



Commission on Human Rights of the Philippines

Response to the *List of issues*

**to be considered during the examination of the Second to the Fifth periodic reports of
THE PHILIPPINES**

on the

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

and

Comments on Government's Compliance with the Convention

Torture remains undefined in domestic law despite the Philippines' accession to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its consequent entry into force on 18 June 1986. This is the primary reason for the unfettered violations on the right to be free from torture, cruel, inhuman or degrading treatment or punishment in the Philippines.

The Commission on Human Rights of the Philippines [hereinafter, CHRP or the Commission] engages the Committee against Torture in the treaty reporting process drawing from its mandates as provided for in the 1987 Constitution, to wit:

1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
2. Adopt its operational guidelines and rules of procedure, and cite contempt for violations thereof in accordance with the Rules of Court;
3. Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measure and legal aid services to the underprivileged whose human rights have been violated or need protection.
4. Exercise visitorial powers over jails, prisons, or detention facilities;

5. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
6. recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
7. Monitor the Philippine Government's compliance with international treaty obligations on human rights;
8. Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
9. Request the assistance of any department, bureau, office, or agency in the performance of its functions;
10. Appoint its officers and employees in accordance with law; and
11. Perform such other duties and functions as may be provided by law

The Commission was consulted by both government and non-government organizations in the course of drafting their respective reports. However, the Commission found difficulty in obtaining the Government report upon its submission to the Committee against Torture.

It is in this respect that the Commission submits its response to select list of issues and comments on compliance with the Convention and its recommendations for consideration in the concluding observations.

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)

The Commission is encouraged by recent developments in the campaign for the passage of the Anti-Torture Bill in the House of Representatives [Annex A: House of Representatives' Version of the Anti-Torture Bill as passed on third reading last 5 March 2009].

In this effort, the Commission has released various issuances including its position paper on the proposed legislation to address the failure to implement the primary obligation stipulated in the Convention by legislating torture as a crime in the Philippines.

In the House of Representatives, the Anti-Torture Bill has passed 3rd reading last 6 April 2009. The Commission has posed the challenge to the Senate to respond by passing its counterpart bill which has yet to undergo 3rd reading before a bicameral conference can be convened to elevate the bill to

the Executive for signature. [Annex B: CHRP Press Statement on Anti-Torture Bills]

Main issues that have been deliberated in technical working group meetings in both chambers are the following:

Under the definition of torture, various duty bearers have raised the issue of why non-state actors, as such, cannot be included. The Commission, in its position paper, underscored the possibility of having a 'broader definition' to include non-state actors in the proposed legislation [Annex C: CHRP Position Paper on the Anti Torture Bill].

Another issue is on the inclusion of a provision that neither an order from a superior nor an order of battle can be used as a justification of torture. The Commission proposed a statement that will recognize the non-derogability of the right to be free from torture, and other cruel inhuman or degrading treatment or punishment as emphasized under the General Comment 29 of the Human Rights Committee.

Discussions on Command Responsibility were also undertaken and the Commission recommended the adoption of the definition of Command Responsibility as found in Article 28 of the Rome Statute.

In the Commission's issuances, it was underscored that, while the failure to criminalize torture falls squarely on the legislature in its responsibility to harmonize laws, the Executive branch shares this obligation by ensuring the certification of the measure as an urgent concern. The mechanism called the Legislative-Executive Development Advisory Council (LEDAC)¹ is a venue that can be harnessed for the greater cooperation for the passage of human rights legislation.

The Commission, in the exercise of its mandate to 'monitor government compliance with International Human Rights Treaties' and 'recommend to Congress effective measures to promote human rights', has issued a Human Rights Legislative Agenda [Annex D: Human Rights Legislative Agenda] that utilizes core human rights treaties as basis for the harmonization of domestic laws with human rights standards and principles. The Human Rights Legislative Agenda has been offered to both the Legislature and the Executive to ensure the full protection of human rights through the enactment of laws, primary of which is the passage of Bill on Anti-Torture. Other relevant legislative proposals to the implementation of the Convention include the following:

- Anti-Enforced Disappearance
- Rights of the Accused, particularly on the Prohibition on the Public Display of Persons Accused
- Enforcement and Operationalization of Command Responsibility to include civilian Organizations
- Unified Penitentiary System under one Agency of Government

¹ The Legislative-Executive Development Advisory Council (LEDAC) was established by virtue of Republic Act 7640 on December 7, 1997. The Council proper is composed of twenty members from both the executive and legislative branches of government. It is chaired by the President of the Philippines. The activities of LEDAC are overseen by an executive committee whose membership also come from the various executive and legislative offices.

