

PROSECUTION OF TORTURE A MANUAL

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Atty. Eric Henry Joseph F. Mallonga





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preface



BOUT two years ago, I was privileged to be involved in a project intended to give practical guidance on how to recognize, properly process, and prosecute complaints on human rights violations. Principally targeting prosecutors at the epicenter of our criminal justice system, the *Manual on Remedies for Human Rights*

Violations was published just before the passage of the Anti-Torture Law. Correspondingly, the scourge of torture could only be viewed—within the context of the existing of penal laws then—principally as an aggravating circumstance in crimes against persons. I had expressed hopes at the time that this particular development in our national law could find expression in another manual specific to torture. I am not only elated that this hope has come to pass, but deeply honored that I have been entrusted with the task of assisting to ensure the proper and fulsome prosecution of a gruesome offense that every Filipino, and all of humanity, has a stake in completely eradicating.

Where torture is committed by those sworn to protect and preserve the peace, and there is not only stolid indifference but unspoken conspiracy to insulate the guilty because of a misplaced sense of institutional loyalty, that nation where it occurs reminds us of the curse hurled by Trojan King Priam's daughter Cassandra, in describing the empire of the Greek rulers: "A house that God hates, guilty within of kindred blood shed."

At its core, torture degrades human dignity and demeans the person, violating the essential integrity of the human body and human will; an exploitation of a person's threshold of suffering. It takes advantage of every person's aversion to pain, which is deeply rooted in the primordial human instinct for survival and self-preservation and almost always overpowers a person's volition. Torture, as a state-sanctioned practice, has existed through the ages. In ancient times, the Greeks and Romans used it for interrogation, generally on slaves. Unfortunately, even with the evolution of modern legislation on various violations of the basic human rights of people by State actors, many states today still engage in torture in an unofficial capacity. In the 1980s, Professor Darius Rejali pointed out that dictatorships used torture "more, and more indiscriminately," but it was modern democracies, specifically referring to the United States, Britain, and France, that "pioneered and exported techniques that have become the lingua franca of modern torture: methods that leave no marks."

It must be clearly stated for the record: Torture, whether or not it leaves marks on the body, is still torture. It may be physical or psychological in its forms. It may not manifest any external injuries. But the deep scars of torture may be within the person's psyche that will take a longer period to heal; oftentimes no healing occurs, and the survivor has episodes of insanity with certain social maladjustments as a consequence of the trauma and stress of torture.

Nevertheless, even as the State actors, who have perpetrated torture, must be prosecuted and punished for their heinous crimes and their victim-survivors rehabilitated and socially reintegrated, there must also be programs for the continuous training of State actors to prevent further commission of such crimes and a rehabilitation of perpetrators, so that they become restored as they are mainstreamed. With the restoration of the victim-survivors as well as a marked improvement in the observance and respect for human rights by police and military institutions as the State actors most prone to commit torture, our ultimate goal of genuine peace and order within this country can certainly be achieved.

Nelson Mandela, in his autobiographical book *No Easy Walk to Freedom*, pointed out the possibilities of reconciliation in a deeply divided society as South Africa after the historic period of massacres and standard tortures and summary executions of political prisoners such as himself:

The policy of apartheid created a deep and lasting wound in my country and my people. All of us will spend many years, if not generations, recovering from that profound hurt. But the decades of oppression and brutality had another, unintended effect, and that was that it produced the Oliver Tambos, the Walter Sisulus, the Chief Luthulis, the Yusuf Dadoos, the Bram Fischers, the Robert Sobukwes of our time—men of such extraordinary courage, wisdom, and generosity that their like may never be known again. Perhaps it requires such depth of oppression to create such heights of character. My country is rich in (the) minerals and gems that lie beneath its soil, but I have always known that its greatest wealth is its people, finer and truer than the purest diamonds.

It is from these comrades in the struggle that I learned the meaning of courage. Time and again, I have seen men and women risk and give their lives for an idea. I have seen men stand up to attacks and torture without breaking, showing a strength and resiliency that defies the imagination. I learned that courage was not the absence of fear, but the triumph over it. I felt fear myself more times than I can remember, but I hid behind a mask of boldness. The brave man is not he who does not feel afraid, but he who conquers that fear.

I never lost hope that this great transformation would occur. Not only because of the great heroes I have already cited, but because of the courage of the ordinary men and women of my country. I always knew that deep down in every human heart, there is mercy and generosity. No one is born hating another person because of the color of his skin, or his background, or his religion. People must learn to hate, and if they can learn to

hate, they can be taught to love, for love comes more naturally to the human heart than its opposite. Even in the grimmest times in prison when my comrades and I were pushed to our limits, I would see a glimmer of humanity in one of the guards, perhaps just for a second but was enough to reassure me and keep me going. Man's goodness is a flame that can be hidden but never extinguished.

Like Mandela who still believes in man's goodness despite the abominable deeds committed upon his person and his people, those of us who continue to advocate for the betterment of humanity must believe in the possibilities of the resilience and transformation of people, despite the hatred and inhumanity festering in the souls of both the perpetrators and their victims. We must always search for the good in man, even in those who have tortured and massacred with brazenness, for them to realize the heinousness in their atrocious deeds and manifest remorse for the evil committed. With a torturer's recognition of his inhumanity, we are able to take a step forward and move toward the creation of a better and safer society for our people.

The quest for justice and respect for the fundamental freedoms and human rights of people remains a never-ending challenge, the end of which is an infinite number of steps away. But the journey always begins with the first step. It can begin with a better understanding of torture, and why and how it should be prosecuted to the very end in each and every instance it occurs. *Prosecution of Torture: A Manual* is an attempt to assist in that first step, with the fervent hope that each of the next would become less and less feeble, until the walk breaks into a run towards a future that finds no justification whatsoever for the commission of torture.

ATTY. ERIC HENRY JOSEPH F. MALLONGA

acknowledgment



HEN my colleagues from The Asia Foundation, Attys. Carol Mercado and Damcelle Cortes-Torres, first approached me on the possibilities of drafting a manual on human rights, I was reminded of Miguel de Cervantes Saavedra's boisterous but poignant saga, *Don Quixote*, the sad tale of

an elderly, impoverished gentleman of La Mancha.

Having read so many chivalric medieval romances, Don Quixote is stirred to seek his own dreamy adventures. The deluded but resilient knight-errant races inexorably to the merciless denouement of his life's travails. It is at that very great moment, when he succumbs to the fragility of health, when his visionary madness lifts, and on his deathbed, he rues his battles against the windmills as follies and lunacies. It is a conclusion that is not shared by his rotund squire, Sancho Panza, who pleads in tears for his master to rise from the dreary throes of death and sally forth to conquer more windmills and embark on more adventures in finishing the unfinished, to continue dreaming the impossible dream.

So must it be in our own lives. Who is to say that one's dreams and aspirations must yield to pragmatism and convenience, or that one cannot attempt to defy gravity when the opportunity presents itself? Everyone of us must aspire for a kinder, gentler world, where every single individual matters, and every attempt to make that a reality is neither folly nor madness.

Thank you, Atty. Carol Mercado and Atty. Damcelle Torres-Cortes. Like the optimistic squire, you buoyed my spirits to renew my engagement in the seemingly interminable and impossible struggle in addressing, redressing, and eventually eradicating all forms of human rights abuses in our country and elsewhere. Concededly, we should no longer remain serenely selfish and diffident in the wake of vast genocidal slaughters, dehumanizing atrocities, gruesome sufferings, and mysterious disappearances visited upon our people.

In the never-ending quest for justice and respect for the fundamental freedoms and human rights of people, in a universe ruled by a pantheon seemingly arbitrary and ruthless in its dispensations, three extraordinary people have remained devoted in encouraging me to finish *Prosecution of Torture: A Manual*:

Atty. Alma Veronica D. Fernandez-Mallonga, my personal editorial consultant and life partner, a partner of the Siguion Reyna Montecillo Ongsiaco Law Offices, shared her expertise, efforts, guidance, encouragement, and critical advice on the content and organization of this manual. She has also provided the inspiration, with our three young children, particularly Marius Henric, Erica Albertine, and Alexis Josephine, for my advocacies on human rights and child protection as I continue to feverishly tilt the windmills with inflammatory fervor;

Atty. Ryan Hartzell C. Balisacan, now a prosecution attorney at the Department of Justice, has been my legal researcher on my human rights advocacy, ever since we first collaborated on the draft of the *Manual on Remedies for Human Rights Violations*. As a law student at the University of the Philippines College of Law and a research assistant at the U.P. Law Center Institute of Human Rights, Ryan pointed out in several essays on human rights that there were no quantum leaps made by any government emerging from tyrannies into a full-fledged and committed democracy. The respect for human rights and fundamental freedoms of people requires political courage to go against the tide of established practices of the previous regime, and the corrupt powers, including the military and police bureaucracies that had entrenched themselves in the various branches of government. The new dispensations will have to exert more

efforts in recognizing these basic freedoms and human rights and win small victories toward gradual improvements in the administration of justice. It was this young law student who had taught me, an experienced criminal litigator and human rights advocate, these lessons in life;

Ms. Amelia S. Maik, an administrative assistant of the U.P. Institute of Human Rights, has also been my administrative assistant in all the dissertations I have prepared on the rights of children since 1997 and in all my speeches and presentations as a professorial lecturer for the various institutes of the U.P. Law Center. With the professional encoding of my lectures, researches, and dissertations, whether for the Department of Social Welfare and Development- MIMAROPA or Bantay Bata 163, ABS-CBN Foundation, both of which I am legal counsel, or for Meritxell Children's World Foundation Inc., a registered, licensed, and accredited orphanage of which I am founder, any administrative efficiency, expert documentation, and professional coordination is attributable to Ms. Maik.

I also express my sincerest appreciation to the following people who participated with their concerned and concerted efforts in the development and publication of *Prosecution of Torture: A Manual*, and contributed in innumerable ways to its production:

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This section would not be complete if I do not thank the following people who provided me with the moral strength and courage to struggle

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I thank you and salute you all for your generosity, your humanity, and your compassion for the people and the nation that you have served, and for all having touched my life.

ATTY. ERIC HENRY JOSEPH F. MALLONGA

contents

Prefacevi
Acknowledgmentx
List of Annexesxv
1 Conceptual Overview
The evils of torture
Defining torture5
The Philippine context of torture7
Purpose of the manual9
Torture Throughout History
2 The Legal Framework of Torture in International Law
Genesis and historical development of the international law on torture
3 The Philippine Law on Torture
Torture as a common offense: The legal regime prior to the Anti-Torture Act48 Legal recognition of the torture of children as a crime
Contextualizing the Anti-Torture Act in substantive and procedural law81
4 Prosecution of Torture Cases
The role of lawyers in the prosecution of torture
5 Conclusion
The challenge ahead: Defeating torture102

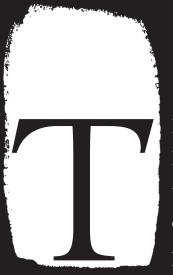
annexes

Annex A. Republic Act No. 9745 (The Anti-Torture Act)
Annex B. Implementing Rules and Regulations of the Anti-Torture Act115
Annex C. United Nations Convention Against Torture
Annex D. Cases Cited
Ireland v. United Kingdom (1978)
Tokyo War Crimes Tribunal (1948)
G.R.B. v. Sweden (1998)
Elmi v. Australia (1999)
Blanco Abad v. Spain (1998)
Rosenmann v. Spain (2002)
Prosecutor v. Furundzija (1998)
Singarasa v. Sri Lanka (2004)
Urra Guridi v. Spain (2005)
People v. Castro (1964)
People v. Chaw Yaw Shun (1968)
Annex E
Annex E1. Torture by means of physical suffering
Annex E2. Torture by means of mental suffering
Annex E3. Torture for the purpose of showing discrimination
Annex E4. Torture for the purpose of punishment
Annex E5. Torture for the purpose of intimidation
Annex E6. Torture through the instigation of a person in authority183
Annex E7. Torture with the consent or acquiescence of a person in authority 185



A video grab from Al Jazeera of the Manila policeman who allegedly tortured a theft suspect at a Tondo police station.

Conceptual Overview



HE video spread like wildfire in Philippine media: it showed an unnamed naked male writhing on the floor as a plainclothes policeman tugged at a rope

tied to his genitals. Vividly depicted were the helplessness and utter desperation of the victim, in stark contrast with the cruelty and abuse of power that completely denigrated the dignity of a living person. This was torture, plain and simple.

The evils of torture



HE world over, the mere mention of the term "torture" is enough to induce fear and terror in the hearts of all persons, and conjure in their minds visions of unspeakable physical, psychological, and emotional pain beyond normal human tolerance.

Indeed, the very word "torture" traces its origins to the Latin word "torquere," which literally means "to twist," denoting just one of the innumerable ways by which severe pain can be inflicted on a person. Since time immemorial, acts of torture have been employed to break a person's will and compel him or her to accede to the torturer's wishes. It has been used to extract confessions, force the disclosure of secrets, or compel actions and omissions.

The earliest records of the use of torture by public officers or persons with authority within the context of the criminal justice system—to extract confessions in order to determine guilt—can be traced to Roman civilization in 12th century Europe.1 From the 12th to the 13th century, torture was recognized as the primary means for extracting confessions, which then

became introduced and accepted in legal proceedings as admissible evidence. The practice continued with official sanction well into the 18th century, when even the Roman Catholic Church tolerated, even permitted, its use especially for sacrilege, heresy, and witchcraft trials.²

However, there are instances when state agents practice torture for no apparent reason other than the fact that the torturer harbors rage and anger against the victim in massive proportions. During these instances, torture is employed merely to ensure that the victim's death is preceded by utter helplessness and agony. Fairly recent accounts of ethnic conflicts in Eastern Europe (the former Yugoslavia, for example) and tribal civil wars in Africa (in Rwanda, Congo, Sudan, and Liberia) provide a graphic picture of the widespread employment of torture by belligerent forces arising from racial and ethnic hatred.

At its core, therefore, torture is characterized rightly as a violation of a fundamental human right. It degrades human dignity and amounts to a denial of the inherent respect due to every human being. It violates the integrity of the human body and human will. It exploits the limitations of a person's threshold of suffering. It takes advantage of the fact that every person's aversion to pain, which is deeply rooted in the primordial human instinct for survival and self-preservation, can almost always overpower a person's volition.

Torture also represents a breach of international humanitarian law. Formerly known more popularly as the "laws of war" or the "laws of armed conflict," international humanitarian law governs the conduct of all persons in times of hostilities, as opposed to human rights that govern the conduct of persons at all times, both in peace and in war. International humanitarian law rests on the philosophy that while a state of peace should be the most desirable state, in case war breaks out for any reason, justified or not, the disputing parties are obliged to conduct their hostilities within certain parameters that are drawn primarily to lessen

the adverse effects of war and to ensure the safety of certain classes of protected persons.

Among the fundamental principles of international humanitarian law is the **principle of limitation**. Under this principle, the means and methods of warfare are not illimitable; combatants are not free to use any and all kinds of weapons and tactics when military objectives can adequately be achieved using conventional ones. Further, combatants should not be free to employ means and methods that cause unnecessary suffering and superfluous injury.

Torture violates the principle of limitation blatantly. By subjecting persons to cruelty and suffering, the conduct of hostilities descends to a level of barbarity that sacrifices human dignity and human worth in favor of a desire for revenge or retribution. By employing torture, combatants seek to achieve objectives that can readily be obtained through other methods of interrogation and investigation that do not violate the integrity of the human person.

In sum, torture is reprehensible because it specifically targets and undermines a person's faculty of autonomous decision-making and free will, so that he or she will be essentially subjugated by another without his or her consent. Without liberty of thought, action, and conscience, a person loses a fundamental aspect of his or her humanity. Therein lies the evil that animates acts of torture.

Defining torture



ONSIDERING the malevolence that attends acts of torture, it is inevitable that torture progressively received a manner of treatment different from that of common crimes. Torture invariably involves causing unnecessary and intolerable suffering and agony to satisfy a particular purpose. It is the context in which it is

committed that places torture in a different league of crimes altogether and imbues it with a far greater evil as compared to generic crimes that similarly involve destruction of life, infliction of injury, or subversion of free will.

However, despite the fact that even average persons can readily assign a definition to the term "torture" based on common human experience, the development of the terminology as a legal construct followed a different path. As will be discussed fully later, the body of international and municipal laws enacted to punish torture as a specific crime intentionally focused on the species that triggers state responsibility, and not on that which gives rise to the liability of private individuals. While torture is abominable in itself, in the eyes of the law, it assumes an even more sinister and atrocious character when committed by agents of government. Thus, it is this kind of torture that has received specific differential treatment in criminal law.

At the outset, it is necessary to establish that "torture," as referred to and discussed in this manual, is to be given a specific legal definition that is narrower in scope than generic "torture" as commonly used and understood. For purposes of this manual, "torture" shall not include the infliction of pain and suffering by private individuals in general. It shall be confined to those directly committed, induced, consented to, or cooperated in by a public official. The discussions on torture in this manual will be anchored on the definition of torture as found in the United Nations Convention Against Torture (UNCAT), which was adopted in the Philippine law on torture, Republic Act No. 9745 or the Anti-Torture Act:

> [T]he term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The use of this definition is significant because it establishes the elements of the crime of torture which is punishable under the law and narrows down criminal liability to particular persons.

The Philippine context of torture

N the Philippines, as elsewhere, torture is not an alien concept. That it is being committed in various contexts is arguably a commonly held notion. Prior to the increased human rights consciousness that emerged only very recently in the policies and practices of the national government, acts of torture have been widely and frequently reported, so much so that it has increasingly been regarded as an unacknowledged, unofficial technique for interrogation and discipline in the police and military establishments.

Historically, the commission of torture reached its height during the martial law era, when it became necessary for the government to effectively and decisively quell the mounting underground political opposition by forcing confessions of tactical information from hapless, oftentimes innocent, victims. By all indications, however, the practice of employing torture continues to this day even after the restoration of the democratic regime.

Perhaps, the only difference is that public officials utilizing torture have learned from past experience. They have not diminished their use of torture. They have only become more circumspect and cautious in hiding or concealing evidence of its commission (not to mention more creative in employing means of torture that leave no ostensible trace so as to ensure impunity). Then, as now, the usual victims of torture in the hands of the police and the military are often suspects in criminal offenses, including rebels and insurgents.

It is against this backdrop that the UNCAT was adopted by the Philippine government. Subsequently, albeit not without inordinate delay, Congress enacted the Anti-Torture Act to enflesh the government's commitments under UNCAT. The Anti-Torture Act is envisioned to provide the necessary impetus for the eventual eradication of the practice of torture. By providing an effective legal mechanism for the redress of this human right violation, the law seeks to compel police and military officers to veer away from the prevailing culture that tolerates and sanctions the employment of acts of torture to achieve tactical aims.

However, it bears emphasis that this novel legislation, notwithstanding its lofty aims, must contend with decades of practice perfected through constant repetition and official acquiescence and tolerance. It must pierce the veil that has historically shielded the police and military establishments, a veil that owes its existence from the fact that acts of torture are always committed in secrecy and within institutions that value fraternal loyalty and esprit de corps, thereby engendering impunity.

Those charged with enforcing the Anti-Torture Act must therefore be aware that its implementation may be severely constrained by the context in which it is applied—torture in the Philippines is currently publicly condemned but surreptitiously condoned. For a clandestine crime such as this, the mere act of dragging it into the open requires equal, if not more, effort as that required in its prosecution.

Purpose of the manual



manual is specifically addressed prosecutors, who are entrusted with the duty to indict perpetrators and litigate cases of torture in court in order to vindicate the rights of victims. It will attempt to lay down pointers and guidelines in order for prosecutors to effectively build a solid case for violation of the Anti-

Torture Act. To do this, prosecutors will first be given the conceptual foundations of torture as a legal construct in order for them to identify it whenever and however it is committed.

Prosecutors should know the elements of torture and establish the criminal liability of all those involved in its commission. They must also be able to acquire the necessary skills to immediately discover if torture has been committed because, more often than not, victims of torture who remain in custody will not be able to volunteer such information for fear of retaliation from the torturers. Sure death awaits victim-witnesses who testify against syndicated torture and crimes perpetrated by law enforcement and military authorities as there is a seeming lack of an adequate and efficient protection system despite a Witness Protection Law.

Once discovered, acts of torture must be immediately and effectively documented, because some evidence of torture sufficient to secure a conviction is not permanent. Therefore, this manual will provide prosecutors the basic skills necessary for them to apply fundamental medical principles in forensic evidence-gathering. It is envisioned that prosecutors can fuse their legal background with rudimentary knowledge of medicine to successfully procure and preserve evidence of torture that will stand in court.

Finally, prosecutors will be provided guidelines in commencing the actual litigation of torture cases. Armed with the requisite knowledge of what torture is and the evidence necessary to establish it, they will be more adept at preparing criminal informations or formal indictments for violations of the Anti-Torture Act and subsequently going to trial on behalf of torture victims, protecting victim-survivors and their witnesses, obtaining relative success at prosecution of human rights violations, and ultimately, stopping the impunity in the commission of torture and other crimes against humanity.

Torture Throughout History

N ancient times, the Greeks and Romans used torture for interrogation, usually on slaves, until second century A.D. A slave's testimony was admissible *only* if extracted by torture because it was assumed that slaves could not be trusted to reveal the truth voluntarily. The practice was later extended to all members of the lower classes.

Crucifixion was one of the oldest methods of torture, employed by Phoenicians, Scythians, Greeks, Romans, Persians, and Carthaginians.ⁱⁱ Under Spartacus and the Destruction of Jerusalem in 70 A.D., notorious mass crucifixions followed the slave rebellion. To frighten other slaves from revolting, Crassus crucified 6,000 of Spartacus' men along the Appian Way from Capua to Rome.ⁱⁱⁱ

Prior to crucifixion, victims were often *savagely whipped* with barbed metal lashes to induce exsanguination, or bleeding out, which weakened the condemned and sped up what could be an inconveniently long execution process. Jesus Christ Himself was brutally scourged at the pillar, crowned with thorns, and pierced in his side as He was nailed to a cross by the Romans.

But while the Romans crucified their enemies and slaves, the Jews and Muslims used stoning, and Egyptians used the desert sun death in punishing the immoral and deterring others from committing acts of crime.iv

In China, from 900 A.D. to its abolition in 1905, slow slicing, or death by a thousand cuts (lingchi), lasted three days, totalling 3,600 cuts. The torturer wielded an extremely sharp knife by putting out the eyes, rendering the condemned incapable of seeing the remainder of the torture and, presumably, adding considerably to the psychological terror of the procedure. Successive rather minor cuts chopped off ears, nose, tongue, fingers, toes, and such before proceeding to grosser cuts that removed large collops of flesh from more sizable parts, like the thighs and shoulders. The heavily carved bodies of the deceased were then paraded in public.v

Before torture was abolished in European states in the late 18th and early 19th centuries, methods of torture included the chevalet, in which an accused witch sat on a pointed metal horse with weights strung from her feet. vi Sexual humiliation torture included forced sitting on redhot stools. vii Gresillons, also called pennywinkis in Scotland, crushed the tips of fingers and toes in a vice-like device.viii

The Spanish Boot, or "leg-screw," used mostly in Germany and Scotland, was a steel boot that was placed over the leg of the accused and was tightened, the pressure of which would break the shin bone in pieces.ix The echelle, more commonly known as the "ladder" or "rack," was a long table where the accused would be stretched violently, pulling out the limbs from their sockets and tearing it out of the body entirely. On some special occasions, a tortillon, in conjunction with the ladder, would severely squeeze and mutilate the genitals simultaneously with the stretching.x

Impalement was frequently practiced in Asia and Europe throughout the Middle Ages. Vlad III Dracula and Ivan the Terrible executed people by piercing them with a long stake; with penetration through the sides, from the rectum, or through the mouth. Often, the victim, still alive, was hoisted into the air after partial impalement, with gravity and the victim's own struggles causing him to slide down the pole after many days.xi

Also a favorite method in France and Germany was the breaking wheel. The condemned were placed on a cartwheel with their limbs stretched out along the spokes over two sturdy wooden beams and made to slowly revolve. Through openings between the spokes, the executioner hit the victim with an iron hammer that could easily break the victim's bones. This process was repeated several times per limb. Once his bones were broken, he was left on the wheel to die. It could take hours, even days, before shock and dehydration caused death.xii

Over time, torture remains a major ethical, philosophical, and legal dilemma as its conceptual definition expands and embraces the sadistic practices of many cultures. Apparently, torture seemed to be compatible with society's concept of justice. In medieval Europe, torture was deemed a legitimate means to extract confessions, or to obtain names of accomplices or other information, about a crime. It was legally permissible only if there was insufficient evidence against the accused.xiii

Even the Medieval Catholic Church engaged in torture commencing 1252 with the Papal Bull Ad Extirpanda. While medieval courts often treated suspects ferociously, many of the most vicious procedures were inflicted upon pious heretics by even more pious friars, who were the most fearsomely innovative torturers in medieval Spain.xiv In 1816, the modern Church's views regarding torture changed drastically with a Papal Bull prohibiting torture as a grave human rights violation. This was bolstered by the Catechism of the Catholic Church No. 2297-2298:

Torture, which uses physical or moral violence to extract confessions, punish the guilty, frighten opponents, or satisfy hatred is contrary to respect for the person and for human dignity....In times past, cruel practices were commonly used by legitimate governments to maintain law and order, often without protest from the Pastors of the Church, who themselves adopted in their own tribunals the prescriptions of Roman law concerning torture. Regrettable as these facts are, the Church always taught the duty of clemency and mercy. She forbade clerics to shed blood. In recent times it has become evident that these cruel practices were neither necessary for public order, nor in conformity with the legitimate rights of the human person. On the contrary, these practices led to ones even more degrading. It is necessary to work for their abolition. We must pray for the victims and their tormentors.

Much earlier, in 1624, however, Johann Graefe published fundamental principles against torture in his advocacy to reform the judiciary and the admissibility of testimonial evidence secured through torture.** Italian lawyer Cesare Beccaria published an essay in which he argued that torture unjustly punished the innocent and should be unnecessary in proving guilt.**vi Voltaire (1694–1778) also fiercely condemned torture in some of his essays.

In 1798, Napoleon Bonaparte pronounced that whipping men suspected of having important secrets to reveal is useless because those being tortured say whatever comes into their heads and whatever they think one wants to believe. Consequently, as a commander-in-chief of the French Empire, he forbade torture for being contrary to reason and humanity.xvii It must be succinctly stated, as Emperor Napoleon observed, confessions obtained through torture can never be judicially admissible because of its unreliability.

As modern sensibilities evolved, there was even a more profound reaction to the war atrocities committed by the Axis Powers in the Second World War, which have led to a sweeping international rejection of most, if not all aspects of the practice of torture.xviii Among others, the atrocities of Adolf Hitler's extirpation of the Jewish peoples during the Holocaust and the military occupation of Southeast Asia by the Japanese Imperial Army could not be ignored, with the Nuremberg Tribunals authorized to dispense justice for the victims of such crimes against humanity.

