

# PUTTING AN END TO TORTURE

■ By Ellec Carlos

ON JUNE 18, 1986, President Corazon Aquino, who then had special legislative powers, approved the Philippines' accession to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), less than two years after the UN General Assembly's adoption of the treaty.

UNCAT's Article 2, paragraph 1 declares that 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.' This means that the foremost obligation of states under the UNCAT is to put in place a domestic legal framework banning the use of torture. But 23 years after the Philippine's adherence to the UN instrument, there is no local law against torture to speak of.

Some legal luminaries say that the principle of automatic incorporation practically makes the prohibition of torture under the UNCAT part of the law of the land, but in the realistic sense, a local statute is necessary since the UNCAT does not



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Task Force Detainees of the Philippines

### More disappointments during the 13<sup>th</sup> Congress

Several Anti-Torture Bills were filed in both chambers during the 13<sup>th</sup> Congress (2004-2007). Shepherded by the likes of Reps. Rosales, Edcel Lagman and Saturnino Ocampo and backed by the UATC member organizations, a consolidated version of the three bills at the House of Representatives passed the third and final reading. This was an accomplishment for anti-torture advocates.

Unfortunately, the counterpart legislators in the Senate had different priorities. The two bills filed there by Senators Miriam Defensor Santiago and Sergio Osmena III were not calendared for public or committee debate by Sen. Joker Arroyo, who was then the Committee on Justice and Human Rights Chairperson. Without a parallel legislation being worked on at the Senate, the legislative process for the passage of an Anti-Torture Law ground to a halt.

### End goal in sight

In the current congress, freedom from torture legislations in both chambers were fortunate to have been given attention. Sponsors of the bills as well as the committee staff had a mindset favorable to the progress of the measures. At the House of Representatives, Reps. Lagman, Ocampo and Risa Hontiveros had re-filed their versions; at the

prescribe any penalties for acts of torture nor any guidelines in line with the varied domestic contexts of States parties.

Early legislations against torture in line with the convention were proposed and filed during the 12th congress (2001-2004). Various versions were filed by Sen. Sergio R. Osmena III, Sen. Francis N. Pangilinan and Rep. Loretta Ann P. Rosales. These bills never got past the committee level.

### Dedicated to the eradication of torture

In 2000, several organizations joined forces to promote the right not to be tortured in the Philippines, forming the United Against Torture Coalition (UATC). The coalition's members committed themselves to the submission of an alternative UNCAT report. They also conducted information and education activities on the right not to be tortured



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and lobbied for the enactment of an anti-torture law. Amidst its public activities and campaign actions over the years, the UATC consistently carried out lobby work in both chambers of the legislature to pursue the refining and progress of the anti-torture bills. UATC representatives kept close contact with key people at the Senate and House of Representatives, especially staff and legislators of the committees where the bills were lodged. The UATC also provided resource persons dur-

ing Technical Working Group meetings and public hearings for the improvement, reconciliation and harmonization of the bills. Despite the active involvement of interest groups under the UATC, progressive committee staff, committed legislators and even a human rights stalwart, Rep. Loretta Ann P. Rosales, (who was Committee on Human Rights Chairperson at the House of Representatives), the 12<sup>th</sup> congress lapsed without the bills prospering past the committee level.

Senate, Sen. Santiago re-filed her bill while Senators Francis Escudero and Rodolfo Biazon filed their own versions. The Committee on Justice and the Committee on Human Rights at the Lower House agreed to jointly sponsor the measures. In spite of several contentious issues, public hearings at the committee level led to the reconciliation of the various versions into one consolidated draft for each chamber.

### Disunited

In recent years, debate at the international level on the legal accountability of non-state actors has become broader. The established view that human rights instruments should cover the protection of people from arbitrary action of the state only, which was originally the purpose of their adoption, has been increasingly questioned and even strongly opposed by individuals and organizations around the world. This debate has led towards the growing recognition of individual and non-state accountability in human rights.

It is indeed exceedingly offensive that public officials being remunerated by the people to ensure their security should become torturers. However, a line of reasoning put forward is that torture is committed by fellow human beings, not their legal identities. The use of torture is intended to systematically dismantle the person's mind, body and spirit, his or her very humanity. From the victim's perspective, torture will be torture, no matter who carries it out.

It is important to say that the UNCAT, in Art. 1(2), provides that its definition of torture is "without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

The human rights community in the Philippines, to this day, remains divided on the issue. Some had chosen to ignore the matter or refrained from openly stating their po-



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sition. This silent discord has caused some unsettling moments in various collaborations and partnerships. Nonetheless, human rights advocates were prompted by the recent positive developments in the progress of the proposed legislation on torture, to collectively address the question of whether to promote the inclusion of Non-State Actor (NSA) accountability in the measure. Whether or not NSAs would be held accountable under the measure would in essence depend on the very definition of torture.

Most organizations within UATC agreed that NSAs (e.g., groups engaged in armed struggle, the Moro separatist groups, and private corporations and groups with their own militia) should be held answerable for their atrocities. The manner in

which they should be brought to justice is a different matter.

Human rights proponents, organizations and individuals outside the UATC formed the Committee on Accountability of Non-State Armed Groups (CALASAG) to advocate that the legal definition of torture and enforced disappearance not be limited to acts committed by state agents. All groups and individuals who prescribe to the "all inclusive" definition strongly assert that the state still has the primary and special responsibility to take effective measures to prevent torture and enforced disappearance. Hence, higher penalties should be imposed on state agents.

The Families of Victims of Involuntary Disappearance (FIND) also strongly advocated their institutional opinion

which favored the exclusion of NSAs from the HR measures.

With the active involvement of UATC member organizations, the consolidated proposed Anti-Torture measure at the House of Representatives (which was now known as House Bill No. 5709) moved through the legislative process. Upon its passage at the committee level, the bill swiftly made its way through sponsorship at the plenary and then approval on second and third reading. As the bill approached its last hurdle, UATC representatives, torture survivors and other advocates held vigil at the House of Representatives to demonstrate their interest in the passage of the Anti-Torture Law. House Bill 5709 was finally approved at the House of Representatives on March 4, 2009.

On November 10, 2009, President Gloria Arroyo signed Republic Act 9745 (the Anti-Torture Act of 2009).

### The tasks at hand

The Anti-Torture Law mandates the Department of Justice and the Philippine Commission on Human Rights to jointly promulgate the rules and regulations for the effective implementation of the Act. The drafting of the implementing rules and regulations shall be done with the active participation of human rights NGOs.

Moreover, NGOs focusing on the right not to be tortured should also be part of the mechanism that will monitor the implementation of the law.

There remains much to be done in the struggle for the right not to be tortured in the Philippines. Anti-torture advocates should continue to be watchful to ensure that the law, which took 22 years to be passed, will effectively protect the citizens from torture and other cruel forms of treatment, and that perpetrators will be brought to justice.

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