

R.A. 9745
THE ANTI-TORTURE LAW
and
**COMPREHENSIVE REHABILITATION PROGRAM FOR
TORTURE VICTIMS AND THEIR FAMILIES**
A Pocket Guide

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[REPUBLIC ACT NO. 9745

AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING
TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR

R.A. 9745

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INTRODUCTION

The application of excessive and inappropriate use of force by authorities to enforce the law, extract information, and mete out punishment against persons under their power continues to be reported in the Philippines. Since the passage of Republic Act 9745 of 2009 or the Anti-Torture Law, law enforcers and other members of the security forces continue to be implicated in torture complaints gathered by the Commission on Human Rights (CHR), the Amnesty International, and human rights organizations in the country. Even children and young people have not been spared, in violation of the Juvenile Justice Law (Republic Act 9344) which prohibits the ill treatment of so-called 'children in conflict with the law'.

A significant obstacle in eradicating torture in the Philippines is the effective implementation of the law. One way to achieve this is to disseminate the information that torture is a crime and that redress is available to the aggrieved parties. To contribute in narrowing down the information gap, the Balay Rehabilitation Center, a civil society co-convenor of the United against Torture Coalition (UATC), offers this Pocket Guide to the Anti-Torture Law and the Comprehensive Program for the Rehabilitation of Torture Victims and their Families. It aims to provide the victims and their families, those at risk of being tortured, and the duty bearers with a compact, concise and easy to understand reference about R.A. 9745 and its component rehabilitation program. This booklet also provides information how an individual can seek redress and whom they can get in touch with to facilitate their access to justice.



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PART I: Republic Act 9745

ANTI-TORTURE LAW OF 2009**Who is primarily responsible to prevent torture and protect the rights of citizens?**

The State – represented by the government, persons in authority and their agents, institutions – has the primary legal, political, and moral obligation to prevent torture, sanction the perpetrators, and enable the victims to obtain redress. In fulfillment of its obligation under the United Nations Convention against Torture (CAT) and the 1987 Constitution, the Philippine Government enacted Republic Act 9745 in 2009. Otherwise known as the Anti-Torture Law (ATL), its passage ended the more than two decades of legislative deficit since the government signed the CAT in June 1986.

The law, among others, prohibits and declares torture and ill-treatment as criminal acts. Perpetrators and their accomplices are made accountable under the law where the penalties include payment of damages and imprisonment that could last for a few years to reclusion perpetua, depending on the gravity of the act and the severity of the suffering of the victim. It also provides for institutional guarantees to prevent situations where torture may be carried out with impunity and a rehabilitation program for the victims and convicted perpetrators.

How is torture distinct from other common forms of violence?

Torture, in its broad sense, is the excessive and inappropriate use of force by an agent of the state or a public official to achieve a particular objective. It is an unlawful exercise of naked power by authorities over those who have no capacity to protect themselves. It is distinct from other acts of violence inflicted by a person on another – such as parental abuse, intimate-partner violence, riots, rally dispersal, inter-personal assaults, physical injuries, and other acts of violence.

The Anti-Torture Law in the Philippines, in keeping with the provisions of the UN Convention against Torture, has determined that three elements have to be present before an act could be prosecuted as a crime of torture:

(1) **nature of the act** – intentional infliction of severe pain or suffering whether physical or mental; (2) **motive** – committed with a clear purpose such as extracting information or confession, intimidation, punishment or discrimination; and, (3) **perpetrator** – inflicted or instigated by, or with the consent or acquiescence of a person in authority or their agents.

In summary, torture is the deliberate infliction of pain and suffering by a public official or its agent, with the intent and purpose of extracting a confession or information, punishment, intimidation, coercion, or discrimination. It does not include the lawful use of proportionate force inherent or incidental in administering lawful sanctions.

The most important criteria in the definition of torture are the intention and purpose, as well as who commits the act, and not the severity of the pain as the indicators of suffering may vary depending on the circumstances and the personality and characteristic of the victim.

