Units (LGUs) that have previously constructed facilities for CICL are now being monitored and are being required to allocate their resources to improve their facilities and comply with the requirements set by the law and the guidelines/policies issued by regulatory agencies as the DSWD.*

*Holding Centers are not detention centers. Holding Centers are temporary places of custody for children while awaiting their commitment to a House of Hope as no child is allowed in police custody for more than 8 hours from initial contact. Thus while awaiting the immediate order of the court to commit the child to House of Hope, the child will be turned over to a holding center for a few hours. Holding center must conform to child friendly standards. A child friendly area or room in the barangay or village center may also serve as a temporary holding place.*

**The State party should:**

**(a) Ensure that detention of children is used as a measure of last resort; that children who are detained have access to a lawyer and are not held in pretrial detention for long periods;**

**(b) Ensure that children are held separately from adults and that girls are separated from boys;**

*The conditions under para 29 (a to b) are strictly observed by the police officers in treating minors arrested for a crime for infraction of law. The Philippines passed Republic Act No. 9344 (AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES) which incorporates the International Standards mentioned in Section 21. In fact, according to the law, detention of a child is a last resort. The general rule is that within 8 hours from initial contact, a minor/child is required to be turned over to social welfare offices. The Philippines is compliant to International Standards with respect to treatment of children in conflict with the law.*

**(c) Investigate all reports of torture and ill-treatment of children in conflict with the law;**

**(d) Ensure that juvenile justice and the conditions of detention of children conform to international standards;**

**(e) Turn over children in conflict with the law to the custody of the Department of Social Service and Development (DSWD) and provide appropriate training to social workers, judges and all personnel which is in contact with the children.**

*The CICL is turned over to the local social welfare officer of the concerned local government unit and not the DSWD. The devolved function of the local government units require that it is the local social welfare officer under their control and supervision who will primarily handle CICL concerns. However, many in the country by habit are still using the term DSWD even when referring to local social welfare who are under the local government unit.*

### **National Preventive Mechanism.**

30. The Committee is concerned that the State party has not established a National Preventive Mechanism more than four years after its ratification of the Optional Protocol to the Convention (art. 2).

31. **The State party should expedite without delay the creation of the National Preventive Mechanism based on a legislative act. It should ensure that it has all necessary resources to full carry out its mandate independently and effectively, in conformity with the provisions of the Optional Protocol to the Convention. Further, the Committee recommends that the State party ensure regular monitoring of places of detention by non-governmental organizations, which is complementary to the monitoring undertaken by the national preventive mechanism.**

*A proposal to establish a National Preventive Mechanism has been approved by the House Committee on Human Rights and is now pending in the House Committee on Appropriations for the consideration of the Funding Clause as provided in the bill. The contemplated measure proposes the creation of the National Committee for the Prevention of Torture (NCPT), an independent body which shall undertake regular, unannounced and unrestricted visits to detention centers for the purpose of examining the treatment and conditions of persons deprived of liberty. It also provides that observations and corresponding recommendations of the NCPT shall be submitted to relevant authorities in order for them to formulate and implement necessary measures.*

*In line with the current Administration's prudence and stringent fiscal discipline program, the idea of creating another autonomous entity within a Constitutionally-created body and with separate budgetary requirement may not be readily accorded proper support by the Department of Budget and Managements (DBM) owing to limited allocable funds.*

*The Philippine Commission on Human Rights (PCHR), now reconstituted for a full term and infused with new blood, is hard put to rethink the present statutory construction of the pending bill to get it out of the legislative mill without compromising the essence and intent of the contemplated measure. What is emerging as a possible consensus version of the bill is for the PCHR itself to assume the role of an NPM compliant with the OPCAT. In anticipation of the said legislation and towards eventual transformation, PCHR has already reassigned personnel for the effective and efficient discharge of this concomitant role. The new version will be finalized in time for its filing in the next Congress.*

## National human rights institution

32. The committee is concerned that the Commission on Human Rights of the Philippines does not have sufficient human and financial resources given the scope of its mandate that would allow for its full and effective implementation, including the carrying out of regular and unannounced visits to all places of deprivation of liberty in all regions of the country. It is also concerned at the delays in the adoption of the Commission on Human Rights Charter (art. 2).

33. **The State party should:**

(a) **Provide the Commission on Human Rights of the Philippines with full functional, structural and financial support so that it can carry out its mandate effectively, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);**

(b) **Expedite the adoption of the Commission on Human Rights Charter.**

*As earlier pointed in the response to a query on the same subject matter during the CAT review of the State party report, there are a number of controversial issues raised by the PCHR-sponsored bill that must be resolved within the parameters of the Constitution and in consideration of governmental processes before we can shepherd it to enactment. To wit:*

*a. Grant of Prosecutorial Power*

*b. Fiscal Autonomy of the CHR*

*c. Structural reorganization*

*d. Power to issue TRO and injunction orders and contempt orders*

*Congress and Executive Branch recognize the importance of putting the NPM in place soonest. To advance the bill in the next Congress, a series of consultative meetings will be conducted to address these substantive impediments.*

## Training

34. The Committee is concerned that public officials involved in the implementation of the Anti-Torture Act lack adequate training and information regarding the prohibition of torture and other cruel, inhuman and degrading treatment in accordance with section 21 of the Act. It is also concerned that most government doctors lack specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The Committee regrets the absence of specific methodologies to monitor and evaluate the effectiveness and impact of the training provided (art. 10).

35. **The State party should:**

(a) **In coordination with medical and legal professional associations and individual experts, ensure that all municipal doctors and public prosecutors receive**

training on how to identify signs of torture and ill-treatment, to document alleged torture cases and how to establish evidence that can be used in legal or administrative proceedings against those responsible for acts of torture through the use of the Istanbul Protocol;

*The Department of Health shall pursue its training program for frontline medical officers assigned in municipal and city health offices and in government hospitals. It shall likewise continue its work on improving medical curriculum to include the Manual on the Effective Investigation and Documentation of Torture Victims and Other Cruel, Inhuman or Degrading Treatment and to highlight the role of medical examination as an essential instrument to serving justice.*

(b) Ensure that all personnel involved in the implementation of the rehabilitation program receive adequate training in the provision of specialized rehabilitation services for torture victims;

(c) Ensure that all training is implemented as part of a comprehensive Government plan for further capacity building of public officials involved in the implementation of the Anti-Torture Act and that the outcomes of the trainings are measured on the basis of indicators, which shall include improved performance of public officials in their respective roles in implementing the Anti-Torture Act;

(d) Develop and implement specific methodologies to monitor and assess the effectiveness and impact of such training on the reduction of cases and torture, violence and ill-treatment.

### **Redress and rehabilitation**

36. The Committee is concerned at the absence of implementation of section 18 of the Anti-Torture Act, which provides for compensation to victims of torture, and section 19, which provides for the formulation of a rehabilitation program for victims of torture. It is also concerned at the complexity of the existing agencies and processes with overlapping jurisdictions that makes it difficult for victims to know to whom to apply. The Committee remains concerned at the situation of children who are subjected to abduction and military recruitment by armed groups (art. 14).

37. **The State party should:**

(a) Ensure that victims of torture obtain redress and rehabilitation and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible by formulation a detailed rehabilitation program. The Committee draws the attention of the State party to general comment No. 3 (2012) on the implementation of article 14 of the Convention, in which the Committee explains the content and scope of the obligations of States Parties to provide full redress to victims of torture and recommends amending the domestic legislation accordingly;

(b) Designate a specific lead coordinating agency at the country level for the implementation of the rehabilitation program and make clear and adequate budgetary provisions for the program to function as a specialized service;

(c) Ensure that the program offers specialized rehabilitation services that are appropriate, available and promptly accessible, in accordance with general comment No. 3 and ensure that access is not conditional on the filing of formal administrative or criminal complaints;

(d) Establish a program of monitoring and evaluation of the impact of the rehabilitation program, including establishing a program of data collection in order to identify the number of victims and their specific rehabilitation needs;

(e) Take the necessary steps to prevent, in a comprehensive manner and to extent possible, the abduction and military recruitment of children by armed groups, to facilitate their reintegration into society and to provide them with as full a rehabilitation as possible, specifically designed for their needs.

### **Reproductive health rights and family planning services**

38. The Committee is concerned at the continuous absolute ban on abortions without exceptions and at incidents of ill-treatment of women seeking post-abortion or post-pregnancy treatment. It also concerned at the inadequate access to sexual and reproductive health services, including misinformation about modern methods of contraception, in particular in Manila, as a result of the implementation of Executives Orders No. 003 and No. 030 issued by the Manila City Council whose implementation has resulted in a significant number of maternal deaths and has fostered domestic violence and has caused damage to women's mental and physical health (arts. 2 and 16).

*The Congress of the Philippines has not barred nor discouraged any proposed legislation related to liberalization of abortion, but has been actively seeking consultations with appropriate civil societies and government agencies on this matter.*

*The City of Manila Executive Orders No. 003 and 0030, which were issued in 2009 and 2011 respectively, were effectively superseded and repealed by Republic Act No. 10354, the Responsible Parenthood and Reproductive Health Act in 2012 which states that: "Except for prevailing laws against abortion, any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent with the provisions of this Act including Republic Act No. 7392, otherwise known as the Midwifery Act, is hereby repealed, modified or amended accordingly."*

39. **The State party should:**

(a) Officially revoke without delay Executive Orders No. 003 and No. 030;

(b) Review its legislation in order to allow for legal exceptions to the prohibition of abortions in specific circumstances such as when the pregnancy

**endangers the life or health of the woman, when it is the result of rape or incest and in cases of fatal impairment;**

*The Philippine Constitution (Section 12, Article II) explicitly protects the mother and the unborn child. Thus, under the “Responsible Parenthood and Reproductive Health Act of 2012” (Republic Act No. 10354), abortion is declared illegal and is punishable by law, although it explicitly provides under the Guiding Principles for Implementation (Section 3 thereof) that “women needing care for post-abortive complications and all complications arising from pregnancy, labor and delivery . . . shall be treated and counseled in a humane, nonjudgmental and compassionate manner”.*

*The CEDAW Committee recommends that abortion be decriminalized on all grounds and legalized on certain exceptional situations, e.g., pregnancy that endangers the life or health of the woman in case of rape or incest; and fetal impairment.*

*However, although there has been no concrete legislative action from either Chamber of Congress, a scanning of the records of bills filed reveals that proponents of any degree of legalized abortion have not initiated any measure in either Chamber, but pro-life advocates abortion for women facing unplanned or crisis pregnancies (House Bill Nos. 267 and 2523, Senate Bill No. 547).*

*Moreover, pro-life legislators in the House of Representatives are even inclined to support the imposition of increased penalties for “intentional” or “unintentional” abortion, abortion “practiced by or with consent” of the woman herself or by her parents or aided by a physician or midwife or pharmacist dispensing abortifacient drugs (House Bill Nos. 567 and 3201).*

*It is therefore strongly suggested that concerned duty-bearers and stakeholders start the process of drafting a consensus bill that may be introduced and deliberated upon with dispatch in the next Congress to save some 200 Filipino mothers annually from dying due to abortion-related complications.*

**(c) Provide universal access to a full range of the safest and most technologically advanced methods of contraception and ensure rights-based counselling and information on reproductive health services to all women and adolescents; restore access to emergency contraceptives for victims of sexual violence;**

*Since 2012, the Philippine Government, through the Department of Health, has financed the distribution of full range of safe contraceptive products to all women of the reproductive age group through all 3,951 health centers nationwide. These are provided with informed choice and voluntarily.*

**(d) Develop a confidential complains mechanism for women subjected to discrimination, harassment or ill-treatment while seeking post-abortion or post-pregnancy treatment or other reproductive health services;**

**(e) Investigate, prevent and punish all incidents of ill-treatment of women seeking post-pregnancy care in Government hospitals and provide effective legal remedies to victims.**

*Incidents of ill-treatment of women under any circumstances are being reported and addressed through the implementation of all laws and procedures on the violence against women. To encourage confidential reporting and healthcare seeking, the establishment and service operation of Women and Children Protection Unit (WCPU) which is a mandatory licensing requirement in all government-owned and private hospitals – per Department of Health Administrative Order No. 2013-0011, dated March 11, 2013. The interagency Online National Electronic Injury Surveillance System (ONEISS) captures all types of injuries and sexual violence committed against women and children.*

### **Corporal punishment of children**

40. The committee is concerned that the corporal punishment of children in the home remains lawful in the State part. The committee is also concerned at the tabling of Bill No. 922 in Congress that aims to lower the age of criminal responsibility from 14 to 9. (arts. 2 and 16).

41. **The State party should:**

**(a) Expedite the adoption by the Senate of Anti-Corporal Punishment Bill (No. SB 2182) to prohibit the corporal punishment of children in all settings, including in the home;**

*The “Positive Discipline for Children” or Anti-Corporal Punishment bill touches a very sensitive chord in the cultural psyche of the Filipinos, whether about the family and parental roles, or the society and social norms. Nonetheless, the heightened public awareness about children’s rights and welfare, as well as the role of the family as a support mechanism for the child’s development, is certainly pushing, albeit slowly a change in the mindset of Filipinos that corporal punishment is a way of imposing discipline and showing “love” for the children.*

*Securing the passage of the bill in the Senate in this present Congress is almost improbable because of the very limited time left. Although one more final push for the bill is never a wasted effort for a good cause, it will certainly be worth trying come May 23, the resumption of session of Congress. Otherwise, the next Congress presents a much better prospect for the bill.*

**(b) Immediately withdraw Bill No. 922 from Congress, with a view to maintaining the age of criminal responsibility as it currently stands.**

*House Bill No. 922 was filed in the 15<sup>th</sup> Congress which ended in June of 2013 or during the first half of the Aquino Administration. Said bill proposed to lower the age of criminal liability to 9 years old and provided that a child between 9 and 15 years old who acted with discernment in committing a crime be held criminally liable.*

*Suffice it to say that House Bill No. 922 was decisively rejected by the 15<sup>th</sup> Congress, and was totally expunged in the final text of the Juvenile Justice System Act or Republic Act No. 10630 which signed by President Aquino on October 3, 2013.*

## Follow-up procedure

42. The committee requests the State party to provide, by 13 May 2017, information on follow-up to the Committee's recommendations on the pre-trial detention and overcrowding, the measures taken with regard to torture and ill-treatment, and steps taken to close all secret places of detention (see paras. 14, 16 and 22 above). In the same context, the State party is invited to inform the Committee about its plans for implementing with the coming reporting period, some or all of the remaining recommendations in the concluding observations.

