

Mandates of the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL PHL 8/2018

27 August 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/6 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged torture in custody of a person with psychosocial disability.

According to the allegations received:

Between 26 and 27 August 2017, Mr. [REDACTED], a United States citizen diagnosed with bipolar, post-traumatic stress disorder, and clinical depression, was arrested by the police in Daraga, Albay, Philippines for disturbing the public order after self-inflicting cuts on his wrists and attempting to commit suicide by jumping off a local bridge. Reportedly, the man was under the influence of an unintentional overdose caused by the consumption of a prescribed psychotropic drug.

At the moment of the arrest, local National Police officers offered to release him in exchange for his personal belongings. Subsequently, Mr. [REDACTED] was transferred to a hospital where he reported the police bribery attempt. As a consequence of his complaint, he was immediately returned to the police station and subjected to kicking, beating, and blows to the head.

Mr. [REDACTED] was detained in a cell overnight and, during this time, was not allowed to contact his Consulate, but was allegedly left restrained in handcuffs overnight, hogtied with ropes to a wooden pole for over eight hours in stationary position and forced to urinate on himself and sleep in the urine. He was also denied food and water while in custody.

Mr. [REDACTED] was released on the next day. Subsequently, he filed complaints with the Philippine's National Bureau of Investigation (NBI) in order to seek redress for these violations, but did not receive any response.

Without prejudging the accuracy of this information, I would like to express serious concern at the alleged torture and ill-treatment of Mr. [REDACTED] while in police custody seemingly in contravention of the prohibition of torture and ill-treatment as stipulated by international human rights law.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and comment, which you may have on the above mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate any remedial action taken vis à vis Mr. [REDACTED].
4. Please provide information on measures taken by your Excellency's Government to prevent the arbitrary use of force by law enforcement officials.
5. Please provide information on measures adopted by the Philippine authorities to ensure the right of Mr. [REDACTED] to an effective remedy for the alleged human rights violations, including torture and ill-treatment.
6. Please indicate any steps your Excellency's Government plans to take to fulfil its obligation to ensure respect for the human rights of persons of disabilities, notably those imprisoned, in line with the CRPD.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Kindly be informed that a copy of this communication will also be shared with the Government of the United States of America for their full information.

While awaiting a reply, and in the event that your investigations support or suggest the allegations to be correct, we urge that all necessary measures be taken to ensure accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw attention of your Excellency's Government to the applicable international human rights norms and standards.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as article 7 of the International Covenant on Civil and Political Rights (ICCPR), both of which your Excellency's government ratified in 1986. Article 12 of CAT, further requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed; and article 7 requires State parties to prosecute suspected perpetrators of torture. Additionally, Article 15 of the CAT, prohibits the use of information obtained under torture as evidence in any proceedings. The Committee Against Torture (CAT) has stressed that States have a heightened obligation to protect persons vulnerable to discrimination, as such individuals are generally more at risk of experiencing torture and ill-treatment (see CAT/C/GC/2, paras. 15, 17 and 18).

Additionally, we refer to the Convention on the Rights of Persons with Disabilities (CRPD), ratified by the Philippines on 15 April 2008, particularly articles 15 (freedom from torture or cruel, inhuman or degrading treatment), 16 (freedom from exploitation, violence and abuse), and 17 (protecting the integrity of the person), which complements the above human rights instruments in relation to the right of persons with disabilities to be free from any act of torture or any form of cruel, inhuman or degrading treatment.

Moreover, article 14 of the CRPD, in conjunction with its article 5, prohibits the unlawful or arbitrary deprivation of liberty of persons with disabilities, and states that the existence of a disability shall in no case justify a deprivation of liberty. States have an obligation to ensure that persons with disabilities are entitled, on an equal basis with others, to guarantees in accordance with international human rights law. They must also ensure that treatment and conditions during arrest and detention do not discriminate directly or indirectly against persons with disabilities and that they respect their inherent dignity.

Likewise, article 10(1) of the ICCPR establishes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Human Rights Committee in General Comment No. 21 has explained that this provision applies to anyone deprived of their liberty under the laws and authority of the State, including in prisons, hospitals, psychiatric institutions, or elsewhere, without discrimination. It has also recalled that this provision supplements the ban on torture and other cruel, inhuman or degrading treatment or punishment established in article 7 of the ICCPR (paras. 2-3).

Furthermore, Principle 20 of the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court (adopted by the Working Group on Arbitrary Detention during its 72nd sessions, held in April 2015) underlines that Courts, while reviewing the arbitrariness and lawfulness of the deprivation of liberty of persons with disabilities, shall comply with the State's obligation to prohibit involuntary committal or internment on the grounds of the existence of an impairment or perceived impairment, particularly on the basis of actual or perceived psychosocial or intellectual disability (WGAD/CRP.1/2015, para. 56). Persons with disabilities are entitled to be treated on an equal basis with others, given the same procedural guarantees available to others, and to not be discriminated against on the basis of disability (WGAD/CRP.1/2015, paras. 57-58). They are also entitled to request individualized and appropriate accommodations and support in order to exercise the right to challenge the arbitrariness and lawfulness of their detention (WGAD/CRP.1/2015, para. 59).

We would also like to draw the attention of your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners 2015 (the Mandela Rules). In particular, Rule 43 that prohibits, in all circumstances, disciplinary sanctions that amount to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment. Rule 22 also states that every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality, well prepared, and served, and that drinking water shall be available to every prisoner whenever he or she needs.

Additionally, we would like to also bring to the attention of your Excellency's Government reports of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment that find that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions (A/66/268, para. 79). Therefore, solitary confinement of any duration must never be imposed on persons with mental or physical disabilities (A/HRC/31/57, para. 22).

Finally, we would like to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. Both the Code of Conduct for Law Enforcement Officials, (adopted by the General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force only if other means remain ineffective or without any promise of achieving the intended result. Force used must be proportionate to the legitimate objective to be achieved.