

Child Torture in the Philippines

A Joint Report to Universal Periodic Review (UPR) by the International Rehabilitation Council for Torture Victims (IRCT) and BALAY Rehabilitation Center

1. Introduction

Violence against children is a concern that has drawn wide public attention in the Philippines, with corporal punishment as one of the most recognized forms of ill treatment of minors. But there is yet another serious type of violence among young people below 18 years old that has to be distinguished and responded to. This is the phenomenon of torture among children.¹ This particularly happens in places where a large number of street children increases the likelihood of a minor being picked up by the police.² Many of these children do not have access to basic needs such as food, proper health care and education increasing their vulnerability to assaults by the authorities. Children involved in armed conflict can also be subjected to torture as a way of exacting information or as a method to intimidate communities.³ Reports show that children in detention and in some youth centers are subjected to ill treatment from the authorities as well.⁴

The Philippines is a state party to the United Nations Convention on the Rights of the Child (CRC) since 1990 and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1986.

2. Context of the Report

This report is prepared jointly by BALAY and IRCT. BALAY is a duly-registered non-profit organization that provides psychosocial support for survivors of torture and organized violence in the Philippines. It is a convener, and currently heads the secretariat, of the United Against Torture Coalition (UATC), a network of around 20 national civil society organizations that contributed for the passage of the anti-torture law in the Philippines in 2009.

The IRCT is a health-based umbrella organization that supports the rehabilitation of torture victims and the prevention of torture worldwide. The members of IRCT comprise more than 140 independent organizations in over 70 countries who govern the work of the IRCT. Today, the IRCT is the largest membership-based civil society organisation to work in the field of torture rehabilitation and prevention.

¹ The Convention against Torture (CAT) and the Convention on the Rights of Children (CRC) define torture as the intentional infliction of severe pain or suffering by a public official or an agent of a person in authority against another person for such purpose as obtaining confession or information, or as a form of punishment, intimidation, or coercion.

² Estimated number of street children in the Philippines: 250,000. See Committee on the Rights of the Child, Fifty-second session, Consideration of Reports Submitted by States parties under article 44 of the Convention. Concluding observations: The Philippines CRC/C/PHL/CO/3-4 2 October 2009, paragraph 74; Indonesia estimates: 170,000, India estimates: 11 million. See Consortium for Street Children. Street Children Statistics at http://www.streetchildren.org.uk/_uploads/resources/Street_Children_Stats_FINAL.pdf

³ Journal on Rehabilitation of Torture Victims and Prevention of Torture Volume 19, NO.2, 2009, ISSN 1018-8185

⁴ Proceedings of a round-table discussion on Children and Torture, Balay Rehabilitation Center and IRCT, Quezon City, September 22, 2011

In September 2011 BALAY and the IRCT undertook a joint fact finding mission and organized a forum on children and torture in the Philippines.⁵ **The findings of the fact-finding mission illustrate that:**

- The torture of children in conflict with the law (CICL) is widespread. At the same time no systematic reporting and documentation on cases of child torture is conducted, making the issue an urgent and alarming matter.
- There is a lack of differentiation between child abuse and child torture⁶ with the result that the awareness of torture of children is low, and therefore rarely reported.
- Philippine policies and laws fail to address the issue of children and torture in a comprehensive manner; or do not address the matter at all.
- Children are at most risk of torture from the time of arrest and until/if the child reaches a youth centre or NGO providing for care and rehabilitation - that is in places of detention, police lock-ups and jails. In the worst cases, torture and ill treatment continues to take place in closed institutions, places of detention or even in the youth homes.
- Torture of children is used as a means of forcing confessions of a crime the child may or may not have committed; corporal punishment or correctional measures for petty crimes or delinquent behaviour, even when the behaviour does not fall under criminal measures; repression or threat to the families of the children i.e. for the parents to pay a bail for the release of the child
- The methods of torture used against children include; beatings, electrocution, placing bullets between the fingers, threats with gun, blind folding, bag over the head and punches, rape, stabbing in the legs, caging, threats towards the child and the family of the child, placement of “bomb” in hands, maltreatment and abuse in prisons and/or closed institutions.
- The main perpetrators of child torture is the police and/or local security forces or peace keepers known as “tanods” operating in the Barangays⁷.

TORTURE AND KILLING OF CHILDREN IN ZAMBOANGA - *Three children were tortured and brutally killed and their bodies dumped in an irrigation canal in a farming village in Zamboanga City in the southern Philippines. Civilians discovered the bodies - their hands tied behind the back and head covered with packing tape - in the village of Talabaan on Wednesday, March 31, 2011. Police said the bodies bore hack wounds when they found them still covered on hays to hide the grizzly murder and victims of summary executions. No group claimed responsibility for the killings, but villagers claimed to have seen a white van late on Tuesday near where the bodies had been found. The three victims were identified as Jeric Escover, 12; Elby Dablo, 16; and Carlo Catalan, 13.*⁸

⁵ “Are children being tortured?”, <http://worldwithouttorture.org/2011/10/25/%E2%80%9Ccare-children-being-tortured%E2%80%9D/>

⁶ UNICEF Innocenti Research Centre: Child Victims of Torture and Cruel, Inhuman Or Degrading Treatment. Dan O'Donnell and Norberto Liwski, IWP 2010-11, June 2010.