*In order to prevent the existence of secret custodial facilities, the PNP issued a Directive dated February 11, 2014 requiring all Regional Directors of Police Regional Offices (PROs) and Directors of National Support Units (NSUs) to sign and submit an Affidavit of Undertaking stating primarily that all facilities are properly reported, and that no secret detention places, solitary confinement, incommunicado or other similar forms of detention expressly prohibited by Section 7 of RA 9745 (Anti-Torture Act of 2009) exists within their areas of responsibility and that they are taking full responsibility for any omissions or inaccuracies in the reporting thereof.*

*Enshrined in the said Directive is a caveat that any misrepresentation, omission or act of dishonesty or for any fraudulent, falsified or tampered documents on their part will render them administratively and criminally liable as provided by Republic Act Nos. 9745 and 6713, the Revised Penal Code and other applicable Rules, Regulations and Issuances".*

## Other issues

43. The Committee reiterates its recommendations that the State party consider making the declarations to recognize competency of articles 21 and 22 of the Convention.

44. The Committee invites the State party to consider ratifying the core United Nations human rights treaties to which it is not yet party.

45. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

46. The State party is invited to submit its next periodic report, which will be its fourth, by 13 May 2020. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fourth periodic report under article 19 of the Convention. The State party is also invited to submit its common core document in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEb.2/Rev.6).

**RESPONSES OF THE PHILIPPINES TO THE ISSUES RAISED BY MEMBERS  
OF THE COMMITTEE AGAINST TORTURE DURING THE INTERACTIVE  
DIALOGUE AND CONSIDERATION OF THE PHILIPPINES' 3RD PERIODIC  
REPORT ON THE IMPLEMENTATION OF THE CONVENTION AGAINST  
TORTURE (CAT)**

Palais Wilson, Geneva, Switzerland  
27-28 April 2016

---

**I. INTRODUCTION**

In its Opening Statement, the Philippine Delegation assured the Committee that the State is moving forward and determined to prevail despite the challenges in implementing the Convention Against Torture. It also painted a canvass of what the Philippine government has done, and is committed to do, consistent with its human rights obligations.

The Philippine government asserts its steadfastness in protecting the rights and promoting the interests, especially of the most vulnerable sectors in its society.

Some critical principles were emphasized as the Philippines answers the issues raised by the Committee, as follows:

First, the Philippine government is committed to promote, protect, and fulfill human rights. This is not just a cherished tradition, but a norm in Philippine society and the Philippine government is determined to continue its work to mainstream human rights in all its programs and policies. Leave no doubt on how deeply the State values human rights and how willing it is to go the extra mile to ensure that these rights are promoted and protected;

Second, there is no culture of impunity in the Philippines. Policies and laws in place ensure that violators are punished, and mechanisms in operation deter would-be violators;

Third, the Philippine justice system is functional. Its justice system may not be perfect, but definitely it is not dysfunctional, despite alleged deficiencies.

The fact that the Philippines has impeached a Chief Justice of the Supreme Court, indicted a former President and three incumbent Senators, and arrested a 2-star General for violation of civil and political rights are proof that the system is working. The Philippine judicial process may be perceived to be time-challenged, but it is not ready to be hasty as to sacrifice the protection of the right to due process of both the alleged victims and perpetrators of crimes.

Fourth, good governance is a centerpiece of the State's current administration. Good governance is not a mere slogan, but practiced with a tenacity of purpose. And acts of torture contravene this very principle that the State so highly uphold. Declarations to this effect were made by no less than by President Benigno Aquino during the issuance of the Anti-Torture Act's implementing rules and regulations in 2010.

The Philippines also restated that it ratified the Convention Against Torture (CAT) riding on the strong belief that torture has no place in a democratic and civilized society and should be eradicated.

The Philippine delegation came to the revalida fully expecting a constructive dialogue and an opportunity to exchange views with the honorable members of this Committee.

In responding to the issues and questions, the Philippines consolidated similar questions. The responses are presented according to specific themes, as follows: (1) effectiveness of existing mechanisms, (2) institutional programs, policies and procedures, (3) questions on legal norms, (4) impact of awareness-building and trainings, (5) measures to address violations against women and children, (6) efforts of our legislature, (7) the State's relationship with the independent national human rights institution, and (8) the State's engagement with non-government and civil society organizations.

Update on the status of specific cases brought to the Philippine delegation's attention, as well as clarifications on some issues raised, are included in the responses below.

## II. RESPONSES BY THEMATIC AREAS

### A. EFFECTIVENESS OF MECHANISMS

*On separate requests from Ms. Malla and Gaer, and Mr. Touze, Bruni, and Zhang for a brief description of the mandate and functions of the State's inter-agency committee to address extrajudicial killings, enforced disappearance, torture, and other violations to the right to life, liberty, and security, including a response to questions on the Committee's independence and neutrality, updates on the progress of its work, and capacity-building efforts.*

*RESPONSE (delivered by Undersecretary Wendell Go, Department of Justice)*

1. Administrative Order (AO) No. 35, Series of 2012, issued by President Benigno S. Aquino III provided for the creation of a high level inter-agency committee (IAC), chaired by the Secretary of Justice for the resolution of cases of extra-judicial killings (EJK), enforced disappearances (ED), torture, and other grave violations of the right to life, liberty and security of persons. The Ombudsman and the Commission on Human Rights of the Philippines (CHRP) participate as independent observers of the Committee.
2. The AO 35 mechanism complements and enhances the regular conduct of operations and functions of government agencies. It does not add another layer to the bureaucratic processes or regulations, nor hamper the operations and functions of individual agencies. On the contrary, it aims to build on the strengths of the different agencies, foster synergies and collaboration among the security forces, academe and non-governmental organizations. The Department of Justice (DOJ), which chairs the IAC, together with other government offices, is committed to the establishment of an institutional legacy of an efficient, coherent, and comprehensive government

machinery dedicated to the resolution of unsolved cases of political violence in the form of EJKs, EDs, torture, and other grave violations of the right to life, liberty, and security of persons.

3. The IAC, supported by its technical working group (TWG) and Secretariat, conducted an inventory of unresolved cases, adding new cases referred by government and non-government entities. But over the past years, the role of the IAC has evolved into a mechanism not just for the inventory and monitoring of cases, but for the identification of patterns of impunity, vulnerabilities and areas for improvement, leading to important policy changes.
4. As of date, the IAC TWG has processed 138 reports of EDs, of which 27 were approved by the IAC for inclusion in the Committee's database.
5. Furthermore, 113 reported incidents of torture are now in various stages of investigation and trial, as follows: 18 pending in court; 24 pending police investigation; 51 terminated; 16 unsolved; and four under police investigation.
6. In the general conduct of investigation for offenses, prosecutors do not participate in case build-up. However, recognizing the sense of urgency in resolving cases of extrajudicial killings, enforced disappearances and torture, composite teams of prosecutors and investigators known as Special Investigation Teams (SITs), Special Oversight Team (SOTs) and Special Tracker Teams (STTs) were created. The composite-team approach is a strategy adopted by the IAC to allow prosecutors and investigators to collaborate, cooperate and coordinate in the investigation and build-up of cases.
7. As of March 31, 2016, 389 prosecutors were designated to handle AO 35 cases, while 68 Special Investigation Teams were created.
8. Investigators and prosecutors who are part of the AO 35 IAC have undergone a series of 3-day orientation-workshops consisting of 11 modules on collaborative case-handling. These workshops are focused on strengthening the linkage between prosecutors and investigators as well as on improving legal and forensics capabilities.
9. In terms of capacity-building, 266 prosecutors from the DOJ and investigators from the Philippine National Police (PNP) and National Bureau of Investigation (NBI) have been trained all over the Philippines, beginning with areas wherein incidents of EJKs, EDs and torture are the highest.
10. As part of its stakeholder engagement program, the DOJ, through the AO 35 IAC, is finalizing the Memorandum of Agreement with the National Monitoring Mechanism (NMM), a tripartite body that brought together government agencies, non-government organizations and civil society organizations (NGO-CSO), and the independent national human rights institution (NHRI), i.e., the CHRP, in a credible and inclusive forum for monitoring the nation's progress on the resolution of human rights violations cases, prioritizing EJKs, EDs, and torture in the immediate.
11. Collaborative efforts on the development of information and education materials have likewise been undertaken with the NMM as the latter engages communities, facilitates

reporting of cases, and provides support to victims and their families with the end in view of securing the cooperation of witnesses toward successful case resolution.

***On the issue of whether there has been any conviction under the Anti-Torture Act of the Philippines***

*RESPONSE (delivered by Undersecretary Wendell Go, Department of Justice)*

12. On 31 March 2016, the Philippine Anti-Torture Act was directly applied in a case involving police torture, wherein the Court found concerned police personnel guilty beyond reasonable doubt.

***On the current work of the Inter-Agency Committee on Trafficking in Persons, and extradition policy of the Philippine government in relation to what has been asked by the Committee on the status of asylum seekers***

*RESPONSE (delivered by Chief State Counsel Ricardo Paras, Department of Justice)*

13. Under Section 15 of the Anti-Trafficking in Persons Act, or Republic Act No. 9208, as amended, the government shall establish preventive, protective and rehabilitative programs for trafficked persons. The Department of Foreign Affairs (DFA) under the said provision of the law is mandated to extend its resources and facilities overseas for trafficked persons regardless of their manner of entry into the receiving country and to explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.
14. The DFA provides Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against their traffickers, represent their interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or securing regular immigration status as may be allowed or provided for by the host country. The DFA is also mandated to repatriate trafficked Filipinos, subject to their consent.
15. The DFA is also mandated to take necessary measures for the efficient implementation of the Electronic Passporting System to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking due to fraudulent identification documents. The Philippines started the use of electronic passports in 2012.
16. In coordination with the Department of Labor and Employment (DOLE), the DFA provides free temporary shelters and other services to Filipino victims of trafficking overseas through the migrant workers and other overseas Filipinos resource center, established under Migrant Workers Act (RA 8042), as amended.
17. In the meantime, the DOJ, as the central authority in the implementation of Extradition Treaties, provides Letters of Assurance issued by the Secretary (Minister)

- of Justice, as the highest legal officer of the land. These letters assure that extraditees shall not be subjected to torture, as the State adheres to the principles and standards of the absolute condemnation and prohibition of torture, and values the dignity of every human person and guarantees respect of human rights.
18. In a particular case of extradition of one Hedelito Trinidad who was accused in the Philippines of kidnapping-for-ransom and ordered extradited from the US, the extraditee alleged before the US courts that he shall be subjected to torture. The US Secretary of State however weighed in favor of the assurance made by the Secretary of Justice.
  19. The Philippines is the first Asian country to accede to the 1951 Convention Relating to the Status of Refugees. It is the only country in Asia which has its own Refugee and Statelessness determination and protection mechanism implemented by the DOJ's Refugees and Stateless Persons Protection Unit. The Refugee Convention defines a refugee as a person, who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of his/her past country or his/her former habitual residence.
  20. From 1998-2012, there were 389 asylum applications, with 147 applicants approved. Other applications were either archived or abandoned due to the applicants' choice to travel to other countries. The refugee determination procedure provides that the Secretary (Minister) of Justice orders the release of asylum seekers from detention where an application is duly filed. Should the application for asylum be denied, the applicant shall be subjected to Philippine Immigration laws where the applicant's rights to due process and other rights are duly protected.
  21. The Philippines respects the principle of *non-refoulement*, which forbids the return of the asylum seekers to the country where they are the subject of persecution. The Philippine Anti-Torture Law as well as the Anti-Enforced or Involuntary Disappearance Act of 1992 likewise contain provisions on *non-refoulement*.

## **B. INSTITUTIONAL PROGRAMS, POLICIES AND PROCEDURES**

22. On the issue raised by Ms. Malla that there exists several investigation mechanisms that tend to confuse people. The Philippines asserts that in reality, there is no such confusion. These mechanisms are established for specific purposes and with clearly defined scopes of function.

*On the alleged issues relating to the rehabilitation mechanism for victims under the anti-torture law, as raised by Ms. Malla and Mr. Bruni and on the alleged lack of access by torture victims to medical services, on the treatment of medical and psychological reports as public documents, monetary compensation for torture victims, ensuring the integrity of investigations, lack of medical treatment, and problems of entry of medical doctors in prison, including the protection of medical doctors, the last issue having been raised by the Chair.*

*CONSOLIDATED RESPONSES (Delivered by Dr. Maria Corazon Lucia V. Teoxon, Focal Person for NPM and Torture, Department of Health)*

23. *On the matter of rehabilitation mechanism for victims.* In 2014, the tripartite agreement on the “Comprehensive Rehabilitation Program for Torture Victims and their Families, and Those Who Committed Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment” was signed by the Secretary (Minister) of the Department of Social Welfare & Development (DSWD), Secretary (Minister) of the Department of Health (DOH), and by the CHRP Chairperson.
24. After the first year of implementation, it was realized that a systems analysis of the processes to effectively refer and follow through the services provided to torture victims was necessary. In partnership with another non-governmental organization (NGO), the Balay Rehabilitation, Inc., it was determined that existing health and social service procedures needed to be enhanced in order to accommodate the privacy and security needs of the probable victims of torture and that the participation of community-based NGO-CSOs could better facilitate the inter-agency referral process. The establishment of new hospital service units for probable victims of torture will be initiated as soon as the new protocols and process flows are approved for implementation by the DOH
25. On the alleged lack of access to adequate medical examination and documentation. The DOH, in partnership with Medical Action Group (MAG), an NGO, has begun the orientation and training of medical officers and hospital residents in medical examination, recording and referral according to the essential requirements of the Anti-Torture Law.
26. By end of December 2015, the partnership has:
  - a. Trained more than 200 municipal and city health officers in areas with armed conflict;
  - b. Oriented 67 officers of medical student associations on the Anti-Torture Act; and
  - c. Conducted a scientific forum for 91 provincial and city health officers on the medical examination, management and rehabilitation of the torture victims.
27. The next step will be a review of the training syllabus for mainstreaming human rights in health care. The training syllabus will be used by a core group of trainers at the regional level who will train other frontline medical officers already deployed in government service.
28. The DOH will also partner with medical schools to design and pilot the incorporation of anti-torture and human rights laws in the current medical school academic curriculum.
29. *On the matter of treating medical and psychological reports as public documents.* The health sector responders balance the ethical rules of confidentiality and the evidentiary/prosecutorial requirements to ensure that torture cases filed in courts prosper. Part of the policy that was issued by the DOH in 2013 for the guidance of

hospitals and medical examiners state that the medical and psychological report on a torture or probable torture victim shall be treated as a public document.

30. A precondition for the release of such document is that persons who seek to avail of medical report have a legal interest on the same. These persons are:
  - a. Victim (unconditional release once identity is established);
  - b. Next-of-kin of victim – adequately validated;
  - c. Lawyer/s of the victim – authorized in writing by the victim;
  - d. Perpetrators and representative of suspected perpetrator of torture and other cruel inhuman and degrading treatment, after presentation of an authentic court order;
  - e. Others persons authorized in writing by the victim; and
  - f. Others persons authorized by a court of law.
  