The LEDAC Task Force to Prioritize the Common Legislative Agenda (CLA) is a committee composed of members from the executive and legislative offices. It is chaired by the Executive Secretary and includes both the majority and minority floor leaders of both houses of Congress. The committee monitors the CLA and discuss/resolve issues involving passage or prioritization of legislative measures included in the CLA.

- Release on Recognizance

The Agenda also includes the ratification of the following human rights instruments:

- Second Optional Protocol to the ICCPR (the Government acceded to OP2-ICCPR on 20 November 2007)
- Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) (to which the Philippine Government committed to ratify in its candidature to the Human Rights Council and its consequent Universal Periodic Review in 2008).

It is in this regard that the Commission requests the Committee to include in its observations the adoption of the Human Rights Legislative Agenda, particularly the measures relating to the respect, protection and fulfillment of the right not to be subjected to torture and to cruel, inhuman or degrading treatment or punishment. Moreover, the Executive is called upon to ensure the certification of the measures as urgent and wield its persuasive powers in both houses of the Legislature to pass the proposals.

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.

x x x

The case of the disappearance, search and subsequent finding of Muhamadiya Hamja, referred by the Non-Government Organization, Karapatan, is illustrative of a violation of RA 7438 particularly in respect of the right to counsel and the right to inform a relative.

On 28 November 2008, Mr. Hamja, just came from the Mosque a few meters away from his home when a white van with several armed persons stopped and forcibly took him away. The vehicle was later identified by a bystander through its license plate number.

On December 3, 2008, a composite team from the Commission was dispatched to assist the complainant, son, Mr. Ahmad Hamja in looking for his father. The CHR team initially went to the Southern Police District (the Police unit with area jurisdiction) and inquired on the whereabouts of Mr. Hamja. They were asked to proceed to the Criminal and Investigation Detection Group Office located in the Philippine National Police Office Headquarters to the office of its chief, Police Inspector Wilfredo Sy. Upon knocking on the slightly ajar door of said officer, Ahmad recognized the sandals of his father and became hysterical, when upon forcibly entering the room, he saw a weak and injured condition of his father, blindfolded and handcuffed.

Upon becoming aware of the commotion, P/Insp Sy accosted the CHRP team who was in turn informed of their mission to locate Hamja. It was only then that the son Ahmad was informed of the arrest of Muhamadiya Hamja aka Madja Hamja by virtue of an alias warrant of arrest for Kidnapping and Serious Illegal Detention issued by Hon. Presiding Judge Danilo M. Bucoy, of RTC Br. 2 Isabela, Basilan dated February 7, 2007. Allegedly, Hamja, was turned-over only to their

Office on 2 December 2008 by the Naval Intelligence and Security Force.

The case is undergoing Public Inquiry by the Commission *en banc* to determine the violations of human rights committed against the person of Muhamadiya Hamja.

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?

The safeguard underpinning the rights of detainees is the general rule that a person can only be arrested with a warrant issued by a judge upon the finding of probable cause. However, the law permits arrests without a warrant in certain limited circumstances under rule 113 of the Rules of Criminal Procedure. In case of lawful warrantless arrests, Article 125 of the RPC provides that police officers are required to deliver an arrested person before the proper judicial authority within the prescribed periods of 12, 18, and 36 hours, depending on the seriousness of the alleged offense. Failure to do so can subject the officer responsible to prosecution and penalties for arbitrary detention.

However, in the investigations of the Commission, the patterns of arrest and investigation of political and criminal suspects suggest that in practice, the procedural safeguards are not observed. During custodial investigations, access to lawyers and relatives are frequently denied or prohibited. The safeguards to be observed during custodial investigation are in reality weak.

