



Republika ng Pilipinas

Komisyon ng Karapatang Pantao

(Commission on Human Rights)

Position Paper on the “Anti-Torture Act”

*“Loss of life, loss of sanity, loss of limb,
loss of hope, loss of trust, and loss of income . . .
losses may seem endless and the effects may be for life
when someone is subjected to torture.”¹*

Introduction

In the early years throughout the world, governments have used torture against their enemies and as part of their legal systems. At present, torture has seen a resurgence in the 20th century. The political pressures of the modern state were blamed for this increase, particularly its use by armies during wartime and by intelligence agencies. In Asia, torture and ill-treatment persists as an undercurrent. Torture in police custody is common throughout the region – inflicted on both criminal suspects and political dissidents.²

Torture strikes at the heart of the dignity of any human being and can never be tolerated.³ As early as the *Universal Declaration on Human Rights* (UDHR) in 1948, the community of nations recognized torture as one of the main causes of human rights violations, hence, must be properly and effectively addressed:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁴

The *International Convention on Civil and Political Rights* (ICCPR) contains a similar provision, to wit:

“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.”⁵

However, it is such an important right that the United Nations had to come up with a separate convention, the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and that it had

¹ Understanding Torture, Benito E. Molino, M.D., p.1

² Ibid., pp. 4-5

³ The Rolando Abadilla murder inquiry – an urgent need for effective investigation of torture, Amnesty International, page 2

⁴ Article 5, UDHR

⁵ Article 7, ICCPR



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to be reiterated in the *Convention on the Elimination of Discrimination Against Women* (CEDAW), the *Convention on the Rights of the Child* (CRC) and the Rome Statute of the International Criminal Court.⁶

In addition, the *(UN) Code of Conduct for Law Enforcement Officials* ensures promotion of the dignity of every human person and protection against torture, to wit:

“No law enforcement official may inflict, instigate or tolerate any act of torture or cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”⁷

Torture in the Philippines

Cognizant to the provisions of the *Universal Declaration on Human Rights* to which it fully adheres and the *Convention Against Torture*, to which it is a State party, the Philippines has incorporated in its legal system provisions of law that have for their objective the prohibition and/or elimination of torture, and other cruel, inhuman or degrading treatment or punishment.⁸

The fundamental law of the land, the Constitution of the Philippines contains provisions that on the whole provide the legal climate that would permit the enactment of legislative, administrative and judicial measures that would prevent acts of torture.⁹

It is avowed State policy that “*The State values the dignity of every human person and guarantees full respect for human rights.*”¹⁰ Article III of the Constitution contains a Bill of Rights with provisions that will ensure the prevention of acts of torture. The State is also enjoined by the Constitution to

⁶ Understanding Torture, Benito E. Molino, M.D., p. 3

⁷ Article 5

⁸ The Philippine Initial Report to the Human Rights Committee, 1989, p. 12

⁹ Ibid.

¹⁰ Article II, Section 11, 1987 Constitution



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strengthen in the consciousness of the military the respect for people's rights in the performance of their duty.¹¹

Apart from the Constitution, there is a long-standing provision of national legislation prohibiting public officers from maltreating prisoners under their charge. This is found in Article 235 of the Revised Penal Code. Other provisions of the said Code are also applicable.

Although judicial as well as administrative remedies are available to victims under existing laws which prescribe specific acts as criminal, basic legislative enactment is still necessary to deter what is considered as 'torture' within the meaning of Article 1 of the Convention (CAT). Moreover, there is as yet no clear set of preventive measures against torture within its territorial jurisdiction.

Prohibition is but only half of the State obligation of a State party to the CAT, defining torture is the other half. Only then can the Commission declare that the Philippine Government is compliant insofar as legislative measures are concerned. In the past 21 years of the Philippines as State party to the CAT (from the entry into force on 26 June 1987), the failure to implement the initial obligation have fallen squarely on the legislative branch of government.

More than media exaggerations, violations of torture are real. Data show that the use of torture is still employed in the Philippines: from 1988 to 1998, 15,556 complaints of violations of human rights have been brought before the Presidential Committee on Human Rights (PCHR), mostly cases of torture. During the time of the Aquino government (1986-1992), 102 cases of torture among political dissenters were documented by the Task Force Detainees of the Philippines (TFDP). During the Ramos administration (1992-1998), 179 cases of torture were documented. From 1998 to January 2001 during the Estrada government, there were 53 cases of torture documented. And from January 2001 to December 2004, TFDP documented 63 cases of torture affecting 146 victims, 141 male and 5 female. All these cases of torture were against suspected political dissenters and alleged Muslim terrorists.¹²

¹¹ Article XVI, Section 5 (2), Ibid.

¹² Understanding Torture, Benito E. Molino, M.D., p.



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To date, perpetrators of human rights violations, especially torture, remain scot-free. [Twenty three years] Nineteen years after being party to the 1984 Convention Against Torture and [twenty one years] eighteen years after the ratification of the 1987 Constitution which clearly prohibits torture, there is no domestic law declaring torture as a punishable crime in the country. Thus, impunity continues and victims and survivors are yet to get justice.¹³

Hence, the Bills currently filed in both Houses of Congress are most welcome and well-supported legislative measure to effectively and properly address the issue of torture in the Philippines. The recognition of torture as a separate and distinct crime under our national laws is essential in the promotion and protection of the human right to be free from torture.

