Torture and ill-treatment in the Philippines

Stakeholder report to the 3rd Cycle of the UN Human Rights Council's Universal Periodic Review (UPR)

21 September 2016

Written by Balay Rehabilitation Centre and the Medical Action Group (MAG) with the technical support of the International Rehabilitation Council for Torture Victims

Funded by the European Union under the IRCT's Data in the Fight against Impunity (DFI) Project.

This report has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union.

Introduction

1. In this submission, prepared for the 3rd cycle Universal Periodic Review (UPR) of the Philippines taking place in April- May 2017 at 27th session of the UPR, Balay Rehabilitation Center (Balay), the Medical Action Group (MAG) and the International Rehabilitation Council for Torture Victims (IRCT), provide information and analysis on progress made in the implementation of recommendations accepted by the Philippines during its previous UPR in 2012 including recommendations concerning elimination of torture, and cruel, inhuman or degrading treatment or punishment, full operationalization of rehabilitation program for victims of torture and establishment of the National Preventive Mechanism (NPM).

2. The submission was prepared and submitted by Balay Rehabilitation Center (Balay), the Medical Action Group (MAG) with the technical support of the International Rehabilitation Council for Torture Victims (IRCT).

3. Information and analysis including recommendations contained in this report are in parts included in a report titled "Torture and the Right to Rehabilitation in the Philippines" prepared and published by the Balay, MAG and IRCT in June 2016.

I. Previous UPR recommendations pertaining to torture and ill-treatment

4. During the second UPR cycle the Philippines received multiple recommendations pertaining to torture and ill-treatment. These included elimination of torture, effective implementation of the Anti-Torture Act including a rehabilitation program for torture survivors, effective investigations and prosecution of torture offences and ratification of OPCAT.
5. The majority of recommendations were accepted (two were noted) and thus provided a clear roadmap for fighting torture and ill-treatment in the Philippines over the next 4,5 years. Unfortunately, while there have been some limited action towards implementation of the recommendations, the efforts have been insufficient to have a positive impact on the situation of torture victims in the Philippines.

II. The situation of torture and ill-treatment in the Philippines

6. In May 2016, the UN Committee against Torture expressed its concern at the continued reports of widespread use of torture and ill-treatment. Records gathered by Balay and MAG as well as other local NGOs indicate that torture remains pervasive though underreported in the Philippines and the continued use of secret detention remain a key obstacle to exposing these crimes. The majority of reports of torture that do surface involve police officers, members of security forces, prison officials, Local executive officers, members of paramilitary groups and local peacekeepers.

7. Torture for the purpose of punishment or confession is very common in relation to persons suspected of petty crime or being members of armed groups. However, discrimination and economic interest are increasingly emerging as motives in the context of land rights disputes and the treatment of persons with psychosocial disabilities. Furthermore, threats of torture, ill-treatment and extrajudicial killings against victims, witnesses and human rights defenders remain a serious problem in the Philippines.
8. Data collected by Balay from 142 victims receiving medical and psychosocial services as of September 15, 2016, indicates that the most frequent methods of torture and ill-treatment experienced by their clients are blunt force trauma, sub-standard detention conditions, deprivation of normal sensory stimulation and asphyxiation. Being beaten and only having access to contaminated food and water in detention are among the most frequent experiences by Balay clients, but several also report being exposed to practices such as waterboarding, drowning, and falanga (systematic beating of the sole). Threats of harm or death to the victim or family members are common psychological torture methods.
9. Those most at risk of torture are persons living in impoverished areas and in places where government, security and peace and order operations against armed insurgency and violent activities of non-state armed groups are palpable. Children in conflict with the law (child offenders) and suspected criminals, including those who may have been involved in shady deals with law enforcers, are also at risk but are rarely documented by those mandated to do so by the Anti-Torture Act.
10. Among Balay's clients, males constitute 97% and the females 3%. Around 23 percent are young people between 10 to 19 years old, while the elderly victims, aged 60 years old and above, count to 5%. The situation for victims of torture and ill-treatment in the Philippines is often highly complicated. Due to the torture methods used, they often suffer from severe physical and psychological trauma. This includes open wounds, skin and muscle injuries and post traumatic distress. At the same time, they will often find themselves in very precarious circumstances after torture has taken place. Some are still in pre-trial detention and can stay there for years without having the case against them reviewed by a judge and those who are free often find themselves at continued risk of more torture or other reprisals from the same perpetrators. This may further compound their trauma and severely complicate rehabilitation efforts.
11. Of the 44 detainees found in the secret detention cell in the "wheel of torture" case in Biñan, Laguna in January 2014, only 25 filed complaints according to the Commission on Human Rights(CHR), that said some of the victims felt that they did not need to file a case since they only sustained minor injuries.
12. MAG conducted medical examination and psychological assessment of 27 victims of "wheel of torture". Based on the documentation, common forms of torture used by police authorities involved in the "wheel of torture" included psychological torture, verbal abuse, threats to family, mock executions, positional torture such as 30-second bat or "paniki" (Filipino term for bat) and sensory deprivation.

