

PHILIPPINES

I. INTRODUCTION

1. The Legal Framework

1.1. The Constitution

The Republic of the Philippines has a population of around 83 million people, made up of mainly Christian Malay, with Muslim Malay and Chinese constituting the largest minority groups of the 110 ethno-linguistic groups in the country.¹

The Philippines became independent from the United States of America on 4 July 1946 (it had previously been colonised by Spain). It adopted its present Constitution on 2 February 1987, which came into effect on 11 February of that year. According to the Constitution, the Philippines is a Republic consisting of 73 provinces and 61 chartered cities. The Constitution contains a bill of rights, recognising the right to life and liberty, the prohibition of torture and cruel, degrading or inhuman punishment, the right to privacy, freedom of expression, religion and movement, the right to assembly, the right to property, free access to the courts and several rights relating to fair trial and due process in criminal proceedings.² The judiciary is comprised of the Supreme Court, courts of Appeal, *Sandiganbayan*, the third specialized court under the Supreme Court dealing with graft, corruption and other forms of malpractice among government employees, regional trial courts, municipal trial courts and municipal circuit trial courts.³ The Supreme Court is the highest judicial organ and has, *inter alia*, the power to decide on the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation.⁴ The Constitution does not expressly guarantee the independence of the judiciary but provides safeguards against executive interference.⁵

1.2. Incorporation and Status of International Law in Domestic Law

The Republic of the Philippines is party to the following relevant human rights and humanitarian law treaties⁶:

- Genocide Convention (7 July 1950)
- Geneva Conventions (6 October 1952)
- CERD (15 September 1967)
- IESCR (7 June 1974)
- CRC (21 August 1980)

¹ See Core Document forming part of the reports of State Parties: Philippines, UN Doc. HRI/CORE/1/Add.37, 2 February 1994, I.

² See Article III, Articles 1-22 of the Constitution.

³ See Article VIII of the Constitution.

⁴ Article VIII, Article 5 of the Constitution.

⁵ The procedures and practice relating to the appointment, transfer and dismissal of judges are found in Article VIII (Judicial Department) of the Constitution, Rules of Court and Code of Judicial Conduct.

⁶ Date of accession or receipt of instrument by UN.

- Refugee Convention (22 July 1981)
- CEDAW (5 August 1981)
- Convention against Torture (18 June 1986)
- ICCPR (23 October 1986)
- Additional Protocol II to the Geneva Conventions (11 December 1986)
- Optional Protocol to ICCPR (22 August 1989)

Article II(2) of the Constitution stipulates that the Philippines “adopts the generally accepted principles of international law as part of the law of the land” This recognition of the doctrine of incorporation means that international law becomes operative and effective within the domestic legal system without the need for further transformation.⁷ Its applicability in any particular case will depend on the self-executing nature of the rule in question.⁸ Consequently, international law has the same status as national statutory legislation and is therefore subordinate to the Constitution. The Philippines has not enacted any legislation implementing the Convention against Torture.

2. Practice of Torture: Context, Occurrence, Responses

2.1. The practice of torture

Torture and other serious human rights violations were reportedly perpetrated on a large-scale from 1965 to 1986 when the Philippines was ruled by Ferdinand Marcos, especially after the declaration of Martial Law in 1972. Torture and other serious human rights violations, including enforced disappearances, were mainly but by no means exclusively used as part of counter-insurgency operations and were committed by the police, the army and other security forces, including para-military groups, against a wide-range of individuals, particularly political opponents of the regime.⁹ After Corazon Aquino came to power in 1986, several measures were taken to restore democracy and ensure the protection of human rights, among them the adoption of the new Constitution, but torture persisted. The focus of attention during the Marcos dictatorship and the Aquino period was on political crimes. Later on, once the “political crimes” started to decrease it is reported to have shifted to the torture and ill-treatment of suspected common criminals. While common criminals and suspects were tortured and ill-treated during the Marcos dictatorship, their plight was not given due attention then and no data and statistics are available.

Throughout the following years, during the presidencies of Ramos from 1992 to 1998, of Estrada from 1998 to 2001 and now President Arroyo, torture and ill-treatment have continued to be widely reported, now resorted to mainly in the context of the criminal investigation system.¹⁰ Presently, torture is said to be

⁷ See José M. Roy III, *A Note on Incorporation: Creating Municipal Jurisdiction from International Law*, 46 *Ateneo Law Journal* 635 (2001), p. 635, citing the case of *U.S.A. v. Guinto, et al.*, 182 SCRA (1990) in which Justice Cruz explained the nature and consequences of the doctrine of incorporation.

⁸ *Ibid.*, p.636.

⁹ According to FIND, the Families of Victims of Involuntary Disappearance, a domestic NGO, there have been 1,778 victims of disappearance alone during the Marcos dictatorship. See AFAD Statement, International Week of the Disappeared, May 27-31, 20002, Collective Struggle against Involuntary Disappearances in Asia. Several thousands of people were tortured during the Marcos period. The Task Force Detainees of the Philippines opened a Museum of Courage and Resistance (The Martial Law Museum) in which 6,000 documented cases of human rights violations are remembered. See www.tfdp.org.

¹⁰ See Amnesty International, Philippines, *Torture persists: appearance and reality within the criminal justice system*, January 2003, AI Index: ASA 35/001/2003, p.6 and pp.8, 9 for torture techniques used.

predominantly committed by the Philippine National Police (PNP) and, in some instances, especially in the context of the fight against the armed opposition group in Jolo, by the army.¹¹ In the latter case, torture has apparently been employed as part of anti-insurgency operations and directed mainly against members of the New People's Army and the Muslim Moro Islamic Liberation Front.¹² The main purpose of torture committed by the police forces, in the context of a crack down on crime policy, is the extraction of confessions and information. The victims of torture are commonly criminal suspects, and among them often persons with a low social standing, such as street children and drug users. There is said to be a consistent pattern of rape and sexual harassment of women detainees, amongst other forms of torture and ill-treatment.¹³ There are also consistent reports of torture and ill-treatment of children and juveniles.¹⁴

2.2. Domestic Responses

Following the fall of Marcos, the Philippines government has taken several measures aimed at ensuring the protection of human rights and combating torture. The bill of rights was strengthened in the 1987 Constitution. Since then, several laws have been passed with the objective of providing better protection against human rights abuses and strengthening the rights of victims.¹⁵ Moreover, three bodies, the Commission on Human Rights,¹⁶ the Office of the Ombudsman¹⁷ and the Law Enforcement Board¹⁸ were established all of whom are tasked with protecting human rights and ensuring greater public accountability.

¹¹ See Amnesty International: *Philippines: Human Rights must be respected to Arture peace and stability in southern Philippines*, February 2002, AI Index ASA35/001/2002, according to which Philippine military operations against Muslim Artessionist groups and kidnap gangs in Mindanao have been accompanied by persistent reports of human rights violations, including indiscriminate bombardment of civilian areas, and the killing and disappearance of suspected Abu Sayyaf members as well as reports about arbitrary arrest and torture. The conflict in Mindanao dates back to the late 1970s when fighting broke out between the Moro National Liberation Front and Government Forces. Recently, Abu Sayyaf, a Muslim separatist armed group, have carried out operations against the government and have kidnapped civilians for ransom.

¹² See AI, *Torture persists*, supra, pp. 5, 8.

¹³ See Amnesty International, *Philippines, Fear, shame and impunity: Rape and sexual abuse of women in custody*, March 2001, AI Index: ASA 35/001/2001.

¹⁴ *Ibid.*, pp.33 et seq.

¹⁵ See *infra*, in particular V.

¹⁶ The independent office of the Commission on Human Rights was created by Article XIII, Article 17(1) of the Constitution. The Constitution vests the Commission with several powers and functions which are however mainly recommendatory in nature. See Article XIII, Article 18. See also Presidential Executive Order No. 163, which provides guidelines for the operation of the Commission as an independent office to promote the protection, respect for and enhancement for people's right.

