

# WORKSHOP

Implementation of the  
Optional Protocol  
to the Convention  
Against Torture  
(OPCAT)  
in the Philippines  
and the Establishment  
of an Effective  
National Preventive  
Mechanism (NPM)



Published by  
BALAY Rehabilitation Center  
In partnership with the  
Commission on Human Rights – Philippines (CHRP)

**BALAY SECRETARIAT MEMBERS:**

Joy Lascano – BALAY Program Coordinator  
Ellecer Carlos – BALAY Pointperson for the OPCAT  
Cis Doctolero – BALAY Finance Coordinator

**STAFF:**

Louie Crismo, Peggie Candare, Jun Paas, Rowena Gacutan  
Joseph Boral, Celia Briones, Baden Escalante

**CHRP SECRETARIAT MEMBERS:**

Dr. Renante A. Basas - Head, Project Management Team  
Dr. Joseph Andrew D. Jimenez, Flordeliza A. Briones, Milagros M. Escobar  
Delia M. Arciaga, Jun O. Mabini, Marcial A. Sanchez Jr.

Editor: Carina V. Anasarias  
Lay-out and Design: Jose Fernandez  
Photos by: Jun Paas

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BALAY Rehabilitation Center  
25 Maalindog Street, UP Village  
Diliman, Quezon City 1101  
Philippines

Telefax (632) 9216301  
Tel. Num. (632) 4263825  
Email: [balay@balayph.net](mailto:balay@balayph.net)  
URL: <http://www.balayph.net>

Printed by Proprint Design Corner  
3-KE corner K-2nd Street, Kamuning, Quezon City, Philippines

Published with the support of the  
United Nations Development Program (UNDP)

## ACKNOWLEDGEMENT

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**T**he Workshop on the Implementation of the Optional Protocol to the Convention against Torture (OPCAT) in the Philippines and Establishing a National Preventive Mechanism is a collaboration of several organizations, both local and international. The organizers of the event convey their utmost appreciation to the Rehabilitation and Research Centre for Torture Victims (RCT), the Association for the Prevention of Torture (APT), and the Asia Pacific Forum (APF) for sharing their time, knowledge, and resources in making the forum a success.

We also commend the government agencies and the members of civil society organizations as well for making the forum a vibrant space of dialogue, mutual respect, and transformative engagement. This page may not be enough to mention everyone, but among them are: United Against Torture Coalition (UATC), Philippine Network Against Torture (PNAT), Presidential Committee on Human Rights (PHRC), Department of Interior and Local Government (DILG), Department of Justice (DOJ), Bureau of Jail Management and Penology (BJMP), Department of Social Welfare and Development (DSWD), Senate Committee on Justice and Human Rights House Committee on Human Rights.

We appreciate the participation of NGOs from Cambodia, Sri Lanka, Bangladesh and Hongkong which, together with BALAY, consist the Regional Working Group for the promotion of OPCAT under the auspices of RCT and the Asian Human Rights Center.

Congratulations to the Office of the Executive Director, the Government Linkages Office, and the Assistance and Visitorial Office of the CHR as well as the BALAY Psychosocial Program for Torture Survivors for steering the forum-workshop up to its productive conclusion.

To all participants whose names and respective offices may have not been cited on this page, thank you very much and Mabuhay Kayo!

This publication presents the proceedings of the two-day National Multi-Stakeholders Forum-Workshop held in Traders Hotel on September 23-24, 2008. The gathering served as a forum where the government's commitment to complete the ratification process of the Optional Protocol to the Convention against Torture (OPCAT) was candidly discussed. The presentations and discussions also shed light on the way forward in setting up a National Preventive Mechanism (NPM) – a visiting mechanism made up of experts with the mandate to conduct regular visits to places where individuals are detained or deprived of their liberty.

The ratification of the OPCAT is one of the major commitments made by the government to the Human Rights Council of the United Nations. On April 28, 2008, President Gloria Macapagal-Arroyo signed the OPCAT's Ratification Instrument on April 18, 2008. It was transmitted to the Senate a week later, and has since made it amongst the several priority legislative agenda of the Senate Committee on Foreign Relations led by its Chairperson, Sen. Miriam Defensor Santiago.

The establishment of an independent, credible, and effective NPM is one of the core provisions in the OPCAT. Once put in place, it is hoped to greatly discourage the practice of torture, ill-treatment, and cruel and inhuman punishment all over the country. With this in mind, the BALAY Rehabilitation Center – a national NGO that provides psychosocial service and advocates for the eradication of torture and organized violence – has teamed up with the Commission on Human Rights of the Philippines (CHRP) in organizing the National Multi-Stakeholders Forum-Workshop.

The activity enabled a wide array of participants representing government agencies, civil society organizations, and kindred organizations from Asia and Europe to contribute in moving the OPCAT ratification process forward and to envision an NPM that is appropriate in the Philippine context.


This document highlights the enlightening presentations from the government and the civil society. It also presents the recommendations raised by the participants to the forum as they identify the challenges that lie ahead in improving the human rights climate in the Philippines well. The event

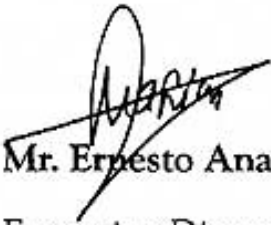
## FOREWORD

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was made possible with the invaluable support from the Rehabilitation and Research Centre for Torture Victims (RCT), the Association for the Prevention of Torture (APT), and the Asia Pacific Forum (APF). The views of the experts coming from these organizations are included in these proceedings as well.

This publication came to be with the assistance from the United Nations Development Program (UNDP). The forum organizers offer this to policy makers, legislators, and other human rights organizations as a reference material which they can use to advance our collective vision of a torture-free Philippines. In particular, institutions and individuals who want to contribute to the establishment and operationalization of the NPM in the country may stand to benefit from this publication as well.

  
Hon. Leila M. De Eima  
Chairperson  
Commission on Human Rights  
Philippines

  
Mr. Ernesto Anasarias  
Executive Director  
BALAY Rehabilitation Center, Inc.

January 2009

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*The objective  
of the present  
Protocol is to  
establish a system  
of regular visits  
undertaken by  
independent  
international and  
national bodies  
to places where  
people are deprived  
of their liberty, in  
order to prevent  
torture and other  
cruel, inhuman  
or degrading  
treatment or  
punishment.*

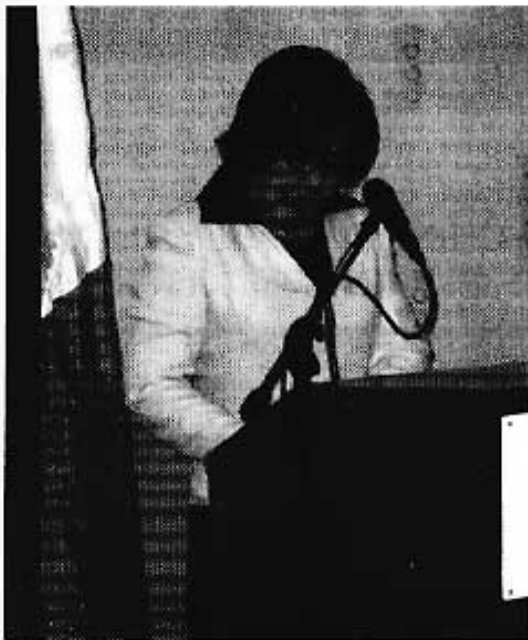
*OPCAT Article 1* 

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**Honorable Atty. Leila M. DE LIMA**  
Chairperson  
Commission on Human Rights (CHR)

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**T**he National Preventive Mechanism (NPM) laid down in the OPCAT reminds us of a familiar document that preceded it 19 years ago – the 1987 constitution of the Philippines. With the emergence of the NPM as an international instrument of protection, it is now almost as if the framers of the Philippine constitution had already foreseen the developments that are coming in the next two decades. The NPM was born and already existed in form in the Philippines through the CHR. Among its many functions as an agency for human rights are those provided in the contemporary NPM. One of these is bridging the disparity in what is mandated vis-a-vis what was accomplished in terms of the Commission's powers specifically the visitation prerogative.



Despite the restoration of the democratic institutions in 1986, a disturbing gap in the broadest scale across government bureaucracy remains and is found between law and practice, principle and habit, imperative and execution, expectation and result. The gap is apparent in cases of human rights violations: the horrendous accounts of the families of the missing, the stories of the survivors of torture in the hands of state forces such as the case of the Manalo brothers, and of the

fate of two UP students who were also abducted, among others. The gap stares us in face reminding us that the CHR, as a bastion of human rights, had been at numerous times unsuccessful in exercising authority. This weakness is reflected in particular in ensuring that the mechanism of jail visitation will prevent the dreadful and revolting incidents of torture in the detention and prison facilities.

The CHR has the visitation power in jails, prisons and detention facilities. It is, however, by no means expected to be merely reactive to the human rights complaints in these facilities. It must be broad, encompassing and proactive. The visits should not be upon complaints - not just in the hope of discovering victims or violations.

The purview of the CHR's visitorial power is not only on the convicted but also on those who have just been arrested and/or facing inquest. When a person is detained, the CHR may pay a visit to the detaining authority. This visitation *motu proprio*, this right to visit on its own initiative, even without the inkling of violation committed, is covered by the constitution. The right to make a visit must be respected at any given point in time as laid out in the OPCAT. Did we really need to wait twenty years to discover we could always count on the NPM?

During the first week of my term in office, I conducted two surprise visits at Camp Vicente Lim, Laguna and the AFP custodial center to check on the condition of General Miranda and Colonel Querubin, who were charged with involvement in mutiny during the February 2006 standoff in Fort Bonifacio. The CHR means business, as demonstrated by these prison visits. But there is a need to be effective and to follow up these visits to make jail visitation a sustainable mechanism of human rights protection. As an aspect of the NPM, it must be relentless and surgical; the visits must be frequent yet unpredictable. Otherwise, it will be all hype. We cannot be as what the detractors say - a tough talker but not a doer. The CHR must cease to be the toothless tiger that it is perceived now. It must close the gap between execution and constitutional mandate. The risks involved between establishing the NPM and the political will to deal with these risks, are the factors that create the gap between law and practice. And we must do everything to remove such disparity.

The general tendency to downplay the CHR mandate was again exemplified last 16 September 2008 when the CHR composite team was refused to visit Capt. Dante Langkit and Lt. Belinda Ferrer at Fort Bonifacio. Seven members of congress led by Rep. Erin Tañada, chairperson of the House Committee on Human Rights, were not allowed entry. Despite the plea to respect the visitorial power of CHR, the army offices remained defiant. Hence, I am sending a letter of protest to the AFP Chief of Staff on this matter.

The difficulty lies in contemplating on and reconciling what is and what should be as far as law and implementation is concerned. But I feel challenged and have since been waking up inspired of the thought that everyday there is something else that can be done to bridge the gaps. The members of media think that we can; the military and police have taken us seriously, and the people believe that the CHR is now made of sterner stuff.

There may be accusations of political agenda being cast upon us. Nonetheless, the commission is there and it is effecting change. Closing the gap between the letter and spirit of the visitorial power and the actual conduct of jail visits is a task that can be turned into a weapon. In the meantime, there is the great need for more push, for support actions such as continuing the effort to lobby for the ratification of OPCAT and creating NPM to make the Philippines not only OPCAT-compliant but also faithful in fulfilling the spirit of the constitution through a preventive mechanism.

Relative to this two-day workshop, the discussions and lectures should focus on the following:

- ☞ deeper understanding of our jail conditions and on the substance of the OPCAT and the workings of the NPM;
- ☞ designing a plan that will include launching effective follow up actions on the initial visits undertaken;
- ☞ further strengthening the CHR and making its work unassailable and reliable rather than being branded as media hype;
- ☞ utilizing all resources available including partnerships with CSOs and other government branches;
- ☞ closing the gap between law against torture and its fulfillment, human rights principle and habit, constitutional imperatives and execution, expectation and result; and
- ☞ fool-proofing the NPM and allowing absolutely no room to a detaining authority to violate the rights of detainees.

This is the current challenge. I end this message with wishes for an enlightening and productive two-day workshop.

**Mr. Philippe TREMBLAY**  
Asia-Pacific Programme Manager  
Association for the Prevention of Torture (APT)

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**T**he APT has been closely involved with the negotiation, adoption and now the campaign for the OPCAT. The APT founder in the 1970s had this idea of setting up comprehensive networks of independent visiting bodies to all places of detention. It has been a long and painful process but thanks to the active support of nations including the Philippines, the Protocol was adopted in the UN General Assembly in 2002.

My colleague Dorrit (Akselbo) and I were in the Philippines in April 2006, in the early days of OPCAT campaign. As early as then, I am positively surprised by the level of commitment shown. We could see



that much can be expected in the Philippines. The country can pave way for other countries to follow especially in the Asia-Pacific region, and we were not wrong.

The national campaign on OPCAT spearheaded by CHR and BALAY with the active participation of other organizations has been relentless. Last April 2008, an announcement that the country is finalizing its ratification process and will soon become party to the OPCAT, was made by the Philippine delegation which appeared in the UN Human Rights Council.

We appreciate that OPCAT approval is being considered by the authorities despite competing priorities in the country. The government has recently submitted report to the UN Committee against Torture which is to be revised in Geneva in May 2009. We see this as a crucial step in engaging with the UN Human Rights system and addressing the most serious human rights challenges this country is facing.

Since my last visit to Manila in 2006, the landscape has greatly evolved. OPCAT has entered into force, and the UN Subcommittee has been formed – members were elected, the first country visits were conducted. Now there are 35 State Parties to the OPCAT and over 30 are signatories.

In Asia, the civil society organizations and the governments realize the potential of this instrument. The campaign is indeed taking up speed in Indonesia, Mongolia and Nepal. The Philippines can set an example for others to follow.

I am looking forward to the debates which are about to take place in two days, as well as the day when the Philippines will formally ratify the OPCAT and assume its role as leader towards torture prevention in Asia and beyond.

## Ms. Dorrit AKSELBO

Programme Manager,  
Prevention of Torture and Organized Violence,  
Rehabilitation and Research Centre for Torture  
Victims (RCT)

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**T**he topic of the workshop – the OPCAT – is indeed a fairly new instrument, but with its innovative structure of national and international independent monitoring visits to places of detention, it can help to ensure better conditions for those deprived of their liberty.

At the national level, the OPCAT provides for states to set-up a national preventive mechanism. This should be an independent body that has as its mandate to visit all places where people are deprived of their liberty. Many states that have ratified OPCAT are now working on setting up these NPMs and we are learning from these national processes that are proving to be both challenging and also innovative in the designing of the national mechanism. Indeed the OPCAT should be seen as a positive tool for the prevention of torture and its ratification would be a natural step forward for the Philippines, since the ratification of the convention against torture more than two decades ago.

Ratification is particularly relevant right now, as the Philippines is due to be examined by the Committee against Torture next year and as the Philippines has been re-elected to the UN Human Rights Council for a three-year period just last year. The ratification of the OPCAT at this time would signal the continued efforts of the Philippines in strengthening the protection on human rights and the prevention of torture. In fact the ratification campaign for the OPCAT was initiated more than three years ago and the RCT is proud to have been able to contribute to this campaign since its inception.

The NGO community and in particular the United against Torture Coalition (UATC), has been a driving force in the campaign which has succeeded in not only raising awareness on the OPCAT but also on the situation of torture in the Philippines. The campaign now seems to be heading into its final phase as there have been several important steps made in the last months signaling the possible ratification of the



OPCAT by the Philippines in the near future. Therefore we are greatly encouraged by the endorsement of the OPCAT by the President of the Philippines and her transfer of the protocol to the Senate for approval. As we understand, the protocol has now been transferred to the Senate Foreign Relations Committee which had designated it at the top of their pri-

ority list. We can therefore only hope that the OPCAT may be approved during the 14<sup>th</sup> congress so that the Philippines may deposit its signature of ratification with the UN in 2009.

Due to this positive momentum in the OPCAT campaign, we feel that this workshop on the implementation of the OPCAT and the set-up of an NPM comes just at the right time. We are greatly encouraged by the great number of multi-stakeholder present here today. This indeed represents the genuine commitment of the Philippines to fulfill its obligations under OPCAT once it is ratified. We hope that the discussions in the course of the next two days will be open and frank and that the workshop may be a first step for the implementation process of the OPCAT in the Philippines.

We hope that the openness and inclusiveness that has marked the OPCAT ratification campaign will continue and that the implementation process will continue to include all relevant stakeholders including in particular representatives of the civil society and experts in the field of torture prevention, many of whom have a lengthy experience in conducting monitoring visits to places of detention. On behalf of RCT, I thank you for the opportunity to be part of this inspiring OPCAT ratification process and I really look forward to the discussion of the following days.



In support of the candidature for a seat in the UNHR Council, the Philippines has pledged to strengthen domestic support for the OPCAT. The Philippine President signed OPCAT this year and the finalization is on the way. This finalization of ratification will allow the Philippines to set a positive example for the rest of the Asian Region, sending a strong signal of the government's commitment to the elimination of torture.

The OPCAT sets a system of regular visit to detentions – international and local mechanisms. The entry of OPCAT into force led to the creation of an international committee, namely the SPT. Of particular interest is the domestic mechanism. The ratification and effective implementation of OPCAT will require the establishment of the NPM.

I am hoping that our deliberation in the next two days will have a fruitful outcome and assist in the process of change that is currently underway.

## Ms. Loreine DELA CRUZ

Board Chairperson,  
BALAY Rehabilitation Center, Inc. (BALAY)

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**I**t is a great opportunity to gather together today experts and practitioners from different countries in Asia and Europe – Cambodia, Sri Lanka, New Zealand, Switzerland and Denmark – for a groundbreaking local workshop in torture prevention, rehabilitation of survivors and the reform and upgrading of the penology system in the Philippines.

The Convention against Torture is a hallmark document preceding the OPCAT – which is a supplementing protocol. The convention declares that there are “no exceptional circumstances whatsoever to justify torture and that no orders from superior offices or a public authority may be validly invoked in justification thereof.”



The current realities in the Philippines, however, are inconsistent with what the Convention against Torture avows. The practice of torture prospers in secret and has always been a hidden crime. No one admits and proclaims commission of torture although we know that this kind of assault on people's human rights is rampantly being perpetrated. Torturers are seldom punished. Impunity remains a major impediment on the effective prevention of torture.

