

## PHILIPPINES

### CAT A/44/46 (1989)

145. The committee considered the initial report of the Philippines (CAT/C/5/Add. 6) and the additional information contained in the second part of the report\* at its 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> meetings, held on 20 and 21 April 1989 (CAT/C/SR. 14-16).

146. The representative of the State party, introducing the report, said that the process of restoring democracy in the Philippines had created the conditions necessary for the prevention and elimination of torture, so that her country had been able to accede to the Convention less than four months after the peaceful revolution of February 1986. A new Constitution had been adopted on 2 February 1987, the Congress of the Philippines had been elected in May 1987 and village (barangay) elections had been held on 28 March 1989, following the mayoral and gubernatorial elections, thereby completing the establishment of a democratic structure in the space of three years. The reforms introduced during that period included the reorganization of the judiciary with the appointment of a Supreme Court, the release of all political prisoners, the restoration of the habeas corpus procedure, the formation of a Commission on Human Rights and the ratification of a number of international human rights instruments. In addition, the new Philippines Constitution included a Bill of Rights specifically prohibiting torture, the use of force, violence, threats, secret detention and cruel, inhuman or degrading punishment, and made confessions extracted by torture or other unauthorized methods inadmissible as evidence. Finally, the Constitution provided for the adoption of legislation for the suppression of torture and the compensation and rehabilitation of torture victims.

147. The State representative stressed, however, the various threats hanging over her country. For example, the Government had to deal with a communist insurgency and the activities of separatist groups, and there had been a number of attempted coups led by military dissidents. At the same time, a large portion of the population lived in poverty while almost half of the national budget went to servicing foreign debt.

148. The members of the Committee welcomed the report, which contained detailed documentation providing a better insight into the political and legal situation prevailing in the Philippines. It was a pity, however, that the information comprising the second part of the initial report had reached them too late to be given proper consideration.

149. In general, members wondered whether the relevant provisions of the Convention could be invoked directly in the courts and applied directly by the competent authorities. They also asked what criteria were applied in appointing justices to the Supreme Court, whether they were professional judges, whether the President of the Republic had the power to reject nominations and whether the prohibition of torture and

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\* The additional information transmitted by the Government of the Philippines to the Committee on the day of its consideration of the report will be circulated as a Committee document at a later date.

other similar acts applied equally to Philippine nationals and foreigners. Additional information was requested on the composition of the Commission on Human Rights, its activities and its relations with the Presidential Committee on Human Rights set up under the Constitution.

150. The members of the Committee also asked for further information on factors and difficulties affecting the implementation of the Convention, particularly the apparent time lag between the adoption and actual implementation of constitutional and legal provisions prohibiting torture. The Committee also asked about the effects of the insurrection on the practical application of the Convention's provisions, whether measures had been taken to prevent the practice of torture in areas under rebel control, whether any cases of torture had occurred and, if so, whether they had been investigated and, where appropriate, convictions had been handed down.

151. With regard to the provision of the Constitution commuting death sentences already imposed to reclusion perpetua, the Committee asked whether commutation was automatic or whether it depended on the institution of an appeal for clemency and, more generally, whether sentences of reclusion perpetua could actually be considered cruel or inhuman punishment.

152. With regard to article 2 of the Convention, members of the Committee asked whether a state of emergency was currently in effect in the Philippines and what was its general effect on legal measures for the protection of human rights, including those relating to torture.

153. With regard to article 4 of the Convention and to Executive Order No. 62, members asked whether ill-treatment of a detainee constituted a crime or an offence, whether it was subject to criminal or administrative law and what penalties were applicable in such cases.

154. Members of the Committee asked for further information on the implementation of articles 5 to 9 of the Convention and on the principle of universal jurisdiction over perpetrators of the crime of torture. In particular, they wondered whether persons presumed to have committed acts of torture could be prosecuted in the Philippines, in cases where the act in question had not been carried out in the Philippines and when neither the victim nor the culprit were Philippine nationals.

155. Referring to article 10 of the Convention, members of the Committee asked about any activities undertaken to inform and educate members of the police or military in matters of human rights, particularly with regard to torture.

156. The Committee asked whether measures had been taken to monitor the implementation of article 11 of the Convention, such as regular inspections of places of detention.