III. Implementation of previous recommendations pertaining to torture and ill-treatment

a. Implementation of the Anti-Torture Act

13. The Anti-Torture Act provides a comprehensive legislative framework for investigating and prosecuting allegations of torture and ill-treatment, punishing perpetrators and providing redress for the victims. In December 2010, the Department of Justice and the Commission on Human Rights of the Philippines (CHR) promulgated the Implementing Rules and Regulations (IRRs). These provide additional details to the requirements for implementation of the law.
14. Unfortunately, the very well-crafted legal framework has not seen the same diligence in its implementation. This has suffered from a lack of leadership, inter-agency coordination, effective oversight and inability to collect and publish data on steps taken to implement key aspect of the law.
15. Outlined in this report are some of the obstacles faced by the Philippines authorities in implementing the Anti-Torture Act. While some of the problems appear to be systemic others differ from case to case. The main obstacles identified are: delayed and ineffective investigations; problems in identifying and locating perpetrators; access to prompt, thorough, impartial and independent medical evaluation; and the risk of reprisals against victims, witnesses and investigators.

Recommendations:

16. Immediately convene the Oversight Committee in charge of overseeing the Implementation of the Anti-Torture Law. The Committee should establish a database to systematically collect information on the implementation of the Anti-Torture Law including on investigations, prosecutions, access to medical evaluations, acts of reprisals, implementation of the rehabilitation programme and the submission of inventory of all detention centers and facilities under the jurisdiction of the PNP and AFP. Furthermore, the Committee should regularly publish status update on cases under consideration and assessments of possible systemic errors identified in the implementation of the Anti-Torture Law.
17. Issue a public statement by the President or other high-ranking officials that torture will not be tolerated and that investigations and prosecutions against direct perpetrators and those with command responsibility will be pursued in every case.

b. Investigations and prosecutions

18. The process of investigating, prosecuting and granting redress to victims for torture and ill-treatment remains deeply flawed. The root causes of this are a combination of delayed investigations, ineffective evidence collection, difficulties with identifying perpetrators and reluctance among the security forces to locate those perpetrators who are identified. Most cases that Balay and MAG are aware of see delays that go far beyond the 60-day limit established by the Anti-Torture Act. This has a very negative impact on the quality of the investigations since physical evidence at the crime scene and on the victims degrades and eventually disappears, witnesses lose their memory and the perpetrators are afforded time to cover up their crime.

