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Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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CONTENTS

INTRODUCTION

Amnesty International is submitting this briefing in advance of the United Nations (UN) Committee against Torture's (the Committee) review of the Philippines' third periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). The submission covers key issues of Amnesty International's concerns and recommendations, in particular, with regard to articles 1, 2, 4, 11, 12, 13, 14 and 16 of the Convention and follows Amnesty International's report, *Above the law: Police torture in the Philippines* (2014)[1], which was published in December 2014. These issues include:

- The widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings;
- The lack of a National Preventive Mechanism;
- The slow and ineffective criminal prosecution;
- The lack of a comprehensive witness protection programme to protect torture survivors, witnesses, whistle-blowers and their families;
- The complex system of disciplinary mechanisms.

ARTICLES 1 AND 16: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Philippines acceded to the Convention in 1986 but it was only in November 2009 that it enacted the Anti-Torture Act (ATA), which, for the first time, recognized and penalized torture as a distinct crime.[2] The ATA adopts, with little variation, the Article 1(1) definition of torture[3] in the Convention and provided its own definition of "other cruel, inhuman or

[1] A copy of the report may be accessed at: https://www.amnesty.org/en/documents/ASA35/007/2014/en/

[2] Republic Act (RA) No. 9745, 10 November 2009.

[3] RA 9745, sec. 3(a).

degrading treatment or punishment."[4] The ATA defines both physical[5] and psychological[6] acts of torture, with penalties ranging from one month and one day to forty years' imprisonment.[7]

In practice, however, the adoption of domestic legislation criminalising torture has done little to stem the number of reported torture incidents to date. Statistics from the Philippine Commission on Human Rights (CHR) show that between 2010, the year following the enactment of the ATA, and September 2015, the CHR received a total of 414 reported cases of torture involving 624 victims.[8] In contrast, the CHR only received a total of 182 reported cases of torture involving 293 victims between 2001 and 2009.[9] While the rise in the number of reported torture cases may be attributed to higher awareness among victims that acts of torture are now criminal in nature, the figures suggest that the Philippine authorities are far from addressing the prevalence of torture efficiently.

In its 2009 Concluding Observations, the Committee raised concerns about "numerous, ongoing, credible and consistent allegations…of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings."[10]

Amnesty International's 2014 Report found that torture is still rampant five years on from those observations. Amnesty International documented at least 50 cases of torture and other ill-treatment during arrest and detention, from 2010 to 2014. Those most at risk are people from disadvantaged and marginalized backgrounds, including suspected juvenile offenders, suspected repeat offenders, criminal suspects whose crimes have personally affected police officers, police assets who have fallen out of favour with local police officers, and suspected members or sympathizers of armed groups and political activists.[11]

An analysis of reports of torture conducted in 2014 shows that the most common methods of torture include systematic beatings, punches and kicks to different parts of the body or hitting with truncheons or similar hard objects. Torture survivors also reported receiving electric shocks; waterboarding; near-asphyxiation by covering the face; burning with cigarettes; blindfolding; being made to assume stressful positions for long periods of time; deprivation of water and food; and Russian roulette or being threatened at gunpoint.[12] There

[4] RA 9745, secs. 3(b) and 5.

[5] RA 9745, sec. 4(pa).

[6] RA 9745, sec. 4(b).

[7] RA 9745, sec. 14 in relation to Act No. 3815 (Revised Penal Code), Art. 27.

[8] Statistics (as of 1 October 2015) provided by CHR to Amnesty International were classified according to the sitting president: from 2001 to June 2010 under former President Gloria Macapagal-Arroyo and from July 2010 until September 2015 under President Benigno S. Aquino III. Figures from January to June 2010 were added to the numbers under the Aquino administration to come up with the cited statistics.

[9] Statistics (as of 1 October 2015) provided by CHR to Amnesty International.

[10] 2009 Concluding Observations of the Committee against Torture, par. 7.