The UN Convention attempts to enforce the formal prohibition of torture at the domestic level. The state parties are compelled to adopt effective legislative, administrative, judicial and other measures to prevent torture in any territory under their jurisdiction. Regrettably, a domestic law that will criminalize the practice of torture has yet to materialize in many countries including the Philippines. Creating and putting in force state measures that will protect lives and guarantee the people's freedom from torture remains a challenge.

Manfred Nowak, the UN Special Rapporteur on Torture has said that the OPCAT is the most important development for the effective prevention of torture at the universal level. The protocol's aim is “to es-

establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

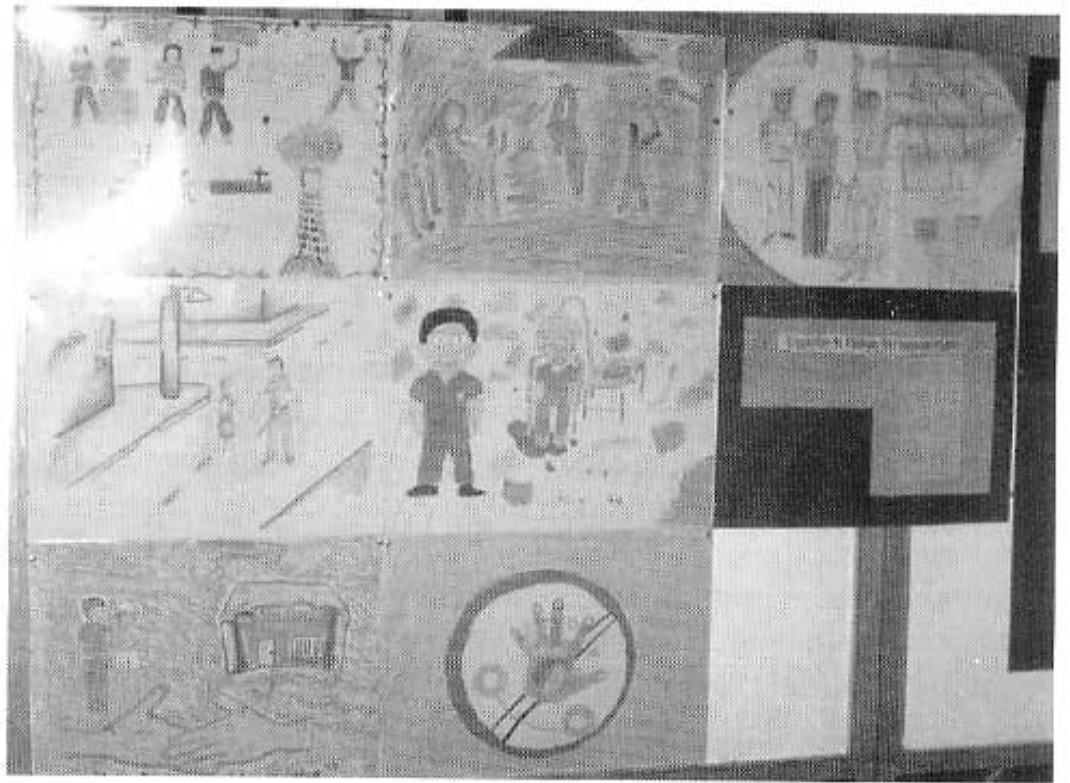
In the Philippines, BALAY together with the UATC was one of the first to launch the campaign on OPCAT ratification in 2006. That initiative continues today. In the course of the two-year old campaign, BALAY together with the members of the coalition had been able to engage stakeholders from various disciplines and sectors in the country and abroad towards achieving OPCAT ratification this year. Various activities were undertaken to involve the executive department, the legislature, the CHR, the jail authorities through the BJMP, the local government units and the civil society organizations.

President Arroyo has signed the OPCAT on April 22 and transmitted the instrument of ratification to the Office of the Senate President. On April 28, Senator Villar transmitted the instrument of ratification to the Senate Committee on Foreign Relations. By end of August, the said committee had placed the OPCAT third in its priority list – next only to the approval of the Japan-Phil. Economic Partnership Agreement (JPEPA) and the ASEAN Charter.

The campaign for ratification puts forward important lessons that could help step up our previous initiatives towards sustaining and eventually consummating the OPCAT agenda, specifically by means of the NPM as a preliminary measure.

The element of pro-active work is a first lesson. The issues and concerns come in heaps and demand a wide range of responses and reactions on our end. At the same time, there are numerous options available and this presents part of the difficulties in our effort to respond immediately and correctly. But in the midst of all the work's madness and mania, it is in finally making a decision and acting on that decision that we truly begin pursuing our goals. It is action, not intention, which produces concrete results.

The second lesson is about beginning our work with the end in mind, which is remembering all the suffering, rehabilitating the torture survivors, and protecting them from the further damages of torture and detention. Despite our tendency to avoid negotiation and compromise, the middle ground is in fact the best position at certain times.



Winning over prison authorities to help in the campaign to prevent torture is certainly desirable and beneficial. This element of cooperation and mutuality in our campaign has in fact facilitated shared work among all the stakeholders in rehabilitating the survivors and preventing torture.

The third is the synergy of vigorous actions, capacities, resources and time among the multi-stakeholders, towards creating concrete and constructive answers to problems. Understanding the needs and interests and finding solutions to satisfy both is a simple but effective formula. It is actually through this simple prescription that we can level the way for joint efforts to monitor the situation in places of detention, propose recommendations, and work constructively with states parties for the implementation of the measures and mechanisms.

The National Preventive Mechanism that we have in perspective must possess functional independence, relevant capabilities including the professional knowledge to carry out its mandate, and the necessary resources in order to be able to operate effectively. These and more will be the subject of this important workshop. Considering the wide spectrum of representations by the participants gathered here today, I am confident that this will be a fruitful and productive event.

## Honorable Eduardo ERMITA

Executive Secretary

and Chairperson

Presidential Human Rights Committee

I thank the CHR for the kind invitation. I acknowledge the two international organizations which are behind the strong global campaign for the OPCAT ratification – the APT and the RCT.

When President Gloria Macapagal-Arroyo signed the OPCAT on 22 April 2008, the message of the administration is this: “We wholeheartedly join our colleagues in the community of nations in denouncing torture and other cruel, inhuman and degrading treatment and punishment, even as we assert the decent and civilized humanity that characterizes the Filipino as individual and as a nation.” For indeed in our pre-colonial history, did we not already have the Code of Kalantiao, which highly valued and respected the humanity of the individual? This to the mind of the sociologist suggests that capacity to be human and to be humane, and it is deeply rooted in who we are as a people, the Filipino people.



Exactly five months ago today since it was signed, the OPCAT is yet to be ratified by the senate. While there is a growing advocacy for its ratification, a number of factors have to be considered. To complete the process for full adherence to the OPCAT, there is wisdom in moving with caution as has been the government's previous actions in relation to its adherence to international treaties. Let us have a reality check. To this date, 61 countries including the Philippines have signed the OPCAT. But only 35 has ratified or acceded to it for one reason or another. The

United Kingdom for instance, in its national periodic report to the UN Council in Geneva, said it delayed its ratification to make way for a review of all its existing monitoring mechanisms.

KEYNOTE  
ADDRESS

Isn't it prudent and reasonable for us to take stock of ourselves and check if we have the structures and means to comply with the OPCAT? Let us first make one thing clear. With or without OPCAT, laws that keep in check acts of torture as well as cruel and inhuman treatment or punishment are being enforced by the Philippine government. This is the premise and springboard for our discussion.

Having said that, however, there is no way that I could not agree for a more thorough discussion of the various aspects of OPCAT, especially on the issues of monitoring visits and the roles of institutions and other stakeholders constituting the domestic visiting mechanisms.

If only to add thrust to the trajectory, let us be clear on the criteria that measures state compliance. I propose that such criteria must hinge on clear existing baseline data for the monitoring of outcomes to be realistic and for us to be fairly measured of our compliance. More important than exploring the monitoring visits as attendant to the OPCAT, I propose that our discussion see first and foremost how well we have managed our own penal system in accordance with the existing laws. By doing so, we can determine if the current state of our penal system is on the level that meets the demands that come with the effective implementation of OPCAT.

Offhand, we may decide whether we are prepared for this now or preparations ought to be made to indeed ensure the implementation of OPCAT. I say we rather be on the side of prudence and thoroughness if only to assert our capability to deliver on the longer term. I invite you to the results of a conference held just this June which was sponsored by the International Committee of the Red Cross entitled "Addressing the Appalling Human Consequences in BJMPs." This was an offshoot of a workshop working session output which I organized in July last year to discuss the ICRC detention report entitled "A call for action: Shortcomings of the Philippine criminal justice system and the consequences for persons in custody of the Bureau of Jail Management and Penology."

Going by the working group presentations, the following were the three main realities in the country's penal system that needs to be focused on:

- ❧ congestion of facilities. The overcrowding can be primarily traced to the proverbial slowness of the wheel of justice. The issue that



confronts us is not whether the lawyers are doing their jobs but whether we have enough lawyers to speak of in the first place.

- ❏ the regular outbreaks of diseases. The poor inmates are already punished with torturous infections even before their respective sentences have been handed down. If only for humanitarian reasons, detainees have to regularly receive medical care including proper and sound quality medication for the prevention and cure of diseases.
- ❏ the Philippine jail system will be less hellish if logistics were able to create constructive jail environments especially in preparation for the eventual reintegration of an inmate with his/her family and society. One cannot expect positive change to happen in an individual if the prison itself offers nothing that can facilitate that.

Let us bear in mind that the prison is not simply a place of containment for the society's enemies. It is most importantly a place of rebirth, a place for remorse, a place of repentance. The infrastructure that is essential to the fruition of these ends should remain a priority. It is for this reason that we have mainstream programs in penal management that run the gamut of personal development, spiritual renewal, education assistance livelihood and skills training, guidance and counseling, physical fitness and recreation and therapeutic community programs. We also have the building up of operations capability to include new jail facilities, supplies and equipment and the continuing

development of the prison officials and personnel. But you and I know these are not enough.

At this point, I see the wisdom of the proposal from both the government and the civil society groups for the Philippine government to move for a deferment for about 3-5 years from the date of ratification of our country's obligation of its implementation as a state party to the OPCAT. This timeframe probably could be a subject in your workshop. This move will be in a form of a formal declaration that will be appended as an integral part of the instrument of the ratification. By doing so, we will have sufficient time to upgrade all prison, detention and custodial facilities according to international and UN standards and spare ourselves from future inconsistencies.

This move shall be accompanied by the appropriate legislation that will define the country's treaty obligations and the sufficient funds appropriation for such a purpose that will indeed ensure the upgrading of facilities and enhancement of manpower resources. I want to inform you that a bigger slice of the budget for 2009 will be appropriated to the DILG because it is this department that supervises the BJMP. The items I have mentioned earlier are the specific projects and activities placed in the budget of the DILG.

In the end, we expect that you will strategize for the ratification, for the eventual and effective implementation of the OPCAT. Your plan of action, your road map, must consider a timetable for consultation and sufficient period for an education and information campaign that will allow the ownership and training of as many stakeholders as possible. The same road map must also be cognizant of our desire to preserve and promote our integrity and sovereignty as a nation, even under scrutiny, in our capacity to resolve our internal problems on our own.

However, even if we feel a sense of urgency at this time, let us not allow pressure to push us into early yet half compliance. As social development workers, you and I know that the process is as equally important as the outcomes we envision. And so, I once again thank you and extend to you the greetings of President Gloria Macapagal Arroyo for this current initiative.

Mabuhay at Salamat po.



Presenter:

**Supt. Carolina BORRINAGA**

Bureau of Jail and Management and Penology  
(BJMP)

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**T**he Philippine correctional is fragmented by nature. It is comprised by the DILG, DSWD and DOJ. BJMP is composed of 7,981 personnel. This number is 80% short of the actual manpower needs of the bureau. The operational jurisdiction of the BJMP has reached 414 jails – 149 district jails, 97 city jails, and 168 municipal jails. Under the BJMP are inmates who are sentenced or accused of crimes punishable with penalties ranging from 1 day to 3 years, and those sentenced or accused of crimes punishable with penalties ranging from 1 day to 6 months.



As mandated by law, the BJMP operates under the reorganized Department of the Interior and Local Government. The institution's program thrust is aimed at:

- 🔄 improving jail security, custody and control program;
- 🔄 upgrading living conditions of inmates through the promotion of restorative justice system, decongestion of jails, provision for basic needs and community-based support service;
- 🔄 intensifying conduct of development programs for inmates such as livelihood, education and skills training, recreation and religious activities, and health services;
- 🔄 enhancing organizational and personnel effectiveness through manpower build-up, human resources development, structural and behavioral reforms and innovations; and
- 🔄 strengthening measures for accountability through improved internal control and intensified management.

BJMP has 4 major programs – the Inmates Welfare and Development (IWD), Inmates Custody, Security and Control, Decongestion, and Good Governance. Under IWD, the jail bureau undertakes rehabilitation programs designed to enhance inmates' self-respect, dignity & sense of responsibility such as religious and spiritual activities, education and vocational training, livelihood program, and recreation and sports.

Among the current challenges for the BJMP are the following:

- ☞ balancing/equalizing the custodial ratio – ideally, a jail officer should handle 7 inmates per shift, but in reality, its jail officer handles 56 inmates per shift.
- ☞ balancing/equalizing the escort-inmate ratio – for its actual escort-inmate ratio, each jail officer takes 3 inmates in comparison to the ideal which is having a jail officer and a jail supervisor for each inmate.

In spite of these limitations, the bureau remains committed through its own efforts in modernizing and professionalizing its jail service. It has a Special Tactics and Response (STAR) team whose members are highly trained and well-equipped jail officers. They react in jail crises and in any jail disturbances, or risky missions the bureau may assign. To reduce jail disturbance, the bureau also conducts regular inmate dialogues. These dialogues provide information and facilitate awareness-raising among its inmates towards knowing and understanding their rights and at the same time enhance intelligence networking in jail. The personnel are continually given development training so that they are well-informed of their responsibility and committed in ensuring the welfare of their inmates. Unannounced inspections (Oplan Greyhound) are conducted to carry out searches of inmates' quarters and flush out contraband and other deadly weapons and ensure the safety and security of inmates, visitors and personnel.

Female wardens are also being designated to man the separate facility for females. Furthermore, under the project "Operation Kontra-Balukol," feedback from inmates is being taken to get their views on the management and administration of the jail officers and monitor the quality and quantity of food being served. This is also a preventive measure against jail officers from conducting ill-treatment and extortion of money from inmates and their visitors.

*Presenter:*

**Mr. Romy CASTILLO**

Vice Chairperson,

Bukluran ng Mangagawang Pilipino (BMP)

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I am a former political prisoner. I was arrested in the middle of the night with four other colleagues in the mid-80s, and was tortured for nine days by my captors. I was charged with subversion and did time in prison from 1984 to 1986. I was lucky to have survived. I had suffered some of the most feared techniques of torture – electrocution and the water cure.

Whenever I remember the ordeal I went through, I still flinch and feel the pain. I ask myself many questions. Why was I imprisoned? Was it wrong to defend the rights of the workers for better working and living conditions? What real crime have I committed? What danger did I pose on government that I had to experience torture and was arrested without any hope of release? I was lucky to have a beautiful woman to whom I was engaged then. She gave me the strength to gather hope and endure detention.

The torture, the high walls, the barb wires, the metal gates – they make everything ugly and terrifying in the prison facility where I was taken. One day, I heard the screams of another colleague who was also being tortured. Even when I could not see what was being done to him, I asked my torturer to tell the others to spare my colleague. I told him that my colleague was innocent. To save the other person, I felt compelled to own up the guilt. “I am the mastermind, so torture only me,” I said. I agonized with the screams and the thoughts in my mind of what was being done in the next room.

I remember being stripped naked, blindfolded and chained to the floor. There were groups of men who alternated in torturing me. When my body eventually surrendered, my captors were compelled to bring me to a hospital. From 180 pounds, my body rapidly dropped to 86 pounds in a short span of time. I was also suffering from infections. I was treated at the hospital for 11 days.



The bad memories continue to haunt me especially whenever I chance upon cars with the luggage space at the rear open. I am always reminded of how I once woke up inside a car's trunk after I was abducted and had fainted from a severe blow. The passing of many years cannot diminish the painful memories of the suffering I went through. No human being should be subjected to torture or to other inhumane and cruel punishments. The reasons are obvious and simple and I cannot understand the many preconditions government insist on before ratifying the OPCAT. It is only right to ratify and implement the OPCAT without delay.

My experience on torture is a permanent memory – it will cling to my being for the rest of my life. Its sting does not seem to want to leave. Even then, I am learning to transform it to inspiration so I can go on with my life constructively as an activist and strong advocate for a torture-free society. For the same reason, I am fully supporting the purposes of this current workshop. I now say that the prison facilities and detention centers in the country must be changed into more positive institutions – they should serve as a place for reform and rehabilitation where there are training facilities or a vocational school. It must stop being a place for violence and for damaging the prisoners. We have heard news about inmates risking their lives to escape from prison because of the ghastly conditions within the prison institutions. The temptation for self release is strongest especially for those who know in their hearts they have done nothing wrong. For me, the cruelest thing that torture can do is to be removed and taken away from those for whom I have laid down my life to serve – my fellow human beings, the people.

Thank you for listening. I salute you for being the advocates and movers who work for a tomorrow without torture.

Presenter:

**Ms. Louise AAEN**

RCT Project Coordinator

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**A**fter years of negotiation, OPCAT was officially adopted in 2002. To date, it has 35 ratifications. As an optional protocol, it seeks to address torture and ill-treatment or punishment where people are deprived of liberty. It places emphasis on preventing violations, rather than reacting to them once they have already occurred. The idea is that torture can be prevented through coordinated actions between the governments and the international community.

The protocol's visiting mechanisms is being supervised and done at the international level through SPT and at the local level through the NPM. Both committees have the mandate to conduct visits to places where persons are deprived of their liberty in countries that have ratified the OPCAT. Alongside the visits is the authority to make appropriate



recommendations to the state outlining the means to undertake improvements. Essentially, the OPCAT is geared toward long-term sustained cooperation and dialogue in order to assist States to implement any necessary changes to prevent torture and ill-treatment.