Unfortunately, even with the evolution of modern legislation on various violations of the basic human rights of people by state actors, many states today still engage in torture in an unofficial capacity. In the 1980s, Professor Darius Rejali pointed out that dictatorships used torture "more, and more indiscriminately," but it was modern democracies, "the United States, Britain, and France," which "pioneered and exported techniques that have become the lingua franca of modern torture: methods that leave no marks."xix

Thus, it has been that peculiar and queer justification where there are no apparent visible disfigurements or marks on the person's bodily integrity, and the delusional beliefs that such "enhanced interrogation" techniques may have disrupted dozens of planned attacks against the American heartland. This may have encouraged even the former American President George W. Bush Jr. in proclaiming the legality of waterboarding, where a person is intermittently suffocated with a wet cloth around the mouth and nostrils and water hosed into these orifices.xx It must be clarified that acceptable methods in the interrogation or investigation of crime suspects and detainees do not include suffocation, blindfolding, asphyxiation, and whatever enhancement is made to justify its commission will still remain torture.



To this day, the horrors of unspeakable torture still haunt the Basilan 73, detainees rounded up in the South in 2001 for kidnapping charges. PHOTO BY MARIO IGNACIO IV

The Legal Framework of Torture in International Law

UE perhaps to the fact that states and their agents unofficially acknowledge and recognize the utility of torture in criminal proceedings and military interrogation, no serious effort has been exerted to

completely eradicate it in practice. Cognizant of this fact, advocates against torture have worked for its prohibition under the law, hoping that official condemnation and the threat of penalty will eventually deter states and their agents from practicing it. To optimize the impact of the criminalization of torture, the support of the international community was sought, in order to come up with binding international instruments, principles, and doctrines that will pressure all states into disavowing the practice of torture. The universal condemnation of torture that now pervades international law is a product of the progressive recognition of the inherent evil of the practice and the need to actively prohibit its employment under the law.

Genesis and historical development of the international law on torture

HE prohibition of torture can be traced back to earlier legal instruments primarily of military origin. The Association for the Prevention of Torture (APT), an international organization nongovernmental based Geneva, Switzerland which is at the forefront of international advocacy against torture, compiled

in 2007 a textual history of the legal precedents of the prohibition of torture. In The Prohibition of Torture and Other Cruel, Inhuman or Degrading Punishment under International Humanitarian Law: Source Texts, the APT outlined the progression of legal texts leading to the development of the UNCAT, which remains to this day the leading and most authoritative normative international instrument prohibiting torture committed by state agents.

According to the APT's Source Texts, the following legal sources provided the impetus for the genesis and eventual development of the international law on torture:

- Article 16 of the Instructions for the Government of Armies of the United States in the Field (otherwise known as the Lieber Code) explicitly provides that "military necessity does not admit of cruelty." Therefore, all military field personnel were enjoined, on pain of death or other appropriate grave penalty, from inflicting suffering for suffering's sake or for the sake of revenge, as well as maiming and wounding except during a fight, and the use of torture to extort confessions.
- The Geneva Convention of 1864 dictates that wounded and sick soldiers shall be taken care of.
- The Geneva Convention of 1906 provides that the prevailing party after every battle shall take measures to search for the wounded and to protect the wounded and the dead from ill-treatment and robbery.
- Under the Laws and Customs of War on Land (otherwise known as the Law of the Hague IV), prisoners of war are to be treated humanely. Likewise, combatants who have already surrendered or who no longer have means of defense are not to be killed or wounded. Inhabitants of a territory should not be forced to furnish information about the defense of the other belligerent force.
- The Geneva Convention of 1929 provides in Article 2 that prisoners of war "must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited." Article 4 also provides that "no coercion may be used on prisoners to secure information as to the condition of their army or country. Prisoners who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind whatever." Lastly, Article 46 states that "any corporal punishment, any imprisonment in quarters without daylight and, in general, any form of cruelty, is forbidden."
- The Charter of the International Military Tribunal for the Trial of German Major War Criminals (otherwise known as the Nuremberg War Crimes Tribunal) in Article 6 (b) classifies as a "war crime" the ill-treatment of a civilian population or of prisoners of war.
- The Geneva Convention of 1949 explicitly prohibits the employment of torture against persons not taking any active part in the hostilities, including members of the armed forces who have laid down their arms and those

placed hors de combat due to sickness, injury, or detention. It also prohibits outrages against personal dignity and humiliating and degrading treatment.

- The 1949 (Third) Geneva Convention (Prisoners of War) prescribes humane treatment for all prisoners of war. In particular, Article 17 provides that "no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."
- **9** The 1949 (Fourth) Geneva Convention (Civilians) explicitly provides that states shall bind themselves not to take any measure of such character as to cause the physical suffering or extermination of civilians in their hands. Particularly, it clarifies that the prohibition "applies not only to murder, torture, corporal punishments, mutilation, and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents."
- 10 The Universal Declaration of Human Rights of the United Nations General Assembly recognizes in Article 5 the human right against torture and cruel, inhuman, or degrading treatment or punishment.
- 11 The International Covenant on Civil and Political Rights expands the content of the right against torture found in the Universal Declaration of Human Rights by providing that "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."
- 12 The Geneva Protocol I (International Conflicts) of 1977 mandates that "torture of all kinds, whether physical or mental," shall constitute violence to the life, health, physical or mental well-being of persons which "shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents."
- **13** The Geneva Protocol II (Non-International Conflicts) of 1977 adopts the prohibitory language of the first Geneva Protocol but goes on further to proscribe "violence to the life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture,

mutilation, or any form of corporal punishment."

- **14** The Rome Statute of 1998, which created the International Criminal Court, the first permanent independent international tribunal for war crimes, crimes against humanity, genocide, and other grave breaches of the laws and customs of international armed conflict, adopts torture as a component element of offenses under its jurisdiction.
 - The Rome Statute first defined the act of torture as "the intentional a infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."
 - Thereafter, the Rome Statute provided that "torture...[and] other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" shall constitute a "crime against humanity" if committed as part of a widespread or systematic attack directed against any civilian population without knowledge of the attack.
 - If committed against the special classes of protected persons under international humanitarian law, "torture or inhuman treatment, including biological experiments," as well as "willfully causing great suffering, or serious injury to body or health" shall constitute a grave violation of the Geneva Conventions, which is also an offense under the International Criminal Court's jurisdiction.

A perusal of the legal documents identified by the APT will reveal that the prohibition of torture has evolved in international law from a norm of conduct in the context of armed conflict to a fully acknowledged human right that may not be committed "at any time and in any place whatsoever" whether by civilian or by military authorities. The most recent assimilation of the concept of torture in international law is in the field of international criminal law, where torture is recognized as a means by which the most heinous and reprehensible crimes against the human race can be committed.

Indeed, by the sheer number of international legal instruments recognizing the underlying evil of torture since before the 19th century, there is no longer any doubt that the international community acknowledges torture as an inherently malevolent act that violates the fundamental rights of persons.

The United Nations Convention Against Torture

ROM the body of international laws that progressively defined torture, the international community came up with the most binding instrument yet which seeks to address the most pernicious species of torture—that committed by the State or its agents.

Indeed, the UNCAT is significant and singular in many respects. For one, being a convention, its normative contents, positive obligations, and mandatory duties are binding on all states signatories. It likewise created a reportorial mechanism that will assist the parties in monitoring the level of compliance with the provisions thereof on a periodic and official basis.

At its core, the UNCAT is envisioned to create a legal regime where states are made to conform to the universal prohibition of torture. The UNCAT, therefore, is both an expression of the international consensus or *opinio juris* condemning torture, as well as a norm-creating instrument designed to influence the conduct and practice of states. The UNCAT is also significant because it sought to provide a universally accepted definition of torture that may serve as a model or template for various other legislations.

Most importantly, the UNCAT recognized and treated torture committed by the State through its agents as a prohibited conduct in itself, independent of the context in which it is committed. This is a progression from the various international instruments discussed in the preceding section, which treated torture as an act committed only in the context of a military war or during a period of occupation or aggression. In the Rome Statute, for example, torture is merely a means by which to commit war crimes and crimes against humanity.

In various instruments in the past, torture was also seen as a reprehensible act directed against protected persons like prisoners of war. However, the UNCAT does not make any distinction as to when an act of torture may be deemed to have been committed, or against whom, for as long as state agents committed it. Because of the UNCAT, torture has been lifted out of the limited milieu of wartime crimes or situations of armed conflict.

Due to its legal significance as the foremost international instrument dealing with torture, the UNCAT should be closely examined in order to determine how its normative content can be better expressed and practiced in actuality.

Legal basis

The preambular clauses of the UNCAT state the legal basis for its adoption by the General Assembly. It was in recognition of the "equal and inalienable rights of all members of the human family," which are "derived from the inherent dignity of the human person," as stated in the Charter of the United Nations.

Likewise, the UNCAT finds legal anchor on the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that recognize the fundamental human right not to be subjected to cruel, inhuman, or degrading punishment and treatment.

Lastly, the UNCAT takes off from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment adopted by the United Nations General Assembly on December 9, 1975.

Definition of torture

The UNCAT defines torture as:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

As discussed earlier in this manual, this definition became the model for the Philippine Anti-Torture Act. This is not to say, however, that the UNCAT provided an inflexible and immutable template for defining torture. Rather, it merely created a *minimum* standard of definition below which any other definition should not be allowed to fall.

It is significant that the UNCAT fixed a *floor*, not a ceiling, of the level and extent of protection that other anti-torture instruments, including domestic legislation, can provide. The exclusionary clause in the UNCAT provides that the definition is "without prejudice to any international instrument or national legislation which does or may contain provisions of wider application." [Underscoring supplied] Any deviation by states parties to the UNCAT, therefore, should always be in favor of or a wider application of the definition of torture rather than a more limited or restricted one that may present opportunities for impunity or evasion.

In the Handbook on State Obligations under the UN Convention Against *Torture* prepared by the APT, the definition of torture in the UNCAT can be distilled into three defining and constitutive elements:

- 1 Infliction of severe mental or physical pain or suffering
- 2 By or with the consent or acquiescence of state authorities
- For a specific purpose, such as gaining information, punishment, or intimidation3

What, then, constitute suffering that is so "severe" that it comes under the ambit of torture?

Unfortunately, the severity of pain inflicted on a victim cannot be subjected to objective standards of measurement. The gravity of pain experienced by a person varies from individual to individual, and varies even more widely from circumstance to circumstance. One person's threshold of pain is different from another, and what may constitute tolerable pain under one circumstance can degenerate rapidly into severe and inhumane pain when applied repeatedly over a prolonged period of time or under circumstances specifically designed to target a peculiar emotional or psychological vulnerability of a person.

The APT's handbook underscored that the Working Group of the Commission on Human Rights that drafted the UNCAT was not able to exhaustively discuss this issue, but did address it by stating that "the scope of 'severe' encompasses prolonged coercive or abusive conduct which in itself is not severe, but becomes so over a period of time." Clearly, the test for determining the severity of torture is one that is both *subjective*—to be taken from the victim's perspective—and *contextual*—to be considered in view of the surrounding circumstances when it was being perpetrated.

It is interesting to note, however, that the European Court of Human Rights in the case of *Ireland v. United Kingdom* (2 Eur. Ct. H.R. series A), as discussed in the APT handbook, sought to impose an "entry level threshold" for torture based on a fixed set of criteria to come up with a "minimum level of severity" that would distinguish torture from other acts of infliction of pain or injury. According to the court, the following aspects must be taken into account in coming up with a determination of severity of the alleged torture:

- 1 Duration of the treatment
- **2** Physical effects of the treatment
- 3 Mental effects of the treatment
- **4** Sex, age, and state of health of the victim

Additionally, the act must have caused "serious and cruel suffering" to the victim.

In any case, however, even if the European Court of Human Rights enumerated several criteria to determine the minimum threshold as regards the severity of torture, instead of adopting a generic case-to-case approach, it should still be noted that the four-point criteria it imposed are still subjective by nature. The physical and mental effect of torture, for instance, is to be

reckoned from the point of view of the victim, which, as discussed above, always assumes a subjective dimension and always takes context into account.

One substantial feature that ought to be highlighted as well in the UNCAT definition on persons accountable for torture is the inclusion of any individual working in an official capacity who intentionally commits acts causing severe pain or suffering, such as military personnel, police investigators and officers, prison wardens, jail guards, and the like.

However, the definition is also expansive enough to accommodate the various kinds of torture "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." These include:

- Civilians working with the military or police as civilian home defense and security capacities
- 2 Paramilitary or para-police organizations working in tandem with local military and police personnel or with the local government
- 3 Private armies or militias of incumbent elected or appointed public officials
- Private security agencies, for as long as they work for, with the consent of, or with the acquiescence of public officers
- Other agencies, offices, bureaus, or institutions over which government exerts some control or ownership.

It should be further pointed out that the clause "acting in an official capacity" in the UNCAT definition may be liberally construed and expanded to include insurgency or rebel organizations, liberation armies, foreign occupation forces, or armed opposition forces holding territorial jurisdiction or administrative control thereat, or possessing sufficient power to overturn or overrun the incumbent government.

Peremptory nature of the prohibition of torture

The UNCAT articulates the *peremptory* or mandatory (non-derogable) nature of the prohibition of torture. It provides that the commission of torture cannot be justified by any exceptional circumstance, including situations of distress like public emergencies, political instability, or war. The convention further provides that an order from a superior officer or public authority cannot be invoked as a justification for the commission of an act of torture.

These underscore the fact that the evil inherent in torture is so great that even public emergencies, during which the State is authorized to derogate from some human rights like free speech and expression, cannot justify it.

The UNCAT also recognized the international consensus borne out of the Tokyo War Crimes Tribunal proceedings that individuals remain responsible for certain inherently wrongful and atrocious acts even if they committed the same under color of some superior authority.

Positive obligations of the State

The UNCAT lays down a positive obligation on the part of the State: to "take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction." This obligation, while not couched in direct and mandatory language, is nonetheless positive, and should be interpreted in light of the international law principle that agreements entered into should be complied with in good faith (or the *pacta sunt servanda* doctrine).

While this obligation laid down in the UNCAT does not bind a state to, for example, enact a domestic law on torture within a fixed timeframe, it should nonetheless be interpreted to mean that the State should at least, in good faith, remove all legal obstacles to the effective enforcement of the prohibition of torture within its jurisdiction. At the most, the State is obligated to adopt proactive measures that will facilitate the full actualization of the provisions of the UNCAT.

Certainly, the guiding principle that a state should operate upon is:

- It should neither impede nor hamper the enforcement of the torture prohibition.
- Should an act of torture be committed and come to its knowledge, it should take reasonable steps to prevent impunity and exact accountability.
- Should the legal atmosphere within its territory be found to be conducive to torture, it should adopt measures with a view to reducing incidents of torture and preventing its repetition in the future, with the ultimate aim of extirpating its practice altogether.

The bottom line: a state that has assumed obligations under the UNCAT cannot be allowed to undermine its enforcement through inaction, indifference, and irresponsibility. It should take concrete and reasonable measures to eventually progress toward a regime that does not condone torture. A state that has bound itself to the UNCAT is obliged to adhere to its general spirit and intent—the eradication of the practice of torture by state agents.

Another obligation imposed by the UNCAT on the State is to "ensure that all acts of torture are offenses under its criminal law" and to make these offenses "punishable by appropriate penalties which take into account their grave nature." This provision of the UNCAT does not obligate states to legislate a specific and independent domestic law on torture; it will suffice that their penal laws allow for the punishment of acts of torture, *taking into account the gravity of the offense per se*.

However, the Committee Against Torture has frequently opined strongly that without a municipal law on torture, it would be very difficult for a state to punish the same in the manner specifically mandated in the UNCAT, that is, taking into account its "grave nature." This is because all penal laws follow the principle *nullum crimen*, *nulla poena sine lege*, or there is no crime when there is no law punishing the act.

In the absence of a definition of torture, acts of torture would have to be treated as ordinary offenses and would have to be categorized, if possible, using the rubric of existing criminal laws pertaining to analogous acts. This model, however, is useful only when the acts of torture can easily fit the mold of existing crimes like murder or physical injuries. However, when it comes to certain acts of torture that defy classification as common crimes (for example, psychological torture that does not involve any physical harm), the need for an independent law on torture becomes apparent; otherwise, the torturers will not be held criminally accountable at all.

Moreover, the second requirement of UNCAT's Article 4—to provide for a punishment that is commensurate to and that recognizes the peculiar gravity of the crime of torture—would appear to require a specific law on torture. The treatment of common offenses more often than not, if not always, falls short of the required severity standard under the UNCAT. Thus, punishing acts of torture under the framework of common crimes will not bring about the same level of deterrence intended to prevent a repetition of the same. Punishing acts of torture as ordinary offenses will only result in penalties that do not take into account the greater evil and atrocity attendant to torture.

For instance, the infliction of physical injuries under common

criminal laws is punishable based on the quality and effect of the resulting harm. However, it cannot be denied that an injury inflicted as in common crimes is not the same as when inflicted in the context of torture, where psychological harm is simultaneously sustained, and where the perpetrator is animated not only by the intent to harm but also with the purpose of extracting an illegal confession.

It is with regard to the latter case that the UNCAT admonishes states to provide a penalty commensurate to the gravity of evil inherent in torture. If the act is punished the same way as an ordinary case of physical injuries, the State would have been unable to discharge its obligations under UNCAT. Hence, Article 4 of the UNCAT should be interpreted in its totality as obligating states to at the very least adopt a definition of torture that includes the definition in Article 1.

Prosecution of torture as an act ex officio

Article 12 of the UNCAT establishes the prosecution of torture as an act ex officio: to be undertaken by the State in its official capacity and not only at the instance of a formal private complaint. This further cements the status of torture as a public crime. The provision of the UNCAT explicitly mandates the State to "proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

In effect, the UNCAT obligates the State to verify even informal reports of, or raw information regarding torture, as long as they engender "reasonable ground" to believe that the same has been committed. This admonition proceeds from the recognition of the enormous powers of the State and its agents who perpetrate acts of torture as defined in the

UNCAT. If the prosecution of torture is preconditioned on the formal complaint of an individual, there is a high likelihood that acts of torture will go unchecked and unpunished, since individuals are frequently unwilling to initiate the indictment of any member of the powerful government apparatus. Thus, the UNCAT obligates states to pursue the investigation of any official within their ranks as soon as reasonable grounds appear to engender a belief that torture has been committed.

Equally important is the obligation of the State to accord special legal protection to any individual who does come forward to complain on acts of torture perpetrated against him or her. Due to the gravity of torture as a crime and the difficulty of bringing an indictment against a government, military, or police official perceived to be powerful, the UNCAT seeks to ensure that an individual who makes an allegation of torture should enjoy a special status under the auspices of the State. Due to the inherent evil of torture, the State should exert all reasonable measures to fully exploit the testimony of an individual who claims to have been a victim, not only to vindicate the rights of that individual, but also to ensure that the same acts will not be repeated by the offending public officer.

The provisions of the UNCAT in Article 13 prescribes three species of special legal protection that must be extended to an individual who alleges torture:

- 1 He or she must be provided a complaint mechanism.
- **2** His or her case must be promptly and impartially examined by competent authority.
- **3** He or she shall be protected against ill-treatment or intimidation as a consequence of the complaint or evidence given.

All these remedies must be made available to the individual concerned; the impairment of any one of these will undermine the

UNCAT enforcement regime and foster a culture of impunity and nonaccountability on the part of the State.

Further, it should be noted that the third species of legal protection that of protection against ill-treatment and intimidation as a consequence of the complaint or the evidence given—has been likewise extended to witnesses who may provide testimony that will corroborate or supplement the principal complainant's. This is in recognition of the fact that the individual lodging the complaint may not be privy to all the facts and circumstances attendant to his or her torture. To be able to provide a holistic picture of the crime and to determine the liability of as many of the perpetrators as possible, the testimonies of witnesses must be considered alongside that of the victim. If the State does not accord protection to the witnesses, the case brought by the complainant may be significantly weakened or may be rendered insufficient.

Redress and reparations for victims of torture

Article 14 of the UNCAT recognizes the rights of victims of torture for redress and reparations. Earlier, it has been discussed that the UNCAT places much emphasis on the nature of torture as a public crime. Any act of torture is a transgression against the public order and security and undermines the legitimacy of the government. However, it cannot be denied that aside from the heavy public impact of torture as a crime and the overriding interest of the State to prevent its commission, torture is still, at its core, a violation of the human rights of an individual. Therefore, the State also has an equally compelling interest in ensuring that victims of torture are given adequate mechanisms for redress and reparations.

The Committee Against Torture has opined that the benefits enshrined

in Article 14 are not confined to monetary compensation alone. They encompass all reasonably necessary means that will contribute to the *full rehabilitation* of the victim or, in the event of death, his or her next of kin. These benefits should include mental and psychosocial rehabilitation, aside from the usual civil compensation sanctioned by law.

In sum, this provision of the UNCAT recognizes the need to provide remedies against the ill effects of torture in the private realm, as seen from the vantage point of the victim.

Non-admissibility of testimony obtained through torture

Perhaps one of the most significant provisions of the UNCAT is the mandate given to states to render inadmissible any testimony proven to have been extracted by way of acts of torture. This obligation, embodied in Article 15, seeks to ensure that not only will the perpetrators of torture be punished, their primordial purpose for committing the reprehensible acts will also not be subserved. This provision throws a full mantle of protection over the torture victim.

In a way, the inadmissibility principle plugs all the loopholes and ensures that the acts of torture will not achieve any of their desired effect and will produce no consequence whatsoever that will work to the detriment of the victim. It manifests the time-honored principle in the law on evidence that a statement extracted by illegal means should be treated as a "fruit of the poisonous tree" and must therefore be rejected in toto. Insulating the judiciary from the evils of torture and its equally pernicious effects will preserve judicial integrity and ensure that the processes of the courts will not be polluted by the proceeds or effects of unlawful acts.

Viewed from another angle, Article 15 seeks to provide a deterrent and preventive effect. By making sure that testimony proven to have been extracted illegally by way of torture will be inadmissible in evidence, the UNCAT provides a powerful disincentive for would-be perpetrators of torture. Since the primordial purpose of torture is the extraction of an illegal confession, it is expected that a state agent will think twice about employing it since a successful showing of torture will render any and all statements made under it worthless and without any legal effect. By removing this primary motivation, the State can somehow influence future perpetrators to refrain from employing acts of torture.

Torture laws in foreign jurisdictions



ROM a legal concept in international law, the prohibition of torture has also gained currency at the municipal level. To date, various countries apart from the Philippines have enacted domestic anti-torture legislations seeking to address the evil of this practice. In some jurisdictions, torture is recognized in other bodies of law, either in

the form of constitutional guarantees or in the form of war crimes or crimes against humanity. This only demonstrates that torture is not only an international law concept but one that finds existence in the *corpus juris* of municipal penal laws. Below are some of the major anti-torture legislations currently enforced in jurisdictions abroad:⁵

Australia. The Torture Prohibition and Death Penalty Abolition Act of 2010 amended Australia's Criminal Code Act of 1995 to make torture a *crime against humanity*, a *war crime*, and an *independent crime* in itself. Torture as an independent crime in Australia generally adopts the UNCAT definition of torture. However, torture as a crime against humanity or a war crime may be committed by any perpetrator, without

need of him or her being a public official or acting at the behest of such public official.

China. The prohibition of torture in China is not as comprehensive, since its law is focused only on a particular context and does not hew very closely to the UNCAT definition. Article 247 of China's Criminal Law punishes any act of torture committed by a judicial officer in order to extort a testimony from a witness, with a heavier punishment imposable if such act resulted in an injury, disability, or death.

France. The Penal Code of France punishes acts of torture committed systematically in the form of a war crime or crime against humanity and as an independent crime. The provisions of French law on torture does not adopt the UNCAT definition, but punishes all acts that qualify as such.

Germany. German penal laws recognized torture in 2002 through the passage of the Act to Introduce the Code of Crimes against International Law. However, torture in Germany has been recognized as a specific crime—only as a species of crimes against humanity and war crimes.

Japan. The laws of Japan prohibiting torture is one of the most advanced in terms of specifically targeting public officers. The Constitution of Japan explicitly provides in Article 36 that "[t]he infliction of torture by any public officer and cruel punishments are absolutely forbidden." It likewise provides an admonition that confessions extracted by means of torture shall be inadmissible in evidence. The 1907 Penal Code of Japan, amended in 2007, penalizes all acts of physical or mental cruelty committed specifically by "a person performing or assisting in judicial, prosecutorial, or police duties," as well as "a person who is guarding or escorting another person detained or confined in accordance with laws and regulations." Japan's torture laws, which zero in specifically on public officials charged with the custody of detained persons, hews very closely

to the language and intent of the UNCAT provisions.

Netherlands. In 2003, the Netherlands passed into law the Act Containing Rules Concerning Serious Violations of International Humanitarian Law or the International Crimes Act. Under this law, torture is punished as a crime against humanity and as a war crime, and likewise as an independent crime. Similar to the UNCAT definition, the torture law of the Netherlands refers to "a public servant or other person working in the service of authorities in the course of his duties." The Netherlands has also enacted the Aliens Act of November 23, 2000, which embodies the principle of *non refoulement* in international law. Significantly, the law provides that an alien may be issued a residence permit in the Netherlands if "he has good grounds for believing that if he is expelled he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment." The Netherlands is one of the very few jurisdictions in the world that has formally codified this principle of international refugee and asylum law into their municipal laws.

Russian Federation. The 1993 Constitution of the Russian Federation provides a guarantee against all forms of torture. Further, its Criminal Code punishes acts of torture both as a species of infliction of injury and as an independent crime. Under the Russian Criminal Code, torture is punishable regardless of the perpetrator; it is applicable even to private persons. The fact that a perpetrator is a public official and the torture was committed in connection with an official activity or in the discharge of a public duty is merely an aggravating circumstance that increases the gravity of penalty imposable. Thus, the Russian Federation recognizes a broader spectrum of torture than that provided in the UNCAT.

South Africa. The 1996 Constitution of South Africa provides that the "right to freedom and security of the person" includes the right not to be tortured in any way.

Switzerland. In Switzerland, the 1999 Federal Constitution provides a guarantee against the commission of acts of torture. Like the Netherlands, Switzerland provides that no person shall be expelled from its jurisdiction and moved to a state where there is a threat that such person will be subjected to torture.

United Kingdom. The United Kingdom's torture law provides one of the most comprehensive treatments of the crime of torture among all jurisdictions in the world. So broad is the scope of its application that under the Criminal Justice Act of 1988, torture may be committed by a public official or a person acting in an official capacity, whatever his nationality, whether such act of torture is committed in the United Kingdom or elsewhere. Its Human Rights Act of 1998 recognizes torture as a specific human rights violation for which comprehensive governmental remedies may be availed of. The breadth of the scope of the United Kingdom's torture law makes it possible even for non-United Kingdom nationals committing torture anywhere in the world to be sued for a criminal violation in the courts of the United Kingdom, subject only to the rules on acquisition of jurisdiction. On this regard, the United Kingdom's torture law is one of the most potent among municipal laws.

United States of America. The torture law of the United States, similar to the United Kingdom's, provides a revolutionary and comprehensive scope of applicability. Under Chapter 113C of the United States Code Collection, the crime of torture is an independent crime whose definition hews closely to that of the UNCAT (although instead of using the UNCAT term "public official," American law refers to acts committed "under color of law"). However, the torture law of the United States, through the Alien Tort Claims Act, further provides that acts of torture committed outside the United States may also be criminally punishable. To clarify the issue of jurisdiction that was not specifically addressed in the United Kingdom law, the United States law provides specifically that any crime of torture committed outside its territory may be prosecuted under its laws if (1)

the alleged offender is a national of the United States, or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. This revolutionary legislation in the United States is the most concrete manifestation of the idealist principle that torture, being an offense against the integrity of the human person and his or her fundamental rights, should be prosecuted, tried, and punished anywhere in the world regardless of the nationality of the offender or the territoriality (locus) of the commission of the offense. Through this law, it has become possible for victims of torture to seek redress in American courts instead of the courts of the jurisdiction where the crime is committed. This is particularly beneficial if the alleged offender is a powerful public official where the crime was committed.

