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## **Joint Civil Society Follow-up Report on the Progress of the Implementation by the Philippines of the United Nations Committee Against Torture Concluding Observations**

1. On 15 May 2009, the Committee Against Torture hereinafter referred as the Committee transmitted to the State party its Concluding Observations hereinafter referred to Recommendations on the 2<sup>nd</sup> Periodic Report of the Philippines which was considered at the 42<sup>nd</sup> session of the Committee held on 27 April-15 May 2009.
2. This Joint Civil Society Written Information Report in Respect of the Follow-up to the Committee's Recommendations is being submitted for the consideration of the Committee in response to the Committee's Recommendations contained in the Follow-up of Issues, CAT/C/PHL/CO/2.
3. This Written Information Report on the Follow-up to the Committee's Recommendations is a collaborative effort of non-government organizations (NGOs) under the United Against Torture Coalition (UATC)-Philippines namely Amnesty International-Philippines, BALAY Rehabilitation Center Inc., Children's Legal Rights and Development Center Inc. (CLRDC), Families of Victims of Involuntary Disappearance (FIND), Medical Action Group (MAG), the Philippine Alliance of Human Rights Advocates (PAHRA), the Philippine Human Rights Information Center (PhilRights) and Task Force Detainees of the Philippines (TFDP).
4. This Written Information Report is organized as established at the Committee's 13<sup>th</sup> session in May 2003 (A/58/44, paragraph 12)<sup>1</sup> by encouraging NGOs to participate by providing direct country-specific information to the members of the Committee and to submit written information in respect of the follow-up on the concrete measures taken by the government in response to the Committee's Recommendations.
5. There were twenty-six (26) Recommendations to the Philippine government to take in order to prevent acts of torture and ill-treatment throughout the country. Out of twenty-six Recommendations, the Committee specifically identified a number of concerns in the Concluding Recommendations that are "serious, protective and can be achieved within one year" which shall be implemented and reported back to the Committee after one year. These Recommendations were contained in paragraphs 7, 15, 16, 18 and 19.  
<http://www2.ohchr.org/english/bodies/cat/docs/followup/PhilippinesExtractsFollowUp.pdf>

**In paragraph 7 of the Concluding Recommendations, the Committee stated that "(t)he State party should implement effective measures promptly to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention."**

6. Not much progress can be reported with regards to this Recommendation. In fact, although legal safeguards for detained persons are provided by Republic Act No. 7438 (An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial

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<sup>1</sup> <http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>

Investigation as well as the Duties of the Arresting, Detaining and Investigation Officers), in practice things are quite different. Most torture victims are those in police custody or *incommunicado* detention. It is said to be typical that arresting officers do not have required identification neither the mandatory warrant of arrest. They merely “invite” the alleged suspect for questioning.

7. Based on the documentation provided by the Task Force Detainees of the Philippines (TFDP), in most incidents in the country, individuals ending up as torture victims were the ones initially arrested without warrant or merely “invited” for questioning and brought to police headquarters, detention centers, safe houses, and military camps. Although the law guarantees the same protection to both legally arrested and those under police custody, this standard practice of the police and military restrict the guarantees of the detained person.
8. In 2009 alone, TFDP documented 40 cases of torture. Moreover, according to TFDP documentation shows that there are 585 victims of torture during former Pres. Macapagal-Arroyo’s regime while there are 3,275 victims of arbitrary arrests and detention as of June 2010. There are reports of violence against human rights defenders that hamper their capacity to promote and protect human rights.

#### **Case No. 1**

On 27 May 2009, Archie Bathan, Rafael Limcumpao and Domingo Alcantara were arrested without warrant by members of combined elements of the 303<sup>rd</sup> PNP-Provincial Mobile Group (PMG), 72<sup>nd</sup> Military Intelligence Company and Army’s 3<sup>rd</sup> Infantry Battalion, both under the Army’s 703<sup>rd</sup> Infantry Brigade in Samal, Bataan.

The three human rights defenders are actively engaged in opposing the commissioning of the Bataan Nuclear Power Plant in Bataan.

The three were kicked and beaten with rifles while they were being frisked and handcuffed. They were hauled off separately into two vehicles and taken to the 303<sup>rd</sup> PMG headquarters in Camp Tolentino, Balanga, Bataan.