In theory, a suspect could report the torture or ill treatment, or request a medical examination, or complain about extended detention period. In practice however, the victims often remain silent, believing that the prosecutors, police or assisting lawyer maybe in collusion with one another. It appears that the inquest proceeding has become a legal formality to facilitate the filing of charges. The periods of custodial investigation frequently appear to be unlawfully extended beyond the allowed 36 hours maximum through the misuse of signed waivers. Intimidated detainees who often suffer ill-treatment are coerced by the police to sign waivers or statements to the contrary.

With the Hamja case illustrating the use of an alias warrant of arrest and the procedural safeguards as stipulated in Republic Act 7438, particularly on the right to counsel and the right to inform a relative of the arrest, as well as the noted patterns of arrest and investigation, the Committee is requested to include, in its concluding observations, Government's obligations particularly on the strict adherence to the human rights safeguards as provided in the Convention, domestic laws and procedures.

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?

x x x

In the Commission's Advisory on the issue of Terrorism and efforts to legislate the same, [Annex E: CHR Advisory No. CHR-A08-2001], it declared support for efforts of counter-terrorism. However, the Commission underscored that all counter-terrorism measures must be consistent with the respect for human rights and conform to all international instruments on human rights. In this advisory, the Commission urged the ratification of the Rome Statute establishing the International Criminal Court which has jurisdiction on crimes against humanity including international terrorism and torture.

The Commission has noted two provisions in the Human Security Act that affect its constitutional mandate. The Commission was not consulted by the Legislature in crafting these provisions.

The first is on Section 19 of the Human Security Act concerning the period of detention in the event of an actual or imminent terrorist attack:

. . . Suspects may not be detained for more than three days without the written approval of a municipal, city, provincial, or regional official of a Human Rights Commission . . .

The law does not specify the Commission on Human Rights but rather, looks at an official of a Human Rights Commission to grant authority for prolonged detention. CHRP has a regional but not a city, municipal or provincial office. Substantively, this provision is viewed to be in conflict with its mandate in the 1987 Constitution to ‘ Exercise visitorial powers over jails and detention facilities ’ which enables investigation of violations against detained persons’ human rights including illegal, arbitrary arrest and detention. How can the CHRP investigate and monitor the legality of detention if it is also tasked to grant authority for prolonged detention of suspects?

The Second is on Section 55 which, in effect, grants the Commission prosecutorial powers:

The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act . . . concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, accused of, or detained for the crime of terrorism or conspiracy to commit terrorism.

To this grant of prosecutorial powers, we concur with the stand of Special Rapporteur Philip Alston in his mission to the Philippines last 2007:

The proposal's risks outweigh its benefits. First, there are already other organs responsible for prosecuting cases. . . to give the CHRP prosecutorial powers would not only be redundant but would compromise a responsibility held by the CHRP, which is to monitor all of these organs for human rights compliance. Second, while a grant of prosecutorial powers might give the CHRP more teeth, it would also increase the security risks faced by its investigators and witnesses.

To ensure that the conflicting provisions are harmonized with the role of the Commission as a national human rights institution and give primacy to the investigation of human rights

violations in the course of counter-terrorism, the Commission requests the inclusion of its comments on the 'Human Security Act' in the Committee's concluding observations.

Moreover, the Commission has campaigned for the passage of the CHRP Charter that will primarily provide for the needed strengthened investigative powers of the Commission.

The Legislature is positively responding to the Commission's strengthening with technical working group meetings in progress in the Senate and the House of Representatives through the Committee on Human Rights in the process of approving on 2nd reading the CHRP Charter bill. Initially expressing its intent to provide the Commission with prosecutorial powers, the Commission respectfully declined and presented an alternative of elaborating on the quasi – judicial powers of the CHRP in aid of its investigative powers as bestowed upon by the drafters of the 1987 Constitution. [Annex F: 'CHRP Charter' House of Representatives Version]. With strengthened investigative powers, among other mandates elaborated in legislative proposals, the 'teeth' being sought for the Commission will be provided.

We fervently seek the Committee's unequivocal inclusion of the passage of the CHRP Charter as an urgent measure by Government, to contribute to squarely addressing the unfettered violations of human rights in the country.

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?

