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PHILIPPINES

Torture persists: appearance and reality within the criminal justice system

I. Introduction

The persistence of torture and ill-treatment in the Philippines today, despite the broad array of legal and institutional human rights safeguards instituted since the ousting of former President Ferdinand Marcos in 1986, highlights a serious discrepancy between the law and its application within the criminal justice system by law enforcement agencies.

Amnesty International believes that this gap between law and practice helps sustain a continuing *de facto* climate of impunity that shields the perpetrators of torture and other grave human rights violations from prosecution and conviction.

The use of torture and ill-treatment by law enforcement officers is a serious crime in itself. It also compromises the right to a fair trial and the integrity of the justice system. The gravity of its effects is exacerbated because the Philippine criminal justice system allows for the death penalty. With criminal prosecutions likely to be poisoned by coerced ‘confessions’ and the forced identification of ‘accomplices’, there is an intensified risk that a person who has suffered torture, and who may be innocent, will be executed.

Techniques of torture documented by Amnesty International in recent years, including electro-shocks and the use of plastic bags to suffocate detainees, mirror those recorded in the 1970s and 1980s. As in the past, those most at risk include alleged members of armed opposition groups, their suspected sympathisers and ordinary criminal suspects. Members of poor or marginalised communities, including women and children who are suspected of committing criminal acts, are also particularly vulnerable.

On paper many of the critical elements necessary for the prevention of torture and other grave human rights violations are already in place. The Philippines has ratified the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other key human rights standards. The 1987 Constitution guarantees that no person shall be held to answer for a criminal offence without due process of law, prohibits torture and bans secret places of detention. The rights of the accused, and procedures to ensure respect for due process and fair trial, are enshrined in law along with penalties for their violation. Complaints bodies, including the Philippine Commission on Human Rights (PCHR) and the Office of the Ombudsman, receive and investigate complaints of human rights violations and can recommend criminal prosecutions. The judiciary, headed by the Supreme Court, is constitutionally independent of other branches of government, mandated to uphold constitutional principles, ensure the delivery of justice and provide redress. Freedom of expression is largely respected and helps sustain a lively free press and vigorous civil society. Yet torture persists, constituting one of the most serious assaults on the principle of respect for human dignity.

Due to the subject at hand, and the interlocking and mutually re-enforcing nature of many practices which contribute to the crime of torture, this report is necessarily lengthy.¹ It will examine the incidence of torture, and present illustrative case studies that focus on particular vulnerable groups. The report will track the sequence of events that follow an arrest and detention of a criminal or other suspect and so describe the circumstances that facilitate the use of torture. It will illustrate how fundamental rights and safeguards can be flouted by law enforcement officers from early stages of the arrest and investigation process; how an atmosphere of fear and intimidation is engendered, and how these factors combine to have a cumulatively damaging effect on a victim's ability to lodge a complaint which will lead to an effective investigation.

The report will also describe the effects of the evidentiary requirements placed on human rights victims who complain of torture, and outline the obstacles faced by the PCHR and other bodies in investigating these complaints and in recommending the criminal prosecution of alleged perpetrators. While acknowledging that proving a criminal charge against an alleged perpetrator of torture, as for any suspect, requires proof beyond reasonable doubt, the report will examine how the burden of proof placed on the victim, within a context of intimidation and fear of reprisals, often creates insurmountable obstacles blocking their search for justice and redress.

The wider effects of impunity will be explored. On the one hand, perpetrators of torture appear to believe that they are unlikely to be punished. They are aware that criminal convictions of law enforcement officers accused of torture are extremely rare and that administrative sanctions tend to be short-lived. They have few qualms about threatening further reprisals if a victim attempts to pursue a complaint. With no compelling incentive to change their behaviour, patterns of violations persist. Many law enforcement officers believe also that 'third degree' interrogation methods are a necessary part of crime fighting, or of intelligence gathering in the context of counter-insurgency operations. Police officers under mounting pressure to solve crimes and themselves lacking confidence in the judicial process are not deterred from using torture as a short-cut to extract confessions and thereby secure a conviction. Due process is regarded as an impediment to effective crime fighting – despite the fact that the current widespread flouting of fair trial safeguards appears not to have had a significant impact on high crime rates.²

On the other hand, the use of torture and other violations of the right to a fair trial by law enforcement officers is tacitly supported by wide sections of the public who have lost faith in the ability of the justice system to protect them from violent crime and to bring those guilty of the most serious offences to account. Setting aside repeated reports of corrupt police

¹ The findings of the report is based on information collated from a number of sources, including sworn statements of detainees recorded by Philippine human rights and legal groups, the Philippine Commission on Human Rights and others, and from personal interviews conducted by Amnesty International representatives during successive visits to the Philippines between 1997 and 2002. Interviews were also conducted with human rights lawyers, public defenders, prosecutors, medical personnel and groups working on behalf of vulnerable groups, including women and children.

² Directorate for Investigation and Detective Management of the Philippines: Overall Crime Volume Statistics: 1995 – 79,248; 1996 – 76,915; 1997 – 71,080, 1998 – 71,575; 1999 – 82,538; 2000- 80,108 2001 – 76,991.

officers with direct links with criminal syndicates, many ordinary citizens view torture of criminal suspects as necessary to secure convictions and to ensure that punishments- either imprisonment or the death penalty- are applied.

Amnesty International believes that torture and the procedural failings that facilitate it must now be confronted and emphatically condemned, not least because the administration of President Gloria Macapagal Arroyo has responded to deep public frustration at high crime levels by pledging to get 'tough' on criminals.

In June 2002, Amnesty International warmly welcomed the launch of the Philippine "United Against Torture Coalition" made up of over 25 organizations including human rights, legal, political and academic groups. The Coalition seeks to combat the practice of torture by raising public awareness and debate, by supporting the drafting and passage of a Congressional Anti-Torture Bill and by documenting the practice and the victims of torture today.

Amnesty International has also welcomed government policy initiatives, especially regarding safeguards protecting women in custody, related to torture and the administration of justice. Within a judicial reform program directed by the Supreme Court, efforts are underway to improve access to justice by disadvantaged groups – including through enhanced human rights training within the justice system and by strengthening the Public Attorney's Office (public defenders, PAO) and improving legal aid for vulnerable groups. In addition, during 2002 a series of regional workshops brought together judges, prosecutors, public defenders and elements of civil society to formulate guidelines for the handling of torture cases and for the identification of policy needs. These efforts are reflected in Congress, where, in addition to a draft bill against torture³, a number of bills have been filed calling for an expansion of the capacities of the Philippine Commission on Human Rights⁴ (PCHR) and the Public Attorney's Office⁵ and for the strengthening of the rights of those accused of criminal offences.⁶

In light of the findings of this report, Amnesty International believes that such initiatives are urgently needed. The goal is an environment where there is no place for torture and where professionalized law enforcement agencies, adequately resourced and trained in professional and human rights standards, are fully respectful of human rights and the rule of law. Only then can the challenge of criminality be truly confronted and public confidence in the administration of justice restored.

1.1 Historical Context

The '*People's Power*' uprising and ousting of President Marcos and accession of President Corazon Aquino in 1986 led to the restoration of democracy, revival of a free press and the adoption of wide-ranging constitutional and legislative human rights safeguards. The non-governmental organization (NGO) community became increasingly vibrant and broad-based.

³ House Bill 2855 Rep. Loretta Ann P. Rosales "Penalizing the commission of acts of torture..."

⁴ House Bill 4221 Rep. Loretta Ann P. Rosales "Strengthening the functional and structural organization of the Commission on Human Rights..."

⁵ House Bill 178 Rep. Gilberto C. Teodoro: "Reorganizing and strengthening the Public Attorney's Office..."

⁶ House Bill 184 Rep. Gilberto C. Teodoro "Providing for the rights of the accused and persons under investigation for the commission of a crime..."

However, these positive developments did not lead to the elimination of torture or an erosion of a climate of impunity shielding perpetrators. The armed forces stepped up an anti-insurgency strategy against the armed opposition group, the New People's Army (NPA) which combined military operations with action against the movement's mass base, including members of legal NGOs and other organizations suspected of being communist "sympathisers". High levels of torture remained commonplace.

In 1992, the newly-elected government of President Fidel Ramos, a former army chief, announced a policy of national reconciliation, and initiated a peace process with the NPA and the Muslim Moro National Liberation Front (MNLF). Peace agreements were eventually reached with the MNLF and peace negotiations began with the NPA. An official amnesty for right-wing military groups responsible for repeated coup attempts reinforced a wider climate of impunity.

The reinforcement of an existing climate of impunity became increasingly evident in relation to the Philippine National Police (PNP).⁷ Former Philippine Constabulary officers accused of torture and other human rights violations, and some closely associated with RAM⁸, occupied increasingly senior positions within the PNP. At the same time, rising rates of violent crime and the seemingly unchecked activities of criminal kidnapping and drugs syndicates, increased public fear and frustration. The apparent inability of the police and criminal justice system to maintain law and order and to deliver justice in the face of what was perceived as spiralling crime rates increased pressure for a tough government response – notwithstanding repeated reports and revelations that corrupt police officers were directly linked to criminal syndicates. During the 1990s, the Philippine Commission on Human Rights (PCHR) recorded annually that an increasing majority of complaints of human rights violations involved the PNP, not the AFP.

In 1998, former Vice-President Joseph Estrada, standing on a populist 'pro-poor' platform and pledging to crack down on crime, was elected President with a strong electoral mandate. As Vice-president, Estrada had headed a special task force on crime which was reportedly linked to the apparent 'salvaging'⁹ of prominent suspected criminals. President Estrada promoted General Panfilo Lacson, the senior officer of this unit, to Director of the PNP.

⁷ In 1990, the Philippine Constabulary was merged with ordinary police units (the Integrated National Police) to form the Philippine National Police (PNP).

⁸ RAM - *Rebolusyonaryong Alyansang Makabansa* (Revolutionary Nationalist Alliance). At the centre of the military coup attempt that preceded the popular ousting of President Marcos, RAM officers (many graduates of the Philippine Military Academy Class of 1971) were linked to sustained patterns of the most grave human rights violations – notably while serving in army and constabulary intelligence units.

⁹In the Philippines, to 'salvage' mean to extra-judicially execute. It is a colloquial term derived from the Tagalog "*salbahe*" meaning to do something 'cruel or savage with cunning'.

Citing the need to confront increasing criminality, the Philippines had also moved against worldwide trends by re-introducing the death penalty¹⁰ in late 1993. It had previously been abolished through the 1987 Constitution. Executions resumed in 1999 after a period of 23 years, and seven men were executed by lethal injection before former President Estrada announced a suspension of executions in early 2000. Amnesty International expressed its fundamental opposition to the death penalty, and outlined its concerns about flaws in the criminal justice system - particularly those facilitating torture - which posed a grave risk that miscarriages of justice that might lead to the execution of an innocent person.¹¹

In 1999, the executions were carried out of four prisoners who had made credible complaints of torture following their arrests.¹² One of the men, Dante Piandong, described to Amnesty International representatives in 1997 how he was beaten and subjected to the 'water cure'¹³ and to electric shocks to his genitals in order to force him to confess to a robbery in which a policeman was shot dead. He also alleged that he was not represented by a lawyer during his custodial investigation and inquest procedure (see 'The Inquest Procedure' page 13). No investigations were believed to have been carried out into the four men's claims of torture before their executions, in clear breach of the Philippine obligations under the UN Convention against Torture.

In early 2000, tensions in Mindanao intensified as President Estrada broke off peace talks with the Islamic separatist Moro Islamic Liberation Front (MILF) and ordered 'all-out war' to capture MILF communities/camps¹⁴ in central Mindanao. During the course of the year at least 400,000 civilians were reported to have been internally displaced in the face of intensive military operations, including artillery bombardments. Reports of human rights violations including extra-judicial executions, 'disappearances' and torture emerged (see Mati case study, page 40).

After corruption scandals and large-scale popular demonstrations in Manila led to the resignation of President Estrada in January 2001, former Vice-President Gloria Macapagal Arroyo took office. President Arroyo resumed peace talks with the MILF and the CPP-NPA. Formal peace talks with the CPP-NPA were suspended in June 2001 and in September 2002 'Operation Gordian Knot' was launched with the objective of 'wiping out' the NPA.

¹⁰ Under Republic Act (RA) 7659, known as the death penalty law, the death sentence may be imposed for a total of 46 different offences, 23 of which incur a mandatory death sentence.

¹¹ Amnesty International, Philippines: 'The Death Penalty: Criminality, Justice and Human Rights' 1997 (AI Index: ASA 35/09/97)

¹² Pablito Andan, Dante Piandong, Jesus Morillos and Archie Bulan. In the case of the latter three men, the executions went ahead despite a submission on their behalf to the UN Human Rights Committee under the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR). In Communication No 869/1999, the Committee concluded that the Philippines committed a grave breach of its obligations under the Protocol by executing the men before the Committee had concluded its consideration of the submission. A Committee member drew particular attention to the fact that the three men were not assisted by a lawyer from the earliest stages of the investigation until their trial - as is required for all suspects under the ICCPR.

¹³ His face was covered with a towel and water poured into his mouth.

¹⁴ The designation of areas as either 'camps' treated a military targets or 'communities' consisting of primarily civilian settlements is contested and often unclear.

Stating that she was not in favour of executions, Arroyo commuted at least 18 death sentences. However, in October 2001, she announced a change of policy, saying that the government needed to “strike fear into the hearts of criminals” and that those convicted of kidnapping for ransom and other offences should be put to death. At least three of 20 prisoners, whose sentences are among at least 80 confirmed by the Supreme Court, were due to be executed in 2002.¹⁵ In late 2002 Arroyo announced a moratorium on the death penalty until a bill on abolition was debated before Congress.

‘Peace and order’ re-emerged as a major government priority as a series of abductions in south-western Mindanao by Abu Sayyaf members (a Muslim separatist group engaged primarily in criminal kidnapping for ransom) continued (see Basilan case study, page 55). At the same time, kidnappings and other serious crimes conducted by criminal syndicates elsewhere in the Philippines continued to fuel a sense of public insecurity and outrage. In mid-2002, President Arroyo ordered the creation of special police units to use ‘military-style’ tactics to target suspected kidnap for ransom gangs. In violation of suspects’ rights to a fair trial, she also attended the public presentation of kidnap suspects, who had not yet been tried, in front of the media as a signal that her administration was determined to get tough on crime.

1.2 International provisions related to torture

The Philippines has acceded to and is bound by the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture. As enshrined by Article 7 of the ICCPR and other standards,

“no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.¹⁶

In General Comment 20 on Article 7, the Human Rights Committee has stated “it is not sufficient for the implementation of article 7 to prohibit such treatment of punishment or make it a crime”. The General Comment refers to the need to prevention, investigation, punishment and reparation.

By ratifying the Convention against Torture, the Philippines has agreed to be legally bound by its provisions, and to “take effective legislative, administrative, judicial and other measures” to prevent torture in any territory under its jurisdiction”.¹⁷

As part of its preventive measures, State Parties to the Convention against Torture have a duty to instigate prompt, thorough and impartial investigations whenever there are reasonable grounds to believe an act of torture has taken place, and are obliged to ensure that any individual who alleges torture has a right to complain, and to have the case heard

¹⁵ According the Free Legal Assistance Group (FLAG) by June 2002 there were 1,007 prisoners, including 28 women, on death row at the National Penitentiary at Muntinlupa and at the Correctional Institution for Women in Manila. Eighty-six prisoners had had their death sentences confirmed by the Supreme Court.

¹⁶ ICCPR - Article 7; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) - Principle 6.

¹⁷ Convention against Torture - Article 2 (1).

promptly and impartially.¹⁸ The duty to investigate is not dependent on a formal complaint by a detainee¹⁹ (see ‘Custodial Investigation’ page 13).

Rights of detainees and fair trial standards

To safeguard the rights of detainees, including their right to fair trial, international standards specify that:

- Anyone arrested or detained must be notified at once of the reasons for their arrest or detention and of their rights, including their right to counsel.²⁰
- Everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to assist in their defence.²¹
- Detainees are entitled to prompt access to families, doctors and a judicial official.²² Experience has shown that access to the outside world is an essential safeguard against human rights violations, including torture, and vital to the process of obtaining a fair trial.

1.3 Torture Continues

Despite international and domestic legal safeguards, torture in the Philippines continues to be a widespread practice. Over the past three decades the consistency of the specific techniques of torture has been marked. Since 1995, in affidavits and in interviews with both ordinary criminal suspects and those arrested in the context of anti-insurgency operations, techniques of physical and mental torture recorded by Amnesty International and Philippine human rights groups²³ have included:

- Placing a plastic bag over the head of the detainee and holding it tightly at the back to induce suffocation (known as “dry submarine” or “*sinupot*”²⁴).
- Giving electro-shocks either directly onto the skin, or with water poured over the body and bare electric wires touched against the genitals, lips, ears, arms or legs.

