

# TORTURE

ASIAN AND GLOBAL PERSPECTIVES

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## THE LOST CAUSE

*Impunity of torture despite anti-torture legislation  
In the Philippines*

## Cover Story

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# The impunity of torture despite anti-torture legislation



*Hundreds of policemen were deployed to ensure peace and security at the various protest areas during the former President of the Philippines, Macapagal-Arroyo's Administration. Photograph by © Duane Mendoza  
– Photo © Duane Mendoza*

Historically, torture has been brandished as a weapon by the ruling classes. The authorities both possess and exercise their capability to carry out inhuman, cruel and degrading punishments.

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by CARLOS ISAGANI T. ZARATE

**T**ORTURE has various forms and purposes in the Philippines. Historically, torture has been embedded in the criminal justice system of the country. The use of torture could be as a form of punishment for breaking the norms and/or laws, or as a method of extracting information from a person suspected of a crime, or as a form of political repression to inflict harm or sow fear and terror against political dissidents and insurgents.

The Philippine experience has been largely influenced by foreign colonial powers that ruled the country for about 500 years. The colonial rulers introduced several ways of using torture to produce severe and inhuman effects on the victims and their families. These forms of torture by the foreign colonial rulers, especially those employed by the Americans during their direct colonisation of the country, have remained in use and have even been improved upon by the state security forces.

At present, the enactment of an anti-torture law has not deterred the law-enforcers from using torture against their victims. While many fraternal organisations and sectors already abhor and have abandoned the use of torture, the military and police institutions continue to practice this inhuman form of punishment and initiation even within their own ranks. Unfortunately, the impunity in the use of torture remains and even worsens notwithstanding the provisions of the 2009 Anti-Torture Act.

### I. Brief Historical Background

During the pre-colonial era, the Philippine *barangays* (local political spheres independent from each other) used different methods of torture or acts that inflict severe physical and mental pain or suffering on a person. Forms of punishment included beating to death, burning, drowning and being stoned to death. The main purpose was to punish criminals or norm-breakers in the society. Local tribal leaders provided severe punishment to norm-breakers in order to deter a repeat of the same act. The local tribesmen saw such violations of their norms and customs as heinous crimes against their culture and tradition.

The Spanish-era saw a different albeit still inhuman form of torture. Most commonly used by the Spaniards to torture an insurgent or an indio (the Spaniard's name for the natives) was the *garrote*. The Spaniards tortured the insurgents or insurrectos they captured or arrested to extract information regarding their activities and the whereabouts of other rebels.

Yet it was the American occupation and colonisation of the Philippines that introduced one of the deadliest and most inhuman form of torture to the archipelago – the water cure. Although water cure has been used before the American occupation, the Americans introduced a more lethal method of water cure. They used it not sparingly but utilised it almost every time

they captured an insurgent. Testimonies show the inhuman and degrading form of water cure used by the Americans:

Lieutenant Grover Flint testified before the US Senate Committee in the Philippines in 1902:

A man is thrown down on his back and three or four men sit or stand on his arms and legs and hold him down; and either a gun barrel or a rifle barrel or a carbine barrel or a stick as big as a belaying pin, – that is, with an inch circumference, – is simply thrust into his jaws and his jaws are thrust back, and, if possible, a wooden log or stone is put under his head or neck, so he can be held more firmly. In the case of very old men I have seen their teeth fall out, – I mean when it was done a little roughly. He is simply held down and then water is poured onto his face down his throat and nose from a jar; and that is kept up until the man gives some sign or becomes unconscious. And, when he becomes unconscious, he is simply rolled aside and he is allowed to come to. In almost every case the men have been a little roughly handled. They were rolled aside rudely, so that water was expelled. A man suffers tremendously; there is no doubt about it. His sufferings must be that of a man who is drowning, but cannot drown.<sup>1</sup>

In his book *The Forging of the American Empire* Sidney Lens recounted:

A reporter for the *New York Evening Post* (April 8, 1902) gave some harrowing details. The native, he said, is thrown on the ground, his arms and legs pinned down, and head partially raised “so as to make pouring in the water an easier matter”. If the prisoner tries to keep his mouth closed, his nose is pinched to cut off the air and force him to open his mouth, or a bamboo stick is put in the opening. In this way water is steadily poured in, one, two,

three, four, five gallons, until the body becomes “an object frightful to contemplate”. In this condition, of course, speech is impossible, so the water is squeezed out of the victim, sometimes naturally, and sometimes – as a young soldier with a smile told the correspondent – “we jump on them to get it out quick.” One or two such treatments and the prisoner either talks or dies.<sup>2</sup>

After the World War II, the Philippines was given nominal independence by the United States, accompanied with lopsided treaties heavily favouring the US to ensure their continued presence and domination of the country.