In July 1986, President Corazon C. Aquino issued Memorandum Order No. 20 entitled 'Education of Arresting and Investigating Personnel on Human Rights' which prescribed the minimum coverage of their study of human rights, as they would integrate in the education and training of all police, military and other arresting and investigating personnel, the following topics:

- The Bill of Rights in the 1987 Constitution
- Pertinent Articles of the Revised Penal Code
- Republic Act 857
- Sections 1705 to 1751 of the Revised Administrative Code of 1987
- The Rules for the Treatment of Prisoners adopted by the Department of Justice on 7 January 1959; the Ministry of Justice Manual on the general rules, policies and operating principles adhered to in the prison service.

The same Presidential Memorandum Order No. 20 conditions the 'continuance in office of arresting and investigating personnel) on their successfully completing the courses' on human rights. This provision is restated in the 1995 Presidential Memorandum Order No. 259 entitled 'Requiring Human Rights Education and Training of Law Enforcement, Police, Military and Prison Personnel' issued on 7 February 1995 by President Fidel V. Ramos.

These prescribed content are part of the Commission's General Human Rights Education Curriculum from which modules have been developed and used in the CHRP Human Rights

Education and Training for the Police and Military. [Annex G: Description of Human Rights Modules]

The Commission on Human Rights, through its Human Rights Education Office and its Regional Offices, conducts relevant human rights trainings for various personnel particularly focused on security forces. In relation to the teaching of standards and principles of the Convention, the Commission has instituted regular training programmes with the law enforcement agencies of government including government medical professionals under the Department of Health, Provincial and Municipal health officers; jail personnel under various agencies with custodial mandates such as the Bureau of Jail Management & Penology and the Philippine National Police under the Department of Interior and Local Government, Bureau of Corrections under the Department of Justice and members of the Armed Forces of the Philippines under the Department of National Defense and the Philippine Drug Enforcement Agency under the Office of the President.

The Commission views the need for an impact assessment of Human Rights Education programmes. Such Human Rights Education programmes should be evaluated as to its efficacy in the application of human rights principles, norms and standards as applied in actual operations of security forces. Hence, it is suggested that the Committee include the need for an impact assessment of the Human Rights Education programme of the Commission and its integration in the curriculum of law enforcement agencies of Government.

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?

Generally, the Commission, upon showing of its mission order asserting the constitutional power 'to visit jails, prisons, and detention facilities' is immediately allowed by jail officials/wardens to conduct inspection of the jail facilities and conduct medical examination upon the prisoner or detainee. However, there have been a number of cases where the Commission has been denied entry into jails and detention facilities mostly under the jurisdiction of the military. Government has cited reasons of national security in denying access to detained persons. To cite examples:

On 16 September 2008, The Commission was denied entry into the Philippine Marine Corps headquarters Battalion, Fort Bonifacio, Taguig where military officers are detained in relation to the alleged attempted coup by the group. Complaints of inhumane treatment, denial of medical attention and solitary confinement were lodged in the Commission.

On 28 – 29 October 2008, the Commission issued a mission order to visit detention facilities in search of James Moy Balao of the Cordillera People's Alliance. The Commission was initially denied access to the following places of detention:

- 28 October 2008, ISAPF/AFP Custodial Center, Camp Aguinaldo, Quezon City
- 29 October 2008, ISAPF General Hospital and Detention Center, Fort Bonifacio
- 29 October 2008, PNP Custodial Center

The CHRP Charter addresses this concern by ensuring emphasis on the visitorial powers of the Commission to include unhampered and unrestrained access to detention facilities.

In the Workshop on the Establishment of a National Preventive Mechanism for the Prevention of Torture held last September 2008, alongside efforts to campaign for the ratification of the Optional Protocol to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Commission has expressed its willingness to take a central role in the national preventive mechanism because the Commission views itself as a form of a visiting mechanism that is already duly provided for in the Constitution.

The Commission recommends the inclusion in the concluding observations on the fulfillment of the obligation of Government to respect and ensure the visitation mandate of the Commission alongside the call to make good Government pronouncements in its pledge and its Universal Periodic Review as a member of the Human Rights Council to ratify the Optional Protocol.

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.

The Commission on Human Rights in its visitation of jails and detention facilities has confirmed reports of violations of the Convention. These include violations in the following areas: Accommodation, Hygiene, Clothing, Food, Water, Exercise, Access to Justice issues and infliction of torture, cruel, inhuman and degrading treatment or punishment.

