ADVANCING A CULTURE OF TORTURE PREVENTION IN SOUTHEAST ASIA

Experiences from Indonesia and the Philippines:
Chapters from the research
"Does Torture Prevention Work?"

DECEMBER 2018

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The Association for the Prevention of Torture (APT) is an independent non-governmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

The APT was founded in 1977 by the Swiss banker and lawyer Jean-Jacques Gautier. Since then the APT has become a leading organisation in prevention of torture. Its expertise and advice is sought by international organisations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture (OPCAT) and National Preventive Mechanisms.

The APT's vision is a torture free world where the rights and dignity of all persons deprived of liberty are respected.

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FOREWORD

PROMOTING A CULTURE OF PREVENTION OF TORTURE AND ILL-TREATMENT IN SOUTH EAST ASIA

"No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." This is not only the promise made by the Universal Declaration on Human Rights, 70 years ago; Article 14 of the 2012 ASEAN Declaration Human Rights also recognises it.

Article 14 is preventive in essence: society shall take measures so that torture does not happen. It also recognises that no State is immune from the risk of torture and ill-treatment: all States have to take measures to make it less likely to occur. Prevention is based on cooperation rather than denunciation, on dialogue rather than condemnation. In practice, effective prevention requires a combination of concrete and constructive measures that together protect the society against the poison of torture.

The Association for the Prevention of Torture (APT) has been actively mobilising States in favour of prevention of torture and other ill-treatment for the last 40 years. Empirical evidence has recently come to support the profound conviction that has been guiding our work: "Does torture prevention work?" – an independent academic research commissioned by the APT and published in 2016 – unequivocally showed that torture prevention works. Covering 16 countries, including Indonesia and the Philippines, over 30 years (1985-2014), the research used both qualitative and quantitative

methods to analyse the correlation between the incidence of torture and measures taken to prevent it in law and in practice.

The overall results of the research are useful and timely for the South East Asian region. Measures that break the secrecy surrounding detention and ensure contacts of the detainees with the outside world have the highest impact on the reduction of the risks of torture:

– Unofficial and secret detention constitute one of the highest risk factor for torture and ill-treatment. All forms of secret and incommunicado detention should therefore be prohibited. The discovery of a secret cell in a police lock-up in Manila, by the Philippines Human Rights Commission in 2017, demonstrates how the use of unofficial detention heightens the risks that law enforcement officers resort to torture and ill-treatment.

– Notification of family immediately after arrest equally has the highest impact in reducing the risk of torture. Simple, practical and cost-effective, this measure helps ensuring safety and well-being while in police custody.

– Granting access to a lawyer from the early hours of police custody, foreseen in the legislation of most South East Asian countries, including Indonesia, the Philippines and Thailand, was found to have the second highest torture prevention impact. In practice, however, arrested persons still face numerous obstacles, such as delay in notification of arrest, lack of independent lawyers, and poor or inexistent legal aid system.

– Independent external oversight of places of detention also plays a significant role in preventing torture and other forms of ill-treatment. The research shows that unannounced visits to places of detention and the possibility to conduct interviews in private with persons deprived of liberty (i.e. out of sight and hearing of law enforcement officers) have a direct effect in reducing torture. Both the Indonesian and Filipino experiences in this booklet attest to the fact that ensuring independent access to places of detention is key.

The research also highlights the important gap between the law and the practice. While the legislation looks good on paper, in most countries its implementation is poor. This contradiction was referred to as "doble kara" (double faced) in the research chapter on the Philippines. Bridging the gap between law and practice is therefore essential to preventing torture and ill-treatment effectively.

Finally, the research and the two country chapters also show that the overreliance on confessions within the criminal justice system constitutes one of the main incentive for torture and ill-treatment. Police interrogations that come with a risk of forced confessions have to be replaced with a new and more effective method of investigative interviewing. In Indonesia, law enforcement is already being trained on this method and similar training is now gaining ground in Thailand as well. At the global level, the APT is co-leading the development of a set of guidelines on investigative interviewing and associated safeguards that will offer practical guidance for a more professional policing.

The APT is of the view that now is the right moment to share these key findings and messages with South East Asian countries. As a society, we have condemned genocide and slavery as anathemas to humanity. It is now time to take similar action against torture. We are taking the first step to disseminate the research findings in the region by publishing the two country chapters on the Philippines and Indonesia in both Bahasa Indonesian and Tagalog. We hope that this publication will inspire everyone, from authorities to civil society to continue their fight and efforts in preventing torture.

"Prevention is better than cure" – with this spirit in mind, let us embark on this journey together!

Barbara Bernath
Secretary General
Geneva, 29 October 2018

ABOUT THE RESEARCH

"Does Torture Prevention Works?" In 2012, the Association for the Prevention of Torture (APT) commissioned an independent, in-depth research to address the question. A team of researchers under the lead of Dr. Richard Carver and Dr. Lisa Handley studied the impact of torture prevention measures over three decades (1985-2014), using a combination of quantitative and qualitative analyses. The quantitative analyses identified correlations between the incidence of torture in the 16 countries covered and a set of preventive measures grouped in four clusters: detention safeguards, prosecution, monitoring of places of detention and complaints mechanisms.

The results were published in 2016 together with country chapters, including on Indonesia and the Philippines. The research confirms for the first time that torture prevention works. Detention safeguards in practice have the highest correlation in reducing torture, followed by prosecution. Unannounced visits to places of detention and monitoring also have significant impact. What matters in order to reduce the risk of torture is not the law but the practice in places of deprivation of liberty.

The study illustrates that torture can occur in very diverse socio-political environments and circumstances and that prevention therefore is necessary everywhere and at all times.

ABOUT THE RESEARCHERS

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Richard Carver has more than 30 years of experience as a human rights researcher, working for Amnesty International, Human Rights Watch, ARTICLE 19, and a number of UN agencies. He has published extensively on national human rights institutions, particularly on criteria and techniques for measuring performance, impact and effectiveness. Originally an Africa specialist, his current work focuses on southeastern Europe. He holds a PhD in Human Rights and an LLM in International Law, both from Oxford Brookes University, where he is Senior Lecturer in Human Rights and Governance.

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Lisa Handley holds a PhD in political science from George Washington University and has taught political science and methodology courses at the University of Virginia, as well as the University of California, Irvine and George Washington University. She is an independent consultant working for organisations such as the UNEAS and UNDP, and has been actively involved in research, writing and teaching on the subjects of minority rights, democracy and elections. She has published more than two dozen academic articles and books on these and related subjects.

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INDONESIA
by Budi Hernawan and Chris Sidoti[1]

CONTEXTUALISING TORTURE IN INDONESIA

The geographical and demographic context

Indonesia is large, dispersed and diverse. The world's fourth largest country by population (over 250 million)[2], it spreads across 6,000 inhabited islands stretching 5,000 km from east to west and 1,800 km from north to south. It takes five and a half hours to fly non-stop from the capital city, Jakarta, to the easternmost provincial capital, Jayapura. One island, Java, holds almost 60% of the whole population. The national language is *bahasa Indonesia* but about 700 living languages are spoken.[3] Ninety per cent Muslim, it has the world's largest Muslim population, but some parts of the country have majority non-Muslim populations. For example, in Bali the people are principally Balinese Hindu, in Papua and Flores predominantly Christian, and in Ambon an almost equal proportion of Muslims and Christians.[4]

Indonesia's large and diverse population, its enormous area and its archipelagic character create great challenges for torture prevention. About 400,000 police personnel work in 4,576 local police stations,[5] and over 400,000 military personnel in the armed forces.[6] The country possesses 441 prisons and official detention centres.[7] Even with the greatest commitment, to implement, monitor and enforce a nationwide policy is a daunting task.

The political context

The last thirty years in Indonesia divide almost equally into two distinct periods. Until 1998 Indonesia was ruled by the authoritarian, military-backed New Order regime of President Suharto. Suharto came to power following a military takeover late in 1965, during and after which some 500,000 people, accused of being communist, were killed. The massacres of 1965–1966 were the largest killings in Indonesian history and remain unresolved.[8] In May 1998 Suharto and the New Order system were overthrown in a popular uprising that inaugurated a process of *reformasi* (reform), which moved Indonesia from an authoritarian to a democratic, civilian political system. The post 1998 system is characterized by:

- Largely free, fair and peaceful elections, including the world's largest direct democratic vote, the election of the President, in which over 130 million citizens voted in 2014.
- An active, multi-party legislature that seeks to hold the executive accountable.
- Courts that are more (but far from totally) independent.
- Greater transparency.
- Increasing decentralisation.
- Continuing military influence in certain areas of politics and the economy.
- Reluctance to confront the country's history of gross human rights violations, ensure accountability and end impunity.

A notable change in the immediate *reformasi* years was the legal separation of the police from the military. During the New Order period, the police were an arm of the Indonesian military and were subject to the military chain of command. This structure increased the involvement of the military in domestic conflicts and tended to militarize police practice. The police were separated from the military in 2000 and established formally in law in 2002.[9]

Indonesia has a presidential system of government. The president is popularly elected by direct vote for a five-year term with a limit of two terms. The national parliament has two houses, the more powerful House of Representatives *(Dewan Perwakilan Rakyat)*, and the House of Regional Representatives *(Dewan Perwakilan Daerah)*, whose powers address relations between the central and regional levels of government. Together the two houses constitute the People's Consultative Assembly *(Majelis Permusyawaratan Rakyat)*. Indonesia is a unitary state but, since *reformasi*, power and authority have increasingly been decentralised to the country's 34 provinces.

The context of conflict and violence

Indonesia has known violence, to a greater or lesser extent, since it formed. The New Order period began in 1965 with massacres of actual and supposed communists that left at least half a million persons dead.[10] The first years of *reformasi* were marked by a increase in local inter-communal conflicts, often rooted in community divisions and exclusions on religious or ethnic lines.[11] Many suspected that military units or groups, and perhaps high ranking officers in the military leadership, fomented some of these eruptions of violence, both to undermine the *reformasi* process and the new civilian government, and to prove that the civilian government depended on the military to prevent inter-communal violence and national disintegration. The number and seriousness of such incidents increased between 1999 and 2004 but then abated and incidents are now rare.

Despite the inter-communal violence, the early *reformasi* years resolved two of the three serious, longstanding conflicts that Indonesia faced: in East Timor, Aceh, and Papua.

East Timor[12] was not been part of the Dutch East Indies during the colonial period or part of Indonesia when Indonesia declared its independence in 1945.[13] It had been under Portuguese colonial occupation and an anti-colonial liberation struggle was on the path to securing independence when Indonesia invaded and occupied the territory in December 1975 and subsequently incorporated it in Indonesia. Indonesian rule was harsh and violent and the liberation struggle continued against the new occupation. In a completely unexpected initiative, the first post-Suharto president, B. J. Habibie, permitted the East Timorese to determine their political status in a UN-sponsored referendum on 30 August 1999. The East Timorese voted for independence. The departure of the Indonesian military was accompanied by extreme violence and the deaths of hundreds of persons.[14]

The conflict in Aceh had antecedents in a campaign for Aceh's independence in the 1950s. Acehnese strongly supported and fought for Indonesia's independence from the Dutch, but many also supported Aceh's independence on political and religious grounds. Politically, Acehnese resented the dominance of Javanese in post-independence Indonesia. Religiously, Acehnese considered themselves to be better Muslims than other Indonesians and wanted to replace the secular state established by the Indonesian constitution with an Islamic state based on sharia. A serious conflict emerged in the 1990s and continued into the 2000s, during which between 10,000 and 30,000 persons are estimated to have died.[15] Peace talks between December 2002 and May 2003 under President Megawati Sukarnoputri eventually broke down and violence resumed. Aceh was then devastated by the Indian Ocean tsunami of 26 December 2004. Some 170,000 Achenese died and over half a million were left homeless. The reconstruction effort caused a suspension of the conflict and led to a ceasefire followed by a peace agreement in 2005 that gave Aceh special autonomy status within Indonesia.

In both the East Timor and Aceh conflicts grave human rights violations occurred for which those responsible have not been made accountable. The lack of accountability remains an open wound in both regions.

Papua is the site of one of the longest unresolved subnational conflicts in the Pacific.[16] The western half of the island of New Guinea had been a Dutch colony. It was occupied by force by Indonesia in 1961 and ceded by the Netherlands in 1962. In 1969, in an 'Act of Free Choice' endorsed by the United Nations, representatives carefully selected by the Indonesian authorities voted to support the territory's incorporation into Indonesia. A long low-level conflict between Papuan separatists and the Indonesian military has persisted ever since. It is not known how many have died as a result; estimates lie between 50,000 and 100,000.[17] Some Papuan intellectuals frame the conflict in terms of 'cultural genocide', implying that the destruction should be measured in terms more profound than physical mortality.[18] Violence appeared to worsen in the first decade after *reformasi*. Since 2012, independence fighters and the Indonesian military have observed a de facto arrangement under which the fighters stay in the jungle and the military stay out of it, and violence has lessened.[19] The military commander in the region indicated that Indonesian forces avoid violence unless they are attacked (as in 2013, when seven soldiers were killed).[20]

The international legal context

Indonesia ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998 and the International Covenant on Civil and Political Rights (ICCPR) in 2006. It has also ratified other core international human rights treaties.[21] However, it has not accepted any of the international procedures for individual communications (complaints), has not ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and has not enacted domestic laws to operationalize, implement and enforce its obligations under the treaties it has ratified.[22]

INCIDENCE OF TORTURE

Determining incidence

Indonesia's political transformation, and the permanent or partial resolution of its conflicts, have transformed the context in which torture occurs and is prevented.[23] Both the incidence and severity of torture have declined since 1998.[24] It is unclear how much this progress is due to the new environment and how much to torture prevention measures.

Determining the extent of the decline is also difficult. It is not possible to assess the incidence of torture with statistical certainty at any point over the past 30 years, or to determine with certainty whether year on year its incidence rose or fell. Reports show shifting patterns, illustrated by individual case studies, but comprehensive data is not available to support their interpretation. There are simply no reliable statistics.

During the New Order period, local NGOs found it dangerous to operate at all. The National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, Komnas HAM) was established in 1993 and began to speak out on torture but it was not able to collect reliable statistics or even comprehensive information. Many activists today are young and were not active during that period. Older activists remember the overall situation but not specific details and certainly lack a detailed nationwide picture. The most reliable overviews are found in reports by international organizations which had good sources of information at the time. Amnesty International, Human Rights Watch and the US Department of State all produced annual reports that assessed the state of human rights, including the incidence of torture. In addition, UN treaty monitoring bodies and special rapporteurs periodically reviewed the overall situation and specific cases. The analysis in this chapter relies heavily on these sources.

Since *reformasi*, NGOs have operated freely and Komnas HAM has remained active. Nevertheless, reliable comprehensive statistics are

still unavailable. Komnas HAM can provide statistics on the number of torture complaints that it receives, but these reflect the pattern of complaints, not the pattern of torture. An increase or decrease in the number of torture complaints can be due to many factors and does not necessarily indicate that torture itself is more or less frequent.[25] For the period since 1998 this chapter draws on a variety of domestic and international reports; but these do not provide sufficient hard data to quantify the incidence of torture.

The New Order period

Use of torture was widespread and routine during the New Order period. The annual reports of the US State Department during these years present a consistent picture. 'While the Government officially does not condone torture and mistreatment, there are frequent reports that they occur … Standard police treatment of detainees, even in minor incidents, often results in physical abuse.'[26] Reports of torture were considered 'frequent [and] credible'.[27] They refer to criminal suspects, detainees and prisoners generally, not to any particular category or population group. Amnesty International reported in 1989, 'Political detainees and criminal suspects alike were reported to have been ill-treated or tortured'.[28]

Reports came in particular from Aceh, Papua and East Timor. This might suggest that more torture occurred in these areas, but might also reflect the fact that international observers paid particular attention to these conflicts. Between 1985 and 1991, reports also refer repeatedly to a policy of 'shoot to wound' in North Sumatra, under which criminal suspects were often shot in the legs by police while allegedly attempting to avoid arrest. The Special Rapporteur on Torture visited Indonesia for the first time in November 1991 and reported that in Aceh, Papua and East Timor, places 'deemed to be unstable, torture is said to be practised rather routinely'.[29] In the same month (November 1991), the Santa Cruz Massacre became a turning point in East Timor, triggering more extreme repression and intensified military action.

Between 1989 and 1999 The Special Rapporteur on torture wrote to the Government of Indonesia many times to draw its attention to reports alleging torture. Invariably, the Government denied the reports. In 1995, for example, he reported:

> By letter dated 4 July 1994 the Special Rapporteur advised the Government that he had continued to receive reports indicating that the practice of torture and other ill-treatment was routine in Indonesia, both with respect to those persons detained for political reasons and those accused of criminal offences. [...]
>
> [T]he Special Rapporteur cannot avoid the conclusion that torture occurs in Indonesia, in particular in cases which are considered to endanger the security of the State.[30]

Most of these letters and communications concerned allegations relating to Aceh, Papua and East Timor.

Beatings were frequent in these years and more extreme forms of torture were also used: 'electric shocks, beatings, burning with lighted cigarettes, and several hours' immersion in water tanks',[31] incommunicado detention,[32] and rape.[33] According to the Special Rapporteur's report to the UN Commission on Human Rights in January 1994, the most commonly used methods were beating on the head, shins, and torso with fists, lengths of wood, iron bars, bottles, rocks, and electric cables; kicking with heavy boots; burning with lighted cigarettes; electric shocks; slashing with razor blades and knives; death threats, faked executions and deliberate wounding with firearms; pouring water through the nose; prolonged immersion in fetid water; hanging upside down by the feet; placing heavy objects on knees and other joints; isolation; sleep and food deprivation; and genital mutilation, sexual molestation and rape.[34]

In 1993 the State Department report stated that 'the situation has improved in recent years' and in 1994 that "some sources reported that the use of torture declined',[35] although it acknowledged that 'definitive statistics are not available';[36] no explanation for the improvement was offered. Other reports noted that widespread,

routine torture continued in these years.[37] The *Annual Report* by Amnesty International in 1993 observed that victims of torture now included strikers, political protesters and the urban poor.[38] Then in 1995 the State Department reported:

> In East Timor, torture increased in frequency beginning in November 1994, and included electric shocks, mock execution, severe beatings, and burning with cigarettes. Following complaints, this problem appears to have eased in the case of the provincial police, but continued or worsened in detention facilities run by military intelligence. Sporadic cases of ill-treatment have been reported in East Timorese prisons.[39]

In 1998, Komnas HAM began to provide some statistical information based on its investigations. In August 1998, for example, it reported that it had documented the torture of 368 persons in Aceh in the periods 1989–91 and 1997–98; and in October 1998 a fact-finding team reported 1,010 incidents of torture in North Aceh between 1989 and 1998.[40] It reported that some 184 people were beaten by police during detention following a riot in Banjarmasin, South Kalimantan.[41] Annually it also reported on the number of human rights complaints it received, including complaints relating to torture. These statistics provided a window on the practice of torture, even though they did not measure its incidence reliably.

The situation in East Timor during the New Order period has been comprehensively examined. After independence the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) investigated and reported on gross human rights violations between 1975 and 1999, the period of Indonesian occupation. The CAVR reported

> Members of the Indonesian security forces and their auxiliaries committed, encouraged and condoned widespread and systematic torture and ill-treatment of victims during the period of Indonesian occupation of Timor-Leste. In some cases torture led to death, sometimes as a direct result of the torture applied to the victim and sometimes as a result of wounds sustained during

> torture being left untreated. [...]
>
> The majority of acts of torture and ill-treatment were carried out during or after arrest or while in detention. Some victims were tortured and ill-treated outside of a place of detention including being assaulted in public, in their homes, in a field or on the journey to a place of detention.
>
> The purpose of torture was to obtain information from the victim, to punish the victim, to threaten the victim, to humiliate the victim, to intimidate the victim or others sharing the victim's political allegiance or to force a change in a victim's loyalties.[42]

The situation in East Timor under the New Order regime was certainly far more severe than elsewhere in Indonesia, with the possible exceptions of Aceh and Papua. However, in other respects the CAVR's description of the practice of torture can be applied to Indonesia as a whole under Suharto.