[11] Amnesty International, *Above the law: Police torture in the Philippines,* London: 2014, p. 26.

[12] Amnesty International, *Above the law: Police torture in the Philippines,* London: 2014, p. 26.

were incidents where victims were stripped naked and their genitalia were tied to a string.[13]

According to statistics from the CHR, an overwhelming number of reported torture cases implicated police officers. Since 2001, 67% of the complaints filed were against police officers.[14] This figure went up to 80% in 2015.[15]

Amnesty International found in 2014 that a severe shortage of police officers coupled with an underdeveloped capabilities to conduct thorough investigations, as well as the pressure on the police from the media and the public to solve high-profile criminal cases, all contribute to the practice of police officers resorting to torture or ill-treatment to try to force suspects to divulge information or to "confess" to a crime.[16] In other cases documented by Amnesty International, police decided to take the law into their own hands and inflict *de facto* punishment on suspected repeat offenders[17] while in others, police were hoping to extort money from the suspects.[18]

This practice continued in 2015. In May 2015, the chief of police of Carmona, Cavite province, south of Manila, was caught on video hitting a male detainee suspected of committing theft with a thick piece of wood. The police chief was relieved from his post after the video was aired on national television.[19] He would later explain that he was merely imposing discipline on the suspect.[20]

In September 2015, then 18-year-old Edgar Henzon was arrested at night by a group of police officers from his home in San Fernando, Pampanga province, north of Manila. Edgar claimed the police were looking for a gun but could not find any. Instead, he was handcuffed and taken to a local police station together with another suspect. There, police punched him in the jaw and applied electric shock to his neck through an electronic device, which made him fall to the ground in pain and left a scar on his neck. He said police took turns punching and kicking his companion, Police later filed drugs charges against the two of them. According to the police, Edgar had been repeatedly involved in robbery even when he was still a minor. Two months before his arrest, he was caught for breaking into a house, but was released because he was still a minor.[21]

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[13] See the cases of Darius Evangelista, *Above the law,* p. 84 and Abdul, *Above the law,* p. 36.

[14] Based on CHR statistics (as of 1 October 2015), police officers were implicated in 401 out of 596 cases.

[15] Based on CHR statistics (as of 5 January 2016), 55 out of 69 cases involved police officers.

[16] Amnesty International, *Above the law: Police torture in the Philippines,* London: 2014, p. 40.

[17] Amnesty International, *Above the law: Police torture in the Philippines,* London: 2014, p. 46.

[18] Amnesty International, *Above the law: Police torture in the Philippines,* London: 2014, p. 48.

[19] ABS-CBN News, Cop chief caught on video torturing suspect, 21 May 2015, http://news.abs-cbn.com/nation/regions/05/21/15/cop-chief-caught-video-torturing-suspect. Last accessed: 6 March 2016.

[20] The Philippine Star, Cavite torture victim identified, 25 May 2015, http://news.abs-cbn.com/nation/regions/05/21/15/cop-chief-caught-video-torturing-suspect. Last accessed: 6 March 2016.

[21] Interview with Amnesty International on 6 March 2016, Pampanga.

In September 2015, a 51-year-old construction worker was arrested in San Fernando, Pampanga province, north of Manila, for allegedly raping his 17-year-old daughter. He told Amnesty International that, on the night of his arrest, three police officers approached him while he was inside the detention cell and were trying to force him to admit that he raped his daughter. When he refused to admit, the police ordered him to extend his hands beyond the bars in the door of the cell and poured hot water on them. Then they hit both the back and the palm of his hands repeatedly with a truncheon. They also struck his fingers which left his nails bruised for a week. Six months later, he showed the scars at the back of his hands to an Amnesty International researcher. He said he believes he was being punished for the crime he was being accused of but insisted that he did not rape his daughter.[22] Amnesty International, however, has no information regarding the merits of the rape case filed against the construction worker.

No government official has publicly acknowledged the prevalence of torture in the Philippines. Philippine President Benigno S. Aquino III has denied any state policy encouraging torture or other human rights violations.