The reports over the years have stated that jails/detention facilities are generally observed as 'deplorable' with highly congested cells as the most common observation. This condition is further aggravated by the lack of adequate ventilation and lighting facilities. Prisoners/detainees likewise complain of inadequate food allowance and lack of basic utilities like water and sleeping paraphernalia. There were also complaints about some prisoners being allowed to go out without a court order. Some jails have no comfort rooms while others have no separate detention cells for women and male detainees. Abuse of inmates by jail guards and fellow inmates are also prevalent. There have been reports that reached the Commission on incidences of hunger in jails.

Using as sample the jails in the National Capital Region², there are facilities that reach up to 353% over their capacity rates. Food Budget for each prison ranges from PhP³20 – 40 to a high of PhP50 per day. Agencies have attributed this low provision to the lack of budgetary allocation from national government.

The Human Rights Legislative Agenda through the passage of proposals, including the bill on a unified penitentiary system under one agency of government, addresses not only the proper monitoring of persons under custody in various detention centers in respect of their rights to human treatment and privileges of parole, probation and clemency. It is also aimed at integrating scarce resources looking to ensure, in combination with other measures, humane conditions inside

2 Quezon City Jail, Manila City Jail (male and female dormitory), Mandaluyong City Jail in 2008.

3 Philippine Pesos

detention facilities. Another bill that is also intended to decongest places of detention will allow detained persons, who, under existing laws are unable to post bail due to inability to pay the same, be released in recognizance. Detention prisoners or those persons in custody awaiting trial, according to estimates by both government and non-government organizations range from 70 – 85% of the total jail population.

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 CHRP, 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.

The Commission is an independent human rights institution with a mandate that has for its subject, any state agent or a private individual. The Commission, can by complaint or on its own, conduct investigations of human rights violations. Its investigation mandate is multi-dimensional as it not only involves the eventual referral of a human rights violation case to the Prosecutor's office of the Office of the Ombudsman for the filing of criminal or administrative charges, but may also come up with recommendations to the legislature, the executive and the judiciary.

Coordination between and among the agencies with the mandate to investigate reports of torture is conceivable but is not practiced. Under the Constitution, the Commission has the mandate to 'request the assistance of any department, bureau, office, or agency in the performance of its functions', particularly in the conduct of its investigations. In some instances, the Commission executes a Memorandum of Understanding with other agencies to clearly define each party's role and responsibilities in the conduct of their respective investigations.

As a National Human Rights Institution, the Commission serves as a forum where complaints of alleged acts of torture are investigated and endorsed for action by the courts and administrative bodies. The Commission has applied the Istanbul Protocol, which contains the first internationally recognized standards and procedures on the documentation of torture, in the investigation of complaints falling under the purview of the Convention.

For the period 2001 - 2009, the CHRP through its Forensic Medical Division, has documented 139 cases of alleged torture applying the Istanbul Protocol. These alleged acts of torture occurred in places of deprivation of liberty such as lock-up cells, detention centers and jails. [Annex H: List of Cases on alleged acts of torture with the victims identified as examined by the CHRP using the

Istanbul Protocol].

Despite many agencies having the mandate to investigate complaints of torture, there lies a lack in performing the obligation by Government to take 'effective legislative, administrative, judicial or other measures to prevent and punish acts of torture'. The Commission has described a 'catch 22' situation wherein Government asserts that there is no such policy of torture and any complaint is immediately addressed. However, when asked to account for the number of cases investigated and being prosecuted on torture, these agencies admit that there is great difficulty in tracing the cases as they are hidden in charges of other offenses. The importance of labeling 'torture' as such in penal law was underscored by the Commission as a legal obligation unfulfilled for the past 22 years by Government.

It is thus recommended that, the concluding observations must call Government to task and ensure the immediate passage of the Anti-Torture Act in accordance with the definition provided for the Convention.

In addition, the potential of an independent forensic office has been raised and envisaged to be placed under the Commission. The added value of establishing an independent forensic office brings to fore another resource that could be utilized in the task to ascertain the instance of torture and bring cases to courts concomitant with the passage of a law criminalizing torture in the country. The current legislative proposals provide for the application of the Istanbul Protocol as Government's common tool for the detection, reporting, documentation as well as in development of specialized treatment programs for victims of torture.

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.

The case of the Manalo Brothers is a window to a systematic practice of torture in the Philippines. This is because the brothers stated that they have seen other disappeared persons who were also tortured while in detention, particularly the two University of the Philippines students, Karen Empeño and Sherlyn Cadapan.