¹⁸ Convention against Torture - Article 13.

¹⁹ Convention against Torture - Article 12.

²⁰ ICCPR - Article 9(2).

²¹ UN Basic Principles on the Role of Lawyers - Principle 1: “All persons are entitled to call on the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”.

²² UN Body of Principles - Principle 19; ICCPR - Article 9(3).

²³ Task Force Detainees of the Philippines (TFDP), Karapatan, doctors from the Medical Action Group (MAG), Free Legal Assistance Group (FLAG) and other non-governmental organizations (NGOs) and legal groups.

²⁴ “*sinupot*” – a colloquial term meaning to be “bagged”.

Suspects have also been forced to put their feet in pails of water while an electric current is passed through the water.

- Placing or tying a cloth over the face of the detainee and pouring or dripping water over the cloth to create gradual suffocation (known as “water cure”). At times, interrogators have simultaneously stood, or placed weight on the stomach, to intensify suffocation. Water may also be poured directly into the nostrils or mouth, or the detainee’s head forced down toilet bowls or into water containers.
- Assault, including being punched with fists (at times with bullets held between the interrogator’s fingers), beaten with rifle-butts or batons which may be wrapped in newspaper or other material (known as ‘mauling’). Beating is often concentrated on the stomach area, which tends not to leave such visible bruising as elsewhere on the body.
- Burning the skin (including the lips, nipples and ears) with cigarettes.
- Placing bullets between the fingers and squeezing tightly.
- Placing pistol or rifle barrels against the detainee’s head or in his or her mouth and threatening the suspect threatened with death while discharging firearms nearby.
- Repeatedly hitting the detainee’s fingers and toes with metal pipes or gun barrels.
- Tying the detainee’s neck tightly with nylon rope. Sometimes plastic bags have also been wrapped around the detainee’s head using masking tape.
- Forcing the suspect to drink excessive amounts of water or other liquids.
- Placing chilli peppers on the suspect’s eyes or genitals, or inserting the detainee’s penis into bottles containing gasoline mixed with chilli.

1.4 The Death Penalty

International standards take on an even greater importance in those countries, including the Philippines, which apply the death penalty.²⁵ Amnesty International is unconditionally opposed to the death penalty as the ultimate cruel, inhuman or degrading punishment and a violation of the most fundamental of human rights - the right to life.

In view of the irreversible nature of executions, trials in capital cases must scrupulously observe all the international standards protecting the right to a fair trial. All safeguards and fair trial guarantees set out in international standards applicable to pre-trial, trial and appellate stages must be fully respected.²⁶

While encouraging the abolition of the death penalty,²⁷ international safeguards state that the death penalty should only be imposed when the guilt of the accused person is, “based

²⁵ In late 2002 President Arroyo ordered the suspension of executions while a bill on abolition was before Congress.

²⁶ UN Human Rights Committee General Comment 6, para. 3.

²⁷ The UN Commission on Human Rights stated that the “abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights” and has “[c]all[ed] upon all states that still maintain the death penalty... to establish a moratorium on

on clear and convincing evidence leaving no room for an alternative explanation of the facts”²⁸.

The UN Human Rights Committee takes the position that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the ICCPR had not been respected and which could no longer be remedied by appeal, would constitute a violation of the right to life.²⁹

2. Torture during pre-trial detention: law and practice

The rights of people who have been taken into custody in the Philippines are defined and protected in the Constitution, various laws³⁰ and an extensive array of executive orders and administrative circulars or codes, including the Police Manual. There are also provisions providing means of financial redress or compensation to victims of unlawful detention.³¹ These safeguards are designed to protect potential victims and to minimise the opportunities and conditions that may facilitate the incidence of torture.

The following sub-sections will examine the safeguards provided at arrest and during investigation while in custody, and those ensuring that a detainee is brought promptly before a proper judicial authority. The sub-sections will describe how, in practice, procedural safeguards repeatedly break down or are wilfully ignored. In particular, the period of ‘custodial investigation’³² after an arrest without a warrant will be shown to be a critical time when the risk of torture is at its highest. The use of torture to extract forced confessions is an unfortunate feature of the custodial investigation period.

The report will go on to recommend that the gap between law and practice in the Philippines be closed through the effective implementation of detailed custodial safeguards set out in human rights laws and standards, notably the ICCPR, Convention against Torture,

executions, with a view to completely abolishing the death penalty” Resolution 2002/77, adopted on 25 April 2002.

²⁸ UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

²⁹ UN Doc. CCPR/C/47/D/282, para 10.6, *Kelly v. Jamaica*, (253/1987), 8 Apr 1991, Report of the HRC, (A/46/40), 1991, paras. 7 and 5.14.

³⁰ The 1987 Constitution (Bill of Rights), various laws including Republic Act 7438,³⁰ the (Court) Rules on Criminal Procedure.

³¹ Republic Act 7309 – ‘An Act creating a Board of Claims for victims of unjust imprisonment or detention and victims of violent crime’ which covers those who are unjustly accused, convicted then acquitted; those unjustly detained and released without charge; those victims of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the Court; and victims of violent crime.

³² ‘Custodial investigation’ includes interrogation after arrest, and interrogation after a person is requested for questioning by police: ‘Custodial investigation is a stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who has been taken into custody by police who carry out a process of interrogation that lends itself to elicit incriminating statements’ (People v Lim 196 SCRA 809).

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles on Detention), the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) and the Declaration on the Protection of All Persons from Enforced Disappearance (Declaration on Enforced Disappearance).

2.1 Arrest

Procedures of Arrest

Philippine law and jurisprudence defines an arrest as an actual restraint of a person, or when he or she submits to the custody of a law enforcement officer. There are two procedures for arrest: with a warrant and without a warrant.³³ The first procedure involves information and evidence being provided to the authorities and a summons being made for the suspect to attend court and answer the charges. The second procedure provides for arrest without warrant and detention for up to 36 hours. In a specific procedure called an ‘inquest’ which applies only to warrantless arrests, the fiscal (public prosecutor) assesses evidence and decides there is enough information to continue.

Use of force at arrest

No violence or unnecessary force is permitted in making an arrest, and the person arrested must not be subject to any greater restraint than is necessary for detention. At the time of an arrest, it is the duty of the arresting officer to inform the suspect of his or her rights and of the reasons for arrest.

Despite these safeguards, in interviews with convicted criminals on death row at the National Penitentiary and with inmates in city jails facing non-capital charges, Amnesty International found that it is routine practice for law enforcement officers to ‘maul’³⁴ suspects immediately after arrest, partly to assert their authority and to instil fear but also to inflict immediate punishment and to disorientate the accused in preparation for interrogation.

Detainees described common characteristics of arrest procedures: suspects are often picked up by unidentified men in plain-clothes without warrants. They are then quickly handcuffed, punched and kicked and forced into waiting vehicles. It is extremely rare, at this stage, for suspects to be informed of the reasons for their arrest or of their rights. Rather, they are often blindfolded with masking tape or cloths, before being taken to police headquarters, local police precincts, or, in some instances, to secret places of detention.

Though secret places of detention are specifically prohibited in the Constitution and the law, suspects continue to report being taken to unauthorised places of detention including motel rooms, unidentified ‘offices’, which may or may not be within major police or military camps, and other secret locations known locally as “safe-houses”.

33 Under Rule 113 (Section 5) of the Rules on Criminal Procedure, an arrest without a warrant by an officer or a private person is lawful,

“(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offence;

(b) When an offence has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested had committed it...”

³⁴ ‘Mauling’ – a colloquial term meaning to beat up or to violently man-handle.

The use of force and intimidation by law enforcement officials often means that unofficial requests (known locally as ‘invitations’) for questioning are actually warrantless arrests.

Those arrested without warrant are often particularly at risk. Amnesty International is concerned that warrantless arrests may be used unlawfully— in that they are *not* effected as, or immediately after, a crime is committed. In interviews with alleged torture victims, both ordinary criminal suspects and those arrested in the context of anti-insurgency operations³⁵, a common pattern is that they had been arrested or ‘picked up’ without a warrant at a time or place distant from the alleged offence. Law enforcement officers appear to prefer this method of arrest because the procedures which follow warrantless arrest remove the impediment of judicial scrutiny at a critical period of the criminal investigation, and permit the conditions by which the suspect can be coerced to provide information. Such pressure ranges from verbal intimidation to extreme physical torture.

Case Study: Edgar Maligaya³⁶

On 20 January 1996, Edgar Maligaya, then a 28-year old former prisoner on parole, was arrested by unidentified plainclothes police at Manila City Jail where he used to return regularly as a volunteer guitarist in the prison chapel. In interviews with Amnesty International, Edgar Maligaya alleged the officers had presented a warrant, but that it was a copy of a earlier warrant against him and not signed by a judge. Edgar Maligaya described how during arrest he had been blindfolded, punched and pushed into a car where his head was held down between the front seats.

³⁵ Constitutional rights in respect to searches and arrests in the context of counter-insurgency operations have been interpreted restrictively in a number of Supreme Court decisions including *Valmonte v. de Villa* (178 SCRA 211); *Guazon v. de Villa* (181 SCRA 6230); *People v. Tejada* (170 SCRA 497); and especially *Umil v. Ramos* (202 SCRA 251). In the latter case, the Supreme Court upheld *inter alia* that subversion or rebellion could be seen as a ‘continuing offence’, thus a warrantless arrest might be lawful even if the suspect was not actively doing anything subversive at that instance. However, such an arrest needed to be based on personal knowledge based on probable cause - an actual belief or reasonable grounds of suspicion linked with good faith on the part of the arresting officer.

³⁶ See full description of the Edgar Maligaya case in “Philippines-The Death Penalty: Criminality, Justice and Human Rights” (AI Index: 35/09/97).

2.2 Custodial Investigation

Detainees are guaranteed a series of rights through the Constitution³⁷ and domestic law.³⁸

Detainees have the right:

- To remain silent;
- To have competent and independent counsel preferably of their own choice, and to be assisted by counsel at all times;
- To be informed of their rights;
- To have visits or conferences with immediate family members or any doctor, priest or minister.

All these rights apply throughout the period of ‘custodial investigation’ - defined as the period following arrest and continuing until such time as a prosecution file (known locally as an ‘information’) is filed in court. These rights cannot be waived, except in writing in the presence of counsel. Officers who fail to inform a detainee of his or her rights; fail to provide competent counsel if the detainee cannot afford his or her own; or obstruct visits by counsel, family or doctors, are liable to prosecution and penalties.³⁹

In practice these rights, safeguards and penalties are repeatedly ignored or rendered ineffective. Those at risk include those arrested in the context of anti-insurgency operations and ordinary criminal suspects, including children and women. Case monitoring by Amnesty International and Philippine NGOs, and surveys conducted by legal groups⁴⁰, has found that,

³⁷ Article 111, s12.

³⁸ Republic Act (RA) 7438 states that the accused, *inter alia*, must be informed of his right to remain silent, that any statement given may be used in evidence against him, and that he has the right to an attorney.

³⁹ RA 7438, s4 a): “Any arresting public officer, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of Peso 6,000 or a penalty of imprisonment of not less than eight years but not more than ten years, or both...”
b) “Any officer who obstructs, prevents...any lawyer...immediate family...any medical doctor...from visiting and conferring privately with him...at any hour of the day...shall suffer the penalty of imprisonment of not less than 4 years and not more than 6 years and a fine of 4,000 peso”.

⁴⁰ See *In Custody of the Law*, LAWASIA Human Rights Committee, Ateneo de Manila University Law School, 1994. Among a series of surveys of detainees conducted nationwide, 53 respondents were surveyed in Manila City Jail. Forty-four stated they had been arrested without a warrant (with 36 not ‘*in flagrante delicto*’); 42 and 41 respectively were not informed of their right to remain silent and their right to counsel; 49 said they were without counsel during investigation; 24 claimed to have suffered maltreatment and 24 stated that they had provided a confession or signed an unknown paper involuntarily.

particularly after unlawful warrantless arrests, suspects are routinely not informed of their rights, are held incommunicado at key stages of their detention and denied access to lawyers, family members and doctors. During such stages they are acutely vulnerable to self-incrimination through ill-treatment or torture.

A consequence of this flouting of procedural safeguards is the serious undermining of the ability of the victim to effect and then preserve the evidence of torture – including medical certificates and a corroborated ‘time-line’ documentary record from arrest to arraignment in court. While first needing to overcome a climate of intimidation and threats of reprisal, the victim then faces formidable obstacles in initiating an effective investigation, especially one that stands a reasonable chance of leading to prosecution, conviction and the provision of redress.

Case Study: Cesar Fortuna

In affidavits and during interviews with Amnesty International representatives, Cesar Fortuna, detained in connection with the 1996 murder of Rolando Abadilla, described how during interrogations a plastic bag was placed over his head and clasped at the neck till he nearly suffocated. He said,

“I struggled and fell to the floor and several men sat on me and pushed me down as another held the plastic bag over my head...this was repeated about three times...I struggled for breath and I thought that this would continue until I died so in the end I agreed to do what they wanted”.

He stated that he was then questioned in detail about the murder of Rolando Abadilla, and subjected to further near suffocation with a plastic bag when he failed to give the desired answers. He described how he was laid down blindfolded, shirtless and face up, on a bench covered with an iron roofing sheet. Ice-cold water was poured over his body, ice placed on his genitals and a wet towel placed over his face and mouth. With an electric wire tied round his toe to act as an ‘earth’, another live electric wire was then touched against different parts of his body, including his face. When he convulsed, he had great difficulty breathing through the wet towel. According to his account given to Amnesty International, his hands and feet were tightly cuffed, and as he convulsed and struggled the metal cuffs cut into his wrist and ankles

He stated that the interrogation and torture ended in the late afternoon of 21 June 1996 when a rice sack was placed over his body and his cuffs changed. He remained in incommunicado detention and was denied access to legal counsel, medical attention or to family members.⁴¹

2.3 The Inquest Procedure

Inquest is a particular procedure which applies only to those arrested without a warrant. It is defined as:

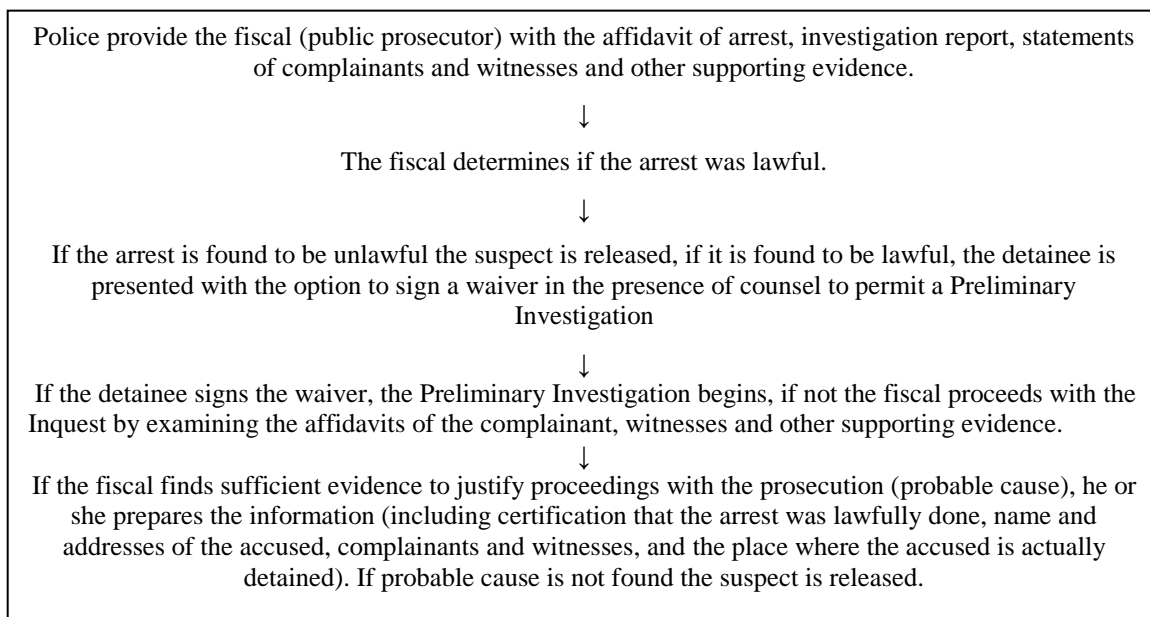
“an informal and summary investigation conducted by a public prosecutor [inquest fiscal] in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or

⁴¹ For more information see “Philippines: The Rolando Abadilla murder inquiry: an urgent need for effective investigation of torture” (AI Index: ASA 35/008/2000, 11 October 2000)

*not said persons should remain under custody and correspondingly be charged in court.*⁴²

By law in the event of an arrest without a warrant, a suspect must be taken to the nearest police station or jail and, following a summary Inquest Procedure, an information must be filed in court within a maximum of 36 hours, depending on the seriousness of the offence.⁴³ This period of police custody can only be extended if the suspect requests a Preliminary Investigation before the information is filed in court.⁴⁴

Chronology of the Inquest Procedure According to Law



While fiscals, as public prosecutors, are part of the executive branch of government, during the summary Inquest Procedure they take on the role of a judicial officer. In theory, the Inquest Procedure provides an opportunity for the fiscal, in the presence of the detainee's

⁴² New Rules on Inquest, Department of Justice Circular No 61, September 21, 1993, Section 1.