31. *On mechanisms for the monetary and non-monetary compensation of a specific group of torture victims, i.e. the victims of Martial Law.* A law, the “Human Rights Victims Reparation and Recognition Act of 2013,” mandates the provision of reparation to victims of martial law as part of their right to access to justice by way of accessing the necessary rehabilitation services provided to torture victims, in general.
  
32. *On service fees for medical examination, treatment and rehabilitation rendered to torture victims.* The DOH and the Philippine Health Insurance Corporation (PhilHealth), the Philippine government’s social health insurance system, have arranged for mechanisms to provide all services to victims of torture free of charge as required by the Anti-Torture Act through such mechanisms as no-balance billing in government hospitals, and enrollment to the national health insurance at point-of-care for non-members of the health insurance.
  
33. *On current policies and measures to address the alleged fear of reprisal among medical examiners.* There are measures that are prescribed for all government hospitals by an Administrative Order (AO) to address the fear of reprisal of responding medical examiners, as follows:
  - a. Provide room or secured area for history-taking and physical examination that can assure auditory and visual privacy;
  - b. Provide medical supplies, documentation and video recording equipment, and facilities for the diagnosis, treatment and rehabilitation;
  - c. Coordinate with appropriate agencies for safety and protection of the medical examiner and of records pertaining to the Anti Torture Act (R.A. 9745); and
  - d. Identify mechanisms to network with alternative teams/s of physicians to support medical examination.
  
34. To ensure the integrity of medical investigations, the agencies holding a probable torture victim informs the latter that they have a right to be medically investigated by a medical officer of their choice before, during, and after detention. The DOH is mandated to ensure the availability of a cadre of medical officers who are aware of the requirements of the Anti-Torture Act.

35. The DOH and the local government units are the employers of majority of frontline medical officers who serve the population at large in all matters of health and these doctors are considered independent of agencies of law enforcement. Thus, there are current efforts of the Philippine government for the re-education, re-orientation and training of medical officers as instruments of the justice system.
36. *On the privacy in detention or prison facilities during consultations with medical doctors.* Detention centers/ facilities are required to have treatment rooms that can ensure privacy and confidentiality for doctors and patients. In the absence of treatment rooms, the torture survivor may be brought to the nearest hospital operated by the Health Department to avoid possible intimidation or harassment of the examining doctor during the examination process.

***On matters concerning the treatment of mentally ill patients***

*RESPONSE (delivered by Dr. Bernardino Vicente, Philippine National Center for Mental Health)*

37. *On confinements.* In the first few days of confinement, patients are placed in a “closed ward”. As they improve, they are transferred to a “semi-open ward” and then to the “open wards” as further improvements in behavior are noted. “Closed ward” patients are encouraged to join ward activities, such as physical exercises or strolling within the courtyard of their pavilion.
38. As of date, repairs and renovation of the 18 of the 28 pavilions have been done, resulting in good ventilation and lighting. Ceilings were also elevated, thus providing cooler environment even during summer months. The newly renovated pavilions have activity areas. Socialization activities and group therapies are also being offered to the patients to improve their condition.
39. *On physical restraints.* Putting patients on physical restraints is considered a medical intervention. Hence, it will require a written order from the patient’s attending physician or resident psychiatrist on duty. The restraint is prescribed based on the clinical presentation of the patient and is never used as a form of punishment. Written orders are issued on a per-need basis and should not last for more than 4-6 hours.
40. Nurses of the National Center for Mental Health (NCMH) are aware of the danger of stasis pneumonia due to prolonged immobilization or lying down. Hence, if the restraint period is to be extended, the resident psychiatrist must see the patient again and renew his/her order of restraint. There is also a prescribed way of restraining patients, as well as the position of patients on restraint from time to time.
41. *On admissions.* Around 80% of admissions in the NCMH is involuntary. Those who sign and give consent for admission of the patient are the nearest kin of the patient, and/or the legally authorized representative (i.e., court-appointed guardian). Patients are sometimes brought in by good Samaritans (i.e., DSWD, police authorities). In such cases, proper identification of the person who brought the patient, including circumstances on how said person met the patient, are properly documented. The

person who brought the patient is made to sign the consent for admission on behalf of the patient.

42. Voluntary admission where a patient freely agrees to be confined is a rarity. The other 20% of the NCMH admissions is through court orders. As a general principle, admission to a psychiatric institution/facility is guided by the clinical finding of the patient (i.e. suicidal, homicidal). The least restrictive treatment setting is preferred and psychiatric confinement is the last resort.
43. *On monitoring and technical supervision.* The monitoring and technical supervision of special hospitals, such as the NCMH, is under the Assistant Secretary (Assistant Minister) for Health Operations of the DOH. The Health Services and Facilities Regulations Bureau sets the minimum standards for buildings, equipment, human resource, administrative, health systems, and treatment protocols for these hospitals. Scheduled and non-scheduled monitoring visits are undertaken and results are made the bases for accreditation or withdrawal of accreditation for coverage under the PhilHealth.

***On the effectiveness of human rights desks in prisons and jails, especially in the area of random and unannounced inspections, investigation of possible torture incidents and the outcome of such investigations, including building awareness among detainees of their rights, as raised by Mister Bruni and Miss Malla***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

44. There are Human Rights Affairs Office/Desk in prisons and jails. From 2010 to 2015, 18 complaints of human rights violations in jails were documented, 16 of which were complaints for ill-treatment. These were investigated by the Bureau of Jail Management and Penology (BJMP), resulting in the filing of various administrative charges. Two other complaints are under investigation by the Office of the Ombudsman at the instance of the CHRP. During the conduct of investigation, the Human Rights Affairs Office/Desk assisted victims in the 16 cases investigated by the BJMP, 12 of which were resolved, with six cases resulting to conviction and imposition of penalties.
45. Human rights desk officers are not tasked to investigate cases, but rather to ensure the safety and security of complainants and to make sure that the personnel or inmates who are subject of their complaint will not be able to intimidate, harass, harm or retaliate against them. On the preventive aspect, the human rights officer initiate advocacy measures to raise consciousness among jail personnel on human-rights based jail management, promote the education and information on the prohibition against torture, conduct trainings on the implementation of the Istanbul Protocol in the effective investigation and documentation of torture, take lead in the conduct of human rights events and activities, conduct dialogue with personnel and inmates on human rights issues and conduct researches on human rights to improve jail management.

46. *On inmates who reportedly are not fully cognizant of their rights.* This is more of an exception rather than the rule. With the institutionalization of the paralegal program of the BJMP, paralegal officers in every jail serve as the information/ case officers to whom inmates can go to discuss the details of their respective case, as well as to explore all available legal opportunities for their immediate release. From 2011 to 2015, 73% of the total number of inmates released were the result of the paralegal program, indicating the effectiveness of the intervention not only in providing information but more importantly, in providing assistance in the resolution of cases.

***On therapeutic community modality program and measures to alleviate over-crowding as raised by Misses Gaer and Belmir, Mr. Bruni and the Chair***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

47. Therapeutic Community Modality Program (TCMP) is a self-help social learning treatment model used for clients with problems of drug abuse and other behavioral problems, such as alcoholism, stealing, and other anti-social tendencies, as well as working with special group of individuals like those in jails.
48. The TCMP was first introduced to BJMP in 2002. It was institutionalized in 2010, at the time of the creation of Directorate for Inmates Welfare and Development. It is now being implemented in 56 percent of all district, city and municipal jails nationwide.
49. The TCMP provides a well-defined and structured environment for a synchronized and focused implementation of the various intervention strategies/activities with the main objective of rehabilitating and eventually reintegrating inmates as productive, law abiding and socially responsible members of the community through well planned supervision programs for the inmates, establishment of innovative, financially and technically feasible projects for moral, spiritual and economic upliftment.
50. As a treatment model, the TCMP includes four categories, namely: behavior management, intellectual and spiritual aspects, emotional and psychological management, vocational and survival aspects and as a holistic and inclusive approach, includes provisions of basic needs, legal, paralegal assistance, human rights protection, medical and dental services, family visits, recreational privileges, livelihood opportunities and others.
51. Along with other reform measures, the BJMP embarked on a Decongestion Program consisting of three components: (1) Paralegal program to pursue early release opportunities for inmates, (2) Construction of additional jail facilities to create more space, and (3) Legislative agenda to lobby passage of laws that will provide alternatives to imprisonment and enhance legal opportunities for release.
52. In year 2015, of the 58,678 inmates released from the jails nationwide, 45,867 were facilitated through the BJMP Paralegal Program using the various legal modes of

- release. From a total of 160,171 inmates released from 2013 to 2015, some 117,591, or 73 percent, were assisted by the Paralegal Program.
53. As earlier reported in the country report, the legal modes of early release are: (1) Release on Recognizance, (2) Article 29 of the Revised Penal Code on grant of Full Time Credit and Release when Preventive Imprisonment equals maximum imposable penalty, (3) Release on Probation, (4) Release on Probation of Children In Conflict with the Law (CICL), (5) Grant of Good Conduct Time Allowance (GCTA), (6) Bail, and (7) Parole, including transfer to other institutions and assistance towards case dismissals/acquittals.
  54. Under Republic Act 10389 or the Recognizance Law in 2012, indigents who are accused and charged with offenses not punishable with life imprisonment may be released in lieu of conventional bail. On the other hand, Republic Act 10592, which amends provisions of the Revised Penal Code on Good Conduct Time Allowance (GCTA), immensely enhanced the grant of GCTA on account of good conduct, study/teaching/mentoring, or loyalty during state of calamity.
  55. In addition, the Supreme Court promulgated Administrative Matter No. 12-11-2-SC, which reiterated the provisions in the Philippine Constitution on bail and provided crucial guidelines for the implementation of the new Release on Recognizance Law. In summary, these laws and regulations represent the restorative justice components of the Philippine criminal justice system and are implemented through the BJMP Paralegal Program.
  56. Likewise, from 2011 to 2016, a P623,748,000 (USD 132.8 million) budget was appropriated by Philippine Congress for the construction of additional jail facilities. For 2016 alone, P373,458,000 (USD 7.95million), almost ten times of the previous year's budget appropriation, was allocated by the Philippine Congress for the construction of 21,968 square meters of additional space for about 4,674 prisoners. The Philippines, with its growing economy, hopes to sustain this momentum of increased spending for the construction of more jails.
  57. The BJMP crafted and requested the sponsorship of a Bill on Alternatives to Imprisonment. The proposed legislation is under consideration by the Philippine legislature.
  58. Congestion has also been a major issue for prison facilities under the Bureau of Corrections (BuCor). In all of BuCor's seven facilities, the occupancy rates manifested congestion in all of these facilities. The BuCor has responded in three (3) ways:
    - a. A new law (Republic Act 10575) that seeks to strengthen the BuCor also mandates the transfer of the New Bilibid Prison (NBP) and the Correctional Institution for Women (CIW) to a new prison facility in the province of Nueva Ecija. This new facility aims to comfortably house around 25,000 inmates and will have infrastructure that will serve as places of reformation. This new facility will be completed in five (5) to eight (8) years.

- b. In the transition toward this new facility, two pilot efforts have begun on the conversion of container vans into living quarters and venues of reformation. One facility will accommodate around 400 inmates while the other will house around 4000 inmates. Both facilities will be complete with reformation infrastructure, including outdoor recreational facilities. The BuCor is also looking at improving the other five BuCor facilities to facilitate even better reforms, as these facilities will be nearer to detainees' families who may be included in the reformation programs.
- c. Similar to the BJMP, the Good Conduct and Time Allowance (GCTA) facilitated the early release of BuCor detainees.

***On the issues of family visits and non-referral of detainees to psychologists as raised by Mr. Touze***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

59. The State policy is to allow family or conjugal visits of inmates. The recommendation to review the current policy on conjugal visit is viewed with appreciation and will be taken with utmost value.
60. *On alleged non-referral of detainees to psychologists.* The BJMP has 66 psychologists among its health workers. Consultations are made available to inmates, there being a need for this vital service. A referral system of inmate-patients to the NCMH and other similar institutions in the provinces complements and bridges the gap in the number of psychologists vis-a-vis the number of inmates to be served.

***On the rate of suicides in places of detention and causes of deaths***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

61. In 2015, there were 456 cases of deaths due to illness among BuCor inmates. This number comprised 1.10% of the average daily population of 41,532 of the penal institution. Violent deaths, on the other hand, have as low as five cases of the entire average prison population, or only 0.01%.
62. In 2014, a total of 641 deaths were recorded, making the overall mortality rate at 1.57% in BuCor prisons. Of these deaths, 604 were due to natural causes, comprising 1.48% of the total 40,745 prison population. Some 21 cases were of violent deaths, or 0.05% of the entire BuCor prison population.
63. In 2013, there were a total of 491 deaths due to natural causes, or 1.27% of the 38,575 BuCor prisoners. Some 9 deaths, or 0.02%, were due to unnatural causes, and 10, or 0.03%, were violent deaths.

64. Of the total number of 801 deaths among inmates in facilities operated by BJMP from 2013 to 2015, eight, or 0.9%, were considered violent deaths. Causes of these violent deaths included five suicides. As death, regardless of cause, is treated with utmost concern, personnel on duty in the five cases were investigated to determine their possible liability.

***On the elimination of instruments in jails and detention facilities that may be used to impose corporal punishment on inmates as raised by Ms. Gaer***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

65. The BJMP Memorandum dated August 1, 2013 classified sticks, paddles, belts and similar devices as prohibited items or contrabands in jails in order to prevent their use as instruments of torture and ill-treatment. The Memorandum was issued based on previous past reports of their use by inmate gangs to enforce gang rule on their members. Those reports were not officially documented but were treated as reliable information. From September 2013 to December 2015, a total of 5,634 sticks, paddles, belts and similar devices were confiscated. The subsequent monitoring on the use of these items for ill- treatment continue to yield negative findings.
66. Detainees are given a thorough orientation of their rights, privileges and responsibilities while in detention. This is done in the form of a lecture-discussion as soon as they arrive in the facility. Information leaflets that details these rights and responsibilities are also given to inmates.
67. The perception that some inmates are not fully cognizant of their rights is more of an exception rather than the general rule. With the institutionalization of the paralegal program of the BJMP, designated paralegal officers in every jail engage in information drives among inmates to explain the ramifications of the cases with which they are charged. They explore all available opportunities for release of inmates by various legal modes. The high number of successful releases through the paralegal assistance in the last five years (73% of the total number released) indicates a positive outcome of the efforts of paralegal officers in providing adequate information to inmates on their legal rights, as well as on information on the status of the cases filed against them.

***On the Modes and Criteria for Release as raised by Malla***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

68. There is no single criterion for the early release of inmates. The different modes of releases provided by various laws require different qualifications or criteria. Provided below are brief description of each of the modes of release including their basic criteria.