This case was initially referred to the Commission through the Families of Victims of Involuntary Disappearance (FIND) requesting appropriate and expeditious action regarding the enforced disappearance of two brothers. The matter was taken up by the Commission's Region III Office, who recommended the filing of corresponding criminal and administrative charges against the alleged perpetrators. The Regional Office likewise recommended that financial assistance be extended to the mother of Raymond Manalo and wife of Reynaldo Manalo.

Subsequently, on 22 May, 2006, the office of FIND requested the assistance of the CHRP, that they may be accompanied in going to the province of Nueva Ecija, where they were last seen, to search for the above-named victims. CHRP Investigators conducted an investigation and were not able to locate the brothers.

On 13 August, the Manalo brothers resurfaced after allegedly escaping from their captors. On 23 August, the Manalo brothers filed a petition for prohibition, temporary restraining order with the Supreme Court. The CHRP then provided security assistance to the Manalo Brothers in the filing

as well as in ensuring their protection in the attendance of their court hearings. On 24 August, the petition was granted by the said court in an *en Banc* Resolution.

On 26 December 2007, the Court of Appeals granted the petition of the Manalo brothers for the Writ of Amparo. The court required the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines to confirm in writing the current assignment of one of the respondents, M/Sgt Rizal Hilario and Donald Caigas, as well to produce 'all medical reports, records, charts, report of treatment given to and medicines prescribed' to the Manalos. Lastly, the Military were ordered to produce the list of medical personnel, military and civilian who attended to the Manalo brothers from 14 February 2006 until August 2007.

The Commission has not received any information on the compliance of government in respect of the Supreme Court's production order.

Meanwhile, on 13 to 15 October 2008, the Commission, joined by Karapatan, conducted an inspection of the area alleged by the Manalo Brothers, as a Philippine Army camp where they were held in captivity. Burned fragments of human bones, believed to be that of another disappeared, Manuel Merino were excavated. The Commission is still evaluating the results of such inspection *vis-à-vis* the testimonies of the Manalo Brothers.

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.

On a case by case basis, the Commission has implemented a witness protection program. However the budget allocation for such a program has not been provided under the General Appropriations Act. The proposed CHRP Charter has included a provision for the institution of a CHRP witness protection program.

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?

As a result of its regular jail visitation program, the Commission issues, in behalf of prisoners, referrals to process claims to the Board of Compensation. However, the Commission has its own

financial assistance program for which an allocation of PhP 2,000,000 for the year has been included in the General Appropriations Act under the Commission's Budget.

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.

Under Rule 131, Section (m) of the Rules of Court, there is a disputable presumption⁴ in favor of a public officer 'that official duty has been regularly performed'.⁵ This presumption applies unless otherwise proven by the complainant who has to show bad faith, ill motive or irregularity. With the recent adoption of the Rule on the Writ of Amparo,⁶ the instant presumption does not apply. Hence, the burden is shifted and it becomes incumbent upon the public official to prove that he has, indeed, regularly performed his functions.

The following cases elaborate on the practice of on the burden of proof and extrajudicial confessions attended by torture as decided by the Supreme Court⁷:

People v. Vallejo, G.R. No. 144656, May 9, 2002.

The admissibility of the extrajudicial confessions of accused-appellant is also attacked on the ground that these were extracted from him by means of torture, beatings, and threats to his life. The bare assertions of maltreatment by the police authorities in extracting confessions from the accused are not sufficient.

The standing rule is that 'where the defendants did not present evidence of compulsion, or duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim,' all these will be considered as indicating voluntariness.

Indeed, extrajudicial confessions are presumed to be voluntary, and, in the absence of conclusive evidence showing that the declarant's consent in executing the same has been vitiated, the confession will be sustained. Accused-appellant's claim that he was tortured and subjected to beatings by policemen in order to extract the said confession from him is unsupported by any proof.