⁴³ Article 124 of the Penal Code imposes penalties of imprisonment on officers who arbitrarily detain a person without legal grounds, and (Article 125) who fail to deliver suspects to the proper judicial authority with 12 hours for crimes punished by light penalties, 18 hours for crimes punishable by correctional penalties and 36 hours for crimes punishable by afflictive or capital penalties.

⁴⁴ A suspect arrested without a warrant requesting a Preliminary Investigation must sign a waiver, in the presence of counsel, waiving his rights under Article 125 of the Penal Code to be brought before a judicial authority within 36 hours. By signing the waiver the detainees agrees to remain in custody of the police pending the conclusion, within a maximum of 15 days, of the requested Preliminary Investigation.

lawyer, to determine the lawfulness of the arrest, whether the lawyer had been present during interrogation, what the physical condition of the detainee is and whether any torture and ill-treatment may have been used to coerce any admission or confession. Indeed, while not stated in the New Rules on Inquest, an earlier circular on inquests⁴⁵ clarified that the procedure should be accompanied by a medical examination and reiterated that government policies on torture or any other form of cruel, degrading or inhuman treatment should be fully respected and that the constitutional rights of detainees should be observed at all times.

In practice, the Inquest Procedure all too often becomes a semi-automatic mechanism for the filing of charges. Frequently, the fiscal's role, in practice, is to assess whether or not there is sufficient evidence to move towards trial and conviction, not to safeguard the well-being of the detainee or to rule on the legality of detention. As such, inquests are a major contributing factor to an accumulation of flaws within the administration of justice which undermine the ability of a detainee to complain effectively about torture or ill-treatment and to be afforded a fair trial. It helps explain how impunity is sustained in practice.

While an Inquest procedure within 36 hours after arrest is regarded by many officials, prosecutors and lawyers as representing a proper and prompt intervention of a "judicial authority", Amnesty International is gravely concerned that the Inquest does not constitute implementation of the right to be brought promptly before a judge or other officer as set out in Article 9(3) of the ICCPR⁴⁶ and other international standards.⁴⁷

Amnesty International believes that the inquest fiscal often lacks the requisite independence to act as a proper judicial authority. Amnesty International is also concerned that inquest procedures are frequently little more than a cursory assessment of evidence on paper as, in practice, the fiscal is assessing the viability of the prosecution case. In addition, there is a widespread assumption among police and prosecutors that, following inquest, the physical filing of an information with a Clerk of Court within 36 hours of arrest does indeed represent the fulfilment of detainee's right to be brought promptly before a 'judicial authority'. However, the organization is concerned that, in addition to the failure by fiscals to exercise a

⁴⁵ See New Rules on Inquest - Department of Justice Circular No. 61, 1993. Other documents are required in relation to specific crimes, e.g. in cases of attempted murder, the complainant's medical certificates should be provided.

⁴⁶ ICCPR Article 9(3) "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

⁴⁷ Body of Principles on Detention: Principle 11 "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority..." Principle 37: "A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention... A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody." Declaration on Enforced Disappearance - Article 10(1) "Any person deprived of liberty shall ... in conformity with national law, be brought before a judicial authority promptly after detention."

proper judicial role⁴⁸ during the inquest itself, the actual filing of the information with the Clerk of Court is manifestly not an occasion for the exercise of genuine judicial oversight – but little more than the lodging of paper documentation.

The first time a suspect physically comes before a judge, and is afforded an opportunity to complain to and to be questioned by him or her, may only be at Arraignment (the entry of a plea of guilt or innocence) which, despite certain procedural requirements⁴⁹, in practice can come weeks or even months after the filing of the information.

The Inquest, therefore, constitutes a critical stage of any complaint process. It may be the only opportunity when medical evidence and testimony can be put on record while the alleged torture or ill-treatment is still recent. Yet this opportunity is frequently denied – inflicting often irretrievable damage on the victim's capacity to have his complaint investigated effectively.

Detainees and lawyers have described to Amnesty International how a climate of intimidation often exists when a suspect is brought before the fiscal from police custody. In theory, after a period of incommunicado interrogation, a suspect could use this first opportunity to report torture or ill-treatment, request a medical examination or complain about any illegally extended detention periods. However in practice accused suspects, who are disorientated, intimidated or may have already been psychologically 'broken' by torture, often remain silent, believing that the fiscal, police and any assisting lawyer (frequently state-appointed) may be in collusion.

Detainees also describe how police appear to them to be in a position of overwhelming power, able to threaten criminal suspects that if they complain, demand to see a doctor, or otherwise 'hinder' the inquest procedure they will be made to suffer - either through continued ill-treatment or through the repeated filing of new 'trumped up' charges which would worsen their legal predicament and extend their police custody to an undefined extent.

Amnesty International recognises that many inquest fiscals probe effectively to determine if due process and the rights of the detainees have been upheld and that they call for medical examinations if they suspect the detainee has been maltreated, however, conversely in many cases it appears that the inquest procedure has become a procedural formality misused complicitly by police and fiscals to facilitate the filing of charges.

Additionally, periods of custodial investigation appear to be unlawfully extended beyond the permitted 36 hours through misuse of signed waivers. Amnesty International is

⁴⁸ Body of Principles on Detention: Principle 37: "to decide on the lawfulness and necessity of the detention; to hear any statement from the detainee on his or her treatment during custody."

⁴⁹ Rules of Court 116e: "When the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case is raffled with three days from the filing of the information or complaint. The accused shall be arraigned within 10 days from the date of the raffle. The pre-trial conference of his case shall be held within 10 days after arraignment." 'Raffling' is a process through which it is determined which court or judge is assigned to a case. RA 8493 'An Act to Ensure a Speedy Trial of All Criminal cases....' Implementing Rules, Sec 2. "The arraignment and the pre-trial if the accused pleads not guilty to the crime charged, shall be held within 30 days from the date the court acquires jurisdiction over the person of the accused."

concerned at persistent reports that intimidated or tortured detainees are coerced to sign waivers, or a statement that they have not been ill-treated. Suspects repeatedly report having signed papers without knowing their contents and have no idea whether they were confessions, waivers or statements implicating others. As described above, within an atmosphere of intimidation or perceived collusion between lawyers and police, the requirement for an assigned lawyer to assist the detainee in signing waivers does not act as an effective safeguard.

When suspects eventually appear before a judge at arraignment, perhaps weeks after custodial investigation, any physical marks of torture may have disappeared and medical reports may not have been compiled. Suspects, who then seek to raise the issue of torture at arraignment or during the trial itself, are at a disadvantage. Defence lawyers describe how allegations of torture at this late stage, especially if the victims are ordinary criminal suspects from poor communities, tend to be regarded with scepticism by judges. As at this stage the only admissible evidence is the complainant's own account, the complainant is at risk of being perceived as lying or offering a self-serving defence.

2.4 Forced Confessions

International Standards state that:

- Coerced confessions are prohibited: this prohibition buttresses the need for the key safeguard of the presence of a lawyer during interrogation,⁵⁰ and is applicable at both the pre-trial and trial stages.
- If an accused alleges during the course of criminal proceedings that he or she has been compelled to make a statement or to confess guilt, the judge should have the authority to consider such an allegation at any stage.⁵¹
- All allegations that statements have been extracted through torture must be promptly and impartially examined by competent authorities, including judges.⁵²
- Prosecutors who come into possession of evidence against suspects that they know or believe on reasonable grounds to have been obtained through torture should refuse to use such evidence and inform the Court accordingly.⁵³
- Evidence elicited as a result of torture or other coercion, including confessions by the accused, must be excluded by the court and not be used in any proceedings except those brought against alleged perpetrators of torture.⁵⁴

Despite procedural safeguards and international standards torture is used as a 'tool' of interrogation and investigation in the pre-trial period often with the specific aim of forcing confession.

⁵⁰ ICCPR - Article 14(3)(g); Body of Principles - 21(2).

⁵¹ Human Rights Committee General Comment 13, para 15.

⁵² Convention Against Torture- Articles 13 and 16.

⁵³ UN Guidelines on the Role of Prosecutors - Guideline 16.

⁵⁴ Convention Against Torture - Article 15.

Case Study: Edgar Maligaya

During the interrogation by plainclothes police officers, which took place at intervals through the night, Edgar Maligaya claims he was punched hard when he failed to answer a question 'correctly'. He described how he was pushed to the floor with his shirt pulled off, his trousers round his knees and his hands cuffed behind his back, and beaten on the stomach with a wooden baton wrapped in paper. A plastic bag was placed over his head and held tight at the back of the neck until he began to gag: the process was repeated more than five times. On being threatened with electric shocks, he agreed to confess. A typewriter was brought to the room and a confession typed up. Edgar Maligaya claimed that he signed the papers without reading them and that he had been put under intense pressure to incriminate other alleged members of the group suspected of shooting a Filipino-Chinese businessman.

Often arrested unlawfully without a warrant, the suspect is subjected to what the police may refer to a generalised "tactical interrogation" about the case, but which is, in reality, an interrogation aimed specifically at producing both self-incriminating statements and the names of accomplices which can then be used as the basis for further arrests. Known colloquially as "Pac-Man"⁵⁵ investigations, a series of arrests then occurs based on original statements or "identifications" which have been coerced through torture. Those suspects subsequently arrested are also at risk of torture, and psychological pressure to 'co-operate' is intensified as police inform them that affidavits identifying them as accomplices have already been sworn. The second round of suspects, then name or "point out" other suspects at police identity parades, and a case is built on cross-referring coerced confessions and identifications. Even if one or more of the suspects is indeed guilty of the crime, a number of "fall-guys" (scapegoats) are also at risk of being caught up in the prosecution and convicted.

Amnesty International believes that the Manriquez case (see below) is illustrative of the character and course of many crime investigations by law enforcement agencies, in which there is a high risk of torture or ill-treatment. Especially in high-profile cases where there is strong official or public pressure to solve the case quickly, instead of lengthy detective work supported by rigorous forensic examinations, there is a tendency for law enforcement officers to move quickly to arrest any suspect they believe may possibly be connected to the crime – however flimsy the existing evidence or unreliable the information provided by crime witnesses or informants.

Case Study: "People versus Manriquez"

The Supreme Court in concluding its decision in the Manriquez case (206 SCRA 812(1992), called on the PNP and PCHR to conduct a thorough and speedy investigation into the reports of torture of the three accused to extort confessions, noting:

'inhuman physical torture is the easiest means of obtaining 'evidence' from helpless civilians when police investigators are neither sufficiently trained for detective work, nor adequately equipped with the scientific tools of criminal investigation. An end should be put to such police brutality.'

⁵⁵ A popular computer game in which one 'alien' eats up exponentially increasing numbers of other 'aliens'.

In the case, Lucia Guiral was arrested in Davao City and accused of kidnapping a seven-year-old girl from the house where she worked as a house-keeper. Lucia Guiral was taken to the Ulas Police Station when she was undressed, soaked wet and subjected to electric shocks. She was brought to a garbage dump where policemen hit her on the head with their pistols and fired guns near her head. She was coerced to name two alleged accomplices - her brother-in-law Julio Manriquez and Shirley Ignacio.

Julio Manriquez was subsequently tortured with a plastic bag being placed over his head and tightened until he lost consciousness. He was also hit on the head with a rattan chair. Shirley Ignacio was similarly mistreated. The trial court acquitted Lucia Guiral and Shirley Ignacio on the grounds that their extra-judicial confessions had been extracted through torture in violation of their constitutional right against self-incrimination. However Julio Manriquez was sentenced to a minimum *reclusion perpetua*.⁵⁶ On appeal the Supreme Court acquitted Manriquez on the grounds that the prosecution had not proved the girl had in fact been kidnapped, much less that Manriquez was the kidnapper.

The police also use practices which undermine absolute the right to a fair trial, particularly the presumption of innocence⁵⁷ and the prohibition of forced confessions, such as parading detained suspects before the media and naming them as the perpetrators. At such occasions, journalists are allowed to question suspects - another form of intimidation leading to confession - and family members of the victims of crimes have been allowed to publicly slap and manhandle the suspects. Increasing disquiet at this practice prompted the filing of a Congressional bill to prohibit such treatment, but the bill remains in committee stage.⁵⁸

Media presentations of suspects who have not been brought to trial continue. During the investigations that followed the murder of actress Nida Blanca in November 2001, a number of suspects were arrested. Philip Medel, a former security guard and police informant, was presented to the media and publicly confessed to committing the crime. However at a later hearing, reportedly in front of the media, Philip Medel shouted that he had been tortured and retracted his confession. In August 2002 President Arroyo attended a number of media presentations of suspects accused of kidnapping for ransom.

3. Access to doctors and lawyers

3.1 Access to Doctors

The denial or restriction of access to doctors at the inquest and later pre-trial stages has a particularly damaging effect on the victim's ability to pursue a complaint. Suspects who have been tortured and are still in police custody rarely assert their right to see a doctor, especially if they are ordinary criminal suspects from poor communities whose everyday access to doctors has been limited. Some report that they were taken to a government hospital for a medical examination after arrest but before interrogation in order to protect police officers from subsequent charges of ill-treatment. Others reported that fiscals or police facilitated a

⁵⁶ Life imprisonment - to be pardoned after 30 years.

⁵⁷ Article 14 (2) ICCPR.

⁵⁸ House Bill 181 Rep. Gilberto C. Teodoro "Prohibiting the public display of persons, arrested, accused, or under custodial investigation in a degrading manner..."

medical examination after inquest, but they were seen by doctors assigned to major PNP or AFP centres or to government hospitals who gave them a cursory ‘check-list’ physical examination with no questions about how any marks may have been inflicted – or searching queries about maltreatment which may not have left marks but had or was causing pain. Often the methods of torture used are chosen specifically because they do not leave obvious physical marks. Amnesty International has found that medical certificates are frequently summary in nature, referring only to visible bruises or contusions with a formulaic assessment of how long the examinee is likely to need medical treatment. In many cases suspects do not see a doctor until days or even weeks after the alleged torture, when families or human rights groups have finally gained access or filed a complaint with the PCHR which has dispatched investigators and doctors to the place of detention, by which time visible marks have faded or disappeared.

Case Study: Edgar Maligaya

On 21 January 1995 Edgar Maligaya was taken to a police doctor in the PNP headquarters at Camp Crame. The police officers reportedly gave a letter to the doctor, who proceeded to use a stethoscope and checked his blood pressure. No major bruises were visible and when Edgar Maligaya tried to draw attention to his sore neck, cracked tooth and swollen lower lip, the doctor reportedly did not respond but proceeded to fill in a medical check-list.

3.2 Access to Lawyers During Pre-trial Detention

Amnesty International is concerned that, in addition to a failure to effectively probe whether the suspect’s right not be tortured or to be otherwise coerced into self-incrimination has been respected, inquest fiscals also often fail to ensure respect for the right of access to lawyers at all stages of investigation. This failure has a particularly damaging effect on the ability of the accused to receive a fair trial – and is a key factor underpinning the impunity that can shield the perpetrators of torture.

Detainees, lawyers and NGOs have reported that prompt access to defence lawyers – both private and public - is frequently highly problematic for detained suspects. Patterns of deception by law enforcement personnel, which were endemic in relation to ‘political’ detainees during the height of the anti-insurgency campaign, appear to remain common today for ordinary criminal suspects. This risk is particularly serious in high-profile investigations, at times involving special police or National Bureau of Investigation (NBI) “task forces”, when there is strong political and public pressure to solve the case quickly. As access to counsel in such circumstances is restricted or denied, the risk of torture or ill-treatment intensifies.

Law enforcement officers frequently do not inform lawyers, family members or human rights investigators when an ordinary criminal or political suspect is arrested; they often mislead them as to the detainee’s exact whereabouts or when and where the inquest will take place: or directly deny access during critical periods of custodial investigation. Public defenders have also described to Amnesty International how police have falsely informed them that an accused person already had retained a private lawyer.