RECOMMENDATIONS

Amnesty International calls on Philippine authorities to:

- Immediately acknowledge publicly the seriousness and the persistence of torture and ill-treatment by police in the Philippines and condemn all such acts unreservedly, sending a clear message to all law enforcement authorities that torture and ill-treatment of detainees is a crime and is strictly prohibited at all times.

- Ensure that all reports of torture and other ill-treatment are promptly and immediately investigated and those found responsible should be brought to justice through prosecution in a court of law.

ARTICLES 2 AND 11: PREVENTION

While the Philippine Constitution, domestic legislation, and the police manual provide for legal safeguards upon arrest, detention and investigation, the standards are not strictly followed in practice.

The 2014 Amnesty International Torture Report found that torture and other ill-treatment usually take place during or after arrests without warrant by police officers wearing civilian clothes. Some torture survivors told Amnesty International that the police did not identify themselves and neither were they informed of their rights upon arrest, contrary to existing legislation and police operating procedures. Some were beaten, threatened at gunpoint, and handcuffed before they were put in unmarked vehicles. Some were blindfolded and not told

[22] Interview with Amnesty International on 6 March 2016, Pampanga.

where they were being taken while others were dragged in full view of neighbours and paraded as criminal suspects. Some were taken to secret detention facilities and/or were held incommunicado until after certain periods of time. Some family members reported going from one police station to another in search of family members reportedly arrested by police officers but could not find any written documentation about their arrests.

Worse, interrogation of torture victims took place in the absence of a lawyer. Some victims reported not being allowed to see a doctor or any relative until a few days later, when the bruises and wounds have started to heal, making documentation of injuries difficult. And while domestic legislation provides for penalties for violation of the rights of persons arrested, detained or under custodial investigation,[23] these are rarely imposed since victims have to file the necessary cases in court.

The blatant disregard and violation of legal safeguards during arrest, interrogation and detention often lay the ground for the commission of torture and other ill-treatment. The use of secret detention facilities make it difficult to monitor the conditions of detainees, and in itself constitutes ill-treatment as well as making detainees highly susceptible to other forms of torture and ill-treatment.

On 17 April 2012, the Philippines acceded to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

To date, no National Preventative Mechanism (NPM) has yet been established despite the one-year timeline set by the OPCAT to do so.[24] In the absence of a NPM, the Commission of Human Rights (CHR) has powers to visit jails, prisons, or detention facilities under the Philippine Constitution.[25] However, the limited resources of the CHR make it difficult for the body to effectively and regularly monitor all places of detention.[26]

In May 2015, the Subcommittee for the Prevention of Torture (SPT) visited the Philippines. While its report to the Philippine government is confidential, the SPT did highlight in a press release issued after the visit the need for an "effective, independent and well-resourced National Preventive Mechanism" that will monitor places of detention to prevent torture and ill-treatment from being inflicted upon those deprived of liberty.[27]

Following lobbying by various human rights and civil society organizations, including Amnesty

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[23] RA 7438, An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers, and Providing Penalties for Violations Thereof, 27 April 1992, sec. 4.

[24] OPCAT, Art. 17.

[25] 1987 Philippine Constitution, Art. XIII, sec. 18(4).

[26] In 2014, CHR officials told Amnesty International that a CHR regional office covering several provinces with millions of residents has an operational budget of PhP13,000 to PhP15,000. (around US$295 to US$340) per month to cover visits, investigations and human rights education activities. In addition, the CHR is allowed to hire only three lawyers per region. Amnesty International, *Above the law: Police torture in the Philippines,* p. 70.

[27] UN SPT Press Release, UN experts urge Philippines to tackle "chronic" prison overcrowding, 3 June 2015, Geneva.