While at Camp Tolentino, the three were tortured by members of the Police Intelligence Branch (PIB) during interrogation. Bathan reported being blindfolded and then hit in the face with a solid object. They also used the torture technique “Russian-roulette” on him and struck his ears with cupped hands several times without warning. Alcantara was punched in the head and chest. Limcumpao was also beaten and suffocated using a thick plastic bag.

The three were forced to admit that they were members of a rebel group Rebolusyunaryong Hukbong Bayan (RHB) of the Marxist-Leninist Proletarian Party (MLPP). The victims were also forced to submit their finger prints. The torture continued until approximately 2:00AM the following day.

From there they were transferred to the provincial hospital but were later returned to the camp where they were observed by medical personnel. At no point were they presented with arrest warrants or informed as to why they were being arrested.

Source: TFDP

9. There are also reports that exceptional circumstances are invoked in particular during an internal political instability.

#### Case No. 2

On 29 July 2009, Mohammad Jafaar S. Maguid, a chaplain of the Moro Islamic Liberation Front (MILF) was arrested without warrant by members of Army's 73<sup>rd</sup> Infantry Battalion in Brgy. Daliao, Maasim, Saranggani. His captors brought him to a military camp in Brgy. Kablangan, Maasim town where he was tortured during interrogation.

On the same day, he was transferred to the PNP-PMG headquarters in Brgy. Kawas, Alabel in Saranggani where he was detained for two days. While at the said police headquarters, he was electrocuted, systematically beaten and deprived of food and water. He was charged with two counts of murder, frustrated murder and illegal possession of firearms and explosives.

Source: TFDP

In paragraph 7 of the Concluding Recommendations of the Committee further stated that all detainees are afforded all legal safeguards from the outset of their detention, **“in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards.”**

10. In response to the Committee's Recommendation in paragraph 7, RA 7438 provides that any person arrested or detained or under custodial investigation have the right to inform his/her relatives to about the fact of his/her detention and his/her location. It is doubtful, however, if this law is an effective protective measure against torture and ill-treatment during the period of apprehension and the formal registration of police at the police station.
11. First, RA 7438 does not require the police officer who apprehends the suspect to grant the access to the phone immediately after the suspect is apprehended. Second, it is not explicitly stated in the law the procedures how the alleged suspect can inform his/her relatives about the location of his/her detention. This means that the person apprehended by the police or military will not be able to inform his/her relatives before he/she is brought to the police station or detention center and booked. Third, it seems that provision regarding the right of the suspect to inform his/her relatives immediately is in conflict with the provisions of Article 125 of Revised Penal Code (RPC) which provides that no custodial investigation shall be conducted and the suspected person can only be legally detained by the investigating officer for the for the allowable period called “12-18-36 hours.”<sup>2</sup>

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<sup>2</sup> As per amendment under EO No. 272 dated 25 July 1987

12. A person subject of an arrest without a warrant must be delivered to the proper judicial authorities within 12-36 hours depending on the gravity of the alleged offense. But in some exceptional cases the pre-trial detention is not the exception but the rule. The combined time alleged suspect spend in the police station or military custody can be delayed up to 72 hours. It can be concluded that the police has the authority to delay notification in usual cases up to 12 hours and in exceptional cases up to 72 hours, which would be enough to extract confession from the suspect. In torture situation, the detainee's deprivation of liberty and the opacity surrounding places of detention such as camps and safe houses create a situation of powerlessness and isolation on the part of the captive which in turn encourages the captors and interrogators to use torture.
13. Another contributing factor in the proliferation of the use of torture is the lengthy pre-trial detention. In May 2005, a study by the Supreme Court (SC) found that an average trial takes over three years, a violation of Article 9 of the International Covenant on Civil and Political Rights (ICCPR) stating that "pretrial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party."<sup>3</sup>
14. Under the Rules of Court, Rule 122, persons arrested without a warrant may ask for a preliminary investigation where they can produce evidence in their defense, or request to be submitted to inquest proceedings to determine if they could be held in custody and charged in court. Moreover, individuals arrested without a warrant must be brought to a judicial authority within 36 hours for crimes such as rebellion.<sup>4</sup> However, in many circumstances, these safeguards are not respected.
15. Not only are torture victims denied the option of filing criminal complaints against their alleged perpetrators, they are also denied access to medical treatment. In practice, the victims have no access to legal counsel and a doctor immediately after arrest and during all stages of detention. The investigations conducted by the police concerning torture are either completely inconclusive or unsatisfactory. Due to non-application of international standards prescribed in the Istanbul Protocol<sup>5</sup> in preparing medical reports, their ability to secure vital pieces of evidence in solving cases of torture is also not satisfactory which could result to failure of building a strong case against the alleged perpetrators that will stand in court.
16. However, suspects who have been tortured and are still in police custody rarely assert their right to see a doctor, especially if they are ordinary suspects from poor communities whose everyday access to doctors has been limited. Some reports disclosed that the victims were taken to a government hospital for a medical examination after arrest but before interrogation to protect police officers from subsequent charges of ill-treatment. Others reported that police facilitated a medical examination after inquest, but they were examined by doctors assigned to PNP or AFP health facilities or to public hospitals who gave them cursory and hasty "check-list" physical examination.