After the New Order

The end of the New Order regime in May 1998 did not lead to a sudden decrease in torture. On the contrary, reports indicate that initially it continued to be as widespread and as severe. In East Timor during the last year of the Indonesian military occupation, leading up to and following the independence referendum on 30 August 1999, the situation became considerably worse, culminating in the extreme violence that marked the final withdrawal of Indonesian forces between September and December 1999. 'In East Timor the Government organized and directed pro-integration militias engaged in extensive torture, and intimidation directed against pro-independence activists and ordinary citizens'.[43] Elsewhere violent conflict erupted or intensified in many parts of Indonesia, including Aceh, West Timor, Papua, the Moluccas and Sulawesi, and was typically accompanied by an increase in torture.[44] Human Rights Watch reported that, 'While most of the country continued to benefit from increased civil and

political liberties, three areas wracked by conflict – Papua, Aceh, and the Moluccas – continued to experience widespread violations'.[45]

The period from 1998 to 2004 was marked by use of sexual violence as a form of torture. This was especially apparent during street fights and arson attacks in May 1998, when supporters of the New Order regime targeted political opponents and also the ethnic Chinese community in Jakarta and elsewhere in Indonesia.[46] At this time, armed gangs and later armed militias became the principal perpetrators of torture; the police and military were either actively complicit or passively tolerant and non-interventionist.[47] An official joint investigation committee explicitly identified a meeting on 14 May 1998 in the headquarters of the Army Strategic Command Unit at which decisions orchestrating the violence were made.[48]

However, there were early signs of change even before the end of 1998. Indonesia ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as Convention 87 of the International Labour Organization (ILO), Concerning Freedom of Association and Protection of the Right to Organize. The Special Rapporteur on Torture noted in 1999 that 'the process of transformation has led to greater openness on human rights issues, in particular, with regard to addressing problems of abuse of prisoners by official personnel'.[49]

In November 2001 the Committee against Torture[50] issued its Concluding Observations on Indonesia's first report under the Convention Against Torture. In many respects these captured the state of torture in Indonesia at the end of the New Order period and the beginning of *reformasi*. While noting efforts to reform the legal system, the Committee expressed concern about allegations in many areas, including:

- Acts of torture and ill-treatment committed by members of the police forces, the army, and paramilitary groups reportedly linked to authorities, and in areas of armed conflict, such as Aceh and Papua.
- Excessive use of force against demonstrators or during investigations.

- Human rights abuses committed by military personnel employed by businesses to protect their premises and avoid labour disputes.
- Inadequate protection against rape and other forms of sexual violence.[51]

In 2004 the State Department noted '... improvements in a few areas [but] serious problems remained. Government agents continued to commit abuses, the most serious of which took place in areas of separatist conflict. Security force members murdered, tortured, raped, beat, and arbitrarily detained civilians and members of separatist movements, especially in Aceh and to a lesser extent in Papua.'[52] In these years (1998 to 2004), widespread and severe torture became increasingly confined to the areas of the most serious conflict, Aceh and Papua.[53]

In 2005 the Timor-Leste Truth, Reconciliation and Reception Commission (CAVR) completed its report on the history of violence between 1974 and 1999. *Chega!* systematically documented 19,578 cases of torture and ill-treatment. It concluded that the Indonesian military (acting alone) had been responsible for 45.4 per cent of the cases; East Timorese auxiliaries of the Indonesian military (acting alone) for 22.4 per cent; and the military and auxiliaries acting together for 14.7 per cent.[54] In short, Indonesia's security apparatus was responsible for the great majority of cases of torture (82.5 per cent) during the 25 year period of Indonesia's occupation of East Timor. *Chega!* was the first comprehensive investigation of Indonesia's record in a serious human rights situation. In describing the abuses committed, with almost complete impunity, in Timor-Leste, it threw light on the Indonesian military's conduct across Indonesia.

In the same year, the Government of Indonesia and the Free Aceh Movement signed the Helsinki Agreement, ending the armed conflict in Aceh. The situation of torture and ill-treatment in Indonesia began to show substantial improvement.[55] The State Department that year reported 'continued abuses by security force personnel, although with sharply reduced frequency and gravity than under past governments'.[56]

After repeated requests over 10 years, the UN Special Rapporteur on Torture was permitted to visit Indonesia in November 2007.[57] This decision was itself an indication that the government was seeking to meet its international human rights obligations. The Special Rapporteur expressed appreciation of the considerable progress achieved since 1998. He reported that torture was common in certain jails and used to obtain confessions, punish suspects, and seek information that incriminated others in criminal activity. However, '[i]n recent years internal police investigative reports showed decreased incidents of torture and misuse of firearms'.[58] The Special Rapporteur noted that 'the lack of legal and institutional safeguards and the prevailing structural impunity' increased the risk of torture of persons in detention.[59]

> In 2008 the Committee Against Torture examined Indonesia's second report on its compliance with the treaty. It noted that torture and ill-treatment were widespread, that safeguards during police detention were insufficient, and that military operations were associated with disproportionate force and widespread torture.
>
> The Committee is also deeply concerned about numerous, ongoing credible and consistent allegations, corroborated by the report of the Special Rapporteur on torture and other sources, of the routine and disproportionate use of force and widespread torture and other cruel, inhuman and degrading treatment or punishment by members of the security and police forces, including by members of the armed forces, mobile police units ('Brimob') and paramilitary groups during military and 'sweep' operations, especially in Papua, Aceh and in other provinces where there have been armed conflicts (arts. 2, 10 and 11).[60]

At the same time Human Rights Watch found 'endemic police torture'[61] and Amnesty International that 'torture remained widespread during arrest, interrogation and detention. Criminal suspects from poor and marginalized communities and peaceful political activists were particularly vulnerable to violations by police.'[62] The Indonesian

National Police took the view that torture was no longer systematic and occurred only in isolated cases due to the misconduct of individual officers.[63]

By 2009 a new issue had emerged for the first time: the imposition of some sharia punishments in Aceh. The peace settlement granted Aceh's provincial authorities a high degree of autonomy.[64] Within Aceh there was strong pressure to adopt and implement sharia. Indonesia itself had adopted a secular form of governance since independence, but local support for the adoption of sharia was a core issues in the Aceh conflict. Some sharia punishments have been imposed and implemented; but sharia has not yet been enacted comprehensively. Amnesty International reported in 2012, 'Provincial authorities in Aceh increasingly used caning as a judicial punishment for various offences, including drinking alcohol, being alone with someone of the opposite sex who was not a marriage partner or relative *(khalwat)*, and for gambling'.[65] In his 2010 report the Special Rapporteur on Torture expressed concern that the recently adopted Islamic Criminal Legal Code in Aceh was 'in clear contravention of the prohibition of torture and cruel, inhuman or degrading punishment'.[66] The Human Rights Committee expressed concern on similar grounds in its Concluding Observations on Indonesia's first report under the International Covenant on Civil and Political Rights (2013).[67]

From 2009 State Department reports say relatively little about torture in Indonesia. They focus on impunity for past abuses and continuing abuses in Papua, where violence has persisted. Most references to specific incidents also relate to Papua, where the situation remains distinct. In other parts of Indonesia, torture, where it occurs, is generally random, happens in secret, and does not target political detainees (with the exception of terrorism suspects).[68]

In Papua, by contrast, torture continues to have the political purpose of creating fear in the local population and demonstrating control. It is therefore well-publicised.[69] When a case was leaked on YouTube, it prompted an immediate response from the Indonesian authorities.[70] In effect, torture has been practised with impunity in Papua over the last

fifty years, and is used to intimidate the population more than to force confessions or extract information.[71] The current military commander of Papua indicated in an interview that the incidence of torture there has decreased: when allegations of torture are made, they are investigated and, if proven, the perpetrators are punished severely.[72]

Indonesia's human rights performance has been reviewed twice under the Universal Periodic Review (UPR), in 2008 and 2012. On both occasions concerns were expressed about the incidence of torture.[73] In 2008 States called for Indonesia to ratify the Optional Protocol *to the Convention against Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), to criminalise torture in law, and to end impunity by prosecuting perpetrators[74]. In their response, Indonesian officials referred to provisions in the draft new Criminal Code to criminalise torture and plans to ratify the OPCAT but neither had been done by the time Indonesia returned to the UPR in 2012. In 2012 States again expressed concern about the continuing incidence of torture and called for ratification of the OPCAT, the criminalization of torture, and prosecution of perpetrators.[75]

When torture occurs now, it is generally less severe than in the past. However, police use of tasers is a worrying development.[76] It is not known whether tasers are issued to the police but some victims of torture and their lawyers have reported that small devices were used to give electric shocks during interrogation.[77] Others said that tasers have been used during arrests.[78] If police have acquired access to tasers, officially or unofficially, there is a significant risk that torture may increase in frequency and severity.

Another worrying development is the reported use of the police hospital in Jayapura, Papua, as a location for torture.[79] This was a common practice of the military in the 1980s, but has not been reported in recent years.

At the end of the period, Indonesia was in a quite different situation than in 1985. In the words of Human Rights Watch: 'The government's willingness to accept numerous recommendations from United

Nations member states during the UN's Universal Periodic Review (UPR) of Indonesia's human rights record was another hopeful sign of a growing commitment to respecting human rights'.[80] Nonetheless, problems persist. According to the State Department, 'local nongovernmental organizations (NGOs) reported that torture continued to be commonplace in police detention facilities'.[81] According to Amnesty International, 'security forces faced persistent allegations of human rights violations, including torture and other ill-treatment and excessive use of force and firearms'.[82] Indonesian NGOs say that torture is less frequent and less severe but still widespread.[83] A major Jakarta-based human rights NGO, KontraS, concluded that torture is most frequently inflicted by the police, followed by the military, and prison guards.[84] Indonesia clearly still has some way to to travel before it successfully prevents torture; but it has already come quite far.

TORTURE IN INDONESIAN LAW

The Criminal Code

Criminal law in Indonesia is governed by two general codes, the Criminal Code[85] and the Criminal Procedure Code.[86] In addition, specific laws cover particular issues or circumstances, including human rights. Torture is not a specific offence in Indonesian criminal law.[87] However, a special law contains an offence of gross human rights violation, including torture under certain circumstances.[88] The right to be free from torture has also been recognized legally and complaints of violation of that right can be investigated and remedied.

Indonesian criminal law remains governed by the Criminal Code enacted during the Dutch colonial period. The Code does not refer to torture but contains provisions criminalizing 'maltreatment'.[89] The penalties depend upon whether maltreatment is premeditated or

not, and whether it causes injury, serious injury or death. Maximum penalties range from imprisonment for two years and eight months (for unpremeditated maltreatment that does not cause injury) to fifteen years (for serious maltreatment with premeditation causing death). Maltreatment offences have general application and are not restricted to maltreatment by State officials.

The Criminal Code also criminalizes the use of 'coercion' to extract a confession or obtain information in a criminal case. This offence is punishable by a maximum term of four years' imprisonment.[90] Its application is restricted to State officials. The Criminal Procedure Code, however, does not exclude the use at trial of evidence obtained under coercion, including confessions.[91] The great majority of criminal convictions in Indonesia depend on confessions.[92]

Limitation periods apply to the prosecution of offences under the Criminal Code:

- Six years for crimes punishable by up to three years of imprisonment.
- 12 years for crimes punishable by more than three years of imprisonment.
- 18 years for crimes punishable by death or life imprisonment.

The crimes of maltreatment and coercion are the principal general laws under which individual acts of torture can be prosecuted and punished. Their scope is limited by the defence of acting under orders, however. The Criminal Code provides that a person is not subject to punishment if he or she performs an act on the order of a competent authority, provided that he or she acted in good faith believing the order to be lawful.[93] Under this exemption, many perpetrators of torture could be exonerated.

The Criminal Code does not contain an offence of unauthorised or unofficial detention by State officials.

Human rights laws

Outside the Criminal Code, Indonesian law includes many statutes that seek to promote and protect human rights, including freedom from torture. Several amendments to the Constitution in 2000 addressed human rights. Art. 28G(2) states that 'everyone has the right to be free from torture or inhumane and degrading treatment'.[94]

Torture is the subject of a specific law that was enacted to enable Indonesia to ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and a provision in a general law on human rights.[95] Neither criminalizes it in terms. Both define torture in accordance with the provisions of the UN Convention, although the definitions are not identical. Law 5/1998 has the more complete definition.

> The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[96]

Law 39/1999, among other things, established Komnas HAM and gave that institution authority to receive, investigate and resolve complaints of human rights violations, including torture.[97] Other laws that apply to specific circumstances (child protection, labour, domestic violence) also contain provisions on torture[98].

A human rights law, Law 26/2000, imposes criminal penalties for human rights abuses, including torture, but these abuses must be 'gross violations of human rights' that constitute crimes against humanity,[99] 'perpetrated as a part of a broad or systematic direct

attack on civilians'.[100] Torture can be one of the actions composing a crime against humanity.[101] So too can acts of 'arbitrary appropriation of the independence or other physical freedoms in contravention of international law' and 'enforced disappearance'.[102] The penalty for crimes against humanity involving torture is imprisonment for between five and fifteen years.[103] The penalty for crimes against humanity involving enforced disappearance is death or imprisonment for life or for between ten and 25 years.[104]

Komnas HAM has authority to investigate gross human rights violations under Law 26/2000, but prosecution is the responsibility of the Attorney General.[105] Trials are undertaken by special Human Rights Courts.[106] There is no limitation period for prosecutions under Law 26/2000. The Criminal Procedure Code governs the process of criminal investigation and trial under this law.[107]

Finally, provisions in police and military regulations prohibit torture. In 2009 the Chief of the Indonesian National Police issued a regulation on police compliance with human rights standards.[108] The regulation includes ten provisions that specifically address torture, generally as one component in a list of human rights standards that law enforcement should observe during investigation, prosecution and detention. It establishes no specific offence of torture, nevertheless. The regulation has been described as normative, not yet operationalised.[109]

In 2010 the Commander of the Indonesian National Military issued a regulation prohibiting torture by the military in the course of law enforcement; the prohibition specifically covers investigation, prosecution, military courts and military prisons.[110] The regulation does not impose a penalty for torture. Instead, it applies general law, which is deficient since in general law torture is not a specific offence. The regulation defines torture in the same terms as Law 5/1998, in line with international definitions. The military court system was placed under the Supreme Court in 2004, increasing the independence of military courts. However, military prosecutors remain part of the military chain of command and are therefore not independent.[111] This affects the number of prosecutions brought for breaches of military discipline.

The Criminal Procedure Code

The Criminal Procedure Code governs the criminal process from initial arrest or detention to the completion of trial. It contains some provisions that are designed to protect criminal suspects or detainees from torture or ill-treatment. In some areas it is supplemented by police and military regulations.

The Criminal Procedure Code requires the authorities to immediately inform a suspect's family of his or her arrest.[112] The family must be provided with a copy of the arrest warrant and later a copy of any warrant of detention or further detention issued by a judge.[113] The police regulation also states that:

> A suspect who is detained has the right to have the competent authority inform his/her family or other persons living at the same house or any other person whose assistance is required by the suspect in order to obtain bail or a guarantee to permit release from detention.[114]

Military regulations similarly require families to be informed.[115]

The Criminal Procedure Code does not require the authorities to inform a suspect or accused person of his or her rights while under examination. However, the police regulation states:

In conducting an arrest, an officer must inform the suspect of his rights and how to exercise such rights, consisting of the right to remain silent, receive legal support and/or be accompanied by a legal counsel, and other rights provided under the Criminal Procedure Code.[116]

The Criminal Procedure Code states that persons suspected of or charged with a crime should have access to legal assistance.[117] A suspect or accused person has the right to contact a legal adviser and to obtain legal advice 'from the moment of his arrest or detention at all stages of examination'.[118] However, the role of legal counsel is limited: counsel has no right to intervene during an interrogation. He or she may only watch and listen, and may only watch if the case involves a crime against state security.[119]

Although it recognizes and guarantees the right to legal counsel, the Criminal Procedure Code contains many provisions that can effectively deter legal counsel from providing the advice and advocacy their clients require. Legal counsel can be warned if they are considered to abuse their right to contact a detainee; and contact may be supervised by an official or may even be prohibited.[120] In cases that involve state security, officials may listen to legal counsel's conversations with a suspect.[121]

Under the Criminal Procedure Code, a person may be arrested on a warrant, or without a warrant if caught in the act of committing a crime.[122] In other circumstances, a suspect must be summonsed for questioning. The Code permits a suspect to be detained where there is reason to believe that he or she will escape, damage or destroy physical evidence, or repeat the offence.[123] The maximum periods of detention during investigation and prosecution are:

- Up to 20 days for investigation, at the instigation of a police investigator.[124]
- Up to an additional 40 days for investigation, with the approval of a prosecutor.[125]
- Up to an additional 20 days for prosecution, at the instigation of a prosecutor.[126]
- Up to an additional 30 days for prosecution, with the approval of the head of the appropriate court.[127]
- Up to 30 days for trial, by the trial judge (50 days if trial is in the Supreme Court).[128]
- Up to an additional 60 days for trial, with the approval of the head of the appropriate court.[129]

In addition, a general provision permits repeated extensions of detention, for up to 30 days on each occasion, where a suspect suffers from 'a serious physical or mental disturbance' or where the offence carries a maximum penalty of nine or more years of imprisonment.[130]

The authorities are not required to bring suspects or accused before a judge except when detention periods are expiring and extension

requires a judge's approval. The suspect or accused has the right to be examined 'promptly' by an investigator and to have the case 'promptly' submitted to and 'promptly' adjudicated by a court; but 'promptly' is not defined and its duration is not specified.[131] A detainee has the right to challenge the lawfulness of detention in court.[132] In that situation, the matter must be brought before a judge for a pretrial examination within three days.[133] However, the initiative lies with the suspect or accused and detaining authorities have no duty to bring detainees before a court before their trial starts.

Many procedural requirements relating to detention can be waived in certain circumstances, making incommunicado detention possible. As noted, in cases involving state security a suspect has no right to confidential communication with a legal adviser,[134] and legal advisers cannot listen to the examination of their clients.[135] Other provisions provide exemption in state emergencies and when prosecuting cases of terrorism.[136] During martial law, for example, the martial law administrator can detain persons for an initial period of 20 days and a further period of 30 days.[137] A person suspected of terrorism can be detained for up to six months.[138]

The Criminal Procedure Code does not require the authorities to give detainees a medical examination shortly after detention; but police and military regulations make some provision for medical checks. The police regulation states that 'a detainee has the right to adequate medical service and to have his/her medical records maintained'.[139] The military regulation prohibits failure to provide health support.[140] The law does not require a medical examiner to be independent of the police or the military, or require examinations to be conducted in private.

The law does not require the authorities to record interrogations on audio or video devices. The police regulation states that 'the circumstances and condition of interrogation must be recorded in detail', but this can be done in writing and is therefore not a reliable record of what occurs.[141] Similarly, no law requires the authorities to monitor detention centres using video cameras.

THE PRACTICE

Prosecutions for torture

Prosecutions or other disciplinary actions to sanction torture have been rare and have resulted in few convictions and light penalties. In the words of a State Department report: 'In practice legal protections are both inadequate and widely ignored'.[142] This has been true throughout the period under review, during and after the New Order period. Even now, police or prosecutors rarely follow up well-documented cases of torture.[143] Complaining of torture can lead to further harassment and victimisation.[144]

During the New Order period, certain incidents or cases would occasionally acquire notoriety domestically or (more usually) internationally, and the Government would feel compelled to be seen to be taking some action. There were few, if any, thorough investigations and even fewer prosecutions; prosecutions rarely resulted in convictions and, when they did, offenders were not seriously punished. A trawl of State Department and other human rights reports confirms the pattern.

