

Rehabilitation and Research
Centre for Torture Victims



The Philippines and the *Optional Protocol to the UN Convention against Torture (OPCAT)*

BRIEFING NOTE

10 May 2006

The Association for the Prevention of Torture (APT), the Rehabilitation and Research Centre for Torture Victims (RCT) and the United Against Torture Coalition (UATC) recognise that, since the return to democratic rule in 1986, the government of the Philippines has taken a number of concrete measures that reflect a genuine political will to promote and respect human rights. Indeed, today the Philippines is party to all the core international human rights treaties. In recent years, the Philippines has ratified a number of protocols meant to strengthen the core human rights treaties, including the two Optional Protocols to the UN Convention on the Rights of the Child.

The Philippines adhered to the *UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT) on 18 June 1986 and had its initial report to the UN Committee against Torture (CAT) examined in 1989¹. Since then, however, the Philippines has not filed any of the four subsequent periodic reports due to this treaty body, including most recently its Fifth Periodic Report which was due 25 June 2004. This continuing failure to fulfill its obligations under the UNCAT unnecessarily undermines the Philippines international position, and illustrates a need for the Philippines to demonstrate forcefully that it remains committed to the international struggle against torture.

On 9 May 2006, the Philippines was elected to the UN Human Rights Council pursuant to the pledge it made on 19 April 2006 to “seek to strengthen domestic support for the ratification of the Optional Protocol to the Convention against Torture”. We are extremely encouraged by the Government’s commitment to ratification of the OPCAT by the Philippines and we look forward to future meetings with Government representatives to discuss how we might cooperate in taking the OPCAT through the ratification process, and thereby to assist the Philippines in fulfilling its pledge.

In this regard, our organisations welcome the spirit of openness and dialogue that characterized the meetings we had with high-level officials from the Departments of Justice and Foreign Affairs during the first week of April.

¹ See UN Doc. CAT/C/5/Add.6 (9 December 1988).

During these consultations, it was suggested that our organizations prepare this briefing note to explain in greater detail why it would be in the interest of the Philippines to ratify and implement the OPCAT, an instrument which seeks to establish a system of regular visits to places of detention carried out by complementary international and national independent expert bodies.

Reasons why the Philippines should ratify the OPCAT

The OPCAT is a practical tool to assist States to comply with their existing obligations

During its consideration of States Parties' periodic reports since the adoption of the OPCAT, the UN Committee against Torture has repeatedly recommended that States Parties consider ratifying the Optional Protocol².

In the past decade, other treaty bodies have examined reports presented by the Government of the Philippines and have urged it to put in place a domestic system of visits to detention facilities. As recently as June 2005, the UN Committee on the Rights of the Child (CRC) said it was "*deeply concerned by a number of reported cases of torture, inhuman and degrading treatment of children, particularly faced by children in detention*"³ and suggested that the Government of the Philippines: "*establish[es] a mechanism for regular monitoring visits to detention places to be made by magistrates*". It also urged the Inter-ministerial Working Group on Human Rights Issues to "*continue to monitor the situation relating to torture and take all steps necessary for the prevention of torture [...]*". Our organisations strongly believe that these objectives may best be achieved through regular visits by the monitoring mechanisms contemplated by the OPCAT, which will visit every type of place where persons are deprived of their liberty including juvenile detention facilities and orphanages.

Similar sentiments have also been voiced by the UN Human Rights Committee (HRC). In its 2003 concluding observations on the consolidated second and third periodic reports by the Government of the Philippines, the HRC expressed concerns "*about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of the Covenant*"⁴. It went on to suggest that the Philippines "*should institute an effective system of monitoring treatment of all detainees, to ensure that their rights under articles 7 and 10 of the Covenant are fully protected*". Again, ratification and implementation of the OPCAT should satisfy this recommendation of the HRC and put the Philippines on good standing with the HRC on this issue at the review of its fourth periodic report.

² See for example similar recommendations made to Canada (CAT/C/CR/34/CAN, 5(j); Sri Lanka (CAT/C/LKA/CO/2, 18(b) (15 December 2005) and Uganda (CAT/C/CR/34/UGA 11(d) (21 June 2005).

³ CRC/C/15/Add.259, 3 June 2005, pt 38.

⁴ CCPR/CO/79/PHL (01/12/2003, pt 12.

Adhesion to the OPCAT will also help the Philippines comply more effectively with its obligation, set forth in article 2 of the UNCAT, to “take effective ... measures to prevent acts of torture in any territory under their jurisdiction”. The OPCAT is action-oriented and thus differs in many ways from other treaties that have been elaborated by the UN human rights system over the years. Other UN instruments generally affirm rights and establish monitoring bodies whose main task is to receive and review reports submitted by State parties. These bodies’ work is almost entirely carried out in Geneva and New York.