<b>Legal Modes of Release</b>	<b>Brief Description</b>
Release on Recognizance (RA 6036)	Accused who is not yet convicted is released on his own recognizance or to the custody of two custodians in the community in lieu of bail bond, cash bail or property bail if charged with an offense/crime with a corresponding penalty not exceeding 6-months imprisonment or fine of Php2000. He should not be a recidivist or habitual delinquent.
Release on Recognizance (RA 10389)	Accused who is not yet convicted is released to the custody of a reputable member of the community or on his own recognizance, in lieu of conventional bail which he cannot afford due to abject poverty, subject to the monitoring of a Probation Officer during his provisional release and to certain conditions and qualifications, provided that he is not charged with an offense where the imposable penalty is death, reclusion perpetua or life imprisonment. The accused must not be a habitual delinquent or recidivist or previously escaped from prison.
Full Time Credit of Preventive Imprisonment (Art 29, RPC)	Reduction of time to be served by crediting in full the preventive Imprisonment of an accused who have signed a written Manifestation that he is willing to abide by the disciplinary rules governing convicted prisoners. If detained accused refuses or fails to sign he is credited by law with only four fifths of the period of preventive imprisonment.
Release when Preventive imprisonment equals Maximum Imposable Penalty (Article 29, RPC)	Early mode of release where the detained accused is immediately released from custody by the court when his preventive imprisonment equals to or exceeds the maximum imposable penalty for the offense with which he is charged without prejudice to the continuation of the trial.
Probation (PD 968)	Early mode of release of a convict where the penalty does not exceed six years provided that he was not previously convicted and penalized with a penalty of at least one month or a fine of P200, or convicted of a crime against public order, subject to the supervision of a Probation Officer until he has completed his probation period. Probation is approved by the judge upon recommendation of the Probation Officer after investigation that shows that he is fit for probation.
ROR Pending Probation	Early mode of release where the accused is released to the custody of reputable members of the community while his application for probation is under consideration by the judge or during the post-sentence investigation to determine if he is qualified.
Probation and	Probation and Diversion of case from Criminal Justice

Diversion for CICL (RA 9344)	System for Children in Conflict with the Law (CICL) mandated under the Juvenile Justice and Welfare Act allows release from detention and settlement of the case through mediation.
Good Conduct Time Allowance or GCTA (RA 10592)	Reduction of sentence to be served by a convicted prisoner or the period of detention of an accused undergoing investigation or trial on account of good conduct (minimum of 20 days and maximum of 30 days per month) and/or by engaging in study, teaching or mentoring (15 days per month) and/or for loyalty when he escapes and returns within a mandated period or does not leave the jail premises although there is an opportunity to escape on the occasion of a calamity. (one-fifth to two-fifths reduction of sentence or imposable penalty respectively).
Bail	Mode of provisional release of an accused after the posting of bail bond or deposit of cash or real property to guarantee the appearance of the accused whenever required by the court. If the offense with which he is charged is punishable.
Three-Fold Rule	A mode of reducing service of sentence in multiple convictions of at least four where the maximum penalty to be served will not exceed the highest penalty imposed multiplied by three.
Parole	A mode of early release for those convicted of crimes not subject to probation but penalized with an indeterminate sentence.

***On the monitoring of health condition of inmates as raised by Mr. Modvig***

*RESPONSE (Jail Superintendent Roy Valenzuela, CAT Focal Person, Bureau of Jail Management and Penology)*

69. Monitoring of health condition of inmates is done regularly in order to determine their causes, scope, and nature to formulate measures and act on it effectively.
70. For 2015, there were a total of 319 deaths among the total number of 105,647 prisoners in the same year. Myocardial infarction was the main cause of death among inmates, with 56 recorded cases, followed by sepsis, pulmonary tuberculosis (PTB), cardiopulmonary arrest, and cardiac arrest. The mortality rate of inmates for 2015 was 0.3996%.
71. In 2014, there were 261 deaths. Cardiopulmonary arrest topped the leading cause of death with 74 cases, followed by PTB, myocardial infarction, community acquired

pneumonia, and cerebrovascular accident, recording a 0.506% mortality rate among inmates.

72. In 2013, 221 inmates died in custody. Cardio respiratory arrest was the leading cause of death with 127 cases, followed by PTB with 47 cases. Of the 801 deaths among inmates from 2013 to 2015, only eight, or 0.9%, were considered violent deaths. Causes of these violent deaths included five suicides and three stabbing incidents.

#### Leading Causes of Death in BJMP Facilities, 2015

RANK	DISEASES	NUMBER OF CASES
1 <sup>st</sup>	Myocardial Infarction	56
2 <sup>nd</sup>	Sepsis	47
3 <sup>rd</sup>	Pulmonary Tuberculosis	46
4 <sup>th</sup>	Cardiopulmonary Arrest	41
5 <sup>th</sup>	Cardiac Arrest	30
6 <sup>th</sup>	Cardiovascular Accident	28
7 <sup>th</sup>	Community Acquired Pneumonia	23
8 <sup>th</sup>	Respiratory Arrest	21
9 <sup>th</sup>	Gastrointestinal Bleeding	11
10 <sup>th</sup>	Bronchial Asthma	8
10 <sup>th</sup>	Cancer (Colon/Liver)	8

#### Leading Causes of Death in BJMP Facilities, 2014

RANK	DISEASES	NUMBER OF CASES
1st	Cardiopulmonary Arrest	74
2nd	Pulmonary Tuberculosis	54
3rd	Myocardial Infarction	32
4th	Community Acquired Pneumonia	27
5th	Cerebrovascular Accident	12
6th	Kidney Diseases	8
6th	Hypertension	8
6th	Cardiomyopathy	8
7th	Congestive Heart Failure	7
8th	Bronchial Asthma	6
8th	With history of Edema	6
9th	Pneumonia	5
10th	Coronary Heart Disease	4
11th	Hypokalemia	2
11th	Status Asthmaticus	2
11th	t/c Heat Stroke	2
11th	Cardiac Arrhythmia	2
11th	Diabetes Mellitus	2

#### Leading Causes of Death in BJMP Facilities, 2013

RANK	DISEASES	NUMBER OF CASES
------	----------	-----------------

1st	Cardiopulmonary Arrest	127
2nd	Pulmonary Tuberculosis	49
3rd	Sepsis/Septic Shock	10
4th	Myocardial Infarction	9
5th	Community Acquired Pneumonia	5
6th	Bronchial Asthma	4
6th	Cardiovascular Accident	4
7th	Acute Gastro Enteritis	3
8th	Asphyxiation	2
8th	Cerebrovascular Accident	2
8th	Multi Drug resistant TB	2
8th	Liver Cirrhosis	2

73. To promote the health concerns of inmates, the BJMP, with the assistance of the International Committee of the Red Cross (ICRC), published a Manual on Habitat, Water and Sanitation that provided standards of living conditions for jails. Moreover, 39 potable water supply facilities, 23 kitchens and 8 tuberculosis isolation facilities were set up in various jails in partnership with the ICRC.
74. To reduce deaths due to PTB, diagnostic tests are now immediately conducted on suspected carriers upon their commitment and during the entire period of confinement. Those found positive are then segregated from the general population in isolation facilities. The TB DOTS program which provides needed facilities and medicines for PTB was extended to the jails in partnership with the DOH and Local Government Units. PTB control protocols were issued and strictly observed.
75. As of end of 2015, 86% of all detention facilities under the BJMP and 100% of all prisons (under the BuCor) have remained engaged in the DOH's Tuberculosis Control Program. This program aims to give persons in detention access to free government TB diagnostic services and anti-TB drugs. The implementation of this health program in jails and prisons began in 2009, and covers all detention units under the BJMP, BuCor, PNP, NBI, and local government units. A policy for the mass screening of inmates for PTB and HIV is being planned by the DOH together with experts and representatives of the targeted detention facilities.
76. To address cardio pulmonary arrest, myocardial infarction, and other leading causes of deaths, the BJMP modified its policy on medical examination outside of jail facilities focusing on the preventive aspect of health such as by coordinating with the courts and issuance of multiple schedules of preventive medical check-ups under a single court order. Currently, greater discretion and encouragement is given to Wardens and health personnel to employ practical preventive measures to reduce morbidity and prevent death among the prisoners.

***On the protocol on arrest and the issue regarding the Philippine National Police Operational Procedure as raised by Mr. Bruni***

*RESPONSE (delivered by Police Superintendent Dennis Siervo, Chief, Philippine National Police Human Rights Affairs Office)*

77. On the issue of arrest protocols, the PNP observes the following general guidelines:
- a. All arrests should be made only on the basis of a valid Warrant of Arrest issued by a court or competent authority, except in instances where the law allows warrantless arrest.
  - b. No violence or unnecessary force shall be used in making an arrest, and the person to be arrested shall not be subjected to any greater restraint than what is necessary under the circumstances.
  - c. As a general rule, arrests can be made on any day of the week and at any time of the day or night.
  - d. Only judges are authorized to issue Warrants of Arrest.
  - e. A Warrant of Arrest may no longer be needed if the accused is already under detention. Instead, an Order of Commitment is issued by the judge.
78. A warrant of arrest is the written authority of an arresting officer when taking a person into custody in order that he may be bound to answer for the commission of an offense. The head of the office to whom the warrant of arrest has been delivered for implementation shall cause the warrant to be implemented within 10 days from its receipt. The police officer to whom the warrant of arrest was assigned for implementation shall make a report to the judge who issued the warrant, and in case of his failure to implement the same, shall state the reasons thereof.
79. Under the Police Operational Procedure (POP), all police personnel are mandated to inform all persons arrested, detained, or under investigation about their rights under the law, most especially their right to counsel and the right to physical, medical and psychological examination after arrest, and before and after custodial investigation/interrogation.
80. Furthermore, before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand a physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation shall have the right to immediate access to quality medical treatment.
81. Also, any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or a medical doctor, priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-government organization duly accredited by the Commission on Human Rights of the Philippines or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

82. To better enforce the provisions of Anti-Torture Law and promote other civil/political rights the PNP had made mandatory the use of the updated Miranda Warning Card with Anti-Torture reminders which aim to equip police personnel with the right information and/or materials with which to advise citizens or persons placed under custody of their rights under the law.

***On the issue of warrantless arrest as raised by Mr. Bruni***

*RESPONSE (delivered by Chief State Counsel Paras, Department of Justice)*

83. *On the issue of delay in the resolution of cases.* While there could have been delays in the resolution of some cases, the reasons for such delays should be considered. Based on actual cases, delays are oftentimes attributed to the large number of the accused and witnesses for the parties, several pleadings/motions filed by the parties, unavailability of the witnesses and postponement of scheduled hearings.
84. Also, the prescribed rules of criminal procedure entail a process which courts are strictly bound to adhere to. After an Information is filed, the court issues a warrant of arrest if it finds the existence of probable cause for the issuance thereof and schedules the date of arraignment. Before the arraignment, however, the accused may file a motion to quash and/or to dismiss, and the prosecution is given time to file its comment/opposition. The resolution of this motion takes about two (2) months. After the prosecution has rested its case, the accused may also file a demurrer to evidence, which is actually a motion to dismiss based on insufficiency of evidence. The resolution of the demurrer takes a substantial amount of time because the court has to thoroughly evaluate the evidence of the prosecution to arrive at the proper determination of whether to grant or deny the demurrer. If the demurrer is denied, the accused is given the opportunity to present his evidence (assuming that the demurrer was filed with leave of court).
85. Strict observance of the rules of criminal procedure is mandatory consistent with the demands of due process.

***On the issue of command responsibility as raised by Miss Malla***

*RESPONSE (Major Eduardo Esquivias, Chief of Monitoring, Inquiry & Legal Branch and Human Rights Office, Armed Forces of the Philippines)*

86. The Armed Forces of the Philippines (AFP) and the PNP have issued directives and circulars on command responsibility for officers who commit human rights violations or tolerate those committed by their personnel. After the dictator Marcos was ousted during the People Power Revolution in 1986, various policy issuances were issued detailing accountability of commanders for human rights violations committed by their personnel and subordinates. As a rule, failure to follow the doctrine on command responsibility will render a military officer liable under the Articles of War and separate charges can be filed before a civilian court. Administrative and criminal

charges may be filed against police officers which may result in administrative penalties, including dismissal from the service, criminal liability and penal sanctions.

87. The Philippine Anti-Torture Law and the Anti-Enforced Disappearance Law institutionalized the doctrine of command responsibility in the Philippine Penal System. Upon receipt of reports of alleged human rights violations committed by security forces, an investigation is immediately conducted to determine who are involved, including the commanding officer and superior officers. Commanders are thoroughly investigated whether they led, assisted or tolerated the alleged offense committed by their personnel, or, when they came into knowledge of the alleged violation, whether they had the matter investigated, their personnel arrested or confined, and whether they tried to prevent the violation and assist the victim. Investigations may be conducted simultaneously and/or separately by the unit concerned and by the higher headquarters to obviate and prevent possible cover-up and to determine to what level of command was involved.
88. For example, pursuant to a 2007 directive issued by the AFP, the company commander of the military personnel implicated in the pouring of gasoline on a suspect and the resultant burning of the parts of the body of the victim had been charged together with the principal offenders for the crime of torture. Similarly, a commander of the military unit implicated in the killing of the executive director of a school catering to indigenous peoples is now facing the military General Court Martial for his failure to exercise command responsibility. A 2-star general who was the commander of the unit accused of involvement in the disappearance of two (2) students has been denied bail and is under detention while his trial is ongoing before the Regional Trial Court (RTC). Recently, the Battalion Commander ordered the arrest of a corporal who was the cadre of a patrol base when the battalion commander learned from the media that the corporal was involved in mistreating a civilian by pouring ice-cold water over him.
89. The PNP applied the doctrine of command responsibility in an incident in Laguna where an alleged secret detention facility was located. The Police Chief Inspector was imposed a penalty of one rank demotion for Serious Neglect of Duty and Violation of Executive Order 226 entitled "Institutionalization of the Doctrine of Command Responsibility in All Government Offices, particularly at all Levels of Command in the Philippine National Police and other Law Enforcement Agencies.
90. In 2011, the Office of the Chief, PNP issued a Memorandum on the Accountability of the Immediate Officer for the Involvement of His Subordinate in Criminal Offenses which directs all Police Commissioned Officers (PCOs) to closely supervise, coordinate, control, and monitor the activities of operating units under his or her jurisdiction, and to take preventive or corrective measures as may be warranted. The Memorandum further prescribes the so-called "three-strike policy" which states that the immediate officer or superior shall be relieved if subordinates are involved in three (3) criminal offenses, whether or not corrective or preventive actions were taken. The same Memorandum also states that the presumption of negligence is applied when an immediate officer or superior fails to take action against erring personnel within 24 hours from the time of the incident or offense.

91. It is clear that the Philippines is actively implementing the Anti Torture Law and other laws and demonstrated its resolve in dispensing justice to victims of human rights violations.. It has also partnered with CSOs and the Commission on Human Rights of the Philippines (CHRP), through various mechanisms, in determining the possible liability and accountability of commanders and superior officers.