Thus, while there are different contexts where severe pain or suffering can be inflicted by a person to another, they may only be prosecuted under the Anti-Torture Law if the perpetrator is a person in authority or their agents, such as law enforcers, custodial personnel, jail officers, military, and other members of the security forces. Members of paramilitary forces, barangay tanods, and co-detainees may also be liable for torture if they committed the acts under the authority of public officials.

Other unlawful acts of abuse, cruelty, or violence not recognized under the Anti-Torture Law may still be prosecuted under such applicable laws, such as the Violence against Women and Children Law, the Revised Penal Code, and the Anti-Hazing Law, among others.

Members of non-state armed groups or dissidents who commit acts of torture are not covered by Republic Act 9745. However, they may be held accountable under Republic Act 9851, or the law penalizing crimes against international humanitarian law and other crimes against humanity.

Where does torture happen?

Torture occurs when a person is powerless and under the control of authorities. The use of force and the infliction of pain under these circumstances violate the principle of proportionality, and is an affront to human dignity, forbidden by international and national law.

In the Philippines, torture can happen at the time of arrest, while a person is in transit and under the custody of authorities, in police lock up cells, in remand prisons, regular jails, military detachments and camps, and especially so in unofficial and undisclosed place where a person is held in custody.

What are some of the most common methods of torture?

The Anti-Torture Law has identified some physical and psychological methods of torture punishable under the law. Most common forms of physical torture include beating, electric shocks, stretching, hitting with rifle butt or other hard object, submersion, blindfolding, suffocation, burns, rape and sexual assault.

Psychological forms of torture and ill-treatment, which very often have the most long-lasting consequences for victims, commonly include: isolation, threats, blindfolding, humiliation, prolonged interrogation, denial of sleep and food, mock execution, and witnessing the torture of others.

What is cruel, inhuman and degrading treatment or punishment?

The Anti-Torture Law also prohibits and criminalizes acts classified as cruel, inhuman and degrading treatment or punishment, otherwise known as CIDT or ill-treatment for brevity. They constitute acts that are "deliberate and aggravated treatment or punishment which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to persons."

What is the distinction between torture and CIDT?

The exact boundaries between "torture" and other forms of "cruel, inhuman or degrading treatment or punishment" are often difficult to identify and may depend on the particular circumstances of the case and the characteristics of the particular victim. Both terms cover mental and physical ill-treatment that has been intentionally inflicted by, or with the consent or acquiescence of, the state authorities. CIDT refers to ill-treatment that are inflicted with an intent to expose individuals to the conditions which amount to or result in the ill-treatment.

Degrading treatment may involve pain or suffering less severe than for torture or cruel or inhuman treatment and will usually involve humiliation and debasement of the victim. The essential elements which constitute

ill-treatment not amounting to torture would therefore be consist of the following: (1) intentional exposure to significant mental or physical pain or suffering; and (2) by or with the consent or acquiescence of the state authorities.

In some cases, certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other.

Even where the treatment does not have the purposive element or, as far as degrading treatment is concerned, is not considered severe enough (in legal terms) to amount to torture, it may still amount to ill-treatment punishable under the law.

What are some institutional measures to reduce or prevent torture from taking place?

Mechanisms to prevent situations where torture may be carried out with impunity are included in the Anti-Torture Law. Among them is the prohibition of secret detention places, solitary confinement, incommunicado or other similar forms of detention where torture may be carried out with impunity.

To ensure this, law enforcement agencies, and security forces particularly the Armed Forces of the Philippines (AFP), the Bureau of Jail Management and Penology (BJMP), and the Philippine National Police (PNP) are required to make an updated list of all their detention facilities, detained individuals including date of arrest and offence committed. The list shall be made accessible to the public and must be submitted to the Commission on Human Rights (CHR) every month at the minimum.