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<sup>3</sup> International Federation of Human Rights (FIDH), International Fact-finding Mission Report, Terrorism and Human Rights in the Philippines, April 2008

<sup>4</sup> Article 125, Revised Penal Code

<sup>5</sup> Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

### Case No. 3

On 27 October 2009, Hasim S. Amin, 42, an MILF member, was arrested by members of PNP in Kiamba, Saranggani. Amin was at Kiamba Central Elementary School where there was an on-going medical mission when four police officers arrested him. He was taken into custody for an hour at the police station in Alabel, Saranggani.

According to the victim, he was blindfolded and handcuffed behind his back when he was brought to the PNP Provincial Headquarters in Kawas, Alabel. During the interrogation, he was systematically beaten and a plastic bag was placed over his head to the point of asphyxiation by his captors.

The following day he was brought to PNP-Alabel station. He was made to sit for half an hour while blindfolded. He was detained at the said police station for five days. On November 3, he was brought to the provincial hospital where reportedly a doctor gave him cursory “check-list” physical examination. Amin was charged with arson and attempted murder.

Source: TFDP

17. Medical certificates are frequently summary in nature, referring only to visible bruises or contusions with a formulaic assessment of how long the examinee is likely to need medical treatment. In many cases, victims do not have access to a doctor until days or even weeks after the alleged torture was committed. Most of the time, it is only when families or kin of the victim and human rights groups gained access to or filed a complaint before the Commission on Human Rights (CHR), CHR investigators with doctors and a group of health NGOs staff finally visited the place of detention, but by this time visible marks of torture have already faded or disappeared.

**The Committee pointed out in paragraph 7 that “(t)he State party should also ensure that all suspects under criminal investigation, including minors, are included in a central register which functions effectively.”**

18. The Bureau of Jail Management and Penology (BJMP) and Bureau of Corrections (BuCor) have their own respective registry of detainees and prisoners but the 76 provincial jails and 27 sub-provincial jails managed and administered by local government units have been operating autonomously since the enactment of RA 7160<sup>6</sup>. It is unclear whether provincial LGUs submit a tally and statistical information to the Department of Interior and Local Government (DILG) on a regular basis since local executives have the mandate to devise their own prison registry system.
19. Such a decentralized system and local government autonomy make it difficult for government to implement measures to monitor and prevent acts of torture and cruel, inhuman or degrading treatment or punishment most especially in provincial and district

<sup>6</sup> Local Government Code of 1991

jails which are obscure places from the national government's vantage point. Provincial jail administration has no comprehensive programs and lacking in standards in terms of methods of operations.

**.....the “(t)he State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Moreover, it should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.”**

20. The increase in cases of torture and ill-treatment is attributable, at least in part, to a shift in counter-insurgency campaign strategy of the government that happened in some areas. The attempt to vilify left-leaning organizations and to intimidate leaders of civil society and human rights organizations or the “labeling” and “order-of-battle approach” adopted systematically by the AFP and the PNP against leaders and members of such organizations as “enemies of the state” undermines the purposes of the Human Rights Offices and trainings of the AFP and the PNP. In fact, contravenes the Committee’s Recommendations in paragraph 7.

**In response to paragraph 15 of the Committee’s Recommendations that “(t)he State party should strengthen its measures to ensure prompt, thorough, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation, or continue any reported impermissible actions in breach of the Convention.”**

21. The government has undertaken institutional reforms to address and investigate complaints of torture, ill-treatment and other forms of human rights violations committed by public officials and law enforcement agents, i.e. the Office of the Ombudsman, the PNP-Internal Affairs Services (IAS), CHR, the Human Rights Offices of the PNP and the Armed Forces of the Philippines (AFP) and the human rights desk of the National Bureau of Investigation (NBI). However, civil society groups seriously doubts that these bodies are functioning independently and effectively, as alleged suspect is not subject to suspension or reassignment during the process of investigation and very few that those responsible are brought to justice.