Significant developments in international iurisprudence

SIDE from developments in terms of legislation, the international corpus juris on torture takes into consideration developments in jurisprudence that aim to amplify, clarify, or interpret the provisions of the UNCAT. Since the definition of torture under the UNCAT is being looked upon as a model for municipal or domestic torture

legislations around the world, jurisprudence pertaining to its provisions should also be considered, so that local jurisdictions can adopt doctrines developed elsewhere but which are not extant in the text of the law itself. In many instances, the language of the law is not sufficient to address the multifarious scenarios happening in actuality; it is these vacuums that jurisprudence attempts to fill.

First and foremost, however, it should be emphasized that the 1948 Judgment of the International Military Tribunal for the Far East, otherwise known as the Tokyo War Crimes Tribunal, is one of the acknowledged

forerunners of international jurisprudence recognizing torture. According to this tribunal, torture, as committed by the Japanese Imperial Army in Asia, constitutes a breach of the international customary laws of war. Further, it ruled that governments have the positive responsibility not only to maintain prisoners of war but also to ensure that mistreatment against them shall not be committed.

With the advent of the UNCAT, international jurisprudence shifted its attention to the treaty's text, pronouncing useful rulings on aspects of the definition of torture and the nature of state obligations it prescribed. For instance, in G.R.B. v. Sweden (CAT Communication No. 83/1997), the Committee Against Torture ruled that a non-State entity, despite the fact that it holds de facto control over a territorial portion of a state, cannot be considered within the definition of a "public official" necessary to bring the provisions of the UNCAT into operation. A year later, in Elmi v. Australia (CAT Communication No. 120/1998), it was held that when there is a complete absence of a central state authority, the acts of nonstate entities exercising de facto governmental powers would qualify as torture under the UNCAT.

As to the obligation of the State to ensure the prompt and effective investigation of allegations of torture, Blanco Abad v. Spain (CAT Communication No. 59/1996) laid down the rule that the measure of "promptness" necessary to comply with the standards of the UNCAT is that which is enough to ensure that (1) the victim will not be subjected to further torture and (2) the physical traces evidencing torture will not be lost. In this case, a delay in the investigation which lasted for 18 days was found to be insufficient under UNCAT standards. While this numerical figure is not a hard-and-fast rule, the twofold standard laid down in this case is more useful in resolving scenarios on a case-to-case basis.

As discussed above, the United Kingdom and the United States have formalized in their municipal torture laws the concept of "universal jurisdiction" to prosecute torture committed anywhere by anyone. In Rosenmann v. Spain (CAT Communication No. 176/2000), the Committee Against Torture observed that the concept of universal jurisdiction is still not a mandatory but a discretionary rule of international law, although in the earlier 1998 case of *Prosecutor v. Furundzija* (Case No. IT – 95-17/1-T) rendered by the International Criminal Tribunal for the Former Yugoslavia, it was held that there is a probability that a rule on universal jurisdiction $vis \hat{a}$ vis torture may have arisen to the status of customary norm.

In terms of the rule that information extracted through torture should be held inadmissible, the Human Rights Committee in Singarasa v. Sri Lanka (CAT Communication No. 1033/2001) has held that the prosecution bears the burden of proving that torture was not committed whenever such an allegation was made.

On the duty to provide redress to victims of torture, one significant jurisprudential development is the ruling of the Committee Against Torture in Urra Guridi v. Spain (CAT Communication No. 212/2002) that the government failed to give adequate redress and compensation to a victim of torture when pardon was granted to three Civil Guards found guilty for the crime.

These are just some of the major developments in torture jurisprudence internationally. As different events unfold and various scenarios play out in history, it is expected that interpretations and expert opinions on the law on torture will continue to proliferate.



Darius Evangelista, said to be the torture victim of a Manila police officer, with his wife before he disappeared on March 5, 2010. PHOTO BY MARIO IGNACIO IV

The Philippine Law on Torture

HE advent of international awareness and consciousness of the prohibition of torture was signaled unequivocally by the adoption of the UNCAT by the United Nations General Assembly on December 10, 1984. To date, 147 states parties, including the Philippines, have

However, despite its early accession to the UNCAT, the Philippines did not immediately proceed to craft domestic legislation that will facilitate the treaty's application. Indeed, it was only in 2009, or more than 23 years after becoming party to the UNCAT, that the Philippine legislature enacted the Anti-Torture Act. It took another year, during International Human Rights Day on December 10, 2010, for the Department of Justice and the Commission on Human Rights to promulgate the Implementing Rules and Regulations (IRR)

acceded to it.

of the Anti-Torture Act.

Despite its long and arduous journey through the legislative mill, the Anti-Torture Act has not lost its promise and potential to finally end the culture of impunity surrounding torture. It is upon this important piece of legislation that efforts toward the elimination of the practice of torture are anchored.

Torture as a common offense: The legal regime prior to the Anti-Torture Act

EFORE the Anti-Torture Act was enacted into law, cases of torture can only be prosecuted under the legal framework for common offenses in the organic law.

Under the Revised Penal Code, the closest offense that may be equated to torture is Maltreatment of Prisoners under Article 235. Under this offense, a

person who is tortured while under custody of public officers as a prisoner can file a criminal action to punish the public officer who maltreats him or her for the purpose of extracting a confession. The same offense may be ascribed to a public officer who oversteps the bounds of his or her authority over a prisoner under his or her custody either by inflicting punishments not prescribed by regulations or by inflicting prescribed punishments but in a cruel or humiliating manner.

The gravamen of this offense, however, is abuse of public authority

and not the infliction of intense physical and psychological suffering, which is the essence of torture. Accordingly, the penalty for this offense is only arresto mayor in its medium period to prision coreccional in its minimum period. The elements of this offense, shown below, also do not take into account the essential elements of torture. In the Manual for Prosecutors of the Department of Justice, it was explained that Article 235 has the following elements:6

- 1 The offender is a public officer or employee.
- 2 He or she has under his or her charge a prisoner or detention prisoner.
- 3 He or she maltreats such prisoner in either of the following manner:
 - By overdoing himself or herself in the <u>correction</u> of a prisoner or detention prisoner under his or her charge
 - By overdoing himself or herself in the handling of a prisoner or detention prisoner under his or her charge through:
 - The imposition of punishment not authorized by the regulations
 - ii The infliction of punishments authorized by the regulations in a cruel and humiliating manner
 - iii The maltreatment of such prisoners to extort a confession or to obtain some information from the prisoner

Since the provisions of Article 235 focus on the fact of abuse of authority, the law does not preclude simultaneous prosecution for other criminal offenses arising from whatever injury the victim of maltreatment may have sustained.

Based on the Manual for Prosecutors, prosecution based on injuries sustained may also be done independently outside of maltreatment under Article 235, especially if the victim is not a prisoner or detainee. Indeed, common offenses under the Revised Penal Code are the only remedies

available to victims of torture before the passage of the Anti-Torture Act.

Below are some of these common offenses and their constitutive elements. Based on the most widespread and frequent forms of torture so far documented, the crimes below are the closest equivalents that may be prosecuted, absent a specific anti-torture legislation. One can note that the elements of the offenses below mainly refer to the method of the commission of an act equivalent to torture, and not to the central gravamen of the act of torture itself.

Mutilation⁷ 1

- Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction:
 - There must be castration of organs necessary for generation, such as the penis or ovarium.
 - ii The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction.
- Intentionally making other mutilation, that is, by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body

Serious, Less Serious, or Slight Physical Injuries⁸ 2

- Serious Physical Injuries
 - Committed by wounding, beating, assaulting, or administering injurious substance
 - ii The injured person suffered any of the following:
 - (1) Becomes insane, imbecile, impotent, or blind in consequence of the physical injuries inflicted

- (2) Loses the use of speech or the power to hear or to smell; loses an eye, a hand, a foot, an arm, or a leg, or the use of any such member of his or her body; or becomes incapacitated for the work in which he or she was habitually engaged in consequence of the physical injuries inflicted
- (3) Becomes deformed; loses any other member of his or her body, or loses its use; or becomes ill or incapacitated to perform the work in which he or she was habitually engaged for more than 90 days in consequence of the physical injuries inflicted
- (4) Becomes ill or incapacitated for labor for more than 30 days (but must not be more than 90 days) as a result of the physical injuries inflicted

b Less Serious Physical Injuries

- Committed by wounding, beating, assaulting, or administering injurious substance
- ii The offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time.
- iii The physical injuries must not be the same as those suffered under serious physical injuries.

C Slight Physical Injuries

- Committed by wounding, beating, assaulting, or administering injurious substance
- Suffered any of the following:
 - (1) Incapacitated the offended party for labor from one to nine days, or required medical attendance during the same period
 - (2) Any injury that is not serious enough to prevent the offended party from engaging in his habitual work or require medical assistance.
 - (3) Ill-treatment of another by deed without causing any injury

Administering Injurious Substances or Beverages⁹

- The offender inflicted upon another any serious physical injury.
- It was done by knowingly administering to him or her any injurious substance or beverage or by taking advantage of his or her weakness of mind or credulity.
- He or she had no intent to kill

Rape¹⁰

- Rape by carnal knowledge
 - i The offender is a man
 - He had carnal knowledge of a woman
 - iii The act is accomplished under any of the following circumstances:
 - (1) By using force or intimidation
 - (2) When the woman is deprived of reason or otherwise unconscious
 - (3) By means of fraudulent machination or grave abuse of authority
 - (4) When the woman is under 12 or demented

b **Object Rape**

- The offender commits an act of sexual assault.
- ii The act is committed by any of the following means:
 - (1) By inserting his penis into another person's mouth or anal orifice
 - (2) By inserting any instrument or object into the genital or anal orifice of another person

- iii The act of sexual assault is accomplished under any of the following circumstances:
 - (1) By using force or intimidation
 - (2) When the victim is deprived of reason or otherwise unconscious
 - (3) By means of fraudulent machination or grave abuse of authority
 - (4) When the victim is under 12 or demented

Acts of Lasciviousness¹¹

- The offender commits any act of lasciviousness or lewdness.
- b The act is committed against a person of either sex.
- It is done under any of the following circumstances: C
 - i By using force or intimidation
 - When the offended party is deprived of reason or otherwise unconscious
 - iii By means of fraudulent machination or grave abuse of authority
 - iv When the offended party is under 12 or demented

Kidnapping and Illegal Detention

- Kidnapping and Serious Illegal Detention¹² a
 - i The offender is a private individual.
 - He or she kidnaps or detains another, or in any other manner deprives the latter of his or her liberty.
 - iii The act must be illegal.
 - iv In the commission of the offense, any of the following circumstances is present:

- (1) The kidnapping lasts for more than three days
- (2) It is committed simulating public authority.
- (3) Any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him or her are made
- (4) The person kidnapped or detained is a minor, female, or a public officer.

b Kidnapping and Slight Illegal Detention¹³

- The offender is a private individual.
- **ii** He or she kidnaps or detains another, or in any other manner deprives him or her of his or her liberty.
- iii The act is illegal.
- iv The crime is committed without the attendance of any of the circumstances enumerated under Kidnapping and Serious Illegal Detention.

7 Grave Threats14

- **a** Threatening another with the infliction upon his or her person, honor, or property or that of his or her family of any wrong amounting to a crime and demanding money or imposing any other condition, even though not unlawful, and the offender attained his or her purpose; OR
- **b** Making such threat without the offender attaining his or her purpose; OR
- **c** Threatening another with the infliction upon his or her person, honor, or property or that of his or her family of any wrong amounting to a crime, the threat not being subject to a condition.

8 Grave Coercion¹⁵

- **a** A person prevented another from doing something not prohibited by law, or he or she compelled him or her to do something against his or her will, be it right or wrong.
- **b** The prevention or compulsion is effected by violence, threats, or

intimidation.

The person that restrained the will and liberty of another had not the authority of law or the right to do so, or in other words, that the restraint shall not be made under authority of law or in the exercise of any lawful right.

Attempted or Frustrated Murder or Homicide¹⁶

If torture was committed through acts that clearly evince the perpetrator's intent to ultimately kill the victim (albeit in a protracted manner as to first extract useful or incriminating information), although the victim did not die as a result, then an action for frustrated or attempted murder or homicide may be filed, alleging the following elements:

- An attempt to kill a person
- ii The offender attempted to kill him without any justifying circumstances.
- iii The offender had the intention to kill.
- iv The killing was not attended by any of the qualifying circumstances of murder, parricide, or infanticide.

10 Murder¹⁷ or Homicide¹⁸

If the victim actually dies as a result of the torture, then an action for murder or homicide may be brought before the courts by the heirs of the deceased assisted by the prosecutors or public attorneys, alleging the following elements:

- A person was killed.
- ii The accused killed him.
- iii The killing was attended by any of the following qualifying circumstances:
 - (1) With treachery, taking advantage of superior strength, with the aid or armed men, or employing means to waken the defense, or of means or persons to insure or afford impunity

- (2) In consideration of a price, reward, or promise
- (3) By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin
- (4) On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity
- (5) With evident premeditation
- (6) With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his or her person or corpse
- iv The killing is not parricide or infanticide.

With the wide array of common offenses available for prosecution, one can only imagine how laborious and circuitous the prosecution of torture must be prior to the passage of the Anti-Torture Act. Since a victim can be subjected to different forms and varying degrees of torture during the entire period of detention, corresponding common offenses would have to be filed for every mode of torture and injury sustained. This scheme presents a procedural and strategic difficulty, because the same quantum of evidence—proof beyond reasonable doubt—must be met for each and every offense that may have been committed during the entire period of detention, with different mens rea or criminal intent that have to be established in every case.

Thus, the advantage of having independent torture legislation becomes readily apparent. Whereas before, acts of torture would have to be broken down and compartmentalized into various common offenses, the commission of torture can now be treated comprehensively based on the single criminal impulse of the perpetrator: to inflict intense physical and psychological suffering for an unlawful purpose. Due to this approach,

which takes into account the entirety of the offense (for example, from the point of abduction to the entire duration of the unlawful detention and all acts of torture committed during the period), it is no longer necessary to establish separate *actus reus* and *mens rea* for every offense qualifying as torture. This is the principal benefit of having a specific crime of torture in the country's criminal law.

Legal recognition of the torture of children as a crime

LBEIT the torture of children is widespread, the traditional view of torture appears to be quite limited in complexion as it has always been politically related; hence, its traditional victims are necessarily confined to insurgents and political activists, generally adults.

There is a dearth of information on child torture as these incidents may be committed on minors without any political color or relevance. Reportage on child torture appears absent when ill-treatment, such as corporal punishment within the domestic, school, and prison settings, are viewed as common, normal, regular, natural, or unworthy of a formal judicial indictment. As a result, the traditional treatment of children as mere chattel, commodities, and inferior beings continues within the family, social welfare, education, and criminal justice settings.

Moreover, there is social ostracism against the victims of torture, more especially child victims, if the torture has been perpetrated with a sexual complexion. Children of both genders are molested, sexually assaulted, sodomized, and raped, mostly within the school and criminal justice settings. Yet there is shame visited and wrongly bestowed upon child victims, which only further impedes reportage on the matter.

In determining accountable perpetrators for torture, including the torture of minors, the list of liable state or public officials or those working with public authority is certainly not limited to the police, military, paramilitary, or prison officials. Within the Philippine setting, perpetrators of child torture have been identified to be members of death squads, including health professionals and co-detainees who act with the approval or on the orders of public officials. Health professionals, such as doctors, nurses, or psychiatrists, may participate in torture either by being directly involved (such as certifying a person fit for interrogation or resuscitating a victim for him or her to undergo further maltreatment) or indirectly by omission (such as falsifying medical reports or failure to provide appropriate treatment).¹⁹

It is widely held that children are more susceptible to the physical and psychological effects of torture because of their vulnerability. The threshold of pain and suffering for tender-aged children is definitely much lower than that of an adult. Relatively, physical or mental abuse must necessarily have a much more serious and profound impact on the body and mind of the developing young child than on an adult.

However, the severity and variation of symptoms on the minor generally depend on the child's developmental stage and personality, family dynamics, child's gender, and nature of the trauma. Other considerations on the severity of the symptoms include several elements:²⁰

- 1 The age of the child at the time of trauma
- 2 The duration of exposure to the trauma
- 3 The degree to which the child is isolated socially from family members
- The stories they have been told about what happened to a family member
- The levels of support received

The severity and extent of the torture or ill-treatment suffered by the child are essential information to determine its long-term consequences on the personality change and effects. Lengthy or constant, repeated exposure to torture or ill-treatment will more likely result in permanent personality changes. There could also be significant negative character developments of Post-Traumatic Stress Disorder (PTSD), especially because of the trauma experience during the child's formative and most vulnerable years. A diagnosis of PTSD means that a person experienced an event that involved a threat to one's own life or another's life or physical integrity and that this person responded with intense fear, helplessness, or horror, which will apparently recur throughout the person's developmental growth into adulthood. The features of these disorders seen in children vary, depending on the child's age.²¹

A guiding principle in the medical investigation, evaluation, and treatment of children who are torture survivors is to do no further harm.²² The doctor, especially a psychiatrist, should avoid, and be extremely cautious in, conducting a forceful examination or evaluation of a child without informed consent. A strong, forceful examination may only further heighten the child's trauma and fear of figures of authority. Medical personnel or investigators must always bear in mind the psychological trauma of torture or ill-treatment on the child, which may be exacerbated by an erroneous approach to the medical examination or clinical investigation of the matter. Any treatment that has a tendency of increasing the child's psychological trauma should be avoided at all phases of the medical or clinical discovery.

But then again, child torture is only progressively being recognized as a result of the strong child rights advocacy within the past two decades with the passage of landmark legislation on child abuse, more specifically Republic Act No. 7610 or the Special Protection for Children Against Child Abuse, Exploitation, and Discrimination Act (Anti-Child Abuse Law). Thus, prior to the passage of the Anti-Torture Act, the State

has gradually conceded possibilities of forms of torture and degrading treatment or punishment even of Filipino children, individuals whose age fall below the majority age of 18.

There have been many situations in which children had been subjected to acts causing them severe pain or suffering by people working within the government framework; accountable individuals include residential social workers and security guards in youth detention homes and prisons as well as instructors and teachers of military training in public schools. There has been much debate in the human rights communities on whether the expansive definition of torture provided by the UNCAT on accountable individuals could be interpreted so as to include parents or guardians of children as possible perpetrators of torture. Notwithstanding the debate, the Commission on Human Rights created in 1991 a special committee, the Child Rights Center.

Principally, the Filipino child is protected from torture and other forms of degrading punishment and ill-treatment in a generic sense as clearly stipulated under the Philippine Constitution, Article III (Bill of Rights), Section 19, thus: "The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under sub-human conditions shall be dealt with by law."

Pursuant to this provision, the **Anti-Child Abuse Law** was approved in 1992. This law provided special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.

Section 22 of the law declares children as zones of peace. The specific chapter further mandated, "Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, **torture**, or other cruel, inhuman, or degrading

treatment." But it was quite apparent from the legal section that the specific inclusion of torture merely highlighted the commission of torture only within a milieu of armed conflict. The torture of a child committed outside an armed conflict situation would, at most, constitute child abuse under the more generic provisions of the Anti-Child Abuse Law.

Subsequently, and more specifically, when the outrage against the detention of tender-aged children received increased media coverage, the State recognized that the torture of a child could be committed within the purview of the criminal justice system through legislation. As a consequence, the State mandated that children in conflict with the law were entitled to their human rights under a new administration of juvenile justice and welfare and with progressive revisions to the criminal justice system.

Under Republic Act No. 9344, the Juvenile Justice and Welfare Act of 2006, specifically in Section 5 (a), the child in conflict with the law possesses "the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment," a right previously recognized by the 1989 UN Convention on the Rights of the Child, specifically in Article 37. The difference, however, is that the international convention recognizes the right of the child against torture in a general manner, meaning that any individual intentionally subjecting the child to severe pain and suffering can be held criminally accountable, while the Juvenile Justice and Welfare Act merely penalizes and deals with torture within the purview of the criminal justice system on juveniles. In its promulgation of the Juvenile Justice and Welfare Act, a domestic definition of torture was still absent, thus child torture also remained amorphous, ambiguous, unreported, and partially ignored.

The more significant but subsequent development in child torture has been the passage of the Anti-Torture Act. The act not only defines torture but substantially qualifies the torture of children for the imposition of the stiffest penalties available against perpetrators. In principally specifying and considering the commission of torture against children as an aggravating or qualifying circumstance for purposes of increasing the penalties, the government basically recognized the vulnerabilities of children due to their age-specific special needs and their seeming lack of discernment and coping resources.

In this regard, the government must be able to focus its efforts on improving, facilitating, and encouraging child development and restoration programs that discard traditional, narrow-minded, criminal justice-oriented systems in the treatment of children. With a childrights orientation emanating from the highest government officials, the eradication of child torture becomes a proximate possibility.

The Anti-Torture Act



HE Anti-Torture Act formalized and codified the Philippine government's commitment to human rights, respect for human dignity, the guarantees in the Bill of Rights of the 1987 Constitution, and the international covenants to which it is a signatory (particularly, the UNCAT, International Covenant on Civil and

Political Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, and the Universal Declaration of Human Rights).

To be able to optimize the salutary objectives of the law, one must be familiar with the salient provisions of the Anti-Torture Act, so that all prosecutions can be undertaken properly. It is only through effective prosecution that the Anti-Torture Act can provide an effective means of redress for victims of torture and their kin.

Definition of torture

The Anti-Torture Act adopts the definition of torture in the UNCAT:

"Torture" refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession; punishing him or her for an act he or she or a third person has committed or is suspected of having committed; or intimidating him or her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.²³

Similar with the definition found in the UNCAT, the Anti-Torture Act's definition of "torture" consists of three elements:

- **1** The *actus reus* or criminal act of inflicting severe physical or mental pain or suffering
- **2** The *criminal purpose* of extracting a confession or information, inflicting a punishment, intimidating or discriminating in any way
- 3 The *criminal perpetrator* who must be a <u>person in authority or an agent of a person in authority</u>, or a person acting at the <u>instigation</u> of, or with the <u>consent</u> or <u>acquiescence</u> of a person in authority or agent of a person in authority

The Anti-Torture Act's only departure from the exact language of

the UNCAT is with respect to the use of "person in authority" in its definition, instead of the term "public official" as in the UNCAT.

According to Article 152 of the Revised Penal Code, a "person in authority" is "any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission....A barrio captain and a barangay chairman shall also be deemed a person in authority."

The same provision states that an "agent of a person in authority" is "a person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a barrio councilman, barrio policeman, and barangay leader, and any person who comes to the aid of persons in authority."

While these are the same definitions adopted in the Anti-Torture Act IRR, it should be noted that the IRR intentionally excluded the last paragraph of Article 152 of the Revised Penal Code, which also treats teachers, professors, and lawyers as agents of persons in authority.²⁴

Punishable acts of torture

The Anti-Torture Act provides a non-exhaustive, non-comprehensive list of acts of torture that are punishable under the law. The acts were categorized into "physical" and "mental/psychological" torture. 25

According to the law, there is "physical torture" when the perpetrator inflicts "severe pain, exhaustion, disability, or dysfunction of one or more parts of the body" of the victim. On the other hand, acts of "mental/ psychological torture" are those "calculated to affect or confuse the mind and/or undermine a person's dignity and morale." Below are examples of acts of torture provided in the Anti-Torture Act:

1 Physical Torture

- **a** Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach
- **b** Food deprivation or forcible feeding with spoiled food, animal or human excreta, and other stuff or substances not normally eaten
- **c** Electric shock
- **d** Cigarette burning; burning by electrically heated rods, hot oil, acid; rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s)
- **e** Submersion of the head in water or water polluted with excrement, urine, vomit, and/or blood until the brink of suffocation
- **f** Being tied or forced to assume fixed and stressful bodily position
- **g** Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals
- **h** Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue
- i Dental torture or the forced extraction of the teeth
- j Pulling out of fingernails
- ${f k}$ Harmful exposure to the elements such as sunlight and extreme cold
- I The use of plastic bag and other materials placed over the head to the point of asphyxiation
- **m** The use of psychoactive drugs to change the perception, memory, alertness, or will of a person, such as:
 - i The administration of drugs to induce confession and/or reduce mental competency

- The use of drugs to induce extreme pain or certain symptoms of a disease
- Other analogous acts of physical torture

Mental/Psychological Torture

- Blindfolding
- Threatening a person(s) or his or her relative(s) with bodily harm, execution, or other wrongful acts
 - Confinement in solitary cells or secret detention places
 - d Prolonged interrogation
- Preparing a prisoner for a "show trial," public display, or public humiliation of a detainee or prisoner
- Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he or she shall be summarily executed
 - Maltreating a member(s) of a person's family g
- Causing the torture sessions to be witnessed by the person's family, relatives, or any third party
 - Denial of sleep/rest
- Shame infliction such as stripping the person naked, parading him or her in public places, shaving the victim's head, or putting marks on his or her body against his or her will
- Deliberately prohibiting the victim to communicate with any member of his or her family
 - I Other analogous acts of mental/psychological torture

The examples provided by the Anti-Torture Act have been identified and documented as common forms of torture being employed to extract unlawful confessions. Emphasis must be made that the enumeration is merely illustrative and not definitive. All other acts of torture that may have been employed against a victim can still be punished if they can fall under the "analogous" clauses or under the definition of physical or mental/psychological torture.

Non-derogability of torture

The Anti-Torture Act adopts the principle of non-derogability in the UNCAT by also providing that the prohibition of torture shall apply to all circumstances. ²⁶ The law also cites war, threat of war, internal political instability, and public emergency as exceptional circumstances that shall nonetheless not operate to suspend the prohibition of torture.

One feature that the Anti-Torture Act adds to the principle of non-derogability already provided in the UNCAT is the concept of an "order of battle." According to the Anti-Torture Act, "any determination comprising an 'order of battle' shall not and can never be invoked as a justification for torture."

This is an important innovation because it is specific to the Philippine experience. In the past, state agents have reportedly committed acts of torture against members of communist rebel or Moro secessionist groups. Such treatment has often been justified as part of "tactical interrogations" against legitimate military targets in the "order of battle," that is, identified combatants or insurgents.

The Anti-Torture Act provides a definition of "order of battle" as follows:

"Order of Battle" refers to any document or determination made by the military, police, or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.²⁷

In short, inclusion in an official "order of battle" vests a person the status of a combatant under the laws of armed conflict and can therefore be treated as a legitimate military target. However, the Anti-Torture Act is emphatic in its admonition that even inclusion in an "order of battle" is insufficient justification for the commission of acts of torture. It will be remembered that torture is prohibited even in war time. Thus, inclusion in an "order of battle," which connotes active participation in armed hostilities, is likewise not a justification for committing torture.