The members of the SPT have various legal and medical backgrounds, but most have experience in working with human rights related issues. To date, it has 10 members and will increase to 25 when the ratification of the member states has reach 50. The committee has already conducted various visits to state parties and is continually working on its schedule. Given the lean membership and the growing number of state parties, it has recently set criteria in prioritizing places of visits. Considerations for schedule of visit are based upon the country's date of ratification, date of NPM establishment, geographical placing,

size of the country, and the general situation of the State under consideration.

While the reports made by the committee are considered confidential, countries are being encouraged to make reports publicly available, so that others can learn from these experiences and thereby improve their own national setting.

The OPCAT provides the same mandate for the NPM – conducting visits to detention facilities and providing recommendations based from such visits. The establishment of NPM a year after OPCAT ratification is required. There is no required form and the countries are encouraged to craft one that is most appropriate to the country's context. The composition of the NPM committee may be comprised of persons that have experience in this field, such as human rights specialists – with background in human rights, humanitarian law, and penitentiary systems. To effectively conduct their work, the NPM committee must be independent of the State and have sufficient funds allocated.

*Presenter:*

**Commissioner Ma. Victoria V. CARDONA**

Focal Commissioner,  
Assistance and Visitorial Office

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**M**onitoring is one of the most effective means of preventing torture and ill treatment of persons deprived of liberty. It involves checking the conditions of detention and whether the conditions correspond to national and international standards or not. It is also aimed at ensuring that the detainees are treated with the respect due them considering their inherent dignity and value as human beings.



From the time of arrest, all persons deprived of their liberty are vulnerable and at risk of being mistreated and tortured. This means that the monitoring mechanism ensures that protection is on hand. The task of monitoring detention is absolutely necessary for various reasons:

- ☞ the person detained comes to depend almost entirely on authorities and public officials to guarantee his or her protection, rights and means of existence;
- ☞ the possibility of persons deprived of liberty to influence their own fate is limited if not altogether removed;
- ☞ the places of detention are isolated and restricted; the detainees are kept out of sight of the society; and
- ☞ most importantly, to help the detained not to feel abandoned and totally forgotten. The facilitated visits will help raise their morale.

In sum, the significance of monitoring visits can be seen into four functions – as preventive mechanism, a direct protection, a tool for documentation, and as basis for dialogue with the detaining authorities. The fact that someone from the outside regularly enters a place of detention in itself contributes to the protection of those detained, and helps to prevent ill treatment and torture. It is also a direct protection as the issues and problems can be immediately seen, taken into consideration and addressed. Visiting also provides an opportunity to document several aspects of detention. Most essentially, it helps in establishing a direct dialogue with the persons in charge which may lead to the development of constructive working relationship.

The Philippines has several existing monitoring mechanisms. The internal inspections refer to the prerogative of the national authorities in charge of persons deprived of their liberty. Its role is limited, however, to controlling the compliance of staff to institutional rules and regulations and the procedures rarely involve issues such as the dignity and human rights of the persons deprived of their liberty. Unaided, the internal inspections are thus not sufficient. As part of their mandate, executive judges are also responsible for carrying out judicial inspection. They are directed to conduct regular visits to places of detention and are required to report to the office of the court administrator what they have observed and the overall result of their visitation.

The external and independent mechanism on the other hand is being undertaken by the civil society organizations, if they are allowed access/entry to these detention facilities, and the Commission on Human Rights. The CHR is a national human rights institution mandated to investigate all forms of human rights violations involving civil and political rights. It has the very specific mandate of visitorial power over jails, prisons and detention facilities. An essential part of this mandate is to assess jail and prison conditions and see if these are in accordance with the international human rights standards, in particular, to the UN standards' minimum rules for the treatment of prisoners.

Thus, the CHR through its regional offices conducts the actual visitation. It has the Assistance and Visitorial Office (AVO) that exercises the oversight function on jail visitation. The jail visitorial program of the commission is focused on the treatment, care, and custody of the prisoners and detainees as well as the physical condition of the jail facilities in accordance to what is generally accepted as good principle



and practice in the treatment of prisoners and the management of institutions which are accepted as suitable by the United Nations.

Sadly, the conditions of jails and prisoners which have been monitored by the commission were found to be in violation of the international instruments. The conditions indicated the long-standing problems of extreme overcrowding making the jail environment substandard and inhumane. The schedule of sleeping for instance has to be rotated due to lack of space. This is even exacerbated by the very low, if not lack, of budget for food and medicine. Approximately, each detainee has a budget of PhP40/day and even a lower budget for medicine pegged at PhP3 per person a month. Not surprisingly, there are cases of people dying in detention due to ordinary diseases who are still considered constitutionally innocent.

These problems are connected to various yet related conditions such as slow judicial budget, trial delay, neglect in basic needs, non-compliance to international standards, and the perennial minuscule budget. Throughout the system, there is a limited budget as shown in the lack of adequate facilities, staffing shortages, inadequate reformation program, inefficient police work, unsanitary conditions, inadequate medical facilities and most of all, torture.

To ensure that the rights and welfare of the prisoners are secured and protected, the CHR continuously conducts various forms of assistance. This includes referral to relevant agencies such as the BJMP and PNP; follow-up of specific cases of prisoners and detainees in court for a speedy disposition of cases, conducting lectures to the prisoners to educate and empower them on their rights, conducting medico-legal investigation on cases of torture and physical injuries using the Istanbul Protocol, reviewing the recommendation to the Board of Pardon and Parole for the release of inmates qualified for pardon, conducting workshops, provision for financial assistance, and partnership and collaboration with government organization and civil societies to address the jail and prison conditions.

The issue of congestion is currently being addressed and advocated by the CHR. One of the thrusts as regards this is to expand the coverage of the release of those who can be allowed to go on probation. Most of those convicted of lower prison terms and cannot afford the requisite bail remain in the jails. Hence, the problem of congestion in the country's jails and the cases of detainees who are unable to afford bail



for the speedy disposition of cases are among the proposed agenda at the legislative level.

In the case of the detainees who are still constitutionally innocent, the need to look for other procedures and avenues whereby their voices can be heard and their cases swiftly dealt with has to be recognized. Another temporary remedy is shifting to alternative dispute resolution where citizens can consider settling a simple or not-so-grave situation in a lower system. The judges cannot attend to the criminal and heinous cases because the ones that can actually be handled through a simple settlement are still being filed in higher courts.

As the CHR-AVO work has continued over the years, the commission remains imbued with the following collective and interconnected challenges and limitations.

- ❧ Inaccessibility of the places in literal and physical terms – some detention places are in very far locations and this hinders the family to visit regularly in order to check the detainee’s situation. The provincial jail in Tanay for instance is too far a facility for the family and children of detainees who are currently confined there to visit. Another kind of inaccessibility refers to “closed detentions” where even the CHR which has clear and specific mandate for visitorial appearance on all places of detention is denied access. Furthermore, while other detention centers may provide access, the environment is too controlled and a substantial exchange be-

tween detainees and the visiting/inspecting party is difficult to attain. There is also the element of cover up. Some detention centers are primed and prepared during time of visit to make the facilities and custodial system seemingly in place. Along these lines, we see the importance of the scheduled yet unannounced visit.

- ☞ Limited number of inspecting personnel in terms of budget – the CHR for instance has one regional office which covers various provinces in a region, thus, the difficulty of implementation despite the good planning.
- ☞ Collaboration with the stakeholders such as the local government unit still needs improvement. It is important that the local government in question be taught and reminded that the purpose of visiting is not intended to “blame and shame.” More than this, it is a purpose to safeguard and protect the rights and conditions of the persons in detention and also to help the administrators improve the conditions in these facilities.

To sum up, these challenges would mean narrowing the gap between what the law provides and the actual responses of the state vis-a-vis the concrete conditions in the country’s penitentiary institutions. The CHR is now being challenged to meet its mandate and translate this with correcting the lapses in performance particularly given the limitations of the institution. I urge all the participants in this workshop to do each one’s share for our common objective which is to make prison conditions as humane as possible for our citizens who are on trial and deprived of their liberty.

The current workshop is a venue for preparing ourselves for the challenges including identifying the problems and issues to be resolved. It also signals the commencement of opportunity planning. By exploring the opportunities that are at hand especially once OPCAT is ratified, much can be done to improve the conditions of people in detention. The value of a multi-stakeholder workshop such as this should not be limited to us. It must be shared with all possible and capable agencies of reform so that everybody will get to know the issues and contribute to our advocacy.

*Presenter:*

**Dr. Benito MOLINO**

Chairperson

Philippine Network Against Torture (PNAT)

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**M**y involvement in human rights work started way back in the mid-80s – a period that preceded the establishment of CHR. At that time, my colleagues and I were already working on the documentation of torture cases in the most notorious and feared detention centers in Manila. I can say that a considerable time in my medical career had revolved and ripened around political detainees and torture survivors. We were also instrumental in presenting the cases of torture of political offenders during martial law which formed part of the charges of human rights violations against Marcos in the Hawaii court of law.

I have encountered the legendary Colonel Maganto face to face in jail around the same years during the 80s. I remember that meeting to have turned out into a shouting match because I was insisting on the right of the detainees to be talked to in private but the Colonel would not allow me. In the end, a lawyer from the PCHR had to intervene. He agreed to having the detainees physically examined but not without a police nearby and tightly watching the whole procedure.

The martial law period was a time for the anti-dictatorship activists to resort to sheer guts and genius. Among the most memorable feats in documenting torture cases during that time was slipping in a small camera at Camp Crame and taking photos of the tortured prisoners. That would have cost us our own liberty but risks have to be taken for the sake of the detainees. It was highly uncommon to get permission to examine the torture victims. Usually, we had to wait for weeks or more before the detainees were allowed to be presented to visiting doctors and lawyers.

Although external monitoring mechanisms are being implemented, these are not often sufficient to address and prevent ill treatment or torture. The CHR has the visitorial power and mandate but even these legal devices are not always recognized by the wardens and jail officers. On the other hand, the UN Committee Against Torture can only

visit when invited by the state parties. In the case of the International Committee of the Red Cross, its findings are bounded by confidentiality between the government agencies. The documentation work being done on the cases of torture victims may lead to the improvement of the victim's conditions in jail only when charges are filed in a court of law. But for numerous reasons including the very expensive litigations, the filing of legal cases against the perpetrators do not usually happen.

The challenge of monitoring the protection of human rights in places of detention requires commitment and perseverance. In the Philippines, most torture victims are common crime offenders whose stories are not known. Very few of their cases are being documented.

What makes the practice of torture thought-provoking and insistent of an immediate resolution is the fact that it is not an occasional, random and unstructured phenomenon. Rather, it is a deliberate, well-stud-



ied and institutionalized formula for confession and surrender, employed at the military camps and in secret safe houses kept by the state. It does not only involve the military or police personnel but is also perpetrated by state-appointed doctors and lawyers who are there to cover up the system. Even the elected officials are co-opted to conceal cases and to protect the entire machinery that performs torture particularly when their political careers are at stake. In certain cases, they are even privileged to visit and exert pressure on detainees so that the latter can be persuaded if not outright coerced towards self-incrimination.

The suffering of torture victims continue when they are finally convicted in court and stay in jail to serve prison term. Based on a study conducted by the Medical Action Group (MAG) on the common dis-

eases of the inmates in Manila City Jail, the ailments found prevalent are tuberculosis, arthritis, headache, scabies and STDs. During the summer season, more infections arise such as scabies, carbuncles, and furuncles. The STD cases in particular are acquired from prostitutes who from time to time are allowed to enter the prison facilities, and from stay-in workers who would perhaps also occasionally offer sexual service for money or as part of illicit relationships with some of the inmates. Despite the high incidence of diseases, medical care and available in-house medications are on short supply. We have even discovered that some of the medicines that were donated by agencies and organizations are being dispensed beyond their expiry dates when they are no longer safe for use. The appalling jail conditions which include disease proneness and medical disregard are further made worse by overcrowding. The problem of congestion has in fact led to fatalities.

Statistics note that due to the poor state of prison institutions, more deaths happen during the period of detention than from the actual rendition of capital punishment such as the death penalty. Some deaths are kept in secret and the bodies are taken out of the jail without the knowledge of the jail warden. Often, these are the cases resulting from the fights and quarrels erupting between gangs. To hide the crime, the corpses are dismembered and taken out from the jail in pieces.

In some remote areas, military camps were being used to detain arrested rebel elements. Having worked with organizations that conduct fact-finding missions as well as search actions for missing political activists, I have had the experience of witnessing and even of directly participating in exhuming the remains of torture victims in camps that were previously used and later vacated by the military. Some of the remains were even headless. I have also seen similar brutalities committed by non-state agents against their former comrades. I have seen these in known rebel camps where we have uncovered burial sites for leftist elements who were killed by their own comrades on suspicion of being deep penetration agents. I recall a recent search mission I had joined in which we discovered the remains of a woman buried 22 years ago. The body was hand-tied and bore multiple stab wounds. In this particular case, it is easy to see how rebel groups are also capable of committing atrocious actions against their own kind. Increasingly, our first hand experiences in the field tell us that the practice of torture is not a monopoly of the state. Even the known enemies of the state who accuse the former of gross human rights violations are the same ones who brutalize their victims.

Majority of the instances of human rights violations particularly torture are being committed in remote areas outside Manila. The silent pervasiveness of torture is a disturbing reality and much has to be done to bring it to an end. But in the meantime, the mountains are being moved little by little. The relentless work of the human rights advocates in the country, with much help from the progressive and free-thinking sections in government and from our partners in the international community, has been paving the way for some improvements. The task of visiting the jails and directly communicating with political prisoners is no longer as difficult as before.

Given the urgent need for an independent body to monitor and assess the current realities in relation to human rights in the country, specifically the phenomenon of torture, the current momentum to set up the NPM is indeed a welcome development. While I am personally concerned that the mechanism may not be enough to effectively prevent torture especially when the violations happen before the arrest, I am still keeping an open mind. I urge this current assembly just the same to carefully consider the formulation and setting up of the NPM so that we will be prevented from inadvertently creating a precursor to torture through this very mechanism. By instituting the NPM, I hope we are not inviting torturers to consider the practice as part of SOP and to carry it out more surreptitiously to avoid state detection.

I thank you for the opportunity given us to share and to learn as well through the exchanges and discussions. Let us all remain motivated in what we do for the country's human rights. I believe enormous work and challenges await us from this day forward. Today's act of planting the good seeds will surely pay off. Sooner or later, we will see harvest time.

*Presenter:*

**Mr. Philippe TREMBLAY**

APT Asia-Pacific Programme Manager

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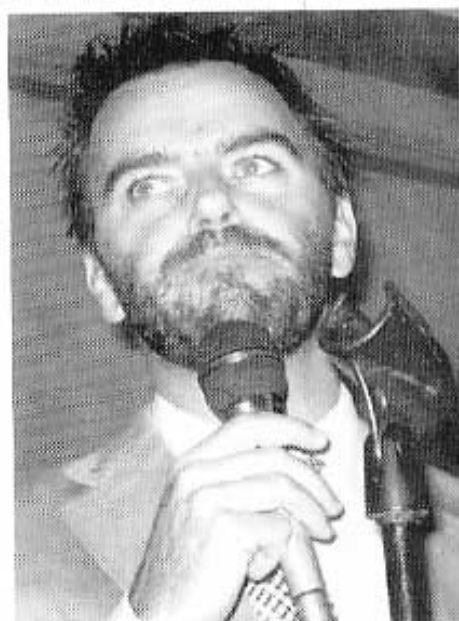
**T**he Subcommittee on the Prevention of Torture (SPT) guidelines on the development of NPM stated that it must entail a public, inclusive and transparent process of establishment. This must include civil society and other actors involved in the prevention of torture from which an existing body is considered for designation as the NPM. The following are the specific requirements of NPM:

- 🔗 **Functional and Financially Independent** – the mandate and powers of the NPM must be clearly established in the legislation. Its members and staff must not be under direction or politically affiliated with the government personnel responsible in those places covered by the visiting mechanism. Another prominent issue is financial independence. Although it may be funded by the State, it is important to have adequate resources to carry out its program. It also must have privileges and immunities from arrest and detention in their conduct of NPM work.
- 🔗 **Mandate to carry out preventive visits** – the NPMs should be granted at a minimum the power to regularly examine the treatment of persons deprived of their liberty, make recommendations to the relevant authorities and submit proposals and observations concerning existing or draft legislation.
- 🔗 **Appropriate expertise and composition** – to effectively communicate and take in the condition and situation of the detainees, it should be comprised of experts who have capabilities and professional knowledge in monitoring detention places. It also requires gender balance and adequate representation of ethnic and minority groups.
- 🔗 **Specific powers and authority** – the NPM requires access to information, access to all places of detention and access to people. Information concerning the number of persons deprived of their liberty, number of places of detention and their location and access to all information concerning the treatment of those persons as well as their conditions of detention should be made accessible to



the committee. They also must have the authority to visit all places of detention – their installations and facilities without prior notice. Alongside this is the opportunity to have private interviews with detainees without witnesses as well as with any other person believed to have relevant information, including staff.

- ☞ The Committee must have the liberty to choose the persons they want to interview and where.
- ☞ Right to make recommendations and to publish reports – while constructive dialogue and relationship is being sought, the State Party is also being encouraged to publish reports based from set of observations and recommendations of the NPM committee. The substantial findings/recommendation from the visits can provide the platform from which the State can indicate their compliance and response in addressing the situation.



The APT considers that while designating NHRIs as NPMs is a legitimate option, considerations ought to be explored and assessed. For one, the NHRI ought to be consulted before the decision is made as it might not be the only or best one. In most, if not all cases – the NHRI will need to have its legislation amended, its organizational structure modified and/or be provided with additional human, logistical and financial resources. At the same time, the NHRIs are generally well placed to liaise with the SPT, and are well placed to take on the role of liaising with the government on the implementation of recommendations.

Essentially, the bodies that will be designated as NPM must substantially increase their resources and make the necessary structural adjustments. It should recognize their responsibility and the need to make reforms. The Philippines is still in its adjustment period wherein at most the greater need lies on proper awareness-raising. There is a big challenge to fortify the information campaign on OPCAT, and its presence felt and publicized. It may take a bit of a time to share to the people the importance of its role and duties and significantly, discuss the working methods of NPM with the government.