- In 1987, in 'at least one instance' the Government disciplined police or security personnel for engaging in brutality.[145]
- In 1988 the Government 'disciplined several police and prison officials', some of whom 'were tried and sentenced to jail terms'.[146] 'The Indonesian press reported on some cases in which police and military personnel were tried for the torture of criminal suspects, but there were apparently no investigations into reports of torture of political suspects.'[147]
- In 1989 officials took disciplinary action in 'several cases'.[148]
- In 1990 officials publicly acknowledged and condemned police brutality and unacceptable prison conditions and occasionally instigated disciplinary action, including transfer, dismissal, trial, and sentencing to prison terms. In no known instances had officials been punished for mistreating political prisoners or detainees.[149]

- In 1991 'dozens' of police and military personnel were tried for torturing or ill-treating criminal suspects. Some were convicted but most received short prison sentences.[150]
- In 1992 'several' policemen were court-martialled for mistreating or beating prisoners.[151] 'In some cases, when deaths appear to take place as a result of torture, police are prosecuted and, if convicted, given lenient sentences.'[152]
- In 1997 a police lieutenant, involved in the torture and death of a detainee, was convicted of abuse of authority and sentenced to nine months in prison.[153]

The end of the New Order regime brought hope that the 'rule of general impunity' would be replaced by the rule of law.[154] However, although the incidence and severity of torture appear to have fallen, the police and military appear to continue to enjoy virtually complete impunity in cases of misconduct.

Soon after the overthrow of Suharto, several of the most serious cases of gross human rights violation were investigated and recommendations were made for prosecution. Only a few cases ever went to trial: almost all of the accused were acquitted, and those convicted were given token sentences.

- An investigation into a riot in May 1998 recommended that those responsible for the rape of 66 ethnic Chinese women should be brought to justice. None were.[155]
- Komnas HAM officially investigated violence surrounding the independence referendum in East Timor in September 1999.[156] It found that torture and gross human rights violations had been committed and recommended the prosecution of those it considered responsible. No one was charged for torture; 18 persons were charged with gross human rights violations. Trials were conducted in the Human Rights Court in 2002 and 2003. Six were convicted and sentenced to terms of imprisonment (one for ten years, the others for shorter periods), but five successfully overturned their convictions on appeal. The only person whose conviction was upheld, a pro-Indonesian Timorese militia leader, was sentenced to ten years in prison.[157]

- The Human Rights Court in Jakarta convicted 12 military officers of charges arising from the detention, torture and killing of protesters in Tanjung Priok, Jakarta, in 1984. The verdicts were all overturned by the Court of Appeal in July 2006.[158]
- Two police officers were charged with command responsibility for the killing of three people and the torture of up to 100 others in Abepura, Papua, in 2000.[159] All were acquitted by the Human Rights Court in Makassar in September 2006.[160]

These failures in high profile cases reinforced the impunity of police and the military. They have little reason to fear being prosecuted for their actions, let alone being convicted and imprisoned. As Human Rights Watch reported in 2010:

> Impunity remains the rule for members of the security forces responsible for abuses. Indonesian military officers and militia leaders have yet to be brought to justice for past atrocities committed in Timor-Leste, Papua, Aceh, the Moluccas, Kalimantan, and elsewhere.[161]

And again the following year,

> New allegations of security force involvement in torture emerged in 2010. But the military consistently shields its officers from investigations and the government makes little effort to hold them accountable.[162]

The enactment of Law 26/2000 and the establishment of the Human Rights Courts led to few prosecutions and even fewer convictions and imprisonments. Indeed, the Courts have essentially ceased to function. One reason for this is that, under the law, only the Attorney General is authorized to prosecute cases in Human Rights Courts, on the basis of an investigation by Komnas HAM. Successive Attorneys General have been reluctant to launch prosecutions. Currently recommendations for prosecution arising from seven Komnas HAM investigations remain in the Attorney General's Office pending a decision.[163] A second reason is their poor record: all but one of the individuals prosecuted before them has been acquitted at trial or on appeal, destroying public

confidence in their independence and integrity. There has been little public pressure to bring new prosecutions.

Occasionally cases of torture will be the subject of other criminal or disciplinary proceedings. It is not possible to ascertain how frequently or infrequently this occurs across the country, and information tends to be about individual cases. Two examples were reported by Human Rights Watch in its 2011 Annual Report.

> In October, a 10-minute cell phone video came to light that showed Indonesian soldiers interrogating and brutally torturing two Papuan men, Tunaliwor Kiwo and Telangga Gire. In the video, Kiwo screams as a piece of burning wood is repeatedly jabbed at his genitals. After pressure from foreign governments, the military finally held a tribunal in Jayapura, Papua, in January. But it is only tried three of six soldiers in the video – Second Sgt. Irwan Rizkiyanto, First Pvt. Jackson Agu, and First Pvt. Thamrin Mahamiri of the Army's Strategic and Reserve Command (Kostrad) 753rd battalion– on military discipline charges, rather than for torture. The three were sentenced to ten months, nine months, and eight months respectively. Military prosecutors only sought sentences of up to 12 months rather than the maximum 30 months as allowed under the military criminal code.
>
> Another torture case captured on video in 2010 involved several soldiers kicking and beating villagers in Papua. Four soldiers from the same Kostrad 753rd battalion were tried on military disciplinary grounds and were sentenced only to five to seven months in prison. The convictions are on appeal before the Surabaya high military tribunal.[164]

Such cases are rare. They result in convictions and imprisonment even more rarely. The West Sumatra case, where very short prison terms were imposed that did not reflect the gravity of the offence and its consequences (the deaths of two teenagers), illustrates the tokenistic outcomes of prosecutions and convictions that have occurred.

One Komnas HAM Commissioner suggested that in the last few years police internal disciplinary procedures have been used more frequently in cases of torture, and that this is leading to better practice. But he too acknowledged that torture continues and sometimes results in the deaths of victims in custody.[165] No data are available to indicate the extent to which disciplinary proceedings are now being applied to sanction or reduce torture, or how much practice has changed.

In 2008 the Special Rapporteur on Torture expressed regret that

> Indonesia has not outlawed torture under its criminal legislation. Indonesian law does not contain an explicit prohibition of torture. This, combined with the absence of procedural safeguards against torture, the lack of independent monitoring mechanisms and of effective complaints mechanisms results in a system of quasi-total impunity.[166]

In the same year the Committee Against Torture expressed deep concern that

> credible allegations of torture and/or ill-treatment committed by law enforcement, military and intelligence services personnel are seldom investigated and prosecuted and that perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the grave nature of their crimes.[167]

Detention practice

The observance of procedural safeguards reveals a comparable evolution from the New Order period to the present, although the absence of reliable statistics makes comparison difficult.

Those interviewed for this research expressed mixed views on whether police notified families of arrests and detentions. Some said that in recent years families have usually been told of an arrest reasonably soon after it occurs, usually by written notification hand-delivered to the detainee's home.[168] Others said that family members are only notified when they go looking for a detained person.[169]

Political detainees are usually able to obtain legal representation at their trials but find it difficult to have their legal counsel present during interrogation and other stages of investigation.[170] Other detainees have more difficulty in obtaining legal advice at all and frequently go through the whole criminal process without it.[171] Many are granted permission to appoint a lawyer but cannot afford to do so. When lawyers are provided, they are often selected by, and are on friendly terms with, the police.[172]

Basic medical attention is provided to detainees who request it but it can be very slow in coming and is very limited in scope.[173] Detainees who have been beaten have sometimes been held in detention until their injuries healed, to conceal evidence of torture.[174] Medical reports in the hands of the police have not usually been made available to victims or their lawyers.[175] In Papua, in particular, recent detainees reported experiencing further torture inside the police hospital: they said that medical professionals had not used anaesthetics when they stitched wounds, and that the police had continued to beat detainees while they were under medical treatment.[176]

Women are especially vulnerable. In conflict areas, women have been sexually assaulted or subjected to gender-based violence by soldiers or police themselves, or with their complicity.[177] The detention facilities for women prisoners and detainees are often overcrowded and have no budgets to meet the specific needs of women, especially women who are pregnant or with infants in detention with them. The introduction in Aceh of corporal punishment for moral crimes also has serious implications for women.[178]

Interrogations have sometimes been recorded on audio or video or closed circuit television in a few police stations and detention centres (notably in the major cities of Jakarta, Surabaya and Semarang).[179] Generally speaking, however, the police do not have access to these technologies. Where they have been introduced, in a few urban police stations and detention centres, foreign donors have often provided financial support.[180] Police and others speak positively of the effect of audio and video technology when it has been used. Police are said to have been 'more restrained' when interrogations were videoed.[181]

Interviewees frequently emphasized that a fundamental problem is the tendency to focus on confessions.[182] The Criminal Procedure Code allows five types of evidence, the last of which is 'the accused's own testimony'.[183] Although an accused person's testimony is not sufficient to prove guilt unless it is accompanied by 'another means of proof',[184] the police and prosecutors seek primarily to obtain confessions and rely on them in most prosecutions. The Criminal Procedure Code states that all evidence, including a suspect's, 'shall be given without pressure from anyone whomsoever and/or in any form whatsoever'.[185] When deciding the facts, courts are also required to take into account any reasons that might cause a witness to testify in a certain way.[186] Despite these safeguards, courts very rarely exclude confessional evidence, even if the accused alleges it was obtained by torture, and for the police and prosecutors few legal or procedural disincentives inhibit them from obtaining confessions by coercion.[187] The reliance of investigators on confessions, and judicial tolerance of this reliance, increase the risk that coercion will be employed.

Weak supervision of operational personnel is a second major deficiency. Senior officers in the police and military are criticised for not enforcing procedures in the course of arrest, detention and investigation.[188] Correcting this failure of leadership, it is argued, is the key to preventing torture.[189]

In sum, the practice of torture appears to be ingrained and institutionalised.[190] Many junior and middle-ranking police are not familiar with basic provisions of the Criminal Code and the Criminal Procedure Code,[191] and some judges and prosecutors do not have a clear understanding of the nature of torture or relevant provisions of international law.[192] The Ministry of Law and Human Rights has provided some training on torture prevention, but only a small proportion of the police, military, prosecutors and prison guards in a small number of cities have benefited from it.[193] Komnas HAM also provides some training and has produced modules that can be used in training of police cadets and new prosecutors.[194] To date, nonetheless, training has generally been *ad hoc* and superficial and without proper follow up; police mainly learn their craft from other police officers

rather than through formal education in law and procedures.[195] The Indonesian National Police says that all police personnel are trained and that the police academy provides ten courses a year, each one for 100 participants,[196] but it recognises that much more needs to be done if torture associated with policing is to be stopped.

With respect to the military, senior and middle-ranking military officers probably enjoy better training and supervision than the police. The military has certainly provided more training to its personnel and shown more willingness to confront the issue of torture. It uses videos of incidents of torture in its training progammes,[197] and in Papua it has invited the provincial office of Komnas HAM to provide human rights training.[198] This said, a systematic, comprehensive training programme for all military personnel is needed and is still not available. More important, reforming the military culture of violence will require commitment and a long-term programme of action.

COMPLAINTS AND MONITORING (LAW AND PRACTICE)

International/regional mechanisms

Indonesia has ratified the UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights (ICCPR) and is required to submit periodic State reports on its compliance with its obligations under those treaties.[199] It has submitted and been examined on two reports under the Convention against Torture and one under the ICCPR.[200]

However, it has not accepted any international jurisdiction to receive and investigate 'communications' (complaints) alleging violations of the treaties in specific cases. Nor has it made a declaration under Art. 22 of the Convention against Torture or ratified the Second

Optional Protocol to the ICCPR concerning individual complaints or communications, and is not subject to any other international complaints mechanism. There is no regional complaints mechanism in Asia.[201]

Indonesia has also not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and so does not accept the monitoring function of the Subcommittee on the Prevention of Torture.

Indonesia has accepted two visits by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[202] It has not made a standing invitation to UN Special Procedures and visits therefore depend on individual *ad hoc* invitations from the Government. The Rapporteur's second visit followed repeated requests over many years.

Domestic mechanisms

Complaints and investigations

Indonesia now has several independent complaint and monitoring mechanisms, three of which are relevant to the prevention of torture. The National Commission on Human Rights (Komnas HAM) was established in 1994 during the New Order period. After *reformasi*, the National Police Commission was established in 2002 and the Ombudsman in 2008.

Komnas HAM was created in 1994 under a presidential decree[203] and re-established by statute on a more permanent and more independent basis in 1999, in compliance with the the Paris Principles (the international standard for national human rights institutions)[204] Its mandate covers human rights generally, as recognised in Law 39/1999, including the right to freedom from torture.[205] Under the law it has four main functions: study and research, dissemination, monitoring, and mediation.[206] In relation to torture, it is authorized to receive and investigate complaints of torture, monitor compliance

with the right to freedom from torture, and promote and provide education and training in torture prevention.[207]

Komnas HAM can receive complaints from any person or group of persons.[208] It has reasonably strong powers of investigation. It is authorized to

- Monitor the implementation of human rights and compile reports on the output of its monitoring.
- Investigate and examine incidents which by their nature or scope are likely to violate human rights.
- Request and hear statements from complainants, victims and accused persons.
- •equest and hear statements from witnesses and, if prosecution follows, request witnesses to submit necessary evidence.
- Survey incident locations and other locations as deemed necessary.
- Request relevant parties to give written statements or submit authenticated documents as required, on approval by the Head of the Court.
- •Examine houses, yards, buildings, and other places that relevant parties reside in or own, on approval by the Head of the Court.[209]

Complaint investigations are not public unless Komnas HAM decides otherwise.[210] Komnas HAM also has authority to suppress information about the parties and witnesses.[211]

Komnas HAM has no power to prosecute. When it completes an investigation into a complaint or an incident and concludes that a violation of human rights has occurred, it reports the case to the Attorney General or the Parliament for resolution.[212] It can also make recommendations for resolving the complaint to the parties.[213] It can release publicly as much information as it wishes about a complaint, its investigation, and its conclusions and recommendations.

Under Law 26/2000, Komnas HAM has particular powers in relation to gross violations of human rights. It is responsible for conducting inquiries into gross violations of human rights, including torture, that are broad and systemic direct attacks on civilians.[214] When conducting an inquiry it is authorized to:

- Inquire into and examine incidents that, based on their nature or scope, can reasonably be considered to amount to gross violations of human rights.
- Receive reports or complaints from individuals or groups on gross violations of human rights, and pursue statements and evidence.
- Request and hear the statements of complainants, victims, or subjects of a complaint.
- Call and hear witnesses.
- Gather and review statements from the location of the incident and other locations as deemed necessary.
- Request relevant parties to make written statements or submit necessary authenticated documents.
- On the order of the investigator, it is authorized to:
- Examine letters.
- Undertake search and seizure.
- Examine houses, yards, buildings, and other places that relevant parties occupy or own.
- Dispatch specialists pertinent to the investigation.[215]

An inquiry differs from an investigation. An investigation is preliminary to prosecution and is conducted by or under the authority of the Attorney General.[216] By contrast, at the conclusion of an inquiry Komnas HAM reports to an investigator appointed by the Attorney General if it considers that the preliminary evidence it has gathered suggests that a gross violation of human rights has occurred.[217] The Attorney General prosecutes gross violations of human rights on the basis of the investigator's report.[218] Beyond that point, Komnas HAM has no further role or power but can request a report from the Attorney General on the progress of an investigation or a prosecution.[219]

Human rights organisations have been critical of Komnas HAM, arguing that it has not addressed torture and other human rights abuses effectively. They say its reports have been weak, that its recommendations have been ignored, and that it has a poor record on prosecutions and convictions.[220] Komnas HAM may in fact have been more influential during the New Order period, when its leadership

was close to Suharto but also independent minded, while NGOs were generally suppressed and found it difficult to operate freely and publicly. After *reformasi*, Komnas HAM had less official influence and was over-shadowed in the public mind by more vocal, critical, activist NGOs. It has since struggled to extend its reach and effectiveness on the ground, having only six regional offices that enjoy limited authority and responsibility.[221] The same characteristics that make it difficult to prevent torture in Indonesia – its large and diverse population, enormous area, and archipelagic nature – make it difficult for Komnas HAM to operate effectively across the country. The organization has 300 staff but there are over 440 prisons and official places of detention and many thousands of police stations. Komnas HAM has produced many good reports on situations of gross human rights violations, including on the 1965 massacres that accompanied the Suharto military takeover and the 1999 events in East Timor. However, these reports did not receive serious government attention or result in prosecutions, and this has undermined its credibility.

The National Police Commission was established by law in 2002.[222] Its powers and functions were supplemented by a presidential decree in 2011.[223] A legally independent body whose mandate is to supervise the National Police,[224] it advises the President on policing policy and the appointment and dismissal of police officers.[225] It is authorized to receive and investigate complaints of police abuse, including torture, and reports on them to the President and to the Chief of the National Police.[226] However, it inquires and recommends, and does not discipline. It has no power to to enter and search premises, or compel witnesses to appear or testimony to be given, or evidenceto be produced. Its reports on complaints are not forwarded to the judiciary for prosecution but sent as recommendations to the President (under Law 2/2002) or the Chief of the National Police (under the Presidential Decree). It is for the President or Chief of Police (as the case may be) to decides whether to take action or initiate disciplinary or criminal proceedings.[227] Because reports to the President and Chief of Police generally do not receive a response, the National Police Commission usually seeks to intervene at lower levels in the police

hierarchy, including locally and provincially, to address the substance of complaints.[228]

The Ombudsman was established by presidential decree in 2000 and then by statute in 2008.[229] An independent legal institution mandated to oversee public administration, it can investigate maladministration on the basis of complaints and at its own initiative,[230] and principally interacts with public sector agencies to resolve complaints by mediation and recommendation. Its responses to individual complaints do not lead to court proceedings.[231]

The Ombudsman is authorized to:

- Request information orally or in writing from the complainant, the party complained against, or other parties relevant to the complaint.
- Investigate decisions and correspondence or other documents from the complainant or the party complained against, to establish the facts.
- Request clarification, or copies of documents as required, from any agencies and from the party complained against.
- Summon the complainant, the party complained against, and other parties relevant to the grievance.
- Settle the grievance by mediation and conciliation at the request of the parties.
- Make recommendations for resolving the grievance, including payment of compensation and rehabilitation of the damaged party
- Publish its findings, conclusions and recommendations in the public interest.[232]

The Ombudsman is also authorized to submit recommendations to the President, Head of Region, or other senior officials, that will rectify and improve the organisation or procedures of public services, and to introduce legal reforms to prevent maladministration. These powers (to report and recommend) concern systemic issues rather than individual complaints. In its 2011 Annual Report, the Ombudsman stated that his office had received 1867 complaints. The

highest number concerned local government (671 – 35.94 per cent), followed by the police (325 – 17.4 per cent), the judiciary (178 – 9.53 per cent), the National land Agency (165 – 8.84 per cent), and *Instansi Pemerintah/Kementerian* or ministerial offices (154 – 8.25 per cent).[233]

Monitoring

The independent mechanisms that monitor places of detention are fewer and weaker than the mechanisms that handle complaints. Komnas HAM is effectively the only independent institution that has specific statutory authority to monitor places of detention; but its authority to do so is weak. Monitoring is one of the general functions of Komnas HAM under its law.[234] A later provision, expanding this general function, empowered it to 'monitor the execution of human rights and compile reports of the output of this monitoring'.[235] Places of detention were not mentioned specifically here or elsewhere in the law. Komnas HAM possesses all the powers necessary to monitor but it does not have specific power to enter and inspect premises, or do so with or without notice. It employs specialised teams to visit places of detention but visits are made in response to complaints; there is no regular monitoring process.[236]

Komnas HAM has a memorandum of understanding with the National Police to monitor police work. The Special Rapporteur on Torture commented in 2010 on this:

> The Special Rapporteur positively notes the existence of several internal and external mechanisms to monitor police work and is encouraged by the Memorandum of Understanding between the police and Komnas HAM (National Human Rights Commission). Unfortunately, these mechanisms fall short of the required independence and authority to initiate processes which effectively lead to the establishment of accountability. The lack of independent and effective monitoring mechanisms, including the possibility to conduct unannounced visits and confidential interviews with detainees, as well as accessible complaints mechanisms continues to contribute to impunity and an environment conducive to the perpetration of torture.[237]

Neither the National Police Commission nor the Ombudsman have formal monitoring responsibilities, but the National Police Commission does undertake some monitoring of police detention facilities. It has a memorandum of understanding with Komnas HAM covering visits to detention centres.[238]

CONCLUSIONS

Although the absence of reliable statistics prevents accurate comparison, the general consensus of international and domestic observers is that the incidence of torture, and severe torture in particular, declined substantially in Indonesia after the end of the New Order regime, at the start of *reformasi* (1998), and especially since the end of the conflict in Aceh (2005). Improvement was due first to broad political changes in Indonesia, including the end of authoritarian rule and its replacement by a relatively democratic system, more effective advocacy and monitoring by Indonesian civil society organisations, and the ending of many internal conflicts, most notably in Aceh.