The climate of intimidation and fear engendered by the police can affect not only the detainee, but also the defence lawyers and the public prosecutors themselves. Human rights lawyers and others have reported intimidation, including being sent implicit death threats.⁵⁹ Again, especially in high-profile cases where suspects are believed to be held in major police, NBI or AFP centres, lawyers have to overcome various degrees of intimidation or obstruction to gain access. Despite the courage of many, some lawyers hesitate before confronting law enforcement agencies involved in controversial or high-profile political or criminal cases. As one young human rights lawyer told Amnesty International “*The police have guns, we do not.*” Another described being sent a formal shirt, traditionally worn at funerals, as a form of death threat.

Aside from intimidation, both defence lawyers and prosecutors⁶⁰ point to a further factor which affects their capacity to confront or challenge law enforcement officers who may have committed human rights violations or have flouted procedural requirements. The cultural aspect of ‘*pakikisama*’⁶¹, the importance placed on avoiding conflict and of building and maintaining smooth relationships with professional colleagues and acquaintances, reduces the likelihood that fiscal or assisting lawyers will openly challenge law enforcement officers. It is more difficult for them to directly challenge police on evidence, or to dismiss a case at inquest for lack of credible evidence, when they may know or are likely to work with particular police officers again – especially in the context of on-going investigations into serious crimes.

Law enforcement officers may therefore encounter no effective restraints on coercing confessions during a period of up to 36 hours before inquest – and frequently longer if the officers believe that they are unlikely, in practice, to be sanctioned for exceeding the legal custodial period. When describing their experience at inquest, suspects often report that they were not assisted by a lawyer at all, nor advised of their right to one. Alternatively, detainees have stated that they were assigned a lawyer at inquest, but that they did not complain or seek advice from them because they believed that the lawyers were closely linked to the police. Persistent but unconfirmed reports indicate that some police stations appear to have arrangements with particular unidentified private lawyers, who appear not to maintain strict professional ethics and who are regularly called in at short notice to facilitate the rapid processing of coerced confessions or waivers during inquest. Amnesty International has also received information from a credible source indicating that a public defender assigned to assist an accused person at inquest confirmed an extra-judicial confession taken during custodial investigation because his client did not refer to any coercion or torture. It later transpired that the public defender’s client had not complained during inquest because he felt under threat. The confession was excluded from evidence at trial after it emerged that torture had indeed taken place.

⁵⁹ In 1997 death threats were received by human rights lawyers from the Free Legal Assistance Group (FLAG), who were involved in the attempted prosecution of PNP officers allegedly involved in the reported extrajudicial execution of 11 members of the *Kuratong Baleleng* bank robbery gang in 1995.

⁶⁰ Reported during interviews with prosecutors, public defenders and private lawyers conducted by Amnesty International in 2002.

⁶¹ *Pakikisama* - a Filipino cultural value by which a person seeks to relate with others in such a way as to avoid outward signs of conflict, including the public acceptance of conduct from others that one dislikes or disapproves.

3.3 Access to Lawyers During arraignment and trial

Especially for criminal suspects from poor and marginalised communities, the first time many see or have a conference with a lawyer is immediately prior to their arraignment in court. Frequently, the only lawyers available to such defendants public defenders from the Public Attorney's Office (PAO). The PAO is mandated to provide free legal services to accused persons who are indigent⁶² and cannot afford private counsel. However the PAO suffers from under-funding, especially in relation to the level of funds provided to the National Prosecution Service, its sister service within the Department of Justice (DOJ).

With approximately 1,000 PAO lawyers nationwide, including some 200 in Metro Manila, the case-load on public defenders can be extreme – particularly as they assist in labour and civil cases as well as criminal cases. Low-paid and overworked, PAO lawyers describe the difficulties in servicing cases effectively (including having at times to pay for the travel costs for key witnesses and for other disbursements from their own salaries). Covering over 2,100 courts nationwide, PAO lawyers can be assigned to cover, on their own, cases being heard in up to three courts. It is difficult even for the most dedicated to perform effectively under these pressures and consequently PAO lawyers can suffer from low morale and from a poor reputation in the community.

Public defenders also describe how judges will at times direct the assigned PAO lawyer at court, on the day of arraignment, to represent an indigent client in order to allow the arraignment to proceed. On such occasions the lawyer's first legal conference with the accused can be summary, with the public defender struggling to apprise himself of the case, collate the various documentation and advise the client on the consequences of his plea.⁶³

Public defenders also report at times being rebuffed by the indigent criminal accused persons, who prefer to enter a guilty plea out of fear that otherwise their case will become more prolonged and that their eventual release from prison will be delayed. Such accused are often extremely reluctant to openly allege torture in court for fear of police reprisals. However, in those cases which are brought swiftly to the court where allegations of torture are made, lawyers describe judges ordering suspects at arraignment to lift their shirts to gain visual physical corroboration, and then moving to dismiss the charges against the accused where marks are seen.

Due to lack of time and resources, immediate applications in court to exclude allegedly coerced evidence appear to be rarely made by PAO lawyers, although the limited number of private human rights lawyers, notably those belonging to the Free Legal Assistance Group (FLAG), frequently attempt to do so. However a defending lawyer often faces the disadvantage that no medical certificates are available, or that certificates that do exist are not conclusive precisely because the torture techniques used (i.e. suffocation by 'water cure' or plastic bags) were selected so as not to leave visible or long-lasting marks.

In addition, because of resource restraints and lack of equipment and training, forensic medical science is not often used (even in cases of rape or paternity suits) and a great reliance is put on witness evidence in the form of affidavits or court testimony. Defence lawyers describe repeatedly how their clients, accused of serious criminal offences, were

⁶² With a family income of 14,000 peso (US\$350) a month or less (Metro-Manila).

⁶³ One consequence of filing a plea at arraignment is that the lawfulness of the detention can no longer be legally challenged.

convicted on the evidence of witnesses, whether or not they had claimed before or in the course of the trial that they had been tortured to coerce a confession or to identify an accomplice.

In practice, even if a defence lawyer makes a successful application in court to exclude evidence on the grounds that it was coerced, it will often be ‘trumped’ by witness evidence which is found to prove the guilt of the accused. This heavy reliance on witness evidence means that the intimidation of witnesses and complainants is an effective way by which law enforcement agencies control the outcome of cases: there is no evidence to corroborate the defendant’s claim that the confession was not made legally.

Another obstacle faced by defence lawyers is the doctrine in Philippine jurisprudence related to the ‘presumption of regularity’ in the actions of public officers. Under this doctrine, the burden of proof is on the complainant to prove that a public officer behaved improperly, including coercing a detained suspect into making a confession. This doctrine stands in contrast to the recommendations of the UN Special Rapporteur on torture who states that where torture or ill-treatment is alleged the burden of proof should “shift to the prosecution” to prove that confessions were lawfully obtained.⁶⁴

While the Supreme Court has asserted the constitutional right not to be tortured, Amnesty International is concerned that numerous appeals before the Supreme Court, especially automatic reviews of death penalty convictions, have not resulted in the Court ordering an investigation into the torture allegations before it has issued a decision confirming the conviction, or ordering an acquittal or re-trial, on other grounds.

4. Complaints, Investigations and Prosecutions

4.1 International Standards: effective investigations

"Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."⁶⁵

The requirement for prompt, independent, impartial and thorough investigation of all complaints⁶⁶ of torture also covers all reports⁶⁷ of torture. There is a need for investigations to

⁶⁴ “Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by lawful means, including torture and similar ill-treatment.” UN Document A/56/156 3 July 2001, paragraph 39 (j).

⁶⁵ Article 12 of the Convention against Torture

⁶⁶ The Committee against Torture has stated that “in principle, article 13 of the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation” *Henri Unai Parot v. Spain*, Communication No 6/1990, UN Doc A/50/44 at 62 (1995) article 10.4.

⁶⁷ The Convention against Torture specifies that an investigation must be made wherever there is “reasonable ground” (article 12) to believe that an act of torture or ill-treatment has been committed, even if there has been no formal complaint. According to the Committee against Torture, such an investigation must be made “whatever the origin of the suspicion” (*Blanco Abad v. Spain*, para 8.2).

be effective and international standards⁶⁸ can be used in assessing whether an investigation is conducted effectively.

The Convention against Torture also requires that investigations be prompt⁶⁹ and impartial⁷⁰ and requires in Article 13, the protection of complainants and witnesses. In line with the UN Principles on the Investigation of Torture,⁷¹ Amnesty International recommends that officials suspected of committing torture or ill-treatment should be suspended from active duty during an official investigation. They should also be removed from any position where they could ill-treat anyone else. The suspension should be without prejudice to the outcome of the investigation: suspension does not mean that the official is presumed to be guilty. Evidence to be gathered in an investigation should include where possible:

- Statements by the alleged victim, by the alleged perpetrators and by witnesses and others having knowledge of the matter;
- Medical evidence;
- Other physical evidence, such as bloodstains or equipment used to inflict torture;
- Circumstantial evidence, such as custody records and records of interrogation sessions.

The Committee has held that one of the sources which may trigger such an investigation is information supplied by non-governmental organizations (NGOs) (*Khaled Ben M'barek v. Tunisia*, 10 November 1999, paras 2.10, 11.4-11.7)

⁶⁸ The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Principles on the Investigation of Torture) refer particularly to medical aspects of investigation, while the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions contain standards on the investigation of deaths in custody and on the operation of commissions of inquiry.

⁶⁹ The Committee against Torture has observed that “promptness [of investigation under Article 12] is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear” (*Blanco Abad v. Spain*, para. 8.2). The requirement of promptness applies both to the time it takes for the authorities to examine the allegations initially, and to the pace of the investigation thereafter.

⁷⁰ The lack of thoroughness of an investigation can be evidence of a lack of impartiality, in violation of the requirements of Articles 12 and 13 of the Convention. In a case (*Ben M'Barek v. Tunisia*) brought before it under Article 22 of the Convention, the Committee against Torture found that the state violated Articles 12 and 13 because the investigation “by failing to investigate more thoroughly, committed a breach of the duty of impartiality imposed on [the examining magistrate] by his obligation to give equal weight to both accusation and defence during his investigation”.

⁷¹ “[t]hose potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation”.

4.2 The Philippine Commission on Human Rights (PCHR)

The Philippine Commission on Human Rights (PCHR) was founded in 1987 as a constitutional body, independent of other state legal institutions, to protect and promote respect for human rights in the Philippines. One of its primary roles is to investigate complaints of human rights violations. After receiving a complaint and completing its inquiries, the PCHR can recommend the filing of appropriate criminal or administration charges for prosecution by the Department of Justice or the Office of the Ombudsman. The PCHR cannot itself pursue prosecutions or bring suspected human rights violators to justice before the courts.

The PCHR and its 13 regional offices continue to play an important role as a forum for reporting and recording patterns of violations nationwide, for promoting human rights education programmes for military and law enforcement personnel, for the exercise of its right of access to all places of detention and for investigations into range of human rights complaints.

However, Amnesty International remains concerned at continued reports from human rights and legal groups in the Philippines regarding limitations in the PCHR's ability, in practice, to provide 'immediate and effective protection' to complainants of torture and other grave human rights violations, and to undertake effective fact-finding investigations that facilitate the prompt filing of criminal cases against alleged perpetrators.

Unfortunately, the PCHR's central role in the defence of human rights in the Philippines has been weakened by the public perception that at times the Commission has been too willing to accept the authorities' version of events, that some investigations were pursued with inadequate vigour and that cases have been set aside or 'archived' too readily and on weak pretexts.

Amnesty International is concerned that the quasi-judicial investigative proceedings of the PCHR, in which the alleged victim and the alleged perpetrator file affidavits and counter-affidavits, at times place an undue burden upon the complainant and their witnesses, especially in torture cases involving techniques that do not leave visible marks. This burden can be heightened by the fact that the victims or their families are often intimidated by the prospect of proving their complaints, are deterred by their lack of resources, and fear reprisals by the accused perpetrators.

The obstacles faced by many alleged torture victims in proving their complaint before the PCHR were clearly illustrated by the complaints lodged by the Rolando Abadilla murder suspect Cesar Fortuna (see case study). In the case, the PCHR demonstrated its role as a forum for the receipt of human rights complaints, and for the exercise of its right of access to all places of detention. However, Amnesty International believes that the subsequent handling of the complaints illuminated weaknesses in the Commission's procedures for the effective investigation of torture complaints – and that these weaknesses have not yet been rectified.⁷²

Amnesty International is concerned that the course of the PCHR investigation and medical investigation in the Abadilla case mirrors a wider pattern of investigations and

⁷² For more information see "Philippines: The Rolando Abadilla murder inquiry: an urgent need for effective investigation of torture" AI-index: ASA 35/008/2000

medical assessments conducted by the Office of the Ombudsman and the Department of Justice.

In light of the Abadilla and other cases involving complaints of torture that do not lead to PCHR recommendations for prosecution on torture-related charges, Amnesty International recommends that the minimum PCHR investigatory practices should be fully consistent with those standards detailed in the UN Istanbul Protocol⁷³, Article 12 and 13 of the Convention Against Torture, and the UN Human Rights Committee General Comment 20, para 14.

Amnesty International remains concerned that in cases where the procedures of the PCHR fail to reach a recommendation on torture allegations, the probability of a successful prosecution for the alleged torture is even further reduced. Without the weight of a specific PCHR recommendation, the Department of Justice or the Office of the Ombudsman is, in practice, less likely to pursue a Preliminary Investigation of the complaint, despite their obligation to conduct an investigation of all reports of torture with or without a complaint.

4.3 The Department of Justice and the Office of the Ombudsman

The Department of Justice or the Office of the Ombudsman⁷⁴, after receiving a criminal complaint regarding allegations of torture (either directly from an offended party or in the form of a complaint endorsed by a PCHR recommendation) conducts a Preliminary Investigation. This, in general, follows the procedures for Preliminary Investigation (see above), and involves the assessment of complaint affidavits and counter affidavits, with the possibility of the investigating prosecutor holding clarificatory hearings.⁷⁵ A finding of probable cause could lead to the filing of an information in court involving a number of charges, including the following offences under the Revised Penal Cod:

‘Torture’ offences under the Revised Penal Code

Under ‘Crimes Against Persons’, the offence of ‘*Physical Injuries*’ is defined as being committed by the ‘wounding, beating or assaulting’ of another person, resulting in injuries to the body, and when there is no intent to kill. The penalty for physical injuries is dependent on the extent of the injuries inflicted.

Article 263 : *Serious physical injuries* - penalties ranging from 12 years imprisonment to six months imprisonment, depending on the extent of injuries, which are defined as ranging from the infliction of blindness or insanity, to when the victim is caused to be incapacitated or require medical treatment, for a period of more than 30 days.

Article 265: *Less serious physical injuries* - penalties ranging from one to six months imprisonment if the victim is caused to be incapacitated or to require medical treatment, for a period of ten days or more.

⁷³ The Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’.

⁷⁴ A constitutional body set up to receive complaints specifically involving public officers.

⁷⁵ The complainant and respondent have a right to be present, but not to examine or cross-examine the witness being questioned.

Article 266: *Slight physical injuries and maltreatment* – penalties ranging from one to 30 days imprisonment if the victim is incapacitated or requires medical treatment, for a period of one to nine days.

Under ‘Crimes Against Security’, the offences of,

Article 282: *Grave Threats* (282) - penalties of imprisonment of up to six months imposed for threats against the person and his family, constituting a crime and,

Article 286: *Grave Coercions* - penalties of imprisonment of up six months when a person, without the authority of the law, and with the use of violence compels a person to do something against his will.

Under ‘Other Offences or Irregularities by Public Officers’

Article 235: *Maltreatment of Prisoners* - penalties ranging from three to six years imprisonment for a public officer who ‘shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge, by the imposition of punishment not authorised by the regulations, or by inflicting such punishment in a cruel and humiliating manner’. Under a 1986 Executive Order, if the purpose of the maltreatment is to extort a confession, or obtain some information from the prisoner, the penalty is six years imprisonment, temporary disqualification from public service and a fine, in addition to liability for any physical injuries caused.

4.4 The need for legislation defining and penalizing torture

Convention against Torture, Article 4

“1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

“2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”⁷⁶

While the absolute prohibition of torture and ill-treatment under international law is enshrined in the Philippine Constitution, it is not yet fully reflected in domestic law. As part of effort to fully incorporate all the provisions of the Convention against Torture, Amnesty International urges the Congress to consider and to enact legislation specifically defining and penalizing acts of torture and for this legislation to incorporate human rights standards.⁷⁷ Certain forms of ill-treatment also should be specified as crimes.

⁷⁶ Article 4 of the Convention against Torture.

⁷⁷ From the 10th to the present Congress, a series of bills on torture have been filed with relevant committees of the House of Representatives, but have yet to be debated by the House and Senate and enacted.

