



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/SR.868
1 May 2009

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 868th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 28 April 2009, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.868/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Second to fifth periodic reports of the Philippines (CAT/C/PHL/2)

1. At the invitation of the Chairperson, the members of the delegation of the Philippines took places at the Committee table.
2. Mr. ERMITA (Philippines) introduced the members of the delegation, which included representatives of various government departments, the judiciary, the Presidential Human Rights Committee, the national police and the armed forces. In illustrating his Government's long-standing commitment to the promotion and protection of human rights on a global scale, he traced the involvement of the Philippines as an active player in various multilateral forums since the founding of the United Nations and the drafting of the Universal Declaration of Human Rights. Since then, the Philippines had acceded to eight core international human rights treaties, the latest being the Convention on the Rights of Persons with Disabilities in 2008. At the regional level, the Philippines had been a strong advocate for human rights, having initiated the decision to create a human rights body under the Charter of the Association of South-East Asian Nations.
3. Government policies and programmes had been geared towards bolstering the democratic processes, in accordance with which activists of all political and ideological persuasions enjoyed freedom of expression and participation in the political life of the country. Furthermore, human rights defenders were routinely consulted in government decision-making and in the formulation of legislation and national programmes, including the training of military, police and judicial personnel. The Philippines was one of the first countries to enshrine the creation of a Commission on Human Rights in its Constitution, and the Government now considered the Commission an important partner in the effective advancement of human rights. While supporting ongoing legislative efforts to strengthen the Commission, the Government also wished to ensure that such efforts would not jeopardize the independence and neutrality of that body.
4. He briefly outlined a number of steps taken in keeping with the State's policy to promote the dignity of human beings: the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty, and signature of domestic law to that effect; participation in the Universal Periodic Review (UPR) in 2008; and preparatory work on the ratification of the Optional Protocol to the Convention against Torture. The national preventive mechanism was expected to be established under the leadership of the Commission on Human Rights of the Philippines, along with members of civil society and NGOs. The improvement of procedures for jail visits was one important outcome arising from that development.
5. Considerable progress had been made in compliance with obligations under international human rights treaties. Moreover, on the occasion of the celebration of the sixtieth anniversary of the Universal Declaration of Human Rights, Administrative Order 249 had been issued to foster the institution of policies, programmes and projects for the enhancement of human rights. To that

end, agencies were urged, inter alia, to respond to the need to: swiftly resolve alleged human rights violations; formulate a comprehensive education campaign on people's rights under the domestic justice system; improve access to legal assistance; further address the rights of indigenous peoples; ensure protection for children in armed conflict and other vulnerable situations; and increase local government accountability in the dissemination of human rights information. Within the context of institutional capacity-building through human rights education, he commended the ongoing efforts of the Commission on Human Rights in the establishment of training programmes targeting the military, police, students and young persons. In that connection, he welcomed an impact assessment of the Government's human rights education programmes by the Commission.

6. Recent developments in the sphere of human rights had been geared to strengthening governance, while consultations had been launched to formulate the Second National Human Rights Action Plan, taking into consideration the recommendations arising from the UPR process, those made by treaty bodies, special procedures and other international human rights mechanisms, and the views of civil society groups.

7. Apart from its obligations under the Convention against Torture, to which it had acceded in 1986, the Constitution of the Philippines prohibited the use of torture and cruel, inhuman or degrading punishment of persons under investigation, including the use of secret detention sites, solitary confinement and other forms of detention during which illegal acts might be committed. The revised Penal Code, the Juvenile Justice and Welfare Act, the Anti-Sexual Harassment Law and Anti-Hazing Law criminalized all acts considered as torture.

8. He stressed that his Government neither engaged in, nor encouraged, torture or similar acts, and took strong measures against them. He was pleased to announce the approval of House Bill No. 5,709, which had become the Anti-Torture Act of 2009. That legislation defined torture as specified in the Convention and established penalties of 12-40 years' imprisonment for offenders. The Commission on Human Rights had proposed bills on the institutional strengthening of the Commission, unification of the penitentiary systems, action to curb enforced disappearances, the treatment of detainees and command responsibility. In addition, the National Police Commission had issued a directive in April 2009 to activate human rights desks in all police stations. The attending officers would serve as human rights advocates, with competence to initiate activities under the Philippine National Police human rights development programme.

