



## **TORTURE AND ILL-TREATMENT IN THE PHILIPPINES – IMPLEMENTATION OF THE ANTI-TORTURE ACT**

This alternative report to the UN Human Rights Committee has been prepared jointly by Balay Rehabilitation Centre (Balay), the International Rehabilitation Council for Torture Victims (IRCT) and the Medical Action Group (MAG).

Balay and MAG are national organisations from the Philippines who provide rehabilitation services to torture survivors and work to prevent and combat torture. The IRCT is a health-based umbrella organisation that supports the rehabilitation of torture victims and the prevention of torture worldwide through our membership of more than 140 torture rehabilitation organisations in over 70 countries.

### **1. Introduction**

In November 2009, the Government of the Philippines adopted Republic Act No. 9745 (the Anti-Torture Act). The act is a comprehensive piece of legislation covering various issues relevant to ensuring accountability and redress for torture and ill-treatment including provisions for criminalisation, medical documentation, command responsibility and rehabilitation for victims. Despite minor concerns especially relating to the length of penalties, the law can be viewed as a good practice example for national anti torture laws.

Unfortunately, the implementation of the Anti-Torture Act has so far not been executed with the same diligence as the drafting. The first complaints brought under the new law have revealed various different deficiencies in relation to investigations and the way prosecutions are brought. In collaboration, Balay, MAG and IRCT have been actively involved in three of the first cases filed under the new law. For these cases, the organisations have provided forensic medical evidence, supported the legal proceedings and provided rehabilitation services to the victims and their families. Based on the cases and the collective experience of the three organisations in working on implementation of

the Anti-Torture Act, this report will illustrate some of the deficiencies and obstacles experienced so far and provide recommendations for how these can be remedied. The report, in part, responds to the questions posed by the Committee in paragraph 13 in the list of issues.

## **2. The Anti-Torture Act**

The Anti-Torture Act provides a comprehensive legislative framework for investigating and prosecuting allegations of torture and ill-treatment, punishing perpetrators and providing redress for the victims. In December 2010, the Department of Justice and the Commission on Human Rights of the Philippines (CHR) promulgated the Implementing Rules and Regulations (IRRs). These provide additional details to the requirements for implementation of the law. Among the main features of the law that are relevant to the analysis in this report are:

- **Section 4(b) (1)**, which prohibits the use of blindfolding.
- **Section 9**, which provides the right of victims to a prompt and impartial investigation by the CHR and relevant government agencies within 60 days of the complaint and the right of all persons involved in a torture case to protection from harassment and other forms of reprisals.
- **Section 12**, which provides the right to a physical, medical and psychological Examination by an independent and competent doctor of one's own choice. Section 24 of the IRRs further elaborates the standards and a template for such an examination.
- **Section 13**, which provides for command responsibility. This provision extends command responsibility to cases where immediate superiors fail to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment.
- **Section 19**, which mandate the formulation of a rehabilitation programme within one year of the law taking effect. Sections 37-40 of the IRRs further elaborate the agencies that must participate in the formulation and funding of the rehabilitation program and that non-governmental organisations and torture survivor representatives must be involved in its formulation.

### 3. Outline of test cases

Since the beginning of 2010, Balay, MAG and the IRCT have been actively involved in three cases of torture and ill-treatment in the Philippines:

1. **Lenin Salas et al** (Jose L. Gomez, Jerry Simbulan, Rodwin M. Talaand Daniel Navarro) vs. PSupt. Madzgani M. Mukaram & John Does for Violation of RA 9745,
2. **Ronnel Victor R. Cabais** vs. Lt. Joel M. Santos, Cpl. Bienvenido I. Ajero, Cpl. Abelardo Reyes, Cpl. Sonie Delos Reyes, Cpl. Mark Ramos, Cpl. Alex D. Buban, Jr. and Pfc. Mark A. Zamora for Violation of Republic Act No. 9745 and
3. **Abdul Khan Ajaid y Balinting** vs Col. Alexander Macario, Capt. Sherwin Guidangen, Sgt. George Awing, Sgt. Edgardo Santos, Staff Elmer Magdaraog and John Does for Grave Misconduct & Grave abuse of Authority.