Amnesty International is concerned that the existing definitions of ‘physical injuries’ and other ‘torture-related’ offences under the Penal Code narrows, in practice, the scope of their application against alleged perpetrators of torture, can impede prosecutions and punishment, and fails to provide penalties that reflect the grave nature of the crime.

For example, a charge of ‘*serious physical injuries*’ requires that the victim is found to require medical care for more than 30 days. However in many cases recorded by Amnesty International, cursory physical examinations result in formulaic medical certificates that state treatment is required for less than nine days - a finding that tends to limit charges to that of ‘*slight physical injuries*’ punishable by up to 30 days in prison. According to information received by Amnesty International, charges of ‘physical injuries’ rather than that of ‘Maltreatment of Prisoners’, are most commonly preferred by prosecutors in torture-related cases. The organization is concerned that the application of the law in this manner does not adequately address the fact that torture often does not leave visible marks, or the medical examinations are often not sufficiently rigorous or searching. Consistent with Article 1 of the Convention against Torture, definitions of torture should rely on the act itself, not on its results.

The national legal framework for the punishment of torture also needs to be consistent with other provisions of the Convention against Torture including the following:

- The law must not allow any **exceptional circumstances** whatsoever to be invoked as a justification for torture (Article 2(2)).
- The law must not allow an **order from a superior officer** or a public authority to be invoked as a justification of torture (Article 2(3)).
- The law should provide for the exercise of **universal jurisdiction** over torture as specified in Articles 5-8 of the Convention.
- The law should outline an effective strategy including legislative, administrative, judicial and other methods for the prevention of torture and ill-treatment (Articles 2, 16).

Case Study: Manila - Seven men accused of robbery

Allan Rosales, Ricard Manlapaz, Rolando Tutanés, Wilson dela Cruz, Ruben Cervito, Alfredo Leala and Romeo Real were arrested in Manila on 16 January 1999 after the vehicle they were travelling in was forced to stop by officers of the Criminal Investigation and Detection Group (CIDG) of the PNP. They were brought to the CIDG jail in PNP headquarters in Camp Crame and subsequently interrogated about their alleged involvement in a robbery and car theft gang.

In a sworn statement submitted to the Philippine Commission on Human Rights (PCHR) on 22 January, the wives of the detainees complained that their husbands had informed them that they had been unlawfully arrested without warrants, detained arbitrarily without knowledge of the crime they were accused of and, after a senior police officer had ‘borrowed’ them from the custody of the CIDG jail warden, they had each been taken at intervals to an unidentified room and, during an interrogation period lasting around three hours, tortured to coerce confessions and to provide incriminating information.

Apart from beating and punches, at least two of the men claimed they had had plastic bags placed over their heads to induce near suffocation. At the subsequent inquest procedure, and

with the suspects still denied access to legal counsel of their choice or family visits, an inquest fiscal prepared an information, based on the coerced confessions and police investigation reports, for filing before the court.

PCHR medical officers gained access to Camp Crame on 21 January and examined the detainees. According to their medical reports, at least six of the detainees had suffered injuries, including contusions and abrasions, inflicted at various periods between 16 and 19 January which would require medical attention “for a period of not less than three days and not more than nine days from the date of infliction”.

After receiving a counter-affidavit from the accused senior police officer, the PCHR issued a resolution on the complaint in September 1999. The PCHR dismissed the complaint of unlawful arrest on the grounds that the police claimed to have seen a gun on one of the men entering the vehicle and that, after following and stopping the vehicle, they reportedly found illegal firearms and a hand-grenade. The PCHR found that the detention had not been arbitrary in that that charges related to these alleged illegal firearms and explosives had been filed within the prescribed period. The PCHR noted that the accused police officer admitted to ‘borrowing’ the detainees from the CIDG jail, but that he claimed this was only for the purpose of a police identification line-up.

On the complaint of torture or ‘physical injury’ the PCHR found that the prescriptive 60 days for the filing of such charges had passed, and that the evidence suggested “only slight physical injuries”. However, on the basis of the medical reports, the PCHR recommended that criminal charges under the offence of Maltreatment of Prisoners (Article 235 of the Penal Code) should be filed with the Office of the Ombudsman, in addition to administrative charges being filed with the Internal Affairs Department of the PNP. Amnesty International is unaware of charges or sanctions being imposed by the authorities in response to these recommendations.

On the grounds of the allegedly coerced confessions, the detainees were charged with car theft and robbery and brought before the Quezon City Regional Trial Court. In January 2000 their defence counsel sought to dismiss evidence submitted by police on the grounds that two police officers, acting as prosecution witnesses, admitted in court that the detainees had not been assisted by counsel of their choice during warrantless arrest, detention and investigation, and that torture had taken place, the results of which had been recorded in the PCHR medical reports.

4.5 Overcoming Impunity

*“Prosecution and punishment break the cycle of crime and impunity. It protects the public from the culprits repeating their crimes and it helps to deter others from committing similar crimes by raising the real threat that they too, may be caught and punished”.*⁷⁸

⁷⁸ See Amnesty International “*Disappearances and Political Killings - Human Rights Crisis of the 1990s - A Manual for Action*.” (AI Index: ACT 33/01/94, 1994).

Amnesty International is concerned that, despite repeated reports of torture nationwide, the Department of Justice and the Office of the Ombudsman have filed few criminal cases against accused public officers, and that even fewer of these cases have led to convictions.

Many of the obstacles facing complainants who pursue torture complaints during custodial investigation derive from the flouting of procedural safeguards and fundamental rights during custodial investigation and are replicated in the Department of Justice and Ombudsman's office. These include a fear of reprisals, the lack of conclusive medical certificates (especially after torture that leaves few marks) and the fact that the lack of legal assistance for the victim at key stages of the investigation has led both to the introduction of coerced testimony into the case and a failure to promptly record detailed complaint affidavits. Many victims of torture, aware of the difficulties in proving their claim, are deterred from even lodging an initial complaint.

Case Study: Department of Justice - delays in investigating torture

Despite the PCHR's decision not to recommend charges of torture in the Rolando Abadilla case the alleged torture victims filed complaints of 'grave threats and 'grave coercion' against named police offices with the Department of Justice (DOJ) in 1996. After five years the resolution of the preliminary investigation of these complaints remained pending.

After appeals from Amnesty International and other human rights groups, the DOJ appointed a new panel of prosecutors to review the investigation of the complaints. However, in August 2001 the panel issued a resolution stating that the DOJ would take no further action on the complaints on the grounds that the matter was *sub judice* - in that an automatic review by the Supreme Court of the death sentences imposed on five of the complainants in 1999 remained pending. The resolution stated that complaints of torture and other human rights violations could be re-filed with the DOJ after the Supreme Court concluded its review.

Amnesty International had a number of grave concerns regarding the repercussions of the resolution on this case and on the wider struggle to prevent torture and combat impunity in the Philippines. The organization believes that the application of the doctrine of *sub judice* in this manner, whatever its merits in other cases, risks having an effect that cannot have been intended or envisaged by the courts in their earlier rulings on the doctrine. Amnesty International is concerned at the prospect that, in the worst examples, any person claiming to have been tortured in the context of cases subsequently brought to court, cannot have their complaints properly investigated, let alone prosecuted, until the final resolution of the prosecution case against them.

Amnesty International foresees the possibility of preliminary investigations of torture being conducted and concluded by the DOJ only after the execution of complainants whose death sentences have been affirmed by the Supreme Court. Clearly, such an outcome would constitute an appalling violation of the most fundamental of human rights.

Moreover, the many years that are likely to elapse between the original complaint and DOJ investigation creates grave obstacles to the ability of the authorities to then conduct an effective investigation of torture. Amnesty International therefore has increasing concerns that the DOJ's position in this regard constitutes a contravention of the Republic of the Philippines' legal obligations as a State Party to the Convention against Torture.

Under Article 12 of the Convention against Torture, the Philippines is required to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. Yet it appears that in the Philippines, especially in cases where the PCHR does not carry out an investigation, a full investigation cannot take place until a lengthy appeals procedure is exhausted first. Under Article 7 of the Convention against Torture, the Philippines is required, where there is evidence, to submit the case of any person alleged to have committed an offence of torture to its competent authorities for the purpose of prosecution.

Moreover there is a widely-held public perception that the wider court system, notorious for being slow-paced, works in favour of the wealthy and influential and against the poor and disadvantaged. Victims of torture, especially those from marginalised groups, are deterred from pursuing prosecutions and engaging in a prolonged and complex legal process, by a fear of reprisals, a lack of confidence in the independence and impartiality of the courts, and the economic burdens presented by a prolonged trial. Cases pursued over many years can halt after a complainant or key witness, unable to afford to continue or subjected to threats, agrees to accept an 'amicable' settlement which may involve some payment by the perpetrators. The knowledge that so few cases of alleged human rights violations by public officers have led to convictions since 1986 is a further deterrent.

A second factor adding to this cycle of impunity is the tacit public acceptance that torture of criminal suspects is somehow necessary to secure convictions and to ensure the delivery of justice rather than a violation of human rights, and a crime in itself. Suspected criminals are at times believed to 'deserve' such treatment and when they try to complain or to offer a defence in court they are at risk of being seen as liars, or at the least self-serving.

Amnesty International is convinced that overcoming impunity is a key element in the eradication of torture. Prosecutions and convictions of perpetrators would be the clearest possible sign of an official policy that torture will no longer be tolerated. It strengthens the rule of law by demonstrating that public officials are not above the law. It contributes to the rehabilitation of victims of torture, giving a sense that justice has been done. It helps to promote a public morality based on human rights values by emphasizing that human rights violations must not go unpunished. And a conviction or a finding of state responsibility can provide the basis for financial compensation and other forms of reparation.

The need to exercise the political will to bring those responsible to justice applies to the various institutions involved. Prosecutors must have the will to bring charges and pursue an effective prosecution. Judges must have the will to convict and sentence the accused person if the evidence against them is sufficiently strong. Other institutions, including the police, must provide the necessary support and must not impede the process. In addition, courage and persistence are needed on the part of survivors of torture and their lawyers and supporters.

Reform of the judiciary is a major plank in the government's campaign against rising levels of criminality and as part of its efforts to provide a stable framework for economic growth. Amnesty International believes justice for the victims of torture should take its place at the centre of a wider campaign in the Philippines against impunity and in support of the rule of law.

5. Groups Vulnerable to Torture

The following section examines some of the groups most at risk of torture or ill-treatment and also most vulnerable to the pattern of procedural failings which have been described above. It will look at three groups: children, women, and suspected insurgents, secessionists and their sympathizers. The third category will address torture in the context of the anti-insurgency campaign against suspected communist insurgents and their alleged sympathizers as well as the vulnerability of suspected Muslim secessionists and their alleged supporters within recent military campaigns in Mindanao.

5.1 Children at Risk

The Philippines has ratified the Convention on the Rights of the Child⁷⁹ and should implement the Standard Minimum Rules for the Administration of Juvenile Justice (Standard Minimum Rules). The Philippines has a variety of national executive orders and laws⁸⁰ which provide for the welfare and protection of children - especially those in 'conflict with the law' within the juvenile justice system. 'Child and Youth Relations Officers' exist within all police stations and have a responsibility to ensure that child suspects are treated appropriately, as set out in special Regulations⁸¹, a police manual⁸² and other codes.

⁷⁹ Article 37, States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

⁸⁰ Including the Child and Youth Welfare Code (PD 603); The Dangerous Drugs Act of 1972 as amended, and RA 7610 - The Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992.

⁸¹ Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (pursuant to Article 209 of the Child and Youth Welfare Code).

Under Philippine law, the particular rights and procedural safeguards of a child⁸³ in conflict with the law during arrest, investigation and pre-trial detention include:

When arrested with or without a warrant:

- Not to be arrested and searched with unnecessary force
- To be informed of the reason for arrest
- After arrest, to be brought immediately to the nearest police station, where the apprehension, including the arresting officer shall be recorded in the police blotter (log-book)
- After the arrest is recorded in the police blotter, the arresting officer must immediately take the youth detainee to any available government medical officer for a physical and mental examination.
- The arresting officer must notify, within eight hours, the Department of Social Welfare and Development (DSDW) and the parents or guardians of the reason for the arrest
- To be released on recognizance to parents or responsible community members at the discretion of the judge
- To be released on bail, or to be committed to the care of the DSDW if he/she cannot afford to post bail

⁸² 'Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances' 1993.

⁸³ Under Philippine law a 'youthful offender' is defined as a child, minor or youth who is over the age of nine but under the age of 18. Under the Revised Penal Code, a child under the age of nine is exempt from criminal liability. When a child commits an offence between the age of nine and 15, his or her criminal liability depends on whether he or she acted with 'discernment' (understanding the difference between right and wrong).

During custodial investigation⁸⁴:

- To be held in facilities separate from adult detainees while in detention, preferably in a local rehabilitation centre or juvenile facility
- To be investigated only in the presence of counsel and, wherever possible, parents or guardian or social worker
- To be informed of the right to remain silent and to counsel
- To be informed of his/her legal rights in a language that he or she understands
- To remain silent
- To have access to competent and independent counsel of choice
- Any waiver of rights to counsel and to remain silent must be made in writing and in the presence of counsel
- To be delivered to a proper judicial authority within 12, 18 or 36 hours depending on the seriousness of the offence, and to be released if there are no charges filed within this period⁸⁵

In practice persistent reports from human rights and legal NGOs⁸⁶ in the Philippines indicate that these rights and procedural safeguards are often ignored or break down. Child suspects, especially those from particularly vulnerable and marginalised groups such as street-children, ‘vagrants’ and/or those involved in substance-abuse,⁸⁷ are detained without access to social workers and lawyers for extended periods and are vulnerable to torture or ill-treatment.

In many cases, even if there are appropriate juvenile detention facilities, children remain for long periods in adult penal institutions because of delays in processing their legal cases, as well as a general disregard for their rights. It appears common practice for arresting officers, rather than taking minors to juvenile detention centers, to place children in local adult jails (sometimes after a period of detention in cells in police stations) pending their inquest procedure or first court appearance.

Amnesty International is concerned by reports that the majority of children detained in jails appear to have been arrested without warrants - reportedly after been caught while committing a crime (in *flagrante delicto*). Apart from the right not to be detained in adult

⁸⁴ These provisions are reflected in international standards. See Standard Minimum Rules 7, 10, 13.4, 15 and Convention on the Rights of the Child articles 37 d and c.

⁸⁵ These time limits do not appear to be consistent with Standard Minimum Rule 10.2 which state that “[a] judge or other competent official or body shall, without delay, consider the issue of release.”

⁸⁶ Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System’ 1998. Human Rights Center, Ateneo Law School and UNICEF. Also, ‘Youth in Detention’. 1996. Philippine Action for Youth Offenders (PAYO).

⁸⁷ So-called ‘Rugby Kids’ – Rugby is a local term for the glue often inhaled by street-children and others.

penal institutions, the basic rights of child detainees listed above also appear to be routinely ignored.⁸⁸

After arrest many children are reported not to be given medical examinations, or are given cursory examinations and are subsequently at risk of ill-treatment while in police custody. Social workers or parents are often not informed about the child's detention within a reasonable time (and not within the statutory time limit of eight hours). Many child suspects are handcuffed upon arrest or during transfer, and there are persistent reports of ill-treatment, include punches, slaps, blows on the soles of the feet and having bullets squeezed between the fingers and having the head shaved as 'punishment'.

At times the perpetrators are *barangay tanods* (village/district officials who patrol the locality) who frequently are the first to confront or 'arrest' suspected youth offenders or street-children - and may then attempt to mediate between the complainant and accused child without involving law enforcement agencies. Otherwise police are reported to ill-treat accused children, both at the time of arrest and while in police station cells.

Periods of detention, and the subsequent risk of ill-treatment, can be prolonged despite the fact that the Child and Youth Welfare Code requires that in all but the most exceptional circumstances a minor, if unable to furnish bail, should be committed from the time of his arrest to the care of the DSWD or other appropriate juvenile centre. In practice this frequently does not occur, partly because of apparent lack of clarity over who has immediate authority to transfer a child detainee from police custody or adult jail to a juvenile centre.

After an inquest procedure or preliminary investigation, a prosecutor who files the information in court does not have authority to transfer the accused from police custody or jail to a juvenile detention centre. However the judge, who has the authority to transfer the detainee, will often not see the accused child in court for up to two weeks or more after the initial arrest and detention.⁸⁹ In practice, therefore, the decision whether or not to transfer a child out of police or other custody lies with the arresting officer or jail authorities.

A lack of awareness about legal requirements and a lack of a sense of urgency amongst jailing authorities appear to be key contributory factors in repeated failures to transfer children promptly from police station cells or jail to juvenile centres. There would also appear to be a general reluctance to transfer children to juvenile facilities by jail authorities due to alleged fears that the juveniles may easily escape their custody.