These political changes made possible many specific measures associated with torture prevention that then contributed directly to the reduced incidence and severity of torure. They included the ratification of additional international human rights treaties and the enactment of domestic laws on human rights and torture prevention, the demilitarisation of the national police, and the establishment or strengtheining of domestic national insitutions for human rights. The end of the conflict in Aceh contributed greatly to the reducution in torture there but the persistence of conflict in Papua ensures the persistence of torture there.

Broader positive changes in Indonesia include: better (though still inadequate) laws; more transparent government; greater public scrutiny; more effective advocacy by non-government organisations; the emergence of independent institutions (notably, Komnas HAM and the Ombudsman) that investigate and monitor violations of

human rights, including torture; the separation of the police from the military; and, to an extent, improved training.[239] Social media and mobile phones have also been used creatively to increase transparency and oversight, not least with respect to arrests and detentions[240] International scrutiny and pressure have also been important.[241]

Nevertheless, torture remains a serious human rights concern in Indonesia and measures to prevent it are inadequate. Some groups are especially at risk of torture. They include: drug and terrorism suspects; gay, lesbian and transgender persons; and Papuan political activists.[242] Helped by the ending of a number of conflicts, *reformasi* has reduced torture but has not prevented it. The current democratic regime remains reluctant to address the entrenched impunity that protects abusers in most parts of government and society.

The persistence of torture is specifically associated with

- **Inadequate laws** that fail to criminalise torture except when it constitutes a crime against humanity.
- **Inadequate law enforcement** that rarely leads to prosecution of officials and even more rarely results in convictions and punishment.
- **Inadequate justice** that accepts confessions obtained by coercion.
- **Inadequate leadership** that tolerates torture and, more broadly, impunity, and fails to ensure that the chain of command is effectively accountable.
- **Inadequate training** that does not promote professionalism and good practice in law enforcement and does not equip police and military officials to conduct investigations without torturing.
- **Inadequate accountability** that does not ensure proper supervision of junior officers and does not hold junior officers, their superiors, and managers responsible for their actions.
- **Inadequate procedures** that do not provide an effective framework for protecting suspects, dissidents, detainees and prisoners.
- **Inadequate transparency** that fails to uphold high standards of financial accountability.

The current situation is captured by the recommendations of the Human Rights Committee in its Concluding Observations on Indonesia in 2013.

> The State party should expedite the process of the enactment of a revised Penal Code. It should ensure that the revised Penal Code includes a definition of torture that covers all of the elements contained in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the Covenant. The State party should also ensure that the law adequately provides for the effective investigation and prosecution of perpetrators of such acts and their accomplices; that, if convicted, perpetrators and their accomplices are punished with sanctions commensurate with the seriousness of the crime; and that victims are adequately compensated. Furthermore, the State party should ensure that law enforcement personnel receive training on prevention and investigation of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) into all their training programmes.[243]

THE PHILIPPINES
by Ricardo Sunga III

INTRODUCTION

What is the relation between Philippine anti-torture laws and the incidence of torture? To what extent have measures to curb torture succeeded? This chapter critically examines torture in the Philippines between 1985 and 2014, and concludes that there are two faces of torture in the country – law and practice – which, to this day, diverge widely.

The chapter draws on reports by United Nations bodies such as the Committee against Torture, the United States Department of State, Amnesty International, Human Rights Watch and other non-governmental organizations (NGOs), and interviews with government officials and members of civil society.

INCIDENCE OF TORTURE

The Marcos regime

The Ferdinand Marcos period ended 14 months into the period under review. In the words of the Free Legal Assistance Group and Foundation for Integrative and Development Studies of the University of the Philippines: 'The Philippine military was the fist of former President Marcos' authoritarian rule. Between 1972 and 1986, elite torture units became his instruments of terror. Torture and execution without due process were widely practised by the state through a series of Presidential orders and decrees.'[244]

These orders and decrees suspended safeguards and created conditions that considerably increased the risk of government abuse. They included Presidential Proclamation No. 1081, which declared martial law and authorized detention of individuals charged with rebellion and similar offences (until the President ordered their release),[245] and General Order No. 2-A, which directed the Secretary of National Defense to arrest individuals for crimes such as conspiring to seize state power.[246]

Both orders were widely used to suppress dissent and political opposition to the regime, though their targets were the two principal armed insurgencies that have been active during the period (a national movement led by the Maoist Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA), and a Muslim separatist insurgency in Mindanao).[247]

During this time, the most common forms of torture were: the ashtray (burning the skin with cigarette butts); pulling out fingernails; *pompyang* or *el telefono* (slapping both ears simultaneously with great force); NAWASA[248] (the water cure); wet submarine (submerging the victim's head in water or a toilet bowl); dry submarine (covering the victim's head with plastic to cause suffocation); MERALCO[249] (electric shock); Russian roulette; rape or sexual abuse; solitary confinement; and psychological or mental torture.[250]

The Aquino administration

In February 1986, the Marcos regime was overthrown. Following mass protests, President Corazon Aquino replaced Marcos. Expectations ran high that the human rights and torture record of the Philippines would improve during her term (1986-1992).

Unfortunately, the situation improved only slightly. According to Amnesty International, President Aquino took several steps to halt torture when she came to power[251] However, reports continued to emerge of torture and ill-treatment of political detainees during interrogation by police and military officials.[252] The military denied such reports, arguing that they were part of the communists' propaganda war. Government officials admitted isolated instances of torture, but denied that its use was government policy.[253] Human Rights Watch concluded that neither the government-appointed Commission on Human Rights nor independent monitoring groups had reliable statistics, but accepted that numerous cases of politically motivated killings, torture, disappearances and unfair trials had been documented.[254] Sr Cresencia Lucero SFIC (Chair of Task Force Detainees of the Philippines) argued that the war waged by the Aquino government against rebels maintained the incidence of torture at a high level.[255]

The Ramos and Estrada administrations

During the terms of President Fidel Ramos (1992-1998) and President Joseph Estrada (1998-2001), reports of torture declined. Nevertheless, government forces continued to ill-treat and torture individuals whom they suspected of belonging to or supporting the CPP/NPA or the Muslim insurgencies in Mindanao. Others to whom the labels of 'communist' or 'rebel' could be attached also became victims, including trades union activists, civil rights attorneys, other critics of the government, and sometimes innocent bystanders.[256]

Though acts of torture remained severe and widespread, their *number* appeared to drop. Citing Task Force Detainees, the United States Department of State reported that the intensity of counterinsurgency operations had declined, and attributed this to efforts to raise military awareness of human rights.[257] Amnesty International noted that some political prisoners had been released, that others remained in prison, that some new arrests had been made, and that some of those detained were reported to have been tortured or ill-treated.[258] Human Rights Watch concluded that the Philippine government's human rights record was mixed. In the view of the Philippine Commission on Human Rights (PCHR) and human rights NGOs, violations declined on all fronts, though reports of abuses (including disappearances, extrajudicial killings, incommunicado detention, and arrests without warrant) continued to emerge.[259]

The Arroyo administration

During the term of President Gloria Arroyo (2001-2010), human rights violations, including torture, increased somewhat. The number of extra-judicial killings and enforced disappearance (both of which are almost invariably accompanied by torture) rose sharply. According to Nilda Sevilla, Co-Chair of Families of Victims of Involuntary Disappearances (an NGO), torture is intimately linked to enforced disappearance, and family members of the disappeared are haunted by thoughts of the torture their relative might have experienced.[260] Following an official visit to the Philippines, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, cited a report that implied General Jovito Palparan had command responsibility for many killings and disappearances.[261]

The United States Department of State reported that members of the security services were responsible for extrajudicial killings, torture, disappearances, arbitrary arrest and detention, and other physical abuse of suspects and detainees, and identified issues of police, prosecutorial, and judicial corruption.[262] Amnesty International drew attention to defects in the administration of justice, the torture and

ill-treatment of criminal suspects by police to extract confessions, extrajudicial executions of suspected drug dealers and others, and arbitrary arrests, torture, extrajudicial executions and disappearances in the context of military counter-insurgency operations.[263]

The crimes reported included: rape and sexual assault of female prisoners; mistreatment of children; the torture or ill-treatment of suspects by police or military personnel after arrest, during unlawfully extended periods of investigative detention, before filing of charges, and during interrogation; and denial of the right to have allegations of torture and other human rights violations investigated promptly, effectively and impartially. Child suspects, especially street children and those involved in substance abuse, were frequently detained for extended periods without access to social workers or lawyers, and were vulnerable to torture and ill-treatment. Public confidence in complaints bodies, including the Commission on Human Rights and the Office of the Ombudsman, was low.

In the context of counter-insurgency operations (against suspected Islamist 'terrorists', Muslim separatists and communist insurgents), arbitrary arrests, torture, extrajudicial executions and disappearances were reported.[264] Civilians living in militarized zones, or areas targeted for counter-insurgency operations, were susceptible to harassment, physical assaults, arbitrary arrest, and torture by the military. Individuals considered to sympathize with or to have assisted the NPA were at particular risk. Harassment by local security forces of human rights groups and activists affiliated with leftist causes was also a concern.[265] As military operations intensified, there were reports nationwide of arbitrary detentions, extrajudicial executions, enforced disappearances, torture, and harassment of civilians suspected of being CPP/NPA supporters.[266]

The enforced disappearance and torture of Raymond and Reynaldo Manalo, suspected of being members of the New People's Army, demonstrated the nature of the human rights violations that took place in this period. The two brothers were charcoal gatherers living in San Ildefonso, Bulacan, a province outside Manila. On 14 February

2006, while they were resting at home, soldiers took them into custody. When their families searched for them, officials denied knowledge of their whereabouts. One and a half years later, the brothers escaped from military custody and described their ordeal. In a later *amparo* court case,[267] they stated under oath that they had been transferred from one place to another, beaten, fed rotten food, doused with urine and hot water, hit with pieces of wood, slapped with a pistol, and burned. They testified that they had met General Jovito Palparan, who they said had been one of their captors, and described seeing others who had undergone the same ordeal. Protective orders were subsequently issued in their favour.[268]

The Aquino administration

During the term of President Benigno Aquino III (2010-2013), while the number of reported incidents of torture and other violations of human rights appeared to decrease,[269] allegations of human rights violations nevertheless continued to mention torture, as well as violence and harassment against leftist and human rights activists by security forces, disappearances, warrantless arrests, and lengthy pre-trial detentions. According to the PCHR and reliable human rights groups, excessive use of force and torture remained ingrained elements of the arrest and detention process.[270]

Common forms of abuse during arrest and interrogation included electric shocks, cigarette burns, and suffocation. Suspected or captured members of the *Abu Sayaff* group[271] and the NPA were particular targets for abuse. Allegations of rape and sexual harassment were made against Philippine National Police officials. Reports of abuse by prison guards against detainees were common, though prisoners, fearing retaliation, rarely lodged formal complaints. Women in police custody were particularly vulnerable to sexual and physical assault by police and prison officials[272].

In January 2014, the media reported discovery of a police 'torture wheel'.[273] At a secret detention facility in Laguna, a province near

Manila, police officers reportedly used a roulette to determine how detainees (mostly drug offenders) were to be tortured, either to punish them or coerce them into providing information. Punishments included a 'bat position' in which detainees were hung upside down for 30 seconds.[274] The 'wheel of torture' increased concern about the degree to which police officers understood, or took seriously, the absolute prohibition of torture in human rights law.

Frequency, severity and geographical distribution

Torture took place in the Philippines consistently throughout the period under review, with almost the same frequency. The military and police were reportedly equally responsible. Slightly fewer cases of torture were reported in the post-Marcos era. The severity of torture was also essentially consistent. Throughout the period, a wide spectrum of different kinds of physical and mental torture occurred.

The victims of torture included individuals accused of common as well as political crimes.

In terms of geographical distribution, reports of torture occurred across the Philippines throughout the period. An archipelago composed of more than 7000 islands, the Philippines has three major island groups: Luzon in the North, Visayas in the centre, and Mindanao to the South. The capital city, Manila, is located in Luzon, in the Visayas. The inhabitants of the Visayas are predominantly Catholic; the inhabitants of Mindanao are predominantly Muslim.

In Northern Luzon, victims of torture included young adults and indigenous peoples.[275] In Metro Manila, the rest of Luzon, and in the Visayas generally, they included those accused of common as well as political offences.[276] In Mindanao, suspected members of Muslim rebel groups were particularly targeted for torture.[277]

DETENTION LAW

The 1973 Philippine Constitution and the Revised Penal Code under Marcos

At the start of the period under review, detainees already enjoyed constitutional safeguards. The 1973 Constitution stated that: 'Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.'

Philippine criminal laws also defined and established penalties for crimes such as arbitrary detention and delays in producing prisoners. Article 124 of the Revised Penal Code provided for a range of penalties, including prison terms, for the crime of arbitrary detention, in which a 'public officer or employee', 'without legal grounds, detains a person'. Article 125 of the Code defined and punished, with imprisonment, the crime of delay in presenting suspects to the proper judicial authorities. A 'public officer or employee' committed this crime when he or she detained 'any person for some legal ground' and failed 'to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent'.[278] The same article required that a detained person be 'informed of the cause of his detention' and guaranteed the detainee's right 'to communicate and confer at any time' with his or her 'attorney or counsel'.[279]

ICCPR, CAT and the 1987 Philippine Constitution

In 1986, the Philippines ratified or acceded to several international human rights treaties, notably the UN International Covenant on Civil and Political Rights, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention on Torture). When it ratified these treaties,[280] the Philippine government was required to guarantee the rights they affirm, thereby increasing the protection that detainees enjoyed in law.

A new Constitution (approved by plebiscite in 1987) further strengthened safeguards for detainees. Going beyond the provisions of the 1973 Constitution, it explicitly guaranteed the rights of an individual under criminal investigation, affirming his 'right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice'; affirmed that a person who cannot afford the services of counsel must be provided with one; and stated that his or her rights cannot be waived except in writing and in the presence of counsel.[281]

The 1987 Constitution also prohibited torture, force, violence, threat, intimidation, or the use of any other means that vitiate free will, as well as secret detention places, and solitary, incommunicado, or other similar forms of detention. It affirmed that confessions or admissions obtained in violation of a person's rights were inadmissible as evidence.[282]

Republic Act No. 7438

Republic Act No. 7438 of 1992 (An Act Defining Certain Rights of Person Arrested, Detained or under Custodial Investigation, as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof) detailed the rights of persons arrested, detained or under custodial investigation and criminalized violations of their rights. According to this law, any person arrested, detained or under custodial investigation must at

all times be assisted by counsel. Any public officer or employee, or anyone acting under his or her order or in his or her place, who arrests, detains or investigates any person for the commission of an offence should inform the latter, in a language known to and understood by him or her, of his or her rights to remain silent and to have competent and independent counsel, preferably of his or her own choice, who must at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If a suspect cannot pay for counsel, he or she must be provided with a competent and independent counsel by the investigating officer.[283]

Republic Act No. 7438 also required that a custodial investigation report be written by the investigating officer. Before this report is signed (or thumbmarked) by suspects, it must be read and adequately explained to detainees by their counsel, or by the assisting counsel provided by the investigating officer, in a language or dialect they know. If this procedure is not respected, investigation reports are null and void. Any extrajudicial confession made by a person who is arrested, detained or under custodial investigation must be in writing and signed by him or her , in the presence of his or her counsel, or in the latter's absence, upon a valid waiver, in the presence of his or her parents, older brothers and sisters, or spouse, or the municipal mayor, a municipal judge, district school supervisor, or priest or minister of the gospel, as chosen by him or her. If this procedure is not respected, confessions are inadmissible as evidence in any proceeding. Any waiver by a person arrested or detained under the provisions of article 125 of the Revised Penal Code, or under custodial investigation, should be in writing and signed by this person in the presence of his or her counsel. If this procedure is not respected, the waiver is null and void.[284]

Under Republic Act No. 7438, the authorities have a legal duty to ensure that any person arrested or detained or under custodial investigation is allowed visits by or conferences with: any member of his or her immediate family; a medical doctor or priest or religious minister chosen by him or her or any member of his or her immediate family;

his or her counsel; any national non-governmental organization duly accredited by the Commission on Human Rights; or any international non-governmental organization duly accredited by the Office of the President. ('Immediate family' includes a detainee's spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.)[285]

Republic Act No. 7438 which guarantees the rights of those under custodial investigation clarifies that the term 'custodial investigation' includes the practice of issuing an invitation to a person who is investigated in connection with an offence he or she is suspected of having committed. Furthermore, the inviting officer may become liable for any violation of law.[286]

Republic Act No. 7438 goes further and imposes prison terms for: (a) an arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his or her right to remain silent, and to have competent and independent counsel, preferably of his or her own choice; (b) a public officer or employee, or anyone acting upon the orders of such an investigating officer, or in his or her place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offence, if the latter cannot afford the services of his or her own counsel; and (c) a person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or her or by any member of his or her immediate family or by his or her counsel from visiting and conferring privately with him or her, or from examining and treating him or her, or from ministering to his or her spiritual needs, at any hour of the day or, in urgent cases, the night.[287]

Its provisions notwithstanding, Republic Act No. 7438 provides that any security officer with custodial responsibility over a detainee or prisoner may undertake reasonable measures necessary to secure his or her safety and prevent his or her escape.[288]

Republic Acts No. 9745 and No. 10353

Legal protection for detainees was further strengthened in 2009, with the passage into law of Republic Act No. 9745, also known the Philippine Anti-Torture Act. The Act defines and punishes torture according to the standards of the UN Convention against Torture. It states that the right not to be subjected to torture is an absolute and non-derogable right and affirms that the rights it guarantees apply in all circumstances. A state of war or threat of war, internal political instability, other forms of public emergency, documents or determinations setting out an 'order of battle': none of these can be invoked to justify torture and other cruel, inhuman and degrading treatment or punishment.[289]

Republic Act No. 9745 also: affirms a detainee's right to a medical examination;[290] prohibits secret detention places, solitary confinement, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity; and requires the Philippine National Police, Armed Forces of the Philippines, and other law enforcement agencies to make an updated list of all detention centres and facilities under their jurisdictions, with data on the prisoners or detainees detained in them (including names, dates of arrest and incarceration, and the crime or offence committed). The list should be made available to the public at all times; and a copy of the complete list should be available at the national headquarters of the Philippine National Police and the Armed Forces of the Philippines, and should be submitted by the Philippine National Police, Armed Forces of the Philippines, and other law enforcement agencies to the Philippine Commission on Human Rights (PCHR). The list is to be updated by the same agencies within the first five days of every month at minimum. Every regional office of the Philippine National Police, Armed Forces of the Philippines, and other law enforcement agencies should maintain a similar list of all detainees and detention facilities within their respective areas, should make the list available to the public at all times in their respective regional headquarters, and should submit a copy, updated in the manner described above, to the appropriate regional office of the PCHR.

With regard to medical examinations, before and after interrogation, every person arrested, detained or under custodial investigation has the right to be informed of his or her right to demand a physical examination by an independent and competent doctor of his or her own choice. If a suspect cannot afford the services of a doctor, the State is to provide him or her with a competent and independent doctor to conduct a physical examination. The State also has a duty to provide detainees with a psychological evaluation (if one is available under the circumstances). If the arrested person is female, she must be attended preferably by a female doctor. Any person arrested, detained or under custodial investigation is entitled to adequate medical treatment immediately. The findings of each physical examination or psychological evaluation are to be set out in a medical report, duly signed by the attending physician. Medical reports should describe the suspect's medical history and the doctor's findings, and are to be attached to the custodial investigation report. They are to be considered public documents.[291]

In December 2010, the Implementing Rules and Regulations of Republic Act No. 9745 were adopted, embodying the standards found in the Istanbul Protocol for medical examinations in torture cases. The Rules require both a physical and psychological examination. The medical report of a physical examination must include: pertinent case and background information; the victim's torture allegations; physical symptoms and disabilities; the findings of physical examination; photographs; diagnostic test results; an interpretation of findings; conclusions and recommendations; consultations; the physician's certification; the clinician's signature, date and place; and relevant annexes. Reports of psychological examinations must include: the victim's psychological history; a report of his or her examination; an interpretation of findings; conclusions and recommendations; consultations; the physician's certification; the clinician's signature, date and place; and relevant annexes.[292]

In 2013, Republic Act No. 10353 (the Anti-Enforced Disappearance Act) became effective, raising further the legal protection for detainees. Apart from defining and punishing the crime of enforced

disappearance, it explicitly guarantees 'the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition'.[293]

Recordings and cameras

Audio and video recordings of interrogations provide evidence of testimony and the context in which it was obtained. They have the potential to make authorities think twice before resorting to torture; cameras in places of interrogation can help to deter acts of torture.