9. Other remarkable achievements included the "mobile court" system, under the auspices of the Supreme Court, and the integration by the Department of the Interior and Local Government of the "Access to justice for the poor" initiative in the training curricula of police and public safety personnel.

10. He reiterated his Government's commitment to human rights, in spite of the challenges posed by the global financial crisis, an active Communist insurgency, a Muslim secessionist movement and the scourge of local terrorism, which had threatened national security. Such challenges had never distracted the Government from fulfilling its sovereign duty to promote and protect human rights.

11. Ms. GAER, Country Rapporteur, said that the composition of the delegation, whose members represented a wide range of institutions in the national human rights apparatus, sent a

strong signal of the Government's commitment to curb torture and other forms of inhuman treatment. Although the Philippines was well known for its stance on democracy and had assumed a high profile in the international sphere over the years, including its status as one of the first States to ratify and report on the Convention against Torture, it was disappointing that it had not appeared before the Committee in 20 years.

12. As to the material presented by the delegation for the consideration of the Committee at the current session, she said that the periodic report contained few examples of government action to illustrate how specific cases were dealt with. In his opening statement, the head of delegation had cited the challenges posed by certain threats to national security. However, she wished to stress that, in its attempt to maintain peace and security, the Government must not undermine its commitment to fight torture. She invited the delegation to explain how the challenge of armed threats was being confronted and the extent to which human rights safeguards had been affected.

13. She was encouraged by the adoption of House Bill No. 5,709 constituting the Anti-Torture Act of 2009, and the activation of human rights desks under the auspices of the National Police Commission, but was disheartened by allegations that torture had continued during the 20 years that had elapsed since the Philippines had previously appeared before the Committee.

14. It had been reported by civil society that other legislation against torture had languished in Congress for over 10 years due to the low priority accorded to it. That approach, which was indicative of a lack of commitment, was a cause for concern. She was curious to know whether it was usual for the legislative process to be so lengthy, what the major obstacles preventing the smooth passage of such legislation might have been, and what leadership the Government had provided in overcoming those obstacles. She asked for further clarification on the content of bills that remained pending, especially given the fact that there was no legislation that explicitly criminalized and prohibited torture and ill-treatment in accordance with the Convention. Such violations were still classified as lesser crimes. She asked whether mental torture was being addressed as a subject for future legislation, and would be interested in knowing the methods used by the sponsors of the bills to secure endorsements and to what extent the administration was involved in the process.

15. A major issue for the Committee was the existence of effective measures to prevent torture, and in that connection she asked what provisions had been made to secure legal safeguards and how they were implemented from the early stages of the detention process. Information reaching the Committee suggested that existing safeguards were not enforced in practice. There seemed to be a clear pattern of torture and ill-treatment of detainees from the time of their arrest and interrogation until they appeared before the judicial authorities, so she requested clarification on the protection provided for individuals during that crucial period. The State Department of the United States, as recently as 2009, had reported on routine abuse by the police and security forces. Detainees also seemed to be denied medical attention. Citing an example of a pregnant woman under detention who had been refused medical assistance, she asked what specific provision had been made for access to independent counsel and medical attention, particularly in cases such as pregnancy.

16. Judges were required to indicate if a person before them might have been subjected to torture. She asked whether there had been any cases where judges had done so and requested an investigation, and, if so, what had been the outcome.

17. With regard to the right to medical attention, NGOs reported that in practice detainees subjected to torture often had to wait until the visible signs of torture had disappeared before they could see a doctor. The lack of independence and impartiality of medical examiners was of concern, and there were allegations that medical certificates were sometimes forged or falsified and that training and awareness programmes were inadequate. She requested the State party to respond to those allegations and asked what measures could in practice guarantee the right to medical attention.

18. The Commission on Human Rights was often arbitrarily refused permission to visit detainees, especially persons detained on grounds of security. She asked under what circumstances those visits were refused and what measures were being taken to ensure access to prisons. Was there an ombudsman who could intervene and grant access and, if not, why not?

19. In its replies to the list of issues the State party had said that the allegations of arrests without a warrant were inaccurate; however, there was information to suggest that the practice was widespread. The only way to protect people was to ensure that procedures were followed. Arrests without a warrant and invitations to questioning seemed to be used in particular against leftist activists and human rights defenders. Pretrial detention was often lengthy, even for children. According to the report of the International Federation of Action by Christians for the Abolition of Torture-Action of Christians for the Abolition of Torture (FIACAT-ACAT), there had been many cases of illegal arrest and detention, and she asked how the State party addressed those cases and provided an opportunity to challenge the detention. She asked the delegation to comment on the case of Remigio Saladero Jr., a human rights and labour lawyer, and on the allegation that many individuals seemed to be targeted because they belonged to activist groups.