The ability of a child to complain about torture or ill-treatment is undermined by the fear of reprisals while in police custody. The fact that a child suspect may frequently not see a

⁸⁸ A survey of minors held in 12 jails in Metro Manila conducted by Medecins Sans Frontieres (Belgium) between September 1998 and January 1999 reported that 100% of minors interviewed claimed that arresting police or *barangay tanods* (local government officials) did not inform them of their basic rights; 60% claimed they had been ill-treated by arresting police, officials or complainants; 90% claimed they were investigated without the assistance of a lawyer, social worker or parents, nor advised of the implications of pleading guilty at arraignment; the shortest reported period of detention in a police station before transfer to a juvenile centre or jail was three days, while the longest was three months. Almost all the minors interviewed claimed that they were incarcerated in police precincts with adult detainees.

⁸⁹ This contravenes Standard Minimum Rule 20.1 which states that "Each case shall from the outset be handled expeditiously, without any unnecessary delay."

lawyer until his arraignment in court, when a PAO defence lawyer might be assigned, compounds the obstacles facing child victims of torture or ill-treatment. In some cases, arraignments take place as much as two months after arrest. Child rights organizations have repeatedly drawn attention to the fact that lack of timely legal counsel means that children often have no real understanding of the charges against them, the legal process or the significance of their pleas.

Despite the creation of special courts⁹⁰ to hear cases involving children, serious backlogs and delays continue to occur. In violation of Standard Rule 13.4⁹¹, child detainees are reported to be held in detention (frequently in unsegregated adult jails or in jails where minors can mix with adult inmates during the day) for periods exceeding the maximum punishment for their alleged offence (e.g. vagrancy or minor drugs offences). In one case a child remained in an adult jail for over 40 days after a court ordered his transfer to a juvenile centre. There are serious concerns that the conditions in many jails are unsanitary and overcrowded and fail to meet minimum international standards for the treatment of prisoners.

Case Study: “John”, “Peter” and “Ronald”⁹²

In a sworn statement, a 17-year-old boy, ‘John’, described how he was confronted by a police officer on 24 March 1998 outside a store in Kibawe, Bukidnon province (Mindanao) and accused of having stolen the wallets of two persons. He reported being punched in the stomach and arrested without a warrant. He was then forced to board a motorcycle, and with the assistance of another policeman, brought to Kibawe Police Station. There he was ordered to strip. When he refused he described how he was hit at the back of his neck and placed inside a detention cell at the police station.

Another 17-year-old boy, ‘Peter’, corroborated this account and stated that the arresting police officer was drunk at the time and dressed only in short pants and a t-shirt. ‘Peter’ described how he was punched by the officer when he went to John’s assistance, and the officer kicked him and discharged his firearm in front of them. A third boy at the scene, 16-year-old ‘Ronald’, described how he was pistol-whipped by the police officer when he tried to intervene. He described how the officer pointed his gun at him and fired near his feet. On 25 March, John was released from the police station cell.

On 31 March, the three boys filed a complaint of ‘physical injuries’ at the local office of the PCHR, swore affidavits and provided medical certificates. In April, the PCHR found that a human rights violation had taken place and a charge of ‘arbitrary detention’ was subsequently filed against the accused officer at the local Municipal Trial Court. Amnesty International has not received information about the course or outcome of the trial.

Recent information from Philippine NGOs indicates that the case study above is not unusual and that the serious failures of safeguards and reports of ill-treatment continue and are repeated widely throughout the Philippines.⁹³

⁹⁰ The Child and Family Courts Act of 1997.

⁹¹ “Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.”

⁹² Names have been changed.

⁹³ See ‘Minors in Jail Case Studies’ - The Philippines, September 2002, PREDA Foundation.

5.2 Women at Risk

In March 2001, Amnesty International issued a report⁹⁴ examining how women in the custody of law enforcement officials in the Philippines constitute a group who are also vulnerable to torture, including rape and sexual abuse. Following the issue of the report Amnesty International welcomed the announced intention of the Philippine government to introduce and implement measures to protect women in custody.

The National Commission on the Role of Filipino Women (NCRPW) informed the organization that it had drafted a plan for the creation of a task force on violence against women and women in detention to be presented to the President.⁹⁵ The Bureau of Jail Management and Penology (BJMP) announced that it had adopted a “zero tolerance policy for staff sexual misconduct with inmates” and, in March 2001, issued a memorandum to jail administrators and wardens, stating that any staff found to have engaged in so-called “sexual misconduct” with inmates would be dealt “with the full extent of the law”.⁹⁶

The Secretary of the Department of the Interior and Local Government (DILG) stated that the DILG was re-evaluating recommendations made by the DILG’s Gender Unit in 1997 as part of its study on sexual harassment of female detainees and was examining plans for improvement in three areas: jail structures and facilities, gender sensitivity training and monitoring mechanisms.⁹⁷ In October 2001 the PCHR issued a human rights advisory making recommendations for the protection of women in custody and calling for all complaints of rape, sexual abuse or torture committed by state officials to be investigated promptly and independently.

Although Amnesty International has welcomed these announcements the organization remains concerned that it continues to receive further reports of rape and sexual abuse of women in custody. The organization believes that investigations into cases of custodial sexual abuse continue to be inadequate and rarely result in the alleged perpetrators being brought to justice. In addition, there is no systematic monitoring of the situation of women in custody.

Although there have been a small number of prosecutions of police officers for rape of women in their custody, Amnesty International believes that most perpetrators continue to escape prosecution. According to Filipino women activists, the shame and stigma associated both with rape and with incarceration means that women are often reluctant to talk about their

⁹⁴ ‘Philippines: Fear, shame and impunity: Rape and sexual abuse of women in custody’, 2001, (AI Index: ASA 35/001/2001).

⁹⁵ Amnesty International was informed of this plan by the NCRPW in October 2001

⁹⁶ Amnesty International was informed in October 2001 by the Chief Superintendent that 15 cases had been brought to the attention of the BJMP. The majority, however, were dropped after investigation due to lack of evidence or because the alleged victim did not pursue the complaint. No further details were given.

⁹⁷ The plans being examined included (1) improving jail structures and facilities including provision of separate facilities for female offenders supervised by female police officers or jail staff, (2) gender sensitivity programs for both police/jail guards and female detainees, to raise awareness and contribute to the prevention of abuses; (3) establishment of a monitoring mechanism, including an independent NGO-led group to visit police stations and jail facilities in order to receive and monitor complaints.

experience. This reluctance is compounded by a fear of reprisals. It is not unusual for women to be threatened or pressured into withdrawing complaints of rape, particularly if the perpetrator is a law enforcement official or in an influential position. In addition, victims who report rape, either by state officials or within the family and community, often face a lack of sensitivity from police or court officials and intrusive media reporting of their cases.

Violations of women's rights in custody, such as rape and other forms of sexual violence, often remain hidden from public scrutiny. Despite the existence in the Philippines of an active network of women's non-governmental organizations working on many issues, including violence against women in the family and community, very few are currently in a position to monitor or document systematically torture of women in custody.

Most female victims of torture are from disadvantaged social groups, including suspected prostitutes, street children, drug users and the poor. Often arrested for minor crimes or on suspicion of violating the anti-vagrancy law, their underprivileged status makes them vulnerable to rape, sexual assault, threats, slaps, punches and kicks. Women detained in provincial, municipal and city jails are also reported to have been raped or subjected to other forms of sexual violence. It is also believed to be common for female detainees to be offered special privileges by jail guards in return for sexual favours.

Amnesty International fears that the over 40 cases of rape or other sexual abuse of women or girls in custody brought to the organization's attention between 1995 and 2002, represent only a fraction of the real number of cases.

Case Studies: Women in Custody

In June 2002 Amnesty International was informed by the BJMP that investigations into two cases of alleged rape in custody had been dropped. In the first case, a 38-year old woman detained at Talavera Jail, Nueva Ecija, had accused the jail warden of raping her, threatening her with death, and forcing her to have an abortion when she became pregnant. Rape charges initially brought against the jail warden in May 2001 were dropped and the case dismissed for lack of substantial evidence after the alleged victim withdrew her complaint in September 2001.

In a second case, a 17-year old girl detained at Dagupan City Jail, had accused the jail warden and 11 guards of sexually abusing her in January 2000. An internal investigation conducted by the BJMP recommended in February 2000 that the case be closed due to lack of sufficient evidence, but also recommended that the accused officers be reassigned. In June 2000 the City Prosecutor's Office in Dagupan City recommended that the case be dismissed provisionally after the alleged victim failed to testify on a number of occasions due to illness. The City Prosecutor's Office was also informed that she had been placed under the protective custody of the National Center for Women in Alabang, Muntinlupa City.

5.3 Suspected Insurgents and Sympathizers

Two ongoing conflicts and resulting counter-insurgency operations contextualise the third vulnerable group consisting of suspected insurgents and sympathizers. The first conflict is that between the AFP and the armed wing of the Communist Party of the Philippines (CPP) the New People's Army (NPA), the second that between the AFP and Muslim secessionists in Mindanao. In both situations those who are thought to be associated with or sympathetic to the insurgent groups are at a higher risk of torture and other grave human rights violations.

The breakdown of peace negotiations,⁹⁸ the government's labelling of the CPP as a 'terrorist organization' and the launching of an aggressive military operation have increased the risks for suspected NPA members and their alleged sympathizers. High-ranking military officials have accused lawful groups critical of the government of having close links with the NPA. Those publicly portrayed as active NPA sympathizers risk being viewed by the military as legitimate targets of counter-insurgency operations making them highly vulnerable to torture. (See Case Study: Cesario Lebrilla below)

Individuals, groups and communities associated with the Moro Islamic Liberation Front (MILF), the Moro National Liberation front (MNLF), the Abu Sayyaf and related factions have also faced increased risks of torture and other grave human rights violations in the context of counter-insurgency campaigns. (See Case Study: The Mati Arrests below)

Case Study: Cesario Lebrilla

In the evening of 8 January 2000, Cesario 'Jack' Lebrilla, a 40-year-old house painter with three children and organizer of an urban poor community association in Bagong Silang, Caloocan City (Metro Manila) was abducted by a group of unidentified armed men, reportedly after being pointed out by a police informant. According to his sworn affidavit and testimony subsequently given to the human rights group TFDP⁹⁹ he was tortured while held incommunicado for 16 days to force him to confess to involvement in the bombing of the Shell oil company offices in Manila in late 1999¹⁰⁰. Following his abduction family members looked for him in local police stations and jails but no record of his arrest was available. He remained missing for 16 days.

In his account, Cesario Lebrilla related how a group of around 16 unidentified armed men, some wearing face masks surrounded and seized him. He received a heavy blow to the back of his neck, and while disoriented, was handcuffed and forced into a vehicle. A pistol was pressed into his stomach, his hair pulled, and eyes and mouth covered with packing tape. He reported how he was taken to unidentified secret location - which he suspected was inside a military base near an airport. Held inside a room with windows covered with newspapers, while blindfolded and handcuffed, he was interrogated intensively over a period of four days and pressed to identify photographs of people allegedly connected to the Shell bombing.

⁹⁸ Although formal talks remain stalled comments by President Arroyo in October 2002 indicated a willingness to pursue what she termed 'back channel' talks of a more informal nature.

⁹⁹ Task Force Detainees of the Philippines

¹⁰⁰ Oil price rises had prompted attacks on oil companies by suspected leftist insurgents.

Torture techniques included being beaten or kicked when he answered ‘incorrectly’, looked sideways or failed to respond using ‘sir’; both ears being punched or slapped hard simultaneously; being hit with a chair and pieces of wood; and his head wrapped with cellophane. His interrogators, some wearing face masks, threatened him repeatedly with death; gasoline was poured over him, rifles with bullets removed were fired in his direction, and he was shown a wire, sack and shovel and taken outside blindfolded on four successive evenings to a place where he thought he was to be killed. Death threats were also made against his wife and family.

Cesario Lebrilla was released late on 24 January 2000, reportedly after he made an agreement with his interrogators that he would become a police informant in his locality, help trace the Shell bombing suspects and become a state witness in any prosecution. Arrangements were made for him to report to his former captors. Cesario Lebrilla contacted TFDP and swore an affidavit, but fearing reprisals remained reluctant to pursue a formal complaint with the authorities. Cesario continued to suffer the psychological effects of his ordeal for many months. He experienced intense feelings of anxiety on seeing men resembling his captors and, fearing that he was being followed, he preferred not to go outside his home.

Case Study: The Mati arrests

Mass arrests and allegations of torture reported between 14-19 July 2000 near Mati, Davao Oriental (eastern Mindanao).

In July 2000, at least 29 Muslim men¹⁰¹ were arrested in Tarragona, Mati, on suspicion of being active members of the Moro Islamic Liberation Front (MILF).

On 18 July soldiers and police entered barangay (village) Tagabukid, Tarragona, and arrested 15 civilian suspects, mostly without lawful warrant and often apparently at random.¹⁰²

The next morning the villagers were ordered by soldiers to gather for a traditional assembly. With the men segregated and lined up, a vehicle with tinted windows drew up and unidentified occupants pointed out at least 11 men who were then arrested. With other arrests taking place in the area, at least 29 men were reported detained in the military sweep. Detained incommunicado, their families had no idea of their whereabouts for at least five days.

According to sworn affidavits and testimony given to local TFDP human rights workers, most of the detainees were held briefly at a military camp before being transported to Mati

¹⁰¹ Romulo Durong, Russel Lagbawan, Longlong Martin, Rustom Fernando, Adem Dalilan, Racim Anting, Arwin Anting, Jalih Anting, Edgar Camanggo, Jacklo Palatic, Dondon Palactic, Longlong Palactic, Rolan Pinos, Polan Quitab, Amin Paseo, Toto Onofre, Ricric Tarona, Expedito Masali, Dodong Eliso, Norman Dalilan, Elmar Kiram, Rolly Maglinte, Nonoy Gomandan, Gerry Antuling, Reynante Kiram, Bobet Atason, Musimar Alisan, Mustafar Maglinte, Rodel Mapando.

¹⁰² An arrest warrant reportedly listed several specific names but referred to all other suspects as anonymous “...John Doe, Peter Doe...”. The Supreme Court has ruled that arrest warrants that list “John Doe...” without a specific description of the suspect whose name is unknown, are unlawful.

provincial jail. At least 20 were subsequently blindfolded, handcuffed and taken back to a military camp, which they later discovered to be an AFP Special Forces camp at Mati, for 'tactical interrogation'.

The detainees later told human rights workers from TFDP and Karapatan how they were tortured to coerce information about the MILF. Russel Lagbawan, an *ustadz* (Muslim cleric), recounted how he was arrested on 14 July and brought to a police barracks at about 8.00 pm. He related that during interrogation that lasted until 4.00 am his "*face was covered with cellophane and wrapped in a thick towel, both ears were punched and bullets were inserted between my fingers to force me to admit that I was an MILF member*". He described how he was pressured to name his alleged accomplices in crimes he denied any knowledge of.

Other detainees arrested on 18-19 July 2000 told human rights workers how many were beaten, punched in the stomach, hit with rifle butts and kicked. One described how he was punched on the chest, his mouth forced open and a rifle barrel pushed inside, while another described how he was punched in the stomach, kicked and hit in the chest and his right knee burned with cigarette butts.

After five days they were returned to Mati provincial jail. The Jail Warden reportedly stated that he had not received any commitment orders for the detainees and that they were merely being held for 'safekeeping'. This was the first opportunity they had to inform their families of their whereabouts or be in a position to seek legal or medical assistance. Subsequently, a number of detainees were informed that amended criminal complaints, citing different alleged offences from those that formed the basis of the original '*John Doe...*' arrest warrant, had been presented - and that they were to be charged in court with 'robbery in band' and murder.

Most of the detainees remained too fearful to lodge any immediate formal complaint of their treatment or to file charges against the alleged perpetrators. Frightened of reprisals and in order to win their release from jail at least six of the detainees reportedly agreed to sign an amnesty application in which they, falsely, admitted membership of the MILF.

An appeal for an investigation was eventually lodged by TFDP human rights workers on behalf of the detainees with the Davao regional office of the PCHR in November 2000. However it was only in March 2001 - after prolonged discussions with TFDP staff and their families - that at least six of the detainees felt secure enough to sign an official complaint-affidavits calling for the filing of charges for warrantless arrest, arbitrary detention and physical injuries.

On the issue of torture the PCHR found that one medical report it had received (that of Russel Lagbawan, issued on 17 July 2000) recorded only evidence of 'slight physical injuries' - an offence for which the prescriptive period for the filing of charges is 60 days. Because no affidavit in support of the complaint lodged at the PCHR had been received within a 60 day period, the PCHR felt unable to recommend the filing of torture charges.