However, no Philippine law or regulation has addressed the subject of audio and video recording of interrogations. Nor does any Philippine law or regulation require cameras to film them. As one observer noted, the Philippine National Police budget for equipment is spent on purchasing a firearm for each police officer, rather than the purchase of audio and video devices for the protection of detainees.[294]

Advances in detention law

In sum, detention-related laws in the Philippines steadily improved throughout the period under review. Detainees were already entitled to a lawyer, and unofficial detention and failure to present detainees promptly before a court were both already criminalized. In 1992, a new law recognized the right of detainees to receive visits from immediate family, and from a doctor, priest, and counsel, and criminalized failures to respect it. In 2009 a further law required detainees to be informed of their right to a medical examination at arrest. In 2013, finally, a law was passed requiring family members (or persons chosen by the detainee) to be informed promptly after detention. In contrast, no law requires audio or video recordings of interrogations or the installation of cameras for that purpose.

Detention practice

On one side, there is the law on detention: on the other, its practice. During the period under review, laws on procedures for arrest, investigation and detention have not been followed and detainees' rights have not been respected. The Committee against Torture has expressed deep concern about the many credible and corroborated allegations of routine torture and ill-treatment of Philippine suspects in police custody, notably for the purpose of extracting confessions or information for use in criminal proceedings.[295]

Despite the new legislation, there remain insufficient safeguards for detainees in practice. The Philippine authorities have failed to: (a) bring detainees promptly before a judge and have held them in custody for prolonged periods; (b) systematically register all detainees, including minors; (c) keep records of all periods of pre-trial detention; (d) provide detainees with prompt access to lawyers and independent doctors; (e) notify detainees of their rights when they are detained, including their right to contact family members.[296]

There is evidence that the Philippine National Police and Armed Forces of the Philippines continue to detain suspects in secret detention centres, safe houses and military camps. Although authorities are required to file charges within 12 to 36 hours after arrest without warrant (depending on the seriousness of the crime), lengthy pre-trial detention remains a problem, due to the slowness of judicial processes. Many arrests are reportedly made without warrant. Criminal suspects arrested without a warrant are at risk of torture and ill-treatment in the absence of effective judicial oversight.[297]

Detainees experience a wide variety of human rights violations according to the Foundation for Integrative and Development Studies of the University of the Philippines. Firstly, at arrest (both warrantless arrests, and in a large proportion of arrests in general), suspects are not explicitly informed of their rights; essentially, the criminal justice system neglects detainees' rights until confessions are obtained. At arrest and in detention, second, they are often subjected to torture.

At arrest, some are beaten up, verbally abused, or threatened to extract a confession, while others lose their valuables, or suffer sexual harassment. During investigation, suspects may be beaten again if they refuse to confess. Some are burned with lighted cigarettes, given electric shocks, suffocated, strangled, or banged against the wall.

In the minds of arresting and investigating officers, what is most important is to arrest and file charges.[298] Many consider that human rights are an obstacle to their work. They view alleged criminals as a subtype of the population, to whom different rules apply because they break the law and harm people's lives. Some officers even allow victims of an alleged crime to beat up the individuals who are alleged to have been responsible. Officials dehumanize suspects and exploit the power they have over them. Once a confession is obtained, torture decreases dramatically. Torture is a shortcut, a substitute for good police work. It occurs because officials believe they can get away with it.[299]

In sum, detention practice was extremely poor through the entire period under review. Despite laws to the contrary, unofficial detention was widespread. Families or others were not usually promptly informed of a person's detention. Detainees were usually not informed of their right to a lawyer. When they were informed, most detainees did not exercise this right, from ignorance or fear. Detainees were not usually promptly presented to a judge. Medical examinations did not take place or, if they did, they were compromised. Interrogations were not electronically recorded. Cameras were not used. Despite increasing use of other investigative techniques, confessions continued to have importance.[300]

A major reason for this poor practice is that prosecutors, police, soldiers and other personnel involved in the detention process receive little training, and much of the training that does occur is adequate.

Some training has been reported. The PCHR and the Medical Action Group (a human rights NGO) trained officials of the Bureau of Jail Management and Penology officers from 2003 to 2006. The

Department of Justice and the Medical Action Group provided training to officials of the National Prosecution Service and Philippine National Police in 2013. The Commission on Human Rights has given lectures and talks on human rights topics, including torture, to up to 18,999 uniformed men and women.[301]

These are important steps. Nevertheless, many jail officials, prosecutors, and police officers remain untrained, and it is unclear how much was retained or how far the skills that were acquired were communicated to other officials.

PROSECUTION LAW AND PRACTICE

Crime of maltreatment

Until 2009, no law defined and punished the crime of torture. A provision of the Revised Penal Code defined and punished the crime of maltreatment of prisoners. This law continues to be in effect today. It imposes a graduated penalty (from *arresto mayor*[302] to *prision correccional*[303]), in addition to liability for physical injuries or damage, on any public officer or employee who exceeds his or her authority when correcting or handling a prisoner or detainee in his or her charge, by imposing punishment that is not authorized by regulations or inflicting such punishment in a cruel or humiliating manner.[304]

According to the Revised Penal Code, if the purpose of the maltreatment is to extort a confession, or to obtain information from the prisoner, the offender is punished by *prision correccional*, temporary special disqualification, and a fine not exceeding 500 pesos, in addition to his or her liability for the physical injuries or damage caused.[305]

Limitations to the crime of maltreatment

There are several limitations to prosecution for the crime of maltreatment. First, the penalties for this crime are not substantial. At most, maltreatment incurs a penalty of six years of imprisonment. Second, it does not match the definition of torture in the UN Convention against Torture. Third, it is subject to a statute of limitations (ten or five years, depending on the circumstances).[306]

The Philippine Supreme Court[307] has confirmed convictions for torture, though not for maltreatment, for crimes including murder, rape and coercion. In *People vs. Torreja*,[308] the Court confirmed the conviction of a police officer for qualified rape of a female detainee. In *People vs. Alegarbes*,[309] the Court confirmed a soldier's conviction for murder following the torture and death of his victim. In *People vs. Ravelo*[310], the Court confirmed the conviction of members of the Civilian Home Defense Force[311] for murder and frustrated murder, after they had tortured suspected rebels. In *Punzalan vs. People*,[312] *US vs. Pabalan,*[313] **and** *US vs. Cusi*,[314] the Court confirmed the conviction of a mayor and police officers for coercion after they maltreated suspects to extract a confession.

From 2009, Republic Act No. 9745 (the Anti-Torture Act) defined and punished torture in accordance with the standards of the UN Convention against Torture. The Act defines torture as:

> an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority.[315]

According to Republic Act No. 9745, torture does not include pain or suffering arising from, inherent in, or incidental to, lawful sanctions.[316] The law goes on to define cruel, inhuman and[317] degrading treatment or punishment, as a deliberate and aggravated treatment or punishment, not considered torture, inflicted by a person in authority, or agent of a person in authority, against a person under his or her custody, which attains a level of severity, causing suffering, gross humiliation, or debasement to the latter.[318]

Republic Act No. 9745 states that any person is liable as a principal if they participate in the commission of torture, or other cruel, inhuman and degrading treatment or punishment, or induce others to commit such acts, or cooperate in the execution of such acts, beforehand or simultaneously.[319] Furthermore, applying the principle of command responsibility, an officer is also liable as a principal if he or she (a) knows – or, given the circumstances at the time, should have known – that acts of torture or other cruel, inhuman and degrading treatment or punishment will be committed, are being committed, or have been committed by his or her subordinates or by others within his or her area of responsibility, and (b) does not take preventive or corrective action, despite such knowledge, before, during or immediately after such acts occur, and (c) when he or she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment, but fails to prevent or investigate allegations of such acts, deliberately or by negligence.[320]

Republic Act No. 9745 provides substantial penalties that are graduated (according to the severity of the torture). It imposes the longest prison term[321] for the following acts: (1) torture resulting in the death of a person; (2) torture resulting in mutilation; (3) torture with rape; (4) torture with other forms of sexual abuse where, in consequence, the victim becomes insane, imbecile, impotent, blind or maimed for life; and (5) torture committed against children.[322]

The act imposes slightly shorter prison terms[323] for acts of mental or psychological torture that cause the victim to become insane, fear becoming insane, have complete or partial amnesia, or have suicidal

tendencies due to guilt, a sense of worthlessness or shame,[324] and for acts of torture that result in other forms of psychological, mental and emotional harm than those just described.[325]

Even lower penalties are imposed if, as a result of torture: a victim loses the power of speech, hearing, or smell; loses an eye, a hand, a foot, an arm or a leg; or the use of any such member; or is permanently incapacitated and unable to work;[326] or becomes deformed, or loses another part of, or use of, his or her body than the parts cited above, or becomes ill or incapacitated and unable to work for a period of more than 90 days;[327] or becomes ill, incapacitated or unable to work for more than 30 days but not more than 90 days;[328] or becomes ill or incapacitated and unable to work for 30 days or less.[329]

Criminal penalties are also imposed: for acts that amount to cruel, inhuman or degrading treatment or punishment;[330] for establishing, operating and maintaining secret detention places, or holding detainees in solitary confinement, *incommunicado*, or in similar forms of prohibited detention, where torture may be carried out with impunity;[331] for failure to maintain, submit or make available to the public an updated list of detention centres and facilities, and corresponding data on the prisoners or detainees they contain, as required by law.[332]

The Philippine Commission for Human Rights, the Department of Justice, the Department of National Defense, the Department of the Interior and Local Government, and other concerned parties in both the public and private sectors, have a legal duty to ensure that education and information regarding the prohibition against torture and other cruel, inhuman and degrading treatment or punishment are fully included in the training of civil and military law enforcement personnel, medical personnel, public officials, and other persons who may be involved in the custody, interrogation or treatment of individuals who are arrested, detained or imprisoned. The Department of Education and the Commission on Higher Education must also ensure human rights education classes are included in all primary, secondary and tertiary level academic institutions nationwide.[333]

Republic Act No. 9745 is an advance in the law. It defines and punishes torture according to the standards found in the UN Convention against Torture. It also imposes stiffer penalties for torture than those imposed by the Revised Penal Code for maltreatment and varies the penalties according to the severity of the torture inflicted. Arguably, the Act makes torture, like maltreatment, subject to a statute of limitations. Although its Implementing Rules and Regulations state there is no statute of limitations,[334] the Act itself contains no such provision: this suggests that a statute of limitations does apply, because Implementing Rules and Regulations cannot extend what an Act does not authorize. If this is so, even the most serious forms of torture are not prosecutable after 12 years and less serious forms of torture cannot be prosecuted after between four and eight years.[335]

Obstacles to prosecution for torture

In the four years since Republic Act No. 9745 came into force, no person has been convicted of torture. A few have been charged. They include Police Senior Inspector Joselito Binayug et *al*, arrested and charged with the torture of Darius Evangelista, a suspected thief;[336] the case is pending before the Regional Trial Court of Manila, Branch 1. Soldiers in the second infantry battalion of the army's ninth infantry division were charged with the torture of Ronel Cabais, a suspected member of the NPA;[337] warrants were issued by the Municipal Trial Court of Polangui-Libon-Oas, Albay, South Luzon, but so far no arrests have been made. Sgt. George Awing, SSgt. Elmer Magdaraog, and Capt. Sherwin Guidangen were charged before the Regional Trial Court of Isabela City, Basilan, Mindanao, Branch 2, with the torture of Abdul-Khan Balinting Ajid, a suspected member of the Abu-Sayaff group;[338] they too have not so far been arrested.

The Medical Action Group suggests several reasons why so few have been prosecuted, and none convicted. Prosecutors and public attorneys are insufficiently aware of Republic Act No. 9745, leading *de facto* to lengthy pre-trial detention; the government does not allocate sufficient financial and human resources to prosecution because it

is not determined to ensure that investigations are effective; and overburdened public attorneys who are busy defending their clients against criminal accusations have little time to spare for other duties, including those under Republic Act No. 9745.[339] Prosecutor Gail Maderazo has emphasized the inadequate training of public prosecutors and public attorneys. A round of training activities to inform public prosecutors about Republic Act No. 9745 took place in 2013, and a training workshop was held in 2014; but these trainings have not reached the whole of the National Prosecution Service of the Philippines, much less the Public Attorney's office. Many public prosecutors and public attorneys are not well-informed about the law regarding torture.[340]

Prompt medical examinations are rarely performed, although this is a legal requirement. Torture victims rarely assert their right to be seen by a doctor, because most are unaware that they have this right and the authorities do not inform them. For obvious reasons, the authorities are reluctant to bring victims of torture to a medical doctor for examination, and are under less pressure to do so if they are poor. Many torture victims are unable to see a doctor for days or weeks, compromising the quality of any investigation, since perpetrators have time to cover up their crime, and evidence at the crime scene and on the victim fades and eventually disappears. Medical examinations should be provided without cost if an arrested person cannot pay, but in practice suspects are often charged and as a result many waive their right to be medically examined.[341]

In addition, torture victims are frequently examined by doctors assigned to health facilities of the Philippine National Police, or Armed Forces of the Philippines. These doctors may give them only a cursory physical examination, and ask no questions about torture marks. Medical certificates are frequently summary, refer only to visible bruises or contusions, and contain a formulaic assessment of how long the victim is likely to need medical treatment.[342]

Finally, few health professionals in the Philippines have the necessary skills to document torture thoroughly, and these often avoid

attempting to document torture for fear of reprisals. Police officials are often present during physical and medical examinations; in some cases, they supervise doctors' work. No safeguards guarantee the confidentiality of medical reports, protect health personnel from police intimidation, or ensure that they can examine patients in private (without the presence of police).[343]

Proper medical evaluation is usually carried out by health professionals affiliated with NGOs. Because law enforcement agencies usually bar human rights NGOs from entering jails and detention centres, such evaluations usually occur after a considerable delay. In many cases, even when NGO experts are allowed to see and examine victims, they are prohibited from bringing medical and documentation equipment into detention centres: the effect, evidently, is to prevent a proper forensic examination, until after injuries have healed.[344]

When acts of torture are prosecuted, victims also need to deal with the legal construct of 'presumption of regularity' in the performance of official duties.[345] The actions of government officials are presumed to be regular. Torture is presumed not to have taken place. The burden of proving a torture allegation rests heavily on the victim, which discourages torture victims from coming forward. Though many complaints of torture are recorded by human rights organizations and reported in the media, very few are prosecuted.[346]

In addition, the government often invokes exceptional circumstances and threats to national security as a defence. The authorities frequently arrest innocent civilians, often without a lawful court order, and there are many cases of mistaken identity, notably of Muslims who share similar or identical names. Incentives (rewards and promises of promotion) also encourage officers to take shortcuts or resort to torture and ill-treatment. These problems have been particularly acute in Mindanao.[347]

When the authorities cannot or will not identify and locate alleged perpetrators, this evidently makes it harder for torture victims to obtain justice and redress. The common practice of blindfolding, itself

a form of torture under Republic Act No. 9745, makes it difficult for victims to identify their perpetrators. The reluctance of prosecutors to use or allow voice identification has the same effect.[348] In Pampanga, Luzon, five political detainees who had been blindfolded saw their case against their police captors dismissed because prosecutors rejected the voice identification they submitted.[349] Authorities often block cases because they are reluctant to cooperate in the prosecution of colleagues.[350] Examples include the failures, already mentioned, to implement warrants for the arrest of soldiers in the second infantry battalion of the army's ninth infantry division, charged with the torture of Ronel Cabais,[351] and Sgt. George Awing, SSgt. Elmer Magdaraog, and Capt. Sherwin Guidangen, charged with the torture of Abdul-Khan Balinting Ajid.[352]

Torture survivors, their families, and support groups (including doctors and lawyers) say that many torture survivors and witnesses are also reluctant to cooperate with torture prosecutions because they fear reprisals, and threats of retaliation, by relatives, friends and colleagues of the alleged perpetrators.[353]

The failure to prosecute is a systemic problem, aggravated by the fact that torture victims and their witnesses are often charged with insurgency-related activities and trumped-up offences.[354]

Though the Department of Justice's National Bureau of Investigation and the PCHR both have witness protection programs, they have rarely been used effectively because of lack of funding and support staff. Moreover, protection only starts when charges are filed. Witnesses have complained that protection is guaranteed during the trial, not afterwards, leaving them open to retribution.

During interrogation, torture victims are subjected to threats and physical pressure, and are forced to sign statements whose content and purpose are not explained to them. Later, they realize that they have signed a waiver that legitimizes their confessions. When the document surfaces, the victims finds himself obliged to prove he signed it under torture.[355]

Civil liability

A criminal case generally generates a civil case. According to the Philippine Rules of Court, when a criminal action is instituted it generally triggers a civil action for the recovery of civil liability arising from the offence, unless the offended party waives civil action, reserves the right to institute it separately, or institutes a civil action prior to the criminal action.[356]

A separate civil case is also possible. In *Aberca vs. Ver*,[357] the Philippine Supreme Court confirmed that an injured party has grounds to institute a separate civil action for damages arising from human rights violations, including torture. In reaching this opinion, the Court relied on the New Civil Code[358] which makes any public officer or employee or private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the enumerated rights and liberties of another person, liable to the latter for damages. These rights and liberties include: freedom from arbitrary or illegal detention; the right to equal protection under the law; the right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures; the right not be compelled to witness against oneself; the right not to be forced to confess guilt; the right not to be induced to confess guilt by a promise of immunity or reward (except when the person confessing becomes a State witness); freedom from excessive fines or cruel and unusual punishment, unless the same are imposed or inflicted in accordance with a statute that has not been judicially declared unconstitutional; and freedom of access to the courts.

(Because of technical defences, the litigation in Aberca v Ver has not yet been completed. 26 years have passed since the case was initiated but the plaintiffs have yet to receive any form of reparation for the injuries they suffered, which included torture.)

A Board of Claims, through an expedient administrative procedure, grants awards to victims of violent crimes that include torture. These awards are rather small.[359] A similar administrative body, the

Human Rights Victims' Claims Board, grants larger amounts, but its jurisdiction is limited to victims of human rights violations by the Marcos regime.[360]

COMPLAINTS AND MONITORING LAW AND PRACTICE

Tanodbayan

In 1985, at the beginning of the period under review, no national human rights institution existed that could serve as a complaints or monitoring body. An Ombudsman (Tanodbayan) could investigate complaints committed by an administrative body, advise the legislature on possible remedial measures, and prosecute erring government officials.[361] In her study of the Tanodbayan between 1979 and 1981, Irene Cortes (a law professor and subsequently Supreme Court Justice) calculated that the Tanodbayan received over 3,000 cases per year, including 300 on administrative bodies; she did not indicate how many involved torture.[362]

In 1986, a Presidential Committee on Human Rights was created.[363] Its functions included the investigation of allegations of torture; but it could only make recommendations to the President. The US State Department reported that 27 torture allegations were brought to the attention of the Committee in 1986.[364]

Commission on Human Rights

The 1987 Constitution of the Philippines established a national human rights institution, titled the Philippine Commission on Human Rights (PCHR). Its powers are considerably broader than those of the Presidential Committee on Human Rights. Its independence is constitutionally guaranteed.[365] The automatic and regular release of

its approved annual appropriations is constitutionally assured.[366] With regard to torture, the Commission is empowered to act both as a complaints mechanism and as a monitoring body.