20. She asked who had been held accountable in the case of the Manalo brothers, which had involved allegations of detention by the armed forces and torture. It had been reported that one general implicated in the case could no longer be held liable because he had retired; she asked whether that was true and whether there were any cases of military officers being charged with abuses before the courts.

21. There was concern regarding the broad definition of terrorism used in the Human Security Act. She asked how the expanded powers of arrest and detention under the Act would be implemented and whether the mandate in that regard would be limited or whether it would serve both a security and human rights purpose.

22. There was a lack of accountability under the Human Security Act, which did not impose an obligation on the judicial authority to check whether a suspect had been subjected to torture at the end of the custodial investigation period. She asked whether there was an independent, impartial body to investigate offences committed by members of the Anti-Terrorism Council or other personnel engaged in anti-terrorism activities. She asked whether there were any data on punishment imposed on persons who had committed abuses. It was of particular concern that the Commission on Human Rights did not have the power to prosecute or to authorize detention of suspects under the Human Security Act. What was the Government doing to ensure that the Commission remained independent and why was it covered by the Act?

23. There was a lack of provisions on command responsibility in the Human Security Act. In the case of Gemma Lape, who had been threatened with death after being arbitrarily arrested and

detained, police officers could not be held accountable because of the principle of “presumption of regularity”. Did that principle provide immunity to members of the security forces or could they be held accountable?

24. She acknowledged the proposed Magna Carta of Women, but asked whether specific legislation to address gender-based torture and ill-treatment would be drafted and whether there had been any prosecutions in that regard. There were allegations of widespread abuse of female detainees. What steps were being taken to ensure that women could report such abuse without fear of retribution? She asked the delegation to comment on the case of Angelina Bisuna De Ipong, which was detailed in the International Federation for Human Rights report. The World Organization against Torture report stated that there were cases of girls being forced to serve as “comfort women” in military camps and forced into prostitution, and she invited the delegation to comment.

25. With regard to trafficking, progress had been made in that 11 persons had been convicted. However, she asked whether any measures had been taken to tackle the organized crime syndicates engaged in trafficking.

26. She requested clarification as to whether there was a law that classified acts of domestic violence as specific offences under the criminal law. The results achieved in the area of violence against women were remarkable and more victims were coming forward. She requested information on the resulting prosecutions.

27. With regard to non-refoulement, she asked whether article 3 of the Convention was explicitly covered in the State party’s bilateral extradition treaties, and, if not, why not, as the issue had been brought to the State party’s attention during the consideration of its initial report.

28. While the Human Security Act banned extraordinary rendition, reports indicated that it might have occurred.

29. Article 4 of the Convention required acts of torture to be classified as offences under criminal law and a question had been raised on the existing criminal provisions in the list of issues.

30. Civilians were used by the armed forces in the form of the Citizens’ Armed Forces Geographical Units, and she asked what command responsibility the Government and armed forces held for abuses committed by civilians acting in the name of the Government.

31. In summary, the main problems included the late reporting on obligations, the lack of laws specifically prohibiting torture, the broad definition of terrorism, the lack of legal safeguards, the absence of an independent body to investigate and monitor violations, repeated allegations of arrests without a warrant, sexual violence, trafficking and violence against women, the apparent impunity of officials in the army and police forces, and documented cases of torture, including the list from the Forensic and Medical Division of the Commission on Human Rights. How many individuals had been convicted and punished in relation to those cases and what kinds of punishment had been imposed?