¹⁷ The independent Office of the Ombudsman was created pursuant to Article 11, Article 5 of the Constitution. Its main task is to ensure accountability of public employees. To this end, the Office may investigate complaints regarding illegal, unjust, improper or inefficient conduct of public officials. The powers, functions and duties of the Ombudsman are stipulated in Article 13. See also Republic Act No.6670, An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for other Purposes, known as "The Ombudsman Act of 1989."

¹⁸ See Article XI, Article 12 of the Constitution. The PLE Board is the central receiving entity for any citizen's complaint against the officers and members of the National Police for offences that are punishable by disciplinary sanctions, including dismissal. See Article 67 of Republican Act No.8551. known as the Philippine National Police Reform and Reorganization Act of 1998. It shall take cognisance of, or refer a complaint against a police officer to the proper disciplinary or adjudication authority within three days upon the filing of the complaint. These Boards, which are local tribunals under the control of the Department of the Interior and Local Government, are charged with investigating complaints against police officers. They have the power to impose a considerable range of administrative sanctions, including dismissal from the forces but have no further powers with regard to criminal proArutions.

However, several bills which would have led to a substantial strengthening of victims' rights and better human rights protection, particularly separate bills on torture and disappearance, have not found the required majority in Parliament.¹⁹ An Anti-Torture bill was first tabled in the Tenth Congress in 1998 and re-filed up to the present Congress through House Bill 2885 where it is currently at the committee level.²⁰ The various administrations of the Philippines have also been slow to back up the legislative efforts with institutional reforms that would have ensured their implementation.

2.3. International Responses

There have been relatively few recent pronouncements by international bodies or organs on the situation relating to torture in the Philippines, which is largely due to the failure of the Government to conform to its reporting obligations.²¹ In 1995, the Committee on the Rights of the Child expressed its concerns about "the level of violence and the high incidence of ill-treatment and abuse of children, including cases attributed to the police or military personnel."²²

In 2001, the Special Rapporteur on the Rights of Women, in a letter sent jointly with the Special Rapporteur on Torture, advised the Government that she had received information according to which women in the custody of law enforcement officials are particularly vulnerable to torture, including rape and sexual abuse. Moreover, both Special Rapporteurs highlighted obstacles faced by victims in lodging complaints and poor prison conditions in the Philippines.²³

The Working Group on Enforced or Involuntary Disappearances stated that: "it continues to be concerned that little has been done by the Government to clarify the more than 500 outstanding cases ... The Working Group wishes to remind the Government of its responsibilities under article 13 of the Declaration to conduct thorough and impartial investigations for as long as the fate of the victim remains unclarified. The Working Group wishes to express its hope that the Government and the relatives will take steps to clarify the outstanding cases and, if applicable, implement the provisions of article 19 of the Declaration, which entitles the victims and relatives to compensation."²⁴

Only very few communications have been made to the Human Rights Commission under the first optional protocol to the International Covenant on Civil and Political

¹⁹ See infra on Government Reparation Measures.

²⁰ See Alfred A. Araya Jr., *Torture persists in the Philippines - Amnesty International*, 3 February 2003, http://www.cyberdyaryo.com/features/f2003_0203_01.htm

²¹ The Philippines has still neither submitted its initial report to the CAT which was due more than ten years ago on 25 June 1992 nor its report to the Human Rights Committee under the ICCPR.

²² Concluding observations of the Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.29, 15 February 1995.

²³ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, report submitted in accordance with Commission on Human Rights resolution 2000/49, UN Doc.E/CN.4/2002/83, Add.1, 28 January 2002, paras.94 et seq.

²⁴ See Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2002/79, 18 January 2002, paras. 264 and 265.

Rights (ICCPR). One of the most recent concerned violations of 7, 9 and 14 (ICCPR), but the Human Rights Committee found no violation of article 7.²⁵ The Philippines has not recognised the right of individuals to submit petitions under the Convention against Torture (CAT).

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Torture is expressly prohibited under Article 12(2) of the 1987 Constitution: "No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited." Article 19 of the Constitution contains a prohibition of ill-treatment: "1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted, neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it...; 2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."

There is no express prohibition or definition of torture in statutory law. Torture has not been defined in the jurisprudence of the Philippine courts.²⁶ However, Article 1 of the Torture Convention should be applicable in defining torture pursuant to the doctrine of incorporation, which finds support in several court rulings.²⁷

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The substantive law: Criminal offences and punishment

The Revised Penal Code of the Philippines does not include a specific offence of torture. However, torture may be punished under several other offences.

Maltreatment of prisoners is a criminal offence that carries a punishment of over two months to two years and four months imprisonment in addition to the liability of the acting public officer.²⁸ If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender is punishable by up to six years imprisonment, with a temporary special disqualification from public service and a fine, in addition to liability for the physical injuries or damage caused.²⁹

²⁵ But see the dissenting opinion of Solari Yrigoyen. See Communication no. 788/1997.

²⁶ However, the Supreme Court has used the term torture to describe acts of police brutality and "third-degree" methods used to extort confessions. See *People vs Manliguez*, 206 SCRA 812 (1992).

²⁷ See supra, I, 1.2. as well as *Mejoff vs. Director of Prisons*, 90 Phl. 70 (1951) and *Tañada vs. Angara*, 272 SCRA 18 (1997).

²⁸ Article 235(1) Revised Penal Code: "The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, in addition to his liability for the physical injuries or damage caused, shall be imposed upon any public officer or employee who shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge by the imposition of punishment not authorized by the regulations, or by inflicting such punishment in a cruel and humiliating manner."

²⁹ Article 235(2) Revised Penal Code in conjunction with a 1985 Executive Order.

Other criminal offences are mutilation,³⁰ inflicting serious physical injuries,³¹ administering injurious substances or beverages,³² inflicting less serious physical injuries,³³ inflicting slight physical injuries and maltreatment³⁴ and threats and coercion,³⁵ which carry penalties ranging from a fine to thirty years imprisonment.

Homicide³⁶ and murder³⁷ are punishable by over twelve years to twenty years imprisonment or the death penalty. Rape carries a punishment of thirty years imprisonment and, under aggravating circumstances, can include the death penalty.³⁸ This penalty will be imposed if the victim is under the custody of the police or military authorities or any law enforcement or penal institution. It will also be imposed if the rape is committed by any member of the Armed Forces or paramilitary units, the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.³⁹ Taking advantage of a public position constitutes an aggravating circumstance for any crime.⁴⁰

Principals, accomplices and accessories are also criminally liable.⁴¹

Chiefs of Police and other disciplinary authorities may impose disciplinary sanctions ranging, depending on the seriousness of the offence, from withholding of privileges, restrictions, suspension or forfeiture of salary to dismissal.⁴²

2. The Procedural Law

2.1. Immunities

There are no amnesty laws covering acts of torture.⁴³

³⁰ Article 262 Revised Penal Code.

³¹ Article 263 Revised Penal Code.

³² Article 264 Revised Penal Code.

³³ Article 265 Revised Penal Code.

³⁴ Article 266 Revised Penal Code.

³⁵ Articles 282-286 Revised Penal Code.

³⁶ Article 249 Revised Penal Code.

³⁷ Article 248 Revised Penal Code. According to Article 248 (6), murder is the killing of another person with cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

³⁸ Article 266 A) and B) Revised Penal Code, as amended by Republic Act No. 8353, known as "The Anti-Rape Law of 1997."

³⁹ *Ibid.*, Article 266, B) (2) and (7).

⁴⁰ Article 14 (1) Revised Penal Code.

⁴¹ Articles 16-19 Revised Penal Code.

⁴² See Republic Act No. 8551, known as the Philippine National Police Reform and Reorganization Act of 1998, Title VI, Articles 52 et seq.