*Presenter:*

**Ms. Suraina PASHA**

Project Manager, Asia-Pacific Forum

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**T**he APF is a forum for cooperation, coordination and mutual support amongst National Human Rights Institutions (NHRIs) in the Asia Pacific region. Its membership is categorized into three – full membership, candidate membership, and associate membership. A member's status by category is based on compliance with United Nations Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).

The APF has an established legal advisory body called advisory council of jurists (ACJ) which is not a court but assists in helping to remedy gaps and in this manner provides a platform for reference to some extent. It is primarily involved in initiating efforts to address the issues pertaining to education, death penalty, torture, trafficking, child pornography, rule of law and terrorism, and the right to environment. It also reviews possible changes to operation and structures with considerable attention to torture laws and policies. Under its 2005 Reference on Torture, the ACJ focused on the following:

- ❏ definition of torture and other forms of ill-treatment under international law, and the development of Minimum Interrogation Standards (MIS);
- ❏ prohibition against torture and other ill-treatment under customary international law;
- ❏ non-derogability of prohibition against torture and other ill-treatment;
- ❏ international legal and procedural safeguards to prevent torture and other ill-treatment;
- ❏ inadmissibility in legal proceedings of evidence obtained through torture and ill-treatment;
- ❏ remedial measures for victims of torture and other ill-treatment;

- ☞ non-refoulement of victims of torture and other ill-treatment;
- ☞ torture and other ill-treatment during armed conflicts;
- ☞ jurisdiction of national and international tribunals over torture and other ill-treatment;
- ☞ jurisdiction of national and international tribunals over torture and other ill-treatment by international intervention forces; and
- ☞ torture and other ill-treatment by non-state actors.

The ACJ has recommended that the Philippine Commission on Human Rights urge the government to ratify the OPCAT. In addition, the jurists also identified concerns that are crucial in addressing torture law and policies of the government such as ratification of the Protocols to the Geneva Conventions and reviewing the question of torture in reference to armed conflict.

Establishing a definition of torture in Philippine law which is specific to the country's situation is also recommended. As reports of widespread and persistent torture are noted, there is also the need for review of the remedies for the victims of torture, and the burden of proof on victims to prove confession obtained through torture. The cases of children detained with the adults as well as persistent reports of ill-treatment and abuse of children remains prevalent. This and the concerns of overcrowding and poor conditions need to be closely followed-up, monitored and immediately addressed.

In terms of the establishment of the NPMs, the APF puts emphasis on mechanisms that adhere to the Paris Principles. It recognizes that NHRI can be a sound approach as coordinator of a multi-party mechanism as exemplified by the New Zealand Human Rights Commission or as the sole NPM like the experience of the Maldives Commission.



*Presenter:*

**Ms. Jessica NGTAI**

Human Rights Commission of New Zealand

New Zealand has ratified the Optional Protocol to the Convention against Torture (OPCAT) in March 2007. In accordance with New Zealand's policy that a treaty should not be ratified until any legislation required to implement it has been passed, the Ministry of Justice investigated what legislative changes would be required to give effect to the obligations in the OPCAT. In view of that, the Crimes of Torture Amendment Bill was drafted. In the course of this exercise, officials examined a number of existing organizations with responsibilities in relation to the welfare and treatment of detained persons. However, it was also recognized that a number

of changes would be required to ensure that any organizations that were designated as National Preventive Mechanisms (NPMs) would meet the requirements of OPCAT particularly the requisites<sup>1</sup> in setting up the NPMs. The officials were also mindful of concerns that if a number of organizations were designated as NPMs, the designation of a central coordinating body may be advisable. It was proposed that the New Zealand Human Rights Commission undertake this role.

In November 2006, the Parliament passed a legislation that amended the Crimes of Torture Act 1989 and included new provisions relating to visits by the SPT, the establishment of NPMs, the Central National Preventive Mechanism and other miscellaneous provisions. Following the passage of these legislative changes, New Zealand ratified OPCAT and it entered into force in New Zealand in April 2007. The NPMs and the Central National Preventive Mechanism were formally designated by the Minister of Justice in June 2007.



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<sup>1</sup> functionally independent, adequately resourced, composition of experts, specific power and authorities, capability to make recommendations to relevant authorities, publish reports

The designated NPMs are as follows:

The Office of the Ombudsmen has been designated as the NPM for prisons, immigration detention facilities, health and disability places of detention, and youth justice residences. The Ombudsmen are independent 'Officers of Parliament', with wide statutory powers to investigate complaints against government agencies. A significant element of their role relates to prisons – providing an external and independent review process for individual prison inmates' grievances, as well as the ability to conduct investigations on their own motion, and make regular prison visits.

The Office of the Children's Commissioner is the NPM covering children and young persons in youth justice residences. The Office of the Children's Commissioner is an independent Crown entity – a statutory entity that is funded by but with statutory independence from government. The Children's Commissioner has a range of statutory powers to promote children's and young people's wellbeing, including through advocacy, public awareness, consultation, research, investigations and monitoring. The Commissioner's role also has specific functions in respect of monitoring the residences where children and young people are placed in care because of care and protection issues or because of youth offending.

The Independent Police Conduct Authority is the designated NPM in relation to people held in police cells and otherwise in the custody of the police. The Authority is an independent Crown entity, and is independent of the police and of the government. The Authority is a civilian oversight body concerned with misconduct or neglect of duty by the police, and the investigation of incidents where death or serious harm occurs in the course of police duties.

Prior to the ratification of OPCAT, the Authority's statutory mandate was extended to enable it to inspect and monitor police detention, in addition to its existing complaints and investigations role. Other re-

cent legislative changes enacted during the year, have increased the Authority's membership and investigative capacity, and clarified or enhanced several other aspects of their powers.

The Inspector of Service Penal Establishments (ISPE) is charged with monitoring Defense Force Service Custody and Service Corrective Establishments. While the wording in the original NPM designation refers to the 'Visiting Officer' system provided under the Armed Forces Discipline Act 1971, the transfer of the role to the ISPE under the Court Martial Act 2007 ensures that the NPM is independent of the Defence Force. This represents a significant development, for the first time providing for regular external monitoring of Defence Force detention facilities.

The Human Rights Commission was appointed as the Central National Preventive Mechanism. The Commission is a National Human Rights Institution (NHRI), with 'A' status accreditation with the UN Human Rights Council. It is a member of the International Coordinating Committee of NHRIs and of the Asia Pacific Forum of NHRIs. The Commission is an independent Crown entity with a wide range of functions under the Human Rights Act 1993. These include: advocating and promoting respect for human rights, encouraging harmonious relations among diverse groups, promoting equal employment opportunities and resolving complaints of unlawful discrimination.

The functions of the Central National Preventive Mechanism, as set out in the Act, are to coordinate the activities of the NPMs and liaise with the SPT. In carrying out these functions, it is to consult and liaise with NPMs, review their reports, identify systemic issues, coordinate the submission of information to the Subcommittee, and make, in consultation with NPMs, recommendations to government on any matter it considers appropriate. OPCAT envisions a "system" of regular visits to all places of detention. The Commission sees supporting NPMs to work as a cohesive system, as a key element of its role. Central coordination can also help to ensure that any gaps are identified and that the monitoring system operates effectively across all places of detention.

The first year of operation of the five organizations as OPCAT mechanisms has focused on assessing the scope of the roles, developing a preventive monitoring programme, processes and measures based on

international human rights standards and a human rights approach. During this period, the Commission's focus has been to work with the other designated NPMs towards developing a cohesive human rights based approach to OPCAT implementation. This has largely involved developing shared resources and providing information, and facilitating discussions.

- ☞ Convening regular meetings of all NPMs – The Commission has so far hosted a number of roundtable meetings of NPMs to provide an opportunity for OPCAT organizations to update each other on progress, discuss emerging issues and exchange information and ideas with the aim of developing a common understanding of the OPCAT role and how it would be undertaken. Likewise, it also provides a forum for building capacity through focused discussion on key topics.
- ☞ Sharing information and developing resources – To assist NPMs with their planning and promote consistency of monitoring across all places of detention, the Commission provided NPMs with information on OPCAT principles and requirements and international preventive monitoring processes. The Commission also drafted a comprehensive set of standards and indicators, as the basis for each NPM to develop into monitoring tools specific to each particular type of detention facility. While a single common monitoring template has not been possible, the use of the same basic underlying framework provides a level of consistency across the different contexts, and ensures that monitoring is grounded in human rights standards.
- ☞ Review and coordination of reports – Initial monitoring activities are now getting underway and the first annual reports of all NPMs will be published in the next month. The Commission will compile a joint report of the year's activities. The Commission will be working with the NPMs to identify systemic issues, as well as any gaps in the monitoring regime, and how these might be addressed. As NPMs conclude preparations and preventive monitoring gets underway in 2008-2009, it is anticipated that the Commission's responsibilities in regard to reviewing NPM reports and addressing systemic issues will become more of a focus of the coming year's activities.

- ☞ Liaison with the Subcommittee – The Commission has so far written to the Subcommittee to introduce the New Zealand NPMs and invite further contact or advice from the Subcommittee.

Alongside these are the following continuing challenges:

- ☞ the significant expansion of role and workload that the OPCAT role represents for NPMs, and finding ways to work effectively within limited resources;
- ☞ maintaining a level of cohesion and consistency, while recognizing the distinct context each NPM deals with, and the independence of individual NPMs;
- ☞ practical issues such as timetabling, frequency and duration of visits, the resources required, and the standards and measures to be applied;
- ☞ managing the relationship between existing complaints/investigation roles of NPMs, and their preventive monitoring role under OPCAT; and
- ☞ promoting awareness of OPCAT and its broader human rights approach and integration of human rights into the day to day practices of detaining agencies.

A challenge in New Zealand is that the NPMs are all relatively small organizations and to varying extents, the NPM role represents a significant expansion of role and workload. However, there is a definite commitment and genuine determination on the part of all NPMs to implement OPCAT effectively.



## MORNING OPEN FORUM



**Atty. Byron BOCAR:** Secretary Ermita's statement on the deferment of the implementation OPCAT for 3-5 years elicits concern. Will the possible deferment constitute a violation of the OPCAT provisions, especially when this could be as long as five years? Based on Article 24 of the OPCAT, unilateral postponement is allowed only for 3 years and the additional two years is for the Committee on Torture to decide on.



**Ms. Louise AAEN:** The OPCAT provides in its provision that the State can opt for a 3-year deferment. Currently, no other countries have so far used this provision to defer. It will also be up to the SPT and the Committee against Torture if the additional 2 years can be allowed with regard to effectively implementing the NPM in the Philippines.



**Chairperson Leila De LIMA:** Sec. Ermita has asked for the deferment of the implementation of OPCAT on the premise of allowing the executive department to introduce improvements in the jail conditions.

There are two points on the objectives of OPCAT. Primarily, it is to prevent torture and the commission of degrading and cruel treatment of persons deprived of liberty. Second is the examination of the conditions of jail and other detention facilities. On one hand, the plan to introduce significant measures or reforms in jail condition is most welcome and can be the prerogative of the executive department. On the other hand, the implementation of the OPCAT in terms of checking on the occurrence or commission of torture is something else. The purpose, exact scope, and plan for such recommendation must be clear.

No amount of improvements on the jail conditions could address the problem of torture. The commission of torture is more of a mindset with the prison authorities. It needs qualified action that must and can be undertaken by the executive.

**Ms. Dorrit AKSELBO:** The setting up of the NPM and its commencement is not always expected to be perfect. The OPCAT does not require a perfect penitentiary system to be functioning before it can be implemented because shaming and blaming is not the idea of the OPCAT instrument. More importantly, it gears towards getting time to set-up mechanisms that can assist in having better conditions in the country's prisons to ultimately prevent the culture of torture, and as a first step in prevention. There is also a good point in taking measures for planning and setting up. But at the same time, it must be clarified with Sec. Ermita what he meant by "needing a long period of time" in his last statement. Given the fact that preparations are necessary, the aspect of time in starting and implementing the NPM is also significant.



**Dr. Filipina VILLA:** The presentation made by Supt. Borrinaga of the BJMP is enlightening and comprehensive. It is important to share this orientation at the local level. As a physician, I note the case of one inmate with tubercu-

losis whose condition was passed on to several other people within the facility. The situation of congestion is alarming. The medical as well as the dental conditions and concerns of the inmates should be taken into consideration, along with the proper budget appropriation by the local/municipal leaders.

The initiative to professionalize work with the prisoner community is commendable. I believe that all government agencies involved in prison rehabilitation should be professionalized. The plight of women and children in penal institutions must be especially addressed. Effective coordination and developing linkages must be done particularly with the DOH and agencies for appropriate rehabilitative program.

**Supt. Carolina BORRINAGA:** The program under my office which I presented is relatively new. While there were initiatives and joint programs implemented in the other directorates, it is under my office that we have designed a special program that handles and manages the cases of tuberculosis in prison.

We look forward to eventually realizing our efforts in re-orienting the jails from a mere correctional institution into a place of inmate entrepreneurship and learning. We are fostering a school-like atmosphere, a place where inmates can continue to learn new skills and be productive. Similar to this is the female penal farm in Davao - the first of its kind in the country. This facility is a home-like female cell. The inmates do not feel that they are prisoners in jail and are productively contributing skills and capacities for the good of the local community. Some of them would even describe themselves as "*bakasyunistas*" (vacation-takers). We consider all this as a paradigm shift in handling and managing the current penal system.



**Dr. Filipina VILLA:** The importance of conducting physical examination among the inmates before they are sent to actual detention has to be further strengthened in the practice of the relevant agencies. In my practice, I ensure getting their medical history and taking note of their physical condition. The medical report and the task of noting that the examinee is "physically fit and without external injuries" before turning them over to the PNP and BJMP is a vital part of the procedure. I am personally committing to share the issues and in-

formation from this workshop and continue to explore ways on how BJMP and the health program in my municipality can work hand-in-hand.

**Mr. Enrique GARCIA:** Regarding Dr. De Lima's view on torture - as a mindset among the penal facilities' authorities, as a practice that goes beyond having improved facilities, and also in the light of what Sec. Ermita has said about the government's premises for deferment - the challenge upon all stakeholders now is admitting that we have faults in handling the system and that there is plenty of room for improvement.

**Mr. Philippe TREMBLAY:** The UN Sub-committee for the Prevention of Torture SPT cannot regularly conduct visit to a single party. Due to the number of states needing to be monitored, the possibility of conducting visits may be scheduled only between 4-5 years. Given the number of state parties to be visited and the limitation in terms of human resource, monitoring is currently a problem.

The bulk of work therefore is at the NPM. It plays an important role in coordinating, particularly in preparing for the SPT's visit and the actual field visits. Reports which contain analysis and recommendation to the state is considered confidential but publishing them is the more ideal objective. That the state could agree in publishing these reports has been one of the strong ideas going around for some time.

The European Commission on Prevention of Torture for instance has allowed reports on the country's progress on curbing torture to reach the public. By doing so, a better gauge on the accomplishments and progress done, particularly in addressing the recommendations, is made possible. Also, the Swedish government has accepted and allowed agency action with respect to the SPT recommendations. This provides an idea of the work the SPT has done so far, including the types of recommendations it has made.

**Ms. Loreine DELA CRUZ:** The statement of Sec. Ermita regarding government's move for a deferment for about 3-5 years may still be taken in a positive way. How we can continue to support and

make OPCAT work in the country in the present context can be addressed during the workshop sessions as points for reflection. The insights and arguments arising from these workshops would be documented and serve as consolidated outputs that will help the CHR and the Executive Department to lobby the Office of the President for the shorter 3-year deferment in setting up NPM. Let us not lose momentum and instead take the issue as a major point for action planning.



**Atty. Herminia ANGELES:** The office of Sec. Gaité is drafting a legislative measure for OPCAT. But in relation to the statement of Sec. Ermita, the main concern is that after its ratification, the country may fall short in terms of compliance, given the poor state of the country's jails in general. The move for deferment so that focus may be given on the needed preparations and improvement is a valid position. In the meantime, the DILG may take the lead in the drafting of OPCAT legislation together with DSWD, CHR, DBM and DOJ.

**Atty. Byron BOCAR:** I hope that any possible deferment will not affect or mean postponement for the processes already being taken for the anti-torture bill. The importance of an immediate OPCAT imple-



mentation is linked with its being a preventive measure as compared to the anti-torture law which is more for dispensing punitive actions against perpetrators. While we welcome and fully support efforts to improve the jail system, we may have to keep in mind that having the best prison system in the country will not guarantee the prevention of torture. This is the very reason for the urgency of the OPCAT which specifically stipulates the need for visitorial power.

**Ms. Jane ARZADON:** On the part of the Senate Committee on Justice and Rights, the committee has already approved the Anti-Torture Act of 2008. I hope this will be a relief to the interested participants although the bill is yet to undergo interpellation in the Senate.

**Dr. Renante BASAS:** The previous day, the Philippine Network against Torture had already discussed the possibility of deferment and devised a plan of action to take in the eventuality of delay. The time that deferment entails can be utilized to discuss and handle the setting up of the NPM, its design and structure. Furthermore, the aim of the OPCAT is, first, to monitor and second, to improve jail conditions. Allowing for adequate time so that the government can work and prepare for it seriously may have to be considered.

## AFTERNOON OPEN FORUM



**Dr. Lidovina DORION:** Obtaining information on the identity of the torturers is a current impediment in government documentation as well as in NGO practice on the prevention of torture in the country. Are there significant local research studies existing on the torturers (including their profile) which can be accessed to support the work of community advocates and field practitioners?

**Dr. Renante BASAS:** The closest thing to research work that I can refer to is the study done by Dr. June Lopez from the University of the Philippines which was conducted 3-5 years ago.

**Dr. Filipina VILLA:** The sessions were an eye opener. I am however saddened to hear in one of the stories that colleagues in the medical field were at certain times compelled to allow torture to happen, even as the same victims were their patients. Doctors are meant to save lives and not kill. The cases of torture should have been brought to the

attention of the city government. The cases of overcrowding and other atrocious conditions in jail should also be made known to the proper authorities so that appropriations on the local government budget will be correspondingly made. This is only a matter of prioritization.

**Atty. Byron BOCAR:** The reality of torture in the Philippines is as widespread and brazen as the usurpation and corruption of power in government bureaucracy. Some of these torturers are now actually in congress and senate, or have previously served terms in these branches of government. Ironically, torture victims in the country are able to obtain justice and other favorable considerations not from its own courts of law but from a foreign country as exemplified by the cases of martial law complainants in Hawaii.