The Subcommittee, and its national counterpart the National Preventive Mechanism (NPM) that each State party will establish or designate, will operate in a rather different way. Though some of the existing treaty bodies can, exceptionally and in response to particular complaints, conduct in-country visits, visits are at the core of the mandates of the Subcommittee and National Prevention Mechanisms. The approach of OPCAT is to provide expert advice, tailored to the States’ circumstances, as the basis for cooperative institutional reform. Confidentiality of communication with the State is a key principle. The OPCAT does not establish a system for complaints or condemnation, but a system of open and constructive dialogue between the Subcommittee, the NPM, and the State party concerned.

As the OPCAT simply complements the Convention against Torture, it does not entail additional reporting obligations.

The OPCAT supports national sovereignty

In response to the global campaign to promote the OPCAT, which was launched as early as 2003, it has occasionally been suggested that implementation of the OPCAT, and most notably the right of access that States will grant to the Subcommittee on Prevention, could threaten national sovereignty. However, far from infringing sovereignty, the OPCAT actually supports it. First, the ability of the Subcommittee to visit State’s territories in fact derives solely from that State’s own exercise of sovereignty in deciding to ratify the OPCAT. In this respect, the OPCAT is in principle no more a threat to national sovereignty than any other international treaty. Second, as we describe in more detail below, the Subcommittee differs from many existing international bodies in that it is a confidential and cooperative expert body. Third, the main engine of prevention under the OPCAT is not the international body but rather a national institution designed or selected by the government itself, which is referred to in the OPCAT as the National Preventive Mechanism (NPM).

Rather than an antagonistic or condemnatory attitude, the Subcommittee will rely on mutual trust and confidential constructive dialogue. The monitoring scheme envisaged by the OPCAT is largely inspired by the methodology of the International Committee of the Red Cross (ICRC). Like the ICRC, the Subcommittee will not, as a general rule, make its observations and

recommendations public. Publication would only take place with the consent of the State. Otherwise, only in rare circumstances where the State refuses to cooperate with the Subcommittee or to take steps to improve the situation, would any public statement about a State be issued.

When it carries out a specific visit, the Subcommittee will not expect to find perfect detention facilities and will not expect ill-treatment to disappear overnight. The objective sought by the Subcommittee and the NPM will be to progressively eradicate torture and ill-treatment, and identify, together with relevant authorities, practical ways to achieve this objective within each State's own national context. For the overall system to gain credibility early on and function effectively, it is understood that the recommendations made by the monitoring bodies will need to be substantiated, pragmatic and realistic, in order for the governments to be in a position to actually implement them.

Looking at the experience of the European Committee for the Prevention of Torture (CPT), whose jurisdiction covers the 53 Member States of the Council of Europe, and the Subcommittee's projected budget, it is unlikely that the Subcommittee will carry out more than 4-5 visits per year. This means that each State party to the OPCAT would most likely be visited by the Subcommittee on average once every 4 or 5 years⁵.

This implies that the bulk of the visiting will be done by the locally-established National Preventive Mechanism, a body whose knowledge of the local reality is more extensive than that of the Subcommittee and whose operations are by definition an exercise of state sovereignty. States will have a wide range of options in creating a new national body, or designating an existing body or bodies, to act as the National Preventive Mechanism, carrying out visits on an ongoing basis. The National Preventive Mechanism would be a Filipino national institution consisting of Filipino experts. In this respect, the OPCAT arguably does more than any other UN human rights treaty to support national sovereignty as the means of achieving human rights protection.

Advice to the Government on legislative reforms

We understand that the Philippines may soon pass legislation criminalizing torture and other forms of ill-treatment after many years of debate. Such efforts to harmonize national legislation with international human rights standards are to be congratulated. However, as the recent revision of legislation specific to juvenile detention demonstrates, there will always be an ongoing need to update and improve laws and regulations concerning individuals deprived of liberty. The Subcommittee and NPM, which will be made up of recognized experts in the field, will be well-positioned to provide the government with useful, practical and expert advice on such future legislative reforms.

⁵ The OPCAT foresees the possibility that the Subcommittee undertakes a "short follow up" visit if deemed necessary.

The OPCAT opens the door to a new source of international financial assistance

Upon entry into force of the OPCAT, a Special Fund will be set up to help States parties to finance their implementation of recommendations made by the Subcommittee. This Fund, whose management scheme is likely to be modeled on that of the UN Voluntary Fund for Victims of Torture, will be of great use to States parties that are willing to improve the material conditions in which persons deprived of their liberty are kept, but face resource limitations. It is not uncommon to hear State officials themselves complain about the poor conditions of detention that prevail in some facilities, and lament the financial constraints they face.