22. Furthermore, Prof. Philip Alston, UN Special Rapporteur on extra-judicial, summary or arbitrary executions pointed out that link between impunity and the absence of effective witness protection system in the country. In practice, the Witness Protection Program<sup>7</sup> is

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<sup>7</sup> RA 6981 otherwise known as Witness Protection Security and Benefit Act

deeply flawed and would seem only to be effective in a very limited number of cases. He further said that one expert suggested to him that 8 out of 10 strong cases or 80 percent fail to move from initial investigation to actual prosecution stage due to unwillingness of witnesses to testify for fear for their lives and security. This hesitation on the part of the witnesses and victims' families came as no surprise since the police themselves have been implicated in the abductions and killings.

In paragraph 16 the Committee is concerned on the effectiveness and independence of the Commission on Human Rights of the Philippines (CHRP). It state that the **“(t)he State party should take the necessary steps to strengthen the mandate, including access to detention facilities, and independence of the CHRP, including through the adoption of the proposed CHRP Charter as well as allocation of sufficient resources for its effective implementation. The visitation mandate of the CHRP should include unhampered and unrestricted access to all detention facilities, including those under the jurisdiction of the military.”**

23. The Committee pointed out that, in a number of instances, the Commission on Human Rights of the Philippines (CHRP) has been denied entry into jails and detention facilities mostly under the jurisdiction of the military. The Committee is also concerned that Section 19 of the 2007 Human Security Act grants the CHRP authority to prolong detention of suspects. These measures compromise the capacity of the CHRP to monitor the State party's human rights compliance.
24. The Commission on Human Rights is a constitutional body created in 1987 to investigate cases of human rights violations, including torture, report and record patterns of human rights violations and promote human rights education programs for military and law enforcement personnel.
25. On some occasions, the CHR even becomes an apologist for the government and dependent on the Executive Branch because it had limited fiscal autonomy. The CHR was not given the respect it deserves despite its constitutional mandate. The powers of the CHR were not clearly defined.
26. Under House Bill No. 6822 of the 14<sup>th</sup> Congress (An Act Strengthening the Commission on Human Rights and for other purposes), the CHR is being given prosecutorial powers in case of inaction by concerned agencies. It also gives the body full fiscal autonomy, visitorial powers, and a witness protection program. The House of Representatives passed their version of the CHR Charter or HB No. 6822 on September 16 last year however the Senate has failed to pass its version.

The Committee pointed out in paragraph 18 of their recommendations that **(t)he State party should take effective measures to prevent sexual violence in detention, including by reviewing current policies and procedures for the custody and treatment of detainees, ensuring separation of juvenile detainees from adults, and of female detainees from males, enforcing regulations calling for female inmates to be guarded by officers of the same gender, and monitoring and documenting incidents of sexual violence in detention, and provide the Committee with data thereon, disaggregated by relevant indicators.**

**The State party should also take effective measures to ensure that detainees who allegedly are sexually victimized are able to report the abuse without being subjected to punitive measures by staff, protect detainees who report sexual abuse from retaliation by the perpetrator(s), promptly, effectively and impartially investigate and prosecute all instances of sexual abuse in custody and provide access to confidential medical and mental health care for victims of sexual abuse in detention, as well as access to redress, including compensation and rehabilitation, as appropriate.”**

27. Sexual violence in detention, like other human rights violations, flourishes where it is surrounded by silence and secrecy. In the report<sup>8</sup> of The Just Detention International (JDI), a US-based human rights group promoting the right to be free from sexual violence in detention places, emphasized that the country's detention facilities exhibit many of the conditions that have been found to be most likely to lead to sexual abuse, including severe overcrowding, lack of adequate supervision, failure to separate the most vulnerable inmates from likely predators, widespread homophobia, and a culture of silence around sexual abuse that results in impunity for corrupt officials. Current and former inmates, corrections and prison officials, and NGOs agree that it is fear, shame, and a belief among inmates that no help is available that prevents survivors of sexual abuse from speaking out about their experiences.
28. In one of the few official studies conducted on prisoner rape in the Philippines, four percent of 552 female jail inmates surveyed reported to the DILG that they had experienced sexual abuse while detained. Seven of the women had been raped, while others were subjected to conduct including sexual touching, kissing, corrections officials exposing their genitalia, and attempted rape. A study found that ten percent of the women detainees surveyed had had sex with jail officials prior to their transfer to the Correctional Institution for Women, illuminating the widespread abuse of women inmates by corrections staff.
29. Women under arrest and in detention are also exposed to high risks of torture and other forms of cruel, inhuman and degrading treatment, including rape by State agents and even jail guards particularly between the time of arrest and detention at the police station or military camp. A contributing factor to sexual violence against women in detention is