Prohibited forms of deprivation of liberty

Under the IRR of the Anti-Torture Act. no individual, whether arrested. detained, or under custodial investigation, restricted or deprived of liberty for any reason, shall be kept in (1) secret detention, (2) solitary confinement, (3) held incommunicado, (4) prohibited custody, or (5) similar forms of detention.28

The prohibited forms of deprivation of liberty enumerated above are a direct admonition that the employment of these is a form of torture. The Commission on Human Rights has been given visitorial and inspection powers to be able to ensure that prohibited forms of confinement amounting to torture are not being employed in any police, military, or law enforcement agency.29

Record-keeping of prisoner and detainee information

The Anti-Torture Act and its IRR also provide a mandatory system of record-keeping for all law enforcement agencies and local government units having jurisdiction over detention facilities.³⁰ The law directs them to prepare an inventory, updated and reported on a monthly basis, of all detention facilities under their supervision and the corresponding information of every prisoner or detainee. The information required to be kept was not specified in full in the law or the IRR, but, at the very least, it should include names, dates of arrest, and the crime or offense charged.

The law specifically provides that the inventory containing the above information shall be available for public access at all times at the headquarters or offices of the agencies or local government units concerned. The only exception to this rule of mandatory public access is in the case of minors involved in sexual crimes, whose identities shall not be divulged to the public.

Exclusionary rule

The UNCAT's provision on the inadmissibility of any information extracted through torture has been adopted in the Anti-Torture Act.31 Under the law, a confession, admission, or statement obtained as a result of torture shall not be admissible in any proceedings except only when such information shall be used against a person or persons accused of committing torture.

Special provisions for victims of torture

One of the significant provisions of the Anti-Torture Act and its IRR is the special legal treatment it gives to victims of torture. Acknowledging the tremendous burden of availing of legal remedies in order to obtain redress for torture, the law provides preferential assistance and special protection to victims of torture, as well as to witnesses in prosecutions for torture, during the various stages of the criminal justice process. These are:

- A reglementary period of 60 days within which an investigation of a complaint for torture should be concluded.32
- A reglementary period of 60 days within which a preliminary investigation before the Department of Justice or the Office of the Ombudsman for torture should be concluded. 33
- 3 Assistance from the Public Attorney's Office (PAO) in the preparation of all affidavits and other legal documents by the victim. 34
- A child victim of torture shall always be accompanied by a local Social Welfare and Development Officer. 35
- Special protection to a torture victim during trial, which includes, when appropriate, immediate suspension of the public officer being investigated, or the transfer of the victim to another detention facility, to prevent such public officer from further injuring or intimidating the victim or from influencing the course of the investigation 36
- Adoption of proper remedial and protective measures for victims and witnesses testifying in a court proceeding for the prosecution of torture, with a view to minimizing trauma. This includes the use of closed-circuit television, one-way mirrors, or other devices in court hearings, as well as soliciting the assistance of expert psychologists or psychiatrists, or court-appointed special

advocate/guardian ad litem in the case of child victims/witnesses. 37

Legal assistance to all torture victims to be provided by the Public Attorney's Office and the Commission on Human Rights regardless of the indigency of the person, and other legal assistance from the Integrated Bar of the Philippines and other human rights nongovernmental organizations 38

Right to physical and medical examination

The establishment of a specific right to physical and medical examination³⁹ is another significant provision in the Anti-Torture Act. This right, notably, is not provided in the 1987 Constitution, but the Anti-Torture Act enshrines it statutorily. This right is comprehensive because it spans the entire duration that a person is under official custody. This right has several aspects:

First, it gives a person the right to be informed of his or her right to demand physical examination by an independent and competent doctor of his or her own choice before and after interrogation. If the person cannot afford the services of a medical professional, the State should provide him or her with one free of cost. It should be noted that this right has been worded in a manner that mirrors the right to counsel—it is available to every person at definite stages of the process (before and after interrogation) and should be provided de oficio if the person does not have means.

Second, the law provides that the right to immediate access to proper and adequate physical, medical, and psychological examination for treatment is an immediately executory right that can be demanded without need of any court order or legal process not only by the victim but also by his or her immediate family member. The Anti-Torture Act acknowledges that the right to immediate medical attention is of such urgent and inherent nature that it can be demanded at any time and cannot be subjected to any exogenous process that may impede its availment.

Third, the law provides that medical attention should be given in a gender-sensitive manner, such that a female person should be examined, as much as practicable, by a female physician. Facilities for female victims and detainees should also be segregated according to sex. Utmost sensitivity and specialized care should also be accorded to victims of sexual torture.

Fourth, it being an inherent, essential and paramount right, the waiver of the right to physical, medical, and psychological examination can only be done in writing, executed in the presence and assistance of a counsel of one's choice and in a language that he or she understands. Note, as well, the parallelism the law tries to draw between the right to medical examination and the right to counsel in terms of the requirements for the waiver of both. This merely underscores the intent of the legislature to make the right to a medical examination, which is the best safeguard against torture while a person is in custody, equivalent to the right to counsel.

Persons criminally liable

It is significant to note that the commission of an act of torture, although requiring the presence of a person in authority or his or her agent, need not require the latter's direct participation.⁴⁰ The definition of the law is broad enough to include not only direct commission, but also three other species of participation:

- Instigation (which is the most active in all the forms of indirect commission, denoting direction or persuasion)
- 2 Consent (indirect commission by unequivocally giving permission)
- Acquiescence (passive participation by omitting to voice disagreement to the commission of torture or failure to take reasonable steps to prevent its commission)

Under the law, three classes of persons may be held criminally liable, based on their level of participation:

- 1 Principal, who may be:
 - A direct participant in the torture
 - b A person who forces another to commit acts of torture
 - C A person who induces another to commit acts of torture
 - One who cooperated in the execution of the torture by another act without which it would not have been accomplished
 - One who **cooperated** in the execution of the torture by previous or simultaneous acts
 - A superior military, police, or law enforcement officer or senior government official who **issued an order** to a lower ranking personnel to commit torture

- An immediate commanding officer of the unit concerned of the Armed Forces of the Philippines or an immediate senior public official of the Philippine National Police or other law enforcement agencies when, by his or her act, omission, or negligence, he or she led, assisted, abetted, or allowed, whether directly or indirectly, the commission of torture by his or her subordinates; or when all the following elements are present:
 - He or she has knowledge, owing to circumstances, or he or she should have known, that torture has been committed, is being committed, or will be committed by his or her subordinates.
 - Despite such knowledge, he or she did not take preventive or corrective action before, during, or immediately after its commission.
 - **iii** Even if he or she has the authority to prevent torture or investigate allegations of torture
 - iv Such failure to take preventive or corrective action is deliberate or due to negligence.
- Accomplice, or one who cannot be treated as a principal under the above circumstances but who cooperated in the execution of the torture by previous or simultaneous acts
- Accessory, or one who takes part in the crime by acts subsequent to the commission of torture through:
 - Profiting or assisting the offender in profiting from the fruits of the acts of torture
 - Concealing the act by destroying the effects or instruments of torture to prevent its discovery
 - Harboring, concealing, or assisting in the escape of the principal(s) in the act of torture

What is clearly noticeable in the modes of incurring criminal liability under the Anti-Torture Act is the marked emphasis on the principle of command responsibility. Incurring liability as a principal under the Anti-Torture Act principally follows the general rule under criminal law: the person should have directly participated in, induced another to commit, or cooperated in the commission of the acts of torture. However, an additional mode of incurring criminal liability as a principal is when a superior officer ordered the commission of the acts of torture, or when a superior officer, having knowledge of the commission of acts of torture and in the position to prevent or correct the same, failed to take preventive or corrective measures deliberately or negligently.

The thrust of the Anti-Torture Act is clearly to impose upon superior officers of the military, police, and law enforcement agencies a heavy burden in ensuring that torture is not committed within their areas of responsibility. This is in recognition of the fact that since torture is committed within the clandestine confines and behind the closed doors of heavily guarded and fortified military, police, or law enforcement establishments, external agents and watchdogs are not as effective and potent in preventing breaches of the law. Therefore, the best guarantee that torture will not be committed with impunity in places not easily reached by the vigilant eyes of the public is to threaten superior officers with equal penalty should their subordinates be found to be liable of the crime.

In effect, the law seeks to conscript responsible officers and enlist their involuntary/voluntary participation as primary implementers of the law, to be able to ensure and monitor compliance with the law by all members of the official hierarchy under their supervision.

One rule of paramount importance that should be underscored based on the enumeration above is that **even a private person can be held liable for the offense**. The fact that the definition of torture adverts to a **person in authority** does not mean that only public officers can be punished for committing acts of torture. It should be underscored that a

direct participant in the acts of torture shall be held liable as a principal in the crime. Thus, for as long as a person in authority orders, consents, or acquiesces to the commission of torture, both such person in authority and anyone who directly participates or cooperates in the acts of torture, including private persons, shall be equally held liable.

The operative fact is that the torture was committed with the imprimatur of an agent of the State. As long as acts of torture were committed with at least the acquiescence of a public official, they are considered acts of torture within the meaning of the law, and everyone involved, whether public or private persons, shall be liable.

Penalties imposable

The crime of torture, once established, shall warrant the imposition of the following penalties, 41 corresponding to the magnitude and gravity of the injury caused:

1 Reclusion perpetua for any of the following:

- The acts of torture resulted in death, mutilation, permanent disability (insanity, imbecility, impotence, blindness, maining).
- h. They were committed with rape or sexual abuse.
- They were committed against children.
- **Reclusion temporal** if the acts of mental/psychological torture resulted in insanity, complete or partial amnesia, fear of becoming insane, or suicidal tendencies due to guilt, worthlessness, or shame
- **Prision correccional** if the acts of torture resulted in psychological, mental, and emotional harm other than those described above
- **Prision mayor** in its medium and maximum periods if the victim lost

the power of speech or the power to hear or smell; lost an eye, hand, foot, arm, or leg, or the use of such member; or became permanently incapacitated for labor

- **5 Prision mayor** in its minimum and medium periods if the victim is deformed or lost any part of his or her body other than those mentioned above or lost the use of the same, or shall have become incapacitated for labor for more than 90 days
- **6 Prision correctional** in its maximum period to **prision mayor** in its minimum period if the victim became ill or incapacitated for labor for more than 30 days but not more than 90 days

Special provisions

The following provisions in the Anti-Torture Act pertain to special legal issues applicable to the prosecution and punishment of torture:

- **1** If a child is involved in the act of inflicting torture, he or she shall be proceeded against in accordance with Republic Act No. 9344, the Juvenile Justice and Welfare Act. 42
- **2** Torture <u>cannot absorb or be absorbed</u> by any other crime or felony committed as a consequence or as a means in the conduct or commission of torture. Thus, the common offenses previously discussed, when committed as a consequence of or when used as a means to commit torture, can still be prosecuted on top of the crime of torture.⁴³
- **3** A person convicted of torture is disqualified from availing of the benefits of any special amnesty law or any similar measure that would result in his or her being exempted from criminal proceedings or sanctions.⁴⁴
- **4** The principle of *non refoulement* is applicable in the Philippines. Thus, no person shall be extradited by the Philippine government to another state when there are substantial grounds to believe that he or she is in danger of being subjected to torture.⁴⁵

- Victims of torture are entitled to avail of compensation under Republic Act No. 7309, the Victim Compensation Act, but the Anti-Torture Act stipulates that the compensation to be given shall not be less than 10,000 pesos.⁴⁶ Note that under the Victim Compensation Act, the compensation that may be awarded to a victim shall **not exceed** 10,000 pesos.⁴⁷
- The crime of torture **is not subject to any statute of limitation or** prescription. It can be prosecuted at any time even after the lapse of the usual prescriptive periods applicable to common crimes and felonies.⁴⁸
- Whenever a Crime Against Persons or a Crime Against Personal Liberty and Security under the Revised Penal Code is attended by torture, the penalty imposable for such common offenses shall be imposed in its maximum period.⁴⁹ Thus, torture has the effect of being an aggravating circumstance in ordinary crimes.

Contextualizing the Anti-Torture Act in substantive and procedural law



VEN as the Anti-Torture Act represents the primary legislation necessary to successfully prosecute acts of torture, one must not lose sight of other provisions of substantive and procedural law that co-exist with it. In prosecuting cases of torture, it is important to take due notice of these laws to be able to optimize the protection and

preference given by the law to the victim of torture.

First, it should not be forgotten that the prohibition of torture is constitutional in nature. Article III, Section 12 (2) of the 1987 Constitution provides that "no torture, force, violence, threat, intimidation, or any other means, which vitiate the free will shall be used against [a person under investigation]. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited."

Also, Article III, Section 19 of the 1987 Constitution provides that "the employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."

The fact that the prohibition of torture finds basis in the 1987 Constitution underscores its paramount importance and the urgency of the need to prosecute all breaches thereof expeditiously.

Second, under the Human Security Act, acts of torture committed against a detainee during investigation/ interrogation are likewise prohibited. These may take the form of threats, intimidation, coercion, or acts that inflict any form of physical pain or torment, or mental, moral, or psychological pressure, or which shall vitiate the detained person's free will.

If the acts were shown to have been committed, the evidence obtained shall be inadmissible and cannot be used as evidence in any judicial, quasijudicial, legislative, or administrative, investigation, inquiry, proceeding, or hearing.

If a prosecution under the Human Security Act is pursued, the following are the penalties imposable:

- Any person or persons who use threat, intimidation, or coercion, or who inflict physical pain or torment, or mental, moral, or psychological pressure, which shall vitiate the free will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of 12 years and one day to 20 years of imprisonment.
- **2** When death or serious permanent disability of the detained person occurs as a consequence of the use of such threat, intimidation, or coercion, or as a consequence of the infliction on him or her of such physical pain or

torment, or as a consequence of the infliction on him or her of such mental, moral, or psychological pressure, the penalty shall be 12 years and one day to 20 years of imprisonment.

Third, acts of torture can be the basis of an independent civil action for damages under Article 32 of the Civil Code, particularly on the ground of violation of the freedom against cruel and unusual punishment and the freedom from arbitrary or illegal detention. By pursuing this route, a victim of torture may be compensated by the court in such amount as may be necessary to vindicate his or her right, to indemnify any loss or injury or, at the discretion of the court, to punish the offender and/or use his or her case as a deterrent against similar transgressions in the future.

Fourth, it should be remembered that every accused is granted certain rights as guaranteed by the Constitution and under Republic Act No. 7438.⁵⁰ This includes the right to visitation by and consultation with counsel.⁵¹ Whenever availing of this right, counsels of detained persons shall always be on guard and vigilant against the possibility of torture being committed against their clients. Counsels, especially during the period immediately following the detention and/or interrogation of the detainee, should be especially wary of telltale signs of torture, and should exert all effort to determine whether their clients have been subjected to any ill-treatment while detained.

Fifth, public prosecutors serving as inquest prosecutors should do well to remember Letter of Instruction 621 (series of 1977), particularly Section 6 (e), which pronounces that one of the functions of the inquest procedure is to determine if maltreatment or other forms of torture have been committed on the person arrested and to institute the necessary charges if any. The inquest proceedings is one of the earliest opportunities for commission of acts of torture to be detected, and inquest prosecutors are therefore the first line of defense against such breach of the antitorture law.

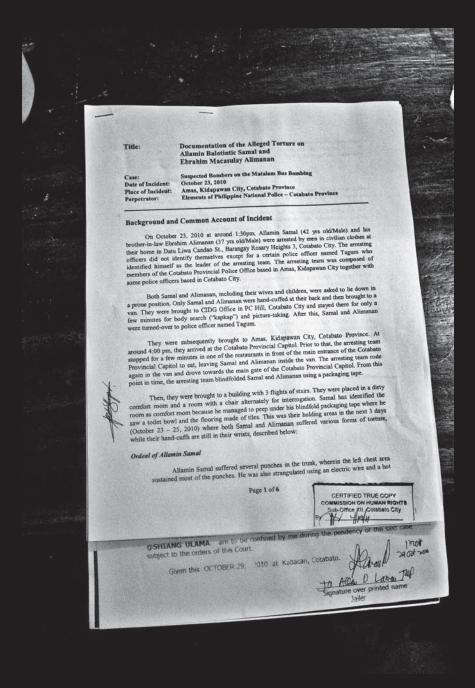
Sixth, if allegations of torture have been brought to fore during the trial stage or, indeed, in open court at the trial itself, an obligation is also imposed on the judge to proceed with the trial with extra caution to "prevent the constitutional guarantees [against torture, force, violence, threat, intimidation, or any other means which vitiate the free will] from being reduced to futile platitudes." This much is mandated by Administrative Matter No. MTJ 90-4001 (July 14, 1995). The judge is enjoined to take an active role in ascertaining the veracity of the claim of torture or assuring that statements given in open court were not the result of torture, even if no claim to that effect was raised. Whenever an admission or confession is introduced in evidence, the judge should personally satisfy himself that such were voluntarily given and not extracted through force or intimidation.

Lastly, in the 1964 criminal case of People v. Castro (G.R. No. L-17465, August 31, 1964), the Supreme Court imposed upon judges and prosecutors, to whom persons accused are brought for swearing to the truth of their statements, the obligation to adopt the practice of having confessants physically and thoroughly examined by independent and qualified doctors before administering the oath, even if it is not requested by the accused.

The judge is enjoined to assume an active role in the detection of torture, so much so that he or she is expected not only to address allegations of torture but also to ascertain the absence of torture whenever a confession or admission is introduced in evidence. The judge, in general terms, is enjoined to make findings of fact regarding the presence or absence of previous acts of torture perpetrated upon the accused through overt and searching inquiry. In doing so, the judge must take into account the fact that an accused who goes to court for trial and who expects to be returned to the same detention place under the custody of the same detention officers is very unlikely to volunteer information of torture or maltreatment.

It is therefore the duty of the judge to examine the candor of the accused and look for telltale signs of torture even if no allegation of such was made. In addition, the judge must not confine him or herself to mere physical manifestations evidencing or indicating the possibility of torture.

Also, in People v. Chaw Yaw Shun (G.R. No. L-19590, April 25, 1968), the Supreme Court acknowledged that the mere absence of external injury in the confessor's body does not destroy or rule out any claim of maltreatment by the use of other scientific modes or forms of torture. Vigilance, therefore, should be exercised by the judge in ascertaining that torture was not committed, whether or not such commission resulted in physical injuries that are easily detected.



The Commission on Human Rights has filed criminal and administrative charges against officers of the Kidapawan City Police on allegations of severe torture inflicted on Matalam bus bombing suspects Allamin Samal and Ebrahim Alimanan. PHOTO BY MARIO IGNACIO IV

Prosecution of Torture Cases

AWYERS play an essential role in the discovery, prevention, and eventual prosecution of torture.

Opportunities for the commission of acts of torture as defined in the

Anti-Torture Act almost always present themselves whenever a person is arrested, detained, or placed under custodial investigation. While the victim himself or herself may be rendered defenseless and helpless against his or her torturers, lawyers are situated in a peculiar position in this scenario where they can promptly intervene to discover torture and prevent further acts, as well as to subsequently hold accountable those responsible for these.

The role of lawyers in the prosecution of torture



UE to the primacy of the right to counsel as recognized in international and municipal law, lawyers have the unique opportunity to be given, and in some cases *lawfully demand*, access to a detained person at any stage of the criminal justice process. The Special Rapporteur on Torture appointed by the

United Nations has opined that right to access to legal counsel can only be legitimately delayed (but in no cases absolutely denied) when there is a clearly defined state interest to prevent completion of a violent conspiracy of which a detained person is suspected to be a part, to prevent a detained person from alerting identified co-conspirators and compromise ongoing investigations, and to prevent specific threats to life or physical security of other persons.⁵² When these compelling interests are not present, access to legal counsel cannot be arbitrarily denied by law enforcement officers.

Thus, lawyers must be aware of their singular power to detect and prevent acts of torture from the very outset. It should be one of the

most basic and fundamental agenda during a lawyer's first conference with a detained client to ensure that the latter has not been subjected to acts of torture. This consciousness and sensitivity of a lawyer cannot be overemphasized enough; it can spell a huge difference in the welfare, and even the life of a person during the criminal justice process.

The role of a lawyer, however, does not end in the prompt detection of torture. Once a person claims before his or her lawyer that he or she has been subjected to torture, it is absolutely essential that the lawyer promptly take the following measures:

- Call the attention of the proper authorities in order to identify the perpetrators and prevent their evasion.
- 2 Report the commission of the acts of torture in order to compel higher authorities to prevent a repetition of the same.
- Take steps to ensure that the life and welfare of the victim of torture is safeguarded, including availing of all available procedural remedies to effect his or her transfer to a less hostile and more secure detention environment, if the need to do so is acute.
- Proceed to document evidence of torture, with a view to criminally prosecuting those responsible.

Evidently, the most challenging task for a lawyer who has detected or who came to know the commission of torture is the documentation of evidence sufficient to successfully prosecute a case for violation of the Anti-Torture Act. However, despite the challenge, it is absolutely imperative that all lawyers promptly do so, since the pieces of evidence of the commission of torture are not permanent and can be lost with the passage of even a relatively brief period of time. Needless to say, along with the loss of hard evidence of torture is the loss of much of the potential to successfully prosecute a torture case in court.

It is therefore essential for all lawyers to be equipped with a basic and working knowledge of how torture evidence should be documented. In light of the imperative need to record and preserve such evidence promptly, a lawyer who came by the knowledge of the commission of torture does not have the luxury of awaiting the intervention of a "specialist" or a "technical expert" to commence documentation of torture.

Guidelines in the documentation of evidence of torture



HE documentation of evidence of torture is largely a medical-psychological task, but one which every lawyer should also have basic understanding of. This is because while the recording of the physical and psychological evidence of torture is the domain of medical practitioners, the evidence will ultimately be

used by lawyers before a court of law in prosecuting actual torture cases.

Thus, the collation of evidence, while adhering to established medical principles and procedures, must be undertaken within a legal framework with a view to gathering the quality and quantity of evidence that will stand in court. A lawyer who is well-informed of the basic medical processes for the documentation of torture is in the best position to direct the process of evidence gathering and recording, because he or she is conscious of what information is needed to successfully prosecute torture cases.

The United Nations High Commissioner for Human Rights has come up with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, more commonly known as the Istanbul Protocol. It provides a detailed procedure for the effective documentation of torture with a view to criminal prosecution, taken from the perspective of both a lawyer and a medical practitioner. The manual itself is merely a fleshing out of the basic Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The first paragraph of the Principles state that the purposes of effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment or punishment (hereinafter "torture or other ill-treatment") include the following:

- Clarification of the facts and establishment and acknowledgment of individual and state responsibility for victims and their families
- 2 Identification of measures needed to prevent recurrence
- Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation

Proceeding from these primordial purposes, a lawyer who has to commence or assist in the prompt documentation of torture—or direct a medical practitioner in doing so-should be able to gather evidence in an effective and efficient manner.

The Torture Reporting Handbook prepared by Camille Giffard of the Human Rights Centre of the University of Essex condenses the procedures in the Istanbul Protocol into a more handy version that is useful in giving lawyers a basic working knowledge of torture documentation.

According to Giffard, torture documentation, to be effective, must adhere to three basic principles: (1) good quality information, (2) accuracy, and (3) reliability.53 She proceeds to state that the "highest standard" of information that a documentor should seek is one that is:

- 1 First hand
- 2 Detailed
- 3 Internally consistent
- Corroborated from several angles
- Demonstrating a pattern
- 6 Fresh54

The criteria are merely aspirational of the "highest standard" of information that torture documentation ideally should obtain. Understandably, in many cases, these criteria cannot be satisfied fully. It is useful, however, to keep this standard in mind when documenting evidence of torture, because proximity to this ideal increases the likelihood of a successful prosecution of torture in court. Following are some of the most notable guidelines that every lawyer should remember in documenting torture, as culled from Giffard's handbook:

Take general precautions to maintain reliability of information by knowing the source, maintaining contact with him or her, and avoiding exclusive reliance on media reports or rumors.55 Most of the time, a followup interview to obtain further data or verify or clarify certain information is needed. It is essential for the lawyer not to lose touch both with the victim and with other witnesses who may be able to assist in the prosecution of the case.

- 2 Use precise questions and try to approach the questioning of the victim using a chronological fashion to easily detect internal inconsistencies.⁵⁶ While a victim of torture is usually disoriented and tends to ramble on in narrating, it is the lawyer's job to to make sense of the narration and direct the victim, through appropriate questioning, in order to provide a logical structure to the interview.
- During the interview, the lawyer should be conscious of essential facts brought up in the narration that may be corroborated by physical or documentary evidence.⁵⁷ These pieces of evidence will prove useful later in court. It is helpful to explain to the victim, at the outset, that any physical evidence that can tend to prove any element of his or her story is essential and should be promptly identified and obtained or secured if possible. For example, if the victim begins his or her story by saying he or she was arrested while dining at a restaurant, immediately inquire if there are any receipts (which are presumably dated and timed) that can establish his or her presence at the time and place he or she pinpoints. Immediately ask as well who may be able to verify his or her account. If the victim mentions names, designations, or ranks (in the case of military officers, for example) that he or she was able to recall from an incident, immediately verify the information by requesting the relevant data from official records.
- **4** The lawyer should always take note of the demeanor of the interviewee during the documentation process.⁵⁸ A person's body language can provide insight as to the reliability of his or her story. The lawyer should be prepared to corroborate a person's story from other sources if needed. However, the lawyer should bear in mind that a victim of torture suffers from severe trauma that can affect his or her orientation. Inconsistencies in statements should not be taken solely as signs of untruthfulness but may also be considered evidence of the extent of psychological stress the victim has suffered from the commission of torture.
- The lawyer should always be aware that an interview, especially a forensic interview that seeks to document testimonial evidence of torture, is particularly stressful to a victim of torture. 59 The lawyer should be sensitive and sensible enough to obtain information without causing undue difficulty to the victim. Despite the need to promptly gather and preserve evidence, the lawyer should not rush the victim into narrating the entire incident; most people find it hard to reconstruct stories to which they attach strong

emotional associations. Taking periodic breaks, or allowing the victim to take his or her time in recalling details, should be done by the lawyer as necessary. The lawyer should also be sensitive enough to cautiously approach certain difficult questions and not to force an answer from the victim, particularly in cases where the torture involves sexual abuse.

- Taking down notes during the interview is not a hard-and-fast rule.⁶⁰ Torture victims may be concerned about who will have access to the written information, for obvious security concerns. This can be addressed at the outset by the interviewer by beginning the interview with an explanation that written accounts are important in the prosecution of the case later on and will be kept in strictest confidence. However, if the victim is obviously uncomfortable with an "interview" setup and is more inclined to simply "share" his or her traumatic experience, the lawyer should be prepared to simply listen and take down notes immediately after.
- The ideal interview setup is to interview a victim as a pair, with one in charge of talking and/or empathizing with the victim and the other passively taking notes. 61 This setup diffuses a potentially stressful situation, especially if a victim is uncomfortable being alone with only one person the interviewer—in a room. The handbook recommends that the pair be complementary experts—one in law and one in medicine—to ensure that all necessary details are given focus. However, in using this setup, it is important to establish that only one in the pair of interviewers should primarily direct the entire process and carry the conversation, so as not to confuse and overpower/overwhelm the victim. Thus, the note-taker should keep interjections at a minimum.
- Establish a comfortable rapport with the victim. The lawyer should bear in mind that an allegation of torture is a serious imputation whose mere revelation will already endanger the victim's life and welfare (especially if he or she will remain in detention after the interview). Thus, even during the interview, it is essential that steps be taken to assure the victim's safety. The lawyer's posture in interviewing, as well as the surroundings during the interview, will have a significant impact on the effectiveness of torture documentation.⁶² Be sensitive of the body language of the victim and respond accordingly. If the victim is traumatized, it might appear threatening for him or her to have his or her lawyer lean forward too closely while asking questions. On the other hand, the lawyer's posture should not convey lack

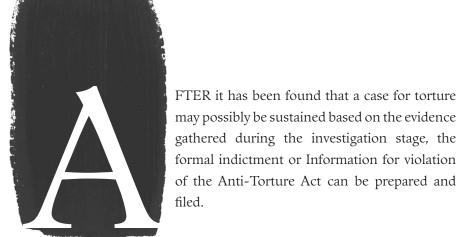
of interest as well. As much as possible, make arrangements to conduct the interview in private, or at least not within anyone's earshot, to encourage the victim to disclose as much information as possible without fear of being overheard.

