



Addressing the Economic, Social and
Cultural Root Causes of Torture and
Other Forms of Violence in
The Philippines

Preventing Torture and other Cruel, Inhuman and Degrading Treatment in the Philippines by Acting on their Economic, Social and Cultural Root Causes

An alternative report to
the United Nations Committee against Torture
at its 42nd session- April/May 2009
including the Committee's concluding observations
and recommendations to the Government

Prepared by the World Organisation Against Torture in collaboration with:



**Philippine Alliance
of Human Rights Advocates
(PAHRA)**

and



**Karapatan
(Alliance for the Advancement
of People's Rights)**

This report has been endorsed by the following Philippine human rights organisations: the Medical Action Group (MAG), Families of Victims of Involuntary Disappearance (FIND), Partnership for Agrarian Reform and Rural Development Services (PARRDS), Task Force Detainees of the Philippines (TFDP), Philippine Human Rights Information Center (PhilRights), Balay Incorporated, Aniban ng mga Manggagawa sa Agrikultura (AMA), Bagong Alyansang Makabayan (BAYAN), Ibon Foundation, Inc., Kilusang Mayo Uno (KMU), Kilusang Magbubukid ng Pilipinas (KMP), Amihan (Peasant Women of the Philippines), Center for Trade Union and Human Rights (CTUHR), Kalikasan People's Network for the Environment (Kalikasan-PNE), Center for Environmental Concerns (CEC), Desaparecidos, Hustisyal, Ecumenical Movement for Justice and Peace (EMJP) and Samahan ng mga Mandaragat ng Bacoor, Cavite, Inc. (Association of Fishersfolks of Bacoor, Cavite, Inc. or SMBC, Inc.).



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"How to prevent or reduce violence, including torture, by acting on its root causes, often found in violations of economic, social and cultural rights, ... goes to the very heart of human rights protection."

Louise Arbour

United Nations High Commissioner for Human Rights¹ (2004 - 2008)

"As long as national societies and indeed the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as the risk of torture is concerned, directly contributing to the vicious circle of brutalization that is a blot on and a threat to our aspirations for a life of dignity and respect for all."

Sir Nigel Rodley

UN Special Rapporteur on the question of torture² (1993 - 2001)

¹ OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, at www.omct.org, p. 9. The Internet pages referred to in this document were visited in during 2008 and were valid at that time.

² UN Doc. A/55/290, para. 37.

Executive Summary

The purpose of this report is to contribute to the reduction and elimination of torture, cruel, inhuman and degrading treatment, summary executions and enforced disappearances in the Philippines by proposing recommendations for action to address their economic, social and cultural root causes.

It responds to the concerns expressed by the Committee against Torture regarding the serious violations of the rights of human rights defenders, including indigenous rights defenders, trade unionists and peasant activists, and the plight of indigenous peoples who, as among the most marginalised groups in the Philippines, are often victims of various forms of abuse, violence and exploitation. The Committee also referred to reports that due to poor living conditions and social exclusion, indigenous children are at risk of becoming involved in armed conflict and being recruited into armed groups and that armed conflict renders indigenous women and girls more vulnerable to physical and sexual violence.³

This report is based on information and analysis from national and international NGOs, on two information-gathering missions to the Philippines, on the conclusions of United Nations treaty bodies, reports of United Nations special rapporteurs, the World Bank, the United Nations Common Country Assessment of the Philippines and others. The information in this report mirrors that in the report submitted by OMCT in October 2008 to the 41st session of the Committee on Economic, Social and Cultural Rights in which it addressed the economic, social and cultural root causes of torture and other forms of violence in the Philippines from the perspective of the International Covenant on Economic, Social and Cultural Rights.⁴ By submitting reports to two key UN treaty bodies, OMCT seeks to provide the committees with a basis for mutually reinforcing recommendations.

This report describes how the poor, vulnerable and marginalised in their daily struggle for existence and in their legitimate activities to claim and protect their rights are met with violence on a large scale. Farmers and indigenous peoples wishing to have continued access to their means of living, the Muslim population of the Philippines seeking respect for their culture and way of life, workers seeking to protect their rights, victims of large-scale mining operations, and human rights defenders working to protect those populations and their rights are subjected to torture, summary executions, forced disappearances and other forms of ill-treatment from public and private sources.

³ UN Doc. CAT/C/PHL/Q/ 2 of 15 December 2008, paras. 32 and 33.

⁴ Available at www.omct.org.

Peaceful protests are seen as subversive by the Government and criminalised, and rural populations, under the guise of anti-subversive military operations, are prevented from growing their own food, their children are prevented from going to school, and they are subjected to torture, ill-treatment, killings, disappearances and other serious human rights violations.