These cases are not highlighted to be individually promoted in the review of the Philippines but because they serve to provide an early indication of some of the systemic obstacles that are occurring in the implementation of the Anti-Torture Act. Unless remedied, these are likely to continue to prevent torture victims in the Philippines from effectively pursuing justice. Below is a short outline of each case.

#### 3.1. Lenin Salas et. al.

The CHR regional office filed the case in Pampanga shortly after the Anti-Torture Act took effect in 2009. It is among the first case of torture that reached the prosecutor's office. The complainants are five political detainees who claim that they have been badly beaten and threatened with death by their police captors whose names appeared on official records. The alleged torture and ill-treatment was documented by forensic experts and the visual marks was captured by a TV crew from Al Jazeera television visiting their detention facility. The complaint was filed on September 21, 2010 at the Office of the City Prosecutor of the City of San Fernando, Pampanga. The Office of City Prosecutor of the City of San Fernando, Pampanga issued resolutions dated July 21, 2011 and November 21, 2011 dismissing the complaint against respondents.

The prosecutor's office found it probably that torture had taken place based on the forensic medical reports but at the same time rejected the victims' voice based identification of the perpetrators. Since the victims were blindfolded from the time of arrest and during the alleged torture. This decision has now been appealed but at as of 20 July 2012, no decision has been issued. The alleged victims are still detained on

criminal charges and their relatives have complained about harassment from unidentified men, whom they believe to be members of security forces.

### **3.2. Case No. 2: Ronnel Cabais**

According to Ronnel Cabais, he was attending the funeral of his grandmother when soldiers took him in April 2010. They accused him of being a member of the New People's Army. Many civilians saw the soldiers beat him up. The military brought him to their detachment. During interrogation, they beat him up again, electrocuted him, and covered his head with plastic. They later turned him over to the police. He was not advised to immediately seek medical attention, nor was he informed of his rights. The police filed a criminal case against him for Violation of the Commission on Elections' Gun Ban (carrying a firearm during the election period). In August 2010, the IRCT sent a team composed of a forensic doctor and psychologist, who are both experts in documenting torture in the Philippines, to document the case. They produced a Medico-Legal report concluding that the victim's allegations of torture were highly consistent with the physical and psychological symptoms. This along with a Medico-Legal report produced by a local expert was submitted to the prosecution.

On December 13, 2010, the CHR regional office in Bicol filed, on his behalf, a case of torture against the soldiers involved and in January 2011, the Municipal Circuit Trial Court of Polangui-Libon-Oas issued a warrant of arrest for several members of the 2nd Infantry Battalion of the Army's 9<sup>th</sup> Infantry Division. In March 2011, due to fears of reprisals, Balay, MAG and IRCT ensured Mr Cabais' release on bail after which he entered an NGO-run victim and witness protection programme.

As of 20 July 2012, the accused soldiers have still not been located by the military authorities who deny knowing those named in the arrest order despite official records indicating their names, rank, position, and unit.

### **3.3. Case No. 3: Abdul-Khan Ajid**

According to Abdul-Khan Ajid, on July 23 2011 at around 3 o'clock in the morning, soldiers took him away from his house. The military accused him of being a member of the Abu Sayyaf Group (ASG) that was responsible for a string of atrocities and kidnappings of civilians. His captors tied his hands with a rope, threatened to kill him and ruined the family bakery from which he gets his income. He was blindfolded as he was taken to several locations. He was not given food, he was beaten in different parts of his body, his head was covered by plastic, and he was submerged in water several times, his foot burned with cigarette butts. Later on, his captors poured gasoline on his body

and on his face and set him on fire. During this treatment, he was forced to admit that he is a member of the ASG.

His relatives were able to see him only after they filed a writ of habeas corpus. They brought him to the Basilan Community Hospital, but he was later transferred to the Zamboanga City Medical Center for treatment of his third degree burns. The doctors who examined him were at first reluctant to issue their findings related to torture. They apparently fear the reprisal of authorities that may be implicated in the incident. Subsequently NGO doctors made a thorough examination of the victim in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also known as the Istanbul Protocol) and concluded that the victim had suffered grave physical and mental injuries, which were consistent with the allegations of torture.