Prompt Access to Justice and Protective Mechanisms

The law also requires a prompt (maximum of 60 working days) and impartial investigation by the CHR and other mandated agencies such as the Department of Justice (DOJ), Public Attorney's Office (PAO), National Bureau of Investigation (NBI), the Armed Forces of the Philippines (AFP), and the Philippine National Police (PNP) of possible torture cases brought to their attention. Government agencies are also required to provide the victims sufficient protection from harassment, threats or intimidation. The state shall provide security to the victim's, family and the

witnesses as well. Likewise, Writs of Habeas Corpus, Amparo and Data filed on behalf of a victim of torture or CIDT should be complied with by concerned agencies immediately.

Assistance to investigation and filing of complaint

The CHR and PAO are mandated by the law to provide legal assistance to the victims in the investigation, filing and monitoring of the complaint. Finally, any confession, admission or statement obtained as a result of torture is inadmissible as evidence except if used against a perpetrator.

For Persons Deprived of their Liberty

For persons under custody of law enforcement agents, every person arrested shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her choice before and after interrogation.

Under the law, the State shall provide a competent and independent doctor if the victim cannot afford such services. Any person arrested, detained or under custodial investigation, including his or her immediate family, shall have the right to immediate access to proper and adequate medical treatment.

Who could be held criminally liable for acts of torture?

Those that can be held criminally liable for act of torture or CIDT include any person who actually participated or who cooperated in the execution of the act of torture and CIDT and any officer or official who issued an order to commit torture.

Any officer or official who have committed an "act of omission or negligence" by not taking preventive action or conducting investigations whether deliberately or out of negligence upon knowing that an act of torture has been committed can be liable as well.

Public officials can, even if they did not participate in the commission of torture or CIDT, can be liable as accessories if they have knowledge about the act and takes part subsequent to its commission by: profiting from or assisting in the act; concealment; destroying instruments of torture or evidences; and harboring, concealing or assisting their escape.

Can torture be acceptable under certain circumstances?

The prohibition of torture is absolute under the Anti-Torture Law and international law. Torture shall not be allowed nor tolerated under any circumstances. Even a state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

Can acts of torture be prosecuted separately from other crimes?

Torture as a crime may be filed separately; it shall not be absorbed by any other crime or felony committed as a consequence. In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

What are the penalties for acts of torture?

Acts of torture carry the penalty of reclusion perpetua (20 years and 1 day, to 40 years) if they resulted to death or mutilation; or if the victim is raped or the act is committed with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life. The same penalty will be meted out to perpetrators if torture is committed against children.

Reclusion temporal (20 years and one day, to 40 years) will be the penalty on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame. For acts of torture that result in psychological, mental and emotional harm, the penalty is prision correccional (six months to 6 years). While the penalty of prision mayor (six years to 12 years) shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; or shall have become permanently incapacitated for labor.

The penalty of prision correccional (six months to 6 years) shall be imposed upon those who establish, operate and maintain secret detention

places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention where torture may be carried out with impunity.

The penalty of *arresto mayor* (one month to 6 months) shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein.

Can torture victims avail of compensation for the torment they suffered?

Under the law, any person who has suffered from torture shall have the right to claim for compensation as provided for under Republic Act No. 7309. In no case shall compensation be any lower than Ten Thousand Pesos (Php 10,000). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations, such as the Financial Assistance Program of the government.

PART II: COMPREHENSIVE REHABILITATION PROGRAM FOR TORTURE VICTIMS (CPRTV)

INTRODUCTION

Torture as a cruel act of violence, is a serious and terrible assault against human dignity. It impairs a person's functioning, impedes the development of human potential, and curtail the enjoyment of the fullness of life.

Torture strikes at the very core of one's civil and political freedoms and violates human rights. It is immoral and impractical – that is, the infliction of pain and suffering does not guarantee the generation of reliable information and is declared unacceptable by the international law and the Anti-Torture Law in the Philippines.