- A torture victim has legitimate interests outside of his or her own safety, which are, in some cases, even more important for him or her. Thus, the lawyer should accommodate the victim's occasional deviations where he or she voices apprehensions about personal concerns like his or her family's welfare. 63 These concerns will help the victim achieve his or her desired level of comfort, especially when these are already articulated. However, despite the need to show empathy with the victim, the lawyer should maintain a professional stance and should not convey unrealistic expectations that he or she is able to address all the concerns, personal or otherwise, of the victim.
- **10** Always be alert in reading the victim's level of distress during the interview. If the person is not prepared for a full disclosure, consider scheduling several short interviews instead of a long one.⁶⁴ However, take care not to abruptly end an interview on a stressful subject. Before concluding an interview, steer the conversation to a less sensitive subject.
- 11 The barest information that a lawyer should aspire to obtain during an interview is at least some verifiable information on: (1) the identity of the victim—this is particularly addressed to public attorneys meeting a client for the first time, (2) identity of the perpetrators, (3) how the victim came into the hands of public officials, (4) where the victim was taken, (5) what the holding conditions were like, (6) the form of torture or ill-treatment, and (7) official response to the incident, if any.65 These pieces of information are enough to build a case for torture that will stand in court. All succeeding interviews, therefore, with the victim and with witnesses, should focus on obtaining as many details as possible regarding this information.
- 12 In documenting **physical** evidence of torture, be aware of physical signs of injuries like swellings, bruises, cuts, grazes, or burns. Remember to ask the victim about difficulties or irregularities in movements of his or her body. The lawyer can do this by asking the victim to stand up, sit down, walk, bend down, and raise his or her arms. Take note as well of any deformity of shape or posture of the back or limbs.66

- 13 Describe all physical signs of torture in as detailed a manner as possible, using accurate measurements if possible and taking note of size, color, appearance, and structure.⁶⁷ The best scenario is for the lawyer to describe in detail (not necessarily in medical, but only in sufficiently descriptive terms) the character of the injury and to afterwards take a picture of it, even using an amateur camera (or the ones installed in cellular phones). The lawyer should be conscious that evidence of torture in a person's body is not always permanent. Thus, considering the lengthy nature of the litigation process, any injury present during the interview will most likely be gone by the time the victim testifies in court. Thus, it is imperative that all injuries be documented in at best three ways: (1) descriptive writing, (2) photograph, and (3) an official medical analysis. As regards an official medical analysis, the lawyer should be aware of the right to medical examination provided in the Anti-Torture Act. This remedy should be availed of at the very outset in order to preserve physical evidence medically.
- **14** Psychological effects of torture should likewise be accurately documented.⁶⁸ While these are less manifest than physical injuries, the lawyer should be aware of some of the common symptoms of psychological stresses being exhibited by the victim. The lawyer should ask the victim if he or she suffers from recurring nightmares, intense depression, distressful "flashbacks" during conscious or waking moments, difficulty in sleeping, irritability, restlessness or agitation, outbursts of anger, difficulty in concentration, or anxiety or agitation, especially in the form of exaggerated responses when startled. As with physical injuries, these symptoms should be recorded in as detailed a manner as possible. They can also be corroborated through interviews with other witnesses. For example, the family of the victim can relay if the latter often wakes up screaming from a nightmare.
- **15** A lawyer is not expected to make an accurate medical interpretation of manifestations of psychological injury arising from torture. Thus, the lawyer is not precluded from simply recording even subjective comments from the victim and making subjective observations himself or herself based on the narrative of the victim. A medical expert can simply make the proper interpretations subsequently.⁶⁹

Lawyers should be aware of these guidelines in order to promptly and effectively conduct a torture documentation as soon as the victim apprises him or her of the fact of its commission. As stated earlier, the lawyer will not always have the luxury of summoning a medical expert who can immediately record all physical and psychological evidence of torture. At the very least, as soon as the allegation of torture is made, the lawyer conferring with a victim should be able to gather the necessary data needed to establish the allegation, with a view to supporting a charge for torture to be made later.

Preparing the Information for torture



In preparing the Information, the elements of the act constituting the crime should be clearly spelled out. Specifically, it should contain:

- An allegation referring to the infliction of severe mental or physical pain, in any of the forms indicated in, or similar to, the acts of torture described in Section 4 (a) and (b) of the Anti-Torture Act
- An allegation referring to the purpose for such infliction, which can be any of the purposes contained in Section 3 (a) of the Anti-Torture Act
- An allegation that the act of torture was committed by, or at the instigation, or with the consent or acquiescence of, a person in authority or an agent of a person in authority



Matalam bus bombing suspects Alimanan and Samal were allegedly slapped, punched, kicked, and suffocated. Scalding water with pepper was poured over their bodies. Photo BY MARIO IGNACIO IV



HE prosecution of a criminal case for torture is an extremely difficult task, especially since it involves persons in authority who can exert pressure and influence from within, literally extirpate the

lives of witnesses, and frustrate measures to secure justice for the victims. Additionally, it must be underscored that the mere revelation and discovery of acts of torture are already coupled with inherent difficulties arising from lack of corroborating witnesses, the complicated processes of gathering documentary evidence from secretive establishments and the anguish that a torture survivor had to go through in recounting and reliving moments that he or she would rather forget. In this setting, it behooves the prosecutors, investigators, judges, and other stakeholders in the criminal justice system to exert whatever effort is necessary to both shield the victim from further suffering and ensure that perpetrators do not enjoy the protection of historical impunity that has long shrouded torture as a crime.

The challenge ahead: Defeating torture



HE passage of the Anti-Torture Act in the Philippines represents a milestone in the country's legislation. It enables the criminal justice system to treat torture as the crime that it really is. It provides a specific and comprehensive manner of treating torture, instead of relying on common crimes that do

not entirely encapsulate the evils of torture and, as a consequence, fail to address and punish it accordingly. All the pillars of the criminal justice system should take this opportunity to properly, promptly, and effectively avail of the protection and remedies of this law in order to contribute to the eventual total eradication of this inhuman act.

But beyond celebrating the milestone of an Anti-Torture Act that recognizes and penalizes various crimes of torture, there are still many major issues encountered by those advocating for the elimination of torture. Even with the landmark passage of an Anti-Torture Law, the advocacy to galvanize the law into a living reality has merely commenced. The promulgation of law beckons anti-torture advocates and survivors to

frontally confront those issues through creative strategies that provide a sense of meaning and purpose to their advocacy.

As there should be no place for such heinous felonies against humanity in a flourishing democracy, these major issues that continue to bedevil the human rights advocates and the torture victims and their families ought to be specifically addressed:70

- The limited recognition of and support to torture victims and the general lack of knowledge about the fact that professional rehabilitation is both necessary and possible
- 2 The inadequate international funding available for rehabilitation and prevention activities worldwide, including multilateral, bilateral, and private funding
- 3 The limited implementation of international conventions against torture and the lack of knowledge about the obligations undertaken by states parties to these conventions. These obligations include the responsibility to ensure education of law enforcement personnel and health professionals (UNCAT, Article 10) with responsibility over detained or imprisoned individuals, about their duties toward these individuals. The obligations also include the provision of assistance—including rehabilitation (Article 14) —to victims of torture and their families, and the effective prosecution of perpetrators responsible for torture (Articles 4-8).
- The limited efforts undertaken by the world community toward the prevention of torture. This may be due to lack of interest, insufficient knowledge about the existence of torture, and the magnitude of the problem.
- The lack of knowledge about possible means to counteract torture among individuals and groups exposed to torture

The main obstacle is the limited attention and awareness about the extent of the problem. Where political torture is performed, torture is also often a routine procedure in the police stations and military camps. In a country such as the Philippines, police have never been trained in democratic interrogation techniques even as we have supposedly graduated from a military junta- supported dictatorship. Being taken into a police station is most often synonymous with torture.

Information must be relevant to the public in a manner that overcomes emotional resistance toward involvement in an unpleasant topic. Information on the practice of torture and its consequences, the rehabilitation possibilities for torture victims and availability of services, and prevention measures should be readily accessible to victims and their families and potential victims such as activists, advocates, and whistleblowers.

Special efforts must be made to inform and appeal to authorities responsible for the torture, and pressure and conscientize them in such a manner for them to constructively respond to the problem they themselves have created. Victims, their families, and willing witnesses must be carefully selected and provided with adequate protection to avoid endangering their lives.

In battling the problem of torture, a threefold advocacy program could address the need for accumulation, processing, and dissemination of information.⁷¹

Accumulation covers primarily the maintenance of documentation centers and the continuous collection of information.

Processing includes analysis and systematization of information, eventually resulting in the production of publications, articles, and other means of communication. Processing information is of maximum importance precisely because it becomes the primary proponent for prevention activities directed at eradicating torture at society and community levels. Identification of causes of torture, possible agents of torture, systems that permit, organize, and spread torture, and high-risk

groups in danger of torture are processed and proposals are made to prevent further commission of torture through the data evaluation made in the processing phase of the advocacy.

Dissemination involves the presentation of information to specific target groups, such as promotion and distribution of publications, press campaigns, and speeches. It is in the dissemination phase that proactive advocacy takes place. Seminars and training workshops can be organized in which the vital information of torture can be disseminated and advocacies highlighted among decision-makers, opinion leaders, involved sectors, and the general public.

Proposals for more specific actions⁷² are welcome.

Congress should create a reparation fund for torture victims such as a torture victim compensation fund to compensate survivors and their families for the failure of the government in providing adequate protection and in upholding the state of human rights within the nation.

The Chief Executive could also participate in the moves to eliminate human rights violations and torture through the creation of a Truth and Reconciliation Commission, provided it is deemed to be within constitutional parameters, to determine the truth behind unstated government policies and practices of the military and police organizations. Professional and academic inquiries and investigations have the purpose and effect of allowing torture victims to express their grievances, thereby allowing them to move on and start the healing of societal wounds in reconciling people. Perpetrators may even come to understand the prohibitions on torture, and to accept the primordial need to respect the human dignity and fundamental freedoms of people.

For torture survivors and their families, it would also be prudent for government to consider the creation of a torture rehabilitation center where victims and their families can seek free psychiatric and medical assistance considering that it was government's responsibility, in the first place, to protect these people against the depredations of its officials and military and police forces. Further, there should be the creation of a center for torture and human rights victims where focused group sharing sessions can be organized for them to be empowered and participate in campaigns, crusades and programs against torture.

Recognizing the need to convey the strong message against torture, the government must actively form a special task force or special commission that consists of a special group of prosecutors with expertise in human rights and humanitarian law, military law, and criminal law.

All these activities and programs are necessary in defeating torture, whether or not as an instrument of government suppression of human rights and free expression. When government sectors, especially the officials and agencies directly involved and publicly charged with the commission of torture, get involved in these activities and programs, then the eradication of torture becomes a more proximate and concrete reality.

End Notes

Chapters 1-5

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- ² Molino, 4.
- ³ Lene Wendland, Handbook on State Obligations under the UN Convention Against Torture (Geneva, Switzerland: Association for the Prevention of Torture [APT], 2002), 24.
- ⁴ Wendland, 26.
- ⁵ A compilation of torture laws in different jurisdictions is available at the Association for the Prevention of Torture website, http://www.apt.ch.
- ⁶ "Special Section on Human Rights," in Manual for Prosecutors (Manila: Department of Justice, 2008).
- ⁷ Revised Penal Code, Art. 262.
- 8 Revised Penal Code, Art. 263, 265, and 266.
- 9 Revised Penal Code, Art. 264.
- 10 Revised Penal Code. Art. 266.
- 11 Revised Penal Code, Art. 366.
- 12 Revised Penal Code, Art. 267.
- 13 Revised Penal Code, Art. 268.
- 14 Revised Penal Code, Art. 282.
- 15 Revised Penal Code, Art. 286.
- ¹⁶ Revised Penal Code, Art. 250.
- 17 Revised Penal Code, Art. 248. ¹⁸ Revised Penal Code. Art. 249.
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- 20 Poca, 64.
- ²¹ Poca. 64-65.
- ²² Poca, 68.
- ²³ The Anti-Torture Act of 2009 (Anti-Torture Act). Republic Act No. 9745, Sec. 3 (a).
- ²⁴ Implementing Rules and Regulations of the Anti-Torture Act of 2009 (IRR), Sec. 5.
- ²⁵ Anti-Torture Act, Sec. 4 (a) and (b).
- ²⁶ Anti-Torture Act. Sec. 6.
- ²⁷ Anti-Torture Act, Sec. 3 (d).
- ²⁸ IRR. Sec. 10.
- ²⁹ IRR, Sec. 11.

- ³⁰ Anti-Torture Act, Sec. 7, and IRR, Sec. 11.
- 31 Anti-Torture Act, Sec. 8.
- 32 IRR, Sec. 15 (a).
- 33 IRR, Sec. 15 (a).
- 34 IRR, Sec. 15 (a).
- 35 IRR, Sec. 15 (b).
- 36 IRR, Sec. 16.
- 37 IRR, Sec. 17.
- 38 IRR, Sec. 18.
- ³⁹ Anti-Torture Act, Sec. 12.
- ⁴⁰ Anti-Torture Act, Sec. 13.
- ⁴¹ Anti-Torture Act. Sec. 14.
- 42 IRR. Sec. 28.
- ⁴³ Anti-Torture Act, Sec. 15.
- 44 Anti-Torture Act. Sec. 16.
- 45 Anti-Torture Act, Sec. 17.
- 46 Anti-Torture Act. Sec. 18
- ⁴⁷ The Victim Compensation Act. 1992. Republic Act 7309.
- 48 IRR, Sec. 45
- ⁴⁹ Anti-Torture Act, Sec. 22.
- 50 Otherwise known as An Act Defining Certain Rights of Persons Arrested, Detained, or Under Custodial Investigation.
- ⁵¹ Notably, violation of an accused's right to visitation and conference is specifically made punishable by Republic Act No. 857, otherwise known as *Penalty for Violation of Right of Attorneys to Visit and Confer with Persons Arrested*.
- ⁵² Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68 (17 December 2002), par. 26.
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- ⁵⁶ Giffard, 32.
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Torture Throughout History

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- xviii Elihu Lauterpacht, C.J. Greenwood International Law Reports (Cambridge University Press,
- xix Darius Rejali, "Torture, American style. The surprising force behind torture: Democracies." Boston Globe 16 December 2007.
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ANNEX "A" Republic Act No. 9745 (The Anti-Torture Act)

AN ACT PENALIZING THE COMMISSION OF ACTS OF TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

- **SEC. 1**. Short Title. This Act shall be known as the "Anti-Torture Act of 2009".
- **SEC. 2**. *Statement of Policy.* It is hereby declared the policy of the State:
- (a) to value the dignity of every human person and guarantee full respect for human rights;
- (b) to ensure that the rights of all persons, including suspects, detainees and prisoners are respected at all times; that no person placed under investigation or held in custody by any person in authority or agent of a person in authority shall be subjected to torture, physical harm, force, violence, threat or intimidation or any act that impairs his/her free will; and that secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are hereby prohibited; and
- (c) to fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the 1987 Philippine Constitution and various international instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), to which the Philippines is a State party.
- **SEC. 3**. *Definitions*. For purposes of this Act, the following terms shall mean:
- (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or

coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

- (b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.
- (c) "Victim" refers to the person subjected to torture or other cruel, inhuman and degrading treatment or punishment as defined above and any individual who has suffered harm as a result of any act(s) of torture, or other cruel, inhuman and degrading treatment or punishment.
- (d) "Order of Battle" refers to a document made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.
- **SEC. 4**. Acts of Torture. For purposes of this Act, torture shall include, but not be limited to, the following:
- (a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
 - 1. systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
 - food deprivation or forcible feeding with spoiled food, animal or human 2. excreta and other stuff or substances not normally eaten;
 - 3. electric shock:
 - 4. cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
 - 5. the submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation:
 - being tied or forced to assume fixed and stressful bodily position; 6.

- 7. rape and sexual abuse, including the insertion of foreign bodies into the sex organ or rectum, or electrical torture of the genitals;
- 8. mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
- 9. dental torture or the forced extraction of the teeth;
- 10. pulling out of fingernails;
- 11. harmful exposure to the elements such as sunlight and extreme cold;
- 12. the use of plastic bag and other materials placed over the head to the point of asphyxiation;
- 13. the use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as: (i) the administration of drugs to induce confession and/or reduce mental competency; or (ii) the use of drugs to induce extreme pain or certain symptoms of a disease; and
- 14. other analogous acts of physical torture; and
- (b) Mental/Psychological torture refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:
 - 1. blindfolding;
 - 2. threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
 - 3. confinement in solitary cells or secret detention places;
 - 4. prolonged interrogation;
 - 5. preparing a prisoner for a "show trial", public display or public humiliation of a detainee or prisoner;
 - causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
 - 7. maltreating a member/s of a person's family;
 - 8. causing the torture sessions to be witnessed by the person's family, relatives or any third party;
 - 9. denial of sleep/rest;
 - 10. shame infliction such as stripping the person naked, parading him/her in public

- places, shaving the victim's head or putting marks on his/her body against his/ her will:
- 11. deliberately prohibiting the victim to communicate with any member of his/ her family; and
- 12. other analogous acts of mental/psychological torture.
- **SEC. 5**. Other Cruel, Inhuman and Degrading Treatment or Punishment. Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.
- **SEC. 6**. Freedom from Torture as a Nonderogable Right. Torture is hereby declared a criminal act. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture. An "Order of Battle" or any order from a superior officer or public authority shall not be invoked as a justification for the commission of torture.
- SEC. 7. Exclusionary Rule. Any confession, admission or statement obtained as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that said confession, admission or statement was made.
- **SEC. 8**. Protection of Persons Involved in the Investigation and Prosecution of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. – Any individual who alleges that he/she has been subjected to torture and other cruel, inhuman and degrading treatment or punishment shall have the right to complain to and to have his/her case promptly and impartially examined by competent authorities. The State through its appropriate agencies shall ensure the safety of the complainant or victim and all other persons involved in the investigation and prosecution of cases of torture and other cruel, inhuman and degrading treatment or punishment such as the legal counsel, witnesses, relatives of the victims, representatives of human rights organizations and media. They shall be entitled to the Witness Protection, Security and Benefit Program, as provided under Republic Act No. 6981, and other laws, rules and regulations. They shall be protected from ill-treatment and any act of intimidation or reprisal as a result of the complaint or filing of charges. Any person committing such acts shall be punished under existing laws.
- **SEC. 9.** Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order. – A writ of habeas corpus or writ of amparo or writ of

habeas data proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.

SEC. 10. Assistance in Filing a Complaint. – The Commission on Human Rights of the Philippines (CHRP) and the Public Attorney's Office (PAO) shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.

The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center nearest him/her as well as from human rights nongovernment organizations (NGOs).

SEC. 11. *Right to Physical and Psychological Examination.* – Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand a physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavour to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation shall have the right to immediate access to quality medical treatment.

The physical examination and/or psychological evaluation of the victim shall be contained in a medical report which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Following applicable protocol agreed upon by agencies, medical reports shall, among others, include the following:

- (a) The name, age and address of the patient;
- (b) The name and address of the nearest of kin of the patient;
- (c) The name and address of the person who brought the patient to a hospital clinic or to a health care practitioner for physical and psychological examination;
- (d) The nature and probable cause of the patient's injuries and trauma;
- (e) The approximate time and date when the injury and/or trauma was sustained;
- (f) The place where the injury and/or trauma was sustained;
- (g) The time, date and nature of treatment necessary; and

(h) The diagnosis, prognosis and/or disposition of the patient.

Any person who does not wish to avail of the rights under this provision may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel.

- **SEC. 12.** Criminal Liability. Any person who actually participated or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture by previous or simultaneous acts shall be liable as principal. Any superior military, police or law enforcement officer or senior government official who issued an order to a lower ranking personnel to subject a victim to torture or other cruel, inhuman and degrading treatment or punishment for whatever purpose shall be held equally liable as principal. Any public officer or employee shall be liable as an accessory if he/ she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:
- (a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment:
- (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or
- (c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment: Provided, That the accessory acts are done with the abuse of the official's public functions.
- **SEC. 13**. Liability of Commanding Officer or Superior. The immediate superior of the unit concerned of the Armed Forces of the Philippines or the equivalent senior official of the offender shall be held accountable for "neglect of duty" under the doctrine of "command responsibility" If he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence, shall, without prejudice to criminal liability, be held administratively liable under the principle of command responsibility.

SEC. 14. Penalties. – (a) The penalty of reclusion perpetua shall be imposed upon the

perpetrators of the following acts:

- 1. Torture resulting in the death of any person;
- 2. Torture resulting in mutilation;
- 3. Torture with rape;
- Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
- 5. Torture committed against children.
- (b) The penalty of reclusion temporal shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.
- (c) The penalty of prision mayor in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; or shall have become permanently incapacitated for labor.
- (d) The penalty of prision mayor in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.
- (e) The penalty of prision correccional in its maximum period to prision mayor in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days.
- (f) The penalty of prision correccional in its maximum period shall be imposed on the immediate officer who, either deliberately or by inexcusable negligence, failed to do an act even if he/she has knowledge or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman or degrading treatment or punishment shall be committed, is being committed or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment.
- (g) The penalty of *prision correccional* in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated

for labor for thirty (30) days or less.

- (h) The penalty of arresto mayor shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment.
- **SEC. 15**. Exclusion from the Coverage of Special Amnesty Law. In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.
- **SEC. 16.** Nonexclusivity or Double Jeopardy Under International Law. Notwithstanding the provisions of the foregoing section, any investigation, trial and decision in any Philippine court or other agency for any violation of this Act shall be without prejudice to any investigation, trial, decision or any other legal or administrative process before the appropriate international court or agency under applicable international human rights and humanitarian laws.
- **SEC. 17.** On Refouler. No person shall be expelled, returned or extradited to another State where there are substantial grounds for believing that such person would be in danger of being subjected to torture and other cruel, inhuman and degrading treatment or punishment.

For the purpose of determining whether there are such grounds, the Secretary of Foreign Affairs and the Secretary of Justice, in coordination with the Chairperson of the CHRP, shall take into account all relevant considerations including, where applicable, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

- **SEC. 18.** Compensation to Victims of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. – Any person who has suffered torture or other cruel, inhuman and degrading treatment or punishment shall have the right to claim for compensation as provided for under Republic Act No. 7309: Provided, That in no case shall the compensation be any lower than Ten thousand pesos (P10,000.00). The victim shall also have the right to claim for compensation from such other financial relief programs that may be available to him/her.
- **SEC. 19.** Rehabilitation Program for Victims of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and of Offenders. – Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), together with the Department of Justice (DOJ) and the Department of Health (DOH) and such other concerned government agencies, shall formulate a comprehensive rehabilitation program for victims of torture and their families. Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading treatment or punishment shall likewise be formulated by the same agencies.

- **SEC. 20.** Monitoring of Compliance with this Act. An oversight committee is hereby created to periodically oversee the implementation of this Act. The committee shall be headed by a commissioner of the CHRP, with the following as members: an undersecretary of the DOJ, the chairperson of the Senate Committee on Justice and Human Rights, the respective chairpersons of the House of Representatives' Committees on Justice and Human Rights and the respective chairpersons of two (2) nationally organized human rights NGOs, one of whose functions is the monitoring of cases of torture and other cruel, inhuman and degrading treatment or punishment.
- **SEC. 21.** Education and Information Campaign. The CHRP, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (DILG) and such other concerned parties in both the public and private sectors shall ensure that education and information regarding the prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The Department of Education (DepEd) and the Commission on Higher Education (CHED) shall also ensure the integration of the right against torture in human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.
- **SEC. 22**. Suppletory Applications. The provisions of the Revised Penal Code shall be suppletory to this Act.
- **SEC. 23**. Appropriations. The amount necessary for the initial implementation of this Act shall be charged against the current year's appropriations of the CHRP and the DOJ. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.
- **SEC. 24.** Implementing Rules and Regulations. The DOJ and the CHRP, with the active participation of human rights NGOs, shall jointly promulgate the rules and regulations for the effective implementation of this Act. They shall also ensure the full dissemination of such rules and regulations to all officers and members of various law enforcement agencies.
- **SEC. 25**. Separability Clause. If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.
- **SEC. 26.** Repealing Clause. All laws, decrees, executive orders or rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.
- **SEC. 27**. Effectivity. This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

ANNEX "B"

Implementing Rules and Regulations of the Anti-Torture Act

Section 1.Title. – This shall be known as the implementing rules and regulations of Republic Act No. 9745, otherwise known as the "Anti-Torture Act of 2009".

Section 2. Purpose. – These rules and regulations are hereby promulgated to promote policies, establish the institutional mechanism, prescribe the procedures and guidelines to prevent all forms of torture and other cruel, inhuman and degrading treatment or punishment and ensure the implementation of R.A. No. 9745.

Section 3. Declaration of Policy. – It is hereby declared the policy of the State:

- (a) To value the dignity of every human person and guarantee full respect for human rights;
- (b) To ensure that the human rights of all persons including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody by any person in authority or agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;
- (c) To ensure that secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited;
- (d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution;
- (e) To uphold at all times the inherent rights and dignity of all persons as enshrined and guaranteed in the following international instruments:
 - (i) International Covenant on Civil and Political Rights (ICCPR);
 - (ii) Convention on the Rights of the Child (CRC);

- (iii) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- (iv) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- (v) Universal Declaration on Human Rights, and
- (vi) all other relevant international human rights instruments to which the Philippines is a signatory.

Section 4. Construction. – These implementing rules and regulations shall be construed to achieve the objectives of the Anti-Torture Act of 2009.

Section 5. Definition of Terms. – The following shall be defined as:

Torture – refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Other cruel, inhuman and degrading treatment or punishment – refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of the Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.

Victim – refers to the person subjected to torture or other cruel, inhuman and degrading treatment or punishment as defined above and any individual who has suffered harm as a result of any act(s) of torture, or other cruel, inhuman and degrading treatment or punishment.

Order of Battle – refers to any document or determination made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

Act – refers to Republic Act No. 9745 or the Anti-Torture Act of 2009.

Person in authority – refers to any person directly vested with jurisdiction, whether as an individual or as a member of a court or government corporation, board, or commission.

Agent of a person in authority – refers to any person who, by direct provision of law or by election or by appointment of a competent authority, is charged with the maintenance of public order and the protection and security of life and property including any person who comes to the aid of persons in authority.