The summary executions, disappearances and torture that take place in the Philippines continue because of impunity; no perpetrators are brought to justice and convicted. A climate of fear pervades Filipino society, and many victims and/or relatives of victims either do not bring proceedings for abduction, torture or illegal detention or fail to pursue them due to fear of reprisals from the police or military.

The denial of economic, social and cultural rights weakens people to the extent that allows the perpetrators of violence, by virtue of their positions of power over the victims, to act with impunity. Violence and lack of security, in turn, severely hinder these people seeking to escape from poverty, work in just and favourable conditions, provide care and education to their children, and enjoy an adequate standard of living and the highest attainable standard of health.

This report **recommends** (see chapter IX) the adoption by the Government of a multidimensional and regional approach to eliminate torture and other forms of violence resulting from violations of economic, social and cultural rights. This would be done by establishing **specific programmes of preventive measures** in each geographic region affected by violence aimed at protecting, in an integrated manner, economic, social and cultural rights and civil and political rights through, in particular, the implementation the relevant recommendations of the Committee against Torture, the Committee on Economic, Social and Cultural Rights and other UN treaty bodies. The programme for each specific region, designed and implemented with the participation of representatives of the different communities concerned, would include:

- initiatives relating to economic and social development (employment creation, education initiatives, health services, housing, nutrition, enhancing the status of women, etc.);
- initiatives aimed at respecting and protecting the cultural rights of all groups in the Philippines, including the Muslim population and indigenous peoples and the land rights of the latter;
- initiatives aimed at enhancing the rule of law including strengthening and training the judiciary; training the police and local administrators, relevant military units and personnel in human rights (including economic, social

- and cultural rights); and ceasing to use civilian auxiliaries of the Armed Forces of the Philippines (AFP) in the fight against so-called “terrorism”;
- and
- the establishment of a permanent monitoring function in those areas to ensure official compliance (by law enforcement officials, local government and the military) with human rights law and good practices.

The report also recommends the adoption of a nationwide rights-based approach to development by integrating human rights into economic and social policy. This should include the establishment of democratic and transparent mechanisms with an explicit economic, social and cultural rights mandate to oversee decisions on economic policies and to identify possible areas where there are risks of violence. This mechanism should include the Philippine Commission on Human Rights, relevant economic planning agencies and civil society. The adoption of a rights-based approach to development projects is recommended, including full and thorough consultation with the affected communities, an environmental and human rights impact assessment prior to decision-making and during implementation of projects, the monitoring of compliance with commitments entered into by corporations involved in such projects and the extension of the mandate of the Commission on Human Rights to include economic, social and cultural rights.

Other specific recommendations focus on facilitating the participation of civil society organisations in preventing and eliminating torture and ill-treatment and in ending the climate of impunity, including by ending attacks on human rights defenders, supporting the work of civil society organisations, protecting witnesses and ensuring impartial investigations of extrajudicial executions and torture. Recommendations also deal with strengthening legal and judicial measures to protect human rights by, inter alia, adopting legislation criminalising torture, ratifying the Optional Protocol to the Convention against Torture and empowering the Commission on Human Rights to carry out unannounced visits to all detention centres and military establishments.

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Introduction

This alternative report to the Committee against Torture seeks to reduce and eliminate torture, cruel, inhuman and degrading treatment, summary executions and enforced disappearances in the Philippines by proposing recommendations for action to address their economic, social and cultural root causes.

The effective elimination of torture and other forms of violence requires a multifaceted and integrated approach addressing respect for a wide range of human rights, civil and political as well as economic, social and cultural. Thus, in October 2008, OMCT submitted a report to 41st session of the Committee on Economic, Social and Cultural Rights in which it addressed the economic, social and cultural root causes of torture and other forms of violence in the Philippines from the perspective of the International Covenant on Economic, Social and Cultural Rights.⁵

The present alternative report focuses on eliminating torture in the Philippines by addressing its economic, social and cultural root causes from the perspective of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By submitting reports to two key United Nations treaty bodies, OMCT seeks to provide the committees with a basis for mutually reinforcing recommendations.

Today, there is no doubt that to effectively eliminate torture and ill-treatment, action must be taken against their root causes.⁶ Of course, many other measures must be taken to eliminate torture in addition to addressing its economic, social and cultural root causes.⁷ It is also important to recognise that acting to reduce levels of violence in a given society is a fundamental step toward ensuring the widespread enjoyment of economic, social and cultural rights.

As this report shows, failures to respect the economic, social and cultural rights of a very significant part of the population of the Philippines lead directly to violence in a number of ways. First, poverty and inequality lead to the vulnerability and marginalisation of large sectors of Philippine society, including indigenous people, farmers and others living in rural areas, and the population of the Muslim regions.