On the issue of warrantless arrest, the PCHR found that one detainee, Russel Lagbawan, had been named on an original warrant, and therefore his detention was lawful. In a later statement, the PCHR argued that in any case the validity of Lagbawan's warrant was best addressed during his ongoing trial.

According to information received by Amnesty International, the issue of the arrest of the more than 26 other detainees, who were not named in any relevant arrest warrant,

appeared not to been adequately addressed. The PCHR appeared to suggest that some of the detainees may have been merely ‘invited’ for identification purposes and had not therefore been ‘arrested’ – despite the fact the most were subsequently charged with criminal offences.¹⁰³

In addition, because most of the detainees had failed to submit medical reports immediately, or to file supporting witness affidavits or complaint-affidavits, the PCHR found that their allegations of torture, unlawful warrantless arrest and arbitrary detention were not substantiated and that the case should be closed due to ‘lack of interest’ on the part of the complainants.

In November 2000, in addition to requesting a PCHR investigation, TFDP human rights workers also filed a criminal complaint (unlawful arrest, arbitrary detention and maltreatment of prisoners) against named military and police officers with the Office of the Ombudsman (Deputy Ombudsman for the Military). In response to counter-affidavits from the alleged perpetrators, and citing the lack of sworn statements from the alleged victims or other evidence, the Deputy Ombudsman found “lack of prima facie evidence that would warrant the conduct of further investigation”. He dismissed the criminal complaints, forwarded the files to the AFP and PNP for possible administrative proceedings, and declared the case closed. Some 17 months after arrest, 29 of the Mati detainees were arraigned in the Regional Trial Court on 3 December 2001. Defended by human rights lawyers of the Free Legal Assistance Group (FLAG) they pleaded not guilty to charges of robbery. In June 2002, the Judge declared a ‘provisional’ dismissal of their cases and they were released.¹⁰⁴ The court’s decision was based on a declaration by the Provincial Prosecutor that there was insufficient evidence to proceed, and that two of the detainees - Toto Onofre and Rodel Mapando - who had agreed to serve as state (prosecution) witnesses, claimed that their military investigators had forced them to sign a prepared affidavit and that they had not be advised of their right to counsel.

¹⁰³ Human rights workers noted that a senior police officer had been quoted in the press (Sun Star Davao, 22 July 2000) as saying suspects had been arrested without warrant, but this was lawful as they had been positively identified as accomplices by MILF members who had recently surrendered.

¹⁰⁴ A provisional release opens the possibility of re-arrest under the same charges if new evidence emerges.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

The UN Human Rights Committee has set out a series of custodial safeguards and other measures to be taken to prevent torture. Detailed safeguards have been set out in UN human rights instruments, notably the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (Body of Principles on Detention), the *Standard Minimum Rules for the Treatment of Prisoners* (Standard Minimum Rules) and the *Declaration on the Protection of All Persons from Enforced Disappearance* (Declaration on Enforced Disappearance). Other important findings and recommendations have been made by the UN Committee against Torture and by the UN Special Rapporteur on torture.

In line with these international standards, Amnesty International makes the following recommendations for the prevention of torture in the Philippines.

Human Rights Mechanisms

- The government of the Philippines should extend standing invitations to all of the special mechanisms of the Commission on Human Rights- and as a priority to the Special Rapporteurs on torture and on violence against women.
- The government of the Philippines should submit overdue reports to the Human Rights Committee, Committee against Torture, Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women in order to secure further guidance on how to fulfil its obligations to prevent torture and ill-treatment, and other human rights violations identified in this report.
- Obligations under human rights treaties should be incorporated into domestic law. Specifically, legislation should be passed to incorporate the Convention against Torture into domestic law in accordance with the requirements of the Convention.

Safeguards at Arrest

Amnesty International is concerned that constitutional and legal provisions protecting a prisoner's need to be informed of his or her rights are not systematically respected or enforced. Operational codes for law enforcement officers should ensure that suspects are informed of the reason for arrest and their rights, including:

- right of access to counsel, family members and medical assistance.
- When it is not possible to give a comprehensive explanation of prisoners' rights at the moment of arrest, arrested people should be informed without delay in simple, non-technical language of the rights which are of immediate operational importance, including the key safeguards protecting them against torture or ill-treatment.
- Officials should identify themselves to the person arrested, and on demand, to others witnessing the event. Police officers and other officials who make arrests should wear name tags and numbers so that they can clearly be identified.
- Proper arrest procedures should be backed up by proper record-keeping, including reasons for the arrest, the time of the arrest and the identity of the arresting officers.

Safeguards during transport to a place of detention

Amnesty International is concerned that, after arrest, suspects are at risk of being ill-treated or tortured while in transit to an initial place of detention. Often the victims are beaten or otherwise ill-treated in a police vehicle. To prevent torture in transit, the authorities should:

- Ensure that prisoners are taken directly to the initial place of detention without delay.
- Require the authorities responsible for the place of detention to certify that the prisoners arrived in good physical and mental condition.
- Institute proper means of surveillance and supervision of the actions of officials during transport.
- Ensure that procedures for the safe transport of prisoners are backed up by proper record-keeping, including records of the time of arrest and the subsequent time of arrival at a place of detention.

Record-keeping

Accurate record-keeping is an essential element of the conduct of law enforcement functions, including arrest and detention. Amnesty International is concerned that existing record-keeping systems in the Philippines, including the use of police station ‘blotters’ (log books), are an insufficient safeguard against torture and other human rights violations and need to be strengthened.

The existence of accurate official records that are open to review helps to ensure that proper procedures are followed and that law enforcement officials engaged in their functions can be held accountable for their actions. In line with Principle 12 of the Body of Principles on Detention, Amnesty International recommends that:

There shall be duly recorded:

1. The reasons for the arrest;
 - The time of the arrest and the taking of the arrested person to a place of custody as well as that of his or her first appearance before a judicial or other authority;
 - The identity of the law enforcement officials concerned;
 - Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his or her counsel, if any, in the form prescribed by law.

The requirement of keeping and preserving accurate and complete records of arrest and custody and making the information available when required should be incorporated in national laws and regulations. Any breach of these requirements should be punished by appropriate sanctions.

No Secret Detention

Amnesty International is concerned that constitutional and legal prohibitions against secret places of detention are inadequately enforced. Particularly during custodial investigation

before an inquest procedure, detainees report being held secretly in locations that are not officially recognised as places of detention, including so-called 'safe-houses', unidentified 'offices' in police or military camps and hotel rooms. The organization recommends that:

- Existing laws making it a punishable offence for any official to hold a person in a secret and/or unofficial place of detention are enforced through prosecutions.
- Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court.
- Up-to-date lists of all officially recognized places of detention should be published in a form that is readily accessible to lawyers and members of the public.
- Accurate information about the detainee's arrest and whereabouts should immediately be made available to relatives, lawyers and the courts.

Bringing detainees promptly before a judicial authority

Amnesty International is concerned that Philippine statutory time limits governing when an arrested person should be brought before a judicial authority (within a maximum of 36 hours after a lawful arrest without a warrant) are inadequately enforced. In addition, detainees are at times vulnerable to being coerced to sign waivers extending lawful periods of pre-trial detention. The organization recommends that:

- Laws making it a punishable offence to arbitrarily detain a person beyond 36 hours should be enforced through prosecutions.

The organization is also concerned that prosecutors taking on the role of a 'judicial officer' - notably investigating fiscals conducting Inquest Procedures- do not always exercise the functions or maintain the necessary independence required of a proper judicial authority.

Amnesty International believes that existing procedural guidelines, including the New Rules on Inquest, should be strengthened to reflect Principle 37 of the UN Body of Principles on Detention, and that effective provisions are enforced for two roles for a judicial or other authority when a person is brought before them after arrest:

- To decide on the lawfulness and necessity of the detention, and
- To hear any statement from the detainee on his or her treatment while in custody.

Access to Legal Counsel

Amnesty International is concerned that a detainee's right to counsel at all stages of custodial investigation, including during the inquest procedure, is widely ignored in practice. The organization recommends that:

- Legal and procedural provisions should ensure that detainees are given access to legal counsel during all stages of custodial investigation. Law enforcement personnel who do not honour such provisions should be held accountable and be subject to administrative or criminal sanctions.
- Adequate resources and training be provided to the Public Attorney's Office (PAO) and to the Integrated Bar of the Philippines (IPB) to ensure that detainees have access

to competent legal advice and protection during all stages of criminal investigation and trial.

Medical Examinations

The UN Standard Minimum Rules (Rule 24) and the Body of Principles on Detention (Principle 24) call for prisoners to be given or offered a medical examination as promptly as possible after admission to a place of detention. The UN Human Rights Committee has emphasized the need “to have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning, and before they are brought before the examining magistrate or released”. The Special Rapporteur on torture has further recommended that such medical examinations be “repeated regularly and should be compulsory upon transfer to another place of detention.”¹⁰⁵ Furthermore, prisoners should have a right to be examined by a doctor of their own choice.

Amnesty International therefore recommends that:

- A person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;
- All medical examinations of persons in custody are to be conducted out of the hearing and -- unless the doctor concerned expressly requests otherwise in a given case -- out of the sight of police officers; the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the person in custody and his or her lawyer;
- The confidentiality of medical data is to be strictly observed.

For the effective investigation of torture, Amnesty International believes that medical personnel working with the Philippine Commission on Human Rights (PCHR), law enforcement agencies, government hospitals and other medical institutions should be given adequate resources and training to enable detailed examinations to be carried to establish whether marks, or observable physical and psychological effects, are consistent with the torture that has been alleged.

Amnesty International recommends that these examinations reflect the principles and required methodologies set out in international standards on the medical investigation of torture allegations, particularly ‘The Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’.

The Protocol includes the ‘Principles for the Effective Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment’. These Principles make clear that a doctor’s examination of a person alleging torture should include:

- a history, including “alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;”

¹⁰⁵ UN Doc. A 56/156, 2001, paragraph 39 (f)

- a physical and psychological examination; and
- an opinion, or “an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment”.

Safeguards during Interrogation

Amnesty International recommends that:

- Prisoners should be informed at the time of their arrest of the reasons for their arrest, and of their rights. Before being interrogated, prisoners should also be informed of their rights during interrogation, including the right against self-incrimination and the right to remain silent.
- Lawyers should be present during interrogation.
- The identity of everyone present during interrogations is recorded.
- The blindfolding and hooding of prisoners in police custody be prohibited, and that officers who engage in the practice are prosecuted.
- Proper records of all interrogations are kept, and the audio or video recording of interrogations be considered as an additional valuable safeguard.

Conduct of Criminal Investigations by Law Enforcement Officers: Principles, Resources and Training

Amnesty International believes that law enforcement agencies in the Philippines should be provided with the scientific and technical equipment necessary to investigate crimes effectively and lawfully. While the extent to which they are provided with these means is frequently dependent on the material resources available to the authorities, a lack of resources is not a justification for torture or other unprofessional behaviour. Law enforcement officials should be trained and encouraged to operate as effectively as they can given the resources available to them without breaching legal, ethical or professional standards.

In particular, law enforcement officials should be trained in the skills of interviewing victims, witnesses and those suspected of crime. In relation to suspects, these skills include the abilities to:

- Gather all available evidence in a case before interviewing a suspect;
- Plan an interview based on that evidence so that an effective interview can be conducted;
- Treat an interview as a means of gathering more information or evidence rather than as a means of securing a confession;
- Conduct an interview in a manner that respects the suspect’s rights;
- Analyse information obtained during the interview, and carry out any further investigation into the case suggested by that analysis;
- Check any admission or confession made by the suspect against available evidence; and evaluate each interview with a view to learning from each experience and developing interviewing and investigative skills further.

Effective investigation of reports of torture: the role of the Philippine Commission on Human Rights, the Office of the Ombudsman and the Department of Justice

Reflecting the UN Principles on the Investigation of Torture (see Appendix I), Amnesty International recommends that:

- All investigations of torture should be prompt, thorough, impartial and independent.
- In carrying out investigations, investigating bodies should pursue all available sources including statements from complainants, witnesses and alleged perpetrators, medical reports, police investigation records, court files, media reports and information from NGOs, families of victims and lawyers.
- Involved public officials should be suspended pending the outcome of investigations into allegations of torture or ill-treatment.
- Those responsible for torture must be brought to justice and tried in accordance with international standards for fair trial.

Excluding Evidence Obtained through Torture: the Role of Prosecutors and the Courts

In the Philippines as elsewhere, the most common purpose of torture is to obtain confessions or other evidence which can be used in criminal proceedings. Amnesty International believes that if the use of such evidence can be effectively excluded, the motivation for obtaining it will disappear and the use of torture should diminish accordingly. As formulated in Article 15 of the Convention against Torture,

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

Prosecutors

Amnesty International recommends that the Department of Justice implements effective measures to ensure compliance with Article 16 of the UN Guidelines on the Role of Prosecutors:

"When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

The Courts

As recommended by the Special Rapporteur on torture,

“Prosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely on confessions or information alleged to have been obtained by such treatment; indeed, the burden of proof should be on the State to demonstrate the absence of coercion.”¹⁰⁶

- If there are reasonable grounds to believe that torture or ill-treatment was inflicted, either during interrogation or in the course of judicial proceedings, the judge should ensure that a prompt and impartial investigation is initiated, in accordance with Articles 12, 13 and 16 of the Convention against Torture and Articles 8 and 9 of the Declaration against Torture.

In line with the above, Amnesty International recommends:

- That prisoners should be able to address judges in an atmosphere free from intimidation.
- If there is any sign of torture or ill-treatment, the judge should inquire into it without delay, even if the prisoner has not volunteered any statement.
- If the inquiry, or the prisoner’s own statement, gives reason to believe that torture or ill-treatment was committed, the judge should initiate an effective investigation and take effective steps to protect the prisoner against any further ill-treatment, and, if the detention is unlawful or unnecessary, order the prisoner's immediate release under safe conditions.
- When at any time in the course of a judicial proceeding it is alleged that a statement was made under torture or ill-treatment or when a judge otherwise has reason to suspect that evidence was obtained through torture or ill-treatment, a separate hearing should be held before such evidence is admitted. Amnesty International believes that if the hearing determines that a statement was not made voluntarily, it should be excluded as evidence, except as evidence against those accused of coercing the statement.
- The supposed victim should have access to independent doctors and lawyers for assistance in securing the evidence needed to back up the claim.

The Congress: the need for legislation defining and penalizing acts of torture

Amnesty International urges the Government of the Philippines to adopt a law for the prohibition and prevention of torture. Such a law should:

- Fully reflect the provisions of the Convention against Torture

¹⁰⁶ Report on visit to Turkey, E/CN.4/1999/61/Add.1, para. 113(e).

- Ensure that all acts of torture, as defined in Article 1 of the Convention against Torture, are criminalized, and that the law complies with the Philippines' obligations under other human rights instruments and does not apply the death penalty.
- Impose penalties appropriate to the gravity of the offence.
- Criminalize attempts to commit torture and complicity or participation in torture.

Children

- Ensure that law enforcement officials inquire immediately on arrest or first contact as to the age of any suspect who appears to be below the age of eighteen.
- Ensure that child detainees are, in accordance with human rights standards, at all times detained separately from adult detainees and in separate facilities where they exist.
- Deliver all child detainees promptly before a judicial authority following arrest and release those who are not charged within the period permitted under domestic law.
- Ensure that parents, guardians and/or social workers are immediately informed of arrest.
- Enforce the safeguards that exist under domestic and international law and hold those who fail to uphold such standards accountable.
- Limit the use of pre-trial detention for children to exceptional circumstances, and all forms of detention should be consistent with the international standard that children should only be detained as a last resort and for the shortest possible period of time.

Women¹⁰⁷

- Ensure that female security personnel are present during the interrogation of female detainees, and that male staff who supervise female detainees are accompanied by female staff at all times, in line with the UN Standard Minimum Rules for the Treatment of Prisoners.
- Ensure that female detainees are always held separately from male detainees.
- Take effective steps to protect female detainees who report rape or sexual harassment from threats, reprisals or any other form of intimidation.
- Investigate all complaints of rape or sexual abuse by state officials promptly and independently, and bring anyone found responsible to justice. All punishments for such violations should conform with internationally recognized standards for human rights and exclude the death penalty.
- Introduce and fully implement laws forbidding sexual harassment of female detainees by police, prison or military officials, as the acceptance of such practices promotes an environment where rape and other sexual violence occurs. All forms of sexual contact between law enforcement officials and detainees, including physical assault, should be explicitly prohibited.

¹⁰⁷ For further recommendations see: 'Philippines: Fear, shame and impunity: Rape and sexual abuse of women in custody', 2001, (AI Index: ASA 35/001/2001).