When NGOs brought the matter to the Human Rights Office of the armed forces, an immediate investigation was carried out resulting in the dismissal from military service of two soldiers. An Army Captain is still facing military proceedings to determine if he is still fit to remain in service. Meanwhile, the counsel of the victim has filed a complaint of torture before the military Ombudsman in February 2012. The perpetrators are likely to be facing a criminal case and stand trial in civilian court if the Ombudsman issues a favorable finding to the complaint. The relatives of the torture victim have been reportedly threatened to be harmed and had allegedly been offered money by an officer implicated in the case to withdraw the complaint. However, based on the CHR Region IX Resolution dated April 18, 2012, the two senior officers, Col. Alexander Macario and Capt. Arvin Llenaresas were excluded from the charges under the principle of command responsibility as the resolution stated that “they (the Respondent Senior Officers of the military) were able to substantially explain their non-participation in the acts complained of and they neither consented nor had the knowledge of the alleged acts.”

#### **4. Effective investigations and prosecutions**

The experience from the three cases outlined in the previous section provides valuable information on some of the obstacles faced by the Philippines authorities in implementing the Anti-Torture Act. While some of the problems appear to be systemic others differ from case to case. The main obstacles identified are: delayed and ineffective investigations; problems in identifying and locating perpetrators; access to prompt, thorough, impartial and independent medical evaluation; and the risk of reprisals against victims, witnesses and investigators.

#### **4.1. Delayed and ineffective investigations**

All three cases saw significant delays at one or more stages of the investigative process despite the 60-day deadline provided by law. This has a very negative impact on the quality of the investigations since physical evidence at the crime scene and on the victims degrades and eventually disappears, witnesses lose their memory and the perpetrators are afforded time to cover up their crime.

In connection with the work on the three cases and other activities implemented by the authors of this report, a number of causes for delays have emerged:

- a) There is a lack of awareness and training in the new Anti-Torture Act among prosecutors and lawyers of the Public Attorney's Office (PAO) which means that the 60 day deadline stipulated by the law is not applied by the prosecutors nor argued by the PAO lawyers.
- b) There is a lack of commitment in the Government to ensure effective investigations by allocating the necessary financial and human resources to the various components of the torture investigations. In addition, overburdened PAO lawyers limit their attention to criminal accusations against their clients and show a limited interest in prioritising the allegations of torture and ill-treatment brought forward by their clients. One of the results of this is a lack of coordination with the victims and their families, which causes further delays. Despite a significant amount of staff in the CHR, investigations by the CHR appears to be delayed at least partly by lack of human resources.
- c) Victims, witnesses and persons participating in the investigation of torture allegations are routinely subjected to threats or direct reprisals to compel them to withdraw their complaint. This causes delays in the initial reporting of torture and ill-treatment, delays in the location and evidence taking from witnesses and it negatively affects the independence of investigators from both the legal and health professions resulting in inadequate or directly false forensic examinations of the victims and a general lack of diligence in the work of prosecutors. Police officials are often present during physical and medical examinations, and in some cases supervise the work of medical doctor. Pressure upon medical doctors includes threats, intimidation or filing of false criminal charges against them and more subtle risks of professional/career consequences. During trainings of City/Municipal Health Officers (C/MHOs) by the implemented by MAG, many C/MHOs referred to fear of reprisals as one of the impediments for them not documenting cases of torture and ill-treatment.
- d) While it has been possible for legal and health professionals to get access to alleged torture victims in places of detention, this access is significantly delayed

or limited. This is especially problematic in relation to physical forensic examinations of the victim, where much of the evidence will quickly disappear as the trauma heals. When health professionals are denied access or denied the right to bring in their examination equipment, it significantly reduces the quality of their examination. For example, on October 24, 2010, Dr. Sherjan Kalim of the Mindanao Human Rights Action Center (MinHRAC) and Medical Action Group (MAG) was denied access to suspects Allamin Balotintic Samal and Ibrahim Makasulay Alimanan who were detained at the North Cotabato Provincial Police Office in Kidapawan City. A medical examination on the two suspects at the Kidapawan City Hospital was only conducted by Dr. Kalim after four days since their arrest.