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<sup>8</sup> Report prepared by Just Detention International (JDI), an international human rights organization based in Los Angeles, California, that seeks to end sexual abuse in all forms of detention. Sexual Violence in Philippine Detention Facilities, Insert for Inclusion in Alternative NGO Report to U.N. Committee Against Torture, March 2009

that contrary to Article 53 of the UN Standard Minimum Rules for the Treatment of Prisoners, male jail officers are allowed to supervise female inmates, to undertake body searches and to be present when female inmates are naked.<sup>9</sup>

30. Women are subjected to all kinds of indignities, even with laws that are supposed to protect them from violence under police custody. One of these is Article 245 of the RPC, which forbids public officers from making sexual advances towards female detainees. Often violated, this provision is of little use to women who suffer various sexual abuses en route to the police stations and are held under duress and without the benefit of counsel. They are also physically lumped together with male detainees because there are no separate quarters for men and women in many police stations. Some arrests are not even officially registered. This is a clear violation of Philippine prisons rules and regulations and the United Nations Standard Minimum Rules for the Treatment of Prisoners.
31. Although documentation of sexual violence in Philippine detention facilities has focused predominantly on women detainees, juveniles, and political prisoners, there is growing evidence that sexual abuse is a common occurrence throughout the country's detention facilities.<sup>10</sup>

**Furthermore, the Committee calls upon the State party to consider enacting the draft Prison Rape Elimination Act of 2008.**

32. There were attempts to reintroduce the draft Prison Rape Elimination Act particularly through the efforts of the Just Detention International (JDI), a US-based rights group promoting the right to be free from sexual violence in detention places. Sexual violence in places of detention remains an obscure and largely untouched concern for Philippine authorities and there is need to spur interest and action on the issue if this key recommendation by the Committee is to be fulfilled.

**In response to paragraph 19 of the Committee's Recommendation that "(t)he State Party should further reduce the number of children in detention and ensure that persons below 18 years of age are not detained with adults; that alternative measures to deprivation of liberty, such as probation, community service or suspended sentences are available; that professionals in the area of recovery and social reintegration of children are properly trained; and that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriated conditions."**

<sup>9</sup> Ibid.

<sup>10</sup> Luz Rimban and Chit Balmaceda-Gutierrez, Philippine Center for Investigative Journalism (PCIJ), No Justice for Women Raped in Jail (7 December 1998), (quoting Romeo Pena, then-director of the PNP Directorate for Investigation, as stating that "there are cases of men getting raped [in prison]," even while denying that sexual violence against female detainees is common; see also, Raymond E. Narag, Freedom and Death Inside the Jail, A look into the condition of the Quezon City Jail 63, (2005)

33. The Convention on the Rights of the Child, as well as the Standard Minimum Rules on the Administration of Juvenile Justice set out a series of guidelines, safeguards and protection on the rights of child detainees. The Juvenile Justice and Welfare Act of 2006 (RA 9344) among other reforms, changed the age of criminal responsibility from nine to 15 years of age. Under RA 9344, children caught committing crimes are to be turned over to juvenile justice and welfare councils to be placed in programs supervised by local social welfare officers, and also prohibits the detention of minors in jails while undergoing trial.
34. Despite the prohibition of RA 9344, it is common and standard practice that children in conflict with the law (CICL), upon apprehension or arrest, are thrown into holding cells in police stations which are overcrowded with adult inmates. Most often parents of the children are not contacted immediately. It is during this period especially girls get tattooed and subjected to various forms of ill-treatment including rape and sexual abuse. Physical conditions of healthcare and medical facilities are extremely poor. Inside the center are crowded sleeping quarters, untidy, unventilated, toilet bowls full of stools, children forcibly clean them using their bare hands as there are no water supply inside the center where the supposedly comfort room is located. Most of the children suffer also from skin diseases because of detrimental condition of the facility. They also sleep on the floor as there are no linens and beds provided.