The consequences of torture are not only in relation to physical and psychosocial well being but also in the protection and exercise of rights of affected persons. As long as torture takes place, its negative physical, mental, and social effects will continue to be a public health and social welfare challenge. It affects not only individuals and families, but also communities and the entire nation. The legacy of these experiences - because of the indelible marks they leave – can continue into subsequent generations creating an enduring cycle of pain and suffering, also known as multi-generational trauma.

What is the legal basis of the right to rehabilitation of torture victims?

States who are parties to the Convention against Torture (CAT) are obliged to fulfill their commitment under international law. Article 14, of the CAT, particularly provides that each State Party has to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.

As such, the rehabilitation program is considered as integral part of redress and providing justice to the victim. It sees prevention and rehabilitation as complementary, interdependent and mutually reinforcing.

Section 19 of the Anti-Torture Law and Section 37 of its Implementing Rules and Regulations (IRR) provide for the formulation of a comprehensive rehabilitation program for the victims of torture and their families. It also provides for the development of a parallel program for the convicted torturers “towards the attainment of restorative justice.”

What did the government do to fulfill its obligation to provide rehabilitation services for torture victims and their affected members?

To fulfill their obligation under the Anti-Torture Law, the mandated agencies, notably the Department of Social Welfare and Development (DSWD), Department of Justice (DOJ), Department of Health (DOH) approved in 2014 the Comprehensive Program for the Rehabilitation of Torture Victims and their Families and those who Committed Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (also referred to in this document as CPRTV for brevity).

With the signing of the CPRTV, the rehabilitation program becomes binding and enforceable to all agencies who have been identified as having particular roles and responsibilities under the state rehabilitation program.

So far, the primary mandated agencies are still working on their respective policies that would guide their implementation of their commitment under the CPRTV.

What is the meaning of rehabilitation under the CPRTV?

Rehabilitation, as defined in the CPRTV, is a process of restoring functionality, including managing pain, restoring productivity, and finding and reframing meaning in experience. It is a transformation process of healing, empowerment and development towards the attainment of full human potential and enjoyment of life of torture victims and their affected families.

The social reintegration of torture victims is an essential component of the CPRTV. It is understood as a process of reuniting the victim with his/her essential family and community or integrating in a new community. It implies a package of measures towards restoring the victim's rights, social status and health and helping him/her regain vital capacity for activities that were restricted due to some reasons.

It includes measures on restoring/building friendly relations in the family, vocational training and employment, regaining the feeling of being full-fledged members of society, feeling of self-respect and other ethnic personal interrelations.

Why is the rehabilitation holistic?

The rehabilitation framework under the CPRTV is based on a bio-psychosocial model that is informed by a human rights perspective. It provides for the physical, social, and psychological healing and development of victims of torture and their families. It aspires for a holistic treatment of torture victims since the consequences of torture could be acute and chronic, and may include physical, mental, psychological, cultural, spiritual and socio-political problems.

The rehabilitation program aims to enable the victims to recover their health, sense of wellbeing, and functioning to become contributing members of the community.

It also seeks to pursue rehabilitative services based on the different identified needs of torture victims and their families, and is based on the sound assessment of a case manager.

The program is guided by the following principles:

- comprehensive continuum of care
- confidentiality and right to privacy
- gender sensitivity
- appropriateness of treatment and care
- informed consent
- non-discrimination
- participation and self-determination
- respect for and protection of human rights; and
- restorative justice.

What are the kind of rehabilitation services that torture victims and affected family members may avail?

The law provides that the state shall make available rehabilitation services to the victims and their affected family members. Among the services they are entitled to enjoy are:

- a. Comprehensive, adequate and competent medical care from health and medical professionals
- b. Psychological and/or psychiatric services given to the victim, their families, and groups that are responsive to their needs and are culturally-sensitive.
- c. Economic empowerment and assistance that can come in the forms of livelihood assistance, skills training, job placement, financial/cash assistance, educational/scholarship assistance, and legal assistance

How can torture survivors avail of rehabilitation services?