157. Finally, with regard to articles 12 to 14 of the Convention, members asked whether, despite the problems created by the insurgency, an infrastructure for the rehabilitation of torture victims had been set up. With regard to the work of the Commission on Human Rights set up in the Philippines, the Committee asked about the procedure whereby torture victims could submit complaints to the Commission, whether the Commission had had to deal with many such cases and, if so, with what results, whether investigations had been opened and whether they had produced any convictions. Further details were also requested on the activities of the Presidential Committee on Human Rights in that regard.

158. In reply to questions raised by members of the Committee concerning the status of the Convention in Philippine law, the representative of the State party explained that under article 2.2 of the Constitution, international law was part of the law of the land. However, no case had been filed to test the rule in relation to the Convention because the Convention was very recent. She added there was no case law on the question of the conflict between the Constitution and the International Covenant on Civil and Political Rights. Lastly, she emphasized that article 8, section 4, paragraph 2, of the Constitution provided that all cases involving the constitutionality of a treaty, international or executive agreement or law should be heard by the Supreme Court en banc.

159. In reply to other questions concerning the organization of the judiciary, the representative stated that the power of the judiciary was vested in a Supreme Court, which was a collegiate body consisting of one Chief Justice and 14 associate justices. She also said that certain reforms had been introduced to guarantee the independence of the judiciary, and that justices were appointed by the Judicial Bar Council. Moreover, the power of the Head of State to appoint judges was very limited, in that he had to select one individual from a list of not less than three candidates submitted to him by the council. Candidates for seats on the Supreme Court could come from the academic community, or be practising lawyers or members of a judicial body, provided that they were members of the Bar. Lastly, the representative drew attention to new systems under experimentation in order to expedite the administration of justice and therefore to ensure more effective protection of human rights. Replying to another question, she emphasized that the protection against torture extended to Filipino citizens under the Constitution was also extended to foreigners.

160. Referring to various questions concerning the Philippine Commission on Human Rights and the Presidential Committee on Human Rights, the representative explained that the first Presidential Committee on Human Rights had been established almost immediately after President Aquino had come to power in February 1986, with a specific mandate of investigating and taking jurisdiction over cases filed against military and law-enforcement agencies. It had later been transformed into the Philippine Commission on Human Rights, which was to be independent under the new Constitution, and which had the power to investigate, to adopt its own rules, to cite for contempt and to provide for legal measures for the protection of human rights. Moreover, it could exercise visitorial powers over prisons or detention facilities, and establish a continuing programme of research, education and information to enhance respect for the primacy of human rights. It had also recommended to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights or their families, and it could monitor the Government's compliance with international treaty obligations in respect of human rights. The Commission was composed of five commissioners appointed by the President for a fixed term of office. The representative also drew the Committee's attention to a bill pending in Congress for the strengthening of the independence of the Commission. Lastly, she pointed out that a new Presidential Committee on Human Rights had been established in December 1988 in response to a request from a non-governmental organization which wanted to trace its members who had disappeared under martial law.

161. Regarding factors and difficulties encountered in the implementation of the Convention, the representative of the reporting State underscored that, although the Government had succeeded in establishing certain general principles and guidelines against torture and other inhuman treatment or punishment, much still remained to be done to ensure that those principles were translated into

practice. The Commission on Human Rights, together with government agencies concerned, were doing all they could to ensure effective monitoring and investigations of any incidents of torture in prisons or detention centres. Nevertheless, the representative drew attention to the fact that, in places where civil strife existed, investigation of torture allegations was difficult, especially as the Philippines consisted of an archipelago of over 7,000 islands. Furthermore, she recalled that acts of torture were often committed by the insurgents themselves. She also explained that, in accordance with article 18 of the Constitution, all paramilitary groups were now disbanded. However, there still existed civilian volunteer organizations, unarmed vigilant groups that had organized themselves to protect their own families and property against lawless elements and that had to be registered in accordance with guidelines laid down by the Commission, which included respect for human rights. Lastly, she emphasized the growing perception in her country that torture had a dehumanizing effect not only on the victim but also on the perpetrator, and stated that a study of the phenomenon of torture, not only with a view of rehabilitating those affected but also as a means of achieving national reconciliation, was being prepared. In addition, a number of bills were currently before Congress to ensure protection of human rights, notably by safeguarding the independence of the Commission on Human Rights, by ensuring proper facilities for detainees and by penalizing public officials who denied arrested persons or detainees their rights under the Constitution.

162. Replying to questions raised in connection with the death penalty, the representative said that, in 1987, death sentences imposed on 428 persons had been commuted. Under the revised Penal Code, the death penalty had been automatically abolished, although Congress was empowered to restore it for what it considered to be "heinous crimes". In addition, she explained that reclusion perpetua, which was considered to be appropriate in the case of major crimes, was not a life sentence, but a sentence with a maximum term of 30 years.