Despite receiving independence from colonial masters, the legacy of torture that the colonialists introduced in the Philippines continued. The military and police establishments employed the use of torture to instil fear and maintain order in favour of the status quo.

Under the Marcos dictatorial regime, torture was widely used. Under the Martial Law declared by President Ferdinand Marcos, torture was the most utilised method of suppression by the military. Thousands of activists, innocent civilians suspected of being NPA-sympathisers and other persons were arrested, detained and subsequently tortured by the state security agents. Water cure, electrocution, and other severe physical, mental and emotional torture was used by the military and police agents against the opposition and activists.

Unfortunately, the overthrow of Marcos through a People Power uprising did not eradicate the use of torture. The succeeding Cory Aquino administration did not stop the use of torture by the military but actually escalated it further. Up to the present administration under Pres. B.S. Aquino III (son of Pres. Cory Aquino), the use of torture remains as prevalent as before.

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1 Told of “Water Cure” Given to Filipinos. Witness Went Into Details Before Senate Committee on the Philippines. *New York Times*, Feb. 25, 1902, p. 3

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2 Sidney Lens (2003). *The Forging of the American Empire: From the Revolution to Vietnam: A History of U.S. Imperialism*. Pluto Press. ISBN 0-7453-2100-3

## II. Prior to Anti-Torture Legislation

Before the enactment of the Anti-Torture Act of 2009 (R.A. 9745), the Philippines has several statutory provisions that implicitly banned the use of torture but without provisions for penalties. The first Philippine constitution, the 1899 Malolos Constitution, contained articles against human rights violations. This constitution however did not explicitly prohibit torture.

In the 1935 Commonwealth Constitution, a prohibition against cruel and unusual punishment was stipulated. But the provisions of the 1935 Constitution did not define cruel and unusual punishment nor did it provide penalty for it. The 1973 Constitution provided a closer description of torture but did not explicitly define it. The 1973 Constitution also did not punish the practice of torture, only proscribing the use of evidence gathered from the “use of force, violence, threat, intimidation or any means which vitiates the free will” of a person.

The present Constitution, the 1987 Constitution, provides for a more elaborate prohibition of torture. It expressly forbids, “torture, force, violence, threat, intimidation, or any other means which vitiate the free will” but did not provide a definite penalty against torture. The Constitution left it to the Legislative body to enact a law that provided penal and civil sanctions in violation of the constitutional provision on torture.

The Legislature, however, took 22 years before it finally enacted Republic Act 9745 or the Anti-Torture Act of 2009.

## III. Defining Features of the 2009 Anti-Torture Act

One of the most significant feature of the Anti-Torture Act is the wide scope of the definition of torture. In Section 3, torture is defined as:

“(a) ‘Torture’ refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing

him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

(b) Other cruel inhuman and degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.”

The definition of torture also expands the list of culpable criminal acts to include “pharmacological torture”.

Another significant feature of the law is the provision on the right to medical attention for the victim of torture. Besides the right itself, authorities are also compelled to inform the victim of their right to be granted medical examination before and after interrogation.

Torture as a separate and independent crime is a novel provision of this law. It provides a separate remedy for torture victims should other cases filed against the torturer not prosper. That torture is not absorbed or cannot be absorbed by another crime makes it equally heinous with other crimes. This characterisation as a heinous crime strikes the state security agents hiding behind the cloak of their uniforms.

Command responsibility is also a defining and revolutionary feature of the 2009 Anti-Torture Act. It penalises not only those who committed or participated in the act of torture but also the law

enforcement officials and any other public official or employee whose negligence led to the commission of torture by their subordinates or other persons within their area of responsibility.

The Anti-Torture Act is granted additional teeth through the exclusion of perpetrators of torture from special amnesty laws. This feature provides for a limited scope of exemption from penalty by torturers.

These, and other important provisions of the 2009 Anti-Torture Act should be enough to make the state security agents and forces to think twice before committing such deeds. Sadly, however, the law remains a piece of paper that has yet to be strictly implemented.