APPENDICES

Appendix I: Principles on the Effective Documentation of Torture

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Principles on the Investigation of Torture), annexed to UN General Assembly resolution 55/89 of 4 December 2000

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter torture or other ill-treatment) include the following:

- (i) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;
- (ii) Identification of measures needed to prevent recurrence;
- (iii) Facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence;

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles;

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials;

(b) The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(i) Circumstances of the interview: name of the subject and name affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;

(ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should be given;

(v) Authorship: the report should clearly identify those carrying out the examination and should be signed;

(c) The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

Appendix II: Additional Case Studies

Case Study- Daniel Arca

Cesario Lebrilla's abduction was reportedly linked to the earlier abduction of Daniel Arca, a member of the same urban poor community in Caloocan City (Metro-Manila). Daniel Arca, 41, who had received treatment for leprosy since 1980 and had lost the use of fingers on his left hand and some toes, was seized in his home by unidentified armed men on the evening of 9 December, 1999. He remained missing for three nights and four days.

According to Daniel Arca's written account, as he was pulled out to a vehicle, he shouted to his wife to record the number plate. Over the next four days his wife and neighbours searched for him in police stations, hospitals and military camps in Metro Manila, but received no information as to his whereabouts. He was finally located on 13 December 1999 in Sangandaan police station after he was able to send a note to his family through the wife of another detainee. Daniel's wife recalled that Sangandaan was one of the first police stations she had visited, but no record of Daniel's detention had been on the police 'blotter' (log book). On returning to the station after receiving the note Daniel's wife saw his name newly-written on the blotter.

In his account to TFDP human rights workers, Daniel Arca described how when in the vehicle he had been told that he would be taken to a police station where a criminal complaint had been made against him. He was subsequently told he was to be brought to a so-called 'safe-house' - and he was blindfolded using a long, wet towel that covered his face and mouth. During the journey he was intimidated by someone saying "look, we're passing a cemetery". Brought into a room he was questioned about his alleged involvement in the Shell bombing, but denied any knowledge, pointing out that he was a long-term leprosy patient with physical disabilities.

Daniel Arca related how, when his blindfold was taken off, he found himself in a small warehouse where he could see a motorcycle and smell that chickens had been kept there. Subsequently he was again questioned - including about his children and where they studied - during which he was allowed to smoke, given some food and water and had his handcuffs loosened. He was taken to a cell with bars and later to a room which he judged to be an office used for crime detection and intelligence gathering. Blindfolded with a T-shirt wrapped around his face with packing tape, he was made to lie down on a bench with his hands hanging down and cuffed. During interrogation, he felt someone holding his feet and his

stomach was tightly wrapped with plastic. Water was poured over his face and as his mouth filled with water someone heavy sat on his stomach. At one point, when he was forced to kneel holding a heavy object, he felt a candle lit under his outstretched hands.

Daniel Arca recounted how he heard someone order that he be taken out to an office for an inquest procedure. He stated that at inquest, because of the physical pressure inflicted on him and his anxiety about threats to his family, he confessed to the accusations against him. In his account to human rights workers, he stated he wanted to put his ordeal on record but was unwilling to file a complaint or file charges because he feared for his life and the well-being of his family. He judged it safer to return to family and to keep quiet.

Case Study: The Basilan arrests

Mass arrests, allegations of torture reported between June-July 2001 in Barangay Tabuk, Isabela City, Basilan and elsewhere (south-western Mindanao).

The 28 Muslim men whose names are listed below were arrested from 13-16 July 2001 in Basilan and charged in Zamboanga City.

Rabiche Tumanggong, Saddat Abdulgani Hussin, Marvin Fernandez Hamizon, Marvin Uyag Hasim, Bobby Abdulajid Alonto, Sedkie Karama Abdurasid, Abdulgaffar T. Hadji Yusof, Ebrahim Joe, Sajid N. Asaha, Ping Chiong Tan, Abdulmoner Hasiim Saliddin, Hadji Mohamad Isa Palaw, Badran Abdulhamid, Anwar Abdulhami, Munib Alabani Majid, Masser Lim Omar, Romy Hairal, Gaafar Mundi, Poi John Ali, Munap Abdul Saliddin, Hadji Adulgani O. Abas, Osin Abdulcarin, Sirad Antonio, Ibno Haser Hagasi, Nimrod Kallong, Iklaman Abdusalam Taligon, Jalil Samsawy, Otoh Hapikin

Two other men listed below were arrested in late June in Tumhaubong, Basilan

Mukim Hataman Limborg, Yacob Ayub

Military operations in the Sulu Archipelago (including Jolo and Basilan islands) in south-western Mindanao escalated during 2000 in response to the kidnapping for ransom of scores of Filipinos and foreigners by the armed Islamist group Abu Sayyaf. In one incident in March 2000, 52 persons including schoolchildren, teachers and a priest were kidnapped at Tumahubong, Sumisip and at Sinangkapan, both in the island province of Basilan. Over 20 hostages were released, but 27 were held until May 2000 when military assaults led to the rescue of many. Six of the hostages, including the priest were killed, reportedly by the kidnapers as army units closed in. A number of the victims, including three women, were reported to have been either beheaded or mutilated by their captors.

In April 2000, 21 foreign nationals were kidnapped from Sabah (north Borneo, Malaysia) and in September former President Joseph Estrada ordered a major offensive against suspected Abu Sayyaf bases on Jolo island. During a temporary news blackout, reports of indiscriminate bombardments and other human rights violations, including extrajudicial executions, "disappearances" and torture, began to emerge.

In May 2001, an Abu Sayyaf unit staged another major kidnapping, seizing 17 Filipinos and three US citizens from a tourist resort in Palawan and transported them to Basilan. A number of the hostages were beheaded by their kidnapers while others were released after the reported payment of ransoms. President Gloria Arroyo directed the military to exert every effort to track down the kidnapers and to rescue the remaining hostages unharmed. In June,

military units surrounded the Abu Sayyaf unit at a church in Lamitan, but in controversial circumstances that were the subject of later Congressional inquiries, the kidnappers were able to escape with their hostages.

In July 2001, President Arroyo declared a ‘state of lawlessness’ in the Sulu archipelago and Zamboanga City and called on the Armed Forces of the Philippines (AFP) to suppress “lawless violence”. In support of the declaration, Secretary of Justice Hernando Perez issued a Memorandum to the AFP on 13 July, giving detailed guidelines on lawful arrest and the rights of the accused. However the Memorandum included a clause that appeared to represent an erosion of existing safeguards against arbitrary detention.¹⁰⁸

Following the release of the Memorandum, military ‘saturation and sweep’ operations escalated in the area of Barangay Tabuk, Isabela, Basilan. Witnesses described how, late on 12 July 2001, troops of the 103rd Army Brigade surrounded the district, cordoning off designated areas. From dawn the next day troops, some wearing face masks, entered houses and ordered the occupants to congregate outside. Some were arrested after masked informants ‘pointed out’ suspected Abu Sayyaf members or their alleged sympathisers, others appeared to be arrested at random. At least 28 Muslim villagers were detained over the succeeding days. Held in a military camp for up to three days, many were reportedly tortured during interrogation and denied access to legal counsel, family members or medical personnel.

In an affidavit sworn before lawyers of the Philippine Commission on Human Rights (PCHR) regional office in Zamboanga on 18 July, **Abdulmoner Saliddin** described how soldiers asked to search his house early on 13 July and on request were shown a firearm which had been lawfully registered. He was then ‘invited’ for further questioning at a military camp at Isabela City. His father, **Munap Saliddin**, accompanied him to ensure his safety, but on arrival both found that they were under arrest on suspicion of involvement in kidnapping. Both men related how they were subsequently blindfolded, had their hands and feet tied together, and were transferred to the military headquarters of the 103rd Brigade in barangay Tabiawan, where they remained until 16 July. Abdulmoner Saliddin related how, during interrogation, he was tortured to force him to admit involvement in Abu Sayyaf kidnappings and described being punched, nails being pressed into his ear and temple, being burnt with cigarette butts on his shoulder, arm and leg, and pliers used to squeeze his lips and tongue. On

¹⁰⁸ The DOJ Memorandum altered the Rules of Criminal Procedure requirement that lawful warrantless arrests had to be based on ‘probable cause based on *personal knowledge*...’ In the Memorandum, this requirement was relaxed to allow warrantless arrests on the lesser standard of ‘verified information’. Thus arresting officers did not need to have personal knowledge of the commission of the crime or of the participation of the person to be arrested. The Memorandum stated:

‘Section 5, Rule 113 of the Revised Rules of Criminal Procedure.

Arrest without a warrant; When lawful. – a peace officer or a private person may, without a warrant arrest a person;

- a) When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit and offence;
- b) When an offence has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; ...

In relation to paragraph b). above, based on verified information, probable cause exists against all members of the Abu Sayyaf Group, their conspirators, associates and agents. (italics added)

16 July, the two men and 26 other detainees were flown by helicopter to Zamboanga City, and underwent inquest proceedings at the Hall of Justice following which an Information (charge) was filed in court for the offences of Kidnapping and Serious Illegal Detention.

In testimony given to PCHR and Karapatan¹⁰⁹ human rights workers, the *barangay captain* (village head) of Tabuk, **Abdulgani Abbas**, described how, after he left the mosque after early morning prayers on 13 July, he was requested by soldiers to voluntarily accompany a number of his constituents who had just been arrested and were standing handcuffed. On arrival in military camp he and all the other arrested suspects were accused of being Abu Sayyaf members and threatened with death. Transferred later to Tabiawan military camp, they were made to sign a document stating that they had not had not been maltreated and then were blindfolded and handcuffed. Shortly afterwards he was accused of being an active Abu Sayyaf member and, when he strongly denied this, was struck with a hard object. He felt what he thought was a nail pressed into his temple causing it to bleed. On 16 July he was transported to Zamboanga, charged after inquest and committed to jail.

Other residents of Tabuk alleged similar treatment. Arrested without warrant on 13 July, a group of six men were made to sign a document stating they were not maltreated after which they were transferred to Tabiawan camp where they were tortured to admit membership of the Abu Sayyaf. **Sahid Asaha** described being kicked, punched and whipped in the abdomen and guns being fired nearby accompanied by death threats. **Abdulgaffar Hadji Yusof** described being punched and burned; **Sadat Hussin** stated his neck and legs were tied, he was punched and kicked and his skin punctured by metal wires; **Marvin Fernandez Ramiso** stated his left eye was pistol whipped, his nipples twisted with pliers and his body punched. **Marvin Hashim Uyag** claimed similar treatment while **Bobby Alonto Abdulajid** said he was beaten every time he denied his interrogators' accusations and, on hearing gunshots, was informed his companions had been executed.

Adel Ariola Oringa, a resident of Tabuk, told human rights workers how he was dragged out of his office on 16 July and brought to a military jeep where he was handcuffed and blindfolded. He described being taken to Tabiawan military camp and tortured. He claimed soldiers rubbed chilli pepper into his eyes, inserted a bottle into his anus and hung him upside down for prolonged periods. Subsequently he was charged with the murder of a military officer and detained at Basilan Provincial Jail. Similar treatment was reported by **Abubakar T. Ashalin**, who was arrested on 16 July after his jeep was stopped as he returned home from Lamitan. While allegedly held by soldiers of the 18th Infantry Battalion he claimed he was beaten, chilli pepper rubbed into his eyes and his penis and a bottle inserted into his anus. The next day he was taken to Tabiawan military camp where he was beaten. He reported that three days later a warrant of arrest was issued against him charging him with the murder of a military officer.

Other arrests continued to take place elsewhere on Basilan. In an affidavit sworn before PCHR lawyers, the Barangay Captain of Fuente, **Sirad Antonio**, and barangay official, **Ibnohasir Agasi**, narrated how they were detained early on 15 July in Fuente, Maluso. After giving permission for their homes to be searched, they were requested by soldiers to

¹⁰⁹The human rights group, Karapatan, undertook a preliminary visit to Basilan in August 2001, and led an NGO fact-finding mission in September 2001. See "Basilan under Siege: report on the fact-finding on human rights violations, relief and medical mission, September 9-16, 2001".

accompany them in order to give a report on possible Abu Sayyaf activity in their barangay. Later that day they were transferred to Tabiawan military camp in Isabela where they were blindfolded and hog-tied. Ordered to strip, they were coerced to sign documents they did not know the contents of, to admit participation in Abu Sayyaf kidnappings and to name local alleged accomplices. Sirad Antonio described how they both were punched and kicked and he was burnt on his nipples with cigarette butts. Still blindfolded and with hands and feet tied together, both men were transported by helicopter to Zamboanga City on 16 July and after a short inquest proceeding were charged with kidnapping and committed to jail.

Earlier arrests had also taken place. In sworn joint affidavit, **Mukim Hataman Limborg** and **Yacob Ayub** described how they were approached by soldiers in Tumhaubong, Basilan in late June and 'invited' to accompany them to their camp. Subsequently they were blindfolded, hands tied behind their back and taken to another military camp where they were interrogated. Yacob Ayub described being hit in the head with a rifle butt, tied with rope around the neck, whipped with a piece of wood and burnt with the heated barrel of a rifle and by burning pieces of wood. Mukim Limborg described being hog-tied and whipped until he lost consciousness. He reported that, on regaining consciousness, he found scald wounds on his trunk and thighs and cigarette burns on his cheek and hand. Both were detained in Zamboanga charged with Kidnapping and Serious Illegal Detention.

On 26 July 2001, the Director of the PCHR Regional Office in Zamboanga issued a report on his investigations of human rights complaints arising from the Tabuk arrests. He found that 24 of the 28 suspects detained in Zamboanga had been unlawfully arrested without a warrant, that rights of access had been denied and that a number had been physically and mentally tortured to coerce confessions and extract information.

He questioned the apparent effects of the 13 July Department of Justice Memorandum altering the requirements for lawful warrantless arrests. He described how informations, which had originated in May 2000 from the affidavits of victims of the earlier Tumahubong kidnappings, were repeatedly amended and expanded to include the names of those detained in the mass arrests of July 2001. Warrants of arrest for many of these 'newly' named detainees were issued only after they were arrested and amended informations filed in court.

The PCHR noted that the Prosecutors appeared to recognise that at least 24 of the detainees had been arrested without warrants because the prosecutors themselves had certified that these detainees had not availed themselves of a full Preliminary Investigation before an Information was filed in court because they had not signed a waiver to this effect.

One of these detainees, Hadji Mohammad Isa Palaw, later requested the Court in Zamboanga to order a Preliminary Investigation of the charges against laid him. The Court agreed and, having conducted the investigation a panel of prosecutors recommended the dismissal of charges against him in September 2001. However he was reportedly transferred to Bicutan jail (near Pasig, Metro Manila) and continued to face trial in 2002. At least six other detainees applied to the Pasig Court for Preliminary Investigation. Prosecutors affirmed their indictments and the Judge confirmed their arraignment.

In light of these findings, the PCHR recommended the filing of criminal and administrative charges against officers and men of the 103rd Brigade for unlawful arrest, torture and violation of the rights of the accused.

In December 2001 the Office of the Deputy Ombudsman for the Military began its preliminary investigation into criminal complaints lodged by a number of the detainees and called for counter-affidavits to be provided by the commanding officer of the 103rd Brigade. The accused officer filed a counter affidavit in March 2002 stating he did not torture or authorize the torture of the complainants because they already had warrants issued against them and had been identified as participants in the 2000 kidnappings. According to information received by Amnesty International, the Deputy Ombudsman has not called a hearing on the case or resolved whether or not to charge the accused officer.

Most of those detained in Tabuk around 13 July 2001, and numerous others arrested in following months, were subsequently transferred from Zamboanga to Bicutan jail, near Manila.

As a result of a series of amendments to the original Informations, which stemmed from the March 2000 kidnappings, and a series of new charge sheets filed on behalf of others of the kidnap victims, by 2002 at least 123 detainees faced trial on charges of Kidnapping and Serious Illegal Detention. The amendments included the addition of new names, and the addition or alteration of aliases or nicknames by which some alleged Abu Sayyaf members were known.

A defence lawyer from the Free Legal Assistance Group (FLAG) filed Motions to Quash or to Dismiss the charges on the grounds that the names of some of the accused were different from those in the charge sheets. These petitions were mostly denied by the court. In addition, defence lawyers filed a petition for Habeas Corpus in the case of 25 detainees whose names did not match any of those names in the charge sheets. The court ruled against the petition on the grounds that it would be better to present the evidence in a full trial. Proceedings continued as of mid-2002 with the defendants and their relatives facing severe financial difficulties funding their legal defence, including the travel expenses of witnesses from Mindanao to Manila.