International, Senate Bill No. 3032 or the National Preventive Mechanism Bill was filed in the Philippine Senate on 10 December 2015. The bill seeks to establish a National Committee for the Prevention of Torture, attached to the CHR, albeit "solely for budget purposes."[28] At the time of writing, it remains pending at the committee level.[29]

Beyond existing legislation and legal safeguards, police attitude towards criminal suspects and detainees has remained a crucial factor leading to torture and other ill-treatment. According to a high-ranking police official Amnesty International talked to, aside from the lack of awareness among lower-ranking police officers of the human rights requirements under the law, there is also a perception within police ranks that human rights gets in the way of solving crimes. Human rights trainings are often perceived with negative overtones and scepticism while the culture of physical and psychological violence is oftentimes part of police training as a means to inculcate discipline, obedience and camaraderie. Blind obedience to superiors coupled with attitudes of group cohesion or loyalty often means turning a blind eye to wrongdoing, which can be exacerbated by the lack of a whistle-blowing policy.[30]

RECOMMENDATIONS

Amnesty International calls on Philippine authorities to:

- Ensure strict compliance of police operations with standards set out in international instruments for protection against human rights violations, including the UN Code of Conduct for Law Enforcement Officials, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

- Pass the National Preventive Mechanism Bill establishing a NPM currently filed before the Philippine Senate.

ARTICLES 4, 12, 13 AND 14: INEFFECTIVE CRIMINAL

[28] Senate Bill No. 3032, An Act Establishing the National Preventive Mechanism in the Philippines, and Appopriating Funds Therefor, filed 10 December 2015, sec. 4.

[29] Senate of the Philippines website, http://www.senate.gov.ph/lis/bill_res.aspx?congress=16&q=SBN-3032. Last accessed: 10 March 2016.

[30] Amnesty International, *Above the law: Police torture in the Philippines,* London: 2014, p. 27.

PROSECUTION, IMPUNITY AND REPARATION

Since the enactment of the ATA in 2009, there has been no reported convictions for torture or other ill-treatment under the Act.

Under the ATA, various bodies are mandated to receive and investigate complaints of torture within 60 days: the Commission on Human Rights (CHR), the Department of Justice (DOJ), specifically under its National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP).[31] In addition, the Public Attorney's Office (PAO) was tasked to assist the complainants with legal documentation.[32] Under the Philippine judicial system, two agencies have authority to prosecute: the DOJ through its National Prosecution Service (NPS)[33] and the Office of the Ombudsman for government officials.[34]

Amnesty International's research found that when torture cases are investigated, most do not make it past the preliminary investigation – the stage which determines if criminal charges should be brought in court. A number of cases were dismissed due to insufficient evidence while others are still pending resolution, or were dismissed and remain under appeal years after the torture occurred.

Alfreda Disbarro, a former police informant, was tortured by the police in October 2013 after falling out of favour with her police principals. Despite the 60-day period to investigate torture cases under the ATA, it was not until July 2014 that the CHR to released their decision and more than a year to submit the case to the Office of the Ombudsman for preliminary investigation. The Ombudsman ordered respondent police officers to comment on the administrative and criminal complaints in April 2015 but Amnesty International understands that, up to now, the case has not progressed beyond this stage.

Not even intense media attention can assure timely resolution of preliminary investigation. The Laguna 'wheel of torture' cases, so-called because a wheel containing various forms of physical torture were found in the secret detention facility were torture victims were detained in January 2014, continue to await resolution before the DOJ.[35] The majority of the cases have in fact been dismissed and are on appeal to the DOJ.[36]

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[31] RA 9745, sec. 9(a) in relation to the Implementing Rules and Regulations of Anti-Torture Act of 2009, sec. 15(a).

[32] Implementing Rules and Regulations of Anti-Torture Act of 2009, sec. 15(a).

[33] RA 10071, The Prosecution Service Act of 2010, 8 April 2010, sec. 3.

[34] 1987 Philippine Constitution, Art. XI, sec. 13.

[35] Amnesty International, Above the law: Police torture in the Philippines, Chapter 3, p. 25.