### C. QUESTIONS ON LEGAL NORMS

*On the concept of "exclusionary rule" as raised by Miss Malla and on the issue of inadmissibility of evidence derived from torture as raised by Miss Belmir*

*RESPONSE (Delivered by Presiding Judge Amparo Cabotaje-Tang, Sandiganbayan [Graft Court])*

92. In the matter of exclusionary rule, it was observed that the burden to show that torture was in fact committed as a means of obtaining a confession is placed on the alleged torture victim himself. It is opined that it is very difficult for the claimant to successfully discharge this burden. Considering that he is under detention, he cannot be expected to collate evidence of the claimed torture.
93. Torture is a criminal act, which is punished under Republic Act (R.A.) No. 9745. Since it is a criminal case, the applicable laws in the country govern its proceedings.
94. Section 14, Article III of the 1987 Philippine Constitution declares a presumption of innocence in favor of the accused. In relation thereto, such presumption of innocence may only be overthrown by proof beyond reasonable doubt pursuant to the Philippine criminal rules on evidence. Thus, the burden of proof is placed on the prosecution/claimant to establish the criminal culpability of any accused. Such burden can never be shifted for that would violate applicable and existing Philippine laws.
95. The alleged torture victim is entitled to several rights under the Anti Torture Law. As earlier stated above, under Section 12 of the said law, before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/ her right to demand physical examination by an independent and competent doctor of his/ her own choice. If such person cannot afford the services of his/ her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State is mandated to endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation, including his/ her immediate family, shall have the right to immediate access to proper and adequate medical treatment. The physical examination and /or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/ her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

96. It is not therefore correct to say that an arrested or detained person is completely helpless to secure evidence to prove his claim of torture. This requirement of a medical report regarding his condition before and after interrogation will immensely help prove the claim of torture. The findings in the same report would constitute physical evidence which, under Philippine jurisprudence, is at the apex in the hierarchy of trustworthiness.
97. Moreover, the 1987 Philippine Constitution provides specific safeguards to ensure the voluntariness of any confession during the period of detention or custodial investigation of any person. For a confession to be admissible, the Constitution requires that (1) it must be in writing, and (2) it must be executed in the presence of an independent counsel. Philippine jurisprudence is replete with cases where extrajudicial confessions were rejected for failure to show strict compliance with the requisites of admissibility.

***On the issue of delay in the proceedings in criminal cases, this causes prolonged pre-trial detention***

*RESPONSE (Delivered by Presiding Judge Amparo Cabotaje-Tang, Sandiganbayan [Graft Court])*

98. Regarding delay in the trial of criminal cases, the Philippine Supreme Court has issued various circulars or guidelines to speed up the resolution of cases all aimed at addressing the issue of prolonged pre-trial detention and jail congestion.
99. The Philippine Supreme Court has taken several measures to carry on its mandate outside the confines of a courtroom. With the assistance of its partners in the Executive Branch of the government such as the BJMP. It has laid down several jail visitation procedures to ensure detainees are afforded their constitutional rights. Under the Supreme Court's new guidelines on Jail Visitation and Inspection, Executive Judges are mandated to personally conduct visitation and inspection of provincial or city jails as well as other youth detention homes and youth rehabilitation centers within their respective jurisdictions on a quarterly basis, and to submit a report on matters such as the duration of detention and health condition of prisoners to the Office of the Court Administrator of the Supreme Court.
100. These same judges are also mandated to require the submission of reports from the presiding judges within their administrative areas on the total number of detainees whose cases are pending in their sala, which shall include information on the name and age of the detention prisoner, case number, crime charged, first day of detention, duration of detention and status of the case.
101. Finally, the Executive Judge is required to immediately act on cases involving detention prisoners who have been detained for a period equivalent to or beyond the maximum period of the imposable penalty.
102. From the issuance's effectivity in August 2013, a total of 1,458 jail visits by judges have been conducted across the country.

103. On March 18, 2014, the Philippine Supreme Court issued guidelines for decongesting, holding jails by enforcing the rights of accused persons to bail and to speedy trial. The guidelines prescribe strict time limits in the prosecution of cases against a detained accused, which must be strictly observed. The court shall terminate the regular trial within 180 days, or trial by judicial affidavits, within 60 days reckoned from the date the trial began, minus the excluded delays or postponement under the rules. The case against the accused may be dismissed on the ground of denial of the right to speedy trial in the event of failure to observe the time limits. The same guidelines also provide that an accused who has been detained for a period of at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, *motu proprio*, or on motion, after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him.
104. The Supreme Court has also launched the 2015 Guidelines for Continuous Trial where pilot courts conduct continuous trial in cases involving "high impact" criminal cases like bouncing check, cases involving minors, drugs, *estafa*, illegal recruitment and select commercial cases, for its speedy disposition. The guidelines reinforce strict observance of timelines in the rules of procedure while its training component incorporates review of flowcharts, which outline critical periods for different types of cases.
105. Under this system, trial dates should be set one (1) day apart and motions for postponement are prohibited, save for exceptional grounds. If such a postponement is granted, however, such party is cautioned that the presentation of his/her evidence must still be finished on the dates previously agreed upon and allotted to it. The pre-trial and trial dates, once set, are final. Likewise, the parties, their counsels, and the witnesses are notified in open court of the next hearing date, making notice to them immediately binding. The promulgation date shall be set no more than ninety (90) days from the submission of the case for decision.
106. The Court has also embarked on several innovative decongestion efforts which aim to decrease trial times and ensure that detainees are given a speedy resolution of their case.
107. Among these programs is the Hustisyeah program, a decongestion program where a 30% reduction of caseload was recorded in Quezon City, where the program was piloted. Just this year, provision for the hiring of 635 court decongestion officers was approved by the Supreme Court in the hopes of building on the success of the program. Furthermore, the Supreme Court has formed assisting courts to address the disproportionate allocation of courts in various parts of the country. Under this program, less congested courts from nearby jurisdictions are tasked to help overburdened courts deal with the latter's heavier caseloads.
108. The Philippine Judiciary has also started linking up with other government agencies to speed up case processing. An example of this is the eSubpoena. The eSubpoena is an automated notification system where the courts are able to send out electronic subpoenas, and duly received by the concerned police officer through their national headquarters. Based on initial reports, there is a ninety-seven percent (97%)

compliance rate of policemen attending trial in Quezon City, where the system is currently being piloted.

109. At the same time, the Court approved the development of the eCourt, an automated case management system developed for the trial courts that is expected to not only increase efficiency in case processing and monitoring, but also enhance transparency in court operations and records integrity. It aims to speed up decision-making through automated monitoring of cases; cut case backlogs through a dashboard that provides information like the aging of cases, pending deadlines, and new case incidents that require action; increase public access to information through computers in public kiosks that are found at the entrance of the different halls of justices; and bolster transparency as the raffling of cases is done electronically.

***On the State's criminalization of torture, the prevention of arbitrary arrests, raised by Mr. Bruni, and on the issue of blind-folding, raised by Mr. Bruni and the Chair, on the issue of warrantless arrest raised by Mr. Bruni and the issues related to compensation under the Human Rights Claims Board and under the anti-torture law as raised by Miss Malla.***

*RESPONSE (Delivered by Chief State Counsel Paras, Department of Justice)*

110. Inquest is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons lawfully arrested and detained without a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court.
111. The purpose of inquest proceedings is that while the State acknowledges the law enforcers authority to arrest and detain persons without a warrant, the State must also ensure that these persons are lawfully arrested and detained. To do so, the inquest officer is tasked to consider all pieces of evidence gathered by the police in the course of the latter's investigation of the criminal incident involving the arrested or detained person.
112. It should be emphasized that under Philippine law, there are only three instances wherein a person may be arrested without a warrant.
- 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; and
  - c. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

113. Should it be found that the arrest was unlawful, the inquest officer shall immediately recommend the release of the detainee. If the arrest is lawful, then the inquest proceedings shall proceed unless the detainee requests for a full-blown preliminary investigation in which case, he shall be made to execute a waiver of Article 125 of the Revised Penal Code of the Philippines, with the assistance of a lawyer.
114. Without the waiver, the arresting officer may be held liable for arbitrary detention, for failure to file the criminal complaint and bring the detainee to the judicial authorities.
115. If the Inquest Prosecutor finds that probable cause exists, he shall prepare the information with the recommendation that the same be filed in court. If no probable cause, he shall recommend the release of the detained person.

#### **D. AWARENESS-BUILDING, INFORMATION, EDUCATION AND TRAINING**

*On the alleged knowledge and resource gaps in the information, education and communication programs of the State.*

*RESPONSE (Delivered by Assistant Secretary Jennifer Oreta, Office of the Presidential Adviser on the Peace Process)*

116. The Philippines welcomes the Committee's appreciation of the programs that were conducted by the State in terms of building awareness, information dissemination, education and training of State authorities. The Philippines values this observation of Misses Malla and Belmir on the effectiveness of education and training programs for uniformed personnel in the light of the alleged continuing incidents of human rights violations, including torture. The Philippines reiterates its request to the Commission on Human Rights to conduct an objective impact assessment on the effectiveness of these programs with the objective of identifying weak areas that require strengthening or enhancement.
117. As mentioned above, detainees are given a thorough orientation of their rights, privileges and responsibilities while in detention. This is done in the form of a lecture-discussion as soon as they arrive in the facility. Leaflets are also given to inmates that detail these rights and responsibilities.
118. The AFP and the PNP continue to conduct regular training of its personnel on human rights, international humanitarian law and the rule of law. Human rights is taught in the regular courses from the pre-entry, basic, advance, specialization and general staff courses. Advocacy and information dissemination drives are conducted to the personnel and formed units, and engagements with stakeholders are regularly conducted.
119. Community-based dialogue sessions are conducted between and among the CHRP, PNP, AFP, CSOs led by the Philippine Alliance of Human Rights Advocates (PAHRA) together with the Hanns Seidel Foundation of Germany, the Ninoy and Cory Aquino Foundation and the lawyer's advocacy group, Alternative Law Groups. This project consortium has institutionalized the conduct of regular human rights

training, including "Training of Trainers". Recently, the CHRP acknowledged this institutionalization of trainings on human rights through a resolution. The increased number of people becoming aware of the laws on human rights has resulted in the lower number of reports of alleged human rights violations, including torture. Another tangible effect has been the ease in the conduct of investigations and inquiries.

120. On the alleged knowledge gap of detainees about their rights, the Philippine Government has enhanced efforts to provide orientations upon the arrival of the detainees in facilities. They are also provided with information leaflets on the basic rights, privileges and responsibilities of persons in detention.

#### **E. ON WOMEN'S AND CHILDREN'S CONCERNS**

*On the matter raised by Mr. Touze and Ms. Gaer as regards the figures on the cases of Violence Against Women (VAW) that were reported for the period of 2004 to 2012 and on the matter of VAW legislation as raised by Ms. Malla.*

*RESPONSE (Delivered by Gen. Doris Dorigo, CAT Focal Person, Department of the Interior and Local Government)*

121. The PNP Women and Children Protection Center monitors and receives report on incidents involving violence against women. The noticeable increase in the number of reported cases on violation of Republic Act No. 9262 over a period of 9 years from 218 in 2004 to 11,531 incidents in 2012 are attributed to the following reasons:
- a. Establishment of 1,913 women and children protection desks in all police stations, manned by 3,288 desk officers, 99% of whom are female police officers;
  - b. Continuous information campaign to strengthen public awareness about the law;
  - c. Implementation of various programs and projects to eliminate violence against women;
  - d. Development of guidelines in the establishment of referral systems on violence against women and children in the local government units and violence against women desk handbook by frontline services such as Department of Interior and Local Government, Department of Social Welfare and Development, Department of Health, Department of Education and Philippine Commission on Women; and
  - e. Active involvement of the civil society organizations in monitoring, reporting and implementation of programs to eradicate violations against women.
122. Likewise, the Philippines has taken measures to mainstream these laws and issuances to combat violence against women such as Anti-Violence Against Women and their Children Act; Magna Carta of Women; Sexual Harassment Law; Anti-Rape Law; Anti-Trafficking Law; and Juvenile Justice and Welfare Act. Mainstreaming these laws involves tasking Philippine government agencies to provide the required services to victims such as psychosocial care, medical, police assistance and protection.

***On concerns on the Reproductive Health Act, as well as in the issue of the continuing ban on abortion as raised by Misses Malla and Gaer.***

*RESPONSE (Delivered by Dr. Maria Corazon Lucia V. Teoxon, Focal Person for NPM and Torture, Department of Health)*

123. *On the misimpression that Filipino women cannot exercise their right to access family planning services and abortion.* After 27 long years of intense lobbying by women and human rights groups, the Philippine Congress finally enacted the law providing for a national policy on responsible parenthood and reproductive health in 2012. This law guarantees the right of all persons to choose and make decisions for themselves in accordance with their religious and cultural beliefs, ethics, and the demands of responsible parenthood. It likewise guarantees universal access to medically-safe, non-abortifacient, effective, affordable and quality reproductive health care services, methods, devices and supplies as determined by the country's Food and Drug Administration.
124. Since then, the DOH has been enabling healthcare facilities nationwide to provide both natural and modern contraception services and supplies. By 2015, all 3,951 rural and urban health centers, 701 selected village health stations, and 1,164 hospitals were engaged in providing family planning services. As a result, the use of modern contraception increased from 31% in 2013 to 41% in 2015.
125. Surveys showed that more than 70% of these women were given adequate information on the possible side effects of each contraception method and what to do if such side effects are experienced, and other methods which they may opt to use. The DOH has annually allocated an average of 70 Million US dollars to ensure woman's access to safe contraception.
126. While the same law upholds the Philippine penal code which considers abortion as illegal, it also directs the government to ensure that all women needing care for post-abortion complications and all other complications arising from pregnancy, labor and delivery shall be treated and counseled in a humane, non-judgmental and compassionate manner. The same law now recognizes that there are medical indications for abortion performed in extreme situations when the life of a woman is at risk.
127. In order to manage abortion and its complications, the DOH has issued a policy in 2000 implemented from the community level up to higher referral hospitals. Gaps remain in monitoring implementation of this policy such as the lack of compliance with reporting. However, the health system has included among its licensing standards, the operation of women and children protection unit in every hospital and health office. Women's desks have been set up in 85% of 41,208 villages or barangays in order to capture this concern as well. These are venues where women may report grievances with regard unsatisfactory health care.

