



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/PHL/Q/2
15 December 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Forty-second session
27 April – 15 May 2009

ADVANCE UNEDITED VERSION

**List of issues to be considered during the examination of
the second periodic report of THE PHILIPPINES (CAT/C/PHL/2)**

Article 1

1. Notwithstanding the statement in the report that the Revised Penal Code guarantees that all acts of torture are classified as criminal offences with corresponding penalties under Philippine laws, please inform the Committee of steps taken by the State party to amend its legislation and institute a crime of torture as defined by the Convention in its Penal Code. According to the report, the Committee on Justice has adopted House Bill No. 5846 which is a consolidation of three bills on torture, and in the Senate, two bills on torture have been filed and are pending consideration at the committee level. Please provide more information on these bills and clarify their content and interrelatedness. What is the status of these bills? (State party report, paras. 3 and 4)

Article 2

2. Please describe how the basic legal safeguards for detained persons, as provided for in Republic Act No. 7438 (including prompt access to defence counsel and medical examination and the right to inform a relative), are implemented in the State party from the outset of their detention. Please provide information on any restrictions that may be imposed on these rights and elaborate on the statement that “..the provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape” (State party report, para. 56). What steps are being taken by the State party to ensure that this is interpreted in a narrow manner? (State party report, para. 54) Please also provide information on the implementation of the penalty clause contained in section 4 of the same law. How often has this clause been invoked and how many public officials have been sanctioned in this respect?

3. Please provide detailed information on the *de facto* practice of detention of suspects by the Philippine National Police (PNP) and the Philippine Armed Forces (AFP), including numbers and length of such detention. Please comment on reports that although authorities are required to file charges within 12 to 36 hours of arrests made without warrants, depending on the

seriousness of the crime, lengthy pretrial detention remains a problem, due to the slow judicial process. Please also comment on reports that the use of arrests without warrants is extensive, that many of these arrests may be arbitrary and that criminal suspects are at risk of torture and ill-treatment during extended periods of “investigative” detention. Are persons detained by the PNP and the AFP systematically registered and is there a central registry of detainees in place?

4. Please comment on reports that Republic Act 9372 (Human Security Act of 2007), also known as the Anti-Terrorism Act, permits persons apprehended in the Philippines to be rendered to countries that routinely commit torture, as long as the receiving State provides assurances of fair treatment. Does the Act allow for suspects to be detained without warrant or charge for up to 72 hours? Please describe the steps taken by the State party to address the concerns expressed by the Special Rapporteur on the promotion and protection of human rights while countering terrorism in respect of the Human Security Act, including the broad definition of “terrorist crimes”, the strict application of a penalty of 40 years’ imprisonment, the competence of various bodies authorized to review the detention of an individual, and the restrictions on movement (A/HRC/6/17/Add.1, paras. 64-97).

5. Please inform the Committee whether legislation prohibiting torture and cruel, inhuman and degrading treatment contains specific provisions regarding gender-based breaches of the Convention, including sexual violence. Please also describe all, if any, effective measures taken to monitor the occurrence of and to prevent such acts, and please provide data, disaggregated by sex, age and ethnicity of the victims, and information on investigation, prosecution and punishment of perpetrators.

6. Information before the Committee indicates that the State party continues to be seen as a source, transit and destination country for cross-border trafficking of women and children for sexual exploitation and forced labour. Please provide updated information on any new legislation and/or measures adopted to prevent and combat sexual trafficking as well as the relevant statistical data on this issue, especially the number of complaints, investigations, indictments, and convictions relating to trafficking. What measures have been taken to provide assistance to victims, including gender-sensitive training to sensitize law-enforcement officials in contact with these victims?

7. Could you please comment on reports that the number of cases of violence against women reported to the police increased six-fold from 1996 to 2005? Please provide information on legislative and other measures undertaken to prevent domestic violence and to classify acts of domestic violence as specific offences under the criminal law. Please provide statistical data on complaints, prosecutions and sentences in matters of domestic violence. Please indicate which measures have been adopted to sensitize and train law enforcement personnel and other relevant staff to recognize domestic violence and to ensure that they take preventive measures, as appropriate, and prosecute those responsible.

8. Please provide more information on the mandate and activities of the Presidential Human Rights Committee (PHRC), as well as the human and financial resources allocated to it. According to the report, the President has issued Administrative Order No. 163 on the strengthening and increase of membership of the PHRC as well as expansion of its functions, whereby the Department of Interior and Local Government (DILG) has been mandated to lead an inter-agency working group and to coordinate for compliance with and implementation of the Convention. Please elaborate on this issue and explain how the reconstitution and strengthening

of the PHRC may ensure “a much fuller compliance and implementation of the provisions”.
(State party report, para. 7 and 122)

Article 3

9. In respect of the provisions implementing article 3 of the Convention into domestic law, please clarify who are the competent authorities, what are the existing legal safeguards and the procedures for appeal, including whether these have suspensive effect, regarding the expulsion, return and extradition of persons to another State? Please provide detailed information on all decisions taken in this respect and other return cases relevant to article 3 of the Convention as well as on the criteria for such decisions, including the number of cases, the countries to which persons were returned, and whether there were any cases where return/extradition was refused because of a risk of torture, and if so, to which countries.