Custodial investigation – shall include the practice of issuing an invitation to a person who is investigated in connection with an offense he/she is suspected to have committed, without prejudice to the liability of the inviting officer for any violation of law, as defined in R.A. No. 7438 or "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof".

Interrogation – refers to the process of questioning an arrested or detained person in relation to any violation of law.

Solitary confinement – is a form of imprisonment in which a prisoner(s) or detainee(s) is denied contact with any other persons, except members of the prison or detention staff. Solitary confinement also exists when occasional access to the prisoner(s) or detainee(s) is subjected to the discretion of the jailer or prison or detention authority.

Incommunicado – refers to a condition wherein a person under investigation or detention is deliberately prohibited, without valid reason, from communicating in any manner with any person other than the persons holding him/her under custody.

Prohibited custody – refers to the captivity or deprivation of liberty of an individual, whether static or mobile, without just cause.

Prohibited detention. – refers to secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity.

Right to own choice – refers to the right of all persons in custody to be informed in oral or written form, in a language or dialect understood by the alleged torture victim or the person concerned, of the right to demand a physical examination by a physician of his/her own choice.

Independent and competent doctor – refers to any physician freely chosen by the victim or his /her duly authorized representative/s to conduct physical examination and treatment of tortured victims. Physicians who belong to agencies that are involved in the arrest and detention of the victim are not included, unless the victim specifically allowed such examination and when circumstances so require.

Right to Physical Examination – refers to the right of every person arrested, detained or under custodial investigation to prompt and thorough examination for the purpose of determining whether or not torture has been inflicted. This also refers to access without any delay to such an examination, which shall be made before and after any act of interrogation and immediately before and after any transfer of the person to places of detention.

Barangay Human Rights Action Center (BHRAC) – refers to the barangay institutional mechanism, which receives and refers complaints of human rights violations, including torture.

Section 6. Acts of Torture. – For purposes of these rules and regulations, torture shall include, but not be limited to the following:

- (a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
 - (1) Systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach. For purposes of these rules, stomach shall mean abdomen.
 - (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
 - (3) Electric shock;
 - (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
 - (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation:
 - (6) Being tied or forced to assume fixed and stressful bodily position;
 - (7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
 - (8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
 - (9) Dental torture or the forced extraction of the teeth;
 - (10) Pulling out of fingernails;
 - (11) Harmful exposure to the elements such as sunlight and extreme cold;
 - (12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;

- (13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
 - (i) The administration of drugs to induce confession and/or reduce mental competency; or
 - (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and
- (14) Other analogous acts of physical torture; and
- (b) Mental/Psychological Torture refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:
 - (1) Blindfolding;
 - (2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
 - (3) Confinement in solitary cells or secret detention places;
 - (4) Prolonged interrogation;
 - (5) Preparing a prisoner for a show trial, public display or public humiliation of a detainee or prisoner;
 - (6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
 - (7) Maltreating a member/s of a person's family;
 - (8) Causing the torture sessions to be witnessed by the person's family, relatives or any third party;
 - (9) Denial of sleep/rest;
 - (10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will:
 - (11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
 - (12) Other analogous acts of mental/psychological torture.

Section 7. Other Cruel, Inhuman and Degrading Treatment or Punishment. – Other cruel, inhuman and degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of the Act,

inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.

Section 8. – Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, An Absolute Right. – Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

Section 9. Nature of the Offense. Any person having personal knowledge of the circumstances involving the commission of the crime may file a complaint under acts punishable by Sections 6 and 7 hereof.

Section 10. Secret Detention Places, Solitary Confinement, Incommunicado or Other Similar Forms of Detention. – No individual, whether arrested, detained, or under custodial investigation, restricted or deprived of liberty for any reason, shall be kept in secret detention, solitary confinement, held incommunicado, prohibited custody or other similar forms of detention.

Under no circumstance shall such detention centers be allowed and, if found, its use as a secret detention center shall be discontinued immediately.

Section 11. Inspection by the CHR of Detention, Rehabilitation, Confinement and Other Similar Facilities. – The Commission on Human Rights (CHR) shall exercise its visitorial powers at any time over jails, prisons and detention facilities and it shall have unrestricted access to any detention facility inside military camps, police lock-up cells, jails, prisons, youth homes, and any detention, rehabilitation, confinement and other similar facilities.

The custodial authorities shall validate or verify the identity and authority of the CHR visitation team without delay.

Section 12. List of Detention Centers, Facilities and Register of Detainees and Prisoners. – The Philippine National Police (PNP), Armed Forces of the Philippines (AFP), National Bureau of Investigation (NBI), Bureau of Jail Management and Penology (BJMP), Bureau of Corrections (BuCor), Philippine Drug Enforcement Agency (PDEA) and all other law enforcement agencies and local chief executives having jurisdiction over provincial jails shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others,

names, dates of arrest and incarceration, and the crime or offense charged. Such list shall be periodically updated by the said agencies and local chief executives within the first five (5) days of every month at the minimum.

Within sixty (60) days from the adoption of these rules and regulations, the CHR shall prescribe a standard format and guidelines for reporting the list of detention centers and facilities at the national and regional and local levels. It shall also prescribe the contents of register of detention centers and facilities.

The updated list shall be made available to the public at all times, with copies available at the respective national headquarters or offices of the abovementioned agencies; Provided, however, that any records of children or of persons involved in sexual violence cases shall not be accessible to the public pursuant to R.A. No. 7610, R.A. No. 8353, R.A. No. 9344 and other related laws.

Section 13. Compliance of Regional Offices. – All regional or similar offices of the agencies referred to in the preceding section shall also maintain a similar list of all detention centers and facilities within their respective jurisdictions together with the up-to-date register of detainees and/or prisoners, make the same available to the public at all times at their respective regional headquarters, and submit a copy, updated in the same manner provided above, to the respective regional offices of the CHR.

Section 14. Applicability of the Exclusionary Rule; Exception. – Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceeding, except if the same is used as evidence against a person or persons accused of committing torture.

Section 15. Institutional Protection of Torture Victims and Other Persons **Involved.** – A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

(a) A victim of torture shall have the right to a prompt and impartial fact-finding investigation within the period of sixty (60) days by the CHR, PNP, DOJ/NBI, AFP and other concerned government agencies where the complaint is lodged.

The Public Attorney's Office (PAO) shall assist the victim/s in the preparation of affidavits and other legal documents.

When the case is referred to the Department of Justice (DOJ) or the Ombudsman for preliminary investigation, the 60-day period shall be reckoned from the filing of the complaint before said agencies.

(b) A child shall always be accompanied by a social worker from the Local Social Welfare and Development Office (LSWDO). The LSWDO shall ensure that medical examination is conducted, preferably with the presence of the parent or legal guardian. The LSWDO shall likewise ensure the filing of a complaint to the appropriate agencies.

Section 16. Government Protection Against All Forms of Harassment, Threat and/or Intimidation. – Upon filing of the complaint, during trial and until the case reaches final disposition, the victim, as well as other persons involved in the investigation and prosecution of the case, shall be provided with sufficient government protection such as placing the persons being investigated under preventive suspension during the period of administrative investigation, filing a motion in court to transfer the detainee to a safe place and other remedies as may be provided for by law.

The factors to be considered in granting protection may include, among others, the following:

- (1) Power and position of the perpetrators;
- (2) Capacity and access to resources of the accused;
- (3) History of retaliatory action of the accused;
- (4) Economic, social status, and gender of the victim and other involved persons;
- (5) Degree of severity of the act complained of; and
- (6) Geographical distance between the victim/other involved persons and the accused.

The victim of torture and witnesses to torture may avail of the benefits under R.A. No. 6981, otherwise known as the "Witness Protection, Security and Benefit Act", and other applicable laws.

Section 17. Manner of Testifying and Presentation of Evidence. – Torture victims and witnesses to torture shall be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any forum in order to avoid further trauma. Appropriate government agencies may coordinate with concerned civil society organizations in providing such protection.

Whenever necessary, closed circuit television testimony and one-way mirrors and such devices shall be utilized in the taking of testimony to prevent direct interaction between the victim/s and accused.

Psychiatrists or psychologists, especially trauma experts, shall provide victims and witnesses in-court assistance when necessary, in accordance with the rules of court. Child psychologist, child psychiatrist or Court Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) shall also be provided to children, in accordance with the existing rules on examination of a child witness.

Section 18. Assistance in Filing a Complaint. – The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto, regardless of whether the complainant is indigent or not.

The victim or interested party may also seek legal assistance from the Integrated Bar of the Philippines (IBP) and human rights nongovernment organizations (NGOs), among others.

The Barangay Human Rights Action Centers (BHRACs), through the Barangay Human Rights Action Officers (BHRAOs), shall render assistance in the following manner:

- (1) Conduct information education campaign on this law;
- (2) Refer victims of torture to the CHR or other appropriate agency for the conduct of investigation or for legal assistance.

The Department of Interior and Local Government (DILG) and CHR shall conduct information dissemination at the grassroots level to ensure that the citizenry will utilize the BHRAC in filing complaints.

Section 19. Right to Physical, Medical and Psychological Examination. –

Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. The implementation of this right shall likewise ensure that the person has access to a medical examination for the purpose of documenting possible allegations of torture or other ill-treatment.

If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct a physical examination. The State shall likewise provide the victim with a psychological evaluation if available under the circumstances. The medical examination shall be conducted at no cost to the victim, and under no circumstance will he/she be required to pay for laboratory fees, testing fees, x-rays, or any and all other expenses. Failure to prove incapacity to pay shall not be a ground to deny physical examination. If further consultations are necessary, the funds for this purpose may likewise be provided by other agencies that provide financial assistance, such as the Philippine Charity Sweepstakes Office (PCSO) and Philippine Amusement and Gaming Corporation (PAGCOR).

In case of the Department of Health (DOH), each Center for Health Development (CHD) shall ensure that victims are referred to the appropriate health facilities in their jurisdiction. In case of the local government units (LGUs), the local health units

may also provide assistance. The social worker conducting the intake interview may recommend to the LGUs the grant of financial /medical assistance.

Section 20. Access to Physical, Medical and Psychological Examination for Treatment, An Immediately Executory Right. – The right to immediate access to proper and adequate physical, medical and psychological examination for treatment of any person arrested, detained or under custodial investigation, and his/her immediate family member such as the parents, brothers and sisters, spouse and children, is an inherent right that is immediately executory upon demand of the victim without need of any court order or any legal process.

Section 21. Female victims/detainees. – If the person arrested and/or detained is female, she shall be attended to by a female doctor. In cases where female doctors are unavailable, male doctors will be allowed, provided that there is a written or oral consent from the person arrested, and the examination is done in the presence of a family member, preferably female, of sufficient age and discretion, or a representative of any organization authorized by the victim.

Facilities for female victims/detainees shall be exclusive to them and separate from the facilities for male victims/ detainees.

In case of victims of sexual torture, utmost care and sensitivity shall be observed in the medical examination of the victim. If specialized care is necessary, the victim shall be referred to the appropriate specialists.

Section 22. Obligation of the Medical Examiners. – All medical examiners conducting the examinations described in these rules and regulations are under a legal and ethical obligation to conduct a diligent and complete medical examination. Any violation of this obligation by conduct or omission shall be referred to the relevant authorities and medical associations for further investigation. All medical reports must be duly signed by the examining physician.

Section 23. Medical Report. – The medical report with respect to a medical examination conducted on the torture victim shall be considered a public document, Provided, that any person who seeks to avail of the medical report has legal interest on the same, Provided further, that medical reports involving children and victims of sexual violence shall be kept confidential in conformity with existing laws.

Section 24. Contents of the Report. – The physician who conducted the medical examination and psychological evaluation shall prepare and sign the report which shall contain the following information:

(I) Case information

- (1) Date and time of examination
- (2) Place of examination

- (3) Address of referring agency/person
- (4) Address of immediate relative or contact person
- (5) Name/position of person requesting the examination
- (6) Case number
- (7) Duration of evaluation in hours and minutes
- (8) Subject's full name (given name, middle name and surname)
- (9) Subject's birth date
- (10) Subject's birthplace
- (11) Subject's gender
- (12) Reason for examination
- (13) Subject's ID Number
- (14) Clinician's name
- (15) When present, interpreter's name
- (16) Whether or not informed consent was given by the subject. If none, reason/s why
- (17) Name and position of person accompanying the subject
- (18) Name and position of persons present during examination
- (19) Whether or not subject is restrained during examination. If "yes", how/why?
- (20) Name and position of person to whom the medical report is to be transferred/ submitted
- (21) Transfer date
- (22) Transfer time
- (23) For subjects in custody, whether or not medical evaluation/investigation was conducted without restriction
- (24) Provide details of any restriction

(II) Background information

(1) General information (age, occupation, education, family composition, etc.)

- (2) Past medical history
- (3) Review of prior medical evaluations of torture and ill-treatment
- (4) Psychosocial history pre-arrest

(III) Victim's allegations of torture and ill-treatment

- (1) Summary of detention and abuse
- (2) Circumstances of arrest and detention
- (3) Initial and subsequent places of detention (chronology, transportation and detention conditions)
- (4) Narrative account of ill-treatment or torture (in each place of detention)
- (5) Review of torture methods

(IV) Physical symptoms and disabilities

Describe the development of acute and chronic symptoms and disabilities and the subsequent healing processes.

- (1) Acute symptoms and disabilities
- (2) Chronic symptoms and disabilities
- (V) Physical examination
- (1) General appearance
- (2) Skin
- (3) Face and head
- (4) Eyes, ears, nose and throat
- (5) Oral cavity and teeth
- (6) Chest and abdomen (including vital signs)
- (7) Genitourinary system
- (8) Musculoskeletal system
- (9) Central and peripheral nervous system
- (10) Anogenital examination

(VI) Photographs

(VII) Diagnostic test results

(VIII) Interpretation of findings

Physical evidence

- (A) Correlate the degree of consistency between the history of acute and chronic physical symptoms and disabilities with allegations of abuse.
- (B) Correlate the degree of consistency between physical examination findings and allegations of abuse.

The absence of physical findings does not exclude the possibility that torture or ill-treatment was inflicted.

(C) Correlate the degree of consistency between examination findings of the individual with knowledge of torture methods and their common after-effects used in a particular region.

(IX) Conclusions and recommendations

Physical Evidence

- (1) Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and allegations of torture and ill-treatment.
- (2) Reiterate the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse.
- (3) Provide any recommendations for further evaluation and care for the individual.
 - (4) If necessary, provide recommendation for rehabilitation program.

(X) Consultations

(XI) Physician's Certification on the conduct of physical examination

The undersigned physician(s) shall certify that he/she was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities.

In case restrictions were imposed, the certification shall include said restrictions.

The physician(s) shall certify that he/she had to carry out the evaluation with restrictions and shall state the same.

"I hereby certify that I was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities".

"I hereby certify that I was allowed to examine (the subject) with restrictions". (State the restrictions)

(XII) Clinician's signature, date, place

(XIII) Relevant annexes

A copy of the clinician's curriculum vitae, anatomical drawings for identification of torture and ill-treatment, photographs, consultations and diagnostic test results, among others.

(XIV) Psychological history/examination

- (1) Methods of assessment
- (2) Current psychological complaints
- (3) Post-torture history
- (4) Pre-torture history
- (5) Past psychological/psychiatric history
- (6) Substance use and abuse history
- (7) Mental status examination
- (8) Assessment of social functioning
- (9) Psychological testing
- (10) Neuropsychological testing

(XV) Interpretation of findings

Psychological evidence

- (A) Correlate the degree of consistency between the psychological findings and the report of alleged torture.
 - (B) Provide an assessment of whether the psychological findings are expected

or typical reactions to extreme stress within the cultural and social context of the individual.

- (C) Indicate the status of the individual in the fluctuating course of traumarelated mental disorders over time, i.e. what is the time frame in relation to the torture events and where in the course of recovery is the individual?
- (D) Identify any coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.) and the impact these may have on the individual.
- (E) Mention physical conditions that may contribute to the clinical picture, especially with regard to possible evidence of head injury sustained during torture or detention.

(XVI) Conclusions and recommendations

Psychological Evidence

- (1) Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and allegations of torture and ill-treatment.
- (2) Reiterate the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse.
- (3) Provide any recommendations for further evaluation and care for the individual.
 - (4) If necessary, provide recommendation for rehabilitation program.

(XVII) Consultations

(XVIII) Physician's Certification on the conduct of psychological examination

The undersigned physician(s) shall certify that he/she was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities.

In case restrictions were imposed, the certification shall include the said restrictions. The physician(s) shall certify that he/she had to carry out the evaluation with restrictions and shall state the same.

"I hereby certify that I was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities".

"I hereby certify that I was allowed to examine (the subject) with restrictions". (state the restrictions)

(XIX) Clinician's signature, date, place

(XX) Relevant annexes

A copy of the clinician's curriculum vitae, anatomical drawings for identification of torture and ill-treatment, photographs, consultations and diagnostic test results, among others.

Section 25. Waiver of the Right to Physical, Medical and Psychological Examination. – Any person who does not wish to avail of the rights to physical, medical and psychological examination as prescribed in the Act may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of a counsel of his/her own choice and in a language he/she understands.

Section 26. Principal. – (a) Any person who directly participated, forced or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the offense by another act without which it would not have been accomplished or who cooperated in the execution of the offense by previous or simultaneous acts shall be liable as a principal.

- (b) Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principal.
- (c) The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that the act of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as a principal.

Section 27. Accomplice. – Any person who, not being included in Section 26 hereof, cooperate in the execution of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts is an accomplice.

Section 28. Accessories. – Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:

- (a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;
- (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or,
- (c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment; Provided that the accessory acts are done with the abuse of the official's public functions.

If in the event a child is involved in the act of inflicting torture, the handling and treatment of said child shall be in accordance with R.A. No. 7610, R.A. No. 9344 (Juvenile Justice and Welfare Act) and other related laws. In case of doubt, the interpretation of any of the provisions of these rules and regulations shall be construed liberally in favor of the child involved in torture acts, i.e., consistent with the best interests of the child, the declared state policy, the rights of the child and principles of restorative justice.

Section 29. Penalties. – (a) The penalty of *reclusion perpetua* shall be imposed upon the perpetrators of the following acts:

- (1) Torture resulting in the death of any person;
- (2) Torture resulting in mutilation;
- (3) Torture with rape;
- (4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
 - (5) Torture committed against children.
- (b) The penalty of *reclusion temporal* shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.
- (c) The penalty of *prision correccional* shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described in paragraph (b) of this section.

- (d) The penalty of *prision mayor* in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; or shall have become permanently incapacitated for labor.
- (e) The penalty of *prision mayor* in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.
- (f) The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days.
- (g) The penalty of *prision correccional* in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for thirty (30) days or less.
- (h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of the Act.
- (i) The penalty of *prision correccional* shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention as provided in Section 7 of the Act where torture may be carried out with impunity.
- (j) The penalty of *arresto mayor* shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of the Act.

This is without prejudice to the provisions of R.A. No. 7438 or "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof."

Section 30. Torture as a Separate and Independent Crime. — Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be imposable without prejudice to any other criminal liability provided for by domestic and international laws.

Section 31. Inapplicability of Amnesty. – In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

Section 32. Applicability of Refouler. - No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including, where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

Section 33. Who May Avail of Compensation. – Any person who has suffered torture as defined in the Act, or in the victim's absence or incapacity, his/her immediate family, shall have the right to claim for compensation provided for under existing laws, rules and regulations.

In case of death of the victim, the compensation accruing to him/her shall form part of his/her estate.

Section 34. Application for Claims, Where Filed. – The application for claims shall be filed with the Board of Claims under the DOJ as provided for in R.A. No. 7309. Request for financial assistance may also be filed with the CHR.

Section 35. Who May File. – The victim, a relative of the victim within the fourth degree of consanguinity, or an authorized human rights NGO may assist the victims in filing a claim.

Section 36. Amount of Compensation. – Where there is a finding that torture had been committed, the amount of compensation in R.A. No. 7309 shall not be less than ten thousand pesos (PhP10,000.00).

Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to them under existing laws, including the right to apply for the grant of financial assistance from the CHR.

Section 37. Rehabilitation Program. – Toward the attainment of restorative justice, rehabilitation programs shall be provided for the physical, psychological and social healing and development of victims of torture and their families.

The victims of torture and their families shall be entitled to avail of the rehabilitation program based on the recommendation of the examining physician in the Medical and Psychological Report.

A parallel rehabilitation program shall also be provided for persons who have

been convicted by final judgment of torture and other cruel, inhuman and degrading punishment.

Section 38. Responsible agencies. – Within one (1) year from the effectivity of the Act, the rehabilitation program shall be formulated by the following agencies:

Department of Social Welfare and Development (DSWD)

Department of Health (DOH)

Department of Justice (DOJ)

Department of Interior and Local Government (DILG)

Commission on Human Rights (CHR)

Council for the Welfare of Children (CWC)

Armed Forces of the Philippines (AFP)

Bureau of Corrections (BuCor)

Bureau of Jail Management and Penology (BJMP)

Philippine National Police (PNP)

National Bureau of Investigation (NBI)

Philippine Drug Enforcement Agency (PDEA)

Human rights nongovernment organizations duly recognized by the government shall also be called to actively participate in the formulation of such program.

The role and participation of survivors of torture shall be given due consideration by inviting female and male survivors who will be able to represent their collective feelings and opinions on the formulation of a rehabilitation program.

Section 39. Components of the Rehabilitation Program. – The comprehensive rehabilitation program to be developed by the aforementioned agencies shall provide for the physical, mental, social, psychological healing and development of victims of torture and their families.

The parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading punishment shall be developed for their mental, social, psychological healing and re-integration.

Section 40. Funding for the Rehabilitation Program. – The agencies mandated to provide services for the rehabilitation of the victims/perpetrators of torture shall provide the necessary budget for the implementation of the rehabilitation program.

Section 41. Monitoring of Compliance with the Act. - An Oversight Committee (OC) is hereby created to periodically oversee the implementation of the Act. The Committee shall be headed by a Commissioner of the CHR, with the following as members: the Chairperson of the Senate Committee on Justice and Human Rights, the respective Chairpersons of the House of Representatives' Committees on Justice and Human Rights, and the Minority Leaders of both houses or their respective representatives in the minority.

The OC shall regularly conduct meetings and submit an annual report to the President on the implementation of the Act. The annual report, which shall be made publicly available, shall include, among others:

- (a) Identification of the strengths and weaknesses in the implementation of the Act;
- (b) Appraisal of the performance of the government agencies in relation to their duties and responsibilities under the Act; and
 - (c) Recommendations on how to improve the implementation of the Act

The OC shall call the attention of the departments and agencies concerned to perform their respective duties and responsibilities under the Act and these Rules, and assist them if necessary to ensure the effective implementation of the Act.

Section 42. Active participation of the NGOs. – The OC recognizes the active participation of concerned NGOs in exercising its oversight functions. NGOs may request the Committee to conduct inquiries, consultations, and/or ocular inspections regarding documented violations of the Act.

Section 43. Mandatory Education and Training on Prohibition Against Torture. – The CHR, the DOJ, the Department of National Defense (DND), the DILG and such other concerned parties in both the public and private sectors shall ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the following:

- (a) Government personnel and officials: A continuing education on human rights, prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be provided to prosecutors, investigators, personnel and officials with custodial and correctional functions and other government personnel and officials who may be involved in the implementation of programs under the Act.
- (b) Law enforcement and security personnel and officials: The education and training shall be integrated in basic curricula in the military and police academies. Continuing education shall likewise be provided for law enforcement and security personnel.
- (c) Medical Personnel: The DOH shall provide adequate formal training for physicians in government health institutions and agencies that provide medical and forensic services to victims of all types of violence, especially cases of torture.

It shall endeavor to provide the same training to private medical practitioners in coordination with the Philippine Medical Association and other medical societies or colleges.

(d) Inclusion in formal education curricula: The Department of Education (DEPED) and the Commission on Higher Education (CHED), in consultation with the CHR, shall ensure the integration of human rights, anti-torture and other related laws in all primary, secondary and tertiary level academic institutions nationwide.

Section 44. Information dissemination. – The concerned agencies shall ensure that the information disseminated is comprehensive, clear and in a manner easy to understand. Efforts must be undertaken to inform the public on the definition of torture, what their rights and duties are in relation to it, and how they can be part of sustainable solutions to eradicate the culture of torture. The tri-media should be employed so that the information reaches the widest audience possible.

Section 45. Torture as a Non-Prescriptible Offense. – The statute of limitation or prescription period shall not apply to torture cases.

Section 46. Applicability of the Revised Penal Code. – The provisions of the Revised Penal Code insofar as they are applicable shall be suppletory to the Act. Moreover, if the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment as defined herein, the penalty to be imposed shall be in its maximum period.

Section 47. Appropriations. – The amount of Five million pesos (Php5,000,000.00) is hereby appropriated to the CHR for the initial implementation of the Act. Thereafter, such sums as may be necessary for the continued implementation of the Act shall be included in the annual General Appropriations Act.

Section 48. Separability Clause. – If any provision of these IRR is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.

Section 49. Effectivity. – These IRR shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 10th day of December 2010.

LEILA M. DE LIMA LORETTA ANN P. ROSALES

Secretary of Justice Chair, Commission on Human Rights

ANNEX "C" **United Nations Convention Against Torture**

CONVENTION AGAINST TORTURE and Other Cruel, Inhuman or Degrading **Treatment or Punishment**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms.

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452) (XXX)),

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

Article 1

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a

person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

- 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
- 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

- 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- For the purpose of determining whether there are such grounds, the competent
 authorities shall take into account all relevant considerations including, where
 applicable, the existence in the State concerned of a consistent pattern of gross,
 flagrant or mass violations of human rights.

Article 4

- 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
- 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its

- jurisdiction over the offences referred to in article 4 in the following cases:
- 2. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- When the alleged offender is a national of that State;
- 4. When the victim was a national of that State if that State considers it appropriate.
- 5. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.
- This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

- Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
- 2. Such State shall immediately make a preliminary inquiry into the facts.
- 3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.
- When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

Article 7

The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

- 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
- 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

- The offences referred to in article 4 shall be deemed to be included as
 extraditable offences in any extradition treaty existing between States Parties.
 States Parties undertake to include such offences as extraditable offences in
 every extradition treaty to be concluded between them.
- If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.
- 3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.
- 4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

- States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
- 2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement

personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committee in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

- Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
- Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

- Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
- The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

- 1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
- 2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.
- 3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
- 4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

- The members of the Committee shall be elected for a term of four years. They 5. shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.
- If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
- States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

- The Committee shall elect its officers for a term of two years. They may be reelected.
- 2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that
- 3. Six members shall constitute a quorum;
- Decisions of the Committee shall be made by a majority vote of the members present.
- The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
- The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
- The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19

The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect

to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.

- 2. The Secretary-General shall transmit the reports to all States Parties.
- [Each report shall be considered by the Committee which may make such
 comments or suggestions on the report as it considers appropriate, and shall
 forward these to the State Party concerned. That State Party may respond with
 any observations it chooses to the Committee.
- 4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.]

- If the Committee receives reliable information which appears to it to contain
 well-founded indications that torture is being systematically practised in the
 territory of a State Party, the Committee shall invite that State Party to co-operate
 in the examination of the information and to this end to submit observations
 with regard to the information concerned.
- Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
- 3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
- 4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
- 5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee

may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

- A State Party to this Convention may at any time declare under this article 3 that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, pending, or available in the matter.
 - If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee by notice given to the Committee and to the other State.
 - The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
 - The Committee shall hold closed meetings when examining communications under this article.
 - Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee

may, when appropriate, set up an ad hoc conciliation commission.