#### **4.2. Identification and location of perpetrators**

Inability and unwillingness to identify and locate alleged perpetrators is a significant impediment to ensuring justice for torture victims. The common use of blindfolding, in itself constituting torture under the Anti-Torture Act, effectively prevents victims from visually identifying their perpetrators. Combined with the restrictive approach to voice identification taken by the prosecutor in the Salas case, this significantly complicates the identification of perpetrators and effectively encourages the use of blindfolding as a means of escaping justice. A related problem is the military's reluctance to cooperate with the prosecutor's office in producing alleged perpetrators within their ranks who have been identified by name and association. This was clearly illustrated in the Cabais case. These problems are aggravated by the lack of focus at the investigative and prosecution stages on ensuring command responsibility for which there is ample room in the Anti-Torture Act. The Ajid case illustrates that this problem is also present in the investigations of the CHR. Based on the resolution of the CHR, two senior officers, Col. Alexander Macario and Capt. Arvin Llenaresas were excluded from the charges under the principle of command responsibility as the resolution stated that *"they (the Respondent Senior Officers of the military) were able to substantially explain their non-participation in the acts complained of and they neither consented nor had the knowledge of the alleged acts."* Subsequently, during a case conference focusing on the Ajid case, respected lawyers from the University of the Philippines College of Law found this part of the resolution to have significant flaws in relation to the section on command responsibility.

If command responsibility was effectively pursued in all cases, it is likely that military commanders would be more likely to facilitate the identification and location of alleged perpetrators thereby increasing the possibilities for ending impunity. Further, it could

have a significant preventive effect on the general occurrence of torture and ill-treatment in the country.

#### **4.3. Prompt, thorough, impartial and independent medical evaluation**

A common feature of all three cases and many more is the absence of access for the victims to a prompt, thorough, impartial and independent medical evaluation. Despite the very clear provision in the Anti-Torture Act for this particularly important element of torture investigation, this gap persists. This is a multifaceted problem: there are very few health professionals in the Philippines who have the necessary skills to thoroughly document torture and ill-treatment; health professionals often avoid even attempting to document torture due to fear of reprisals; and there is no system or procedures to ensure that persons who allege or otherwise display signs of torture or ill-treatment are promptly afforded a medical evaluation. When proper medical evaluations are carried out, it is usually done by health professionals affiliated with NGOs and for this reason often with significant delays. The result of this is a lesser quality of evidence and often also a late initiation of investigative steps.

#### **4.4. Reprisals**

The torture survivors and their families, and support groups including the prosecutors and judges point to fear of reprisals and threats of retaliation from relatives, friends and colleagues of the alleged perpetrator as a major cause of reluctance of witnesses and torture survivors to cooperate and pursue investigation and prosecution of torture cases. In the Cabais Case for instance, the victim's families report been threatened and harassed several times and the Balay Rehabilitation Staff/ Social Worker have been sent threats through text messages and experienced being followed by suspicious strangers. The threats range from blatant invitations for a talk about the case elsewhere with guns wrapped in a or piece of cloth or shirt poked at the staff and the family members of the victim (in this case, that of Ronnel Cabais), to surveillances at the family home of the victim and text messages both to the victims' family and staff as well as the hacking of the staff's Facebook Account. In the Lenin Salas et al Case, harassment has been experienced by the families of the victims while in the Ajid case, the harassment come with veiled threats and bribery attempts to silence the victim and his family. The government's Witness Protection Program (WPP) provided by the Department of Justice (DOJ) is not sufficiently implemented and is widely distrusted by the intended beneficiaries.<sup>1</sup> Witnesses have complained that protection is guaranteed only during and

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<sup>1</sup> A/HRC/8/3/Add.2, paras 52-54

not after trial, leaving them open to retribution by the accused or from friends of the accused. For extrajudicial killings, it is reported that 8 out of 10 cases fail to move from initial investigation to actual prosecution stage due to unwillingness of witnesses to testify for fear for their lives and security.<sup>2</sup>

In response, NGOs have started implementing their own protection programmes, which were used to ensure the safety of Ronnel Cabais before his torture complaint was filed.

## **5. Access to rehabilitation**

Section 19 of the Anti-Torture Act mandates the formulation of a rehabilitation programme within one year of the law taking effect. This is an essential part of ensuring effective redress for torture survivors and their reintegration into society.