#### **IV. The Current Culture of Impunity in the Use of Torture**

Despite the revolutionary features of the 2009 Anti-Torture Act, torture is still widely practised by the military and police establishment. In an ironic twist, the perpetrators of torture are the same as those tasked to prevent it.

In their efforts to sow terror and inflict harm to dissidents, state security forces use all kinds of cruel, inhuman and degrading methods. The passing of the Anti-Torture Act has proven to not be sufficient. It has not dented the impunity enjoyed by the state security forces in committing torture. In the five years since the law was enacted not a single perpetrator has been punished, in the face of hundreds of documented cases under the Aquino administration alone.

One significant example is the case of Rolly Panesa, a security guard falsely accused of being a high-ranking

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official in the Communist Party of the Philippines (CCP). During military interrogation, Panesa was badly beaten. Under torture, he admitted his “guilt” and was arrested by intelligence agents 5 October, 2012. At 48 years old it seemed ridiculous that he could have been mistaken for the 68 year old CCP official.

Rolly Panesa was arrested under the “reward system”: an organised racketeering scheme run by the military and the police. The Department of National Defence and the Department of Interior and Local Government issued a joint memorandum listing 235 names identified as communists and offered a reward for their arrest or neutralisation. These names have subsequently been used by law enforcement agents to falsely accuse and arrest innocent civilians. Human rights organisations have claimed that the joint order is a hit list.

Yet the scheme continues. Recently, two elders were arrested and falsely accused of communist activity. Lourdes Quioc, 64 years old and a local hilot (village midwife), and Reynaldo Ingal, 63 years old and a retired company driver, were arrested and falsely named as Eugenia Magpantay and Agaton Topacio respectively. The latter two are included in the DND-DILG “hit list” order.

#### **V. Conclusion**

Historically, torture has been brandished as a weapon by the ruling classes. The authorities both possess and exercise their capability to carry out inhuman, cruel and degrading punishments. The culture of impunity in the use of torture by state security forces could occur

without the tacit approval or backing of government officials. The military and police institutions cannot implement torture if the government has the political will to stop it.

The Philippines government, run by the elite classes desperate to protect their hold on power, are anxious to allow their war dogs to use any method to maintain the status quo. In order to instill fear among the people, to prevent dissent and uprising, the ruling elites will accept the military's use of torture.

While the passage of the 2009 Anti-Torture Act has been commended by international human rights groups, implementation and strong determination by the government to curb torture remains to be seen. Now the law exists, the need to implement it and punish culprits comes to the fore.

This goes to demonstrate that the enactment of a law is not enough to solve the problems of society. Action and determination to curb criminality, especially those committed by uniformed officials, is the next step to take. ■



*Text adapted from the speech given by Rep. Carlos Isagani T. Zarate of the Bayan Muna Partylist House of Representatives, at the 16th Philippine Congress and 3rd Asian Alliance Against Torture and Ill-Treatment (AAATI)*

*Conference of Asian Parliamentarians, 10-14 October, 2014.*

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■ cont'd from page 4

**LG: Do you think a functioning criminal justice system is the ideal way to challenge torture? What features would such a system require?**

**MC:** Torture and cruel treatment of individual prisoners can be challenged in the criminal justice system. But a much broader strategy is necessary to end torture once and for all. There must be a national consensus that torture is wrong, illegal, and counter-productive, and must never be used under any circumstances. Indeed, the Torture Convention says, "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture." That prohibition is unequivocal.

**LG: It was a whistleblower who leaked the Abu Ghraib photos, resulting in the torture committed becoming a matter of international discussion. What impact can the average individual have in preventing, limiting or challenging torture?**

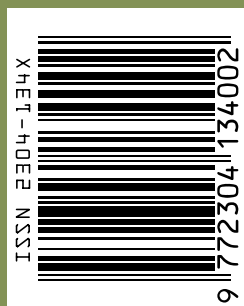
**MC:** Whistleblowers serve a critical function in society. Without them, government can get away with secrecy, lies, and illegal treatment. We should protect and encourage whistleblowers such as Daniel Ellsberg, Chelsea Manning, John Kiriakou and Edward Snowden.

**LG: Finally, in your own opinion, why is torture wrong?**

**MC:** There is absolutely no justification for subjecting any human being to torture. It is just plain wrong. ■

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