19. Delays are often caused by a lack of awareness among prosecutors and lawyers of the Public Attorney's Office (PAO) which means that the 60 day deadline stipulated by the law is not applied by the prosecutors nor argued by the PAO lawyers. Further, there is a lack of commitment in the Government to ensure effective investigations by allocating the necessary financial and human resources to the various components of the torture investigations. Victims, witnesses and persons participating in the investigation of torture allegations are routinely subjected to threats or direct reprisals to compel them to withdraw their complaint. This causes delays in the initial reporting of torture and ill-treatment and delays in the location and evidence taking from witnesses.
20. Victims rarely have access to medical and psychological documentation of their trauma and once they do, the health professionals are often ill-trained or under pressure to produce pre-defined findings. Social workers, public defenders, and jail officers generally do not have the awareness nor the skills to screen persons-at-risk for signs that they have been subjected to torture or ill treatment. In instances where a detainee or an arrested person is brought to a government hospital for a medical check-up, MAG have found that doctors often simply undertake a "cursory physical examination" without bothering to ask how an injury may have been sustained by the patient or they do not include in their report a finding that torture may have been committed against the patient or detainee. Medical certificates refer only to visible bruises or contusions with a formulaic assessment of how long the victim is likely to need medical treatment.
21. MAG particularly notes that some medical personnel experience pressure from authorities allegedly involved in torture cases. It cites incidents where victims are examined by doctors assigned to major Philippine National Police (PNP) or Armed Forces of the Philippines (AFP) health facilities. This means that police officials are present during physical and medical examinations and, in some cases, supervise the work of medical doctors themselves. MAG adds that there are no real safeguards in place to ensure that health personnel are not subjected to police intimidation, are able to examine victims independently of the police, and able to maintain the confidentiality of medical reports. Moreover there are very few health professional in the Philippines who have the necessary skills to thoroughly document torture and ill-treatment and health professionals often avoid even attempting to document torture due to fear of reprisals.
22. Inability and unwillingness to identify and locate alleged perpetrators is a significant impediment to ensuring justice for torture victims. When investigators do produce good evidence, the common use of blindfolding, in itself constituting torture under the Anti-Torture Act, effectively prevents victims from visually identifying their perpetrators. Combined with the restrictive approach to voice identification taken by the prosecutor in the Salas case, this significantly complicates the identification of perpetrators and effectively encourages the use of blindfolding as a means of escaping justice. A related problem is the military's reluctance to cooperate with the prosecutor's office in producing alleged perpetrators within their ranks who have been identified by name and association. This was clearly illustrated in the Cabais case. These problems are aggravated by the lack of focus at the investigative and prosecution stages on ensuring command responsibility for which there is ample room in the Anti-Torture Act.

Recommendations:

23. Fully implement, with corresponding budget appropriations, the DoH Administrative Order No. 2013-0008, Guidelines for the Implementation of Section 19 of the IRR of the Anti-Torture Act, to ensure that all persons who allege or otherwise show indications of having been tortured or ill-treated are offered a prompt, thorough, impartial and independent medical examination in accordance with the Istanbul Protocol.
24. Ensure adequate protection of health professionals, social workers, and other service providers documenting torture and ill-treatment from intimidation and other forms of reprisals; and ensuring that health professionals are able to examine victims independently and to maintain the confidentiality of medical records.
25. Ensure that all cases that merit prosecution are processed promptly and that all possible efforts are taken to identify and apprehend alleged perpetrators.
26. Ensure that all investigations and prosecutions of allegations of torture adequately cover the possibilities for pursuing command responsibility including by obtaining all relevant records of all officials on duty particularly those holding senior positions that are alleged to have planned, abetted, commanded or perpetrated acts of torture and by utilizing the full extent of Section 13 of the law when it comes to non-compliance by the relevant institutions with the investigation.

c. Rehabilitation programme

27. Torture victims have a right to rehabilitation under Article 14 of the UN Convention against Torture. Section 19 of the Anti-Torture Act provides for an elaborate rehabilitation programme for torture victims has been developed through strong engagement from civil society including Balay and MAG. Implementing Rules and Regulations were issued by then President Benigno Aquino in 2010 and the Comprehensive Program for the Rehabilitation of Torture Victims and their Families (CPRTV) was approved for implementation by the Department of Social Welfare and Development (DSWD), the Department of Health (DoH), and the Department of Justice (DoJ) in 2014.
28. But for most torture victims, rehabilitation is not a lived reality in the Philippines. This is partially due to lack of political willingness to take responsibility for the programme and adequately fund it and partly due to technical complications in delivering healthcare and psycho-social services in rural areas in the Philippines. The government is yet to designate a lead agency to implement the programme. Aside from the DSWD and the Bureau of Jail Management and Penology (BJMP), which have drafted their respective guidelines with some assistance from Balay, there is no detailed step-by step plan and concrete commitments from the relevant government agencies on how it will be put to effect.
29. The absence of a coordinating agency creates a risk that rehabilitation services will become compartmentalized within the different responsible agencies and thus not fulfill the objective of taking a holistic approach to the victim's needs. This lack of specificity may tempt government agencies, who have already demonstrated a lack of interest and ability in providing specialized rehabilitation services to torture survivors, to not diligently implement the programme.
30. Only a few victims and their family members have accessed rehabilitation service to date. Balay, for instance, was able to facilitate the free hospitalization and medical treatment of four former detainees (one of whom underwent surgery for a head injury) in coordination

with the health department and government hospitals. More than 30 victims and their family members obtained financial assistance from the social welfare department to alleviate their medical and subsistence needs as of August 2016. A survivors' association also obtained financial capital to sustain their livelihood project.