163. With reference to article 2 of the Convention, she explained that there was no declared formal state of emergency, but that there was an insurgency which could be described as civil strife. However, in conformity with article 4 of the International Covenant on Civil and Political Rights, the Constitution and existing law did not allow for any exceptional circumstances that might be invoked as a justification for torture. Moreover, a state of martial law did not suspend the operation of the Constitution, and in the case of the suspension of the writ of habeas corpus, the person arrested or detained had to be judicially charged within three days. The privilege of the writ of habeas corpus could be suspended by the President under martial law only in a case of invasion or rebellion, when public safety so required. Furthermore, the suspension only applied to persons judicially charged with rebellion or offences inherent or directly connected with invasion. Congress was empowered to revoke and the Supreme Court could review the sufficiency of the factual basis of the proclamation of martial law or the suspension of habeas corpus.

164. In reply to questions asked by members concerning article 4 of the Convention, the representative stated that maltreatment was defined under the Penal Code as the imposition of punishment not authorized by the regulations and inflicted in a cruel or humiliating manner. Executive Order No. 62 had increased the original penalty for such an offence to a maximum imprisonment term of eight years. Furthermore, a further penalty was temporary absolute disqualification, whereby the official concerned could be deprived for a certain period of his post, his right to vote and his pension rights.

165. Commenting on questions raised under articles 5 to 9 of the Convention, the representative explained that as a general rule torture was not treated as a crime against humanity and that Philippine jurisdiction was extended outside Philippine territory only for specific offences such as economic sabotage and crimes against national security and the law of nations, except as provided in treaties and laws of preferential application. Furthermore, extradition was granted only pursuant to an extradition treaty and at present only two such treaties existed. Nevertheless, she highlighted a further extradition treaty with Australia - awaiting ratification by the Senate, whereby extradition might be refused on the grounds that the offence for which extradition was requested was one that constituted an infringement of article 7 of the International Covenant on Civil and Political Rights.

166. Regarding questions raised under article 10 of the Convention, the representative of the reporting State emphasized that the study of human rights had been made part of the training of all police and military personnel and had been included by the Civil Service Commission in its in-service training courses. Similarly, specific mention was made of training in human rights for personnel responsible for investigations and arrests. Furthermore, the findings of the Commission on Human Rights cases were being disseminated to the public and, in co-operation with the United Nations Centre for Human Rights, the Philippines was hosting a regional training seminar for the Asia-Pacific region under the Centre's advisory services programme.

167. Lastly, with reference to articles 12 to 14 of the Convention, the representative explained that in investigating torture allegations, the Commission on Human Rights of the Philippines had first to determine whether a prima facie case existed. She underlined that obtaining evidence was very difficult, since witnesses of the offence were reluctant to come forward. After the case had been submitted to the Prosecutor, the Commission's task was to monitor its progress in order to ensure that it was disposed of expeditiously and in accordance with the law. The representative also provided a number of figures relating to complaints of human rights violations. Particularly, she stated that a total of 72 cases involving torture had been filed by the Commission and that successful results had been achieved in three cases filed against military personnel, in which sentences ranging from temporary suspension to discharge from the service had been imposed. Similarly, cases had also been successfully brought against five police officers who had been sentenced to demotion and forfeiture of pay. Responding to other questions, she explained that several bills providing for the rehabilitation of victims and for the compensation of their families were currently before Congress. As regards protection of children against torture, she stated that their protection was ensured under the Family Code, the Labour Code and the Child and Youth Welfare Code. Nevertheless, she recalled that children were particularly affected by the unrest and economic difficulties which currently existed in the Philippines.

168. The representative of the State party concluded by describing the general background to the campaign against torture in the Philippines. She again stressed the importance of prevention, training and information and of public support for the policy of protection of human rights. Finally, she said that the Optional Protocol to the International Covenant on Civil and Political Rights was expected to be ratified shortly.

169. The members of the Committee thanked the representative of the State party for her frank and clear replies and welcomed the considerable progress achieved in the restoration of democracy in the Philippines. They nevertheless expressed the hope that the envisaged legal measures prohibiting

torture would be implemented as rapidly as possible and called on the Government to place greater emphasis on training, education and information, as well as on the monitoring process. It was noted that the existence of internal unrest could not justify the use of torture, even if opponents of the Government themselves committed human rights violations.