#### **Case No. 4**

On 27 January 2010, Children's Legal Rights and Development Center (CLRD) with the CHR staff visited the Agusan del Sur Provincial Jail and other provincial jails in the towns of Caraga and Surigao in Mindanao where they saw a group of CICL as young as fifteen years old were detained together with adult prisoners in cramped, crowded and untidy detention facilities.

When interviewed, the children admitted they were tortured and most of them were indigenous peoples. They were not aware of the reason of their incarceration and they said they were made to sign counter-affidavits on the crime of murder they allegedly committed. CLRD found that some documents purportedly showed the children appeared in court proceedings but the children denied they attended such. Based on investigations, the alleged perpetrators were a group of henchman of mining firms in the areas where the said IPs resides.

Source: CLRD

35. Evidences show to a large extent that diversion is rarely used as CICL are usually detained in the company of adults and subjected to torture. Despite their respective mandates to establish detention and rehabilitation centers in cities and municipalities throughout the Philippines, the Department of Social Welfare and Development (DSWD), the DILG and LGUs have not satisfactorily carried out this obligation. As a result, many areas in the country do not have this facility, and children awaiting trial are detained together with adult detainees for prolonged periods of time where conditions of detention may amount to cruel, inhuman and degrading treatment. Mariano says the city is doing the best it can to help reform the children at Molave, even if the Center is not what child-rights activists would like it to be. Steel bars divide the children's area from the Social

Services Department area, and the children's quarters are nothing but jail cells that to children could look unfriendly and forbidding.

#### **Case No. 5**

In November 2009, there were three children who filed complaints against barangay tanods (village security staff) who tortured them after they were arrested for stealing. According to the children, when they brought to the police station, the law enforcers who attended on their case physically beaten them.

Another case was a barangay captain in Caloocan City admitted when interviewed by CLRD that he tortured a child after the child escaped after he was arrested by BSDO staff.

In May 2010, a 15-year-old CICL was a victim of alleged summary execution or murder. According to reports, the victim who was residing in Brgy. Bagong Silang, Caloocan City was known to be alleged recidivist. His dead body was found inside a sack. The case is being investigated by the National Bureau of Investigation (NBI).

Source: CLRD

36. Police child detention is an institutionalized practice that has been going on for decades. The reason police child detention still persists is this: There exists a DSWD and BJMP requirement for a court-issued commitment order to be first produced by police officers before they can turn over children to the DSWD or BJMP custody. It takes weeks and even months for the commitment order to be processed and issued by the judge, destroying the child in the interim. Often, too, BJMP guards who help oversee the children, take them to hearings in handcuffs.
37. As the cases illustrated below shall show, the principles behind RA 9344 remain, to a large extent, on paper. Diversion is rarely used and conditions in detention centers continue to worsen, and they are becoming more overcrowded by the day. Children are subjected to violence, both from guards, and by fellow inmates, without intervention from the authorities.
38. The CLRD disclosed that it remains disputable the claim of the Philippine government that it had released more or less 565 minors in 2008, the truth of the matter is that in Metro Manila alone, the number of children being detained almost doubled every year.
39. CICL continue to be victims of human rights violation even prior to their detention. CLRD has been representing CICL in courts for their immediate release. Hence, CLRD documented cases prove majority percentage of CICL have been arrested without warrant, tortured by law enforcers and/or Barangay Security and Development Office (BSDO) staff and even by barangay captain during and right after the arrest in cases of petty crimes such as stealing, robbery and snatching.
40. It was also prohibited by RA 9344 to use any forms of restraints in apprehending minor, handcuffs or other implements of restraints, the use of unnecessary force and violence are often used against children being arrested. Forms of torture and ill-treatment on

children in detention committed particularly by jail wardens include among others punching, slapping, grabbing the child on the neck, having the child's head shaved, whipping the child with a paddle and belt buckle. These forms of torture are labeled as "LE" or Learning Experience by jail wardens. When CLRD interviewed the wardens about the alleged torture on the children, they answered-- "*naka – LE sila kasi may ginawa silang kasalanan.*" (they are on LE because they committed a violation).