Balay Rehabilitation Center and Medical Action Group are part of the technical working Group, which is developing the Rehabilitation Program for Torture Survivors. At this point, the working group has completed the framework for rehabilitation including objectives, terms of reference of government agencies involved, and flowchart and it is in the final stages of elaboration.

In addition to the significant delay in its elaboration, there are a number of other concerns with regard to the design of the programme:

- a) There is no specific lead agency in its implementation and there is no detailed step-by step plan and concrete commitments from the relevant government agencies on how it will be put to effect. This lack of specificity creates a risk that government agencies that have already demonstrated a lack of interest and ability in providing specialised rehabilitation services to torture survivors will not diligently implement the programme.
- b) There are no clear provisions for separate allocation of funding for the rehabilitation programme. This open the door for government agencies considering torture rehabilitation activities as one of the many service components that they are already doing without establishing the necessary expertise and capacity.
- c) Many components of the rehabilitation programme are structurally placed in sectors where local governments have the competence to implement such as such as the Social Welfare and Development Office. Implementation thus depends on the decisions and priorities at local level. Since it is common practice that national policies are not effectively implemented when falling under the

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<sup>2</sup> A/HRC/11/2/Add.8, para 31.

competence of local governments, this is also a concern with regard to the rehabilitation programme.

- d) The absence of a coordinating agency creates a risk that rehabilitation services will become compartmentalised within the different responsible agencies and thus not fulfil the objective of taking a holistic approach to the victim's needs.

## **6. Conclusions and Recommendations**

Ensuring effective access to justice and rehabilitation for torture survivors in the Philippines will be a work in progress but there is a clear sense that the current the Government is willing to work on improvements. The legislative framework is largely in place but there are problems with several aspects of its implementation. In order to remedy these problems Balay, MAG and the IRCT would like to propose the following initiatives and recommendations for the Committee's consideration.

- a) Promote compliance with the Anti-Torture Act, Section 9 through adequate resourcing of relevant sections of the prosecutor's office and imposition of administrative sanction against prosecutors who continuously fail to comply with the 60 day deadline without legitimate justification.
- b) Ensure that all investigations and prosecutions of allegations of torture and ill-treatment adequately cover the possibilities for pursuing command responsibility including by obtaining records of all officials on duty in the institution of the alleged perpetrator at the time of the crime and by utilising the full extent of Section 13 of the law when it comes to non-compliance by the relevant institutions with the investigation.
- c) Increase awareness among the security forces about the prohibition of blindfolding and sanction all incidents of blindfolding regardless of whether it is done in connection with other forms of torture or not. Further, consider how rules of evidence evaluation may be amended to increase the possibility of identifying perpetrators through other means than visual verification. Lastly, make it mandatory for prosecutors to carry out a full investigation of possible command responsibility where identification of the primary perpetrator is impaired by the use of blindfolds.
- d) Ensure that there is a sufficient number of health professionals trained in documentation of torture and ill-treatment in accordance with the Istanbul protocol. Further adopt the necessary procedures, regulations and practices to ensure that all persons who allege or otherwise show indications of having been tortured or ill-treated are offered a prompt, thorough, impartial and independent

medical examination. These include but are not limited to: ensuring adequate protection of health professionals documenting torture and ill-treatment from harassment and other forms of reprisals; ensuring that health professionals working in places of detention are not hierarchically subordinate to the head of the detention facility or other security organs; and including the right to a medical examination in the “Miranda warning” to be read to all detainees upon arrest.

- e) Reform the current victim and witness protection programme to ensure that it affords effective protection against reprisals and other harassment to all persons in need thereof and for as long as this is needed. This should include measures to ensure its full independence from those government agencies allegedly involved in and ill-treatment, possibilities for physical relocation for persons in detention, and amendment of judicial procedures to protect witnesses and victims against exposure during the conduct of proceedings.
- f) Implement a holistic rehabilitation programme, which is adequately funded and has sufficient geographical reach. This should include the identification of a coordinating agency and measures to ensure implementation by local governments. The rehabilitation programme should be subject to ongoing monitoring and evaluation in order to continuously measure its quality and take corrective measures.
- g) Convene the Oversight Committee to monitor and evaluate the implementation of the Anti-Torture Act, as mandated by section 20 of the same act. Further, ensure the establishment of a database to systematically collect information on the implementation of the Anti-Torture Act including on investigations, prosecutions, access to medical evaluations, acts of reprisals and implementation of the rehabilitation programme.