10. Please provide detailed information on whether the State party has engaged or participated in any form in the so-called extraordinary renditions; include in your answer whether any investigation on this issue has taken place by branches of the Government or State agencies. Are there pending cases on this issue? If so, please provide details.

11. Please explain what measures have been considered by the State Party to determine its non-refoulement obligations under article 3 of the Convention with regard to the existing bilateral extradition treaties signed by the Philippines? Under those treaties, has extradition ever been denied on grounds that a persons would be in danger of being subjected to torture if extradited to the requesting State? If so, please provide details. What post-return monitoring mechanisms have been put in place? (State party report, paras. 43-47)

Article 4

12. Please provide detailed information on current criminal provisions concerning offences such as attempted acts of torture, instigation or consent of torture or the order to commit torture by a person in authority and the exact penalties imposed for any of these offences. Please provide information on the number and the nature of the cases including geographical location of the offenses prosecuted, in which those legal provisions were applied as well as on the penalties imposed or the reasons for acquittal.

Articles 5, 7 and 8

13. Please indicate any legislative or other measures taken to implement each provision of article 5 of the Convention. Under the legislation in force, are acts of torture considered universal crimes under national law, wherever they occur and whatever the nationality of the perpetrator or victim? Please provide any relevant examples of any such prosecutions. Does the State party apply the Convention to persons under its jurisdiction in cases where the Philippine troops or police officers are stationed abroad? If so, please provide relevant details.

14. Please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging its own prosecution as a result. What is the status and outcome of such proceedings? Which sections of the Philippine Penal Code were violated in such cases?

Article 10

15. The report indicates that, with the close collaboration of the Commission on Human Rights of the Philippines (CHRP), human rights components are included in the training programs for all military and law enforcement units of the government. (State party report, paras. 49 and 50) Please provide further information on the instruction and training provided for law-enforcement officials and other public officials with respect to human rights, specifically the number and the content of training programmes on the treatment of detainees and vulnerable groups, and on the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Is gender-sensitive training conducted? Please specify who conducts and who undergoes the training, and if the Convention is made known in the course of such programmes. How and by whom are such training and instruction programmes monitored and evaluated?

16. Please provide detailed information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological *sequelae* of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol?

Article 11

17. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any new rules, instructions, methods and practices or arrangements for custody that may have been introduced. Please also indicate the frequency with which these are reviewed. Do any rules exist that would prohibit investigations, visits by international bodies or mechanisms, or other forms of human rights scrutiny?

18. Please provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the number of imprisoned persons and the occupancy rates for the detention facilities for the period 2000-2008.

19. Could you please comment on reports of ill-treatment in detention centres, including severe overcrowding, sub-standard facilities and lack of basic facilities? Please provide specific examples. According to the report, the Government, through the Budget and Management Secretary, has vowed to pour more funds into the Bureau of Jail Management and Penology to ensure a more just and restorative prison system. (State party report, para. 93) Please inform the Committee of measures taken by the State party to improve these material conditions and of any concrete legislative plans and budget allocations relevant to addressing this problem in the future.

20. Please provide statistics on the number of children in detention, disaggregated by sex, age and ethnicity. Please provide information on the measures taken by the State party to address the serious concerns expressed by the Committee on the Rights of the Child (CRC/C/15/Add.259, paras. 89-91) about the high number of persons below 18 years of age in detention, the persistent violations of the rights of children in conflict with the law, the alleged cases of torture, abuse, including sexual abuse and other forms of degrading treatment of persons below 18 years of age in detention, and the overall deficiencies in the administration of the Philippine juvenile justice system. According to para. 87 of the report, the President has recently signed Executive Order No. 633 providing for the immediate release of detained children in conflict with the law as

declared under R.A. 9344, the “Juvenile Justice and Welfare Act of 2006”. Please provide information on the implementation of this Order, including the number of children released. Please indicate what the situation is at present with regard to the strict separation from adults of persons below 18 years of age in places of detention.

21. What is the situation at present with regard to the separation of female and male detainees? What steps have the State party taken to ensure that women prisoners are guarded exclusively by female prison staff?

Articles 12 and 13

22. According to the report, various authorities have the power to investigate complaints of human rights violations committed by public officials, including reports of torture, i.e. the Office of the Ombudsman, the Internal Affairs Service of the Philippine National Police (IAS), the CHR, the Human Rights Offices of PNP and AFP and the human rights desk of the National Bureau of Investigation. (State party report, paras. 61-65 and 76-77) Please elaborate on the respective mandates of these mechanisms and describe how they coordinate their activities to avoid overlaps and how their mandates are clarified vis-à-vis complainants.

23. Please describe the procedure to be followed in cases of complaints against police and military misconduct. In particular, please describe the steps taken by the State party to ensure that the investigation of complaints is independent, prompt and effective. Does the State party consider establishing an independent police complaints and accountability body? Please provide information, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, both at the penal and disciplinary levels, and the outcomes of them. This information should be disaggregated by sex, age and ethnicity of the individual bringing the complaint and indicate which authority undertook the investigation.