***On perceived contradiction between Reproductive Health and Responsible Parenthood Law and the Penal Code***

*RESPONSE (Delivered by Dr. Maria Corazon Lucia V. Teoxon, Focal Person for NPM and Torture, Department of Health)*

128. There is no contradiction between the two laws. As earlier mentioned, the Reproductive Health and Responsible Parenthood Law upholds the provision of the penal law that abortion is illegal. The Philippines notes that the country's population is composed of 86% Christians, most of whom are Roman Catholic, and 6% are Muslims. Both religions do not accept abortion as a regular option for responsible parenthood. However, with the Reproductive Health and Responsible Parenthood Law in place, Filipino women have now been given the freedom to choose artificial methods of contraception.

***On steps taken to document and punish health workers and facilities when women are not taken cared of humanely during post-abortion***

*RESPONSE (Delivered by Dr. Maria Corazon Lucia V. Teoxon, Focal Person for NPM and Torture, Department of Health)*

129. With the universal coverage of the PhilHealth, the licensing, accreditation and payment of health facilities could be withdrawn anytime that a complaint against the health worker is proven valid.

***On the issue of Filipino women who are victims of abuse while working abroad as raised by Ms. Gaer***

*RESPONSE (Delivered by Hon. Cecilia B. Rebong, Permanent Representative of the Philippines, Permanent Mission of the Philippines to the United Nations and Other International Organizations in Geneva)*

130. The Philippine does not have a policy of exporting labor. However, when a Filipino national decides, for whatever reason, to work abroad, a mantle of protection is provided to him or her by the Philippine government.
131. Under Republic Act No. 7157, otherwise known as "Philippine Foreign Service Act of 1991," Philippines' Department of Foreign Affairs (DFA) to is mandated to implement the three pillars of Philippine Foreign Policy, as follows:
- a. Preservation and enhancement of national security;
  - b. Promotion and attainment of economic security; and
  - c. Protection and of the rights and promotion of the welfare and interest of Filipinos overseas.
132. In order to implement this unique pillar of Philippine Foreign Policy, the DFA created the institutionalized of country's diplomatic and consular missions abroad as a web of safety nets ready to assist any and all Filipino migrant in distress abroad. The Philippines has a global network of 82 embassies and consulates, 166 honorary

- consulates and at least 1,295 personnel who are mandated by law to render 24/7 services to overseas Filipinos e.g., consular, labor and welfare services, legal services and repatriation assistance.
133. The personnel of the embassies and consulates and representatives of government agencies, such as the DOLE, Overseas Workers' Welfare Administration, and DSWD act as one country team under the leadership of the ambassador or the consul general.
  134. All of these personnel undergo intensive pre-departure orientation program to prepare them to provide 24/7 consular assistance. Philippine missions in countries where we have big number of overseas Filipinos maintain and regularly update database of Filipinos in their area of jurisdiction, as well as their respective contingency plans. They also provide services such as but not limited to the following:
    - a. Provision of food and temporary shelter in Filipino Resource Workers Centers (FWRC) abroad;
    - b. Psycho-social support from professionals through Social Welfare Attachés assigned to Philippine diplomatic or consular missions;
    - c. The use of the Legal Assistance Fund (LAF) for the cost of legal services in destination or host countries. Legal assistance can range from informing migrant workers of available judicial and other remedies, hiring of lawyers in the host country for the filing of appropriate cases. The LAF was created under the Migrant Workers and Overseas Filipinos Act of 1995 to provide legal services to distressed Filipinos overseas, including trafficking in persons victims, and to pay for court fees and other expenses incidental to litigation. In 2015, the Philippine Government appropriated PhP 100,051,893.79 (or US\$2.1 million) for victims.
    - d. The cost of repatriation of migrants maybe sourced from the Assistance-to-Nationals Fund (ATN Fund). This Fund is also used to defray the cost of medical attention, immigration fees or repatriation and other transportation costs. In 2015, the Philippine Government appropriated US\$7.48 million from the annual Philippine General Appropriations Act.
  135. Philippine Foreign Service Posts (FSPs) actively collaborate with host governments, local NGOs, the Filipino community and international organizations to perform its mandate to assist distressed Filipinos overseas.
  136. On the matter of the crucial role of FSPs in mainstreaming gender issues, the In addition to mandatory training for DFA personnel to be assigned to diplomatic and consular missions abroad, the Philippines conducts regional trainings for its personnel abroad in the proper handling of victims of trafficking in persons and other abuses. Through these exercises, the Philippines has enhanced capabilities of its foreign service personnel in attending to gender-sensitive issues and protection of vulnerable groups.

*On the issue of violence against women (Ms. Gaer)*

*RESPONSE (Delivered by Director Pacita Sarino, Protective Services Bureau, Department of Social Welfare and Development)*

137. On the measures taken by the Government to prevent, combat and punish violence against women including domestic violence as raised by Ms. Gaer, the Philippines has passed the following domestic legislation: (1) Anti-Trafficking Law (RA 9208) of 2003; (2) Anti-Violence against Women and their Children Act (RA 9262) of 2006; (3) Juvenile Justice and Welfare Act (RA 9344); (4) Magna Carta of Women (RA 9710); (5) Sexual Harassment Law and (5) Anti-Rape Law.
138. These laws mandate government agencies in providing crucial services to victims, such as psychosocial care, medical, police assistance and prosecution.
139. The Anti-VAWC Law and the Anti-Trafficking in Persons Act of 2003 mandates the establishment of the Inter-Agency Council on Violence against Women and their Children (IAC-VAWC) and Local Committees on Anti-Trafficking and Violence Against Women and Their Children (LCAT-VAWC). A joint memorandum circular was signed between the Departments of Justice, Social Welfare and Development and Interior and Local Government to establish this partnership. As of February 2016, 39 out of 81 provinces (48%), 108 of 145 cities (74%) and 1058 of 1489 municipalities (71%) organized their LCAT-VAWCs.
140. As of December 31, 2015, 36,577 out of the total 42,029 barangays or villages (87%) established their Barangay Violence Against Women (Barangay VAW) Desks as a gender-sensitive initiative to address VAW cases at the village level VAW desks are managed by persons assigned by the Punong Barangay.
141. Aside from the creation of village level Violence Against Women desks, "Gender and Development Focal Points" are being established and strengthened at the national and local levels, including foreign service posts, to accelerate gender mainstreaming in policies and programs, and improve gender budgeting.
142. The Magna Carta of Women is being popularized through information caravans, radio programs, and social networking. It has also been translated in local languages.
143. The Magna Carta has also benefited many working women as they avail of the special 60-day leave for surgery due to gynecological disorders. Night work for women is now allowed. Laws have been reviewed to become consistent with the Magna Carta. Awaiting enactment are the bill equalizing penalties for men and women committing sexual infidelity, the bill amending the anti-rape act, and amendments to the Family Code, among others.
144. On the Localization of Magna Carta of Women, policies and procedures have been drawn up to mainstream a gender perspective in local planning, programming and budgeting; review local legislation; project development, implementation, monitoring and evaluation. The Philippines has implemented a 3-year capacity-building project with the support of Spanish Government to strengthen and replicate local and national

- convergence models of support and services for women's economic empowerment and social rights.
145. In 2015, the Department of the Interior and Local Government (DILG) and the Philippine Council of Women (PCW) implemented a project entitled "Capacity Building of VAW Desk Persons/Officers in Handling of VAW Cases" where Punong Barangays or village chiefs, and Barangay VAW desk persons from pilot municipalities in Region VI were trained. The project partnered with two state universities and colleges in the Visayas; the Aklan State University in Aklan and Central Philippine University in Iloilo City as a new modality in capacity development. The project developed a training manual for DILG field officers, partner-local resource institutions and other stakeholders through the assistance of partner universities. The DILG also partnered with the Polytechnic University of the Philippines in Manila as partner-training arm in strengthening the capacities of barangays in the establishment and operationalization of VAW desks within the National Capital Region and nearby provinces.
  146. The Philippines embarked on further trainings in 10 additional pilot cities and municipalities through the "Strengthening the Capacities of Direct Service Providers of LGUs handling of VAW cases" project, funded by the European Union-Philippine Justice Support (EPJUST II) Programme. An e-learning course on Capacitating VAW Desk utilizing the internet is being developed with cooperation from EPJUST II.
  147. The Philippines recorded 42,216 VAW cases in 2015. As such, frontline service providers on violence against women, including the Departments of Interior and Local Government, Social Welfare, Education, and Health together with the Philippine Commission on Women (PCW), developed guidelines and tools to eliminate VAW and to further improve services on VAW at the village level. These include the Guidelines in the Establishment and Management of a Referral System on Violence against Women and Children at the Local Government Unit Level and the Barangay VAW Desk Handbook. The Performance Standards and Assessment Tools for Services Addressing VAW in the Philippines were developed for social workers, police, health workers, prosecutors and local officials to ensure gender-responsive handling of VAW cases.
  148. The DSWD also developed a Manual on Gender-Responsive Case Management, a quick-reference handbook for social workers who deal with Violence against Women and Children (VAWC) cases. Use of the Manual enhanced the capacity of selected members of the Inter-Agency Councils against Trafficking and VAWC in six regions of the country through the conduct of Training on Community-Based Rehabilitation Program for Perpetrators of Domestic Violence.
  149. To complement VAW Desks, the PNP established, as of March 2016, 1,917 Women and Children Protection Desks (WCPDs) across the country with a manpower complement of 4,427 desk officers, 99% of whom are women police officers.
  150. On the number of clients served, a total of 20,046 VAW victim-survivors were received social work counselling, medical services, transportation, limited financial assistance, referral and temporary shelter.

151. On the concerns to harmonize data collection, a pioneering National VAW Documentation System was developed to avoid double counting of data and to track cases and services on women. It was pilot-tested by the PCW in the province of Aklan, as reported in the Philippines' previous report. Future efforts will focus on a national piloting system that uses the enhanced VAW Docs based on the recommendation of the UN Gender-based violence information management system.
152. On the issue of report submission and data analysis, the Philippines' Women and Children Protection Committee (WCPC) utilizes a new report matrix incorporating gender-based cases.
153. The PCW also helped organize the Men Opposed to VAW Everywhere (MOVE), an organization of men committed to actively involve themselves in the elimination of VAW and to speak out against it. As of 2013, MOVE has 29 chapters all over the Philippines, including key government departments and local government units.

***On the matter of children in conflict with the law (CICL) who have been allegedly subjected to beatings, electric shocks and other forms of abuse, and the alleged ill-treatment of street children who are arrested, as raised by Miss Malla and Belmir***

*RESPONSE (Delivered by Atty. Tricia Claire Oco, Executive Director, Juvenile Justice and Welfare Council*

154. It should also be noted that JJWC's capacity to oversee the implementation of the law has been strengthened with the establishment of its 16 Regional Committees across the country. The human resources and budget of the JJWC Secretariat were also increased.
155. JJWC has 16 Regional Committees that require the membership of at least two NGOs designated by the DSWD Secretary (Minister). The Committees serve as a platform to raise possible violations of the Juvenile Justice and Welfare Council Act or RA 9344. The JJWC organizes quick response teams and small groups to conduct monitoring visits to facilities. In 2015, 78 rehabilitation facilities and 190 detention places were monitored and inspected by the JJWC and its committees. During these monitoring visits and inspections, the JJWC provides technical assistance on the case management of children and intervenes for the immediate release of children from detention facilities.
156. A total of 19 children from the National Capital Region, Region III and Region X were transferred to youth rehabilitation centers in 2015. No allegations of torture or ill treatment in any stage of their entry into the justice system were made during the monitoring visits. To enhance the capabilities of its case managers handling children in conflict with the law (CICL) clients, the JJWC has embarked on a continuous capability building trainings to equip them with the proper skills to determine if their clients have experienced torture and to provide appropriate services.

157. The JJWC has developed IEC materials, produced documentation of success stories, popularized guidelines/policies on CICL issues and organized dialogues with media.

***On the question of whether Rape Law penalizes anal sex***

*RESPONSE (Delivered by Atty. Tricia Claire Oco, Executive Director, Juvenile Justice and Welfare Council)*

158. The Philippines' rape law penalizes anal sex. In the Philippines, a person commits sexual assault if he inserts his penis into another person's mouth or anal orifice, or if any person inserts any instrument or object into the genital or anal orifice of another. That person is considered to have violated the Anti Rape Law of 1997 or RA 8353 and may be imprisoned within the range of 6 years and one day to 10 years plus imposition of fines and other accessory penalties. The law seeks to address sexual violence and rape against victims who are male and provide greater protection.

***On the discussions in Philippine Congress to lower the minimum age of criminal responsibility as raised by Misses Malla and Belmir, and Mister Hani***

*RESPONSE (Delivered by Atty. Tricia Claire Oco, Executive Director, Juvenile Justice and Welfare Council)*

159. The amended Juvenile Justice and Welfare Act of 2013 (RA 10630) sets the MACR at 15 years. The law clarifies the procedures on how to treat children who are below the MACR but have committed serious crimes or who have repeat offenses. Particularly, the amended law mandated the rehabilitation of institutions to establish intensive juvenile intervention programs to particularly address cases of children who commit crimes while below MACR but require institutional types of intervention. The amended act also reiterates the Philippine government's policy to shift the focus towards community intervention and to resort only to institutionalization of children only when it becomes absolutely necessary.
160. The JJWC has undertaken studies and initiatives in consideration of the proposal for the lowering the minimum age of criminal responsibility (MACR). These initiatives include advocacy work with legislators, specifically, the Committee on Population and Development, and policy makers. The JJWC submitted position papers to the legislative chamber in 2012 to 2013.
161. The JJCW continually strengthens its partnership with the Juvenile Justice Network, a grouping of UNICEF, NGOs and CSOs working on CICL. The JJWC and its Regional Committees have also developed and are currently implementing their respective Communications Plans focused on maintaining the MACR at 15 years.

***On the issue of street children having been allegedly arrested during the 2015 Asia Pacific Economic Cooperation (APEC) Summit***

*RESPONSE (Delivered by Pacita D. Sarino, Director, Protective Services Bureau, Department of Social Welfare and Development)*

162. The Philippine laws consider it illegal to arrest street children because they are not considered to have committed any crime. Instead, they are considered as children at risk that require intervention for their protection. They are covered by the reach-out operations which is a year-round coordinated effort of the Local Government Units and the DSWD to respond to the needs to shield children and their families from exposure to the dangers of the streets.
163. Contrary to allegations, the reach-out operations are not conducted because of the APEC (Asia Pacific Economic Cooperation). The DSWD conducts the reach-out operations to address the health and safety concerns of children as vulnerable groups. Under the program, these children are secured from exploitation by unscrupulous individuals and groups. Children and their families that are taken off the streets are provided accommodations in various LGU-managed facilities and DSWD centers and institutions. It is in these facilities and centers where they were also interviewed, assessed, and provided appropriate services.