4 Disputable presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence (Rule 131, Rule 3, introductory paragraph, Rules of Court)

5 *Ibid.*, paragraph (m)

6 Section 17, Rule on the Writ of Amparo, A.M. No. 07-912-SC, 25 September 2007, amended 16 October 2007

7 As provided by the Free Legal Assistance Group (FLAG)

Under Article III, Section 12 of the 1987 Constitution, persons under custodial investigation have the following rights:

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel, preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

x x x

There are two kinds of involuntary or coerced confessions covered by this constitutional provision: (1) those resulting from third degree methods like torture, force, violence, threat and intimidation, and (2) those given without the benefit of the Miranda warnings. Viewed against this backdrop, certain circumstances in this case need to be carefully reviewed and considered.

Appellant executed his sworn statement on his alleged involvement in the killing of Ka Elving on December 23, 1996 or five days after his arrest. Immediately after accomplishing the affidavit, appellant sought medical attention, during which Dr. Correa found positive marks of violence on the latter's body, an indication that physical coercion occurred at one point from the time of his arrest up to the execution of his extrajudicial confession. The only purpose of the maltreatment could have been to force him to admit guilt against his will. When confronted on this matter, rebuttal witness PO3 Palmero had nothing but evasive and unresponsive answers . . . Furthermore, the trial court misapplied the rule that a confession is presumed voluntary where the same contains details and facts unknown to the investigator which could have been supplied only by the perpetrator of the crime. In *People vs. Abayon*, we held:

'It is a settled rule that where an alleged confession contains details and is replete with facts which could have possibly been supplied only by the perpetrator of the crime, and could not have been known to or invented by the investigators, the confession is considered to have been voluntarily given. This rule, however, was erroneously applied by the trial court in the case at bar.'

In this case, the police authorities already knew of the murder of Ka Elving. As succinctly pointed out by the Office of the Solicitor General:

. . . at the time of the execution of the extrajudicial confession, and even before appellant's arrest, the post mortem examination was already available to the police. Data regarding the murder weapon, the wounds sustained by the victim, the whereabouts of the cadaver were properly within the knowledge of the investigating officers. The latter, then, could have easily

filled up the details of the crime in the extrajudicial confession. It must be emphasized that the presumption of voluntariness of an extrajudicial confession arises only when the replete details could have been supplied by no other person but the perpetrator himself (People vs. Base, 105 SCRA 721 (1981)), which is not the case here.

Also worth mentioning is the belated appearance of Atty. Angara, incidentally not of appellant's choice, who assisted him in the execution of his extrajudicial confession. This fell terribly short of the standards demanded by the Constitution and Section 2 of RA 7438. Appellant was arrested before noon on December 18, 1996. The extrajudicial confession was taken five days later, on December 23, 1996. Atty. Angara testified that policemen came to her office at past 10:00 a.m. on December 23, 1996 requesting her to assist a suspect under custodial investigation. She arrived at the police station at around 11:00 a.m. and conferred with the appellant for about 30 minutes. The interrogation resumed after lunch and lasted till 4:00 p.m.

From the foregoing, it is evident that appellant had already been in detention for five days before he came to be assisted by a lawyer, just before he was about to put his confession in writing. We entertain no doubt that the constitutional requirement was violated."

People v. Alicando, G.R. No. 117487, December 12, 1995

"The burden to prove that an accused waived his right to remain silent and the right to counsel before making a confession under custodial interrogation rests with the prosecution. It is also the burden of the prosecution to show that the evidence derived from confession is not tainted as "fruit of the poisonous tree." The burden has to be discharged by clear and convincing evidence ...

In the case at bar, the... prosecution utterly failed to discharge this burden. It matters not that in the course of the hearing, the appellant failed to make a timely objection to the introduction of these constitutionally proscribed evidence. The lack of objection did not satisfy the heavy burden of proof that rested on 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).

The Commission is pleased to report on the comments of Mr. Alston pertaining to its mandate. The CHRP has institutionalized an Integrated Capacity Building Programme for its personnel complement. In 2007, six trainings were implemented which aimed at enhancing the knowledge and skills of CHRP investigations of human rights cases, particularly Extra-Judicial Killings and Enforced Disappearance. A 3-day 'Forum on the Convention on the Protection of All Persons from

Enforced Disappearance was held in Manila' was also held and attended by key officers, investigators and lawyers of government agencies. This was followed up by taking the forum to other areas of the Philippines, particularly Davao City, Tacloban City and Legazpi City.