Under the 1987 Constitution, the PCHR can investigate, at its own initiative or following a complaint by any party, all forms of human rights violations that involve civil and political rights. It can adopt its operational guidelines and rules of procedure, and cite for contempt if these guidelines and rules are violated, in accordance with the Rules of Court. It can adopt appropriate legal measures to protect the human rights of all persons in the Philippines, as well as Philippine citizens residing abroad, and develop preventive measures and legal aid services for under-privileged individuals whose human rights have been violated or need protection. It has authority to visit jails, prisons, or detention facilities. It can grant immunity from prosecution to any person whose testimony, or whose possession of documents or other evidence, is necessary or convenient for determining the truth in any investigation that it conducts or that is conducted under its authority. It has the power to request the assistance of any department, bureau, office, or agency in the performance of its functions.[367]

Philippine Commission for Human Rights as a complaints mechanism

As a complaints mechanism, the PCHR has many powers under the 1987 Constitution. It has the authority to receive complaints of torture and investigate them. It can carry out investigations at its own initiative. It is independent: other government branches and official bodies are not entitled to exert any formal influence over it. The Commission has no power to compel the production of evidence, but can request the assistance of other government offices, and has power to cite in contempt. It can refer a case to an investigative authority,[368] but has no power to bind that authority. It can similarly recommend redress, but its recommendation is non-binding.

The PCHR faces a number of issues. In the period under review, it referred several cases to public prosecutors, having investigated complaints, but some of these were dismissed. Some of the PCHR's recommendations of redress were similarly set aside by other agencies. Greater cooperation between the Commission, public prosecutors and other agencies should be explored.

The Commission publishes its findings as part of its procedure and prepares annual reports that summarize its work.[369] In 2012, the PCHR reported that it had documented torture incidents involving 64 victims.[370] In 2011, it combined figures for extra-judicial killings, enforced disappearances and torture, and reported that it had documented 183 such incidents, involving 225 victims.[371] It stated that 183 incidents, involving 408 victims, had occurred the previous year. In 2010, it reported 114 cases of torture.[372]

PCHR as a monitoring body

The PCHR is also authorized to monitor torture by making visits to places of detention. The 1987 Constitution does not say what kinds of visits that the Commission is entitled to make, but the PCHR's powers are broad enough to include unannounced visits. No law grants the Commission immunity for its monitoring-related activities.

In the early years of its existence, from 1987 onwards, PCHR visits were obstructed, even though the Constitution specifically entitled it to visit. Prison authorities commonly obliged its officials to wait, on the grounds that clearance had to be sought, and sometimes refused them entrance altogether. The PCHR found it most difficult to enter military sites of detention; these even occasionally claimed that they had no detention facilities. It had slightly less difficulty entering police prisons, and had the least difficulty visiting national, provincial, city and municipal prisons. When the Commission began to show jail officials a copy of the constitution, the reception improved.

With regard to its visiting powers, the PCHR has made some advances. On 18 May 2009, it adopted Implementing Guidelines

on Jail Visitation;[373] on 23 June 2009 it signed a Memorandum of Undertaking with the Philippine National Police, facilitating access to police detention facilities; on 16 September 2009, the Bureau of Jail Management and Penology issued a Memorandum Circular granting the Commission access to its jails. A Memorandum of Agreement between the Commission and the Armed Forces of the Philippines that would facilitate visits to military detention facilities has been drafted, but the Armed Forces of the Philippines has yet to sign it.

The PCHR has also agreed its procedure for conducting visits. All visits are made by authorized officers and personnel, covered by a Mission Order.[374] Within five days of a mission, the officer or the team that conducted the visit must submit a comprehensive post-mission report to the official who issued the Mission Order. A copy of the report should be furnished to the Commission's Assistance and Visitorial Office,[375] which submits to Members of the Commission regular monthly reports on all visitation activities, as well as special reports that may be required. The Assistance and Visitorial Office submits consolidated annual reports on its services and related programmes and projects.[376] State authorities, their agents, or any person acting in their stead or by acquiescence, who deliberately or without just cause disregard or refuse to obey the authority of the Commission to enforce its visitorial power, are liable for contempt.[377]

Republic Act No. 10353 of 2012 (the Anti-Enforced Disappearance Act) strengthened the visiting powers of the PCHR. Under this law, the Commission or its duly authorized representatives are mandated and authorized to make regular, independent, unannounced and unrestricted visits to, and to inspect, all places of detention and confinement.[378]

During the period under review, the PCHR conducted many announced and unannounced visits. When Commission officials succeeded in obtaining entry to detention facilities, they were able to interview detainees. Visitation reports are summarized in the Commission's annual reports. For example, the 2011 Annual Report calculated that the PCHR had reached a total of 46,170 prisoners during regular

and on-the-spot visits.[379] In 2010, the Annual Report states that the Commission conducted 520 jail visits.[380]

Since it was founded, PCHR staff have received a certain amount of training. From 2003 to 2006 the Medical Action Group co-organized a training for PCHR staff and other officials on how to identify, document and report torture cases. Training increased after passage of Republic Act No. 9745 (the anti-Torture Act), which requires anti-torture training.[381] In 2010, the Association for the Prevention of Torture (APT) organized a training workshop for PCHR staff. A key point that emerged was the distinction between preventive and reactive visits: the PCHR teams that make preventive visits are now separate from teams that visit in response to a complaint.[382]

The PCHR's annual reports cite other training activities. In 2010, for instance, supported by the Australian government, it embarked on a four-year project to strengthen its investigative capacity with the help of a Peruvian forensic anthropology team.[383] In 2011, the Commission and three NGOs (Balay Rehabilitation Center, the Medical Action Group, and Task Force Detainees of the Philippines) organized a training on preventive monitoring of torture and ill-treatment.[384] In 2012, staff participated in a crime scene investigation training in Bangkok.[385]

Other complaints bodies

A number of bodies, in addition to the PCHR, can receive and investigate complaints of torture. Most have a mandate to investigate violations of law by public officials. They include the Ombudsman, an independent body created by the 1987 Philippine Constitution to consider the criminal and administrative liabilities of public officials who violate the law,[386] and the Civil Service Commission, an independent body created by the 1987 Philippine Constitution to serve as the central personnel agency of the government.[387] The Civil Service Commission only considers the administrative liability of public officials.

It may be useful to explore the possibility of streamlining these mechanisms and how cooperation between them might be improved.

Other agencies receive complaints against police officers and consider their administrative liability. They include: the Philippine National Police Command, which exercises control over serving police;[388] the National Police Commission, which exercises administrative control and operational supervision over the Philippine National Police;[389] the People's Law Enforcement Bureau, the principal office receiving complaints against the police from citizens;[390] and the Philippine National Police Internal Affairs Service, which carries out investigations.[391]

OPCAT

The Philippines acceded to the Optional Protocol to the UN Convention against Torture (OPCAT) in 2012. It is premature to assess its effect. The government has recognized the competence of the Subcommittee on Prevention of Torture to carry out unannounced and unrestricted visits, but it inserted a reservation that postpones such visits.[392]

OPCAT requires states parties to establish an independent and adequately resourced national preventive mechanism (NPM) to prevent torture, which should have the power to carry out unannounced and unrestricted visits. The grace period for establishing this body has passed. Congress is studying a draft bill that would create the NPM, but it has not yet been approved.

Torture has two faces

With respect to torture, Philippine practice diverges markedly from Philippine law. On one hand, measures to curb torture have steadily improved. Largely due to unrelenting campaigning by civil society,[393] laws relating to torture have become more sophisticated, culminating in Republic Act No. 9745 (the Philippine Anti-Torture Act)[394] which

defines and punishes the crime of torture in accordance with the standards set out in the UN Convention against Torture. The Philippine Commission on Human Rights has also progressed, as a complaints and as a monitoring body. Because its independence is constitutionally guaranteed, the PCHR is potentially able to make effective use of its powers to investigate torture and visit prisons and detention centres. Moreover, Republic Act No. 10353 (the Anti-Enforced Disappearance Act)[395] enables it to carry out unrestricted and unannounced visits.

The practice is another matter. The military and police have continued to commit torture as if they have no reason to stop. During the period under review, the incidence of torture improved slightly after the Marcos regime fell, but its frequency, severity and geographical spread have remained high. Law enforcement officials continue to belittle or disregard the rights of detainees and to ignore the absolute prohibition of torture.

This dysfunction appears to be deeply entrenched. Three hundred years of Spanish colonial rule, followed by half a century of American colonization, complemented by Japanese occupation during the Second World War and the martial law rule of President Marcos, help to explain the wide divergence between law and practice. The Philippine military and police do not have roots in a solid tradition of sound and accountable law enforcement. The attitudes this history has engendered will not change, or be changed, overnight.

In addition, longstanding conflicts with Muslim secessionists and with the New People's Army continue to tempt military and police officers to use national security considerations to justify torture. The Cabais, Salas and Ajid cases (cited in this chapter) are evidence of this – while the Evangelista and 'wheel of torture' cases (also cited) show the degree to which the security forces torture suspects of common crimes.

Philippine law enforcement needs to change. A harsh colonial past and martial law history do not excuse torture. The Philippines' violent history should induce those responsible for law enforcement to take

the opposite direction, and firmly abjure and oppose torture. Law can light the path ahead. It has the potential to show 'what could be' and eventually guide practice. For the moment, unfortunately, this remains an aspiration in the Philippines, and there is no indication when it might be realized.

CONCLUSION

The people of the Philippines have an expression: *doble kara*.[396] It means 'of two faces.' The law says one thing. What happens is another. The country is an example of good law but very poor practice. Torture persists in spite of numerous international and domestic measures adopted to prevent it and, to date, those measures have had little effect on what happens on arrest, at interrogation, and in places of detention.

Some measures, such as the Optional Protocol to the Convention against Torture, and Republic Act No. 10353 (the Anti-Enforced Disappearance Act), are new and will take time to produce effects. Nevertheless, though the Republic Act No. 9745 (the Anti-Torture Act) has helped to raise official and public awareness of the prohibition of torture, the continuing practice of prolonged detention prior to filing charges, despite the criminalization of this practice,[397] promotes acts of torture.

A variety of reasons explain why the law has little effect. They include: the sense of impunity of police officers and the military; the fear of reprisals that victims, witnesses, lawyers and doctors feel; the absence of immunity for officials of the PCHR when they perform their monitoring duties; failure to apply the law equally to those who lack legal, medical, financial and other resources; the non-binding nature of PCHR referrals of torture to public prosecutors, and its recommendations of redress; and the shortfall in training provided to police officers, prosecutors, public attorneys, and officials of the PHRC.

Much remains to be done before the two faces of law and practice in the Philippines coincide, bringing torture to an end.

NOTES

1. Indria Fernida assisted with legal research for this chapter.
2. See http://worldpopulationreview.com/countries/indonesia-population. The UN estimate in 2012 was 246,864,000: see http://unstats.un.org/unsd/pocketbook/WSPB2014.pdf accessed on 20 September 2015.
3. See http://www.ethnologue.com/country/ID accessed on 20 September 2015.
4. Indonesian Common Core Document, UN DOC HRI/CORE/IDN/2010, 15 October 2010, table 4.
5. In 2007 there were 360,381 police personnel: Indonesian Common Core Document, UN DOC HRI/CORE/IDN/2010, 15 October 2010, para. 81. See http://ranahberita.com/17377/jumlah-personel-polri-tahun-2014 accessed on 20 September 2015.
6. See the strategic planning of the Indonesian Military entitled *Rencana Strategis Pembangunan TNI Tahun* 2005-2009, (Markas Besar Tentara Nasional Indonesia 2006) Jakarta.
7. 2012 figure. International Centre for Prison Studies. At http://prisonstudies.org/country/indonesia accessed on 20 September 2015.
8. R. Cribb, 'Genocide in Indonesia, 1965–1966' (*Journal of Genocide Research*, vol. 3, no. 2), pp. 219-39; Komisi Nasional Hak Asasi Manusia (Komnas HAM), *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia Berat* (Jakarta, 2014); J. Roosa, *Pretext for Mass Murder:The September 30th Movement and Suharto's Coup d'État in Indonesia* (Wisconsin: University of Wisconsin Press, 2006); B.T. Wardaya, *Bung Karno menggugat!: dari Marhaen, CIA, pembantaian massal '65 hingga G30S* (Cet. 1 edn, Yogyakarta: Galangpress, Baciro Baru, 2006).
9. Law 2/2002, on the Indonesian National Police.
10. The actual death toll is unknown and may have exceeded one million. See Amnesty International, *Submission to the United Nations Human Rights Committee* (2013), p. 33. At: http://www.amnesty.org/en/library/asset/ASA21/018/2013/en/c40a6196-e8e8-40bd-99ae-c2100eab0cf4/asa210182013en.pdf accessed on 20 September 2015.
11. J. Braithwaite, V. Braithwaite, M. Cookson, L. Dunn, *Anomie and Violence: Non-Truth and Reconciliation in Indonesian Peacebuilding* (Canberra: ANU Press, 2010); G. van Klinken, Communal Violence and Democratization in Indonesia: Small town wars (NewYork: Routledge, 2007).
12. Since independence, East Timor's official title is the Democratic Republic of Timor-Leste. 'East Timor' is used here because this was its name during the period of Indonesian occupation.
13. Indonesia declared independence on 17 August 1945 at the end of the Pacific War. Its independence was not recognised by the Dutch colonial power and a war of independence ensued. Independence was finally recognised on 27 December 1949.
14. The Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) documented in great detail the events of 1999 in the course of examining the period of Indonesian occupation. Its final report, *Chega!*, 2,800 pages in length, was released in October 2005. See http://www.cavr-timorleste.org accessed on 20 September 2015.
15. Amnesty International, *Time to Face the Past* (2013), p. 9.

16. T. Parks, N. Colleta, B. Oppenheim, *The Contested Corners of Asia: Subnational Conflict and International Development Assistance* (The Asia Foundation, Washington D.C., 2013). The territory was first called Irian Jaya but more recently has been known as West Papua (*Papua Barat*) or simply Papua. It is currently divided into two Indonesian provinces, Papua and West Papua. This chapter refers to the whole region (that is, both these provinces) as Papua.

17. See Asian Human Rights Commission and International Coalition for Papua, *The Neglected Genocide: Human rights abuses against Papuans in the Central Highlands 1977-1978* (Hong Kong, 2013), at www.humanrightspapua.org/hrreport/genocidereport; J. Wing J and P. King, *Genocide in West Papua? The role of the Indonesian state apparatus and a current needs assessment of the Papuan people (Centre for Peace and Conflict Studies*, Sydney, 2005); E. Brundige, W. King, P. Vahali, S. Vladeck, X. Yuan, *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control* (Allard K. Lowenstein International Human Rights Clinic, Yale Law School, New Haven, 2005).

18. J. Braithwaite, V. Braithwaite, M. Cookson, L. Dunn, *Anomie and Violence: Non-Truth and Reconciliation in Indonesian Peacebuilding* (Canberra: ANU Press, 2010), p. 77.

19. Interviews with Maj Gen Christian Zebua, National Military Regional Commander, 4 September 2014; and with Komnas HAM Jayapura office, 5 September 2014.

20. Interview with Major General Christian Zebua, National Military Regional Commander, 4 September 2014.

21. Convention on the Elimination of All Forms of Discrimination Against Women (1984); Convention on the Rights of the Child (1999); Convention on the Elimination of All Forms of Racial Discrimination (1999); International Covenant on Economic, Social and Cultural Rights (2006); Convention on the Rights of Persons with Disabilities (2011); Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2012). Indonesia signed in 2010 but has not yet ratified the Convention for the Protection of All Persons from Enforced Disappearances.

22. Interview with Fadillah Agus, consultant to the Indonesian National Military 12 September 2014.

23. Social scientists have analysed the breakdown of norms and social order in Indonesia and its impact on state and non-state violence. See J. Braithwaite, V. Braithwaite, M. Cookson, L. Dunn L., *Anomie and Violence: Non-Truth and Reconciliation in Indonesian Peacebuilding* (Canberra: ANU Press, 2010); and G. van Klinken, *Communal Violence and Democratization in Indonesia: Small town wars* (New York: Routledge, 2007).

24. Interview with Komnas HAM, 2 September 2014: meeting with human rights NGOs, Jakarta, 2 September 2014; meetings with Papua church leaders, and with human rights activists, 2 to 5 September 2014; meeting with Aceh non-government organisations, 8 September 2014.

25. Other factors include: the ability of complainants to lodge complaints; their knowledge of complaints procedures; the accessibility and appropriateness of the complaints system; the degree to which complainants have confidence that they will obtain a remedy.

26. United States Department of State, *Country Report on Human Rights Practices for 1987*, p. 702.

27. United States Department of State, *Country Report on Human Rights Practices for 1988*. p. 809.

28. Amnesty International, *Annual Report 1989* (London), p. 178.

29. Special Rapporteur on Torture. Mr. P. Kooiimans, Addendum: Visit to Indonesia and East Timor, UN DOC E/CN.4/1992/17/Add.l, 8 January 1992, p. 17-18.

30. Special Rapporteur on Torture. Mr. P. Kooiimans, Addendum: Visit to Indonesia and East Timor, UN DOC E/CN.4/1992/17/Add.l, 8 January 1992, para. 73.

31. Amnesty International, *Annual Report 1990* (London), p. 121.

32. Human Rights Watch, *World Report 1990* (New York) http://www.hrw.org/reports/1990/WR90/ASIA.BOU-05.htm#P451_109639 accessed on 20 September 2015.

33. United States Department of State, *Country Report on Human Rights Practices* for 1991, p. 861.

34. Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Nigel Rodley, Report on Indponesia, UN DOC E/CN.4/1994/31 (1994), para. 318.

35. United States Department of State, *Country Report on Human Rights Practices for 1993* at (http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_eap/Indonesia.html) *and 199*4 at (http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_eap/Indonesia.html) accessed on 20 September 2015. United States Department of State, Country Report on Human Rights Practices for 1994 at http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_eap/Indonesia.html accessed on 20 September 2015.

36. United States Department of State, *Country Report on Human Rights Practices for 1994* at http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_eap/Indonesia.html accessed on 20 September 2015.

37. Amnesty International, *Annual Report 199*3 (London), p. 157; Human Rights Watch, World Report 1993 (New York) at http://www.hrw.org/reports/1993/WR93/Asw-07.htm#P246_106629 accessed on 20 September 2015.

38. Amnesty International, Annual Report 1993 (London), p. 160

39. United States Department of State, *Country Report on Human Rights Practices for 1995* at http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_eap/Indonesia.html accessed on 20 September 2015.

40. United States Department of State, *Country Report on Human Rights Practices for 1998* at http://www.state.gov/www/global/human_rights/1998_hrp_report/indonesi.html accessed on 20 September 2015. Komisi Nasional Hak Asasi Manusia (Komnas HAM), *Laporan Tim Ad Hoc Aceh* (Jakarta, 2004).

41. Amnesty International, *Annual Report 1998* (London), p. 198.

42. Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), 'Arbitrary detention, torture and ill-treatment', in *Chega!* (2005), Chapter 7.4, p. 2290.

43. United States Department of State, *Country Report on Human Rights Practices for 1999* at http://www.state.gov/j/drl/rls/hrrpt/1999/288.htm accessed on 20 September 2015.

44. United States Department of State, *Country Report on Human Rights Practices for 2000* at http://www.state.gov/j/drl/rls/hrrpt/2000/eap/707.htm accessed on 20 September 2015.

45. Human Rights Watch, *World Report 2001* (New York) at http://www.hrw.org/legacy/wr2k1/asia/indonesia.html accessed on 20 September 2015.

46. See. Komisi Nasional Anti-Kekerasan terhadap Perempuan (Komnas Perempuan), *Temuan Tim Gabungan Pencari Fakta Kerusuhan Mei 1998* (Jakarta, 1999).

47. United States Department of State, *Country Reports on Human Rights Practices for 2001* at http://www.state.gov/j/drl/rls/hrrpt/2001/eap/8314.htm accessed on 20 September 2015.

48. Komisi Nasional Anti-Kekerasan terhadap Perempuan (Komnas Perempuan), *Temuan Tim Gabungan*

Pencari Fakta Kerusuhan Mei 1998 (Jakarta, 1999), p. 26.

49. Special Rapporteur on Torture 1999, E/CN.4/1999/61 para. 360.

50. Committee against Torture, Report, Twenty-seventh session (12-23 November 2001), Twenty-eighth session (29 April-17 May 2002), Supplement No. 44, UN DOC A/57/44, paras. 36-46.