The Special Fund will also be available to allow the NPM to set up education programmes. This could help the Philippines to further disseminate international and domestic legal norms dealing with the prohibition of torture. Adhering to the OPCAT would mean that the Filipino domestic monitoring mechanism could be able to turn to this international Special Fund for money to help in the design of adapted training programmes, including practical publications on torture and ill-treatment, adapted to the needs of the national Filipino context.

Getting access to such additional resources and putting together substantial awareness-raising projects would allow the Government of the Philippines to respond to the UN Committee on the Rights of the Child, who recommended in 2005 that it should “*continue its efforts in training professionals working with and for children, including teachers, law enforcement officials, care workers, judges and health personnel in the identification, reporting and management of cases of ill-treatment (pt 39)*” and “*to take effective measures to prevent and protect children from sexual abuse and exploitation in the framework of religious institutions (pt 51)*”.

Why should the Philippines adhere to the OPCAT as soon as possible?

Strong reasons exist for the Government of the Philippines to initiate the consultation process immediately, in order to sign this treaty and refer it to the Senate before the end of this year.

The first years of activity of the Subcommittee on Prevention will shape the way it is going to operate, possibly for decades. Early State parties will be in a position to nominate and elect members of the Subcommittee and to influence its *modus operandi* in a way that reflects their particular concerns and expectations, as well as their leadership role on a regional and global basis.

So far, given the current status of ratifications, it is likely that the Subcommittee will benefit from significant input from European, Latin American, and African perspectives. At this stage only three Asian states

have signed the OPCAT and only one has ratified; ratification by the Philippines as soon as possible would help to ensure that Asian views are fully taken into consideration in the shaping and work of the Subcommittee. Given its political weight, one can expect that an early ratification by the Philippines would set the tone in the region, position the country as a regional leader in the field of torture prevention, and allow for the Philippines to play an important role in the establishment of the Subcommittee.

Each State party has up to one year after ratification to designate its NPM. This gives States the possibility to ratify first, and then work out the way the OPCAT will be implemented domestically. As external actors, the APT and the RCT do not advocate for any specific implementation model, leaving it instead to national actors to decide; however, we believe that the Philippines has a comparative advantage putting it in a relatively favourable position when the time comes to determine the shape of the NPM.

For instance, the Philippines already has a well-established National Human Rights Commission, for which the treatment of prisoners is a matter of concern⁶. Over the years, it has developed an undeniable expertise in the field of monitoring which could be put to use when the Philippines determines how the OPCAT will be implemented domestically.

On top of this, the Philippines boasts an active and committed community of national human rights NGOs, some of which have extensive experience in the field of torture prevention. Widely respected institutions such as the Task Force Detainees of the Philippines (TFDP), the Medial Action Group (MAG) and the Balay Rehabilitation Centre have been conducting visits to places of detention for several years.

These are indications that the principle of transparency and cooperative dialogue for institutional reform which underlies the Optional Protocol is already well accepted by Filipino law enforcement agencies, something that leads us to believe that implementing the OPCAT in the Philippines should not be too difficult.

Conclusion

We recognize that significant efforts are already being made by the Government of the Philippines at all levels to come to terms with remnants of ill-treatment in detention facilities. The OPCAT could be of great assistance to the Philippines in meeting its existing international obligations under UNCAT and in improving its domestic situation. The OPCAT recognizes and supports States' sovereignty, particularly by relying on national institutions to carry out the bulk of the visits to places of detention. The OPCAT will create new sources of expert advice for the Philippines through the Subcommittee and the NPM, and will open the door to a new source of international funding.

⁶ The Executive Order no 163 of 1987 states, under its section 3, that the Commission on Human Rights shall "exercise visitorial powers over jails, prisons and detention facilities".

Signature and ratification would demonstrate Filipino leadership in the region and provide an opportunity for Filipino influence at the global level. There is no need to wait until 2008 to start receiving the benefits of OPCAT ratification: the APT, the RCT and the UATC respectfully submit that the time for the Philippines to join OPCAT membership is now.

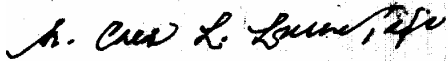
Yours sincerely,



Mark THOMSON
Secretary General
Association for the
Prevention of Torture,
Geneva, Switzerland



Jan Ole HAAGENSEN
Director, International Dept.
Rehabilitation and Research
Centre for Torture Victims,
Copenhagen, Denmark



SR. Crescencia LUCERO, SFIC
Executive Director
Task Force Detainees
of the Philippines



Ms Lorena de la CRUZ
Executive Director
Balay Rehabilitation Centre, Inc.