⁴³ See on previous amnesties issued by President Ramos in 1994 in relation to the past conflict, which however did not cover torture, and are now no longer in force, Jacob Milton C. Divino, *Delicti Jus Gentium: A Limitation on the State's Power to Grant Amnesty*, *Ateneo Law Journal*, Vol. 40 (1995) No. 1, 202-250, pp. 211 et seq.

2.2. Statutes of Limitation

Criminal offences are subject to statutes of limitation. The limitation period is twenty years for crimes punishable by death or imprisonment of more than twelve years. Other crimes prescribe after fifteen years with the exception of crimes carrying a punishment of up to six years, which prescribe after ten years, and those punishable by up to six months imprisonment, which prescribe after five years.⁴⁴ Accordingly, each of the criminal offences applicable in lieu of a specific offence of torture is subject to varying prescription periods: maltreatment is prescribed after ten years, serious physical injuries and mutilation after fifteen years, and rape and murder after twenty years.

2.3. Investigations

2.3.1. Criminal Investigations

A victim of torture can file a complaint relating to the perpetration of a criminal offence, but must follow the requisite preliminary investigation procedures. In particular, an initial complaint would be investigated by the competent Provincial or City officer, and/or the National and Regional State Prosecutors, judges of the Municipal Trial Courts and Municipal Circuit Trial Courts or other officers authorised by law.⁴⁵ For other offences, the victim may file a complaint directly with the Municipal Trial Courts or the Office of the Prosecutor.⁴⁶ The complaint must include the address of the suspect and must be accompanied by affidavits and statements as to witnesses as well as other supporting documents to establish probable cause.⁴⁷ A complaint must be in writing and has to satisfy several formal requirements.⁴⁸ A detainee may bring a complaint when brought before the judge at an inquest procedure.

The Commission on Human Rights, the Office of the Ombudsman, police officers and public officers charged with the enforcement of the law as well as the city, provincial and state prosecutor are tasked to investigate violations of civil and political rights, including torture. The Internal Affairs Service is in charge of investigations into the conduct of the police.⁴⁹ This type of investigation may be initiated by complaint or *proprio motu*, in cases of incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of a police operation or where a suspect in the custody of the police was seriously injured.⁵⁰ Immediate superiors or

⁴⁴ See for prescription of crime, Article 90 Revised Penal Code.

⁴⁵ See Rule 112, Articles 1, 2 and 3 Revised Rules of Criminal Procedure.

⁴⁶ Rule 110, Article 1, Rule 112, Articles 9 and 10 in conjunction with Article 3 (a) of the Revised Rules of Criminal Procedure.

⁴⁷ Rule 112, Article 3 (a) Revised Rules of Criminal Procedure.

⁴⁸ Rule 110, Article 2: "The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved"; Art.3: "A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated"; Art.6: "A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed."

⁴⁹ Article 39, Republic Act No.8551, known as the Philippine National Police Reform and Reorganization Act of 1998.

⁵⁰ Ibid.

supervisors of the personnel under investigation are automatically included in the investigations.⁵¹ The Internal Affairs Service will automatically recommend the dismissal or demotion of any uniformed member of the National Police found guilty of wrongful conduct, including violations of human rights, as well as any immediate superior or supervisor that is found to have acted negligently.⁵²

The applicable procedure depends on the nature of the criminal offence. If the penalty prescribed by law for the offence is cognisable by the Regional Trial Court, a preliminary investigation is required.⁵³ This is the case for murder, rape, serious bodily injury and mutilation but not for maltreatment and similar offences carrying a lesser penalty. When carrying out the preliminary investigation, the prosecutor has to examine the complaint and supporting affidavits and all other evidence, including medical evidence⁵⁴ submitted by the complainant and determine whether the suspect is likely to have committed the criminal offence he or she has been accused of.

If the offence carries a punishment of over six years, i.e. such as rape and murder, any member of the National Police force will be immediately suspended from office by a court for a period not exceeding ninety days upon the filing of a substantiated complaint.

The prosecutor or investigating officer working on the complainant's behalf shall, within ten days after filing the complaint, either dismiss it if he or she finds no ground to continue or issue a subpoena to the suspect.⁵⁵

Where the investigating procedure recommends dismissal, the superior prosecutors or the Ombudsman may disagree with the recommendation and may file information⁵⁶ against the suspect or direct another prosecutor to do so without conducting another preliminary investigation.⁵⁷ The Secretary of Justice may, either upon petition or *proprio motu*, reverse or modify the resolution of the prosecutor, e.g., direct the prosecutor to file the information or dismiss the complaint with notice to the party.⁵⁸

If the investigation continues, the investigating judge reviews the case and transmits his or her findings to the prosecutor or the Ombudsman.⁵⁹ The latter shall review the resolution of the investigating judge within thirty days on the existence of probable cause.⁶⁰ Depending on the outcome of the review, the suspect will be charged with

⁵¹ Ibid., Article 48.

⁵² Article 49 a.

⁵³ Rule 112, Article 1(2) Revised Rules of Criminal Procedure.

⁵⁴ Detainees have the right to medical visits and medical examinations. This is derived from the right to health provided in the Constitution (Article XIII), which can be found in Republic Act No.7438 (An Act Defining Certain Rights of Persons Arrested, Detained or Under Custody and Investigation) and is generally provided for in the prison rules of the respective prison.

⁵⁵ Rule 112, Article 3 (b) Revised Rules of Criminal Procedure. See Article 3 for further procedure in case of subpoena.

⁵⁶ The information is the means by which criminal cases are prosecuted before the Courts. See Rule 10 of the Revised Rules of Criminal Procedure.

⁵⁷ Rule 112, Article 4 Revised Rules of Criminal Procedure.

⁵⁸ Ibid.

⁵⁹ Rule 112, Article 5 Revised Rules of Criminal Procedure.

⁶⁰ Ibid.

the offence or the case will be dismissed. Generally, the decision of the prosecutor not to indict is not subject to review by the judiciary. However, if the complainant can show grave abuse of discretion on the part of the prosecution and raises constitutional issues, he or she can file a petition for *certiorari* with the Supreme Court or with the court of appeal.

In cases not requiring a preliminary investigation, the Prosecutor or the Municipal Trial Court, whichever received the complaint, has ten days to decide whether there is probable cause. The judge may either dismiss the case or issue a warrant of arrest or a summons.⁶¹

2.3.2. The Role of the Commission on Human Rights

The Commission (hereafter CHR) has the power to "investigate, on its own or on complaint by any party, all form of human rights violations involving civil and political rights."⁶² Investigations are carried out by a "Quick Reaction Team", which is composed of a lawyer and an investigator. The team, upon receiving information about a human rights violation, visits the place or area concerned and conducts an investigation in the area, *inter alia*, by taking sworn statements of complainants or witnesses. In cases of alleged torture or in other cases upon request of a victim, a doctor is made available to conduct a medical examination of the victims. If the evidence establishes a *prima facie* case, the Commission recommends the filing of appropriate charges for prosecution by the Department of Justice.⁶³ Subsequently, the Commission monitors the status of the case. It has however no powers of enforcement. In 1995, the CHR entered into a memorandum of agreement with the Department of Justice, according to which CHR lawyers have been designated as special counsels to assist Department Of Justice prosecutors in the litigation of cases involving human rights violations.

2.4. Victims' Rights

Torture survivors have, as victims of serious crimes, several procedural rights during the criminal process, such as the right to counsel, to secure witnesses and to subpoena records and documents. Moreover, if the authorities fail to investigate and/or prosecute, a torture survivor may file a criminal action of dereliction of duty against those responsible.⁶⁴

A witness, including a victim who wishes to testify, enjoys certain rights and benefits under the Witness Protection, Security and Benefits Programme implemented by the Department of Justice.⁶⁵ A witnesses admitted to the programme has the right to a secure housing facility, assistance in obtaining a means of livelihood, securing his or her employment, provision of travel expenses and subsistence, free medical treatment for any injury incurred or suffered as a result of witness duty, a burial

⁶¹ Rule 112, Article 9 Revised Rules of Criminal Procedure.