Taking into account the difficulties encountered in the investigation of extrajudicial killings and enforced disappearances, the CHRP also developed a 3-day Training course on the 'Intelligence Process in the Realm of Human Rights Investigations' which was implemented in March and April of 2008. Orientation Seminars were also held on then newly adopted Rules of Writ of Amparo and the Writ of Habeas Data. The Commission is a partner in the Supreme Court's Philippine Judicial Academy's training of Judges on Handling cases of Extra-Judicial Killings, Enforced Disappearances and Torture.

While thankful for the 25 million peso grant from the Office of the President, aimed to initially cover investigation and trainings on extra judicial killings, enforced disappearances and other human rights violations which was initiated as a result of the Alston visit, the Commission views this as a short term, unsustainable measure. The Commission's national budget share is a mere .02% of the total government allocation. There is a need to increase the operational budget of the Commission and include this increase in the annual appropriations therefor.

It is in this respect that the Commission requests the inclusion in the concluding observations of the importance to provide sufficient financial resources to cover investigations of persistent reports of human rights violations, perform mandates on witness protection and ensure sustainable programs for the protection and promotion of human rights in the country. The CHRP Charter includes such a provision.

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)

The Commission informs the Committee of the Executive Secretary's announcement that the Government will be seeking deferment under the OPCAT upon its ratification. The Commission has issued its position on the matter, given the relevant provisions of the OPCAT as basis [Annex I: Letter to Executive Secretary Eduardo Ermita on the OPCAT Deferment]. The Commission, in this communication, called on the Executive to make good its commitment to the Human Rights Council and its report to the Universal Periodic Review that they will ratify the protocol.

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?

The Commission has not elaborated on the declaration and offers to encourage Government to seriously consider making the declaration to recognize the Committee's competence to receive and consider communications in respect of the rights to be free from torture and other cruel, inhuman, degrading treatment or punishment by making such a declaration recognizing the competence of the Committee to receive and consider communications.

The Commission suggests that the Committee, in calling on government to ensure full

compliance with the Convention and its own declarations of full adherence to the state policy on the prohibition of torture, to further provide for a remedy of torture in the Philippines to seriously consider making a declaration to recognize the competence of the Committee to receive and consider communications within the purview of the Convention.

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

The Commission has, in various issuances, encouraged ratification of the Rome Statute. It is important to note that the Executive has halted the domestic process of ratification of the Rome Statute which paved the way for the Supreme Court Decision on the issue.

In the case of *Pimentel vs Executive Secretary*⁸, the Supreme Court has unanimously dismissed the petition for mandamus to compel the office of the Executive Secretary and the Department of Foreign Affairs to transmit the Philippine-signed copy of the statute of the ICC to the Senate as a ministerial act in the process of ratification under an Executive Order 459 Series of 1997 which provides guidelines on the negotiation of international treaties and their ratification. The petitioners had asserted that the discretionary power to ratify lies with the Senate.⁹

The Supreme Court declared that it is beyond its jurisdiction to compel the Executive Branch of the government to transmit the signed text of Rome Statute to the Senate. The decision to ratify a treaty which has been signed is within the competence of the President alone. The role of the Senate is limited only to giving or withholding its consent or concurrence to the ratification. The signing of the treaty by the State's authorized representatives in the diplomatic mission does not make it incumbent upon the president to ratify. These are two separate and distinct steps in the treaty making process. And a state has no legal or even moral duty to ratify a treaty which has been signed by its plenipotentiaries. This is because after the treaty is signed by the state's representatives, the president being accountable to the people is burdened with the responsibility and the duty to carefully study the contents of the treaty and ensure that they are not inimical to the interest of the state and its people.¹⁰

In this decision, an obiter dictum was also issued by the Supreme Court. It stated that 'the Rome statute is intended to complement national criminal laws and courts. Sufficient remedies are available under our national laws to protect our citizens against human rights violations and petitioners can always seek redress for any abuse in our domestic courts'. This statement shows a lack of appreciation for the role of the International Criminal Court since it has not considered the fact that crimes against humanity and war crimes, including torture, are not yet included in the Philippine's statute books.¹¹

8 Supreme Court Decision of 6 July 2005 GR No.158088

9 McDonald, A., *Yearbook of International Humanitarian Law – 2005*, Published by Cambridge University Press, 2007, page 490 - 491

10 *Ibid.*

11 *Ibid.*