***On the Conditions of Children in Detention and additional concerns on the plight of children, including the allocation of resources to further enforce programs for children in conflict with the law, and additional information on the Bahay Pag-asa (Homes of Hope)***

*RESPONSE (Delivered by Atty. Tricia Claire Oco, Executive Director, Juvenile Justice and Welfare Council)*

164. All Local Government units in the Philippines with facilities that cater to children in conflict with the law (CICL) are mandated to mobilize their resources and improve their facilities to comply with the requirements of the Juvenile Justice and Welfare Act and the guidelines and policies of concerned regulatory agencies such as the DSWD.
165. In response to allegation of violations of the Juvenile Justice and Welfare Act, fact-finding teams were constituted and led by the JJWC in December 2015 to investigate facilities that operate below the standards set by the law. The Caloocan City's *Yakap Bata* (Embrace the Child) Holding Center and the Malabon City's *Bahay Sandigan* (Foundation Home) were priorities. The fact-finding committee discussed their findings and recommendations with the local chief executives and social welfare offices of the aforementioned cities.
166. Caloocan City has started the construction of a new *Bahay Pag-asa* (Home of Hope) rehabilitation facility for children, expected to be finalized after May 2016. The City of Malabon entered into a Memorandum of Agreement with the City of Valenzuela to transfer its wards to the latter on a cost-sharing scheme. The City of Malabon has also included the construction of a *Bahay Pag-asa* rehabilitation facility in its 2016 work and financial plan.

167. The City of Manila has secured the approval and budget to construct a new *Bahay Pag-asa*. Personnel from the DSWD have visited the City of Manila to provide technical assistance, i.e., design and parameters according to the Juvenile Justice and Welfare Act, after conducting pre-accreditation visits in the soon-to-be demolished Manila Youth and Reception Center (MYRC) in April 2016.
168. The JJWC will continue to coordinate with and monitor actions on its recommendations of the fact finding investigations conducted to ensure that rehabilitation facilities comply and are consistent with the standards set in the laws.
169. The JJWC's Regional Committees have also conducted orientations on the heads of rehabilitation facilities on the Guidelines for the Operation of *Bahay Pag-asa*, with focus on case management, programs and services, budget allocation and Standards on Residential Care Facilities.
170. The JJWC, in cooperation with the CHRP, aims to inspect rehabilitation centers for children when the latter conducts its monitoring activities among detention facilities.
171. In 2015, 78 rehabilitation facilities and 190 detention places were monitored and inspected by the JJWC and its Regional Committees. During these monitoring visits and inspections, the JJWC provided technical assistance on the case management of children and intervened for the immediate release of children from detention facilities.
172. A total of 19 children from the National Capital Region, Region III and Region X were transferred to youth rehabilitation centers in 2015. No allegations of torture or ill treatment in any stage of their entry into the justice system were documented during the monitoring visits. To enhance the capabilities of its case managers handling children in conflict with the law (CICL) clients, the JJWC has embarked on capability building programs to equip its officers with the required skills to determine if clients have experienced torture and to provide appropriate services.
173. The Juvenile Justice and Welfare Act mandates the LGUs to allocate funds to implement their respective Comprehensive Local Juvenile Intervention. Funds can be secured from the 1% Internal Revenue Allotment (IRA) allocated for the strengthening and implementation of the programs for Children in Conflict with the Law. For highly-urbanized cities and provinces, this allotment is also differentiated from the fund for the construction and maintenance of *Bahay Pag-asa*.

***On the issue of CICL and democratic reforms that address armed conflict in the country as raised by Mr. Hani***

*RESPONSE (Delivered by Assistant Secretary Jennifer Oreta, Office of the Presidential Adviser on the Peace Process)*

174. For the Committee to fully appreciate the interventions the Philippines does for children involved in armed conflict, a brief context on the peace process in our country is necessary.

175. The strategy employed by the State in addressing armed conflict follows two tracks: (a) a negotiated political settlement with armed groups through peace talks (Track I), and (b) addressing and/or mitigating the effects of armed conflict through a deliberate convergence program for conflict affected areas (Track II).
176. To date, the Philippines is managing five peace tables in various stages of negotiations. These tables can be clustered into two major themes:
- a. The Communist Insurgency
    - The Cordillera People’s Liberation Army (CPLA)
    - The Revolutionary Proletariat Army-Alex Boncayao Brigade
    - The Communist Party of the Philippines-new People’s Army-National
    - Democratic Front (CPP-NPA-NDF)
  - b. The Bangsamoro Struggle
    - Moro National Liberation Front
    - Moro Islamic Liberation Front
177. Complementing the formal negotiation is the deliberate downloading of development and governance interventions to communities affected by armed conflict. The peacebuilding program adopted by the current government is called PAMANA, literally translated as “heritage,” but it also stands for Payapa at Masaganang Pamayanan (peaceful and progressive communities).
178. In 2011-2015, while the PAMANA program targets community rebuilding, a re-integration program for individual combatants is also put in place. A training-livelihood program is offered, together with a re-civilianization or civics program and a healing and reconciliation program. The purpose of the entire package is to allow former combatants to re-integrate back in the folds of law, contribute in rebuilding relations and communities, and become a productive member of society.
179. It is in this context that the Philippines approach children in armed conflict. As a matter of policy, the Philippines prohibits the recruitment of children, and has in fact put in place laws and regulations that penalize any member of the state security force who violate the said policy.

***On measures taken to reintegrate former child soldiers in society as raised by Mr. Hani***

*RESPONSE (Delivered by Assistant Secretary Jennifer Oreta, Office of the Presidential Adviser on the Peace Process)*

180. While the armed rebel groups in the Philippines have declared they do not employ children as combatants or as support units, evidence on the ground suggests otherwise, especially with the Communist Party of the Philippines-New People’s Army group. To facilitate the reintegration of children, the Philippine government has put in place a reintegration program for children who have abandoned the rebel movement. They are immediately turned over to the DSWD Officer for processing

and debriefing. Programs that are available to them include livelihood assistance, scholarship, healing and reconciliation, and family reintegration program.

***On integration of members of rebel groups in the police force as a “positive discrimination” scheme meant to improve relations between population and police.***

*RESPONSE (Delivered by Assistant Secretary Jennifer Oreta, Office of the Presidential Adviser on the Peace Process)*

181. Reintegration of former combatants in the security forces is part of the roster of options available in negotiations between the Philippine government and armed rebel groups.
182. In two of the peace tables, part of the negotiated agreement with the Moro National Liberation Front (MNLF) and Cordillera People’s Liberation Army (CPLA) includes the integration of members of said groups to the police and the military.
183. Under the 1996 Final Peace Agreement between the Philippine government and the MNLF, 7,500 members of the MNLF are to be integrated in both the police and the military. Of this number, 1,750 have been integrated under the police force, while 5,750 have been integrated in the Philippine Army. The integration process has been fully completed in 2003.
184. In the peace agreement between the Philippine government and the CPLA, 168 former CPLA combatants were integrated with the Philippine Army. The integration process has been completed in the first quarter of 2016.
185. The Philippine government made certain concessions with regard the admission requirements of the police and military institutions to accommodate the former combatants. The adjustments were made to ensure the full integration of former combatants, but without prejudice to the critical or core requirements and standards of both police and the military institutions. Examples of these adjustments include giving a grace period for the integratees to complete their high school diploma and lowering the height requirement for admission.

## **F. LEGISLATIVE EFFORTS/ PENDING LEGISLATION**

***On the status of the proposed bill criminalizing extra-judicial killings (EJKs) and of the Prison Rape Elimination Act, both raised by Mr. Bruni***

*RESPONSE (Delivered by Undersecretary Bernardino Sayo, Presidential Legislative Liason Office)*

186. House Bill No. 1688 seeks to qualify “salvaging” or extrajudicial killing by any person in authority or his agent as a heinous crime punishable by maximum penalty. However, the measure has not moved forward in the Committee on Justice during the abbreviated legislative life of the 16th Congress because of a number of legislative

investigations conducted relative to reported cases of EJKs. The bill will be re-introduction in the next Congress.

187. Although there is no record of rape in prison incidence to date, a bill on prison rape was introduced during the 15th Congress particularly providing for the analysis of the incidence and effects of prison rape and to provide information, resources, recommendations and punishment to protect individuals from prison rape. The bill did not prosper beyond the Senate Committee on Justice and Human and so was refiled in the 16th Congress. But this time, the author chose to expand the scope of the measure to cover the complexity of sexual abuse committed while in detention including rape and acts of lasciviousness as defined under the Revised Penal Code. Unfortunately, the bill failed to advance in the 16th Congress and no counterpart bill was initiated in the House of Representatives. We will seek its refiled in the next Congress.

***On corporal punishment at the place of home***

*RESPONSE (Delivered by Undersecretary Bernardino Sayo, Presidential Legislative Liason Office)*

188. The Philippines stands firm on its commitment to human rights as enshrined in various international human rights treaties and agreements, including the UN Convention on the Rights of the Child. In pursuit thereof, legislative proposals have been filed in Philippine Congress to secure the well-being and safety of children in all settings --- at home, in school, in institutions, in alternative care systems, in employment --- by promoting positive and non-violent methods of disciplining children and assisting parents in the fulfilment of their parental obligations. A common thread among these proposed laws is the view that children, as future productive citizens of the country, need to be cared for in an environment that fosters positive reinforcement of behavior rather than making use of punishment to supposedly facilitate learning.
189. House Bill 4907 mandates the formulation and implementation of a comprehensive program for the purpose and provides for a continuing information dissemination campaign on the benefits and techniques of positive and non-violent discipline even as it proscribes acts that constitute corporal punishment.
190. Although passed by the House of Representatives via a unanimous vote the bill has remained pending at Committee-level in the Senate drawn to a gridlock over the issue of whether parents should suffer criminal liability and be forcibly separated from the child-victim. The Philippine government will not relent in its lobby for Senate approval.

***On the National Preventive Mechanism under the Optional Protocol to the CAT, and on the issue of whether its monitoring function will cover detention centers, juvenile detention centers, mental health facilities and psychiatric institutions as raised by Mr. Bruni***

*RESPONSE (Delivered by Undersecretary Severo Catura, Executive Director, Presidential Human Rights Committee-Secretariat)*

191. Since the Philippines ratified OPCAT in 2012, it has always remained very supportive of the establishment of the National Preventive Mechanism (NPM). It shall be pursued as part of the legislative agenda for the next Congress.
192. A national consultative process for the most suitable organizational form of an NPM for the Philippines was started in 2008. This process was inclusive, consultative and participative in accordance with the guidelines of the UN Sub-Committee on Prevention of Torture and with the guidance of the Association for the Prevention of Torture (APT), an international advocacy organization based in Geneva, Switzerland. This process was undertaken in partnership with NGOs, the Presidential Human Rights Committee, representing the Executive department and government institutions through the Philippine OPCAT Working Group (POWG), which was the same group which was instrumental in pushing for the State's ratification of the OPCAT.
193. This national consultative process resulted in two proposals on the NPM organizational form, i.e., (1) the creation of an office attached to but functionally separate from the CHRP or, (2) other, the designation of the CHRP as the NPM. This resulted in two bills establishing the NPM, now referred to as the National Committee for the Prevention of Torture Bill, which was filed in late 2014 at the House of Representatives and at the Senate in mid-2015.
194. Both proposed legislations are currently going through the legislative mill, being deliberated on by various stakeholders in public hearings and technical working groups. Pending the enactment of a law that establishes this mechanism, the CHRP is currently strengthening its preventive monitoring capacity by creating and developing a unit to undertake, in the interim, the work intended to be done by the NPM.
195. The Philippines, working through Congress and the POWG, shall continue its efforts to establish an NPM that is most appropriate to Philippine situations. It has also secured the commitment of the APT for the latter to continue its engagement with the Philippines and share its expertise on this matter.

***On the status of the CHRP Charter bill pending at the Legislature as raised by Ms. Malla***

*RESPONSE (Delivered by Undersecretary Severo Catura, Executive Director, Presidential Human Rights Committee-Secretariat)*

196. The bills providing for the Charter of the CHRP have been filed in Congress, cognizant of certain issues that require further study, including the grant of prosecutorial powers, fiscal autonomy, structural reorganization, and the power to issue temporary restraining orders.
197. Under its new leadership, the CHRP has reviewed these bills in conjunction with a new direction that these bills, such as fulfilling the intent of the bills on National

Preventive Mechanism (NPM). The CHRP views the possibility that it could yet assume the mandate and the function of the NPM.

**G. THE STATE AND ITS INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION, THE COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES**

*On the matter of the oversight function of the CHRP in relation to enhancing the implementation of the Anti-Torture Law of 2009*

*RESPONSE (Delivered by Undersecretary Severo Catura, Presidential Human Rights Committee)*

198. The current CHRP has been diligently readying the Oversight Committee. It needs to catch up with substantial work which is long overdue, considering that the Oversight Committee was convened only once by the previous Commission.
199. It is expected that the current CHRP, which started its term in June 2015, is committed to regularly convene the Oversight Committee, or as often if need be, so that the implementation of the Anti-Torture Act of 2009 can be continuously monitored, evaluated and improved. It has already framed a 2016-2017 Oversight Committee work plan; it has convened the Oversight Committee in February 2016, and has scheduled the next meeting next month.
200. The CHRP is granted access to all detention facilities, which would include those that are supervised by the military establishment and therefore the Philippines refutes the allegation that the CHRP is not granted access places of detention that are supervised by the military,

*On the limited resources of the CHRP that make it difficult to investigate places of detention as raised by the committee*

*RESPONSE (Delivered by Undersecretary Severo Catura, Executive Director, Presidential Human Rights Committee-Secretariat)*

201. The CHRP received a budget under the 2016 General Appropriations Act, in the amount of PhP400 million, or around US\$ 8.7 million, which will be distributed among the different departments tasked with fulfilling the Commission's various constitutional and statutory mandates.
202. Following the rule on checks and balance, annual budgets of the Executive and Judicial bodies, including Constitutional bodies, are approved by the Legislature. Such is based on a stringent review and evaluation of how the budget will be utilized in the most effective and efficient manner. If the CHRP deems that it may benefit from additional resources, especially so that it can enhance its programs, including its visits to the country's detention facilities, such must be properly justified along this process.