⁶²Article XIII, Article 18(1) Constitution.

⁶³ The decision by a lawyer of the regional office of the CHR to dismiss a case will be reviewed by the Regional Director of the CHR upon appeal.

⁶⁴ Article 203 Revised Penal Code.

⁶⁵ According to Article 2 of Republic Act No. 6981, 24 April 1991, known as Witness Protection, Security and Benefits Act.

benefit for the heirs if a witness is killed, and free education for his or her minors in case of death or permanent incapacity.⁶⁶ Moreover, harassment of a witness is made a criminal offence that carries a penalty of a fine of up to 3,000 pesos (US \$ 54.75), or up to one year's imprisonment, and permanent disqualification from holding public office in the case of a public officer.⁶⁷

Victims of rape are entitled to special rights, such as free legal assistance and medical examination.⁶⁸ The authorities shall assist rape victims to hasten the arrest of the offender and the filing of cases in court.⁶⁹ To this end, police officers have an immediate duty to refer a rape case to a prosecutor for inquest, investigation and arrest as well as for counselling and medical services.⁷⁰ The investigating authorities and the courts can take measures to protect a rape victim during proceedings.⁷¹

Finally, the Commission on Human Rights provides financial and medical aid to victims of human rights violations to defray the expenses incurred by the abuse.⁷²

2.5. Trials

The Regional Trial Court or the Sandiganbayan will hear trials relating to torture resulting in the death of the victim on charges of murder. The Municipal or Metropolitan Trial Court has jurisdiction for less serious offences for charges brought in line with the procedure outlined above and after a pre-trial hearing has been held.⁷³ Civilian courts are also competent to hear trials against members of the Armed Forces and other persons subject to military law who commit crimes or offences penalised under the Revised Penal Code, except when the offence is service-connected, in which case the offence shall be tried by court-martial.⁷⁴

Proceedings are largely adversarial and the prosecution has to prove the guilt of the accused beyond reasonable doubt.⁷⁵ The courts have broad sentencing powers; and convicted persons may benefit from executive pardon.

3. The Practice

⁶⁶ Ibid., Articles 3 and 8.

⁶⁷ Ibid., Article 17.

⁶⁸ Article 3 (b) Anti-Rape Law.

⁶⁹ Ibid., Article 3 (c).

⁷⁰ Ibid., Article 4.

⁷¹ Ibid., Article 5.

⁷² See on available legal aid services in the Philippines Carlos P. Medina, [Legal Aid Services in the Philippines, www.pili.org/cle/legal_aid_service_in_the_philippines.htm](http://www.pili.org/cle/legal_aid_service_in_the_philippines.htm). See also the constitutional provision on free medical care, Article XIII, Article 11 of the 1987 Constitution.

⁷³ Rule 118 Revised Rules of Criminal Procedure.

⁷⁴ Article 1, Republic Act No. 7055, 20 June 1991, An Act Strengthening Civilian Supremacy over the Military by Returning to the Civil Courts the Jurisdiction over Certain Offenses involving Members of the Armed Forces of the Philippines, other Persons subject to Military Law, and the Members of the Philippine National Office, repealing for the purpose certain presidential decrees. See for court-martial proceedings Articles of War, 1938.

⁷⁵ See Rule 120 Revised Rules of Criminal Procedure and the Revised Rules of Evidence, 1989.

3.1. Complaints

No statistics as to the overall number of complaints relating to torture are available but various sources demonstrate that a considerable number of torture survivors or relatives of victims have lodged complaints with the authorities or human rights bodies.⁷⁶ However, it is, in particular, detainees, who appear to refrain from complaining. Under the Inquest Procedure, it can take several weeks or months before a suspect appears before a judge, giving him or her for the first time the chance to effectively complain about torture, request a medical examination and have testimonies recorded. At this stage, detainees have often been intimidated and threatened with adverse repercussions, including renewed torture, and may therefore be afraid to complain to the judge in the absence of adequate safeguards and protection.⁷⁷ Besides detainees, women who have been raped in custody have in several cases not lodged any complaints because of fear and the stigma attached to rape.⁷⁸

3.2. Investigations

Investigations opened in torture cases have in several cases been drawn out, lasting for several years without conclusion. In a current case of alleged torture, a panel of prosecutors ruled that the Department of Justice would not carry out any further investigations into the allegations of torture pending review of the death penalty imposed on the accused in 1999 by the Supreme Court as the matter was *sub judice*. As a result, the investigation into this case remained pending for more than six years after the victims had initially brought a complaint against named police officers.⁷⁹ There are indications that the prosecution has been reluctant to vigorously investigate torture allegations against the military. Moreover, investigations against the police are often confronted with a closed and protective police culture. Against this background, investigations are often closed for lack of evidence, especially medical evidence, in spite of the right of detainees to have access to a doctor. Several factors have been identified as contributing to this situation, such as the failure to assert such rights, the carrying out of medical examinations before (and

⁷⁶ See e.g. the figures released by the CHR according to which it received 1,434 complaints relating to violations of civil rights in 1999 alone, of which 809 concerned the right to life, 225 for the right against abuse of chastity, 54 for the right to protection from abuse of authority, 25 for the right of the accused to humane treatment and a speedy trial, 22 for the right to protection of honour and reputation and 79 for the freedom from abuse and neglect as rights of children. See Commission on Human Rights, Annual Performance Report, FY 1999, pp. 5, 6. From January to June 2002, new complaints filed to the CHR were as follows: Murder/Homicide/Execution (92); Torture (4); Disappearance (2); Illegal Arrest/Detention (17); Other complaints (to include 42 rape cases) (359). The data provided in "Summary of Human Rights Violation Cases" dealt with by the Commission in the period January to June 2002 is as follows (categories are those used by CHR): Right to Life (Deprivation of Life (114); Physical Injuries (113); Torture: Mental Assault (6); Abortion (1); Threat/Coercion/ Harassment/Intimidation (82); Wife Battering (1)); Right to Liberty (Abduction, Kidnapping (4); Arrest and/or Detention (58) Disappearance (2); Habeas Corpus (1); Right against Abuse of Chastity (inter alia, Rape (36) and Sexual Abuse (2). Information provided by CHR, Management Information Services Division, PMO. According to the "Breakdown of cases of torture" provided by CHR, there have been a total of 184 cases in the period specified (Incidents occurring from 1987 up to September 2002). While there were over 100 cases in total between 1987 and 1990, reaching its peak with 50 cases in 1988, the average number of cases has been less than ten from 1993 up to date. However, if compared with the other statistical data provided by CHR, the definition of torture used in deriving at these figures appears to be an overly narrow one so that the statistical overview fails to account for all cases that would fall under the definition of torture provided in Article 1 of the Convention against Torture. While in theory following the torture definition of the Universal Declaration of Human Rights and the Convention against Torture, CHR generally record only what the court interpret or what their investigators documented by categorizing torture as minor or serious physical injuries.

⁷⁷ See detailed description in AI, Torture persists, supra, pp.15 et seq.

⁷⁸ See AI, Rape and sexual abuse, supra, p.25.