- 6. In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.
- 7. The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.
- 8. The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report.
 - 1. If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.
 - 2. If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

- A State Party to this Convention may at any time declare under this article
 that it recognizes the competence of the Committee to receive and consider
 communications from or on behalf of individuals subject to its jurisdiction
 who claim to be victims of a violation by a State Party of the provisions of the
 Convention. No communication shall be received by the Committee if it concerns
 a State Party to the Convention which has not made such a declaration.
- 2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of

- submission of such communications or to be incompatible with the provisions of this Convention.
- Subject to the provisions of paragraph 2, the Committee shall bring any communication submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
- The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
- The Committee shall not consider any communication from an individual under 5. this article unless it has ascertained that:
 - The same matter has not been, and is not being examined under another procedure of international investigation or settlement;
 - The individual has exhausted all available domestic remedies: this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
- 6. The Committee shall hold closed meetings when examining communications under this article.
- 7. The Committee shall forward its views to the State Party concerned and to the individual.
- The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit parties thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 23

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities,

privileges and immunities of experts on missions for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

Part III

Article 25

- 1. This Convention is open for signature by all States.
- 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

- This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
- For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

- Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
- 2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it

with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

- An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
- When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

- Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
- Each State may at the time of signature or ratification of this Convention or 2. accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
- Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

- Such a denunciation shall not have the effect of releasing the State Party from
 its obligations under this Convention in regard to any act or omission which
 occurs prior to the date at which the denunciation becomes effective. Nor shall
 denunciation prejudice in any way the continued consideration of any matter
 which is already under consideration by the Committee prior to the date at which
 the denunciation becomes effective.
- Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, or the following particulars:

- 1. Signatures, ratifications and accessions under articles 25 and 26;
- 2. The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 29;
- 3. Denunciations under article 31.

- This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
- 2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

ANNEX "D" Cases Cited

Ireland v. United Kingdom (1978)

2 Eur. Ct. H.R. (series A)

Ireland v. United Kingdom is the first inter-state dispute case settled by the European Court of Human Rights. The case stemmed from the period of the 1960's to the 1970's during which violence pervaded Northern Ireland, allegedly due to activities of the Irish Republican Army which the United Kingdom government classified as a terrorist group. The Irish Republican Army is a clandestine organization with quasimilitary capabilities and its members are opposed to Northern Ireland being part of the dominion of the United Kingdom. Due to the escalation of violence, extrajudicial measures were employed against suspected terrorists in Northern Ireland, involving warrantless arrests, detentions, and ill treatments while in official custody.

In particular, the European Court discussed the "five techniques" used by United Kingdom operatives in interrogating detained persons. These techniques are: "wall standing" (standing in a stressful position facing a wall for prolonged periods), "hooding" (putting a hood over the detained person's head during interrogation), "noise" (placing a detainee in a room with a constant loud and hissing noise), "deprivation of sleep" and "deprivation of food and drink".

In deciding whether these "five techniques" qualify as torture, the European Court held that these do not partake of the same gravity and nature that acts of torture are commonly known for. While acknowledging that these acts do constitute condemnable violence, the European Court did not believe that they surpassed the "threshold" standards of torture. Said the European Court:

"The Court considers in fact that, whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 (art. 3) of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between "torture" and "inhuman or degrading treatment", should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

Moreover, this seems to be the thinking lying behind Article 1 in fine of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment".

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood."

This case, therefore, established the standard of "suffering" by which acts of torture are to be identified and differentiated from common forms of maltreatment. Added to the fact that these were committed with the direct participation or at the very least the consent or acquiescence of official authorities, acts of torture which pass the threshold established by the European Court constitute the same acts which deserve international condemnation as a separate and independent crime of torture.

Tokyo War Crimes Tribunal (1948)

Judgement of the International Military Tribunal for the Far East.

The decision of the Tokyo War Crimes Tribunal refers to acts of atrocities and war crimes committed by the Japanese Imperial Forces during World War II in East and Southeast Asia. The accounts of torture were very numerous and widespread; they were directed against both civilians and prisoners of war, and were committed so systematically that they were treated almost as part of the official war policy of the occupying force. The Tribunal vividly recounted these acts of torture in an entire chapter of the Judgment devoted to them:

"Torture and Other Inhumane Treatment

The practice of torturing prisoners of war and civilian internees prevailed at practically all places occupied by Japanese troops, both in the occupied territories and in Japan. The Japanese indulged in this practice during the entire period of the Pacific War. Methods of torture were employed in all areas so uniformly as to indicate policy both in training and execution. Among these tortures were the water treatment, burning, electric shocks, the knee spread, suspension, kneeling on sharp instruments and flogging.

The Japanese Military Police, the Kempetai, was most active in inflicting these tortures. Other Army and Navy units, however, used the same methods as the Kempetai. Camp guards also employed similar methods. Local police forces organized by the Kempetai in the occupied territories also applied the same methods of torture.

We will show how the Chiefs of Camps were instructed in Tokyo before assuming their duties.

We will also show that these Chiefs of Camps were under the administrative control and supervision of the Prisoner of War Administration Section of the Military Affairs Bureau of the War Ministry to which they rendered monthly reports. The Kempetai were administered by the War Ministry. A Kempetai training school was maintained and operated by the War Ministry in Japan. It is a reasonable inference that the conduct of the Kempetai and the camp guards reflected the policy of the War Ministry.

To indicate the prevalence of torture and the uniformity of the methods employed we give a brief summary of these methods.

The so-called "water treatment" was commonly applied. The victim was bound or otherwise secured in a prone position; and water was forced through his mouth and nostrils into his lungs and stomach until he lost consciousness. Pressure was then applied, sometimes by jumping upon his abdomen to force the water out. The usual practice was to revive the victim and successively repeat the process. There was evidence that this torture was used in the following places: China, at Shanghai, Peiping and Nanking; French Indo-China, at Hanoi and Saigon; Malaya, at Singapore; Burma, at Kyaikto; Thailand, at Chumporn; Andaman Islands, at Port Blair; Borneo, at Jesselton; Sumatra, at Medan, Tadjong Karang and Palembank; Java, at Batavia, Bandung, Soerabaja and Buitennzong; Celebes, at Makassar; Portuguese Timor, at Ossu and Dilli; Philippines, at Manila, Nichols Field, Palo Beach and Dumaguete; Formosa, at Camp Haito; and in Japan, at Tokyo.

Torture by burning was practiced extensively. This torture was generally 9inflicted by burning the body of the victim with lighted cigarettes, but in some instances burning candles, hot irons, burning oil and scalding water were used. In many of these cases, the heat was applied to sensitive parts of the body, such as the nostrils, ears, abdomen, sexual organs, and in the case of women, to the breasts. We have evidence of specific instances in which this form of torture was employed in the following places: China, at Hankow, Peiping, Shanghai and Nomonhan; French Indo-China, at Haiphong, Hanoi, Vinh, and Saigon; Malaya, at Singapore, Victoria Point, Ipoh and Muala Lumpur; Burma, at Kyaikto; Thailand, at Chumporn; Andaman Islands, at Port Blair; Nicobar Islands, at Kakana; borneo, at Jesselton; Sumatra, at Palambang and Pakan Baru; Java, at Batavia, Bandung and Semarang; Moluccas Islands, at Amboina; Portuguese Timor, at Ossu; Solomon Islands, at Buin; Philippine Islands, at Manila, Iloilo City, Palo, Bataan and Dumaguete; and in Japan, at Kawasaki.

The electric shock method was also common. Electric current was applied to a part of the victim's body so as to produce a shock. The point of application was generally a sensitive part of the body such as the nose, ears, sexual organs or breasts. The evidence shows specific instances of the use of this method of torture at the following places: China, at Peiping and Shanghai; French Indo-China, at Hanoi and Mytho; Malaya, at Singapore; thailand, at Chumporn; Java, at Bandung, Buitenzorg and Semarang; and in the Philippines Islands, at Davao.

The so-called knee spread was a frequent method of torture. The victim, with his hands tied behind his back, was forced to kneel with a pole, sometimes as much as three inches in diameter, inserted behind both knee joints so as to spread those joints as pressure was

applied to his thighs, at times by jumping on his thighs. the result of this torture was to separate the knee joints and so cause intense pain. The evidence shows specific instances of this torture being used at the following places: China, at Shanghai and Nanking; Burma, at Tavoy; Andaman Islands, at Port Blair; Borneo, at Sandakan; Sumatra, at Pakan Baru; Moluccas Islands, at Halmahera Island; Portuguese Timor, at Dilli; Philippine Islands, at Manila, Nichols field and Pasay Camp; and in Japan, at Tokyo.

Suspension was another common form of torture. The body of the victim was suspended by the wrists, arms, legs or neck, and at time in such manner as to strangle the victim or pull joints from their sockets. This method was at times combined with flogging during suspension. Specific instances of the employment of this method of torture occurred in the following places: China, at Shanghai and Nanking; French Indo-China, at Hanoi; Malaya, at Singapore, Victoria Point, Ipoh and Kuala Lumpur; Thailand, at Chumporn; burma, at Kyaikto; Borneo, at Sandakan; Sumatra, at Brastagi; Java, at Bandung, Soerabaja and Buitenzorg; Moluccas Islands, at Amboina; Portuguese Timor, at Dilli; Philippine Islands, at Manila, Nichols field, Palo, Iloilo City and Dumaguete; and in Japan, at Tokyo and Yokkaichi.

Kneeling on sharp instruments was another form of torture. the edges of square blocks were mostly used as the sharp instruments, the victim was forced to kneel on these sharp edges for hours without relief; if he moved he was flogged. Specific instances of the use of this method have been shown to us to have occurred at the following places: French Indo-China, at Hanoi; Malaya, at Singapore; Andaman Islands, at Port Blair; Moluccas Islands, on Halmahera Island; Philippine Islands, at Davao; and in Japan, at Fukuoka and Omuta.

Removal of the nails of the fingers and toes also occurred. Instances of this method of torture are found at the following places: China, at Shanghai; Celebes, at Menado; Philippines, at Manila, Iloilo City; and in Japan, at Yamani.

Underground dungeons were used as torture chambers at the following places: French Indo-China, at Hanoi; Malaya, at Singapore; and in Java, at Bandung.

Flogging was the most common of the cruelties of the Japanese. It was commonly used at all prisoner of war and internee camps, prisons, Kempetai headquarters and at all work camps and on all work projects, as well as aboard prison ships. It was indulged in freely by the guards with the approval and often at the direction of the Camp Commandant or some other officer. Special instruments were issued for use in flogging at camps; some of these were billets of wood the size of a baseball bat. On occasions, prisoners were forced to beat their fellow prisoners under the supervision of the guards. Prisoners suffered internal injuries, broken bones, and lacerations from these beatings. In many instances, they were beaten into unconsciousness only to be revived in order to suffer a further beating. the evidence shows that on occasions prisoners were beaten to death.

Mental torture was commonly employed. An illustration of this form of torture is to be found in the treatment to which the Doolittle filers were subjected. After having been subjected to the various other forms of torture, they were taken one at a time and marched blindfolded a considerable distance. The victim could hear voices and marching feet, then the

noise of a squad halting and lowering their rifles as if being formed to act as a firing squad. A Japanese officer then came up to 6the victim and said: "We are Knights of the Bushido of the Order of the Rising Sun; we do not execute at sundown; we execute at sunrise." The victim was then taken back to his cell and informed that unless he talked before sunrise, he would be executed. On 5 December 1944, the Swiss Legation in Tokyo delivered to Foreign Minister SHIGEMITSU a Note of Protest from the British Government. In that note, SHIGEMITSU was informed that a copy of a book entitled, "Notes for the Interrogation of Prisoners of War", and issued by the Japanese Hayashi Division in Burma on 6 August 1943, had been captured. The note gave SHIGEMITSU direct quotations from that book as follows: "Care must be exercised when making use of rebukes, invectives or torture as it will result in his telling falsehood and making a fool of you. The following are the methods normally to be adopted; (a) Torture which includes kicking, beating and anything connected with physical suffering. This method to be used only when everything else fails as it is the most clumsy one." (This passage was specially marked in the copy captured.) "Change the interrogating officer when using violent torture, and good results can be had if the new officer questions in a sympathetic manner. (b) Threats. (1) Hints of future physical discomforts, for instance: torture, murder, starving, solitary confinement, deprivation of sleep. (2) Hints of future mental discomforts, for instance; he will not be allowed to send letters, he will not be given the same treatment as the other prisoners of war, he will be kept till the last in the event of an exchange of prisoners, etc." The note then continued: "The Government of the United Kingdom has requested that the attention of the Japanese Government be drawn to the foregoing. It recalls that the Japanese Government has recently strongly denied that Imperial Japanese authorities make use of torture. See the letter from SHIGEMITSU to the Swiss Minister of 1 July 1944." We have no evidence that any caution was taken to stop this practice of torturing Allied prisoners of war; on the other hand, the practice continued to the time of the surrender of Japan, and when the surrender came, orders were issued to assist the criminals in avoiding just punishment for their crimes. In addition to ordering all incriminating evidence in the form of documents to be destroyed, the following order as issued by the Chief of Prisoner of War Camps at the Prisoner of War Administration Section of the Military Affairs Bureau on 20 August 1945: "Personnel who mistreated prisoners of war and internees or are held in extremely bad sentiment by them are permitted to take care of it by immediately transferring or by fleeing without trace." This order was sent to various prisoner of war camps, including those in Formosa, Korea, Manchuria, North China, Hong Kong, Borneo, Thailand, Malaya and Java."

The chapter on torture in the Tribunal's decision is one of the first comprehensive and unequivocal documentation of acts of torture committed in conjunction with a war of aggression. A perusal of this chapter reveals that most of the common forms of torture extensively used by the Japanese Imperial Forces during World War II remains, to this day, some of the more common acts being employed by perpetrators.

G.R.B. v. Sweden (1998)

CAT Communication No. 83/1997

In this Communication to the Committee Against Torture, the complainant, a Peruvian woman, claimed that she was a sympathizer of the communists. Studying on a scholarship, she took up medicine in Ukraine. Upon returning home in Peru, however she discovered that that her family's house has been searched and some of her possessions confiscated by government soldiers. While in Peru, she was also abducted, raped and held prisoner by members of the Sendero Luminoso, a guerrilla movement in Peru. She brought a complaint against Sweden because, shortly after relocating therein, she applied for but was denied asylum on the ground that the Sendero Luminoso cannot be considered a governmental entity. Thus, her claim of governmental persecution as a ground for asylum cannot be sustained.

In deciding the issue, the Committee sided with the observations of Sweden, noting that the risk of further criminal activities to be perpetrated by the Sendero Luminoso do not fall under the category of "torture" as understood in the law, since it is a non-governmental entity:

"6.5. The Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to Article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee considers that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.

6.6. The Committee notes with concern the numerous reports of torture in Peru, but recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established."

Thus, according to the Committee, while a claim of potential persecution, including acts of torture, is sufficient to sustain a claim of asylum, the same should not emanate from a criminal non-governmental entity. This case is authority in the principle that "torture", as it is understood in international law under the UNCAT, can only be treated as such when committed by an official agent of the State.

Elmi v. Australia (1999)

CAT Communication No. 120/1998.

Similar to the G.R.B. v. Sweden case, this Communication to the Committee Against Torture was submitted by Sadiq Shek Elmi, a Somalian national. Elmi claims that his being a member of the Shikal clan, which traces its roots to Arabia, have attracted the ire of the local Hawiye militia. Since the clan is known for its wealth, the militia has courted its support, but the same was not given. As a result, family members of Elmi have been brutalized – their house was bombed, his father was killed, and his sister raped (she later committed suicide). To escape from persecution, he surreptitiously exited the borders and travelled to Australia. However, the Australian immigration authorities apprehended him for entering the country without proper documentation. Expulsion proceedings were later on commenced against him to repatriate him to Somalia.

Elmi anchored his claim on the obligation of Australia not to expel a person to a country where risks of torture and further persecution can reasonably be expected. However, the observations of Australia underscored the fact that the perceived threats presented by Elmi to justify his claim for non-refoulement emanate from a non-state entity in the form of a rival militia clan, and not from State authorities in the Mogadishu capital.

In resolving the case, the Committee made a landmark observation that acts of torture can be committed even by a strictly non-governmental entity if such entity holds effective control over a particular territory to the point that the same can be already be regarded as a quasi-government:

"6.5 The Committee does not share the State party's view that the Convention is not applicable in the present case since, according to the State party, the acts of torture the author fears he would be subjected to in Somalia would not fall within the definition of torture set out in article 1 (i.e. pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, in this instance for discriminatory purposes). The Committee notes that for a number of years Somalia has been without a central government, that the international community negotiates with the warring factions and that some of the factions operating in Mogadishu have set up quasi-governmental institutions and are negotiating the establishment of a common administration. It follows then that, de facto, those factions exercise certain prerogatives that are comparable to those normally exercised by legitimate governments. Accordingly, the members of those factions can fall, for the purposes of the application of the Convention, within the phrase "public officials or other persons acting in an official capacity" contained in article 1.

6.6 The State party does not dispute the fact that gross, flagrant or mass violations of human rights have been committed in Somalia. Furthermore, the independent expert on the situation of human rights in Somalia, appointed by the Commission on Human Rights, described in her latest report (13) the severity of those violations, the situation of chaos prevailing in the country, the importance of clan identity and the vulnerability of small, unarmed clans such as the Shikal, the clan to which the author belongs.

6.7 The Committee further notes, on the basis of the information before it, that the area of Mogadishu where the Shikal mainly reside, and where the author is likely to reside if he ever reaches Mogadishu, is under the effective control of the Hawiye clan, which has established quasi-governmental institutions and provides a number of public services. Furthermore, reliable sources emphasize that there is no public or informal agreement of protection between the Hawiye and the Shikal clans and that the Shikal remain at the mercy of the armed factions.

6.8 In addition to the above, the Committee considers that two factors support the author's case that he is particularly vulnerable to the kind of acts referred to in article 1 of the Convention. First, the State party has not denied the veracity of the author's claims that his family was particularly targeted in the past by the Hawiye clan, as a result of which his father and brother were executed, his sister raped and the rest of the family was forced to flee and constantly move from one part of the country to another in order to hide. Second, his case has received wide publicity and, therefore, if returned to Somalia the author could be accused of damaging the reputation of the Hawiye.

6.9 In the light of the above the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Somalia."

The decision of the Committee in the *Elmi v. Australia* case represents a breakthrough in torture jurisprudence. By not applying the language of the UNCAT strictly and literally, the Committee took into consideration the realities in some jurisdictions, where the absence of a central effective governmental authority gives rise to the establishment of quasi-governmental entities exercising effective control over a certain territory. Given this fact, the commission of acts of torture by such entities should be punished as such, and not allowed to be disregarded on a mere "technical" requirement. This underscores the principle that acts of torture are committed once an element of "official" sanction can be shown, even if such "official" stature emanates from a pseudo-governmental authority, provided that a formal *de jure* government is not in existence.

Blanco Abad v. Spain (1998)

CAT Communication No. 59/1996.

This Communication was brought by Encarnacion Blanco Abad, a Spanish national, who claims to have been tortured and maltreated by the Spanish Guardia Civil while in detention for being a suspected terrorist and member of the ETA armed gang. She alleged that she brought the allegation of torture before the High Court of Spain, but that the same was not addressed by the authorities. Spain countered that during the entire proceedings, Blanco Abad was represented by counsel and she never previously raised the question of torture, nor did she commenced the lodging of a formal complaint to substantiate her claims.

In resolving the case, the Committee found that Spain failed in its duties under the UNCAT to provide adequate remedy to Blanco Abad as an alleged victim of torture. The Committee underscored the fact that an investigation for torture need not be commenced by a formal complaint, and may be initiated motu proprio as soon as there is a claim of its commission. The Committee ruled:

"8.2 The committee observes that, under article 12 of the Convention, the authorities have the obligation to proceed to an investigation ex officio, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion. Article 12 also requires that the investigation should be prompt and impartial. The Committee observes that promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.

8.3 The Committee observes that when she appeared before the National High Court on 2 February 1992, after having been held incommunicado since 29 January, the author stated that she had been subjected to physical and mental ill-treatment, including the threat of rape. The Court had before it five reports of the forensic physician attached to the National High Court who had examined her daily, the first four examinations having taken place on Guardia Civil premises and the last on the premises of the National High Court prior to the above-mentioned court appearance. These reports note that the author complained of having been subjected to ill-treatment consisting of insults, threats and blows, of having been kept hooded for many hours and of having been forced to remain naked, although she displayed no signs of violence. The Committee considers that these elements should have sufficed for the initiation of an investigation, which did not however take place.

8.4 The Committee also observes that when, on 3 February, the physician of the penitentiary centre noted bruises and contusions on the author's body, this fact was brought to the attention of the judicial authorities. However, the competent judge did not take up the matter until 17 February and Court No. 44 initiated preliminary proceedings only on 21 February.

8.5 The Committee finds that the lack of investigation of the author's allegations, which were made first to the forensic physician after the first examination and during the subsequent examinations she underwent, and then repeated before the judge of the National High Court, and the amount of time which passed between the reporting of the facts and the initiation of proceedings by Court No. 44 are incompatible with the obligation to proceed to a prompt investigation, as provided for in article 12 of the Convention.

8.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.

8.7 The Committee notes, as stated above, that the author's complaint to the judge of the National High Court was not examined and that, while Court No. 44 examined the complaint, it did not do so with the requisite promptness. Indeed, more than three weeks passed from the time that the court received the medical report from the penitentiary centre on 17 February 1992 until the author was brought to court and made her statement on 13 March. On that same date the court called for Section 2 of the National High Court to provide the findings of the medical examinations of the author by the forensic physician of that court, but more than two months elapsed before on 13 May they were added to the case file. On 2 June the judge requested the court's own forensic physician to report thereon, and this was done on 28 July. On 3 August the judge summoned the forensic physician of Court No. 2 who had conducted the said examinations. This physician's statement was taken on 17 November. On that same date the court requested the penitentiary centre to indicate the time at which the author had been examined in that institution and how the injuries had developed; this information was transmitted to the court on 23 December. Contrary to the State party's contention, as cited in paragraph 6.4, that there had been "no tardiness or delay in the conduct of the investigation", the Committee considers that the above chronology shows the investigative measures not to have satisfied the requirement for promptness in examining complaints, as prescribed by article 13 of the Convention, a defect that cannot be excused by the lack of any protest from the author for such a long period.

8.8 The Committee also observes that during the preliminary proceedings, up to the time when they were discontinued on 12 February 1993, the court took no steps to identify and question any of the Guardia Civil officers who might have taken part in the acts complained of by the author. The Committee finds this omission inexcusable, since a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein, as required by the State party's own domestic legislation (article 789 of the Criminal Procedure Act). Furthermore, the Committee observes that, when the

proceedings resumed as of October 1994, the author requested the judge on at least two occasions to allow the submission of evidence additional to that of the medical experts, i.e. she requested the hearing of witnesses as well as the possible perpetrators of the illtreatment, but these hearings were not ordered. The Committee nevertheless believes that such evidence was entirely pertinent since, although forensic medical reports are important as evidence of acts of torture, they are often insufficient and have to be compared with and supplemented by other information. The Committee has found no justification in this case for the refusal of the judicial authorities to allow other evidence and, in particular, that proposed by the author. The Committee considers these omissions to be incompatible with the obligation to proceed to an impartial investigation, as provided for in article 13 of the Convention."

The decision of the Committee in *Blanco Abad* brings to fore the peremptory and mandatory nature of the obligation of States to investigate claims of torture and provide effective remedies for the victims thereof even in the absence of a formal complaint. The *motu proprio* initiation of investigation of acts of torture lies at the heart of international torture legislation, because official action cannot be preconditioned on the initiative of a victim or witness – the State has the burden to prevent torture and to see to it that the same is investigated when and where it is alleged to have been committed.

Rosenmann v. Spain (2002)

CAT Communication No. 176/2000.

This Communication to the Committee Against Torture was brought by Marcos Roitman Rosenmann, a Spanish national, who claims to have been the victim of acts of torture during the coup d'etat period in Chile under the auspices of Augusto Pinochet. Rosenmann claims that the Spanish government violated its obligation under UNCAT to provide effective redress to victims of torture when it negligently bungled the extradition process which would have forced Pinochet to be prosecuted in Spanish courts from United Kingdom where he was sojourning. The Committee decided thus:

"6.6. With respect to (c), the Committee notes that the complainant's claims with regard to torture committed by Chilean authorities are ratione personae justiciable in Chile and in other States in whose territory General Pinochet may be found. However, to the extent that General Pinochet was not in Spain at the time of the submission of the communication, the Committee would consider that articles 13 and 14 of the Convention invoked by the complainant do not apply ratione personae to Spain. In particular, his "right to complain to, and to have his case promptly and impartially examined by, [the] competent authorities", and his claim to compensation would be justiciable vis-à-vis the State responsible for the acts of torture, i.e. Chile, not Spain."

The decision of the Committee characterizes the prosecution of torture as one involving jurisdiction ratione personae, i.e., the authority to try cases of torture is incumbent on the presence of the alleged perpetrator in the jurisdiction where the remedy is being invoked.

Prosecutor v. Furundzija (1998)

Case No. IT – 95-17/1-T at The International Tribunal for the former Yugoslavia, 121 International Law Reports 213, 2002.

Anto Furundzjia, a citizen of Bosnia and Herzegovina was placed on trial before the Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. The prosecution charges the defendant, who was then a leader of a special military-police unit, of arresting, detaining, raping, and torturing a female Moslem civilian. The prosecution alleges that the acts of the defendant constituted torture upon non-combatants during an armed conflict. The defendant denies his presence when the said acts were being perpetrated by his group.

The Trial Chamber found the defendant Furundzjia guilty of the charges alleged by the prosecution.

In this case, decided earlier than *Rosenmann v. Spain*, the Yugoslavia Trial Chamber ruled that, contrarily, there is a "universal" character in the jurisdiction of States to prosecute acts of torture:

"147. There exists today universal revulsion against torture: as a USA Court put it in Filartiga v. Pea-Irala, "the torturer has become, like the pirate and the slave trader before him, hostis humani generis, an enemy of all mankind". This revulsion, as well as the importance States attach to the eradication of torture, has led to the cluster of treaty and customary rules on torture acquiring a particularly high status in the international normative system, a status similar to that of principles such as those prohibiting genocide, slavery, racial discrimination, aggression, the acquisition of territory by force and the forcible suppression of the right of peoples to self-determination. The prohibition against torture exhibits three important features, which are probably held in common with the other general principles protecting fundamental human rights.

X X X

Proceedings could be initiated by potential victims if they had locus standi before a competent international or national judicial body with a view to asking it to hold the national measure to be internationally unlawful; or the victim could bring a civil suit for damage in a foreign court, which would therefore be asked inter alia to disregard the legal value of the national authorising act. What is even more important is that perpetrators of torture acting upon or benefiting from those national measures may

nevertheless be held criminally responsible for torture, whether in a foreign State, or in their own State under a subsequent regime. In short, in spite of possible national authorisation by legislative or judicial bodies to violate the principle banning torture, individuals remain bound to comply with that principle. As the International Military Tribunal at Nuremberg put it: "individuals have international duties which transcend the national obligations of obedience imposed by the individual State".