32. Mr. WANG Xuexian, Alternate Country Rapporteur, referring to article 4 of the Convention, said that when the Committee had considered the initial report of the Philippines, it had deemed the punishment of offenders in certain torture cases to be too lenient. He asked whether the situation had improved.
33. The Committee supported the Commission on Human Rights in pressing for an evaluation of the impact of training programmes.
34. While the statement by the delegation indicated that conditions in jails and detention centres were being improved, more needed to be done. He asked the delegation to indicate whether lengthy pretrial detention was a factor in the occurrence of torture in the country. A study by the Supreme Court had found that the duration of the average trial was three years.
35. According to the replies to the list of issues, some male personnel were still assigned to women's detention facilities for security purposes. However, NGOs reported that some male personnel were also allowed to supervise female detainees and even to carry out body searches.
36. He asked why the Commission on Human Rights was sometimes prevented from visiting detention centres, especially those run by the military.
37. With regard to articles 12 and 13, according to Karapatan (Alliance for the Advancement of People's Rights) there had been over 1,000 victims of torture between 2001 and 2009. Was the Government aware of that situation and, if so, had it taken action to investigate those cases? On his visit to the Philippines in 2007, the Special Rapporteur on extrajudicial, summary or arbitrary executions had stressed the link between impunity and the absence of an adequate witness protection programme. An NGO had informed the Committee that three witnesses had been killed recently, and he asked whether the delegation was aware of that report and could provide further information.
38. He asked whether the Government envisaged setting up a body independent of the police and military to investigate allegations of torture.
39. With regard to article 14 on compensation, the State party had reported that 22,469 applications for compensation had been granted between 1992 and June 2006, and he asked whether any of those applications had been from victims of torture or other ill-treatment. If so, were investigations into those cases conducted and the perpetrators punished? He requested the delegation to comment on the statement by civil society organizations that they were not aware of any torture victim being awarded compensation.
40. As to article 15, in the Philippines any statement proven to have been obtained through torture was inadmissible; according to the Supreme Court, however, the burden of proof rested on the victim. The State party should share the burden of proof because under the Convention it was obliged to ensure that such statements were not invoked in any proceedings. He requested the delegation to comment on the issue. He also asked the delegation to comment on the 2005 and 2006 reports of the Secretary-General on children and armed conflict, which listed the Philippines as one of the countries where grave violations against children had been documented.

41. In relation to counter-terrorism and the prevention of torture, the Special Rapporteur on the promotion and protection of human rights while countering terrorism had expressed reservations about the Human Security Act because its definition of terrorism was, in his opinion, “overly broad” and at variance with the principles of legality, while the strict application of a penalty of 40 years’ imprisonment might undermine judicial discretion in individual cases and result in disproportionate punishment.

42. He requested the delegation to comment on the allegations of large numbers of extrajudicial killings.

43. Ms. SVEAASS, noting that there were large numbers of overseas Filipino workers, especially women, requested information on any programmes being developed in collaboration with receiving countries.

44. The Philippines had a low age of criminal liability and she asked what steps were being taken to reform the juvenile justice system.

45. With regard to the Human Security Act, even in cases where a judge found that torture had taken place, it was difficult to bring proceedings because of the lack of legal provisions.

46. Training was crucial to ensuring that legal safeguards were respected and she asked whether there had been any follow-up to the training programmes on the Istanbul Protocol. The Commission on Human Rights had reported on a number of cases of torture using the Istanbul Protocol, and she asked to what extent doctors had been able to use the Protocol to file complaints or substantiate allegations of torture.

47. While some NGOs worked on the rehabilitation of torture victims, she asked whether the Government was developing any such programmes and stressed the importance of prevention programmes.

48. How could the security situation of human rights defenders be improved? Medical personnel were possibly doing less than they could to document cases of torture for fear of jeopardizing their own safety.

49. Mr. MARIÑO MENÉNDEZ enquired whether any unannounced visits were being made to prisons and detention facilities as a means of monitoring and control. If so, were the visits made by judges or other public officials and were records of such visits kept? He also asked whether records were kept of all detentions, including detentions by military police or forces and by intelligence services.

50. The Committee had received reports that at least 10 judges had been assassinated since 2001. Obviously, such killings were an intimidation tactic aimed at promoting impunity. He asked whether those cases had been investigated and prosecuted.

51. Information provided to the Committee also indicated that individuals who made confessions under duress were often compelled to sign a statement affirming that they had not been subjected to torture and waiving their right to lodge a complaint of torture. The burden of proving that torture had occurred was thus shifted to the victim, particularly if the torture had been inflicted by a public official acting under orders from a superior. He would like to know

whether Philippine law sanctioned such acts of violence when committed by an individual acting under orders. He would also like to know whether torture victims were required to undertake a separate civil proceeding - apart from the criminal proceeding in which it had been determined that they had been subjected to torture or inhuman treatment - in order to receive compensation.

52. Lastly, he sought additional information about the “Access to justice for the poor” project and about services for the reintegration of Philippine emigrants. In relation to the latter, he was interested specifically in services provided to women.