⁷⁹ See for details AI, Torture persists, pp.30 et seq.

not after) interrogations take place, superficial and insufficient examinations, delays in allowing detainees access to doctors until torture marks have disappeared and the use of torture methods that leave minimal physical traces.⁸⁰

The Commission on Human Rights has, in numerous cases, carried out investigations, rendered forensic services and filed cases in courts with prosecution offices and administrative agencies.⁸¹ However, most of these cases have not resulted in a trial let alone conviction of the perpetrators. The Commission has, on the other hand, been criticised for its investigation methods and the burden it places on torture victims. As a result, in the absence of a recommendation by the Commission to the Department of Justice or to the Office of the Ombudsman to prosecute the alleged perpetrators, a number of cases where torture has been alleged, ended at the stage of the Commission.⁸²

The extraction of confessions by means of torture is illegal and inadmissible under law.⁸³ However, "the defence has the burden of proving that a confession was extracted by means of force, duress, promise or reward."⁸⁴ Judges have apparently often failed to take a proactive stance in ordering investigations into apparent or alleged torture, especially at the inquest stage.⁸⁵ However, there have been cases where the Supreme Court denounced torture and recommended to the Commission on Human Rights and the Philippine National Police to "undertake a thorough and speed investigation of, and impose proper disciplinary sanctions on, Police ... (names of the alleged perpetrators) for the alleged torture of the three (3) accused ... to extort confessions from them during the investigation of ..."⁸⁶

3.3. Prosecutions

While a large number of torture cases remain unpunished, especially those committed during the Marcos era, there have been several torture trials.⁸⁷ A number

⁸⁰ Ibid., p.20.

⁸¹ See Annual Report of the Commission, supra.

⁸² AI, Torture persists, pp.26, 27.

⁸³ See Article 12(3) of the Constitution: "Any confession or admission obtained in violation of this or Article 17 (No person shall be compelled to be a witness against himself) hereof shall be inadmissible in evidence against him." According to the settled jurisprudence of the Supreme Court, for an extrajudicial confession to be admissible it must be voluntary, made with the assistance of competent and independent counsel, express and in writing. See *People of the Philippines vs Elberto Base*, G.R. No.109773, March 30,2000, also for references to other judgments by Supreme Court on this issue.

⁸⁴ Ibid. Quoting several other of its judgments, the court stated that: "... bare assertions of maltreatment by the police authorities in extracting confessions from the accused are not sufficient in view of the standing rule enunciated in ... that where the defendants did not present evidence of compulsion, or duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, all these were considered by this Court as factors indicating voluntariness."

⁸⁵ AI, Torture persists, pp.15 et seq.

⁸⁶ See *People of the Philippines vs. Manliguez*, 206 SCRA 812 (1992). The Court also stated that: "Inhuman physical torture is the easiest means of obtaining "evidence" from helpless civilians when police investigators are neither sufficiently trained for detective work, nor adequately equipped, with the scientific tools of criminal investigation. An end should be put to such police brutality."

⁸⁷ According to the statistics provided by the CHR, out of a total of 255 cases in 1999 of human rights cases filed with various courts 166 (65.09%) were dismissed while defendants were only convicted in 26.67% of cases, the remaining percentage resulting in an acquittal. See Annual Report, supra, p.2.

of these trials has been prolonged and ended without a conviction. This has also been attributed to the working of the judiciary, which is seen as favouring those in influential positions. However there have been convictions resulting in heavy punishments in several high profile cases. In three cases decided by the Supreme Court on appeal in 1987, 1991 and 2002, the perpetrators, i.e. members of the army, the civilian home defence and the police respectively, were all punished with life imprisonment in the first two cases, in which the victims were first tortured and then murdered, and to death in the third case of rape in custody.⁸⁸ Moreover, two other verdicts of rape in custody by police officers have been reported, in which the offenders were sentenced to death in 1996 and 1997.⁸⁹

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. Constitutional Law

Article 12(4) of the Constitution stipulates that: "The law shall provide for penal and civil sanctions for violations of this Article (see above) as well as compensation to the rehabilitation of victims of torture or similar practices, and their families." The Constitution does not provide for a right to an effective remedy for the breach of fundamental rights or for a procedure in which to claim reparation for such a breach.

1.2. Civil Law

As a general rule, every person who unlawfully, be it intentionally or by negligence, causes damage to another shall indemnify the latter.⁹⁰ Article 32 of the Civil Code provides for the liability of public officers for damages for violating the Constitutional rights and liberties of another person, as enumerated.⁹¹ While torture is not expressly mentioned in Article 32 of the Civil Code, a claim for compensation can be based on the violation of the freedom from arbitrary and illegal detention, freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, and freedom from excessive fines, or cruel and unusual punishment.⁹² Moreover, Article 33 of the Civil Code provides a legal basis for claiming damages for physical injuries.

Public officers and employees who directly or indirectly violate such rights are personally liable.⁹³ In the leading civil case of *Aberca vs. Ver*,⁹⁴ the Supreme Court

⁸⁸ *People vs Alegarbes*, G.R. No.L-49761, 21 September 1987; *People vs Ravelo, et al.*, G.R. No.78781-82, 15 October 1991 and *People vs Torreja*, G.R. No.132339, 4 February 2002.

⁸⁹ See AI, Rape and sexual abuse, p.15.

⁹⁰ Articles 20 and 2176 Civil Code.

⁹¹ The violation of the constitutional rights in itself gives rise to liability, no bad faith or malice required, see *Lim vs. Ponce de Leon*, 66 SCRA 299.

⁹² Article 32(4), (17) and (18) of the Civil Code.

⁹³ However, in *Lim vs. Ponce de Leon*, supra, the Court held that the subordinate officer was not liable for executing unlawful orders of the superior officer where he was led to believe that there was a legal basis and authority to impound the launch. This line of reasoning will however in all probability not be applicable in torture cases.

⁹⁴ *Aberca vs. Ver*, G.R. No. L-69866, 15 April 1988.

reversed a dismissal and remanded for further proceedings a case for damages arising from human rights violations including the prohibition against torture. The acts were allegedly committed by various intelligence units of the Armed Forces. The Court held that the defendants could not claim immunity for any illegal acts since immunity is only to be granted for acts done in the performance of official duties within the ambit of their powers. It went on to note that Article 32 of the Civil Code encompasses those directly, as well as indirectly, responsible for its violation. Thus, a superior may be held responsible if he fails in his or her duty to properly supervise his or her subordinates.⁹⁵

The State has only assumed liability for the damage caused by the conduct of special agents.⁹⁶ Public officials acting within their scope of duties are personally liable for the damage caused by their intentional or negligent acts or omissions.⁹⁷ Consequently, the State shall not be liable for illegal acts that are *ultra vires* and committed in violation of the rights and liberties of people.⁹⁸

The Civil Code provides for actual or compensatory, moral, nominal, temperate, liquidated and exemplary damages.⁹⁹ The violation of constitutional rights entitles a victim to recover actual and moral damages from the public officer responsible.¹⁰⁰ Actual compensation for pecuniary loss includes the actual loss and lost profits.¹⁰¹ In case of temporary or personal injury, loss or impairment of earning capacity may be claimed as damages.¹⁰² If the amount of damages cannot be provided with certainty but it is evident that some pecuniary loss has been suffered, the Courts can award temperate or moderate damages instead of compensatory damages.¹⁰³ Moral damages may be recovered, *inter alia*, in cases of a criminal offence or quasi-delicts resulting in or causing physical injuries, rape and for the violation of rights as provided for in Article 32 of the Civil Code.¹⁰⁴ Such damages include physical suffering, mental anguish, fear, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.¹⁰⁵ Moral damages are awarded at the discretion of the Court.¹⁰⁶ Finally, exemplary damages may be imposed by way of example for the public good but may not be recovered as a

⁹⁵ Ibid.

⁹⁶ Article 2180 (6) Civil Code. A special agent is one who must be specially commissioned to do a particular task. If the agent is a public official, the task must be foreign to his or her usual scope of functions. Where the agent is not a public official, the State's liability is based on employers' liability. See Cezar S. Sangco, *Philippine Law on Torts and Damages*, 1994.

⁹⁷ Article 2176 Civil Code.

⁹⁸ See Article 2180 (6) in conjunction with Article 2176 Civil Code and *Ministerio vs. Court of First Instance of Cebu*, 40 SCRA (Supreme Court Reports Annotated) 464; also *Isberto vs. Raquiza*, 67 SCRA 116.