51. Committee against Torture, Report, Twenty-seventh session (12-23 November 2001), Twenty-eighth session (29 April-17 May 2002), Supplement No. 44, UN DOC A/57/44, paras. 36-46.

52. *United States Department of State, Country Report on Human Rights Practices for 2004* http://www.state.gov/j/drl/rls/hrrpt/2004/41643.htm accessed on 20 September 2015.

53. B. Hernawan *et al, The Practice of Torture in Aceh and Papua 1998-2007 with an annex on the situation of human rights in Timor-Leste* (Office for Justice and Peace, Catholic Diocese of Jayapura, Jayapura, 2008). See also United States Department of State, *Country Report on Human Rights Practices for 2005. Human Rights Watch's World Report in 2005* concluded that torture in police and military custody was widespread across the archipelago, but it too expressed particular concern about Papua and Aceh.

54. Other actors responsible for cases of torture included Fretilin (11.5 per cent), UDT (3.8 per cent), civilians (2.6 per cent), and other pro-autonomy groups (0.8 per cent). The remaining cases (0.1 per cent) were not assigned to a specific category of perpetrator. See Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), 'Arbitrary detention, torture and ill-treatment', in *Chega!* (2005), chapter 7.4, p. 2288.

55. Interviews with Komnas HAM Banda Aceh office, 8 September 2014; and with human rights academics and NGOs in Aceh, 8-9 September 2104.

56. United States Department of State, Country Report on Human Rights Practices for 2006 at http://www.state.gov/j/drl/rls/hrrpt/2006/78774.htm accessed on 20 September 2015.

57. Budi Hernawan, who hosted the Special Rapporteur's visit to Papua, noted that Indonesian intelligence had sought to influence his meetings with witnesses and victims of torture in Jayapura and Wamena. It became necessary to reorganize locations and times of meetings at the last minute.

58. UN document A/HRC/7/3/Add.7 10 March 2008. See also United States Department of State, *Country Report on Human Rights Practices for 2007*, at http://www.state.gov/j/drl/rls/hrrpt/2007/100521.htm accessed on 20 September 2015.

59. UN document A/HRC/7/3/Add.7. See also Amnesty International, *Annual Report 2008* (London), p. 2.

60. Committee against Torture, Concluding observations on Indonesia, UN DOC CAT/C/IDN/CO/2, 2 July 2008, §11.

61. Human Rights Watch, *World Report 2009* (New York), p. 259.

62. Amnesty International, *Annual Report 2010* (London), p. 170-171.

63. Interview with Brigadier Gen. Herry Prastowo, Director of General Crime Investigation, Indonesian National Police, 12 September 2014.

64. Law 11/2006, on Governing Aceh.

65. Amnesty International, *Annual Report 2012* (London), p. 175.

66. SRT report A/HRC/13/39/Add.6, 26 February 2010, para. 34.

67. Human Rights Committee, Concluding observations on the initial report of Indonesia, UN DOC CCPR/C/IDN/CO/1, 21 August 2013.

68. Interview with Komnas HAM, 2 September 2014.

69. Interviews with Papua church leaders and human rights activists, between 2 and 5 September 2014.

70. B. Hernawan, 'Torture as a mode of governance: reflections on the phenomenon of torture in Papua, Indonesia', in M. Slama and J. Munro (eds), *From 'Stone-Age' to 'Real-Time': Exploring Papuan Temporalities, Mobilities, and Religiosities* (Canberra: ANU Press, 2015). See also Komisi Orang Hilang dan Tindak Kekerasan (KontraS), *Kajian HAM KontraS Terhadap Definisi Penyiksaan di Papua (Studi Kasus Video Penyiksaan YouTube)* (Jakarta, 2011).

71. B. Hernawan, *From the Theatre of Torture to the Theatre of Peace: The Politics of Torture and Re-imagining Peacebuilding in Papua, Indonesia* (PhD thesis, Australian National University, 2013), Torture was also used strategically to instil fear and civilian subservience in East Timor during Indonesian occupation. See Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), 'Arbitrary detention, torture and ill-treatment' in *Chega!* (2005) chapter 7.4, p. 2290.

72. Interview with Major General Christian Zebua, National Military Regional Commander, 4 September 2014.

73. Report of the Working Group on the Universal Periodic Review – Indonesia, UN DOC A/HRC/8/23, 14 May 2008; and Report of the Working Group on the Universal Periodic Review – Indonesia, UN DOC A/HRC/21/7, 5 July 2012.

74. Brazil, France, Germany, the Republic of Korea, Mexico, the Netherlands, New Zealand, Sweden and the United Kingdom raised the issue of torture and made recommendations in 2008. See: Report of the Working Group on the Universal Periodic Review Indonesia, UN DOC A/HRC/8/23, 14 May 2008.

75. Austria, Canada, Denmark, France, the Republic of Korea, New Zealand, Spain, and the United States of America raised the issue of torture and made recommendations in 2012 . See Report of the Working Group on the Universal Periodic Review – Indonesia, UN DOC A/HRC/21/7, 5 July 2012.

76. Tasers are small hand-held devices that deliver electric shocks when brought into contact with persons or objects. The level of the shock can be calibrated from minor to fatal.

77. Meetings with human rights non-government organisations and activists, Jayapura, 5 September 2014.

78. Interview with Komnas HAM Jayapura office, 5 September 2014. Komnas HAM Banda Aceh and human rights NGOs in Aceh have not received reports that tasers have been used.

79. Interview with Papuan students in Jayapura from 2 to 5 September 2014.

80. Human Rights Watch, *World Report 2013* (New York), p. 323.

81. United States Department of State, *Country Report on Human Rights Practices for 2013* http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm# accessed on 20 September 2015.

82. Amnesty International, Annual Report 2013 (London), p. 122.

83. Meetings with human rights NGOs, Jakarta, 2 September 2014; with Papua church leaders and human rights activists, 2 to 5 September 2014; and with Aceh NGOs, 8 September 2014.

84. Komisi Orang Hilang and Tindak Kekerasan (KontraS), *Laporan Praktik Penyiksaan dan Perbuatan Tidak Manusiawi Lainnya di Indonesia 2013– 2014* (Jakarta, 2014).

85. Kitab Undang-undang Hukum Pidana (KUHP).

86. Kitab Undang-undang Hukum Acara Pidana (KUHAP) Law 8/1981.

87. A new criminal code has been in draft for many years. It is said to contain a provision criminalizing torture. In its absence, a specific law to criminalize torture is being prepared jointly by the Ministry of Foreign Affairs and the Ministry of Law and Human Rights. It too has not yet been released or debated. (Interview with the Ministry of Law and Human Rights, 10 September 2014.)

88. Law 26/2000, concerning Human Rights Courts.
89. Criminal Code (1918), Arts. 351, 353, 354 and 355.
90. Criminal Code (1918), Art. 422.
91. Interview with Ugroseno, former Deputy National Chief of Police, 12 September 2014. See also A. S. Kurniasari, Kriminalisasi Penyiksaan Oleh Pejabat Publik sebagai Konsekuensi Ratifikasi Konvensi Menentang Penyiksaan di Indonesia (PhD thesis, Universitas Indonesia, 2012).
92. Criminal Code, Art. 78.
93. Criminal Code, Art. 51.
94. See also Constitution, Art. 28I(1).
95. Respectively they are: Law 5/1998, on the Ratification of of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 28 September 1998; and Law 39/1999, on Human Rights, 23 September 1999, Art. 33(1) and, on children specifically, Art. 66(1).
96. Law 5/1998, Art. 1. See also Law 39/1999, Art. 1(4).
97. Law 39/1999, Art. 90(1).
98. Law 23/2002, on Child Protection, Art. 16(1), on the right of children to protection from torture; Law 13/2003, on Indonesian Labour Law, Art. 169(a), on termination of employment following assault and intimidation; Law 23/2004, on the Elimination of Violence in the Household, consideration (c) on freedom from domestic violence and torture.
99. Law 26/2000, Art. 7.
100. Law 26/2000, Art. 9.
101. Law 26/2000, Art. 9.
102. Law 26/2000, Art. 9.
103. Law 26/2000, Art. 39.
104. Law 26/2000, Art. 37.
105. Law 26/2000, Art. 23.
106. Law 26/2000, Art. 4.
107. Law 26/2000, Art. 10.
108. Chief of the Indonesian National Police, Regulation 8/2009, on Implementation of Human Rights Principles and Standards in Discharge of Duty of the Indonesian National Police, 22 June 2009.
109. Interview with the National Police Commission, 12 September 2014.
110. Commander of the Indonesian National Military, Regulation regarding the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment in the Enforcement of Law within the National Military, 73/IX/2010, 27 September 2010.
111. Interview with Fadillah Agus, consultant to the National Military, 12 September 2014.
112. Criminal Procedure Code, Law 8/1981, Art. 18(3).
113. Criminal Procedure Code, Law 8/1981, Arts. 18(3) and 21(3).
114. Chief of Indonesian National Police, Regulation 8/2009, Art. 36 (k).
115. Commander of the Indonesian National Military, Regulation 73/IX/2010, Art. 4(g).
116. Chief of Indonesian National Police, Regulation 8/2009, Art. 17(1)(g).
117. Criminal Procedure Code, Law 8/1981, chapter VII, Arts, 69 to 74, and Arts. 54 and 57.
118. Criminal Procedure Code, Law 8/1981, Art. 69; also Criminal Procedure Code Law 8/1981, Art. 54. 'Examination' includes but is not limited to interrogation.
119. Criminal Procedure Code, Law 8/1981, Art. 115.
120. Criminal Procedure Code, Law 8/1981, Art. 70.
121. Criminal Procedure Code, Law 8/1981, Art. 71.

122. Criminal Procedure Code, Law 8/1981. Arts. 17 and 18.

123. Criminal Procedure Code, Law 8/1981, Art. 21.

124. Criminal Procedure Code, Law 8/1981, Art. 24(1).

125. Criminal Procedure Code, Law 8/1981, Art. 24(2).

126. Criminal Procedure Code, Law 8/1981, Art. 25(1).

127. Criminal Procedure Code, Law 8/1981, Art. 25(2).

128. Criminal Procedure Code, Law 8/1981, Arts. 26(1), 27(1) and 28(1).

129. Criminal Procedure Code, Law 8/1981, Arts. 26(2), 27 (2) and 28(2).

130. Criminal Procedure Code, Law 8/1981, Art. 29(1).

131. Criminal Procedure Code, Law 8/1981, Art. 50.

132. Criminal Procedure Code, Law 8/1981, Art. 79.

133. Criminal Procedure Code, Law 8/1981, Art. 82(1)(a).

134. Criminal Procedure Code, Law 8/1981, Art. 71.

135. Criminal Procedure Code, Law 8/1981, Art. 115.

136. Government Regulation in lieu of Law (Perpu) 23/1959, on State Emergency, 16 December 1959; and Government Regulation in lieu of Law 1/2002, on the Eradication of Terrorism, 4 April 2003.

137. Government Regulation 23/1959, Art. 32.

138. Government Regulation 1/2002, Art. 25(2).

139. Chief of Indonesian National Police, Regulation No 8/2009, Art. 23(i).

140. Commander of the Indonesian National Military, Regulation 73/IX/2010, Art. 4(g).

141. Chief of Indonesian National Police, Regulation 8/2009, Art. 23(v).

142. United States Department of State, *Country Report on Human Rights Practices for 1993* http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_eap/Indonesia.html and *Country Report on Human Rights Practices for 1994* http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_eap/Indonesia.html, accessed on 20 September 2015, reiterated in other years.

143. Meetings with human rights NGOs, Jakarta, 2 September 2014; with Papua church leaders and human rights activists, 2 to 5 September 2014; and with Aceh NGOs, 8 September 2014.

144. Meetings with human rights NGOs, Jakarta, 2 September 2014; with Papua church leaders and human rights activists, 2 to 5 September 2014; and with Aceh NGOs, 8 September 2014.

145. United States Department of State, *Country Report on Human Rights Practices for 1987*, p. 702.

146. United States Department of State, *Country Report on Human Rights Practices for 1988*, p. 810.

147. Amnesty International, *Annual Report 1988* (London), p. 162.

148. United States Department of State, *Country Report on Human Rights Practices for 1989*, p. 850.

149. United States Department of State, *Country Report on Human Rights Practices for 1990*, p. 893.

150. Amnesty International, *Annual Report 1991* (London), p. 118.

151. United States Department of State, *Country Report on Human Rights Practices for 1992*, p. 570.

152. Human Rights Watch, *World Report 1992* (New York) http://www.hrw.org/reports/1992/WR92/ASW-08.htm#P584_223150 accessed on 20 September 2015.

153. United States Department of State, *Country Report on Human Rights Practices for 1997*, p. 776. Amnesty International, *Annual Report 1998* (London), p. 198.

154. United States Department of State, *Country Report on Human Rights Practices for 1995* http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_eap/Indonesia.html accessed on 20 September 2015.

155. Komisi Nasional Anti-Kekerasan terhadap Perempuan (Komnas Perempuan), *Temuan Tim Gabungan Pencari Fakta Kerusuhan Mei 199*8 (Jakarta, 1999). *Amnesty International, Annual Report 1999* (London), p. 197; Human Rights Watch, *World Report 2000* (New York) http://www.hrw.org/legacy/wr2k/Asia-05.htm#TopOfPage accessed on 20 September 2015.

156. Komnas HAM, *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia Berat* (Jakarta), pp. 383-470.

157. See ELSAM, *Ekspose Hasil Eksaminasi Putusan Pengadilan Abepura dan Timor Timur* (Lembaga Studi dan Advokasi Masyarakat, Jakarta, 2007); Komisi Kebenaran dan Persahabatan, *Laporan Akhir Komisi Kebenaran dan Persahabatan (KKP) Indonesia-Timor Leste* (Komisi Kebenaran dan Persahabatan Indonesia-Timor Leste, Jakarta, 2008), p. 86.

158. Amnesty International, *Annual Report 2006* (London), p. 140.

159. Komisi Nasional Hak Asasi Manusia (Komnas HAM), *Laporan Akhir KPP HAM Papua/Irian Jaya* (Jakarta, 2001), p. 62.

160. D.W. Christianty, I. Kasim, T.N. Dewi, *Pengadilan Pura-pura: Eksaminasi Publik atas Putusan Pengadilan HAM Kasus Abepura* (Lembaga Studi dan Advokasi Masyarakat, Jakarta, 2007); Lembaga Studi dan Advokasi Masyarakat (ELSAM), Ekspose Hasil Eksaminasi Putusan *Pengadilan Abepura dan Timor Timur* (Jakarta, 2007); *Amnesty International, Annual Report 2006* (London), p. 140; Human Rights Watch, *World Report 2006* (New York), p. 271.

161. Human Rights Watch, *World Report 2010* (New York), p. 306.

162. Human Rights Watch, *World Report 2011* (New York), p. 321.

163. Komisi Nasional Hak Asasi Manusia (Komnas HAM), *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia Berat* (Jakarta, 2014), p. 359.

164. Human Rights Watch *Indonesia: hold abusers from military accountable* 24 January 2011 https://www.hrw.org/news/2011/01/24/indonesia-hold-abusers-military-accountable.

165. Interview with Dianto Bachriadi, Komnas HAM Commissioner, 16 January 2015.

166. UN Document No. A/HRC/7/3/Add.7 10 March 2008, p. 2.

167. Committee against Torture, Concluding observations on Indonesia, UN DOC CAT/C/IDN/CO/2, 2 July 2008, §12.

168. Interview with Komnas HAM, 2 September 2014, and with Komnas HAM's Jayapura office, 5 September 2014; meetings with human rights NGOs, Jakarta, 2 September 2014; meetings with Papuan church leaders and human rights activists, 2 to 5 September 2014.

169. Meetings with human rights NGOs , Jakarta, 2 September 2014; and with Papuan church leaders and human rights activists, 2 to 5 September 2014.

170. Meeting with human rights NGOs, Jakarta, 2 September 2014.

171. Interview with Komnas HAM's Jayapura office, 5 September 2014. Meetings with human rights NGOs, Jakarta, 2 September 2014; with Papua church leaders and human rights activists, 2 to 5 September 2014; and with Aceh NGOs, 8 September 2014.

172. Meetings with human rights NGOs, Jakarta, 2 September 2014; and with Papua church leaders and human rights activists, 2 to 5 September 2014.

173. Filep Karma, a prominent Papuan political prisoner, is an example.

Although the UN Working Group on Arbitrary Detention called for his release, he remains in prison with restricted access to medical treatment. See Opinion of the UN Working Group on Arbitrary Detention No. 48/2011.

174. Meeting with student activists, Jayapura, 5 September 2014.

175. Meetings with human rights NGOs, Jakarta, 2 September 2014; and with Papua church leaders and human rights activists, 2 to 5 September 2014.

176. Interview with Papuan students, Jayapura, from 2 to 5 September 2014.

177. Meeting with Aceh human rights NGOs, 8 September 2014.

178. Meeting with Aceh human rights NGOs, 8 September 2014.

179. Interviews with Komnas HAM, 2 September 2014; and with the Ombudsman, Budi Santosa, 10 September 2014.

180. Interview with the Ombudsman, Budi Santosa, 10 September 2014.

181. Interview with the National Police Commission, 12 September 2014.

182. Interview with the Ombudsman, Budi Santosa, 10 September 2014; and with Ugroseno, former Deputy Chief of the National Police, 12 September 2014.

183. Criminal Procedure Code, Law 8/1981, Art. 184(1).

184. Criminal Procedure Code, Law 8/1981, Art. 189)4).

185. Criminal Procedure Code, Law 8/1981, Art. 117(1).

186. Criminal Procedure Code, Law 8/1981, Art. 185(6).

187. Interview with Komnas HAM, 2 September 2014.

188. Interview with the Ombudsman, Budi Santosa, 10 September 2014.

189. Interview with the Ministry of Law and Human Rights, 10 September 2014.

190. See: B. Hernawan, *From the Theatre of Torture to the Theatre of Peace: The Politics of Torture and Re-imagining Peacebuilding in Papua, Indonesia* (PhD thesis, Australian National University, 2013); J. B. Hernawan et al , *The Practice of Torture in Aceh and Papua 1998-2007 with an annex on the situation of human rights in Timor-Leste* (Office for Justice and Peace, Catholic Diocese of Jayapura, Jayapura 2008); N. Hidayat, R. F. Hutabarat (eds), *Pemantauan Publik Dalam Upaya Pencegahan dan Penghapusan Penyiksaan Melalui Indeks Penyiksaan serta Indeks Persepsi Penyiksaan: Wilayah Penelitian Jakarta, Surabaya, Makassar, Banda Aceh, Lhokseumawe* (European Union, Kemitraan and LBH Jakarta, Jakarta, 2010); Komisi Orang Hilang and Tindak Kekerasan (KontraS), *Laporan Praktik Penyiksaan dan Perbuatan Tidak Manusiawi Lainnya di Indonesia 2013–2014 (Jakarta, 2014); A. S. Kurniasari, Kriminalisasi Penyiksaan Oleh Pejabat Publik sebagai Konsekuensi Ratifikasi Konvensi Menentang Penyiksaan di Indonesia* (PhD thesis, Universitas Indonesia, 2012).

191. Meeting with human rights NGOs, Jakarta, 2 September 2014.

192. Interview with the Ministry of Law and Human Rights, 10 September 2014.

193. Interview with the Ministry of Law and Human Rights, 10 September 2014.

194. Interview with Komnas HAM, 2 September 2014.

195. Interview with the National Police Commission, 12 September 2014.

196. Interview with Brigadier General Herry Prastowo, Director, General Crime Investigations, Indonesian National Police, 12 September 2014.

197. Interview with Fadillah Agus, Consultant to the National Military, 12 September 2014.

198. Interview with Major General Christian Zebua, National Military Regional Commander, 4 September 2014.

199. Indonesia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998 and the ICCPR in 2008.

200. Indonesia came before the UN Committee against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2002 and 2008 and before the Human Rights Committee in 2013.

201. The ASEAN Inter-governmental Commission on Human Rights is not an independent regional human rights mechanism and does not have any complaints jurisdiction

202. 1991 (UN Document No. E/CN.4/1992/17/Add.1) and 2007 (UN Document No. A/HRC/7/3/Add.7 p. 2).