41. Even before the passage of RA 9344, CLRD had documented cases of torture during and after the arrest. In 2006, 60 cases of CICL at Manila Youth Reception Center (MYRC) and in 2005, 123 cases of CICL in Molave Youth Home and MYRC. For 2007 and 2008, CLRD had documented 223 cases (Molave and MYRC) of arrests without warrant coupled with torture. In 2009, documented 290 cases of CICL who were arrested without warrant for MYRC alone, all of these CICL suffer inhumane and degrading treatment to date.

#### **Other important issues to be addressed by the Committee Against Torture**

42. The Optional Protocol to the UN Convention Against Torture (OPCAT) ratification is pending for ratification. During a Senate Public Hearing on the OPCAT on 8 October 2009, then Executive Secretary Eduardo Ermita announced the Philippine Government's intent to avail of the declaration to opt out (deferment) on Part III of the OPCAT, a State's party right under Part V of the OPCAT. Part III is on recognizing the authority of the Sub-committee on Prevention of Torture (SPT) to conduct in-country visits to places of deprivation of liberty. This was taken on board by the Senate Committee on Foreign Relations and officially manifested in Senate Resolution 1509.
43. The government has not indicated which article it plans to defer, OPCAT Article 3 on the establishment of the National Preventive Mechanism or Article 4 on recognizing the mandate of the Sub-Committee on Prevention to conduct visits. It has nonetheless indicated two reasons why they were considering a declaration to opt-out and these were to make necessary improvements of conditions in places of detention and harmonize domestic laws in order to conform to the OPCAT. And it was only at the Senate Public Hearing in 2009 when Ermita specified which of the two parts of the OPCAT (Part III or Part IV) they would defer. In a press statement, 24 September 2009, Ermita said "The Government of the Republic of the Philippines needs more time to allow the country to fully comply with its obligations under the OPCAT."
44. Ermita claimed that "the country's penal systems are not yet at par with international standards and accession to the OPCAT, which would mean close international monitoring, could yield misleading conclusions." Further, he said "I see the wisdom of the proposal, from both government and civil society groups for the Philippine government to move for a deferment for three to five more years, from the date of ratification, our country's implementation of its obligations as State Party to the OPCAT."
45. The Philippine government has been remiss of its international human rights commitment for seeking justice and redress for victims of human rights violations by sitting on the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICAED) and the International Criminal Court (ICC).

## CONCLUSIONS AND RECOMMENDATIONS

46. Notwithstanding the fact that the Philippine Government has the obligation to report within one year on its response to the Committee's Recommendations contained in paragraphs 7, 15, 16, 18 and 19, the Philippine Government's reluctance to take concrete measures on the Committee's key recommendations aimed at addressing the concerns by the Committee nor to prioritize the prevention of acts of torture. Having said that, in the spirit of helping improve the Philippine Government's compliance with the CAT, we therefore concluded that:

**ON RECOMMENDATION PAR. 7. Not much progress can be reported with regards to this recommendation. In fact, although legal safeguards for detained persons are provided however torture and ill-treatment on alleged suspects are normal routine used by the police and military, and continued to undermine complaints procedures and legal safeguards.**

We submit the following recommendations:

- To institute and speed up the formulation of the Implementing Rules and Regulations (IRR) of the Anti-Torture Act (RA 9745) and to enact a law criminalizing enforced disappearance; and imposing severe penalties on perpetrators;
- To repeal the Human Security Act of 2007 (RA 9372) as it authorizes preventive detention, expands the power of warrantless arrest and violates human rights;
- To institutionalize the use of the Istanbul Protocol<sup>11</sup> and its inclusion in the National Human Rights Action Plan;
- To ensure that all reports and complaints of torture against the police and military are investigated promptly, impartially and effectively, there must be a body independent from the PNP and the AFP who will conduct the investigation;
- To ensure inadmissibility of confessions obtained under duress in all cases in conformity with Article 15 of the CAT;
- To ensure that military codes, manuals and other military directives are in accordance with the provisions of the CAT and other international human rights instruments to which the Philippine government is a State Party.

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<sup>11</sup> Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

**ON RECOMMENDATION PAR. 15.** The country's malfunctioning criminal justice system strengthens the reigning culture of impunity. Procedural weaknesses in the administration of criminal justice, including unlawful arrests without warrants by the PNP and the AFP, and lack of access to lawyers and doctors during extended periods of "custodial investigation" before the filing of charges, continued to facilitate the use of torture or ill-treatment to coerce confessions. Ironically, this distorted judicial system has increasingly focused on prosecuting the victims of torture instead of the torturers and perpetrators.