53. Mr. KOVALEV asked when the Magna Carta of Women bill, mentioned in the State party’s UPR report (A/HRC/WG.6/1/PHL/1), might be adopted and requested information on the content of the bill. He wondered what principles of international law, in particular those enshrined in the Convention on the Elimination of All Forms of Discrimination against Women, were included in the bill.

54. Ms. KLEOPAS said that the absence of a legal definition of torture in Philippine law hindered the protection of people from torture. She urged the State party to address that lacuna as quickly as possible. She also wished to emphasize that all States parties had an obligation to investigate any reasonable allegation of torture, even if no official complaint had been filed. The Committee had heard many allegations of torture from NGOs the previous day. The State party should investigate those allegations promptly and impartially.

55. Mr. GAYE expressed concern about the State party’s slow progress in incorporating the provisions of the Convention into its domestic legislation. The lack of a definition of the crime of torture was especially worrying. He requested clarification of the provisions of Republic Act 7,055, mentioned in the State party’s report. In particular, he wished to know what specific offences committed by military personnel could be tried in civilian courts. With regard to Republic Act 7,438, he enquired whether that legislation provided for contact between detained persons and their families. If so, how soon could that contact be made?

56. It was his understanding that the Ombudsman had exclusive power to institute legal proceedings in respect of offences committed by public officials, including members of the military. If that was indeed the case, he wondered what recourse was available to citizens in the event that the Ombudsman declined to take action on a complaint against a public official. He requested information on the resources available to the staff of the Office of the Ombudsman to enable them to perform their work and statistics on the number of cases prosecuted, particularly cases involving complaints against military or paramilitary personnel.

57. He would like more information on how, specifically, witnesses were protected and on what safeguards were in place, including both personal and legal safeguards, to ensure that members of the Commission on Human Rights of the Philippines could carry out their work with complete independence.

58. Ms. BELMIR said that, although the State party had an impressive judicial framework, there appeared to be some deficiencies, particularly with regard to the treatment of children. The Committee had received reports from NGOs that children were being held in adult prisons and subjected to torture and other forms of abuse. She would like to hear the delegation’s comments on those allegations. There also appeared to be a lack of precision concerning the roles of

civilian and military judges. She would like to know how their roles differed, overlapped or complemented one another, and whether the boundaries between civilian and military justice were clear.

59. The Committee had also heard reports of arrests without a warrant, a practice which was incompatible with the rule of law. She enquired how widespread the practice was, whether a shortage of judges had made it necessary to allow it, and what controls and safeguards existed to prevent abuses.

60. She expressed concern about the numbers of Philippine women being subjected to violence and underscored the need for better treatment of women.

61. The CHAIRPERSON requested the delegation's views as to why the Philippines had still not legally defined or criminalized torture. He wondered what obstacles were preventing the State party from fulfilling its obligation to incorporate the provisions of the Convention into domestic law and what the Committee might do to help it overcome those obstacles.

62. Like Mr. Wang Xuexian, he was troubled by the 2004 Supreme Court ruling that a person who made a confession bore the burden of proving that that confession had been obtained under duress. That ruling raised serious concerns in relation to the State party's compliance with article 15 of the Convention. It also appeared to run counter to the Philippine Constitution.

63. He was concerned at reports of enforced disappearances. Such acts were violations of the Convention with respect not only to the victims but also to their family members, as the anguish they would suffer as a result of the disappearance of their loved one could be considered cruel and inhuman treatment. He asked what measures were being taken to combat the phenomenon. For example, were enforced disappearances investigated, had special prosecutors been appointed to deal with cases, and were photographs of victims circulated throughout the country? He also requested information on the status of Senate Bill 1,489, which would criminalize enforced disappearance; the Bill had been submitted in 2006 but had yet to be adopted.

64. Lastly, he enquired whether the resources available to the Commission on Human Rights were sufficient and whether they had increased over the years.

65. Mr. ERMITA (Philippines) said that his delegation would be pleased to answer the Committee's questions, but would need some time to organize its remarks. Written responses would be provided to any questions that members of his delegation were unable to address orally. He assured the Committee that he would convey to elected officials and members of Congress in the Philippines its concerns regarding needed legislation.

66. The CHAIRPERSON said that the Committee would look forward to continuing its dialogue with the delegation in due course.

The public part of the meeting rose at 12.05 p.m.