24. Could you please provide information on the measures taken to address the concerns expressed by the Human Rights Committee about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials (CCPR/CO/79/PHL, para. 12)?

25. According to information before the Committee, Raymond and Reynaldo Manalo (brothers) were forcibly taken from their residence by unidentified armed men in 2006, and held in various military detention camps for 18 months during which they allege they were tortured by military officials, at the acquiescence of a high ranking military official. Please provide the Committee with information on the investigations, prosecutions and convictions, if any, into the alleged torture of Raymond and Reynaldo Manalo by members of the Armed Forces of the Philippines.

26. According to the report, Republic Act No. 6981 provides for a Witness Protection Security and Benefit Program. (State party report, paras. 6(b) and 73) In this respect, please comment on reports of systematic intimidation and harassment of witnesses and that the Witness Protection Program is underused and not sufficiently implemented. Information before the Committee also refers to long court delays and notes that the protection is withdrawn if the case is unsuccessful, despite continuing threats. Please provide detailed information on steps taken by the State party to strengthen the Witness Protection Program and ensure its effective implementation.

Article 14

27. According to the report, Republic Act No. 7309 provides for the granting by a Board of Claims of compensation to victims of violent crimes and a total of 22,469 applications for compensation have been granted by the Board from 1992 to June 2006. (State party report, para. 78) Please elaborate on the composition of the Board of Claims and explain how the Board members are appointed or elected. Please explain if national courts can also order redress and compensation measures and provide further information on redress and compensation measures ordered by the courts and/or the Board of Claims and provided to victims of torture, or their families, since the examination of the last periodic report in 1989. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations into such cases continue until the perpetrator(s) is/are identified and brought to justice?

28. The report indicates that non-governmental organizations, such as the Balay Rehabilitation Center, conduct rehabilitation programmes for victims of torture. (State party report, para. 80) Please provide further information on these programmes, including whether the Government is providing financial and/or other support for their effective functioning. Please also provide information on additional steps taken by the State party to ensure medical and psychosocial rehabilitation of the victims.

Article 15

29. According to para. 15 of the report, Article III, section 12 (3) of the Philippine Constitution provides that "...Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him [person under investigation for the commission of an offense]. Please provide examples of any cases where allegations of confessions extracted under torture have existed and inform the Committee of any measures taken by the State party to ensure that the burden of proof rests with the prosecution.

Article 16

30. Please provide information on steps taken by the State party to address the concerns expressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions in respect of continued extrajudicial killings by government institutions, particularly the military (A/HRC/4/20/Add.3), as well as the concerns expressed by the Human Rights Committee regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse, including of detainees, many of whom are women and children, that have neither been investigated nor prosecuted (CCPR/CO/79/PHL, para. 11).

31. Please comment on the findings in 2007 of the investigating commission established by the President under the guidance of former Supreme Court Justice Jose Melo (the Melo Commission) that "[T]he victims, of which this Commission is concerned, were all non-combatants. They were not killed in armed clashes or engagements with the military", that the "killings of activists and media personnel is pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims, invariably activists and media personnel" and that "there is certainly evidence pointing the finger of suspicion at some elements and personalities in the armed forces, in particular General Palparan, as responsible for an undetermined number of killings, by allowing, tolerating, and even encouraging the killings."

32. Please comment on reports that human rights defenders, including indigenous rights defenders such as Lumads of Mindanao and Igorots of the Cordillera, are among the most targeted groups and that trade union and peasant activists, journalists and reporters are often also victims of serious human rights violations. In this respect, please explain how Administrative Order No. 181 recently issued by the President, directing the cooperation and coordination between the national prosecution service and other concerned agencies of government for the successful investigation and prosecution of political and media killings, would contribute to the enhancement of the investigation and prosecution of torture cases. (State party report, para. 66)

33. According to reports before the Committee, indigenous peoples are among the most marginalised groups in the Philippines and are often victims of various forms of abuse, violence and exploitation. Sources also claim that, due to their poor living conditions and social exclusion, indigenous children are at risk of becoming involved in armed conflict and being recruited into armed groups and that armed conflict also renders indigenous women and girls more vulnerable to physical and sexual violence. Please describe the measures taken by the State party to protect civilians in areas affected by armed conflict and to address the issue of violence against indigenous peoples, including women and children. This should, inter alia, include information about investigations into allegations of offences pursuant to articles 1 and 16 of the Convention.

Other

34. Please provide information on the legislative, administrative and other measures undertaken by the State party to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards in law and practice. In this respect, the Committee would like to recall Security Council Resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) all of which reiterate that States must “ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.” Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints.

35. The report provides that the State party is on the verge of ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Please provide updated information on the process and indicate whether there is a timeline for the ratification of the OPCAT. Does the State party plan to establish or designate a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment? (State party report, para. 29)

36. Is the State party considering making the declaration under articles 21 and 22, recognizing the competence of the Committee to receive and consider communications?

37. Does the Philippines envisage ratifying the Rome Statute of the International Criminal Court?