Balay, MAG and the IRCT would like to thank the Human Rights Committee for considering the information provided in this report. We are prepared to respond to any questions or comments you may have in this regard.

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## **Annex 1: Relevant information from other UN mechanisms**

In 2012, the Philippines has been reviewed in the Universal Periodic Review (UPR) and the Committee Against Torture has submitted a List of Issue Prior to Reporting (LOIPR) to the Government. The issues addressed in this report were also addressed in the UPR outcome and the LOIPR. The relevant paragraphs follow:

### **UPR**

Accepted:

129.20. Effectively implement the Anti-Torture Act with a special focus on the responsibility of superior officers, access to medical services and the establishment of a sufficiently resourced rehabilitation programme for victims (Ireland); Carry out the necessary measures to implement fully the 2009 Act against Torture, making special emphasis in investigation and sanction of those responsible for each crime (Mexico); Effectively implement the 2009 Anti-Torture Act, with a particular focus on ensuring that all investigations and prosecutions of allegations of torture and ill-treatment fully cover the possibility of command responsibility as stipulated in section 13 of the Act (Denmark);

Under consideration:

131.18. Effectively implement the 2009 Anti-Torture Act, with a particular focus on ensuring that all alleged victims of torture and ill-treatment have effective access to a medical evaluation of their injuries by institutionalising the use of the Istanbul Protocol, including by providing guidelines to judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological trauma of torture (Denmark);

### **Committee Against Torture LOIPR**

2. ...Please indicate whether the Act provides for liability for individuals in positions of command responsibility and specifically indicate whether any individual has been convicted on this basis.

3. ...Please clarify whether detainees are guaranteed the right to contact a lawyer of their choice and a family member at the time of their detention, and whether inmates have the right to an examination by an independent doctor upon request at the time of their detention and thereafter? Please indicate where these rights are provided in law, how

the State party ensures they are afforded in practice, and how detainees are made aware of them.

5. What safeguards are in place to ensure that medical personnel are not subject to police intimidation and are able to examine victims independently of the police and to maintain the confidentiality of medical reports, and how does the State party monitor the implementation of such safeguards to assure they are afforded in practice?...

18. ... please provide detailed information on the human rights instruction and training provided for:

(c) Medical personnel involved with detainees, on the guidelines to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Istanbul Protocol.

19. Please indicate measures taken to address the reported lack of forensic investigation capacity in the Philippines, rendering prosecution highly dependent on witness testimony.

24. Please provide information on the status of any investigation into the following cases in which police or military personnel are alleged to have committed torture:

(b) Lenin Canda Salas, who, along with four associates, was reportedly tortured in police custody on August 3, 2010. The Committee understands that charges filed against the officials believed to be responsible were later dropped on the grounds that Mr. Salas and his associates were blindfolded during the torture and thus unable to identify the perpetrators. Please indicate whether any investigation into these allegations continues, what steps the State party is taking to ensure that the victims obtain redress, and what measures the State party is taking to ensure that public officials are prohibited from blindfolding detainees during interrogation, in law and in practice;

(c) Abdul-Khan Balinting Ajid, who was arrested and allegedly tortured from July 23-26, 2011 by members of the AFP 39th Scout Rangers in Sumisip, and into whose allegations the military reportedly launched an investigation;

29. In the light of the Committee's previous concluding observations (para.22), please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report in 2009. This information should include the number of requests made, the number granted, the amounts of

compensation ordered and those actually provided in each case. Please also provide information on the accessibility and availability of rehabilitation programmes for victims of torture, ill-treatment, trafficking and domestic and other sexual violence, including medical and psychological assistance. Please indicate the status of implementation of section 19 of the Anti-Torture Law, which mandates the formulation of a rehabilitation programme and specifically indicate whether all relevant agencies have participated in its development and implementation, the amount of resources allocated to it, and measures the State party is taking to ensure that it is implemented throughout the territory of the State party.