156. Furthermore, at the individual level, that is, that of criminal liability, it would seem that one of the consequences of the jus cogens character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction. Indeed, it would be inconsistent on the one hand to prohibit torture to such an extent as to restrict the normally unfettered treaty- making power of sovereign States, and on the other hand bar States from prosecuting and punishing those torturers who have engaged in this odious practice abroad. This legal basis for States' universal jurisdiction over torture bears out and strengthens the legal foundation for such jurisdiction found by other courts in the inherently universal character of the crime. It has been held that international crimes being universally condemned wherever they occur, every State has the right to prosecute and punish the authors of such crimes. As stated in general terms by the Supreme Court of Israel in Eichmann, and echoed by a USA court in Demjanjuk, "it is the universal character of the crimes in question i.e. international crimes which vests in every State the authority to try and punish those who participated in their commission".

Thus, Prosecutor v. Furundzija is authority in the principle that torture may be proceeded against in any state as a matter of obligation.

Singarasa v. Sri Lanka (2004)

CAT Communication No. 1033/2001, Human Rights Committee.

In this Communication to the Human Rights Committee brought by Nallaratnam Singarasa, he claims that he was extrajudicially arrested, detained, and tortured as a suspected terrorist by Sri Lankan authorities. An alleged incriminatory confession signed by him was presented in evidence during trial, which he vehemently alleged was extracted from him through acts of torture. However, the judge considered the confession relevant and credible and convicted him on that basis.

The Committee found that there was a violation on the part of Sri Lankan authorities when they failed to place on the prosecution the burden of proving that the confession was not made without duress.

"7.4 On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary,

the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt. (17) The Committee considers that it is implicit in this principle that the prosecution prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by "inducement, threat or promise" are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in Section 16 of the PTA. Even if, as argued by the State party, the threshold of proof is "placed very low" and "a mere possibility of involuntariness" would suffice to swav the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and illtreatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes that by placing the burden of proof that his confession was made under duress on the author, the State party violated article 14, paragraphs 2, and 3(g), read together with article 2, paragraph 3, and 7 of the Covenant."

Urra Guridi v. Spain (2005)

CAT Communication No. 212/2002 Committee Against Torture.

Kepa Urra Guridi is a Spanish national who claims to have been tortured while under the custody of the Spanish Guardia Civil after the latter conducted operations against suspected members of the armed group ETA. However, despite being able to establish his claim of torture, Urra Guridi felt aggrieved when the convicted civil guards who were found responsible for the torture were pardoned upon the behest of the government. Thus he brought a complaint in the Human Rights Committee which decided thus:

"6.6 As to the alleged violation of article 2 of the Convention, the Committee notes the complainant's argument that the obligation to take effective measures to prevent

torture has not been honoured because the pardons granted to the civil guards have the practical effect of allowing torture to go unpunished and encouraging its repetition. The Committee is of the view that, in the circumstances of the present case, the measures taken by the State party are contrary to the obligation established in article 2 of the Convention, according to which the State party must take effective measures to prevent acts of torture. Consequently, the Committee concludes that such acts constitute a violation of article 2, paragraph 1, of the Convention. The Committee also concludes that the absence of appropriate punishment is incompatible with the duty to prevent acts of torture.

6.7 With regard to the alleged violation of article 4, the Committee recalls its previous jurisprudence to the effect that one of the purposes of the Convention is to avoid allowing persons who have committed acts of torture to escape unpunished. The Committee also recalls that article 4 sets out a duty for States parties to impose appropriate penalties against those held responsible for committing acts of torture, taking into account the grave nature of those acts. The Committee considers that, in the circumstances of the present case, the imposition of lighter penalties and the granting of pardons to the civil guards are incompatible with the duty to impose appropriate punishment. The Committee further notes that the civil guards were not subject to disciplinary proceedings while criminal proceedings were in progress, though the seriousness of the charges against them merited a disciplinary investigation. Consequently, the Committee considers that there has been a violation of article 4, paragraph 2, of the Convention."

The decision of the Committee is significant because it established the extent of the obligation of States to provide adequate remedy to victims of torture. By ruling the way it did, the Committee underscored the need not only to formally punish perpetrators of torture, but also to ensure their effective punishment. Thus, securing a prosecution which will only be remitted later on through pardon is still not in accord with the provisions of the UNCAT on the provision of remedies against torture.

People v. Castro (1964)

G.R. No. L-17465, 31 August 1964

Three persons convicted of double murder for killing a mayor and his wife appealed to the Supreme Court from the death sentence imposed upon them. One of the bases of their appeal is lack of voluntariness of the confessions they executed. They claim that they were tortured into admitting to the crime and executing confessions. These confessions were sworn to before the Justice of the Peace and it contains a statement that they have not been forced, intimidated or threatened into signing the documents which was executed before the City Fiscal.

It should be noted that during arraignment of the case, they pleaded "not quilty" and asked for a medical examination. This was granted and the doctor found scars on the accused but the cause of such scars could not be exactly determined.

The Supreme Court sustained the truthfulness of the confessions basically because these were replete with details that could not have been concocted by the police.

As to the voluntariness of their confessions, the Supreme Court found the claims of the appellants as to how they were tortured as unbelievable. Coupled with their failure to complain to the Justice of the Peace before whom the confessions were sworn to and the written denials they executed before the Fiscal about how they were not forced into executing their confessions.

However, the Supreme Court pointed out that even though a coerced confession may be truthful from an evidentiary standpoint, it could not be ignored that such a confession violates the right of due process and the prohibition against compulsory self-incrimination provided in the Constitution. These rights are the touchstones dividing democratic from totalitarian methods and the violation of these Constitutional rules would be enough to render the coerced confession objectionable.

The burden of proof to clearly show the involuntariness lies with the accused and in this case, the burden has not been adequately met.

Then the Supreme Court opined that judges, justices of the peace and fiscals, to whom persons accused are brought for swearing to the truth of their statements, would do well to adopt the practice of having the confessants physically and thoroughly examined by independent and qualified doctors before administering the oath, even if it is not requested by the accused. Or, if no doctor is immediately available, the swearing officers should themselves examine the entire bodies of the confessants for marks of violence, particularly the portions covered by their clothing. If regularly required, and the results officially noted, this practice would not only deter attempts to secure confessions through violence but ultimately shorten and speed up criminal trials (where accused would repudiate their confessions) by avoiding future controversies on whether the statements were obtained through torture or not. Common sense advises that the swearing officers should not be content with affirmations by the accused that their statements are voluntary, nor with denials that they were improperly procured. Manifestations of this kind are to be expected if the accused is to return to the custody of the agents who obtained this confessions, since repudiation of the statement would result in the infliction of further punishment by those charged with improperly extracting the challenged statements.

People v. Chaw Yaw Shun (1968)

G.R. No. L-19590, 21 April 1968.

In this case, the lifeless body of Hector Crisostomo, an officer of the Presidential Fact Finding Committee charged with the apprehension of dollar smugglers, was found in his car in Bulacan. In the course of the investigation, it was uncovered that a recent car deal of Crisostomo and Victorio Alvarez may possibly have some connections with the killing.

Victorio Alvarez and he made a tape-recorded statement that he alone shot Crisostomo. However, he made a subsequent handwritten statement that a certain Johnny shot Crisostomo. Another statement was made the next day, saying that he was the one who shot Crisostomo but gave a detailed narration of the participation of a certain George Chua (Chaw Yaw Shun) in the commission of the crime. Alvarez said that Chua was a dollar smuggler and that Chua was the one who ordered him to shoot Crisostomo for a consideration of P35,000 plus P400 a month.

Chua subsequently surrendered to the police. Chua's investigation then proceeded, but the investigation which was reduced to writing was destroyed by the investigator because the investigator said that what Chuawas telling them was not true. After Chua's insistent denial, Chua was brought by the investigator to the Philippine Constabulary headquarters in Alabang where, in the presence of several agents, Chua made a written statement confessing that he ordered the killing of Crisostomo because his partners in Hong Kong got angry at Chua because \$132,000 of their money was confiscated by the local authorities, probably because of Crisostomo's doing.

While detained in Bulacan, Chua asked to meet the provincial fiscal, to whom he said that he was maltreated and tortured by the agents who made him confess his part in the murder of Crisostomo. He said that he was beat, up, was electrocuted, and was threatened to be killed if he did not sign the written confession. The case went on with the trial court finding Alvarez, Chua, and another party guilty and sentenced them to suffer the penalty of reclusion perpetua.

Chua appealed while Alvarez withdrew his. The evidence relied upon by the Solicitor General in sustaining the conviction were the confessions of Alvarez, the testimonial evidence of the investigators, and the confession made by Chua.

The Supreme Court found for Chua and acquitted him of the crime. The Court first attacked the testimonial evidence against Chua for it failed to prove a crime against him.

The Court noted the circumstances and conditions under which the confession was obtained. The Court cited the testimony of the investigator that Chua vehemently denied any of the allegations against him but suddenly confessing after being

transferred to Alabang, remarking on the sudden change in Chua's attitude.

The Court found that Chua was indeed tortured and maltreated. The Court noted the two examinations made by Dr. Jose Eustaquio on Chua that he had contusions and scratches that may have been caused by blows or pointed objects, and the examinations made by two other doctors of the Philippine Constabulary. These examinations showed possibility of maltreatment, but there was the absence of external injury on Chua. The Court mentioned that the mere absence of external injury in appellant's body does not destroy or rule out Chua's claim of maltreatment by the use of other scientific modes or forms of torture. Chua's injuries, certified by a private physician and constabulary doctors, were telltales corroboration of the charge of torture and maltreatment.

It is now settled that a confession which is induced or extorted by torturing the accused or by personal violence or abuse directed against the accused for the purpose of obtaining a confession, is an involuntary one and is not admissible in evidence against him, unless found to be true.

Other than the confession, there is no other evidence which proves the truth of the facts stated in the confession. On the contrary, analyzing the confession of Chua, it will be noticed that it is replete with improbabilities and falsities in its material and substantial parts. Also, the trial court failed to appreciate the defense of Alibi of Chua. Chua claimed that he was playing mahjong at the time of the crime and there were testimonies to prove such claim.

ANNEX "E"

Note: Attached herewith are some sample criminal Informations for Torture integrating elements thereof. Identities of perpetrators and victims of torture, including the incident details of the crimes of torture in said examples are all fictitious. Any similar name or detailed narration are merely coincidental and unintended.

ANNEX E1. Torture by means of physical suffering

REPUBLIC OF THE PHILIPPINES Fifth Judicial Region Regional Trial Court Province of Albay, Branch ____

reopie of the Philippines,
Plaintiff,
CRIM. CASE NO
-versus –
FOR: TORTURE
ALBERT RIVERA and
ERIK PASIENTE, officers of
The 1st Infantry Battalion,
Philippine Army,
Accused.
xx

Daarda af tha Dhilimainaa

INFORMATION

The undersigned Second Asst. Provincial Prosecutor hereby accuses ALBERT RIVERA and ERIK PASIENTE, officers of the 1st Infantry Battalion of the the Philippine Army of the crime of Torture, more specifically under Section 6 (a) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows: "That on or about the 1st day of April, 2011, in the Municipality of Tiwi, Albay, Philippines, and within the jurisdiction of this Honorable Court, the said defendants, ALBERT RIVERA and ERIK PASIENTE, officers of the 1st Infantry Battalion of the Philippine Army, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously tortured VICENTE TONGOL through infliction of severe blows by a blunt object to the head, electrocution of the genitals, tearing off of the fingernails, and suffocation using a plastic bag, for the purpose of extracting from said VICENTE TONGOL an illegal confession, causing him severe

physical pain and trauma.
CONTRARY TO LAW.
Tiwi, Albay, Philippines, 8 June 2011."
2 nd Asst. Provincial Prosecutor
BAIL RECOMMENDED:
Witnesses: 1. Delfin Vicente T. Bautista Provincial Director Bureau of Jail Management and Penology Province of Albay
2. And others.
CERTIFICATION
This is to certify that a preliminary investigation has been conducted in this case; that there is sufficient ground to engender a well-founded belief that the abovementioned crime has been committed; and that the accused are probably guilty thereof.
Tiwi, Albay, Philippines, 8 June 2011.
2 nd Asst. Provincial Prosecutor
SUBSCRIBED AND SWORN to before me this 8^{th} day of June 2011 in Tiwi, Albay, Philippines.
Asst. Provincial Prosecutor
APPROVED BY:
Provincial Prosecutor

ANNEX E2. Torture by means of mental suffering

REPUBLIC OF THE PHILIPPINES **Eleventh Judicial Region** Regional Trial Court Davao City, Branch ____

People of the Philippines,
Plaintiff,
CRIM. CASE NO
-versus –
FOR: TORTURE
LT. GEN. JULIANO ARGUELLES,
Maj. Gen. EUFROSINO MANDIGMA,
M/Sgt. MANUEL SANTOS,
All officers of the Philippine Marines,
Accused.
XX

INFORMATION

The undersigned Second Asst. City Prosecutor hereby accuses Lieutenant General JULIANO ARGUELLES, Major General EUFROSINO MANDIGMA, and Master Sergeant MANUEL SANTOS, all officers of the Philippine Marines, of the crime of Torture, more specifically under Section 6 (b) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows:

"That on or about the 19th day of April 2010, in Davao City, Philippines, and within the jurisdiction of this Honorable Court, the said defendants, Lt. Gen. JULIANO ARGUELLES, Maj. Gen. EUFROSINO MANDIGMA, and M/Sgt. MANUEL SANTOS, all officers of the Philippine Marines, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously tortured HERBERT ABUEG by placing him in solitary confinement for fifteen (15) days, during which period he was continuously interrogated at all hours and prohibited from communicating with any person, and threatened with the infliction of severe injuries upon the persons of his children, for the purpose of coercing him to admit to his alleged membership in the Abu Sayaf Kidnap-for-Ransom Group, thereby causing severe mental and psychological harm on said HERBERT ABUEG.

CONTRARY TO LAW.

Davao City, Philippines, 8 July 2010."

2 nd	Asst. City Prosecutor
BAI	IL RECOMMENDED:
Wit	tnesses: Lt. Col. Peter F. Bautista Philippine Marines Davao City
2.	And others.
	CERTIFICATION
me	This is to certify that a preliminary investigation has been conducted in this case at there is sufficient ground to engender a well-founded belief that the above-intioned crime has been committed; and that the accused are probably guilty breof. Davao City, Philippines, 8 July 2010.
	2 nd Asst. City Prosecutor
	BSCRIBED AND SWORN to before me this 8 th day of July 2010 in Davao City, lippines.
	Asst. City Prosecutor
API	PROVED BY:
	City Prosecutor

ANNEX E3. Torture for the purpose of showing discrimination

REPUBLIC OF THE PHILIPPINES National Capital Judicial Region Regional Trial Court Caloocan City, Branch ____

People of the Philippines,
Plaintiff,
CRIM. CASE NO
-versus –
FOR: TORTURE
CARLO ESTAPIO,
BENJAMIN TORRALBA, and
GERARD FACTORAN,
All officers of the Caloocan City
Mobile Police Patrol Group,
Accused.
XX

INFORMATION

The undersigned Second Asst. City Prosecutor hereby accuses CARLO ESTAPIO, BENJAMIN TORRALBA, and GERARD FACTORAN, all officers of the Caloocan City Mobile Patrol Police Group, more specifically under Section 6 (b) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows:

"That on or about the 11th day of November 1998, in Caloocan City, Philippines, and within the jurisdiction of this Honorable Court, the said defendants, CARLO ESTAPIO, BENJAMIN TORRALBA, and GERARD FACTORAN, all officers of the Caloocan City Mobile Patrol Police Group, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously tortured MARIO PACIS by means of systematic beating, cigarette burning and submersion of his head under water, for the sole purpose of discriminating against him purportedly on the ground of his being a member of the Islamic faith and his being from an indigenous cultural community based in Mindanao.

CONTRARY TO LAW.

Caloocan City, Philippines, March 28, 2001."

2 nd Asst. City Prosecutor	
BAIL RECOMMENDED:	

Witnesses:

- Mario Pacis
 Founder-Executive Director
 Caloocan City Islamic Center
- 2. And others.

Note: All criminal informations need a certification on the conduct of a preliminary investigation; that there is sufficient ground to engender a well-founded belief that a crime has been committed; and that the Accused is probably guilty thereof. These certifications should be subscribed by an officer authorized by law, more specifically an appointed prosecutor within the territorial jurisdiction where the crime was committed. The criminal information must be approved by the head of the office such as the Chief State Prosecutor, the Provincial Prosecutor, the City Prosecutor, the Ombudsman, or to other officers to whom they may have lawfully delegated their authority to approve. Hereinafter, the other samples no longer contain these portions but which are necessary in every criminal information.

ANNEX E4. Torture for the purpose of punishment

REPUBLIC OF THE PHILIPPINES National Capital Judicial Region Regional Trial Court Quezon City, Branch ____

People of the Philippines,
Plaintiff,
CRIM. CASE NO
-versus –
FOR: TORTURE
WILIAM BRAGANZA,
ERNESTO VILLARUEL, and
RICHARD PAGARIN,
All officers of Quezon City Jail,
Accused.
YX

INFORMATION

The undersigned Second Asst. City Prosecutor hereby accuses WILLIAM BRAGANZA, ERNESTO VILLARUEL, and RICHARD PAGARIN, all officers of Quezon City Jail, Bureau of Jail Management and Penology, of the crime of Torture, more specifically under Section 6 (b) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows:

"That on or about the 24th day of February 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the said defendants, Jail Officers WILLIAM BRAGANZA, ERNESTO VILLARUEL and RICHARD PAGARIN, all officers of the Quezon City Jail, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously tortured SHERWIN YBARDOLAZA, a detainee therein, by placing him in solitary confinement for twenty (20) days, during which period he was denied any opportunity to confer with counsel or be visited by his family, and systematically beating him, depriving him of food, and burning several parts of his body with cigarettes, for the purpose of punishing him for his alleged involvement in a prison rumble, thereby causing severe physical and mental harm on said SHERWIN YBARDOLAZA.

CONTRARY TO LAW.
Quezon City, Philippines, April 24, 2011"
Ombudsman Investigation & Prosecution Officer
BAIL RECOMMENDED:

Witnesses:

- Jaime Tenido Bautista
 Director
 Bureau of Jail Management and Penology
 Quezon City
- 2. And others.

ANNEX E5. Torture for the purpose of intimidation

REPUBLIC OF THE PHILIPPINES National Capital Judicial Region Regional Trial Court City of Manila, Branch ____

People of the Philippines, Plaintiff,

2nd Asst. City Prosecutor

CRIM. CASE NO
-versus –
FOR: TORTURE
Police Senior Supt. JERICO PASCUAL,
Manila City Police District,
Accused.
XX
INFORMATION
The undersigned Second Asst. City Prosecutor hereby accuses Police Senior Superintendent JERICO PASCUAL, of the Manila City Police District, of the crime of Torture, more specifically under Section 6 (b) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows:
"That on or about the 7 th day of March 2011, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the said defendant Police Senior Superintendent JERICO PASCUAL of the Manila City Police District, did then and there willfully, unlawfully and feloniously tortured STEPHEN LORIEGA, by abducting him and severely beating him and striking him with the butt of his service firearm, for the purpose of intimidating him and preventing him from revealing his knowledge about the said defendant's involvement in the professional squatting syndicate in Tondo, Manila, thereby causing severe physical and mental harm on said STEPHEN LORIEGA.
CONTRARY TO LAW.
City of Manila, Philippines, 7 May 2011"

BAIL RECOMMENDED: _	
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Witnesses:

- Hon. Henry J. Tuliso
 Police Chief Superintendent
 Manila Police District
 City of Manila
- 2. And others.

ANNEX E6. Torture through the instigation of a person in authority

REPUBLIC OF THE PHILIPPINES National Capital Judicial Region Regional Trial Court Quezon City, Branch ____

People of the Philippines,	
Plaintiff,	
CRIM. CASE NO	
-versus –	
FOR: TORTURE	
Asst. Jail Warden WILLIAM ESPOSO,	
Jail Officers GODOFREDO REYES,	
JEREMY DE JESUS, and	
ALOYSIUS ANOVER,	
All officers of Quezon City Jail,	
Accused.	
XX	

INFORMATION

The undersigned Second Asst. City Prosecutor hereby accuses Asst. Warden WILLIAM ESPOSO, Jail Officers GODOFREDO REYES, JEREMY DE JESUS, and ALOYSIUS ANOVER, all officers of Quezon City Jail, Bureau of Jail Management and Penology, of the crime of Torture, more specifically under Section 6 (b) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows:

"That on or about the 4th day of February 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the said defendant, Asst. Warden WILLIAM ESPOSO, instigated the defendants, Jail Officers GODOFREDO REYES, JEREMY DE JESUS and ALOYSIUS ANOVER, all officers of the Ouezon City Jail, to conspire, confederate and mutually aid each other in willfully, unlawfully and feloniously torturing KEN TALISAYON, a detainee therein, by placing him in solitary confinement for twenty (20) days, during which period he was severely beaten, deprived of food, and chained to a wooden post. for the purpose of forcing him to reveal the whereabouts of a prisoner who recently escaped, thereby causing severe physical and mental harm on said KEN TALISAYON.

CONTRARY TO LAW.

Quezon City, Philippines, 4 May 2011.
2 nd Asst. City Prosecutor
BAIL RECOMMENDED:

Witnesses:

- Kenneth Talisay Sy
 Chief Warden
 Quezon City Jail
 Bureau of Jail Management and Penology
- 2. And others.

ANNEX E7. Torture with the consent or acquiescence of a person in authority

REPUBLIC OF THE PHILIPPINES Sixth Judicial Region **Regional Trial Court** Bacolod City, Branch ____

People of the Philippines,
Plaintiff,
CRIM. CASE NO
-versus –
FOR: TORTURE
M/Gen. DARWIN MORELLOS,
Major LANDER CLAVERIA, and
Major RAMILO VILLAR,
All officers of the Army Regional
Headquarters of Western Visayas,
Accused.
XX

INFORMATION

The undersigned Second Asst. City Prosecutor hereby accuses Major General DARWIN MORELLOS, Army Majors LANDER CLAVERIA and RAMILO VILLAR, all officers of the Army Regional Headquarters of Western Visayas, of the crime of Torture, more specifically under Section 6 (b) of Republic Act No. 9745, otherwise known as the Anti-Torture Act of 2009, committed as follows:

"That on or about the 15th day of May 2011, in Bacolod City, Philippines, and within the jurisdiction of this Honorable Court, the said defendant, M/Gen. DARWIN MORELLOS, commanding officer of the Army Regional Headquarters of Western Visayas, personally witnessed and did not object to the acts of defendants Army Majors LANDER CLAVERIA and RAMILO VILLAR who were willfully, unlawfully and feloniously torturing GEMMA ADLAWAN, by tying her hands and suspending her from a beam in the ceiling, and thereafter systematically beating her, burning her body with cigarettes and electrocuting her, for the purpose of coercing her to admit her membership in the New Peoples Army, thereby causing severe physical and mental harm on said GEMMA ADLAWAN.

CONTRARY TO LAW.

Bacolod City, Philippines, 15 September 2011
2 nd Asst. City Prosecutor
BAIL RECOMMENDED:
Witnesses:

W

- Major General Josefino Fadullo Bautista 1. Philippine Army Western Visayas Regional Command
- 2. And others.

About the Author



RIC HENRY JOSEPH F. MALLONGA is a widely known barrister actively engaged in the field of human rights and child rights advocacy in the Philippines. As an international lawyer, his expansive fields of specialization cover family law, children's rights law, intercountry adoption, human rights, criminal law, and environmental law.

Atty. Mallonga graduated from Ateneo de Manila University on the Dean's List with a Bachelor of Arts degree, major in Political Science; from University of the Philippines, College of Law, with a Bachelor of Laws degree and holds masteral units in Educational Administration from the U.P. College of Education; from University of London with a Master of Laws (with merit honors), specialization in International Family and Child Law. He took up his masteral courses in International Law on the Rights of the Child at Queen Mary and Westfield College, with distinction honors for his thesis on Intercountry Adoption, under Crown Barrister Geraldine Van Bueren; in British Child Law with merit honors and Juvenile Justice at the King's College; and in Comparative Law with distinction honors at the Institute of Advanced Legal Studies, all at the University of London.

Atty. Mallonga is a co-founder, trustee, and legal counsel of Infant Jesus Academy, a top private school accredited by the Department of Education and the Philippine Accrediting Association of Schools, Colleges, and Universities in Marikina City, Antipolo City, and Kalibo, Aklan Province, He is the founder and executive director of Meritxell Children's World Foundation Inc., an accredited private orphanage for abandoned infants and children, who are provided full scholarships at the Infant Jesus Academy.

He is also legal counsel of the Department of Social Welfare and Development-MIMAROPA and Bantay Bata 163, ABS-CBN Foundation Inc., an accredited child caring and protection agency that rescues children from situations of abuse and abandonment, and had been legal counsel for the Belgian and Swiss Sections in the Philippines of 2001 Nobel Peace Prize awardee Medisins Sans Frontieres and a central board member of Monacobased Association Mondiale des Amis de l' Enfance.

A State Prosecutor of the Department of Justice for almost ten years, Atty. Mallonga was a Special Prosecutor for the department's Task Force on Human Rights and Task Force on Child Protection, which he founded and organized as well. He prepared the report on human rights violations committed in Marag Valley in Cagayan province during the Marcos and post-Marcos administrations, vehemently denouncing the military operations that deprived the indigenous cultural communities of their ancestral domain in the Cordilleras.

As an opinion commentator and anchor for Radyo Veritas and a former opinion columnist for Manila Times, Atty. Mallonga has denounced and exposed human rights abuses committed by state agents, winning various awards and citations for his hard-hitting but well-researched opinion columns and broadcasts.

Today, Atty. Mallonga delivers professorial lectures and dissertations for the Institutes of Human Rights, Popular Law, Government and Law Reform, and Judicial Administration of the U.P. Law Center.

PROSECUTION OF TORTURE: A MANUAL

is specifically addressed to prosecutors entrusted with the duty to indict perpetrators of torture and litigate torture complaints in vindication of the rights of victims.

Written by human rights lawyer and advocate Eric Henry Joseph F. Mallonga, the manual is intended to be an academic blueprint in the legal construct for prosecutors to identify torture and a pattern of action in effectively building a solid case for prosecution. It provides invaluable, timely, and rigid guidelines for the immediate and effective documentation and the marshalling of evidence in torture cases once discovered. Prosecutors are thus educated on the necessary basic skills in applying fundamental legal and medical principles in forensic evidence-gathering.

Guidelines in commencing litigation are also provided, together with recommended sample templates of criminal information or the actual formal indictment of perpetrators in torture cases.

The publication aspires to educate and empower prosecutors in becoming more adept at criminal investigation of torture cases under the Anti-Torture Act; in preparing formal indictments for these cases; and subsequently, in prosecuting such criminal complaints on behalf of torture victims with an academic citation of existing jurisprudence and international laws on the matter.

With *Prosecution of Torture: A Manual,* Atty. Mallonga contributes to the upliftment of the nation's armed forces in a renewed commitment to respect the human rights of the very people they are obligated to protect and serve and as a first step in the direction of finally stopping the impunity of state agents and similar organizations in the commission of torture and other crimes against humanity.