[36] According to the CHR Region IV, 15 of the 22 cases were dismissed while 7 are pending resolution. Motions for reconsideration were filed in most of the cases dismissed, except where the victims desisted. 10 March 2016.

One reason for the insufficiency of evidence is the lack of immediate, thorough and independent medical examinations to document physical injuries and mental trauma.

Dave Enriquez was a bakery worker who was accused of theft in Batangas province, south of Manila, in July 2012. He claimed he was hit by a wooden paddle, his fingers pounded by a stapler and his head banged against the metal gate of his detention cell at a local police station. While in police custody, Dave underwent two medical examinations in government hospitals which merely indicated he was in "essentially normal physical condition." But a third medical examination by a private hospital showed he suffered from haematomas and soft tissue swelling in the legs, back and chest which required five days to heal. Despite this, the local prosecutor dismissed the torture complaint on the basis of the two earlier medical reports. The case remains on appeal before the DOJ.

To address the issue of weak case-building, the Office of the Philippine President issued Administrative Order No. 35 (AO 35) in November 2012 which created special teams of prosecutors tasked with helping law enforcement agencies conduct fact-finding investigations and gathering evidence for prosecution of cases of torture, enforced disappearances and extrajudicial executions.[37] More than three years after its creation, not much is known about AO 35 and the implementation of its guidelines, other than that at the time of Amnesty International's 2014 report, prosecutors were still undergoing training. There is also concern that the added responsibilities imposed by AO 35 will result in a heavier burden on regular prosecutors. Amnesty International has written to the Philippine DOJ and the Department of Foreign Affairs to determine the status of implementation of AO 35 but has yet to receive a response.

The few cases that have reached the courts have been stuck there for years, like the cases of Darius Evangelista, which was filed in September 2011, and Jerryme Corre filed in December 2012.

Evangelista was a porter suspected of committing robbery, who was seen on video naked, screaming and writhing in pain while a man in a white shirt, later identified as the local police chief, forcefully pulled a string attached to Evangelista's penis. Evangelista was never seen alive again; his decapitated head was later found floating in Manila Bay. His family filed a torture case against the police officers involved but as of March 2016, the prosecution is still in the process of presenting evidence.

Corre, was a mini-bus driver mistaken for his cousin who was accused of robbery and murder. Corre said the police beat him up, gave him electric shocks, and water-boarded him, in an attempt to force him to "confess". The court decision in Corre's case against a police officer was initially set for release on 15 December 2015 but has since been rescheduled five times on the ground that the decision is still being drafted.

Amnesty International found that an overwhelming majority of the total number of torture victims it interviewed for its 2014 Report have opted not to file cases because of a lack of adequate information provided to torture victims and their families regarding their rights under various laws and the options available to them to lodge a complaint. Some have cited fear of police reprisals, particularly in areas where local police are seen as having a wide sphere of influence in court.

The lack of an effective protection for witnesses has only further compounded this problem. While there is a law providing various services to witnesses and their families, including a

[37] Administrative Order No. 35, sec. 2.

secure housing facility and financial or livelihood assistance,[38] Amnesty International found that the process of enrolling someone into the witness protection programme fails to meet the urgent requirements of many witnesses and their families. Victims and their families who filed torture complaints before the CHR, for example, have to wait for an endorsement from the CHR to the DOJ for provisional admission into the DOJ's witness protection programme, which, in practice, could take months or years. Philippine authorities should review the existing law with a view towards increasing accessibility for would-be complainants. Since 2009, no changes have been introduced to the 25-year-old law providing for the WPP.

While the ATA provides for compensation to victims of torture,[39] such compensation has been limited to "victims of unjust imprisonment or detention and victims of violent crimes"[40] defined in a separate legislation. Victims are required to file their claims with the DOJ within six months from being released from detention or imprisonment, or from the date when the victim suffered the damage or injury.[41] And while the ATA sets the minimum amount of compensation for torture victims at PhP10,000.00, the separate legislation specifies the same amount as the maximum limit for victims of violent crimes such as those committed with torture.[42] Those unjustly imprisoned or detained may get no more than PhP1,000.00 per month of imprisonment or detention.[43] Amnesty International is concerned that such amount of compensation cannot be considered "fair and adequate" under Article 14 of the Convention.