This has been long overdue. If passed, this legislation is indeed in commendable compliance of the Philippines' obligation as a State Party to translate principles of international human rights instruments into domestic law.

Bills on Torture, Recommendations

The Commission notes the great improvement in the versions of the bills in the 14th Congress. Consistency with the provisions of CAT is manifestly evident. Major conflicting provisions have been refined.

In view thereof, the Commission respectfully submits the following recommendations for the consideration of the Committee, to wit:

Statement of Policy

Article II, Section 11¹⁴ of the 1987 Constitution is hereto recommended to be added in the Declaration of State Policies – (It is hereby declared the policy of the State. . .) *“to uphold the dignity of every human person and guarantee full respect and protection of human rights.”*

¹³ Ibid.

¹⁴ “The State values the dignity of every human person and guarantees full respect for human rights.”



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We also note the phrase “to ensure that the rights of ALL persons including suspects, detainees or prisoners...” This is consistent with the Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment and Treatment (CAT) as Torture, under the Convention, not limited to persons under custody or detention as well as under the ICCPR General Comment 20 where the right was elaborated and clarified by the Human Rights Committee. This is precisely because Torture under the provisions of CAT is comprehensive enough to cover protection against children, pupils and patients in teaching and medical institutions.¹⁵

Torture as a Non-Derogable Right

We recommend the inclusion of a statement ‘recognizing the non-derogable nature of the right to be free from torture, and other cruel inhuman or degrading treatment or punishment’ as emphasized under the ICCPR General Comment 29.¹⁶

Consequently, we also recommend that the statement “*An order from a superior officer in the office or a public authority shall not be invoked as a justification of Torture*” be included in this Section consistent with Article 2 of CAT.

Exclusionary Rule

Further, it is recommended that the statement that “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” in consonance with Article 15 CAT and our Constitution be made subject to a separate and distinct provision which may be titled “exclusionary rule.”

¹⁵ ICCPR, Forty Fourth session, 1992

¹⁶ ICCPR, General Comment 29, Seventy Second session, 2001



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Right to Medical Examination

In this section, the victim of torture is given the right to seek medical examination from an independent and competent physician. This is analogous to the Constitutional guarantee of an independent and competent counsel though not as mandatory.

However, under the law, only duly accredited medico-legal officers may conduct examination on persons arrested or otherwise under custody of police officers. Not all doctors, especially those in the private sector, have the authority to conduct such examinations and not all medical reports, unless a medico-legal report, are admissible in evidence and given much weight, before the courts of justice. Hence, in order not to confuse the present rules on evidence pertaining to medico-legal examinations, it is suggested that the classification “medico-legal” (independent and competent) be used instead of a generic term, “doctor.”

Ideally, the victim should be able to choose the gender of the medico-legal examiner, which also applies to the investigators and interpreters. This would prevent re-traumatization of the victims, especially for females who may have been raped or in any way sexually abused by torturers, who will inevitably have been mostly males. This also applies to males who were sexually traumatized by other males, and prefer a female medico-legal officer to confide to.

Thus, we recommend the following to encourage a gender-sensitive statement and to reflect the need of victims, both males and females, to wit: *“Should the torture victim so require, he/she shall be referred to a medico-legal of his/her own preference”* or sentences of similar import.

The bills further guarantee medical examination “before and after interrogation.” We believe that the purpose of this phrase is to ensure the non-commission of torture during interrogation. It is suggested, however, that the phrase be dispensed with in order that the guarantee of medical examination will not be limited only before and after interrogation but may extend to all periods of detention considering that the commission of torture is not limited during interrogation.



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Penalties

CAT speaks of “*an attempt to commit torture and an act by any person which constitutes complicity or participation in torture.*”¹⁷

Clearly, the said provision in CAT contemplates an attempt to commit the crime of torture and takes into consideration the various **stages** in the commission of a crime, i.e. attempted, frustrated and consummated as well as the **participation** of the perpetrators, i.e. principal, accomplice and accessory. This is specially so when the commanding officer under Section 5 of the instant bill is made liable as an accessory to the crime of Torture.

We recommend that the same be included. This can be addressed by the inclusion of a paragraph under the instant Section on Penalties similar to the provision in the Revised Penal Code allowing the imposition of penalties which is either one or two degrees lower depending on the stage reached and the degree of participation in the offense.

However, the bill must provide for a clear definition of “*attempt to commit torture*” for it to be effectual. This can be provided for under the section on Definition of Terms.