**Mr. Romy CASTILLO:** I was a victim of torture in the late 80s. Up to the present, I still get to see my torturers (one of them was a military commander) whenever I join protest rallies and other mass assemblies.

When I was in detention, those who were torturing me seemed to find excitement and pleasure performing their aggressions on me. But these same brutes were different persons in the presence of other people. Whenever their family members are around visiting them, they suddenly turn into caring and gentle parents to their children. The transformation in their persona is disturbing.

**Atty. MARTIN:** I feel very concerned about what Atty. De Lima has shared especially regarding the refusal of entry experienced by the CHR Committee in Fort Bonifacio. It is alarming that the CHR which has official power to visit and monitor was treated this way. The situation could be worse for the NGOs and other related human rights organization. This is certainly not permissible under prevailing rules and regulations. I propose the drafting of a resolution against these anomalous acts, which will stress the importance of allowing monitoring visits not only for GOs but also for NGOs and of the official visits as part of monitoring jail conditions. To prevent further cases of refusal of entry, it is urgent that concrete measures have to be adopted. There are in



fact other cases of irregularities in prison practices. In Region 2, detained suspects were withheld police protection. The relatives of the victims were allowed to enter the prison facilities and they harmed and committed abuses against the detainees with the custodial guards not intervening to restrain them. The attacks on the detainees were done with permission from the police on duty.

**Atty. Victoria CARDONA:** With respect to entry restrictions, establishing coordination and direct communication with the higher offices is important. For instance, if the case concerns BJMP, it should be the chief. In the provincial jail, it is the governor. For the military, the AFP chief has the higher authority. If and when such coordination does not succeed, this concern can be brought to court.

**Ms. Auxilium TOLING-OLAYER:** My husband and I were victims and survivors of the worst forms of torture during the martial law years. We won the court case later on but victory was only in paper. There are many factors that continue to protect impunity in this country especially in relation to torture victims. This is why I am very interested in the immediate implementation of the OPCAT which duly provides for visitorial rights. I want to know if the preventive and protective element that goes with the visitorial rights will serve as an effective springboard in addressing cases of torture in the country. I also want to know if NPM can cover and facilitate the pursuit of cases against torture.



**Dr. LAO Mong Hay:** I am interested on the purposes of torture in the Philippines. In Cambodia, the foremost reason is to get confession. There are other motives such as extorting money. In some cases, torture is only done as a malicious practice.

**Dr. Ben MOLINO:** In the Philippine context, exacting confession is the primary reason for both the state agents and the rebel groups in employing torture. Destroying the victims and rendering them helpless physically and emotionally is a further mo-



tive and is commonly done. In some cases, torture is practiced to coerce and threaten an entire community. In Mindanao for instance, torturing the so-called enemies of the state has been instituted communally with the acquiescence and even assistance of local armed groups – both rebels and government-backed. While many communities in the region are strongly affected by increasing animosity manifested in religious, political, and ethnic divide, violence comes easy and so does the practice of torture.

**Atty. Byron BOCAR:** Torture is not only done by the military but also by non-state armed groups. For some time, the NPA has resorted to torture due to fear of massive infiltration within their ranks. Torture is even done to innocent persons. The prevalence of torture was in fact a concern that my organization had raised during the crafting

of the anti-torture bill.

As a result, in some of the workshops held for the proposed bill, the non-state actors were included among the likely perpetrators and were to be held accountable. Regrettably, this specific issue was unsuccessful towards the later part of the legislative processing of the anti-torture bill. Finally, only the state actors, meaning the military and government opera-

tives, will be held liable. The exclusion of other parties who are also prone to the commission of torture and other violent acts against human rights, however, has made justice more elusive for the victims and their families.

**Col. Benedicto JOSE:** I do not quite agree with the previous presentations depicting torture as an institutionalized practice in the military establishment. The ghastly stories that were mentioned earlier



were part of the martial law days and are now just history. I have been in military service for 29 years; I have never seen or known any secret detention center for torturing suspected criminals or political elements. While the military does keep and maintain facilities for detention, this is a transparent practice and CHR is allowed to visit. The current military institution is now composed of the young blood and is guided by a re-educated leadership; these are a new breed of officers who oppose torture. I feel that the stories mentioned regarding military involvement in torture is linked to the motive of pushing for an immediate OPCAT ratification. While the military fully supports the government's national security plan, torture is not a part of that policy and is just an isolated case.

**Dr. Ben MOLINO:** I was involved in documenting the cases of the Manalo brothers early this year. I guarantee that a physician was actually called in that particular case to check the detainees after they were released from detention. No report was given. Yes, it can be said that the case was probably an isolated one. But even just granting in theory that it was a unique case, it still does not mean torture doesn't happen; the Manalo story remains a clear and unmistakable case of torture.

**Col. Benedicto JOSE:** Regarding the issue of visitation, it is important that proper communication and coordination is established with the authorities. I have heard of a congressman and his group who once conducted a visit in a prison detention facility and was not granted entry. Even the legislators cannot make unwarranted visits especially without coordination with the pertinent offices, in the said case, the AFP.

**Atty. Byron BOCAR:** May I clarify that the legislators being alluded to by Col. Jose in his account were men and women who were part of the visiting group as members of the House Committee on Human Rights. They conducted the said visit as part of their official duties.

**Atty. Herminia ANGELES**  
Department of Justice

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I wish to note that while the Philippines condemns all forms of commission of torture, there is no specific law to penalize it at present. Hence, attempts to address torture fall under the regular laws. We are now here gathered together precisely to address this problem. We, in the executive department are moving towards legislative and judiciary measures for the enactment of the bill on torture.

The President has taken a bold step to sign the OPCAT – a likely move following our submission of the country report to the UN in April. While Secretary Ermita this morning has called for the deferment, we were given a direct order from Malacañang to prepare a draft legislation together with the DILG.

From our position, we see that the DILG is the lead agency assigned for the Convention against Torture, which is why we are recommending that the drafting of OPCAT legislation be also spearheaded by the DILG. A while ago, I was recommending together with Mr. Ellecer Carlos of BALAY that the CSOs and NGOs should also join us in crafting this legislation. Being the practitioners, you know more and are better trained than we are. The concern on torture may be seen in its facts and details as well as on its whole. We deem that the NGO people have the experience we all need to get our job done. We hope we can work together to come up with good results.

The government is not yet in any obligation to commit in so far as the recommendations that were presented a while ago. Nonetheless, we affirm commitment to do what we can to uphold and support all the said recommendations. We are optimistic because a large slice of the state's executive budget goes to the DILG which is the implementing arm and the agency in charge of jail management.

In terms of the question on children in detention as raised by Ms. Pasha, the government has enacted the Juvenile Justice Law whereby children below the age 15 should not be detained. CICL has detention homes for the boys and girls in every region. All regions are mandated to have special centers for children in conflict with the law. The pro-



cedure of keeping children in custody is not called detention because it is more for rehabilitation rather than deprivation. For the detainees, there is a mandatory requirement to undergo medical examination and there must be a medical certificate before being put in jail. As far as the law is concerned, this has to be implemented and practiced strictly.

In so far as the rights of the accused are concerned, this has always been our cry: the rights of the accused are

above the rights of government. We are following the Miranda doctrine. In fact, many cases in prosecution have led to the acquittal of persons charged with crimes against government following the HR doctrine. For free legal services, we have the PAO under DOJ, and Free Legal Assistance Group (FLAG). Some schools have free legal groups, provide legal assistance not just for those accused but to all who feel aggravated and need assistance to be able to seek redress in court. When we were in Geneva, many recommendations surfaced and we are only happy to note them. The Geneva experience was a reality check, an eye-opener for us.

The fact that we are all here is a strong indication that we are serious in our role in helping, promoting and advocating for human rights. I think it is just a matter of time. Let us not be despaired with the idea of deferment. It will not stop there; the moratorium is part and parcel of moving forward. We are as much challenged as you are in coming up with a domestic legislation that would specifically address torture and jail conditions, and create a prevention mechanism under the OPCAT.

## Mr. Enrique GARCIA

Department of Local and Interior Government

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I would like to give an idea of how difficult the prospects are to the executive department when it comes to the formulation and the mechanics of this NPM. As you know, the OPCAT has been in force only for 2 years and it is probably a new thing for many in the international community. The Philippines is riding on the first waves and we are proud to have taken the courage to do so. We can consider ourselves a pioneer in this area but much depends on the next moves we will take.

First is the sheer number of places to visit - the diversity and need for enforcement and sustained visits. I would like to respond to the point shared by Secretary Ermita this morning regarding going slow and being cautious about it and the possible postponement of the implementation of the OPCAT for 3 years. The elements that we have to contend with at this point have something to do with the basic characteristics and requirements of the NPM. Let me express this in my own words as the people here are very technical. These are: (1) capability, (2) de facto independence, (3) proper presentation, (4) competencies, and (5) methodologies. There are other items in my checklist but these are the outstanding ones that we may have to deal with right now. So, as Secretary Ermita had said, it is proper for us to go slow. The message is not really to be reticent and hesitant, or not bold enough, but for us to make sure we are going the proper way so there will be no regrets later on.

We take very well the recommendations made by the ACJ. Some of such recommendations are new and some were raised even previously. We assure you that the executive department and its various agencies are well-familiar with the recommendations. There are two issues, however, that strike me as very strange but worth including - the aspect of protecting whistle blowers and the mandatory reporting in cases where there are inklings of torture. These are new things but are worth considering by our legislators for inclusion in the law that will be enacted.

I'd like to share that recently the Office of the President has issued Administrative Order (AO) 163 strengthening the Presidential Human Rights Committee, a multi-agency committee represented practically by all the operating agencies of the government and increasing its capacity to deal with the human rights issues. We are modifying the original AO so that there will be proper representation, consultation and participation by all sectors of the society.

Right now we are in the middle of the national human rights action planning and we are in the process of conducting nationwide consultations towards the formulation of a national human rights action plan. All the CSOs are free to enter any of the eight committees representing the international human rights instruments. We want to embark on it the proper way unlike the first national human rights action plan exercise where there was only the token representation of the CSOs and NGOs. We want to jumpstart and build the impetus for this project. We want its significance and future benefit to be widespread and felt by everybody. We want it to be owned practically by every citizen in this land.

In ending, I look forward to a future where no anguished cries can be heard nor the faces of pain in all its form – physical, psychological spiritual, be seen anymore. I hope our efforts will result in the diminution if not eradication of protests and grievances in the country with regard to the problem of torture.

## **Ms. Jane ARZADON**

Committee Secretary,  
Senate Committee on Justice and Human Rights

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**I**n behalf of the Committee on Justice and Human Rights, under the auspices of Chairman Francis G. Escudero, we are very proud to announce that we indeed have submitted the committee report based on the discussions and deliberations in our technical working group meetings as well as the public hearings we have conducted in the Committee on Justice and Human Rights as well as the Committee on Finance.

Since we are currently discussing the optional protocol, let me update you regarding parallel developments on our end. From what I had gathered through the committee secretary on foreign relations, I believe they have yet to conduct a hearing on OPCAT. But we in the Committee on Justice and Human Rights have already passed our committee report on Anti-Torture 2008. As I speak, it is still on second reading on the floor subject for interpolations and the individual committee amendments. Thereafter, it shall be approved on second reading and then on third reading, in accordance with the rules of parliamentary procedures.

So, allow me now to give at least a brief rundown of some of the points contained in the Anti-Torture Act of 2008. There are a few additions regarding meaning. We have incorporated the details and definitions as to when the act of torture is committed. We have given definitions for the physical, mental, psychological as well as pharmacological forms being used. These latest details make the definition of torture unique and distinct from the other formulations given in the earlier bills. The consolidated Anti-Torture Bill of 2008 of the Committee on Justice and Human Rights is a conglomeration of these five bills filed by different senators and now pending before our committee. From the said proposals, we have derived and synthesized one final bill, and such is the bill that we are right now submitting before you.

In our committee report, we have also addressed the issue of prohibitive detention. We have incorporated specifications on secret detention places, solitary confinement, incommunicado or other similar forms



of detention where torture may be carried out with impunity. Regarding the detention places, we have directed the law enforcement agencies, the PNP, and the AFP to update us with a list of detention facilities and centers under their respective jurisdiction and provide us with data on prisoners, the names, their crimes, the dates of arrest, and the offense committed. This list shall be available to the public at all times. We have also incorporated in our committee report the protection of torture victims.

As I was hearing comments, queries and opinions a while ago, perhaps, the provisions that we have incorporated in our report may be a solution or an answer. We have also incorporated the prompt and impartial investigation on torture victims, to direct the law enforcement agencies specifically the PNP, AFP, NBI together with the CHR and DOJ, to carry out a prompt and impartial investigation which shall mean a maximum of thirty days from the time a complaint for torture is filed.

Secondly, we also incorporated sufficient government protection against all forms of harassment, threat and intimidation to any person as a consequence of his/her action to file a complaint. Again, we have accorded sufficient latitude, consideration and protection to a person in the manner which he/she testifies or in the presentation of evidence in order to avoid further trauma.

Also, any person on behalf of those who have been subjected to torture may report or extend assistance to the victim in the filing of complaints and seek legal assistance in the proper handling of these cases from any of government agencies such as DOJ, CHR, AFP, NBI as well as the Barangay Human Rights Action Centers (BHRAC).

We have also provided provisions on the right to physical, medical and psychological examinations which every person arrested, detained or under custodial investigation shall have. This includes the right to demand physical, psychological pharmacological examinations and medical treatment by an independent and competent doctor of their own choice. Also incorporated in the committee report are those who are criminally liable of the commission of torture.

Under one detail, it is also provided in the report that "any person, whether state or non-state who actually participated in the infliction



of torture, or who is present during the commission shall be liable as principal." We have removed the principle of "command-responsibility." Instead we have modified this under another provision that says "any superior military, police or law enforcement officer, senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principals." Furthermore, "any order to commit torture from any superior in the office shall be illegal and can never be invoked as justification for the commission thereof."

Provisions regarding penalties are also among the new elements. These penalties are dependent on several considerations such as the consequences, commission and victim of torture. For example, the victim may be a woman or a minor. A person may die as a consequence. A victim may be raped or sexually abused. The penalty in these cases is life imprisonment. There are various penalties ranging from 12 years and 1 day to 20 years – these are all based on the severity of torture committed and its outcomes such as loss of body parts and other physical damages. I will provide a copy of the committee report to guide you regarding all these details.

We have also defined torture as a separate and independent crime. This means that it cannot be absorbed or contained in other offenses or crime that the perpetrator may have committed or could be liable to. Therefore the penalties that maybe imposed on torture shall be in addition to the other penalties that maybe imposed if there are other crimes that had been committed. The applicability of refoulement is also provided. We have incorporated in the report that no persons shall be expelled or extradited to another state if there are substantial grounds to believe that such person shall be in danger of torture.

We have also provided compensation as well as education and information campaign provisions on torture, to be taken care of by the CHR, DOJ and DND. The implementing rules and regulations shall be subject to and under the auspices of DOJ and CHR. Should there be any amendments or position papers arising from today's committee inputs, the Senate Committee on Justice and Human Rights welcomes them and would be most glad to receive them.

*Presenter:*

**Mr. Ernesto ANASARIAS**

Deputy Executive Director,  
BALAY Rehabilitation Center, Inc

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**T**he Philippine government presently finds itself navigating the waters for the ratification of the OPCAT and this requires going through the tides of procedures and negotiating the ripples of transitions.


The recent statement of the government through Secretary Eduardo Ermita regarding its preference to opt out and defer for the next 3-5 years the setting up of an NPM may be disheartening at first but the doors for the possibility of optimistic outcomes have not really closed upon us.

Right now, we are challenged to establish and put forward our most compelling arguments to pressure government to accomplish the process with the least delay.

The completion of the ratification process before 2010 can in fact work to the advantage of government and other political players; a ratified OPCAT can bolster the Philippine government's credibility before the UNHRC and the international community. This is an achievement that can be cited in the OPCAT report due in 2009.

At the same time, as the year 2009 paves the way for election grounding and priming, a good opportunity to convince candidates to the national elections and those aspiring for government posts with international designations, is at hand. For the advocates, on the other hand, the ratification and eventual reign of OPCAT in the country is a legacy, a gift to the next generations of Filipinos.

Notwithstanding the incentives for government as well as the reasonable and legitimate premises for an immediate OPCAT ratification, the deferment of the setting up of NPM can also provide ample time and space for movers and shakers to maneuver for the following tasks.

 steer forward the process of consensus-building;

- ❏ widen the constituency for support; information campaign may be launched down to the jail level. This involves engaging and making the people in local governance and those in charge of the prison facilities aware of the OPCAT and NPM. Increasing the constituency also means more stakeholders will be able to participate and cooperative work relationships can be fostered;
- ❏ craft an NPM model that is credible, independent, competent, effective and acceptable. This aspect constitutes enormous homework which begins with thoroughly understanding OPCAT and its provisions; and
- ❏ disseminate information, educate duty-bearers, and prepare the experts. The task must include not only the experts in medical and legal practice, but also practitioners in the field of torture documentation and human rights protection. It must be noted that the task of analyzing and assessing the phenomenon of torture does not only cover the physical affliction, but also the reasons and motives for the practice.



The NPM-building process facilitates the setting of indicators and standards that will sum up and comprehensively depict the existing conditions of the detainees and the detention centers. Based on this, the appropriate programs, policies, interventions and mechanisms which the NPM shall accordingly execute may be clarified.

The NPM-building process has the following characteristics:

- ❏ Transparent, inclusive and participatory – it is a project of all and for all;
- ❏ Has a clarified NPM purpose and mandate – it is a concept/model that is grounded on the realities and contexts of the enforcing state. It is in conformity with the provisions and mandate of the OPCAT;
- ❏ Ensures independence in terms of fiscal autonomy and relationship with the state;
- ❏ Includes a set of criteria for membership and selection process;

Regarding organizational form, it is important that the NPM satisfies the following:

- ☞ Institutes guarantees and powers in respect to visit – entails a legislative basis (through a drafted legislative measure);
- ☞ Has a clarified scope of authority for making recommendations and implementations;
- ☞ Defined relationships between the NPM and CSOs– a clear and healthy consensus of CSOs as a part of NPM and/or CSO as part of monitoring or watch body; and
- ☞ Supported by a legislative measure affirming the NPM.