Section 19 of the ATA provides for the formulation of a comprehensive rehabilitation program by the Department of Social Welfare and Development, Department of Justice, Department of Health, other concerned government agencies and human rights organizations. A parallel rehabilitation program for persons who have committed torture is also provided for. Amnesty International does not have information as to whether the Philippine authorities have been able to establish these services and how well the respective authorities have been able to perform their functions.

RECOMMENDATIONS

Amnesty International calls on the Philippine authorities to:

- Ensure prompt, impartial, independent and effective investigations into all reports of torture and other ill-treatment by law enforcement officials, done by competent investigating law enforcement officers who are adequately equipped and have access to the necessary forensic expertise.

- Ensure prompt and comprehensive documentation of medical conditions of alleged

[38] Republic Act No. 6981 or the Witness Protection, Security and Benefit Act, 24 April 1991.

[39] RA 9745, sec. 18.

[40] RA 7309, An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and For Other Purposes, 30 March 1992, sec. 3.

[41] RA 7309, sec. 5.

[42] RA 7309, sec. 4.

[43] RA 7309, sec. 4.

torture victims.

- Ensure immediate and effective implementation of AO 35 Guidelines, with periodic reviews and monitoring.

- Ensure that trials against alleged perpetrators of torture are completed and decisions rendered within a reasonable period of time.

- Provide ample protection to victims of torture, their families and witnesses, with due consideration to the urgency of the need for protection from threats to their lives and security.

- Provide reparation to victims of torture and other ill-treatment in accordance with international standards.

COMPLICATED DISCIPLINARY MECHANISMS

Efforts by torture victims to seek redress through disciplinary mechanisms have not proven viable either, due largely to the fact that most of the existing disciplinary mechanisms are either unknown to survivors of torture and/or their families or are not easily accessible. Further, many of these mechanisms are complex and complicated with overlapping jurisdictions and different rules of procedure which cause confusion among complainants.[44]

In August 2010, the National Police Commission dismissed an administrative case against police officers who tortured five suspects in Pampanga province due to the failure on the part of the complainants to include a sworn certification against forum shopping, a technical rule prohibiting multiplicity of suits.

The highly-publicized cases of Evangelista and the suspected thief in Carmona, mentioned above, have resulted in almost instant action on the part of the police by immediately relieving the erring officers from their posts. In contrast, in lesser known cases, it took months (in the Disbarro case) and years (in the Corre case) before disciplinary investigations against erring police officers were initiated, and not until after intervention from human rights organizations.

In the Evangelista case, a senior officer was dismissed from service, two were suspended for 60 days while 14 others were absolved. In the Disbarro case, the PNP found two police officers liable for the torture of Disbarro in 2013 and demoted them by one rank, after a year-long investigation.

[44] See discussion on Flawed Disciplinary Processes in Chapter 4.5 in Above the law: Police torture in the Philippines, p. 87.

RECOMMENDATIONS

Amnesty International calls on the Philippine authorities to:

- Review all existing disciplinary bodies for police abuse and human rights violations with the goal of clarifying and streamlining confusing and overlapping mandates.

- Ensure that disciplinary investigations do not take the place of criminal prosecutions, which should remain the priority.

CONCLUSION

Philippine authorities should take a hard look at its compliance with its obligations under the Convention. A crucial first step is to acknowledge that torture persists and is prevalent in some police stations, while ensuring that all allegations of torture should be immediately and thoroughly investigated. Perpetrators should be held to account primarily through criminal prosecution while victims, witnesses and their families should be given urgent and ample protection, as well as fair and adequate compensation (in the case of victims). To prevent more cases of torture and other ill-treatment from taking place, Philippine authorities should immediately pass the bill creating a National Preventive Mechanism.

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