⁵ Available at www.omct.org.

⁶ See OMCT, op. cit.

⁷ These are dealt with in OMCT-sponsored alternative reports to the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

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That marginalisation and vulnerability leaves them open to many forms of violence, including State-sponsored violence, and they do not have the resources to defend themselves. The legal system is not “pro-poor”.

In addition, persons peacefully claiming their economic, social and cultural rights or defending the rights of others are often subjected to violent attacks, killings and disappearances. Violence and lack of security, in turn, severely hinder people from escaping poverty, working in just and favourable conditions, providing care and education to their children, and enjoying an adequate standard of living and the highest attainable standard of health.

It is also important to note that the denial of economic, social and cultural rights weakens people to the extent that the perpetrators of violence, by virtue of their positions of power over the victims, are able to act with impunity. Effectively protecting economic, social and cultural rights empowers people and reduces poverty, inequality and vulnerability to violence.

Philippine's international legal obligations

This report is based on the international legal obligations of the Philippines under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (art. 2, para. 2) and “to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment” (art. 16, para.1).

The Committee has been firm in describing the extent of State responsibility to take action to prevent torture and other cruel, inhuman and degrading treatment or punishment. As regards non-State and private actors, the Committee has stated that when

... acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility... The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.⁸

⁸ General comment No. 2 (2007) : Implementation of article 2 by State parties, para. 18.

Furthermore, the Committee has already established the link between violations of economic, social and cultural rights, in particular the right to adequate housing, and cruel, inhuman and degrading treatment. In its views on communication No. 161/2000,⁹ for example, the Committee found that the violent way in which Roma were evicted from their homes, and their dwellings destroyed and burned in the former Yugoslavia constituted acts of cruel, inhuman or degrading treatment in violation of the Convention. Although the destruction was carried out by private individuals, because the authorities acquiesced in the destruction, the Committee found that the State party was responsible for the violations of the Convention.

This report documents the specific vulnerability of the poor, excluded, marginalised and minority sectors of Filipino society to torture and other forms of violence. The Philippines, as a State party to the Convention, has the specific responsibility to protect vulnerable groups. In the words of the Committee:

Protection for individuals and groups made vulnerable by discrimination or marginalization. *The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment... States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.*"(emphasis added)¹⁰

In order to be more effective, the present report does not follow the traditional division into articles of the Convention against Torture (the Convention), but rather addresses torture and other forms of violence on a topic-by-topic basis, demonstrating through facts, figures and case studies that torture and other forms of violence can be reduced and eliminated by attacking their economic, social and cultural root causes. Of course, and as mentioned above, many other measures must be taken to eliminate torture in addition to addressing its economic, social and cultural root causes.

United Nations Common Country Assessment

This report contains many references to the United Nations Common Country

⁹ Decision on communication No. 161/2000, Dzemajl et al. v. Yugoslavia, adopted on 21 November 2002, UN Doc. CAT/C/29/D/161/2000.

¹⁰ General comment No. 2, op. cit., para. 21.

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Assessment of the Philippines 2004 (CCA).¹¹ That report is the result of a collaborative effort of United Nations agencies, other international organisations, government agencies, and non-governmental and civil society organisations. It adopted a rights-based development approach that means “putting the poor and vulnerable groups at the core of the development agenda”, and it identifies many failures to respect economic, social and cultural rights and their links to violence. It also provides very valuable recommendations for remedial action and enables the fight against torture to be seen in a wider context. The findings and recommendations of the CCA echo many of those identified by OMCT and its partners during the preparation of the present report.

Sources of information

OMCT has prepared this report on the basis of extensive information provided by the following non-governmental organisations in the Philippines: Karapatan (Alliance for the Advancement of People's Rights), Philippines Alliance of Human Rights Advocates (PAHRA) and Task Force Detainees, Philippines (TFDP). In addition, in-depth discussions with a wide range of Philippines human rights activists during their visits to Geneva provided valuable information and insights. This report also reflects the results of OMCT's own ongoing activities in relation to the Philippines including research into certain of the issues dealt with.

In addition, first-hand information for this report was gathered and consultations held with Philippine non-governmental organisations during two field missions to that country. The first, by Ms. Jastine Barrett, a lawyer from the United Kingdom, took place from 16 to 20 September 2008 during which Ms. Barrett met with many Philippine human rights organisations. The second, which took place from 16 to 20 March 2009, was carried out by Mr. Yves Berthelot, President of the World Organisation Against Torture, and Ms. Barrett.