The recently held consultation between the Philippine Network Against Torture (PNAT) and United Against Torture Coalition (UATC) on the effective establishment of NPM has discussed, reviewed and recommended possible considerations on the measure's development which are as follows:

- ☞ CHR as the NPM (regarding this, the CHR has initially expressed positive response);
- ☞ Creation of an NPM distinct from CHR;
- ☞ CHR as convener of an NPM consisting of other experts as members;
- ☞ Inclusion of CSO participation (this requires determining how the organizations can effectively participate with special consideration for the aspect of complementation and coordination).

The NPM may adopt the following for its form:

- ☞ A singular body with nationwide scope of operations including a pool of experts that can be mobilized, and the mandate to visit all prison facilities and institutions under the jurisdiction of the BJMP;
- ☞ Administratively-unified, single NPM with decentralized branches. This is based on the archipelagic character of the country and the corresponding difficulty of a singular body based in Manila with the mandate to undertake periodic visits in prison institutions all over the country;

- ☞ A multiple NPM scheme to conform to the geographic character of the Philippines – concurrently independent and interacting with each other in a certain way; and
- ☞ Multiple scheme with a central NPM unit and having coordination and capacity-building mandate and residual visiting and recommendatory powers. This is a variation of, or an enhanced approach to bullet point 3 (re central NPM Unit), whose function is to build the capacities of the members.

Defining the roles of professionals as pool of experts such as:

- ☞ Medical practitioners – recognition, documentation, expert witness, rehabilitation; and
- ☞ Lawyers – investigation, documentation, monitoring, prosecution.

From these considerations, the CSOs as part of the NPM-building process may choose the options that will best complement their respective causes and capacity to participate – either as independent monitors of NPM, as part of the NPM multi-sector body, as providers of pool of experts, and/or as technical consultants on certain cases. These are the decision/action points as well as the areas of challenge that are now at hand.

BALAY, being one of the advocates of OPCAT ratification, recommends the formation of the Philippine OPCAT Working Group (POWG) which we commit to actively support. We envision the working group to be a mechanism that will create dynamic cooperation, mutuality of purpose and synergizing of resources specifically in the areas of:

- ☞ conducting research on the patterns, prevalence, and concentration of torture cases, from which solid information on cases of torture and where they happen in the archipelago will be established and considered in the design of NPM;
- ☞ mapping of location and conditions of places where persons are or may be deprived of liberty – a solid database that includes the official detention in the country under different management and secret detention center;
- ☞ undertaking comparative studies of Domestic Visiting Mechanisms (DVMs) in the Philippines;

- ☞ propelling the consensus and constituency-building process forward. This initiative requires group complementation in order to prevent dissipation of enthusiasm;
- ☞ preparing study papers on possible other models;
- ☞ drafting legislative measures grounded on inclusive and thorough consultations and agreements on principles and content to prevent conflicts and contentious points especially when the bill is already filed in the congress; and
- ☞ spearheading of lobby work.

We further envision the POWG to be co-chaired by the appropriate GOs and CSOs. We recommend that it be consisted of the Commission on Human Rights, the Presidential Committee on Human Rights, the BALAY Rehabilitation Center Inc., the United Against Torture Coalition, the Philippine Network Against Torture, the Department of Justice, the Department of Interior and Local Government, and representatives from the Committee on Human Rights of the House of Representatives and the Senate.

The working group will carry out joint actions as well as independent activities to press on the OPCAT agenda based on the points cited earlier, and until the instrument is finally ratified and implemented. As the need may arise in step with practical conditions such as increased work demands, the working group can decide to adopt wider membership. It can also spearhead NGO-OPCAT caucuses and conduct joint initiatives with human rights organizations and networks, faith-based groups, children and women NGOs, associations of survivor of torture and organized violence, legal rights centers, independent experts, civic clubs and other humanitarian organizations.

The road towards ratification and enforcement is open and wide for the support that is in progress as well as all the prospective help for OPCAT. The task at hand requires collectivity, synergy and integration. This current workshop is a seedbed for consensus. It is a fertile working ground that welcomes the planting of time, talent and treasure and all other gifts possible, to make OPCAT grow in the backyards of all homes in the country towards a torture-free society.

*Presenter:*

**Ms. Shyamali PUVIMANASINGHE**

Regional Coordinator, EU-OPCAT Project  
Asian Human Rights Commission

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**T**he Optional Protocol to the Convention Against Torture (OPCAT) project supported by the European Union aims to prevent or reduce torture and ill-treatment in 4 Asian countries – Bangladesh, Cambodia the Philippines and Sri Lanka. Specifically, it aims to promote the signing and ratification of the OPCAT in its 4 target countries and strengthen the national capacities of these countries to help fulfil the obligations under the OPCAT.

The project works in partnership with Rehabilitation and Research Centre for Torture Victims (RCT) of Denmark and four national networks representing each countries – the People Against Torture (PAT) and affiliated grassroots groups in Sri Lanka; the Bangladesh Rehabilitation Centre for Trauma Victims (BRCT), associated Task Forces against Torture (TFTs) and Victims Associations (VAs) in Bangladesh; the Asian Human Rights Commission (AHRC) in Hong Kong and the LIKHADO, a Human Rights institution in Cambodia and the BALAY Rehabilitation Center, Inc. together with the United Against Torture Coalition (UATC) in the Philippines.

The Sri Lanka project is involved in legal aide, rehabilitation, and awareness-raising in the campaign against torture. Bangladesh likewise heads a rehabilitation and trauma center for victims of torture. BALAY and the UATC in the Philippines actively work on the issue of torture through awareness-raising, lobbying and rehabilitation as well. The Cambodian project highlights their torture prevention and campaign work through the advancement of the OPCAT.

These organizations, with the regional coordinator based at Asian Human Rights Commission (AHRC), Hong Kong and the project manager of RCT, make up the regional network. As a working group, it maintains close and collaborative projects aimed at strengthening its national campaigns through information and experience sharing, discussions and training. It makes use of international exposures and con-



nection to ensure the safety of local players and movers working in the domestic context.

To date, Asia is the only region with no regional human rights mechanism, and is lagging behind other regions of the world with regard to the OPCAT ratification. Hence, it focuses in campaigning and encouraging other Asian countries to consider and take up the mechanisms of OPCAT. Strategically it targets the following groups:

- ☞ The three branches of the state—the executive, legislative and judiciary. It includes government ministries and agencies such as police, prison and prosecution authorities, parliamentarians and courts;
- ☞ Civil society—including NGOs, professional groups, academics and the general public; and
- ☞ The diplomatic community, donor groups, UN human rights agencies, the EU and other agencies.



Among its diverse campaign and advocacy activities:

- ☞ Bilateral consultations, view exchange meetings, seminars and news letters to raise awareness with state official;
- ☞ Training local civil society groups on CAT/OPCAT related issues and campaign strategies;
- ☞ Events to raise awareness among the general public—media campaigns, public hearings, street movements and the appointment and observance of red letter days; and

- ☞ Data collection, study activities and documentation on existing visiting mechanisms, conditions and treatment of detainees in prisons and police stations.

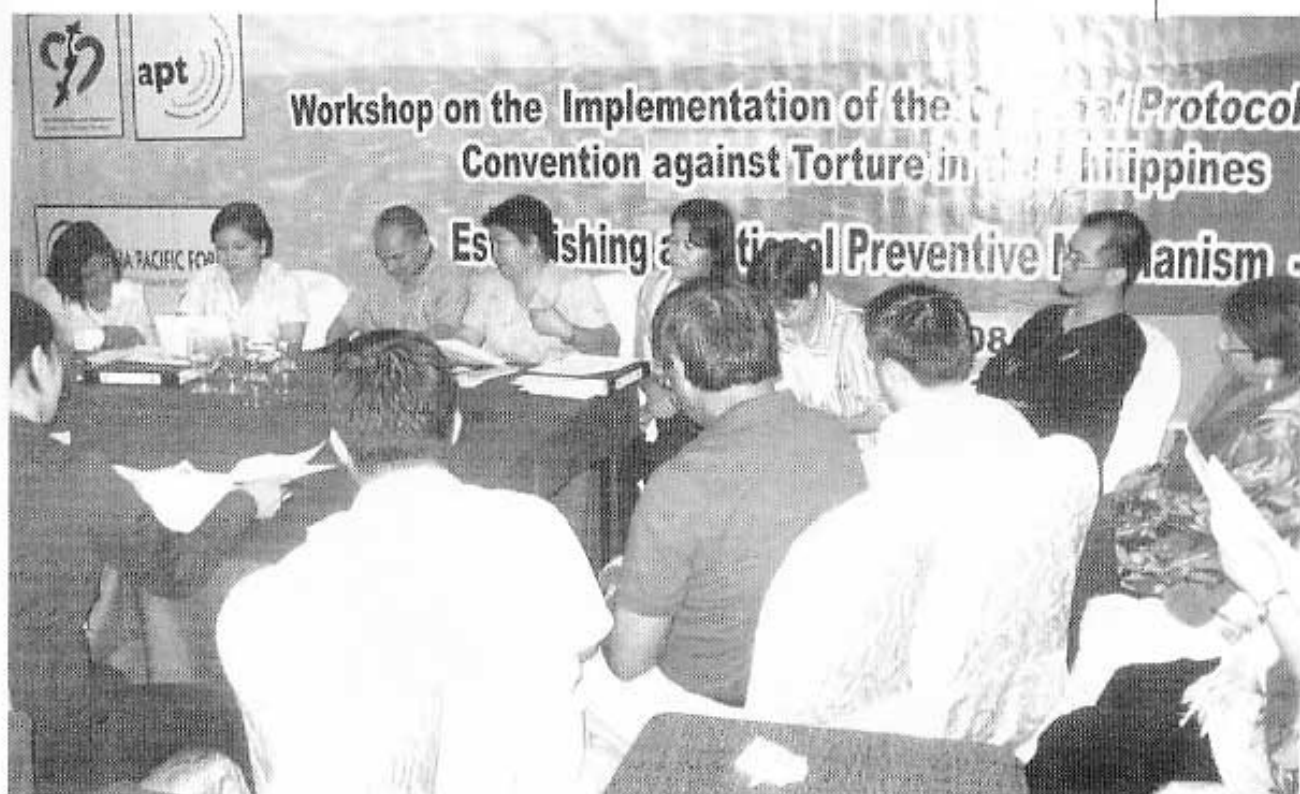
At present, Cambodia is one of only two Asian states to ratify OPCAT and arrangements are still underway for the establishment of an NPM in accordance to the OPCAT requirements. While the Sri Lankan government has ratified the core UN human rights instruments and is one of the few countries in Asia to enact an anti-torture bill, it showed very little interest in undertaking additional international obligations. With the civil conflict intensifying (where?), the Network continuously implement activities in torture prevention and OPCAT awareness-raising through street movements, public hearings and appointing and observance of red letter days.

The Philippines on the other hand, is a success story, with the presence of the local organizations actively promoting OPCAT – even before its partnership with the Network began. Through its innovative interventions such as the use of promotional kits and visible presence, the OPCAT is being placed in the third priority for the senate ratification.

The journey and advocacy of human rights may be testing and difficult, yet its most significant challenge is in knowing that it will be immensely beneficial to those who are detained and who will be detained. The strategy is that “no matter how impossible the situation is vis-à-vis rights promotion, there is always something that can be done.”

*Thrust:*

“Defining an Action Plan towards OPCAT ratification and the establishment of a National Preventive Mechanism”



## Guide Questions for the Workshop Groups

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### *Group 1: Defining a Process for the Establishing* an NPM/s in the Philippines

- ☞ In what way can civil society organizations (CSO) be involved in the process?
- ☞ How can it be ensured that the process for setting up an NPM will be conducted in a participative and consultative manner?
- ☞ How can training programs be put in place for the improvement of the working procedures of suitably qualified institutions so that they can readjust to the requirements of a mechanism under the NPM?
- ☞ Which entity will be the focal institution to facilitate the establishment process?



## Group 2: Design and Structure of the NPM in the Philippines

- ❁ Based on the geographical make up of the Philippines and the thematic expertise needed in places of detention in the Philippines, how will the most basic units of the NPM and the main harmonizing body take form?
- ❁ What will be the extent of power of the NPM?
- ❁ Which places of deprivation of liberty shall the NPM have under its mandate (identification) and which ones need special attention?
- ❁ What type of professional and institutional capacity is needed by the NPM that is to operate in the Philippines?
- ❁ What are the possibilities for the CSOs to be involved in the functions and safeguards of the NPM?
- ❁ How long shall the term of the NPM members be and how shall they be nominated and selected in between terms?
- ❁ How shall the NPM's work be monitored?



- ☞ What kind of relationship will the NPM have with various entities such as civil society groups, government institutions and international organizations?
- ☞ What shall be the characteristics required of the expert members of the NPM?
- ☞ Which Domestic Visiting Mechanisms (GO/NGO) are suitably qualified to become part of the NPM system?
- ☞ Based on their existing mandates, operating procedures and work performance, what function or role can the eligible institutions perform in the NPM?

**Group 3: Appropriate legalization process for  
implementing the OPCAT in the Philippines?**

- ☞ How can the NPM be assured functional independence and seclusion from the influence of the three branches of government?
- ☞ What types of legalization processes can be utilized in order to guarantee the NPM's durability?
- ☞ How can the NPM regularly secure funds outside the budget that is allotted the three branches of government? (Funding and Sustainability)

# GROUP PRESENTATIONS

## *Group 1: Process for the establishment of NPM the Philippines*

In what ways can civil society organizations (CSO) be involved in the process?

1. Through public consultations with the civil society organizations. The CSOs will be identified based on the following qualifications:
  - ☞ Consent/willingness to participate;
  - ☞ Classification as to expertise/competencies; and
  - ☞ Classification as priority organization.
2. The organizations (CSOs and GOs) currently comprising the OPCAT campaign may assume lead role as POWG. Immediate preference may be given to:



- ☞ United Against Torture Coalition;
- ☞ Philippine Network Against Torture (PNAT); and
- ☞ Inter-agency Committee on Prison Reforms

**How can the process of setting up an NPM be conducted in a participative and consultative manner?**

1. By inviting the identified CSOs for consultation and involving them in public hearings especially the victims and their families.
2. Through sustained networking among the GOs and CSOs.
3. Through an inventory of CSOs in the Philippines with the aim of classifying them according to their respective expertise.
4. A nationwide approach towards identifying the issues pertaining to torture will be adopted.

**How can training programs be set up for the improvement of the procedures of suitably qualified institutions so that they can readjust to the requirements of a mechanism under the NPM?**

The POWG will serve as the operating engine that will set in motion the establishment of the NPMs. The members of the working group shall not necessarily be members of NPMs. A multi-sector approach





may also be supported, with Balay and MAG in coordination with other GOs, as lead team representing the NGOs.

### **Which entity will be the focal institution to facilitate the establishment process?**

The DILG as the government's lead agency for the CAT should spearhead the convening of the POWG towards the establishment of the NPM and convene the group. Should there be a need for a separate chairpersons to represent GOs and NGOs, this suggestion will be submitted to the body for approval.

### **Group 2: Design and Structure of the NPM in the Philippines**

**The group did not strictly follow the guide questions that were provided but came out with general ideas on the topic assigned.**

- ☞ On the whole, the group proposed the creation of an NPM which is multi-disciplinary in composition and national in scope. Its design and structure will faithfully adhere to the OPCAT provisions.
- ☞ The process of selection for the NPM membership will be aided by a set of criteria which will provide premium on candidates who are independent, impartial, and known for integrity and courage, competence, credibility and commitment.
- ☞ A screening committee or a selection board composed of various groups and affiliations within the OPCAT campaign spectrum will be tasked to ensure quality and efficiency of selection. An effective check and balance mechanism in the NPM must be instituted and implemented.
- ☞ In relation to the designation of a selection board, a mechanism must be devised to effect the election of the members of the said body.
- ☞ The function of monitoring the NPM may be carried out by the CSOs.

- ☞ The term of office for the individual members of the NPM will be on a staggered basis.
- ☞ Given the diversity of the entities that will be involved in the NPM (as watch body or as regular part of the structure), the importance of transparency and strict compliance to the OPCAT provisions and guidelines must be observed consistently.

### **Group 3: Appropriate legalization process for implementing the OPCAT in the Philippines**

**How can the NPM be assured of functional independence and insulation from the influence of the three branches of government?**

- ☞ To ensure independence in the discharge of its function, the selection and appointment process should be clearly defined. The process should be participative. The CSOs should have a representative in the nomination and, if possible, in the appointment of members. Regarding the criteria on qualification, the standards must be very clear.
- ☞ Several modes of selection should be availed of. Open and unrestricted rules and traditions such as the healthy dynamics between



a political party and an opposition party should effectively play a part. In the case of a presidential appointee, a clear-cut process must be used – a council may select from among the nominees a short list of candidates whose names will be submitted for final appointment. A separate appointing body may be designated.

- ☞ To ensure sustainability, there must be a fixed term of office on a staggered basis. Composition must be diverse, gender balance duly reflected, and non-partisanship practiced.
- ☞ The established NPM must assert and maintain its independence and integrity. It will protect itself from any pressure or influence exerted against it by any outside party including any of the branches or agencies of government. It must observe the Paris Principle.
- ☞ The methods of work should guarantee active and meaningful participation. The NPM must not be discriminatory – its services being open and accessible to all as much as possible. It must respect and adhere to all the human rights instruments universally in force including those awaiting state ratification. Its functions, operations and overall work should be sustainable.
- ☞ The NPM will exert disciplinary control over all its constituency/ members with proper regulation based on transparent and explicit administrative policies, guidelines and rules.
- ☞ Political immunity and other privileges from suit especially in the legitimate performances of mandate and discharge of functions will be adopted to protect NPM officials and members from obstructions caused by interest groups and other interfering parties.
- ☞ Penalties and other measures of sanction will be implemented for those who interfere and try to influence the procedure and results of NPM reports. The same will be applied among its members and officials to strictly enforce the body's standards.
- ☞ The mandate should strongly reflect OPCAT principles and be closely in step with the protocol's provisions.

**What types of legalization processes can be utilized in order to guarantee the NPM's durability?**

- ☞ The ratification process must be the primary means for legalizing the NPM. However, even before a ratification process can be com-

pleted, the government is mandated to take administrative and legislative measures to prevent torture. Nonetheless, a mechanism apart from domestic law can be established to prevent torture.