A case of torture has to be established first before a person can gain access to rehabilitation services. This can be done by having a documentation indicating the torture narrative and the findings of an independent competent medical doctor and a trained investigator or human rights documenter to corroborate the torture account.

A torture victim does not have to file a case or obtain a favourable court decision in order to access the rehabilitation services under the CPRTV. As long as there is reasonable basis to indicate that a person could have suffered from torture, then he or she may be covered by the CPRTV.

There is also no period of prescription for a victim to avail of rehabilitation services.

Hence, aside from medical and legal records, other relevant documents may also be useful in backing up the allegation of torture (such as police reports, independent news accounts, records of human rights groups, etc.).

For family members affected by the torture of their relative, they must also present supporting documents of their affiliation to the victim, as well as the victim's medical and psychological evaluation stating that the person was indeed a victim of torture.

A torture victim may seek support in accessing rehabilitation services from the Commission of Human Rights, civil society organizations committed to human rights protection, and public officials and service providers with knowledge on human rights or the anti-torture law.

How can government agencies and service providers assist the victims access rehabilitation services?

As per the provisions of the CPRTV, doctors have the duty to provide immediate treatment to torture victims and to undertake documentation as provided for by the law and the Implementing Rules and Regulations of RA 9745.

The CHR and the Public Attorney's Office (PAO) are mandated by the law to provide legal assistance to the victims in the investigation, filing and monitoring of the complaint. They may also refer the victims to agencies mandated to provide rehabilitation services for them.

Human right NGOs and service providers specializing on torture documentation may also assist the victims access the rehabilitation program under the CPRTV.

Agencies with a mandate to provide rehabilitation assistance to torture victims such as the DSWD and DOH are expected to assign a case manager to attend to the torture rehabilitation cases.

The case manager is someone that can provide direct service or is able to link the victims and their families to needed resources that exist in complex service delivery networks and orchestrate the delivery of services in a timely manner.

In particular, the function of case managers include the following:

- (a) Facilitate or provide medical and psychosocial intervention to victims and their families.
- (b) Facilitate or provide support services and compensation/reparation to victims and their families to meet their needs through linkages and referrals with other agencies/organization.
- (c) Contribute in capacity enhancement of implementers in managing rehabilitation programs for victims and their families
- (d) Coordinate among members of a multidisciplinary team that will cater/address the needs of the tortured victims.

Social workers in the local government units (and also at the DSWD regional offices) are primarily given the tasks as case managers under the CPRTV. They may refer the victims to the TESDA, DepEd, DOST, and other government agencies for other assistance as well.

The Center for Health Development of the Department of Health is identified under the CPRTV to serve as a focal unit in facilitating medical service for torture victims. Health facilities under the DOH may also designate a particular unit where torture victims may go for treatment and case management. This has to be contained in a guideline to be issued by DOH.

Is there also a rehabilitation program for torturers?

The CPRTV is based on a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior and is best accomplished through cooperative processes that include all stakeholders the ideals of restorative justice. To achieve this, the CPRTV seeks to craft a parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading treatment or punishment or CIDT to help them internalize that the torture is inadmissible under any circumstance and for them to acknowledge the irreversible and far reaching damage the act inflicts to the individual and the social fabric.

The rehabilitation program is mandatory for those convicted perpetrators; while voluntary for those who are not yet convicted.

The CPRTV aims to facilitate a reconciliation of the offender, the offended and the community; and provide a reassurance to the offender that he/she can be reintegrated into the society after acknowledging

accountability and fulfilling the sanction that goes with it. It also seeks to enhance public safety by activating the offender, the victim and the community in prevention strategies.

Specific corrective interventions for those who committed torture and other cruel acts shall be based on further research and/or documentation of torture cases along with the processing of convicted perpetrators.

Can detained torture victims also avail of rehabilitation services?