203. Presidential Decree 50/1993.

204. Law 39/1999.

205. Law 39/1999, Art. 75.

206. Law 39/1999, Art. 76(1).

207. Law 39/1999, Art. 89.

208. Law 39/1999, Art. 90(1).

209. Law 39/1999, Art. 89(3).

210. Law 39/1999, Art. 93.

211. Law 39/1999, Art. 92.

212. Law 39/1999, Art. 89(4)(d) and (e).

213. Law 39/1999, Art. 89(4)(c).

214. Law 26/2000, Art. 18.

215. Law 26/2000, Art. 19(1).

216. Law 26/2000, Art. 21.

217. Law 26/2000, Art. 20(1).

218. Law 26/2000, Art. 23.

219. Law 26/2000, Art. 25.

220. Meetings with human rights NGOs, Jakarta, 2 September 2014.

221. The regional offices are in Ambon, Jayapura, Palu, Banda Aceh, Padang and Pontianak.

222. Law 2/2002, on the Indonesian National Police, Art. 37.

223. Presidential Decree 17/2011, on the National Police Commission.

224. The National Police Commission has no responsibility for the National Military.

225. Law 2/2002, Art. 38.

226. Law 2/2002, Art. 38(2)(c). The Elucidation on Law 2/2002 says that complaints should address 'power abuse, suspicion of corruption, bad services, discriminative treatment and wrong use of discretion' (elucidation note on Art. 38(2)(c)).

227. Law 2/2002, Art. 38(2)(c), and Presidential Decree 7/2011, Art. 9.

228. Interview with the National Police Commission, 12 September 2014.

229. Presidential Decree 44/2000, and Law 37/2008, on the Ombudsman of the Republic of Indonesia.

230. Law 37/2008, Art. 7.

231. For an introduction to the Ombudsman's structure, role and powers, see http://asianombudsman.com/ORC/factsheets/IndonesiaFactsheet.pdf accessed on 20 September 2015.

232. Law 37/2008, Art. 8.

233. Laporan Tahunan Ombudsman RI 2011, p. 31.

234. Law 39/1999, Art. 76(1).

235. Law 39/1999, Art. 89(3)(a).

236. Interview with Komnas HAM, 2 September 2014.

237. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Follow-up to recommendations, Visit to Indonesia, UN Document No. A/HRC/13/39/Add.6, 26 February 2010, para 33.

238. Interview with Komnas HAM, 2 September 2014.

239. Interviews with Komnas HAM, 2 September 2014, with Komnas HAM's

Jayapura office, 5 September 2014, and with Komnas HAM's Banda Aceh office, 8 September 2014. Meetings with human rights NGOs, Jakarta, 2 September 2014; with Papua church leaders and human rights activists, 2 to 5 September 2014, and with Aceh academics and human rights NGOs, 8 to 9 September 2014.

240. Meetings with human rights NGOs, Jakarta, 2 September 2014; and with Papua church leaders and human rights activists, 2 to 5 September 2014.

241. Interview with Yusak Reba, 4 September 2014.

242. Meetings with human rights NGOs, Jakarta, 2 September 2014; and with Papua church leaders and human rights activists 2 to 5 September 2014. Amnesty International *Unfinished business: police accountability in Indonesia* (London, 2009).

243. Human Rights Committee, Concluding observations on the initial report of Indonesia, UN DOC CCPR/C/IDN/CO/1, 21 August 2013, para 14.

244. Free Legal Assistance Group and Foundation for Integrative and Development Studies (FIDS), University of the Philippines, *Torture Philippines, Law and Practice* (FIDS, 2003), p. 16.

245. Presidential Proclamation No. 1081, 1972 (Philippines).

246. General Order No. 2-A, 1972 (Philippines). See also Carlo A. Carag, 'The Legal Implications of the Lifting of Martial Law in the Philippines', *Philippine Law Journal*, 55 (1980), p. 449.

247. The NPA has a presence throughout the country and traces its origins to the *Hukbalahap*, anti-Japanese guerrilla forces that farmers formed in the Second World War. The principal Muslim secessionist groups in Mindanao in this period were the Moro National Liberation Front, the Moro Islamic Liberation Front, and the *Abu Sayaff* Group. Prior to Spanish rule, most of the inhabitants of the islands now known as the Philippines were Muslims. During 300 years of Spanish rule, Luzon and the Visayas became christianized and Catholicism became the majority religion, while Mindanao remained predominantly Muslim

248. An acronym that refers to the National Waterworks and Sewerage Authority.

249. An acronym that refers to the Manila Electric Company.

250. Free Legal Assistance Group and FIDS, Torture Philippines, Law and Practice (FIDS, 2003), p. 17.

251. Her government ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; adopted a new Constitution with a more extensive bill of rights; and established the Philippine Commission on Human Rights, discussed below.

252. Amnesty International, *Annual Report* (1989), p. 195.

253. Amnesty International, *Annual Report* (1990), p. 197.

254. Human Rights Watch, *World Report* (1989).

255. Interview with Sr. Cresencia Lucero SFIC, Chair, Task Force Detainees of the Philippines, 4 September 2014, Quezon City, Luzon.

256. United States Department of State, *Country Reports on Human Rights Practices for 1992*, p. 637.

257. United States Department of State, *Country Reports on Human Rights Practices for 1992*, p. 637.

258. Amnesty International, *Annual Report* (1994), p. 242.

259. Human Rights Watch, *World Report* (1992).

260. Interview with Nilda Sevilla, Co-Chair, Families of Victims of Involuntary Disappearances, 12 January 2015, Quezon City, Luzon.

261. Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Addendum, Follow-up to Country Recommendations – Philippines, UN DOC A/HRC/11/2/ Add.8, 29 April 2009, p. 7.

262. United States Department of State, *Country Reports on Human Rights Practices for 2002*.

263. Amnesty International, *Annual Report* (2002), p. 196.

264. Amnesty International, *Annual Report* (2004), p. 183.

265. Human Rights Watch, *World Reports* (2007), p. 316.

266. Amnesty International, *Annual Report* (2007), p. 210.

267. Under the Rule on the Writ of *Amparo*, sec 1, the petition for a wrir of *amparo* is available to any person whose right to life, liberty and security is violated or threatened with violation in cases of extrajudicial killings and enforced disappearances.

268. Secretary of *National Defense v Manalo*, G. R. No. 180906, 7 October 2008.

269. Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN DOC A/HRC/21/12, 9 July 2012, para. 22.

270. United States Department of State, *Country Reports on Human Rights Practices for 2011*, pp. 5-8.

271. An Islamic rebel group.

272. United States Department of State, *Country Reports on Human Rights Practices for 2011*, pp. 5-8.

273. At: http://newsinfo.inquirer.net/571329/ torture-chamber-in-laguna-closed.

274. At: http://www.theguardian.com/ world/2014/jan/28/philippines-police-wheel-of-torture-game. See also http://www.bbc.com/news/world-asia-25923683.

275. Interview with Atty. Beverly Longid, 7 June 2014, Baguio City, Northern Luzon.

276. Interview with Sr. Cresencia Lucero SFIC, Chair, Task Force Detainees of the Philippines, 4 September 2014, Quezon City, Luzon.

277. Interview with Nixon M. Alonzo, Special Investigator III, Regional Commission on Human Rights, and former Executive Director, Kapatutan Bahran, 27 May 2014, Zamboanga City, Mindanao.

278. The Human Security Act, Republic Act No. 9372, 2007 (Philippines), permits slightly longer periods in the context of counter-terrorism; however, the same law's severe sanctions for abuse have discouraged officials from using it and prevented it from being fully implemented.

279. Revised Penal Code, 1930, as amended (Philippines). These criminal provisions remain in effect.

280. 1987 Philippine Constitution, art. VII, sec. 21, states: 'No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate'. For an application of this provision, see *Pharmaceutical and Health Care Association v. Health Secretary*, G.R. No. 173034, 9 October 2007.

281. 1987 Philippine Constitution, art. III, sec. 12.

282. 1987 Philippine Constitution, art. III, sec. 12.

283. Republic Act No. 7438, 1992 (Philippines), sec. 2.

284. Republic Act No. 7438, 1992 (Philippines), sec. 2.

285. Republic Act No. 7438, 1992 (Philippines), sec. 2.

286. Republic Act No. 7438, 1992 (Philippines), sec. 2.

287. Republic Act No. 7438, 1992 (Philippines), sec. 4.

288. Republic Act No. 7438, 1992 (Philippines), sec. 4.

289. Republic Act No. 9745, 2009 (Philippines), sec. 6.

290. Republic Act No. 9745, 2009 (Philippines), sec. 12.

291. Republic Act No. 9745, 2009 (Philippines), sec. 12.

292. Implementing Rules and Regulations, 2010 (Philippines) of Republic Act No. 9745, sec. 24.

293. Republic Act No. 10353, 2012 (Philippines), sec. 6.

294. Interview with Lina Sarmiento, Chair, Human Rights Victims Claims Board, former Police General and Chair of the Philippine National Police Human Rights Affairs Office, 5 September 2014, Quezon City, Luzon.

295. Committee against Torture, Concluding Observations on the Philippines, UN DOC CAT/C/PHL/CO/2, 29 May 2009, para. 7.

296. Committee against Torture, Concluding Observations on the Philippines, UN DOC CAT/C/PHL/CO/2, 29 May 2009, para. 7.

297. Committee against Torture, Concluding Observations on the Philippines, UN DOC CAT/C/PHL/CO/2, 29 May 2009, para. 12.

298. Free Legal Assistance Group and Foundation for Integrative and Development Studies, University of the Philippine, *Torture Philippines, Law and Practice* (FIDS, 2003), 56-59. This exploratory study of the practice of torture in the Philippines was based on interviews with detainees and custodial officers by a team of 16 researchers and psychology professors.

299. See previous footnote.

300. Interview with Dennis Villa-Ignacio, Former Judge and Special Prosecutor, 20 January 2015, Manila, Luzon. According to Villa-Ignacio, technology is improving but is not being full used; many officers still fall back on brutality. Some technologies remain unavailable: the Philippine police service must go to Hong Kong if it needs a voice identification machine, for instance.

301. PCHR, *2011 Annual Report*, p. 5. At: http://www.chr.gov.ph/.

302. One month and one day to six months of imprisonment.

303. Six months and one day to six years of imprisonment.

304. Revised Penal Code, 1930, as amended (Philippines), art. 235.

305. Revised Penal Code, 1930, as amended (Philippines), art. 235.

306. Revised Penal Code, 1930, as amended (Philippines), art. 90.

307. The country's highest court and court of last resort.

308. *People vs. Torreja*, G. R. No. 132339, 4 February 2002.

309. *People vs. Alegarbes*, G. R. No. L-49761, 21 September 1997.

310. *People vs. Ravelo*, G.R. No. 78781-82, 15 October 1991.

311. A para-military group under military jurisdiction.

312. *Punzalan vs. People*, G. R. Nos. L-8820 & L-8821, 25 May 1956.

313. *US vs. Pabalan*, G.R. No. L-13020, 20 December 1917.

314. *US vs. Cusi*, G.R. No. 3699, 18 March 1908.

315. Republic Act No. 9745, 2009 (Philippines), sec. 3(a).

316. Republic Act No. 9745, 2009 (Philippines), sec. 3(a).

317. The use of 'and' in the Act, rather than 'or' as in the UN Convention against Torture, does not appear to be significant: the Philippine law conforms to the UN Convention.

318. Republic Act No. 9745, 2009 (Philippines), sec. 3(b).

319. Republic Act No. 9745, 2009 (Philippines), sec. 13.

320. Republic Act No. 9745, 2009 (Philippines), sec. 13.

321. *Reclusion perpetua: imprisonment for* between 20 years and one day to 40 years.

322. Republic Act No. 9745, 2009 (Philippines), sec. 14.

323. For these crimes, the Act imposes *reclusion temporal*: imprisonment for between 12 years and one day to 20 years.

324. Republic Act No. 9745, 2009 (Philippines), sec. 14.

325. For these crimes, Republic Act No. 9745, 2009 (Philippines), sec. 14, imposes *prision correccional*: imprisonment for between six months and one day to six years.

326. For these crimes, Republic Act No. 9745, 2009 (Philippines), sec. 14, imposes *prision mayor*: imprisonment for between six years and one day to 12 years.

327. For these crimes, Republic Act N°9745, 2009 (Philippines), sec.14, imposes *prision mayor* (see footnote above).

328. For these crimes, Republic Act N°9745, 2009 (Philippines), sec. 14, imposes *prision correccional* (see footnote above) or prision mayor (see footnote above).

329. For these crimes, Republic Act N°9745, 2009 (Philippines), sec. 14, imposes *prision correccional* (see footnote above).

330. Republic Act No. 9745, 2009 (Philippines), sec. 14.

331. Republic Act No. 9745, 2009 (Philippines), sec. 14.

332. Republic Act No. 9745, 2009 (Philippines), sec. 14.

333. Republic Act No. 9745, 2009 (Philippines), sec. 21.

334. Implementing Rules and Regulations of Republic Act No. 9745, 2010 (Philippines), sec. 45.

335. Act No. 3326, 1926 (Philippines), sec. 1.

336. Evangelista was videoed being beaten while string was attached to his genitals and pulled. See http://www.amnesty.org.uk/sites/default/files/philippines_torture_case_-_instruction__background_info_0.pdf.

337. Cabais was beaten and given electric shocks. See http://lib.ohchr.org/HRBodies/UPR/Documents/ session13/PH/JS11_UPR_PHL_S13_2012_JointSubmission11_E.pdf.

338. Ajid was beaten, submerged in water, and burned with petrol. See http://hronlineph.com/2014/09/27/ urgent-appeal-updated-information-regarding-the-situation-of-abdul-khan-balinting-ajid-tfdp/.

339. Medical Action Group, *Torture Impunity: An Analysis of the Implementation of the Anti-Torture Law* (2014).

340. Interview with Prosecutor Gail Stephanie Maderazo, Department of Justice, 8 September 2014, Manila, Luzon.

341. Medical Action Group, *Torture Impunity* (2014).

342. Medical Action Group, *Torture Impunity* (2014).

343. Medical Action Group, *Torture Impunity* (2014).

344. Medical Action Group, *Torture Impunity* (2014).

345. Rules of Court, 1964, as amended (Philippines), rule 131, sec. 3(m).

346. Medical Action Group, Torture Impunity (2014). Interview of Prosecutor Gail Stephanie Maderazo, Department of Justice, 8 September 2014, Manila, Luzon.

347. Medical Action Group, *Torture Impunity* (2014).

348. Medical Action Group, *Torture Impunity* (2014).

349. At: http://www.amnesty.org/en/news-and-updates/philippine-police-responsible-torture-must-be-prosecuted-2010-08-18.

350. Medical Action Group, *Torture Impunity* (2014).

351. At: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS11_UPR_

PHL_S13_ 2012_JointSubmission11_E.pdf.

352. At: http://hronlineph.com/2014/09/27/urgent-appeal-updated-information-regarding-the-situation-of-abdul-khan-balinting-ajid-tfdp/.

353. Medical Action Group, *Torture Impunity* (2014).

354. Medical Action Group, *Torture Impunity* (2014).

355. Medical Action Group, *Torture Impunity* (2014).

356. Rules of Court, as amended, Revised Rules of Criminal Procedure, 2000 (Philippines), rule 111, sec. 1.

357. Aberca vs. Ver, G.R. No. L-69866, 15 April 1988.

358. Republic Act No. 386, 1949, as amended (Philippines), art. 32.

359. Republic Act No. 7309, 1992 (Philippines).

360. Republic Act. No. 10368, 2013 (Philippines). The funds came from an award in a civil case filed by victims of human rights violations against President Marcos before a Hawaii court under the United States Alien Tort Act.

361. 1973 Philippine Constitution, art. XIII, sec. 6; Presidential Decree No. 1487, 1978 (Philippines); Presidential Decree No.1630, 1979 (Philippines).

362. Irene R. Cortes, 'Redress of Grievances and the Philippine Ombudsman (Tanodbayan)' 57 *Philippine Law Journa*, 1, 14 (1980).

363. Executive Order No. 8, 1986 (Philippines).

364. United States Department of State, *Country Reports on Human Rights Practices for 1986*, p. 794.

365. 1987 Philippine Constitution, art. XIII, sec. 17(1). See also Executive Order No. 163, 5 May 1987, preamble.

366. 1987 Philippine Constitution, art. XIII, sec. 17(4). See also Executive Order No. 163, 5 May 1987, sec. 5.

367. 1987 Philippine Constitution, art. XIII, sec 18. See also Executive Order No. 163, 5 May 1987, sec. 3.

368. Authorities that can investigate criminal liability for torture include the National Prosecution Service (under the Department of Justice), and the Ombudsman, an independent body (created by the 1987 Philippine Constitution, art. XII, sec. 18) that addresses complaints against public officials.

369. Interview with Karen Dumpit, Director, Government Linkages, PCHR, 22 January 2015, Quezon City, Luzon.

370. PCHR, *2012 Annual Report*, pp. 1 and 8. At: http://www.chr.gov.ph/.

371. PCHR, *2011 Annual Repor*t, p. 2. At: http://www.chr.gov.ph/.

372. PCHR, *2010 Annual Report*, p. 11. At: http://www.chr.gov.ph/.

373. Commission on Human Rights of the Philippines Resolution CHR (IV) No. A2009-053-F.

374. PCHR, Rules of Procedure, Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance (April 2012), Rule 17, sec. 4.

375. PCHR, Rules of Procedure (April 2012), Rule 17, sec. 5.

376. PCHR, Rules of Procedure (April 2012), Rule 17, sec. 6.

377. PCHR, Rules of Procedure (April 2012), Rule 17, sec. 7.

378. Republic Act No. 10353, 2012 (Philippines), sec. 13.

379. PCHR, *2011 Annual Report*, p. 2. At: http://www.chr.gov.ph/.

380. PCHR, *2010 Annual Report*, p. 23. At: http://www.chr.gov.ph/.

381. Republic Act No. 9745, 2009 (Philippines), sec. 21.

382. Interview with Dr. Renante Basas, Director, Assistance and Visitorial Office, Commission on Human Rights,

4 September 2014, and 18 September 2014, Quezon City, Luzon.

383. PCHR, *2010 Annual Report,* p. 66. At: http://www.chr.gov.ph/.

384. PCHR, *2011 Annual Report*, p. 82. At: http://www.chr.gov.ph/.

385. PCHR, *2012 Annual Report*, p. 59. At: http://www.chr.gov.ph/.

386. 1987 Philippine Constitution, art. XII, sec. 18. According to Anatolio Alejandrino (Associate Graft Investigation Officer at the office of the Ombudsman), the Ombudsman has handled torture cases (interview on 23 January 2015, Quezon City, Luzon). Information on these cases is not disaggregated but some information is available in the Ombudsman's annual reports. (For instance, case RAS-C-04-1516 involved a police officer charged with grave misconduct for pistol-whipping and kicking civilians in Manila.) The Ombudsman's annual reports are available at its main office. Annual reports from 2004 to 2012 are online at: http://www.ombudsman.gov.ph/index.

387. 1987 Philippine Constitution, art. XIX B, sec. 3.

388. Republic Act No. 6975, as amended, 1990 (Philippines), sec. 23.

389. Republic Act No. 6975, as amended, 1990 (Philippines), sec. 14.

390. Republic Act No. 6975, as amended, 1990 (Philippines), sec. 43

391. Republic Act No. 6975, as amended, 1990 (Philippines), sec. 39.

392. The Philippine reservation reads: 'In accordance with Part V, Article 24 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Republic of the Philippines hereby declares the postponement of the implementation of its obligations under Part III of the Optional Protocol, specifically Article 11 (1)(a) on the visitations by the Subcommittee on Prevention to places referred to in Article 4 and for them to make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.'

393. Interview with Sr. Cresencia Lucero SFIC, Chair, Task Force Detainees of the Philippines, 4 September 2014, Quezon City, Luzon.

394. Republic Act No. 9745, 2009 (Philippines).

395. Republic Act No. 10353, 2012 (Philippines).

396. It is a term that is Spanish in origin. The Philippines was once a colony of Spain.

397. Revised Penal Code, 1930, as amended (Philippines), art. 125.