⁹⁹ Article 2197 Civil Code.

¹⁰⁰ *Lim vs. Ponce de Leon*, supra.

¹⁰¹ Article 2199, 2200 Civil Code.

¹⁰² Article 2205 (1) Civil Code.

¹⁰³ Article 2224 Civil Code.

¹⁰⁴ Article 2219 Civil Code.

¹⁰⁵ Article 2217 Civil Code.

¹⁰⁶ Article 2216 Civil Code.

matter of right.¹⁰⁷ Such damages may be imposed in case of criminal offences as part of civil liability or in cases of gross negligence.¹⁰⁸

In cases where torture resulted in the death of the victim, his or her heirs may claim damages of around 50,000 pesos (US \$912.4) as well as damages for loss of earning capacity of the deceased.¹⁰⁹ The spouse, descendants and ascendants of the deceased may also demand moral damages for mental anguish suffered by the death of the victim.¹¹⁰ The victim can take legal action against the perpetrators before the Municipal Trial Court, either at the place of his/her own residence or that of the defendant.¹¹¹

While a victim may bring a suit against the individual perpetrator and the State, the latter cannot be sued without its consent.¹¹² A civil suit has to be brought within four years from the time of the infliction of injury.¹¹³ The plaintiff has to pay court fees. Indigent persons, i.e. those without income or those whose income is insufficient to instruct a private lawyer, may receive legal aid from the Public Attorney's Office provided that they pass a merits test and are not already represented by private counsel.¹¹⁴ Legal aid may also be provided by the Commission on Human Rights. A claim for damages arising out of torture based on Articles 32 and 2176 of the Civil Code is independent of the result of criminal proceedings.¹¹⁵ In claims for damages based on other grounds the civil action will be suspended before the judgment on the merits of any criminal case. The civil claim is in these cases also independent of the outcome of the criminal proceedings with the exception of a finding that the act or omission from which the civil liability may arise did not, in fact, exist.¹¹⁶

A preponderance of evidence is sufficient proof.¹¹⁷ The victim has to prove liability and pecuniary loss, whereas the assessment of other kinds of damages, such as moral and exemplary damages, is left to the discretion of the Court.¹¹⁸ As a general rule, costs follow the results of the claim.¹¹⁹ A creditor can enforce the judgment by filing a motion for issuance of a writ of execution with the Court and once granted, it can be enforced by the sheriff in the manner provided by Articles 8 and 9 of Rule 39

¹⁰⁷ Articles 2229, 2233 Civil Code.

¹⁰⁸ Articles 2230, 2231 Civil Code.

¹⁰⁹ Article 2206 (1) Civil Code. The amount of P3,000 has been gradually increased and the prevailing jurisprudence fixes the amount at P50,000. See *Gregorio Pestano and Metro Cebu Autobus Corporation vs Tetimo Sumayang and Paz C. Sumayang*, G.R. No.139875, December 4, 2000 with further references.

¹¹⁰ Article 2206 (3) Civil Code.

¹¹¹ Rule 4, Art. 2, Rules of Civil Procedure, 1997.

¹¹² Article 16 (3) of the Constitution. Consent is implied when the State enters into a private contract or business operation unless it is merely incidental to the performance of a governmental function and when the State sues as a private party unless the suit is entered into only to resist a claim. See Joaquin G. Bernas, SJ, *The 1987 Philippine Constitution: A Reviewer-Primer*, 3rd ed., Manila: Rex Book Store, 1997, pp. 474, 475.

¹¹³ Article 1146 Civil Code.

¹¹⁴ The legal basis is Article 11 of the Constitution. See for other forms of legal aid, Medina, *Legal Aid Services in the Philippines*, www.pili.org/cle/legal_aid_service_in_the_philippines.htm.

¹¹⁵ Rule 111 (3) Revised Rules of Criminal Procedure.

¹¹⁶ Rule 111 (2) Revised Rules of Criminal Procedure.

¹¹⁷ Articles 30 and 2177 Civil Code.

¹¹⁸ Article 2216 Civil Code.

¹¹⁹ See Rule 142.

of the Revised Rules of Court. A judgment against the State cannot be enforced by execution.¹²⁰

1.3. Criminal Law

A torture survivor may claim damages against the accused as part of any criminal proceedings. It is implied that a civil action is instituted jointly with the criminal action unless the victim waives the civil case, reserves the right to institute a separate civil case or institutes the separate civil case prior to the criminal case.¹²¹ After a criminal trial has begun, a separate civil action cannot be instituted, with the exceptions outlined above, until the final judgment has been rendered in the criminal case.¹²² Upon filing an action for damages, the victim has to pay in full the filing fees, the amount of which depends on the damages sought.¹²³ For the duration of the criminal proceedings, the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be suspended.¹²⁴

Civil liability follows criminal liability in cases of conviction.¹²⁵ Such liability includes restitution, reparation of the damage caused and indemnification for consequential damages.¹²⁶ The damages are to be assessed in accordance with the rules applicable in civil actions.

2. The Practice

Torture survivors and heirs of victims of torture and extrajudicial killings have received compensation both in civil and criminal cases.

However, the fact that a considerable number of torture cases have not resulted in a conviction means that victims can, in only a very few instances obtain compensation as part of criminal proceedings. Thus, victims of torture often have had to resort to bringing a civil case. While such a course of action in principle, provides a victim with an effective remedy, lack of access to courts, insufficient resources, fear of adverse repercussions, evidentiary hurdles and the fact that effectively no legal recourse against the State is available have often combined to make victims abstain from bringing a civil case in the first place or from being successful when doing so. Moreover, there have been delays in bringing cases to a conclusion, such as in the *Aberca* case mentioned above, where the trial following the reversal of the dismissal has not yet commenced and the applicants have not yet received compensation.

Compensation has also been awarded as part of the judgment in criminal cases. In 1987, the heirs of a victim of torture and murder committed by a member of the

¹²⁰ See *Republic v.s. Villasor*, 54 SCRA 83.

¹²¹ Rule 111 Revised Rules of Criminal Procedure.

¹²² *Ibid.*, Art.2.

¹²³ *Ibid.*, Art.1 (b).

¹²⁴ *Ibid.*, Art.2.

¹²⁵ Article 100 Penal Code. But see above, civil liability can also exist independent of outcome of criminal case.

¹²⁶ Article 104 Penal Code.

army were awarded P 30,000 (\$1, 442) as compensation. In 1991, the heirs of a victim of torture and murder, this time at the hands of members of the Civilian Home Defences, were awarded compensation of P 50,000 (\$1, 748).

In three recent cases of rape in police custody, the victims were awarded the following amounts of damages:

In 1996, P100, 000 (\$3,817) compensation for the rape and as support for the baby, which was born as a result of the rape; in 1997 P50, 000 (\$1,896)¹²⁷, and, in a case decided by the Supreme Court in February 2002, P75,000 (\$ 1,368.6) for rape and P50,000 (\$ 912.4) moral damages in line with jurisprudence of the Supreme Court in similar cases.

In the three cases decided by the Supreme Court in 1987, 1991 and 2002, the Court increased the amount of damages initially awarded by the lower courts.

V. GOVERNMENT REPARATION MEASURES

1. Reparation for past human rights violations

Several bills envisaging compensation for torture victims and victims of the Marcos regime have not yet been adopted by the Senate of the Philippines.¹²⁸ A bill on the establishment of a Truth and Reconciliation Commission has been filed in the House of Representatives by Cong. Etta Rosales and is still pending.