Under the Bureau of Jail Management and Penology's rehabilitation program, a case worker shall be assigned to facilitate the delivery of psychosocial services to torture victims. Likewise, the bureau's paralegal office shall ensure the fast disposition of their cases.

It is the primary duty of the jail officer to provide a safe and secure environment for the victim. Proper and appropriate care should be rendered during the victim's stay in the jail facility.

Designated jail officers, particularly the jail health officers, must accurately and completely record and report signs of torture of the victim. These reports can be used as basis so that the victim can avail of due services due her or him under the CPRTV under the auspices of the BJMP. Concerned jail officers may also refer the immediate family to different government agencies and organizations that can give them and the victim rehabilitation services and assistance.

PART III: Appendix

CONTACT NUMBERS

Contact these numbers for support and/or additional information:

BALAY REHABILITATION CENTER INC

Address: Main Office - #25A Matiyaga Street, Barangay Central, Diliman, Quezon City
 Telefax: (02) 929-8054

Mindanao Office - Purok Sampaguaita, Poblacion 2, Midsayap, North Cotabato
 Website: www.balayph.net
 Email Address: balay@balayph.net
www.facebook.com/balayrehab

AMNESTY INTERNATIONAL

Address: 18 A Marunong Street Barangay Central, Quezon City
 Contact Number/s: (02) 376-4342
 Website: www.amnesty.org.ph
www.facebook.com/amnestyph

MEDICAL ACTION GROUP (MAG)

Address: #20 Road 9, Project 6, Quezon City
 Contact Number/s: (02) 454-7513
 Website: www.magph.org
www.facebook.com/medicalactiongroup

TASK FORCE DETAINEES OF THE PHILIPPINES (TFDP)

Address: #45 St. Mary Street, Cubao, Quezon City
 Contact Number/s: (02) 437-8054, (02) 995-0246, (02) 911-3643
 Website: www.tfdp.net

FREE LEGAL ASSISTANCE GROUP OF THE PHILIPPINES (FLAG)

Address: c/o Sanidad Law Offices 2/f East Side Bldg. 77 Malakas Street, Brgy. Pinahan, Diliman, Quezon City
 Contact Number/s: (02) 475-7159

THE PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES (PAHRA)

Address: 53-B Maliksi Street, Barangay Pinyahan, Quezon City
 Contact Number/s: (02) 475-7159
 Website: www.philippinehumanrights.org

PHILIPPINE NATIONAL POLICE HUMAN RIGHTS AFFAIRS OFFICE

Address: Camp Crame, Quezon City
 (02) 723-0401 loc. 3668, 3678

COMMISSION ON HUMAN RIGHTS

Address: SAAC Building, Commonwealth Avenue, UP Complex, Diliman, Quezon City
 Contact Number/s: (02) 928-7098
 Website: www.chr.gov.ph

ARMED FORCES OF THE PHILIPPINES HUMAN RIGHTS OFFICE

Address: Camp Aguinaldo, Quezon City Contact Number/s: (02) 911-2756, (02) 911-6001 (loc. 6943)
 Website: www.afp.mil.ph

BUREAU OF JAIL MANAGEMENT AND PENOLOGY

Address: 144 Mindanao Ave. Project 8, Quezon City
 Contact Number/s: (02) 927-6383 loc. 102
 Email Address: bjmp_dwd@yahoo.com
 Website: www.bjmp.gov.ph

PUBLIC ATTORNEY'S OFFICE

Address: Central Office, 4th & 5th Floors DOJ Agencies Building NIA Rd. corner East Ave., Diliman, Quezon City
 Contact Number: (02) 929-9436
 Email Address: pao_executive@yahoo.com
 Website: www.pao.gov.ph



Balay Rehabilitation Center

A Philippine Human Rights NGO providing Psychosocial Services
and Rehabilitation to Internally Displaced Persons and Survivors of
Torture and Organized Violence

For more information, visit www.balayph.net
and www.facebook.com/balayrehab
or email us at balay@balayph.net

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