31. Regional consultations facilitated by Balay with medical practitioners, social worker officers, and CHR have affirmed the idea that there should be a focal agency to coordinate the referral and case management process between the national agencies mandated to implement the rehabilitation program and similar mechanisms to be established at the regional and local levels. Each mandated agency is expected to come up with their respective budget to implement their obligation under the law. This opens the door for government agencies to consider torture victims' rehabilitation as one of the many service components that they are already undertaking without establishing the necessary expertise and capacity of its human resources.
32. Environmental factors and lack of security or stability that impedes or prevents access will render available services inadequate. Many torture survivors do not feel safe and secure enough to approach and access rehabilitation services believing that the concerned government agencies will be biased against them. For example, in places where conflict or political instability is ongoing, torture survivors may run the risk of discrimination and further harassments from authorities. Independent service providers also face some security risks. In these situations, the availability of rehabilitation service providers such as NGOs is compromised, as NGOs are bridging the gap by providing the majority of torture rehabilitation services.
33. Despite the risks involved, many victims in the Philippines do try to obtain recognition and accountability for torture because it is seen as an important part of their full rehabilitation. While the law contains progressive provisions on investigation, prosecution and victims support; victims and their relatives' lack adequate information regarding their rights under the law, and the options available to them to lodge a complaint and to access rehabilitation.

Recommendations:

34. Move promptly to designate a lead agency for the implementation of the rehabilitation programme and to make clear and adequate budgetary provisions for the programme to function as a specialized service function in the public health system.
35. Ensure that the programme offers specialized rehabilitation services that are available, appropriate and promptly accessible in accordance with General Comment 3 and that access is not conditional on the filing of formal administrative or criminal complaints.
36. Ensure that victims can freely choose between services provided by the government and by non-government actors such as NGOs and setup a voucher system to compensate the non-government actors for their service provision.
37. Establish a programme of monitoring and evaluation of the impact of the rehabilitation programme including by starting a data collection programme to identify the number of victims and what their specific rehabilitation needs are.

d. National preventive mechanism

38. The NPM Bill proposed by the UATC and supported by the CHR was approved by the Committee on Human Rights in the House of Representatives but did not reach the plenary before the 16th Congress ended on June 30, 2016. The Senate version of the bill was discussed at the Committee of Justice and Human Rights twice at the instigation of the UATC.
39. The NPM bills were promptly filed in the Congress and the Senate respectively by their proponents when the parliament reopened in July 2016. The bills called for the creation of a national mechanism for torture prevention that is essentially separate from the Commission on Human Rights but is attached to it to facilitate financial and administrative management.
40. Balay has already briefed the newly constituted House Committee on Human Rights about the rationale and the salient features of the bill. It has also made representation with the Senators who champions the bill.

Recommendation

41. Call on the Chief Executive or the Presidential Legislative Liason Office (PLLO)[1] to fulfill the provision of the OPCAT and the recommendation of the UN Committee against Torture (UNCAT) to create, through legislation, a mechanism to prevent torture in the Philippines.
42. Designate or call for an independent body – with the participation of relevant civil society organizations – to inquire on the reports of ill treatment or torture of prisoners in the National Bilibid Prison and make recommendations to prevent excessive use of inappropriate force or violence by authorities.

e. New issues since last UPR

43. The government security forces continue to obstruct identification of alleged perpetrators among its ranks. Warrants of arrest of ranking army officers and soldiers have not been served, which impedes the effective prosecution of torturers and the government has neglected to investigate and pursue command responsibility, which can be a strong tool against such obstruction. Despite the filing of many well-documented torture cases, it was only in April 2016 that the first perpetrator was convicted when police officer Jerick Dee Jimenez was sentenced to a maximum of two years and one month imprisonment by a court in Pampanga for the torture of Jerryme Corre. The court demanded that the officer pay Jerryme Corre damages amounting to 100,000 pesos (approximately USD $2,173). Another police officer faces the same charges but remains at large.
44. In May 2016, as reported, the "walk of shame" in Tanauan City, Batangas of suspected drug pushers saw suspects paraded in public and having put marks on their bodies. This raises issues under the prohibition against mental and psychological torture of the Anti-Torture Act, which prohibits "preparing a prisoner for a 'show trial', public display or public humiliation of a detainee or a prisoner."