Command Responsibility

We highly commend the inclusion of the provision on Command Responsibility. And we recommend the definition of Command Responsibility as found in Article 28 of the Rome Statute, to wit:

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the

¹⁷ Article 4, CAT



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jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Compensation to Victims of Torture

On the issue of compensation, we note the provision of Section IX of the *(UN) Basic Principles on the Use of Force* providing for a more comprehensive coverage of **reparation** which are as follows: *Restitution* (restoring the victim to the position before the violation occurred), *Compensation* (monetary payment for economically assessable damage resulting from violations), *Rehabilitation* (including, as necessary, medical and psychological care and relevant social services), and *Satisfaction and Guarantees of Non-Repetition* (including public acknowledgment of the violation and criminal and/or administrative sanctions against those responsible for the violations).¹⁸ It is suggested that the section cover reparation in accordance with the said principles.

¹⁸ Reference on Torture, ACJ, December 2005



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Special Protection to Children

The Commission notes the special provision for additional protection of the rights of children.

However, under Republic Act No. 9344, the general rule is the release of children in conflict with the law on bail or on recognizance, and if there is need for detention, the same should be made at youth homes or rehabilitation centers. The exception for this rule is their detention in facilities separate from adults.

This runs counter to the present provision in the bill that “every child deprived of liberty shall be confined in juvenile detention facilities separate from adult offenders...” And that “The Court may, in its discretion, upon recommendation of the Department of Social Welfare and Development (DSWD) xxx, release a child on recognizance, to the custody of his parents or other suitable person.”

It is thus recommended that the said provision be deleted or reworded if the Committee so desires.

Other Recommendations

1. The Commission also suggests that the Section on “**Definition of Terms**” include some terms which may need clarification and avoid possible confusion such as “cruel, degrading and inhuman punishment,” “attempt to commit torture,” “superior officer” and other terms susceptible of various interpretations.

According to case law, ‘cruel and inhuman treatment’ must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, including the duration of the treatment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim. However, the treatment need not be intended to cause suffering.¹⁹

¹⁹ Ibid.



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On the other hand, ‘degrading treatment’ requires treatment of sufficient severity which involves some form of gross humiliation or debasement. However, it is not necessary that the treatment have this particular purpose.²⁰

The difference between cruel and inhuman treatment and degrading treatment on the one hand and torture on the other relates more to the purpose of the perpetrator rather than any gradation in suffering.²¹

2. A provision requiring the implementation of a *standard interrogation procedure* is recommended to be included. In the upcoming Implementing Rules and Regulations, we respectfully submit the **Minimum Interrogation Standards** developed by the Advisory Council of Jurists (ACJ) to serve as guide.

3. For purposes of documentation of torture, a specialist in forensic medicine or medico-legal officer or a physician with special training on torture documentation is required. Other physicians who are not medico-legal officers may conduct the medical examination such as: pathologists, psychologists or psychiatrists who are also competent and qualified to examine the physical and psychological aspect of torture, and may serve as expert witnesses. Training of specialists in the documentation of torture should be included in the provisions of this law. Thus, provisions on the proper documentation of torture and training of specialist on documentation are hereby suggested.

5. We would also recommend the inclusion of the following remedies to be included in the bill: the Writ of Habeas Corpus, the Writ of Amparo and the Writ of Habeas Data. These remedies are important safeguards and instruments to the protection of victims against torture.

6. Moreover, Article 11 of the CAT speaks of a “*systematic review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form*

²⁰ Ibid.

²¹ Ibid.



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of arrest, detention or imprisonment with a view to preventing any cases of torture.”

We recommend the inclusion of the instant provision to serve as a precautionary measure against commissions of acts of torture. The implementing rules and regulations can provide for the specific details of the same.

ICCPR General Comment No. 20²² is comprehensive on the matter,

“It should be noted that keeping 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 is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when investigation so requires, to family members.”

A Final Recommendation: An Independent Forensic Center

In view of the exceptional nature of the crime of torture and the involvement of the State and/or State agents as has been established in history, it is most respectfully recommended that an independent forensic examination be set in place by this legislation to be able to fully comply with the State obligations.

In accordance with ICCPR General Comment 20 on Article 7, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, ‘complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective’ [i.e. – the right to lodge complaints against maltreatment in conjunction with Article 2 of the ICCPR on

²² Forty fourth session, 1992



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non-discrimination and the right to an effective remedy]. It is in this perspective that the Commission offers its Forensic Center to provide such independent investigation through the strengthening of the existing Forensic Division to conduct and provide the service.

Conclusion

The right of the person against torture has to be respected, protected and fulfilled at all times. This is a human right that cannot be curtailed, diminished or taken away even in times of conflict. It is one of the eight non-derogable rights.²³

The respect, protection and fulfillment of the right to be free from torture is a challenge for public officials and personnel, human rights advocates, health professionals and peace loving people. More than ever, everybody has to join hands in eradicating the evils of torture. This is our contribution to the building of a humane society.²⁴

The Commission on Human Rights fully endorses the passage of a law addressing the issue of torture. However, the above recommendations are respectfully submitted for the consideration of the Committee.

Issued on June 2, 2008 at Quezon City, Philippines.

FOR THE COMMISSION:

sgd. ATTY. LEILA M. DE LIMA
Chairperson

²³ Understanding Torture, Benito E. Molino, M.D.

²⁴ Ibid.