There still has no concrete measure taken by the government to speed up the process of criminal justice system reforms including the institutional reforms of the PNP and the AFP. Such reforms include the following:

- To strengthen the Witness Protection Program under the Witness Protection, Security and Benefit Act (RA 6981) that will guarantee the safety of witnesses to torture incidents and other human rights violations. The government must give the highest priority to the funding of said program;
- To amend the PNP Law (RA 6995) to ensure thorough and impartial investigation by an independent body of police officers accused of committing human rights violations;
- To re-evaluate government's counter-insurgency campaign which encourage or facilitate torture and ill-treatment on alleged rebel suspects and to put an end to the vilification campaign or "labeling" and "order of battle approach" adopted systematically by the AFP and the PNP against left-leaning organizations and civil society groups;
- To enact a law punishing superior officers administratively and criminally for the acts of their subordinates or other persons subject to their control under the principle of command responsibility.

**ON RECOMMENDATION PAR. 16. On the effectiveness and independence of the Commission on Human Rights.**

Department of Justice Secretary and former CHR Chairperson Leila de Lima said "(o)ne of the hallmarks of good government is to establish and maintain a strong national human rights institution that will serve as its conscience and acts if officials will be unwilling or unable to squarely address the unfettered violations of human rights in the country."

Recent events revealed the climate of impunity as our country's worsening human rights situation--from arbitrary and unlawful arrests to enforced disappearances and from torture to extra-judicial killings, from harassments of media outfits to outright killing of journalists. All these lead and point to the CHR as one institution that needs to be strengthened.

From this point, we recommend that a new Charter would give more teeth to the country's human rights body and:

- To enact a law strengthening the CHR with respect to its acquisition of quasi-judicial powers, enhanced investigative authority, other ancillary capacities, full-operational autonomy and independent nomination procedures in order to increase its ability to promote and protect human rights and improve its compliance to the Paris Principles<sup>12</sup>.
- The new CHR charter should embody the concepts and guidelines of the “Paris Principles” among which are independence and pluralism, The “Paris Principles” are the guidelines and recommendations passed by the UN Commission on Human Rights in 1993 for National Human Rights Institutions all over the world.
- To enact a law that removes the prescriptive period on the investigation of cases of human rights violations and expands the power of the CHR to investigate, giving them unhampered and unrestricted visitorial power over all detention facilities of the government including those under the AFP.

**ON RECOMMENDATION PAR. 18.** The fact that several laws have been enacted does not constitute that the government has taken concrete measures to address the Committee’s concern on sexual violence in detention.

Despite plans by government agencies to improve the protection of women in detention, women continued to be at risk of rape, sexual assault and other forms of torture and ill-treatment. Investigations into such violations were inadequate and rarely resulted in prosecutions.

- To continue and strengthen measures aimed at the physical and psychological recovery and social reintegration of torture victims including providing financial resources for the development and effective functioning of rehabilitation, reintegration and compensation through a legislative act;
- To address trafficking in women more effectively by enhancing bilateral, regional and international cooperation with countries of origin, transit and destination and to prosecute and punish traffickers and those exploiting women for prostitution, and provide protection to victims of trafficking;
- To enact the Prison Rape Elimination Act.

**ON RECOMMENDATION PAR. 19.** Despite laws specifically designed to protect and promote children’s rights and welfare, children in custody and detention, defects in the juvenile justice system continued to facilitate abuses, including torture and ill-treatment.

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<sup>12</sup> Principles relating to the status of NHRI defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993

Children were detained with adult inmates in overcrowded facilities, exposing CICL to abuse by other prisoners. CICL were also denied prompt access to social workers, lawyers and families following arrest, and suffered lengthy delays before being brought before a judge and before their trials were concluded. In order to ensure the full implementation of the child-centered laws, there is a need:

- To establish diversion as the country's preferred method of rehabilitating minors. The reluctance to use diversion is linked with lack of public financing and investment for setting-up and running diversion programmes;
- To allot adequate budgetary requirements for the implementation of the Juvenile Justice and Welfare Act (RA 9344) and other children's rights laws.

Thus, we urges that the Committee to consider at its 45<sup>th</sup> session to be held on 2010 November 1-19, sending communications to the Philippine Government given that more than a year would have elapsed since the Committee's Recommendations were issued and that no follow-up report has been received.