[1] The Presidential Legislative Liaison Office (PLLO) was created by Memorandum Order No. 128 dated 11 November 1987, as amended by Memorandum Order No. 142 dated 17 December 1987 during the term of President Corazon C. Aquino. It is the agency under the Office of the President that liaises with Congress regarding all matters impinging on Executive Legislative relations.

45. Gross overcrowding of jails have become an urgent issue of concern following the aggressive implementation of the 'war-on-drugs' by President Duterte himself. Jails around the country are holding five times the intended amount of inmates, according to government data. The Quezon City Jail, [2]for instance, reportedly houses those who are on trial but have not yet been convicted; it holds some 3,800 inmates despite being originally built for 800. This deplorable condition has brought about serious physical and mental health implications among inmates and has been regarded as 'tantamount to torture' by some jail officers themselves. This was confirmed by a team from the CHR which visited the jail in response to the information sent to them by Balay.
46. The decision of President Duterte to call in the Special Action Force, the police combat unit, to replace the guards assigned in the National Penitentiary to contain the manufacture and trade of drugs by convicted 'drug lords' and their associates has tightened regulations inside the prison. Relatives of some prisoners have told Balay that authorities have used excessive force and maltreated their imprisoned kin. Prison visit has become quite restricted making it difficult for independent human rights organizations to verify the complaints and attend to the needs of the alleged victims.
47. More than 2,000 Filipinos have died so far in Duterte's hard-fisted war on drugs, a significant number of which appeared to be vigilante-style executions. Some of the fatalities bore signs of injuries and other forms cruelty when found[3]. In one instance, a policeman reportedly took off the underwear of a two-year-old daughter of a drug suspect and did an anal search, which traumatized the child[4].
48. The director general of the Philippine National Police (PNP), Ronald dela Rosa, told a Senate hearing on Aug. 22 that 712 people had been killed in police operations in the seven weeks since the crackdown began, and that another 1,067 had died at the hands of vigilantes. The carnage is exactly what President Duterte promised. "All of you who are into drugs, you sons of bitches, I will really kill you," he said before his election, in April. A month later, when he was President-elect, Duterte offered medals and cash rewards for citizens that shot dealers dead. "Do your duty, and if in the process you kill 1,000 persons because you were doing your duty, I will protect you," he told police officers on July 1, the day after his inauguration.[5] This 'take-no-prisoner' stance of the Chief Executive appeared to have gave an approval for state agents to break the rule of law with impunity. This observation was also captured in the Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, at the 33rd session of the Human Rights Council.[6]
49. On September 4, 2016, President Duterte signed a declaration of national emergency on account of 'lawless violence.' This measure allows the Chief Executive to call on the armed forces to take a prominent role in law enforcement operations which is, otherwise, considered as an exclusive police function under a normal situation. While the civil and political rights of the citizens, including the right to a writ of habeas corpus, remain in effect during the 'emergency period,' concerns over the possible abuse of authority have raised by civil society organizations.

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[2] http://time.com/4438112/philippines-overcrowded-prison-manila-rodrigo-duterte/
[3] http://www.philstar.com/headlines/2016/07/08/1600763/cop-linked-drugs-tortured-killed
[4] See http://edition.cnn.com/2016/08/22/asia/philippines-senate-hearing-war-on-drugs/
[5] Ibid.
[6] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20474

Recommendations:

50. Organize a top-level inter-agency summit, with the participation of local and foreign experts and civil society organizations, to discuss prison reform and the improvements in the justice system as well as to review the government's anti-drug policy as an approach to decongest the jail system.
51. Call on the highest officials in government to issue public statements on adherence to the rule of law, due process and the international human rights law. Strongly remind law enforcers and security forces that they will be made accountable if they violate the Anti-Torture Act and other acts human rights violation under any circumstances.