⁷ The *barangay* is the basic geo-political unit in the Philippines. It is run by elected officials that compose the Barangay Council, the leading governance structure in a barangay. A committee in a Barangay Council is responsible for the behavior and activities of the ‘tanods’ who serve as civilian peace keepers or neighborhood security force in a barangay. Several barangays can constitute a town or municipality, or even a city.

⁸ “Three teenagers brutally killed,” Mindanao Examiner, March, 31, 2011. <http://zamboangajournal.blogspot.com/2011/03/3-teeners-brutally-killed-in-zamboanga.html>

Appendix A provides several illustrative examples of CICLs who have been exposed to torture. Common for all cases is that they all come from impoverished families, have lived a life on the streets, and have been suspected to or have been actually involved in petty crimes.

3. Lack of reporting and documentation on cases of child torture

The Monitoring and Reporting Mechanism (MRM) established through UN Resolution 1612 on Children in Armed Conflict and led by UNICEF Philippines is mandated to verify cases of grave child rights violations; however the mechanism does not cover non-conflict situations and reports only on physical damage on the child. Capacity does not include reporting on psychological damage and no differentiation is made between intended and unintended violence. Thus, the MRM does not capture cases of tortured children. Representatives from UNICEF Philippines confirm a gap in reporting on torture in armed conflict as well as in the context of children in conflict with the law.

The Council for the Welfare of Children and the Juvenile Justice Welfare Council have no policies or mechanisms to monitor torture of CICLs. However, government social workers have instructions to document and obtain the profile and case history of so called child offenders for possible diversion or rehabilitation programs under the Juvenile Justice Law. This is due to the fact that CICLs are basically regarded as offenders and not as victims themselves. This kind of viewpoint disregards the fact that CICLs are in fact among the category of children in need of special protection.

4. National & local legislative framework Philippines

In 2009, the Philippines adopted an Anti-torture Act in which there is a special provision for aggravated penalties when torture is committed against children (Republic Act 9745, section 14). In addition, the Implementing Rules and Regulations (IRR) of the Anti-torture Act deal with the issue of children in a number of sections (15(b), 17 and 23) relating to support in the investigation process, support during testimonies in court proceedings and confidentiality of medical reports. However, the Anti-torture act includes no comprehensive thinking on how to address torture of children. An example is the lack of or inadequate consideration on the indicators for determining the level of pain or suffering for children that may qualify as an element of torture. There seems to be no clear cut distinction between what could constitute torture for adults and that of children considering that children are more vulnerable in the light of their level of human development. Jurisprudence from the European Court of Human Rights, Inter-American Court of Human Rights and United Nations agree that: "when the victim is a child, his or her greater vulnerability must be taken into account in determining whether the acts inflicted constitute torture or cruel, inhuman, degrading treatment or punishment (CIDT)"⁹. There is a considerable need for addressing the threshold of torture when the victim is a child.

The Philippine Juvenile Justice and Welfare Act (RA 9344) adopted in 2006 stipulates that every *child in conflict with the law* shall have "*the right not to be subjected to torture or other, cruel, inhuman or degrading treatment or punishment (Chapter II,*

⁹ UNICEF Innocenti Research Centre: Child Victims of Torture and Cruel, Inhuman Or Degrading Treatment, pp. 21. Dan O'Donnell and Norberto Liwski, IWP 2010-11, June 2010.

sec. 5)”. Importantly, in the context of children and torture, RA 9344 provides for protection and child-friendly proceedings for child offenders or children in conflict with the law (CICLs). Nonetheless, 5 years after the adoption of RA 9344 its it is still not being effectively implemented, which has resulted in heavy criticism of the the law in the Philippine Congress as well as by the media. Recently, a new bill lowering the age of criminal responsibility from 15 to 9 has been proposed and is currently in process. This is a turn around from the fundamental concern for the protection of children’s rights and juvenile justice being promoted by the UNCRC.¹⁰

Meanwhile, Republic Act 7610 or the law that aims to protect children against child abuse, exploitation and discrimination has defined "child abuse" as the “maltreatment, whether habitual or not, of the child.” It cited the following kinds of abuse, such. (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment; (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. While these kind of abuse may very well point to a torture situation, the law has failed to include torture of children as a very serious form of violation of the right of the child in conformity with the UNCRC.

5. Recommendations

- a. Establish a systematic inter-agency national monitoring, documentation, and reporting mechanism for tortured children consist of the Council for the Welfare of Children, the Commission on Human Rights and Non-Governmental Organizations
- b. Withdraw the amendment of the RA 9644 that seeks to lower the age of criminal responsibility of children from 15 to 9 years old.
- c. Include the prevention, documentation, reparation, and rehabilitation of tortured children in the National Plan of Action for Children (NPAC)
- d. Amend RA 7610 - the law on child protection - to include references to torture of children as an aggravated form of child abuse.
- e. Improve the Monitoring and Reporting Mechanism being promoted by the UNICEF in the Philippines to include the category of child torture as one of the six grave human rights violations.
- f. The issue of children and torture should be included in the reporting to international mechanisms.

¹⁰ South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights; http://www.unicef.org/rosa/Criminal_Responsibility_08July_05%28final_copy%29.pdf