- ☞ The establishment of the NPM does not preclude nor pre-empt the passage of an anti-torture law. Its creation should neither be interpreted as a shortcut nor a substitute for an anti-torture law. However, the non-ratification of the OPCAT can prevent the SPT from carrying out visitation functions in the country.
- ☞ Efforts to enact an anti-torture law may be maximized to maneuver for the establishment of the NPM as well. A new provision to that effect can be added into the current anti-torture bill in the Congress. Another option is to propose the creation of the NPM through the implementing rules and regulations (IRR) of the bill.
- ☞ A new law on the creation of NPM may be considered and actively supported.

#### **How can the NPM regularly secure funds outside the budget that is allotted the three branches of government?**

- ☞ The law must guarantee regular and adequate human and financial resources to sustain the NPM.
- ☞ The grant of fiscal autonomy such as state funding through general appropriation may be pursued.
- ☞ Flexibility and diligence in tapping and gathering funds including from non-traditional sources must be practiced. Access to international funding must be made through vigorous networking and linkage building and other means to establish partnerships.
- ☞ The NPM's human resources in the form of staffing and technical expertise must be ensured at the national and local level. The presence of on-ground or field offices of the NPM is compulsory in view of the archipelagic features of the Philippines.

## WORKSHOP SYNTHESIS

The main strands of ideas from the workshop group outputs were presented by Ms. Joy Lascano of BALAY Rehabilitation Center, Inc. The synthesis, being an attempt to put together the major points and general substance of the group discussions to be used as reference in further advancing the idea of the NPM in the Philippines, was accepted and approved. The presenter reiterated just the same that the current review of salient points does not set a final formula but instead only a presentation of the consensus of what each one can continue to build upon afterwards.

The highlights were as follows:

- ☉ The Philippine OPCAT Working Group (POWG) may serve as the technical body whose members are not necessarily candidates for NPM membership. The group may assume the function of endorsing and advancing the creation of an independent NPM in the Philippines. It will assume the following tasks, among others, in support of the NPM agenda:
  - pursue public consultations among identified civil society organizations;
  - continue the networking that has been started with government agencies and civil society organizations;
  - make a short list and inventory of the partner CSOs towards classifying their possible contribution to the NPM in terms of expertise.
- ☉ The designation of the DILG as lead agency to convene the POWG in pursuing the OPCAT agenda in the Philippines (along with other initiatives emerging in the anti-torture legislative work), in accordance with Executive Order 163, designating the department as the focal entity to monitor the GRP's compliance to the CAT naturally delegates it to convene and lead a working group for the establishment of NPM in the Philippines.



- ☞ In relation to the preceding bullet point, a separate oversight role apart from the designated lead position given the government will be extended to the CSO members in consideration of the specifics of their participation.
- ☞ In terms of the design and structure, a new and multi-disciplinary single NPM will be created which will have a national character and have representation from national groups. Its members will serve terms of office on a staggered basis (spread over a period of time).
- ☞ A process of selection will be adopted entailing an identified set of criteria for those who will become members of the NPM. The NPM will be responsible for coordinating the selection process and ensuring the quality of the procedure of election to membership. The

CSO may serve as a watch body for the NPM membership selection.

- ☞ The selection and appointment process has to be inclusive and participative. The right of the CSO to make its own nominations (at the minimum) and to be appointed to some of the seats as members (at the maximum) will be granted.



- ☞ The composition of NPM must reflect equality and has to be unrestricted in terms of the sex/gender aspect. Its orientation, politics and general outlook must be non-partisan.
- ☞ An alternative selection process may involve a separate and independent appointing body to do the selection of the members of the NPM. If the members are to be appointed by the President, a council shall be created to come up with a short list from the nominees whose names shall then be submitted to the President for final approval.
- ☞ In relation to the first consensus on selection, the need for a legislation as a procedural precondition has to be determined and clarified.

## RESPONSES FROM THE FLOOR

**Dr. Amy ABCEDE:** Given the limited time we have for this current workshop and at the same time the considerable amount of work we are anticipating to do for OPCAT especially the NPM, it will be good if we can be informed now if we can expect a follow-up event similar to this meeting. It is now an opportune time to do so while the participants including our counterpart representatives from abroad are still around to clarify, confirm and affirm their participation. May we be advised now as to when the next activity will be scheduled?

**Mr. Enrique GARCIA:** As this will involve a number of practical considerations, we still need to approach the senate for the insertion of additional budget especially for the purpose of organizing another event for OPCAT. But to begin, we can already form a secretariat which will be composed of the attending workshop participants. The initial directory of agencies which can be produced after this current assembly will be used for continuing communications including possible carry-over meetings.

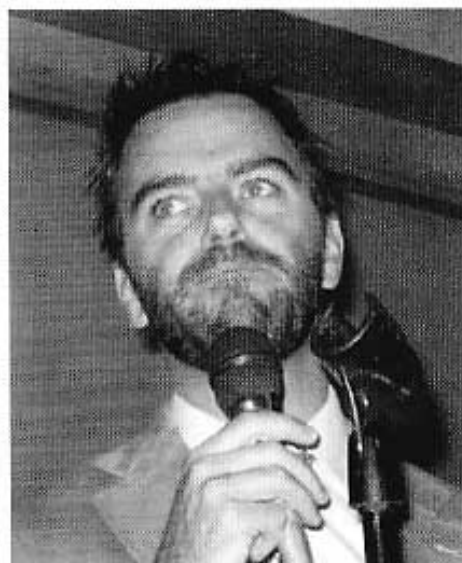
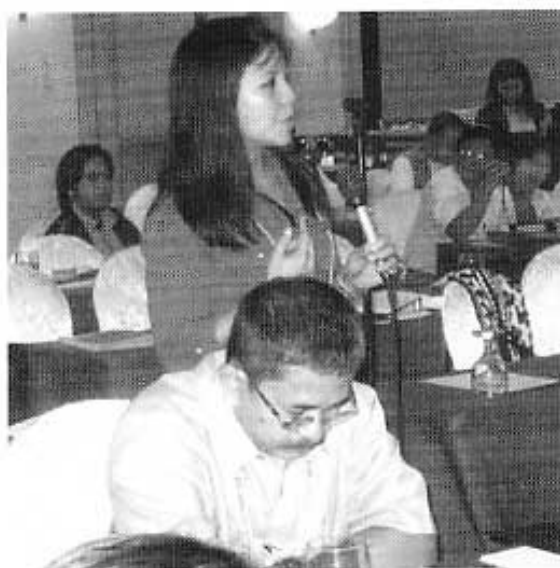
**Ms. Joy LASCANO:** BALAY has already assumed the role of lead convener and has been doing steering work for the secretariat throughout the duration of the preparatory phase up to the actual holding of this workshop event. The practicalities involved such as compiling the profiles and contact details for the directory have been undertaken, not to mention, securing the active involvement of CSOs which are now present. Presently, the most important thing to accomplish is clarify and designate the party/organization which is willing to assume as lead convener or simply as partner-lead convener so we can initiate plans as to the follow-up efforts and a common time line/schedule for organizing the next event.



**Ms. Jane ARZADON :** The Senate Committee on Justice and Human Rights has already spearheaded the legislative procedures for the anti-torture bill and the OPCAT. Ironically, the OPCAT is now still with the committee on foreign relations which has no jurisdiction on its ratification. To harmonize our efforts for OPCAT with our current initiatives for domestic measures on torture, I suggest that ways be worked out so that certain provisions reflecting the NPM element can be incorporated in the anti-torture bill which is now awaiting the second reading and interpolations. We have to take note of a specification in the proposed bill which indicates that within 30 days upon the effectivity of the act, there shall be a formulation with respect to programs, rehabilitation, training, education and a research study, and more or less an oversight committee, to look into the rights of the victim by the groups composed of DOJ, CHR, DSWD and DOH.

Along the same lines, I encourage civic groups such as BALAY and other interested stakeholders to form a group which can provide inputs, proposals, amendments, or any insertion that will be of help in time for the interpolation at the senate floor. I further suggest that a technical working group composed of representatives from various sectors be formed to provide a strong support toward the speedy process and possible approval of the bill on the third reading.

**Mr. Enrique GARCIA:** The first item on the day's agenda is to reflect on and digest the proposals presented in the group workshop. The suggestion made by Atty. Arzadon is a springboard to fast track





our process. The workshop can serve to generate discussions that will then trigger subsequent joint actions for helping push the Anti-Torture bill presented in the senate. There are, however, certain limitations to this possibility. The group may have limited time to digest and decide on the various modes of establishing the NPM, which can be by a separate bill or by riding on the OPCAT law. Right now, we may have to reflect whether to take up the challenge of Atty. Arzadon to constitute a technical working group and provide necessary administrative and technical support for the anti-torture bill.

**Ms. May RODRIGUEZ:** Please clarify whether what you meant is for this group to consider the anti-torture law as a legislation that will create the NPM.

**Mr. Enrique GARCIA:** I am in fact opening two options for reflection – one is to take up the challenge of Atty. Arzadon and ride on the proposed bill now filed in the senate, or to decide and study the earlier workshop output of the group.

**Mr. Carlo CLEOFE:** On behalf of the Task Force Detainees of the Philippines (TFDP), I propose that the secretariat be formed by stakeholders who are actively campaigning on torture prevention such as the UATC, PNAT, DILG, CHR, etc.

Regarding the point raised by Atty. Arzadon, the civil society organizations have always been pushing for the active involvement and participation of more advocates through legislative public hearings and technical working groups and other similar formations. The fact that the OPCAT is now third in the Senate Committee on Foreign Relations' priority list is an indication of the relentless advocacy efforts being exerted by the CSOs such as TFDP, BALAY, MAG, UATC and other groups. The idea of integrating some aspects of the NPM into the bill is being supported by groups who are currently soliciting sponsorships to introduce the monitoring mechanism at the domestic level as an amendment to the bill.



**Mr. Ernesto ANASARIAS:** I wish to acknowledge the discussion on the creation of a secretariat. To shed more light, let me cite one of the relevant output presentations particularly that one from a group which proposed the creation of a Philippine OPCAT Working Group (POWG). Based on that presentation, the POWG will take charge of the task of studying all the proposals and recommendations presented in the workshop. The other tasks that were suggested for inclusion into the mandate of the POWG are conducting research,

producing position papers and other technical support. The POWG may be composed of representatives from CSOs, especially the networks and the NGOs, and the GOs which have been actively involved in the freedom from torture campaign.

Since the POWG is a technical support group and not a consortium or body of conveners, the idea is to keep it small. The identified members of this group can begin discussing on the proposal raised by Atty. Arzadon. Meanwhile, the point raised by DL Abcede warrants confirmation as to whether the present participants will agree to the said proposal on the secretariat as well as on the lead agencies that were identified as prospective members of POWG as mentioned in my earlier presentation.



**Dr. Renante BASAS:** The creation of a secretariat rather than the TWG is more practical right now. Even if the participants do not agree on the creation of the technical working group, it must be realized that the secretariat as a functional group has the capacity and may have the sense to form the TWG.

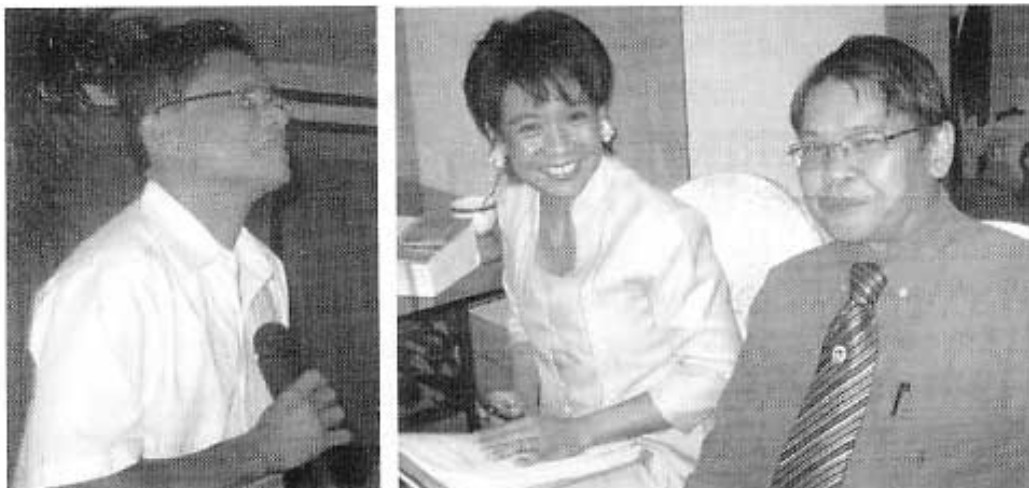
**Ms. Jane ARZADON :** May I just emphasize at this point that even without the push from the CSOs or other agencies, the Senate Committee on Justice is set on thrusting the anti-torture bill forward. The committee is strongly committed to the cause of human rights and the uplift of human dignity. This is affirmed by the various position papers and dossiers of testimonies that the committee has so far produced. The invitation to this workshop is an acknowledgment of the

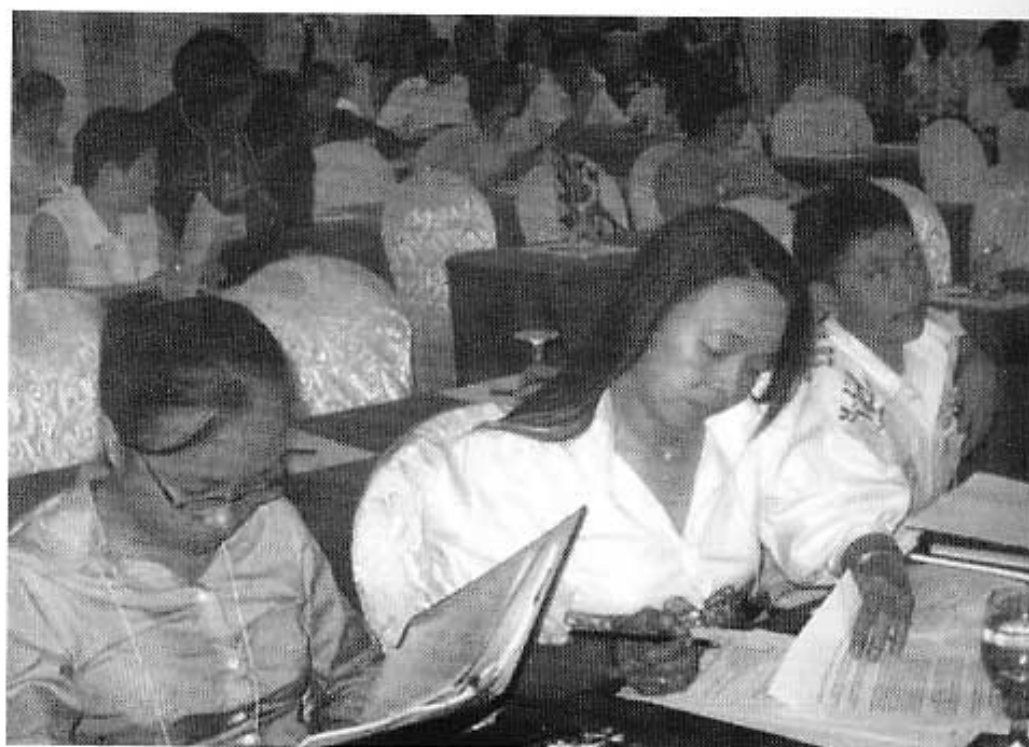
agency's expertise on the intricacies and structures related to the bill. The committee's assistance can be of help in speeding up the process of the legislation.

**Ms. May RODRIGUEZ:** The matter of the working group and its composition seems to have been already resolved but the issue on the composition of secretariat remains unsettled.

**Dr. Renante BASAS:** The idea is to form a secretariat which will facilitate the formation of a working group. Some participants cannot commit their organizations right away hence it will be more appropriate to have the secretariat that will facilitate the formation of the TWG later on.

**Mr. Ernesto ANASARIAS:** Currently, the steering function is being handled jointly by BALAY and CHR with the backing of the members of the UATC. These groups have worked together to carry out the secretariat work for this current workshop. On BALAY's behalf, I signify continued commitment and support for the human rights community's and the CSO's continuing agenda for OPCAT. At the same time, we will gladly welcome more groups which are interested to help with some of the secretariat work, in addition to the support extended by other advocacy partners such as DILG and the PHRC. Our next step is to enjoin the participation of the DSWD, DOH, and other concerned executive agencies.





**Mr. Carlo CLEOFE:** Having been presented with the clarifications by our colleagues, I respectfully withdraw my initial proposal on forming and identifying the secretariat group.

**Mr. Ernesto ANASARIAS:** On our end, we acknowledge the relentless support being extended by the UATC, TFD and CHR, among others, in advancing the cause of OPCAT and in promoting awareness towards protection from torture and the respect of human rights. The goodwill which Balay has gained over time within the local human rights community as well as with our international partners was only possible with the support of these organizations.

**Mr. Philippe TREMBLAY:** I wish to raise a concern on the matter of introducing pertinent amendments to the legislation on the anti-torture bill. I just feel that sufficient time is needed for the additional efforts involved in hammering out the appropriate amendments such as the work of conducting strategic planning for the purpose. It might be safer and more feasible to let the said bill push through, and later, work on the NPM legislation that will complement the anti-torture bill.

**Mr. Carlo CLEOFE:** The prospective amendments to the anti-torture are not an equivalent or compensatory replacement for the NPM. The idea for the amendments is to maximize the benefits of the bill specifically through a protection mechanism that will allow the monitoring of detention places. This move is strategic – a point that can swing votes in the event of OPCAT ratification, as the legislators would likely throw their support behind the OPCAT when there is already a concrete mechanism that is in place. The position of the TFD is to push for the Anti-Torture Bill and at the same time campaign for the OPCAT ratification. While the OPCAT is now third in the priority list of the processing committee, the prospect of having the two major treaties being ratified by Congress comes as a challenge. At the same time, as the national election is set on 2010, we anticipate changes in the year 2009 in terms of campaign maneuvers, the political spectrum at play and the political climate in general. In view of these, we are intensifying our current campaign for the OPCAT ratification.

**Ms. May RODRIGUEZ:** Are there any more clarifications or objections on the matter of the secretariat composition and spearheading?