The human rights violations committed by the Marcos regime have also been the subject of a lawsuit in the United States. On 24 September 1992, the Hawaii Federal District Court held, in a class action brought by victims of his regime in 1986 pursuant to the Alien Tort Claims Act, that Marcos was responsible for charges of involuntary disappearance, summary execution and torture of 9,539 Filipinos and had to pay indemnity to the victims.¹²⁹ On 23 February 1994 the jury awarded \$1.2 billion in punitive damages, which was an aggregate award to be divided *pro rata* among all the plaintiffs. In January 1995, a further \$759 million in compensatory damages were awarded. The judgment, including the total damages of nearly \$2 billion, was upheld on appeal to the United States Court of Appeals for the Ninth Circuit and became final on March 18, 1997. In the same year, the Swiss Supreme Court ruled that the money from Marcos Swiss accounts could be handed back to the Philippines on condition that the Government informed the Swiss authorities about legal proceedings in relation to the confiscation and restitution of the money and steps taken to ensure that the money was used to compensate the victims of human rights violations who had obtained the judgment in the US.¹³⁰ The victims have still not

¹²⁷ See for both cases, AI, Rape and sexual abuse, *supra*, p.15.

¹²⁸ See 1987: Bill No.26: An Act Authorizing Payment of Compensation to and Providing Rehabilitation for Victims of Torture or Similar Practices and their Families and for other Purposes, incorporated in House Bill No.34601, An Act Providing for a Human Rights Code of the Philippines; S. No. 1932, An Act Complying with the Constitutional Mandate to Render a Measure of Justice to the Victims of Human Rights Violations as a Consequence of the Proclamation of Martial Law, and thereafter by Compensating them, and for other Purposes.

¹²⁹ See *Republic of Philippines v Marcos*, 862 F.2d 1355 (9th Cir.1988) (en banc), cert.denied, 490 U.S. 1035, 109 S.Ct.1933 (1989), 104 L. Ed.2d 404 and *Hilao et al. v Estate of Ferdinand Marcos*, 25 F.3d 1467; 1994 U.S. App. LEXIS 14796. *Hilao v Marcos*, 103 F.3d 767 (1996).

¹³⁰ The Swiss Supreme Court cited in this context Articles 2 (2) and (3) as well as 14 of the ICCPR and Articles 12-16, in particular Article 14 of the Convention against Torture. BGE_123_II_595, 10 December 1997.

received compensation. Recently, Reps. Loretta Ann P. Rosales introduced House Bill No. 3048 granting first preference to the claims for damages of the victims of human rights violations in the disposition of the accounts and assets of the late Pres. Marcos forfeited to the Government of the Philippines as ill-gotten wealth.¹³¹

2. General reparation mechanisms

2.1. The Board of Claims

Victims of crimes and certain human rights violations are entitled to some form of reparation and there are special measures of assistance for rape victims. The Government set up a board of claims for certain categories of victims, which has the power to award compensation from a National Treasury fund.

The Board, which is composed of three officials from the Department of Justice, has the power, *inter alia*, to receive, evaluate, process and investigate applications for claims as well as to conduct an independent administrative hearing and resolve applications for claims.¹³² The following persons may file for compensation before the Board: a) any person who was unjustly accused, convicted, and imprisoned but subsequently released by virtue of a judgment of acquittal; b) any person who was unjustly detained and released without being charged; c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the Court; and d) any person who is a victim of a violent crime.¹³³ The amount of compensation shall be based on the number of months of imprisonment or detention for victims of unjust imprisonment or detention¹³⁴ and, in all other cases, a maximum amount shall not exceed 10,000 Pesos (\$182.48) or the amount necessary to reimburse the claimant the expenses incurred for hospitalisation, medical treatment, loss of wages, loss of support or other expenses directly related to the injury, whichever is lower.¹³⁵ The awarding of compensation is without prejudice to the right of the claimant to seek other remedies under existing laws.¹³⁶

A victim has to file his or her claims to the Department within six months after being released from imprisonment or after suffering the damage or injury otherwise he or she is declared to have waived the same.¹³⁷ If any person entitled to damages under the Act dies or is incapable of bringing claims, the heirs may file a claim.¹³⁸ The

¹³¹ Currently, two proposed laws are under consideration in the House of Representatives and the Senate, namely House Bill No. 4535, An Act providing compensation to the victims of human rights violations during the Marcos regime, and for other purposes, known as the "Human Rights Violations Victims Compensation Act of 2002", and Senate S.No.1877, An Act providing for compensation to the victims of human rights violations during the regime of former President Ferdinand Marcos, documentation of said violations, appropriating funds therefore, and for other purposes, known as the "Human Rights Victims Compensation Act of 2002."

¹³² Articles 1 and 2 of Republic Act No. 7309: An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and For Other Purposes, 30 March 1992.

¹³³ Article 3, Act No. 7309. According to the Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice, which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

¹³⁴ Such compensation shall not exceed 1,000 (\$ 18.24) pesos per month.

¹³⁵ Article 4 Act No. 7309.

¹³⁶ Ibid.

¹³⁷ Article 5, *ibid.*

¹³⁸ Article 6, *ibid.*

Board shall resolve the claim within thirty working days after filing of the application in an expeditious and inexpensive procedure.¹³⁹ A claimant may appeal against the decision of the Board within fifteen days of receipt of the resolution to the Secretary of Justice whose decision shall be final.¹⁴⁰

Since its inception in 1992 until the year 2002, the Board of Claims received 18,372 applications of which 16,254 had been processed/acted upon by the end of 2002. The number of applications has risen steadily, beginning with 94 in 1992 and 268 in 1993. From 1994 to 1999, the number ranged from 1,379 to 1,723 applications, and after 2000 annually exceeded the 2,000 mark.¹⁴¹ Out of the 16,254 applications, the Board granted 13,125 compensation claims for violent crimes and 164 for unjustly accused persons while rejecting a total of 2,613 claims.¹⁴² The Board of Claims classifies the application it receives into two categories, namely victims of arbitrary detention/unjust accusation and victims of violent crimes. For victims of violent crimes, no further classification as to the cause of their death/physical injuries is made.¹⁴³ Thus, the Board of Claims does not collect any torture specific data.

2.2. Financial assistance provided by the Commission on Human Rights

The Commission on Human Rights may also provide financial assistance to victims of human rights violations. Victims, their relatives or anyone on their behalf may file a claim for financial assistance to the Commission. Such a claim presupposes that the claimant has filed a substantive claim alleging a violation of human rights with the Commission. An investigation report from the regional office concerned must be attached to the claim, containing details about the act complained of, evidence, which should engender a well-founded belief that a human rights violation has been committed, and, if known, the identity of the perpetrator(s).

The financial assistance provided is temporary relief, not compensation. The eligibility for, and the nature of the financial assistance provided is determined by the Commission on a case-by-case basis. Based on CHR Resolution No. A96-060 of 10 September 1996, such financial assistance includes: a) Survivor's benefit = P 15,000 (\$ 273.72) for immediate surviving heirs of the victim; b) Medical Assistance = up to P 7,500 (\$136.86); c) Incidental Emergency Expenses = ranging from P 2,500 (\$45.62) to 8,000 (\$145.92) per month to cover the cost of providing for the urgent needs of human rights violations such as transportation expenses, food, medicines and other expenses; d) Community Assistance = P 3,000 (\$54.72) per month for families uprooted from their place of abode as a result or in the course or by reason of the commission of human rights violations; e) Special Assistance = up to P 5,000 (\$91.24) for victims of human rights violations not covered under the existing guidelines on financial assistance who are in dire need of financial grants because their life, health and security are threatened and it appears that there is no government agency which can provide immediate assistance to them; f) Rehabilitation Assistance = up to P 1,000 per month (\$18.24) (maximum P 10,000)

¹³⁹ Article 7, *ibid.*

¹⁴⁰ Article 8, *ibid.*

¹⁴¹ 1994 = 1,551; 1995 = 1,379; 1996 = 1,723; 1997 = 1,697; 1998 = 1,589; 1999 = 1,392; 2000 = 2,050; 2001 = 2,304; 2002 = 2,475. See Board of Claims, Accomplishment Report, 1992-2002.