## H. THE STATE AND HUMAN RIGHTS DEFENDERS

*On the State's relationship with so-called human rights defenders as raised by Ms. Belmir.*

*RESPONSE (Delivered by Undersecretary Severo Catura, Executive Director, Presidential Human Rights Committee-Secretariat)*

203. The Philippines, as clearly reflected in its Constitution that arose from a people's desire to rectify the abuses of a past dictatorship, fully respects the role of its citizens, either as individuals or collectively as organizations, to exercise their freedom of speech and expression, and their right to peaceably assemble and petition the government for redress of grievances. And this includes the right – under the human rights duty-bearer and claim-holder nexus – to demand the State's effective implementation of its obligations pertaining to human rights promotion, protection and fulfillment.
204. Unfortunately, certain individuals have been deemed at risk, and alleged to have been victims of repression, reprisals, harassment and other violations because of their advocacy, their commitment and their work. This is rather sad, because this should not – and should never – be the case. One's commitment and advocacy, pursued in a peaceful manner and as a matter of human right, should never be curtailed.
205. The Philippines prides itself in being able to nurture and sustain an environment wherein engagements between the State and non-State organizations, represented by non-government, civil society, and sector organizations, including and specially those immersed in human rights advocacy, are encouraged and facilitated.
206. As a matter of policy, the Philippines promotes and protects the human rights of its citizens in an environment of inclusivity. Under Administrative Order No. 163, series of 2006, the Philippines, in ensuring its effectiveness in complying with its human rights obligations under the core treaties it has signed in the last six decades requires the active participation of NGOs, CSOs, and sectors in the process. In fact, a validation process was included in the preparation of the country's compliance report on the CAT which included organizations that had private meetings with the Committee. Even the preparation of the UPR country national reports went through a validation process with human rights NGOs and CSOs. And prior to the Philippines' ratification of the OPCAT in April 2012, human rights NGOs and CSOs partnered with the Executive Department, through the Philippine OPCAT Working Group, to push the Philippine Congress to take action.
207. In the meantime, in the country's legislature, all congressional hearings on the enactment of laws that impact human rights promotion and protection include the participation of human rights NGOs and CSOs. And we would also like to note that many of the members of Philippine Congress, especially those coming from Party List groups, have strong backgrounds as members or leaders of various human rights NGOs and CSOs.

208. Taking this step further, a bill has been filed in Congress in 2013 defining certain rights individuals, groups, and organs of society and providing penalties for violations of their rights in consonance with the UN Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society that Promote and Protect Universally-Recognized Human Rights. These rights include the right to unhindered access to communication with human rights bodies and access to documents of government units and personnel, paramilitary units and personnel, and military and affiliate government assets, among others, as well as obligations of government to require human rights education in schools and universities.
209. In the Philippines, people working on human rights concerns and their organizations, actively engage with the State and completes the overall picture of the human rights dynamics in the country.
210. Amidst this background, it is unfortunate that there are still allegations that the Philippines violates the rights of these individuals. The Philippines continues to look into such alleged cases, and in fact encourages the surfacing of such cases so that these could be immediately acted upon by way of the appropriate State mechanisms.
211. In all these, however, it is important that such cases not only surface or are reported, but are properly documented in order to be effectively acted upon. In addition to existing mechanisms, a victim of harassment and repression can immediately refer the matter to the CHRP, which is the State's independent national human rights institution and to the Presidential Human Rights Committee Secretariat, for referral to the appropriate offices for action and continued monitoring of their cases.

***On the query of Ms. Malla on the State's Human Security Act***

*RESPONSE (Delivered by Undersecretary Bernardino Sayo, Presidential Legislative Liason Office)*

212. Like many countries, the threat to terrorism is a real concern in the Philippines. Even then, the Human Security Act (RA 9372) requires stringent measures as regards detaining suspects. Even in the event of an actual or imminent terrorist attack, suspects may not be detained for more than three (3) days without written approval from proper authorities. Within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.
213. When a person is placed under custodial arrest and detention, the police or the law enforcement custodial unit concerned shall keep a securely and orderly maintained official logbook, which is declared as a public document and opened to and made available for the inspection and scrutiny of the lawyer or lawyers of the person under custody or any member of his or her family or relative by consanguinity or affinity within the fourth civil degree or his or her physician at any time of the day or night without any form of restriction.

214. The law provides specific procedural safeguards to prevent abuse. Law enforcement personnel who violate the rules may be penalized for ten (10) to twelve (12) years of imprisonment. An inter-agency group has been undertaking comprehensive review of the Human Security Act with the view to enhance its operability, particularly the successful prosecution of suspected terrorists under the said law and reinforcing safeguards against abuses. Philippines

## **I. CASE UPDATES**

While Philippines maintains that the Committee is not a court of law, it shall nevertheless update the Committee on specific cases brought to its attention, as follows:

### **215. Darius G. Evangelista (as raised by Ms Malla, Belmir, Gaer)**

On Preliminary Investigation, complaint against respondents PSUPT. Ernesto V. Tendero, Jr. and SPO1 Burt N. Tupas were dismissed due to lack or insufficiency of evidence.

An Information was filed at RTC Branch. 1, Manila for Violation of RA 9745 against seven (7) PNP personnel (PSupt. Rogelio Rosales Jr., PSI Joselito Binayug, SPO3 Joaquin De Guzman, SPO1 Rodolfo Ong, SPO1 Dante Bautista, PO1 Nonito Binayug and PO1 Rex Binayug). The prosecution has presented nine (9) witnesses.

The three (3) accused in this case have been arrested, namely: PSI Joselito Binayug, SPO1 Rodolfo Ong, and PO1 Rex Binayug. The other four accused [P/Supt. Rogelio Rosales Jr; SPO1 Dante Bautista; PO1 Nonito Binayug (AL); and SPO3 Joaquin De Guzman y Manganti (AL)] are all at-large. Warrants have been issued accordingly for their arrest.

The AO 35 Special Investigation Team (SIT) assigned to this case recommended a careful and thorough presentation of forensic evidence, especially the cellphone video footages taken while the victim was being tortured, to prove as well the identity of the victim as Darius Evangelista. A Special Tracker Team has been created for the arrest of remaining accused who are still at large.

### **216. Person persecuted by the 730th military regiment (raised by Ms. Belmir)**

Records from the AFP do not indicate the incident referred to during the discussion. Some incidents are not reported, or may not have even occurred at all, or may have been the result of lawful government action that was misreported as a violation.

### **217. Maguindanao Incident in November 2009 (raised by Ms. Belmir)**

Based on official court records, as of April 2016, the Ampatuan Incident account for 58 murder cases involving 58 victims, of which 38 were alleged to be media practitioners. There are one hundred ninety-seven (197) accused with one hundred fourteen (114) already arrested, of which one hundred eleven (111) have been

arraigned. The case is attended by 12 lawyers that comprise the third Panel of Public Prosecutors, 7 law firms as private prosecutors, and 27 defense lawyers/firms.

As of April 2016, a total of one hundred eighty-seven (187) witnesses have been heard by the Court: 159 prosecution witnesses, which included the 58 private complainants, and 28 defense witnesses. There are 110 accused on trial and three of them, including Datu Andal Ampatuan, Sr., died while in detention.

The trial Court has resolved 12 sets of Formal Offer of Evidence relative to the bail applications of 69 accused. Likewise, all bail applications of the accused have been resolved, except that of Datu "Unsay" Ampatuan, Jr., who is currently presenting his rebuttal evidence to refute the prosecution's evidence in opposition to his bail applications. The Court has given him until 25 May 2016 to terminate his presentation of evidence.

The proceedings in Court have reached the hearing on the evidence-in-chief where 4 sets of Formal Offer of Evidence concerning 100 accused have been filed by the prosecution. It is now awaiting the filing of the Formal Offer of Evidence on the remaining 10 accused. After the offers of evidence are resolved, the prosecution will be considered to have rested its case.

The Ampatuan incident, is classified as a primarily election-related killing or incident of violence. It is being closely monitored through the Prosecution Panel and trial support team constituted in 2010.

**218. Lenin Salas (raised by Ms. Belmir)**

In a Resolution dated 21 July 2011, the case was dismissed by Prosecutor Maria Graciella Malapit for insufficiency of evidence. The Motion for Reconsideration was denied in a Resolution dated 21 November 2011.

The rule is settled in criminal law that identification of the offender is crucial in every criminal investigation. The complainants' affidavits failed to sufficiently demonstrate that the respondents actually participated, and/or induced other police officers in the acts of torture complained of.

A Petition for Review is currently filed with the Department of Justice.

**219. John Nerio (raised by Mr. Zhang and Ms. Gaer)**

Based on the records of the PNP's Case Monitoring Division, Directorate for Investigation and Detective Management (DIDM), John Paul Nerio (17 years old) was taken into custody for being involved in a commotion that transpired in a KTV Bar in Kidapawan City on or about 2:30 am of December 10, 2011 and for violating the City Ordinance of Curfew for Minors. Because of the incident, a criminal case for violation of RA No. 7610 or the Special Protection against Child Abuse, Exploitation and Discrimination Law was filed against the suspects before the Kidapawan City Prosecution Office with Docket No. NPS Doc# XII -04 -INV-2011-D-0076. Also, a consolidated administrative case for Abuse of Authority, Police Brutality, and

Violation of their Sworn Duties and Responsibilities was filed against the same suspects was filed before the People's Law Enforcement Board (PLEB) of Kidapawan City docketed as Administrative Case #11-02.

However, due to the filing of an Affidavit of Desistance that was executed by John Paul Nerio with the assistance of his father, the above-mentioned criminal case was dismissed. The administrative case was likewise dismissed because John Paul Nerio failed to testify before the PLEB and the other witness that already testified retracted his previous testimony.

**220. Misuari Kamid (raised by Ms. Belmir)**

The accused Misuari Kamid y Unos a.k.a. "Wari" stands charged with violation of Section 5 and Section 11 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Based on the certification issued by the RTC Branch 7 General Santos City and the letter of the Presiding Judge Panambulan Mimbisa, the court have no occasion of being informed or having information that accused had been tortured or under torture of any kind.

**221. Jonas Burgos (raised by Ms. Gaer)**

The prime suspect in this case, Major Harry Baliaga, Jr. is currently being tried for arbitrary detention before the RTC of Quezon City, Branch 216. On October 25 2013, accused Baliaga posted bail in the amount of Forty Thousand Pesos. Accused was arraigned on November 12, 2013.

To date, four (4) prosecution witnesses have concluded their testimony. Private complainant Edita Burgos concluded her testimony on 4 December 2014. Carlos Royeras was presented and his testimony on direct examination was terminated. On 03 March 2015, Atty. Bumen Pasiwen, counsel for the accused, was indisposed. Cross-examination of Carlos Royeras was scheduled on 14 March 2015.

A Special Tracker Team (STT) under the AO 35 mechanism was created in 2014 to find Jeffrey Cabintoy and Elsa Agasang. Efforts are continuously being undertaken, with the assistance of the Department of Foreign Affairs (DFA) and the Overseas Workers Welfare Administration (OWWA) to locate Elsa as her appearance in court is necessary for her testimony to be admitted and given weight.

**222. Abdul Ajid (raised by Ms. Gaer)**

A Joint Resolution dated 16 January 2013 was issued by the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), which reads:

"Wherefore, it is respectfully recommended that respondents Sgt. George Awing, SSgt. Elmer R. Magdaraog, and Captain Sherwin William S. Giudangen and John Does be indicted with violation of Sections 4 and 5 of RA 9745 (Anti-Torture Act of

2009) and Art. 235 of the Revised Penal Code (Maltreatment of Prisoners). It is further recommended that Capt. Guidangen be indicted with the crime of Delay in the delivery of Detained Persons (Art. 125 of the RPC).

For lack of participation, the criminal complaint against respondents Col. Alexander L. Macario and Sgt. Edgardo B. Santos is hereby DISMISSED.

The administrative charges against all respondents are DISMISSED, without prejudice to the Decision of the AFP, including ongoing disciplinary proceedings being conducted by the Western Mindanao Command involving the same incident.”

In July of 2014, cases for torture and maltreatment of prisoners were filed with the trial courts in Isabela City (RTC Branch 2, Isabela City and MTCC Basilan).

However, due to the fact that accused is/are at-large, these cases have been archived but warrants of arrest against the accused have been issued. This case is among the validated and monitored cases of AO35.

**223. Laguna case (raised by Ms. Belmir, Mr. Touze, and Ms. Gaer)**

In the district office of Provincial Investigation Branch located at St. Francis Subdivision, Phase I, Barangay Halang in Biñan, Laguna, there were reportedly incidents of torture made by certain police officers. According to the complainants' affidavit, torture acts were committed by:

- a. Electrocutation;
- b. Hitting with a baseball bat or steel bat including wooden ones;
- c. Repeated punching and kicking in various parts of the body and head;
- d. Putting a plastic bag over the head;
- e. Blindfolding; and,
- f. Issuance of threats to obtain a confession from the arrested persons and/or to get information as to their alleged source.

A total of twenty-three (23) complaints of torture were filed against the respondent police officers. As of February 2016, eight (8) of these cases have been submitted for resolution while the other fifteen (15) cases were dismissed due to lack of probable cause. These cases are set to be reviewed by the AO 35 technical working group and the necessary actions, including the formation of special teams, shall be elevated for the approval and swift implementation of the high-level inter-agency committee.

**224. Farmer allegedly tortured (raised by Ms. Belmir)**

The man allegedly tortured, was accused of sending his 14 yr old grandson to steal from a store. Fetched by the father of the store-owner and 3 CAFGUs at his house and was brought to the CAFGU, a para-military unit, detachment where its cadre, waited for him. The farmer's son and grandson were also at the detachment was allegedly beaten and ice-cold water poured over him. The 10th Infantry Division, upon knowledge of the incident, directed the Battalion Commander of the 72 Infantry Battalion to place under his custody all personnel involved in the incident and to

conduct an investigation. The 4 CAFGUs and the military, in accordance with the Articles of War, were then placed under military arrest and restricted to barracks pending investigation. Thereafter, they were discharged from the military service, pursuant to the military justice system. The victim filed a police report and will press criminal charges against the military and CAFGU personnel.

### **III. CLOSING STATEMENT**

The Philippines expresses its appreciation for the very fruitful and productive two days of interactive dialogue. The Philippines hopes that the members of the Committee have learned much from the Philippines' experience in the anti-torture campaign as members of the Philippine delegation have learned from the valuable insights and inquiries of CAT, as experts in the field of torture protection and prevention.

As emphasized in the Opening Statement, the Philippine delegation came with an openness and willingness to engage in a constructive manner with the Committee. The confidence that the Philippine delegation exhibited is imbued by its desire to address the complex challenges that come with its effort to rid Philippine society of a malaise – incidences of torture and other cases of cruel, inhuman and degrading treatment that, though isolated, only serve as a sad reminder of man's continuing capacity to be cruel toward his fellowmen.

The Philippines joins the UN Committee Against Torture, and the United Nations in general, in advancing the global campaign against torture. But the Philippines cannot fully become an anti-torture champion in the world if its own record is perceived to fall short of standards and expectations. And this is how the Philippines affirms the value of its having engaged with the Committee in its 57th Session.

As the Philippine seeks to fulfill this objective of being fully compliant, the Philippines reiterates before the Committee – and the world – that, as a matter of State policy, it prohibits and abhors all forms of torture or ill-treatment and judiciously addresses the commission of such acts, all in keeping with the spirit and resolve of the UN Convention Against Torture.

The Philippines trusts that the Committee, in these two days of interactive dialogue, has come to appreciate the extent in which the Philippines has sought to fulfill its obligations under the Convention during the reporting period, and will continue to do so in the years that will follow with tenacity of purpose.

**END**