**Ms. Auxilium TOLING- OLAYER:** I want to reiterate that the current committee-cum-secretariat that coordinated this workshop was a collaboration of BALAY, CHR, DILG and UATC. This was already said earlier by Mr. Anasarias who had also noted the importance of partnerships and cooperation as these are the elements that provide the backbone of our efforts towards the realization of the OPCAT campaign. For now, the DILG works as lead convener in accordance with the pertinent administrative order.

## Ms. Auxilium TOLING-OLAYER

Executive Director

BALAY Rehabilitation Center

### SUMMARY OF EVENT AND CLOSING REMARKS

**I**n closing, allow me to refresh your mind on the highlights of what transpired yesterday and today. On the highlights, the first day was quite heavy. Strong statements were issued particularly on concerns related to OPCAT and the NPM. The inputs confronted us with many things that have to be continued considering and reflecting on even beyond the duration and confines of this current workshop.



Providing evidence to this activity is a television coverage which was aired last night. News write-ups also came out in the papers today, providing the public with glimpses of this OPCAT workshop and highlighting the work which local and foreign advocates are doing to improve the human rights situation in the Philippines, including the country's penal systems.

The discussions in the last two days surfaced major points.

One of these was raised by Chairman De Lima regarding the prison visits of the CHR which were not granted by facility authorities. There was also a similar incident involving the Committee of Human Rights from the House of Representatives who were prevented from visiting a particular detention center. The statement made by Executive Secretary Eduardo Ermita on the likely deferment of the implementation of the OPCAT for 3-5 years was a temporary letdown. Despite that, Ms. Lou dela Cruz urged for persistence and invited us to keep on and maximize the positive momentum already gained through this workshop towards the final ratification of the OPCAT and the setting up of the NPM mechanism.

We must also note the particular groups actively pushing for the continuance of the OPCAT agenda despite emerging apprehensions on deferment; these are the members of the UATC and that includes BALAY, TFD, MAG, and FIND, along with the CHR, PCHR, DSWD, DOJ, DOH and many other partner organizations which are explicitly supporting the elimination of the practice of torture in the Philippines.

Another highlight was the presentation made by Police Superintendent Borrinaga on the BJMP structures, programs, systems and management systems within the prison jails.

We also heard Mr. Romy Castillo, a torture victim during the martial law period, recount inhumane experiences in the hands of his military custodians. Romy's experience depicts painful memories that haunt many torture victims and survivors in the country including myself.

We take note of more highlights on the first day of this workshop.

Ms Louise Aaen gave us a background of the OPCAT and the important components of the SPT and the NPM. Her presentation was significant in providing basic understanding of OPCAT and the mechanisms it entails for an effective domestic implementation.

Commissioner Cardona presented the importance of human rights monitoring on the prevention of torture incidences in places of detention and to keep track of detention conditions towards guaranteeing that they conform to international standards.

Dr. Ben Molino cited NGO findings on the cases of torture, which occur prior to and during actual detention within the country's prison institutions. Dr. Molino's presentation pointed to marked trends on the practice of torture especially during the martial law period as supported by statistics and concrete evidences showing heavy physical inflictions on the victims. According to him, dead bodies bearing torture marks were uncovered in some detention sites. Dr. Molino also talked about the various kinds of diseases that commonly develop among the inmates during the time of detention. The infections are acquired from the immediate environment which unable to cope with congestion, lacks sanitation and is vulnerable to unsafe sexual activities.

Mr. Philippe TREMBLAY discussed the challenges on designating the NHRI and NPM. According to him, a good NPM must be functional and independent, must have the mandate to carry out preventive visits, and possess specific power and authorities including the mandate to make recommendations and publish reports.

Ms. Suraina Pasha gave us information about the Asia Pacific Forum for NHRI. She advised that the APF has established a legal advisory body called an advisory council of jurists whose function is to provide



legal counsel in difficult cases associated with remedy gaps in the current penal system. The advisory council also extends service regarding right to education, death penalty, torture, and other concerns related to the domestic implementation of OPCAT. Ms. Pasha also presented the involvement of APF in the development of NHRI in New Zealand and with other human rights commission.

The above-mentioned constituted the major presentations and the most salient points raised on the first day of this workshop.

Today, a major presentation was made by Mr. Ernesto Anasarias on "Seizing Opportunities: Moving the OPCAT Campaign in the Philippines Forward" which contained the results and outcomes of an earlier workshop that was organized and conducted by members of the local civil society together with the stakeholders from other sectors in country. The presentation briefed us on the core unities with respect to OPCAT that was arrived at in the previous consultation, including possible options on the nature of the prospective NPM, its composition, criteria for selection, and form of the mechanism.



The last part, the workshop group session, is the most substantive feature of this two-day event. In this group session, we derived the most meaningful products that we can possibly have from this current workshop. The inputs from the group session enabled us to draw inspiration as to the form, composition, criteria, functions, and other components of the NPM which we hope to set up in the country in support of OPCAT.

And so, that is our recap for the last two days' activities. I am sure that this event provided all of us with productive experience – we have learned a lot about OPCAT and the importance of building a torture free society. Now we have the resources we need for making our dream of ending torture in the Philippines come true.

On behalf of our partners, the Commission on Human Rights (CHR), the Rehabilitation and Research Centre for Torture Victims (RCT), the Association for Prevention of Torture (APT), the Asia Pacific Forum (APF), and of course the members of the United Against Torture Coalition (UATC), BALAY wishes to thank everyone for coming and supporting this event.

**Honorable Cecilia Rachel V. QUISUMBING**  
Commissioner  
Commission on Human Rights

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**I**t is my honor to close this workshop on the implementation of the OPCAT and the establishment of an NPM in the Philippines. Credit for the wide array of participants must be given to the organizers – our Assistance and Visitorial Office, BALAY, APT, APE, our other partners from the CHR, the local and international organizations, and the government. It is a demonstration that it is possible to have multi-sectoral and even cross-border efforts to help fight and prevent torture.

It has been twenty-one years since the Filipino people rejected an authoritarian government whose reign was marked by repression – by torture, disappearances and extra-judicial killings. Twenty-one years have passed since a constitution was framed – putting human rights as state policy and principle and creating the Commission on Human Rights. We hope that we can now move to the next step because twenty-one years ago, Cory Aquino under her powers, and in stark contrast to the Marcos regime, had signed and acceded to the Convention against Torture. So you can see that it is now time for us to move on to the next step, which is prevention.

As we celebrate the 60<sup>th</sup> year of the Universal Declaration on Human Rights, we welcome this effort by civil society in partnership of course with the CHR and the government, to try to develop a mechanism, laws, and policies, that will help build a much stronger human rights-oriented system of correction and detention – a system wherein the rights even of people who had been convicted will be respected.

We must not forget that, often, the conditions in jails can be blamed on a lack of resources. However, that is only one of the challenges. I would like to point out to our partners in the senate, as well as the house – if there are any here from the Congress, that the issue of resources is still an important part of living up to our obligations. Having decent conditions in jail, one will go a long way towards humane conditions – not only for the people who are there but also for the people who work there. That is because when we are in conditions that are

not humane, we are less humane ourselves. It is much easy to give in to basic instincts when we are in an environment that does not recognize we are human.

For the past two days, and having heard the summary, I am sure you have talked about the legal framework and debated on which comes first – chicken or the egg. Should ratifying the OPCAT or having laws create a preventive mechanism? The good thing is that, it can be either the OPCAT or a domestic law, because when we do ratify an international treaty, then the Philippines is obligated to implement.



However, I would like to remind you that it has been 21 years since we signed the OPCAT and we still do not have a law against torture. Thankfully, our legislators are now working on it. But I would just like you to keep in perspective that ratification sometimes does not lead to an immediate domestic law or domestic implementation.

The Indigenous Peoples Rights Act though, is an example of a local law that comes even before the Philippines has signed any international obligations. In the same way, the legislators have been discussing this anti-torture act. Thank you very much to our participants from the senate for suggesting a coordinated effort to help the committee – not just the Committee on Justice but the Committee on Human Rights. On our end at the CHR, we would like to focus on those words and will constantly remind Senator Escudero to continue working on their fulfillment. While it is the Committee on Foreign Affairs that has the main jurisdiction on scheduling this, we would like to encourage Sen. Escudero as the chairperson of that committee, to work closely with the committee on foreign relations, because then he can be the advocate within the senate itself.

Strangely enough, I may have points taken away from me as regards the Senate Foreign Committee because they wanted me to go there this afternoon to help them with the ratification of the Asean Charter. I really wanted to go because if you get *pogi points* (plus points) on one



issue, then maybe they will be more helpful on another issue. But since we have someone here who is close to the senate anyway, we have pledged instead that we will give technical assistance for that.

The International Committee on Red Cross (ICRC) has also helped paved the way towards, hopefully, an effective legislation on torture. They have been doing work on educating legislators in the house and in the senate on international humanitarian law. There seems to be much greater awareness now amongst the people who can set our legal framework.

The President has ratified – not just signed – but ratified the OPCAT and under our constitution, the senate is supposed to concur with it. However, with the news that they would like to defer for 3 years, I'd like to encourage you to not take that badly.

Let us keep our eye on the prize which is ratification and implementation. It has been a while and our friends from BALAY can certainly tell how long they have been campaigning. The idea that the president's office has already ratified is a major step forward. So let us keep our eye on that longer term. The deferment of implementation for an-

other 3 years once it is ratified should not keep us inactive because we can still continue working on the other aspects of the campaign against torture. There are other steps forward including conducting public education and awareness-raising.

What are the ways that OPCAT can already be implemented even not in a legal framework? Do we really have to wait for a law to tell us that this work should be done? Did the Task Force Detainees wait for a law to say that someone has to go and look at the conditions in the martial law detention centers?

Someone has to start listing the number of the disappeared and their names. We are all advocates here. This workshop and all the work you have done before are examples of the work that can be done and needs to be done even without waiting for the law to tell us what can be done.

We can already start discussions with the officials. Where do they see the possible blocks? Let us not wait for a law. This cooperation that we already have started can be strengthened – activities can already begin – so that we can know what to have in a preventive mechanism. We can already start developing the kind of a database we need. We can start lobbying with the senate and with congress to give more money – so that they can improve the conditions of the people in detention. We can target not only the BJMP and other agencies, but also other public and private outfits so that there can be efforts in terms of law and money for the anti-torture agenda towards a preventive mechanism.

There are many opportunities coming up at the same time as our politicians have set their eyes on 2010. That is not very Zen-like because Zen teaches meditation and focusing on the moment. But since they have already set their eyes on that, then let us throw the challenge on them.

How many of these candidates are human rights-oriented? Let us see which mayors and governors, because they also have some jurisdictions. Which senators and congressmen, which presidentiables and vice presidentiables are going to make commitments for human rights specifically for addressing and preventing torture?

It is budget time now. We can spot the lawmakers and track their voting records on issues that affect torture or the prevention of torture,

and make that an advocacy issue during campaign times. This is a way to make our voices heard as advocates even without the ratification and even without legislation.

But this workshop certainly has come forward with some very good, concrete recommendations. I hope to be able to help raise some funds so that we can continue this work, because we cannot stop at just the workshop. I certainly hope that eventually we will have some mechanism on this in the next year whether or not OPCAT has been ratified by then, and whether or not the government or the administration wants to have one. We can start one on our own.

Thank you.

## LIST OF PARTICIPANTS

NAME	ORGANIZATION/AGENCY
1. May Rodriguez	National Union of Journalists of the Philippines (NUJP)
2. Romy Castillo	Bukluran ng Manggagawang Pilipino (BMP)
3. Rio Magpayo	PLCPD
4. Josie F. Flores	Philippine Human Rights Information Center
5. Gerasma Balingasa	LGU - Masbate
6. Amy Abcede	Medical Action Group (MAG)
7. Gilda M. Wong	Baguio Gen. Hospital, Baguio City
8. Benito E. Molino	PHILFORENSICS
9. Lenin Castillo	Families of Victims of Involuntary Disappearances (FIND)
10. Rita Melecio	Task Force Detainees of the Phil. (TFDP)
11. Li Daep	Documentor
12. Boyet Rimban	Documentor
13. Emilio Caoagdan	PNAT
14. Dr. Rene Cam	National Bureau of Investigation (NBI)
15. Byron Bocar	AKBAYAN
16. Roseta V. Ocampo	PHILRIGHTS
17. Thea Alberto	Phil. Daily Inquirer (PDI)
18. Chairperson Leila M. de Lima	Commission on Human Rights (CHR)
19. Comm. Cecilia Rachel V. Quisumbing	CHR
20. Comm. Ma. Victoria V. Cardona	CHR
21. Comm. Norberto de la Cruz	CHR
22. Atty. Jacqueline V. Mejia	CHR
23. Atty. Homero Matthew P. Rusiana	CHR
24. Atty. Flora C. Atilano	
25. Dr. Renante A. Basas	CHR
26. Ms. Karen G. Dumpit	CHR
27. Ms. Ana Elzy E. Ofreneo	CHR
28. Atty. Leizl Parajas	CHR
29. Mr. Ronnie Rosero	CHR - NCR
30. Atty. Mary Grace R. Manzano	CHR - CAR
31. Atty. Daisy R. Limos	CHR - RO 1

32. Atty. Mariano V. Martin	CHR - RO 2
33. Atty. Joey G. Tokias	CHR - RO 3
34. Mr. Jolly P. Torres	CHR - RO 4
35. Mr. Reynaldo A. Matociños	CHR - RO 5
36. Atty. Petrarch G. Torato	CHR - RO 6
37. Mr. Felino Y. Dulzura, Jr.	CHR - RO 7
38. Mr. Praxedes P. Eria	CHR - RO 8
39. Mr. Raul Quiboyen	CHR - RO 9
40. Atty. Jeanne Ivy F. Abrina	CHR - RO 10
41. Mr. Emiliano A. Cajés, Jr.	CHR - RO 11
42. Mr. Jenudin Ulangkaya	CHR - RO 12
43. Dr. Joseph Andrew D. Jimenez	CHR - AVO
44. Ms. Flordeliza A. Briones	CHR - AVO
45. Mr. Marcial A. Sanchez, Jr.	CHR - AVO
46. Ms. Milagros M. Escobar	CHR - AVO
47. Ms. Delia M. Arciaga	CHR - AVO
48. Mr. Jun O. Mabini	CHR - AVO
49. Atty. Marilyn M. Pintor	CHR - CARAGA
50. Atty. David M. Bermudo	CHR - 11
51. Absalon Empleo	PNAT
52. A. R. Azas	CHR
53. Dante E. Armedilla	CHR
54. Mario Cruz	CHR
55. Lynda Agban	CHR
56. Corazon S. Tin	CHR
57. Charito G. Fernandez	CHR
58. Psyche F. Dorona	CHR
59. Dominic G. Morales	CHR
60. John Miller Llasus	CHR
61. Julius Schuck	CHR
62. Aureo D. Hermosura	CHR
63. Maria Teresa Antazo	CHR
64. Edna E. Obuyes	CHR - Caraga
65. Atty. Belly F. Saligumba	CHR



66. Robert P. Alcantara	CHR
67. Dr. Tammy L. Uy	NBI - Cagayan de Oro City
68. Ma. Liduvina F. Dorion, MD	
69. Enrique Rey Garcia	Department of Interior and Local Government (DILG)
70. PSI Jonalyn C. Puday	PNP - Human Rights Affairs Office (HRAO)
71. Ma. Christine Nare	Department of Social Welfare and Development (DSWD)
72. Atty. Mary Joy Segui	DSWD
73. Dr. Judy Ann Dumayas	LGU - Iloilo
74. Eden C. Mariño	DSWD - Central Office
75. Supt. Carolina C. Borrinaga	BJMP
76. Joy Glaizy Anne Leonor	BJMP - CO
77. Jane Arzadon	Senate Justice Committee
78. Emilio A. Gonzales III	
79. Soraya de Guzman	National Statistics Office (NSO)
80. Eddie Valdez	Office of Senator Escudero
81. Victor Caguimbal	PHRC
82. Severo Catura	OP-OES/PHRC
83. Enrique Rey Garcia	DILG
84. Col. Benedicto Jose	AFP - Human Rights Office
85. Saina Rahman Khan	ODIKHAR
86. It Sath	OHCHR
87. Suraina Pasha	Asia Pacific Forum (APF)
88. Philippe Tremblay	Association on the Prevention of Torture (APT)
89. W.A.L. Weerasinghe	Retired Commissioner of Prisons - Sri Lanka
90. Jessica Ngatai	HRC - New Zealand
91. Dr. Lao Mong Hay	AHRC - Hong Kong
92. RG Cruz	ABS-CBN
93. Roy Pelotillo	Manila Standard
94. Tristan Lizardo	ABS-CBN
95. Donrit Ree Akselbo	RCT
96. Silvino Pereira	National Human Rights
97. Maria Verolial	National Human Rights

98. Jean Bertrand	French Embassy
99. Lei Alviz	GMA 7
100. Arnel Gomez	GMA 7
101. Maricel Halili	IBC 13
102. Edmund Sulile	IBC 13
103. Kiko Daguho	RPN 9
104. Edward Ortiz	RPN 9
105. Willy Indac	RPN 9
106. Gloria Baylor	PNA/ OPS
107. Alex Belgica	GMA 7
108. Emmanuel Tupas	
109. Jhomer Santos	Sunshine TV
110. Jimmy de la Cruz	Sunshine TV
111. Alexis Romero	Business World
112. Aileen Intia	GMA - DZBB
112. Roger Cruz	DZRB
113. Emily Bugarin	Tempo
114. Kris Jose	Remate
115. Joyce Pañares	Manila Standard
116. Jocelyn Montemayor	Malaya
117. Christine Avendaño	Inquirer
118. Jojo Sicat	DZRJ



The Workshop was jointly organized by

**BALAY REHABILITATION CENTER, INC.**

and the

**COMMISSION ON HUMAN RIGHTS  
OF THE PHILIPPINES**

in cooperation with the

**REHABILITATION & RESEARCH  
CENTER FOR TORTURE VICTIMS  
(RCT-Denmark)**

**ASSOCIATION ON THE  
PREVENTION OF TORTURE  
(APT-Switzerland)**

**ASIA-PACIFIC FORUM OF  
HUMAN RIGHTS INSTITUTIONS  
(APF)**

Published with the support of the

**UNITED NATIONS  
DEVELOPMENT PROGRAM  
(UNDP)**