¹⁴² 352 claims were deferred as of the end of 2002.

¹⁴³ Letter by Jovencito R. Zunõ, Chief State ProArtutor, Chairman, Board of Claims to Atty. Sarmiento, 3 March 2003, on file with REDRESS.

for victims of unjust imprisonment or detention based on the number of months spent in prison or detention with every fraction thereof considered one month. Other forms of rehabilitation assistance are provided to any person under detention who was subject to cruel, inhuman and degrading punishment by the prison authorities who shall be entitled to financial assistance of an amount not exceeding P 10,000 (\$182.48).¹⁴⁴ Any person under custodial investigation who was subject to cruel or inhuman punishment in order to extort confessions or for any other purpose shall be entitled to the same amount of financial assistance.¹⁴⁵ Finally, any person who has been detained on charges of committing crimes in pursuit of political belief or who has been convicted of committing similar offences and later on released after serving sentence or by virtue of the grant of amnesty or executing clemency shall be entitled to financial assistance in the amount of P10,000 (\$182.48) to enable the person to start a new and productive life.

From 1998 to 2002, CHR has released funds of P 42,172,000 (\$773,940.17) to 995 claimants.¹⁴⁶ From January to March 2002, the Commission granted P 602,500 (\$ 10,989.6) survivor's benefits, P 72,500 (\$ 1,322.4) in medical assistance, P60,000 (\$1,094.88) in special assistance and P 7,500 (\$1,368) in emergency and incidental expenses.¹⁴⁷

2.3. Assistance to Victims of Sexual Violence

The Government has also recently passed the Rape Victim Assistance and Protection Act of 1998.¹⁴⁸ Under this Act, rape crisis centres are to be set up in government hospitals, health clinics or any other suitable places, and are to provide rape victims with psychological counselling, medical and health services, including their medico-legal examination. Psychological counselling and medical services are also to be provided for the family of rape victims whenever necessary. The responsible departments and NGOs shall moreover adopt and implement programs for the recovery of rape victims.¹⁴⁹

VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution over acts of torture committed in a third country

1.1. The Law

¹⁴⁴ This is subject to fulfilling the documentary requirements spelled out in CHR Resolution No. 89-125.

¹⁴⁵ Ibid.

¹⁴⁶ The statistical data provided by Mr. Emerico D. Buenaseda, AVO (Assistance and Visitorial Office) Director, is as follows: 1998 = 176 Claimants, total funds releases P 7,855,000 (5,355,000 Regular Financial Assistance and 2,500,000 to F.I.N.D. (Families of Involuntary Disappearance); 1999 = 241 C., P 12,317,000 (2,000,000 Regular FA and 10,317,000 F.I.N.D.); 2000 = 238 C., P 7,000,000 (2,000,000 Regular FA and 5,000,000 F.I.N.D.); 2001 = 168 C., P 7,000,000 (2,000,000 Regular FA and 5,000,000 F.I.N.D.); and 2002 = 172 C., P 8,000,000 (2,000,000 Regular FA and 6,000,000 F.I.N.D.). Note that F.I.N.D., an NGO, has been allotted a yearly P 5 million fund known as justice fund for the victims of involuntary disappearances. They distribute these to help the families of the victims and at the same time to conduct their advocacy, campaigns etc.

¹⁴⁷ Figures provided by CHR, Management Information Services Division, PMO.

¹⁴⁸ Republic Act No. 8505.

¹⁴⁹ Article 3 of Act No. 8505.

1.1.1. Criminal Law

The criminal law does not contain any express provisions providing for universal jurisdiction or the general application of the active or passive personality principle. However, criminal law applies to public officers or employees who commit an offence in the exercise of their functions, whether within the Philippines or outside of its jurisdiction.¹⁵⁰ Moreover, any person who commits a crime against national security and the law of nations defined in title one of book two of the Code falls within the scope of the Penal Code.¹⁵¹

Universal jurisdiction can arguably be exercised on the basis of Articles 5-7 of the Convention against Torture, which is part of the law of the Philippines by virtue of the direct incorporation of international law. However, there is no recent practice or jurisprudence on this question.¹⁵²

By the same token, acting heads of states, certain other high ranking officials and diplomats are likely to enjoy immunity from criminal proceedings for torture on the basis of international treaties and international law.¹⁵³

1.1.2. Extradition law

Extradition may, according to the Philippine Extradition Law only be granted pursuant to a treaty or convention.¹⁵⁴ It may be granted only for offences that are punishable by imprisonment under the laws both of the requesting state and the Philippines.¹⁵⁵ As the extradition treaty concluded between the Philippines and Indonesia demonstrates, extradition can be granted for a wide range of offences, including homicide, murder, rape, mutilation and infliction of physical injuries,¹⁵⁶ will not be granted for political offences¹⁵⁷ and might be refused if the extradition of a national of the Philippines is sought.¹⁵⁸ Extradition is carried out on the basis of a decision by a court of first instance granting the requested extradition.¹⁵⁹

1.2. Practice

¹⁵⁰ Article 2(4) Revised Penal Code of the Philippines.

¹⁵¹ This Title does contain the crime of piracy but not any other international crimes, such as war crimes, crimes against humanity or the crime of torture.

¹⁵² See however *Kurado v Jalandoni*, 83 Phil.171, 177 (Sup. Ct. 1949), quoted in Amnesty International, Universal Jurisdiction, Duty of States to enact and implement legislation, Chapter IV B and VI, where it is argued that this case could provide the basis for the exercise of universal jurisdiction.

¹⁵³ See supra, I, 1.2.

¹⁵⁴ Article 3 Presidential Decree No. 1069, 13 January 1977. As of late 2001, the Philippines had entered into extradition treaties with ten countries, namely the United States, Australia, Canada, Thailand, Indonesia, Micronesia, South Korea, Switzerland, Hong Kong and China.

¹⁵⁵ Article 3 (a) Presidential Decree No.1069.

¹⁵⁶ Article II of the Treaty, which was concluded on 10 February 1976.

¹⁵⁷ *Ibid.*, Article V.

¹⁵⁸ *Ibid.*, Article VI. See Articles VII and VIII for the other grounds on which a request for extradition might be refused.

¹⁵⁹ See for the procedure, Articles 4 et seq. of Presidential Decree No.1069.

There are no known cases in which perpetrators of acts of torture committed abroad were either prosecuted in the Philippines or extradited to another country.

2. Claiming reparation for acts of torture committed in third countries

As a general rule, a suit for damages can be filed at the place of residence of the plaintiff or of the defendant, including the latter's last place of residence or the place where he or she is found.¹⁶⁰

In the event that universal jurisdiction was to be exercised by virtue of the direct applicability of the Convention against Torture, a torture victim could obtain compensation through criminal proceedings.

As a general rule, immunity is provided in accordance with the general principles of international law.¹⁶¹ However, in the case of *Shauf v. Court of Appeals*, the Supreme Court held that the doctrine of state immunity does not apply where the official carries out unauthorised act.¹⁶²

Foreign States enjoy immunity from suit for sovereign acts following from the adoption of generally accepted principles of international law as interpreted in the settled jurisprudence of the Philippine Courts.¹⁶³

There are no known cases in which torture survivors have claimed reparation before the courts of the Philippines for acts of torture committed abroad.

¹⁶⁰ Rule 4, Article 2 of the 1997 Rules of Procedure.

¹⁶¹ *Sanders v. Veridiano*, GR No.L-46930, 10 June 1988.

¹⁶² *Shauf v Court of Appeals*, 191 SCRA 713 (1990) and *Khosrow Minucher v. Court of Appeals*, 214 SCRA 242 (1992).

¹⁶³ See *Baer v. Tizon*, G.R. No. L-24294, 15 July 1974.