Mr. Berthelot and Ms. Barrett met with representatives of the following organisations: Philippines Alliance of Human Rights Advocates (PAHRA), Karapatan (Alliance for the Advancement of People's Rights), Task Force Detainees of the Philippines (TFDP), Medical Action Group (MAG), PhilRights, Legal Resource Centre (LRC-KSK), Partnership for Agrarian Reform and Rural Development Services (PARRDS), BALAY, FIND (Families of Victims of Involuntary Disappearance), IBON Foundation, Bagong Alyansang Makabayan (BAYAN), Center for Trade Union and Human

¹¹ A Common View, A Common Journey, A Common Country Assessment of the Philippines 2004 (hereinafter CCA), United Nations Country Team, the Philippines, at <http://www.undp.org.ph/?link=6>.

Rights (CTUHR), Kilusang Mayo Uno (KMU) Labor Center (the May 1st Movement Labor Center), Kalikasan People's Network for the Environment (Kalikasan-PNE) and the Ecumenical Movement for Justice and Peace (EMJP). Meetings also took place with victims of human rights violations. Mr. Berthelot and Ms. Barrett also visited a fisherfolk community and met with representatives of Samahan ng mga Mandaragat ng Bacoor, Cavite, Inc. (Association of Fishersfolks of Bacoor, Cavite, Inc. or SMBC, Inc.) during which they were able to see the impact on the lives of the villagers of a development project which had deprived them of their livelihood.

Mr. Berthelot and Ms. Barrett also met with the Chairperson of the Commission on Human Rights of the Philippines and the Head of the European Delegation to the Philippines.

OMCT wishes to thank all those who met with Mr. Berthelot and Ms. Barrett for their availability and their contributions to this report.

OMCT also wishes to thank Mr. Berthelot and Ms. Barrett for having carried out that successful mission.

In addition to the information presented in this report, Mr. Berthelot and Ms. Barrett received information on violations of human rights that, while very important, did not fall within the focus of this report.

The information presented in this report is confirmed in reports of other United Nations treaty bodies and the many recommendations they have made for addressing violence in that country: the Human Rights Committee (2003);¹² the Committee on the Rights of the Child (2005);¹³ the Committee on the Elimination of Discrimination against Women (2006);¹⁴ and the Committee on Economic, Social and Cultural Rights (2008).¹⁵ The information in this report is also confirmed by reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

The challenge of effective recommendations

Crucial to the effective elimination of torture and other cruel, inhuman and

¹² See UN Doc. CCPR/CO/79/PHL.

¹³ See UN Doc. CRC/C/15/Add. 259.

¹⁴ See UN Doc. CEDAW/C/PHL/CO/6.

¹⁵ See UN Doc. E/C.12/PHL/CO/4.

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degrading treatment and punishment are the Committee's recommendations to the State party. These recommendations can serve as a powerful tool to national NGOs and human rights activists in bringing about change. As this report will demonstrate, coordinated action on a number of interrelated factors will be necessary for progress to be made in the Philippines on eliminating torture and ill-treatment. Treaty bodies, in particular the Committee on the Rights of the Child,¹⁶ the Committee on the Elimination of Discrimination against Women¹⁷ and the Committee on Economic, Social and Cultural Rights,¹⁸ have begun to recommend that the Philippines adopt a broad approach to addressing violations.

The holistic and programmatic approaches to recommendations being developed by those committees involve calls for comprehensive strategies covering many factors based on the collection of information, the identification of particular target groups or areas, the involvement of many actors, independent implementation and monitoring mechanisms where relevant, and the provision of sufficient resources. Periodic public reports on progress are recommended, as are reviews of

¹⁶ The Committee on the Rights of the Child (CRC/C/15/Add. 259) has welcomed a holistic approach adopted to address child rights issues and related progress and shortcomings in the Philippines, but expressed concern that the existing monitoring mechanisms are insufficient to monitor and evaluate the implementation of the relevant plan (para. 10). The Committee also underlined the importance of independent monitoring mechanisms regarding children's rights (paras. 11-13). The Committee gave importance to evaluation and recommended that the Philippines establish a systematic assessment of the impact of budgetary allocations on the implementation of children's rights and identify the yearly budgetary amount and proportion spent on persons under 18 years of age (paras. 14 and 15). Regarding children living in the streets, it spoke of a systematic and comprehensive strategy to address the problem that encompassed issues of unlawful arrest and their limited access to adequate nutrition, clothing, housing, social and health services and education. It further encouraged the State party to use indicators and data to formulate policies and programmes for the effective implementation of the Convention, and to develop a comprehensive strategy with the active participation of street children, non-governmental organisations and relevant professionals to address the high number of street children, with the aim of reducing and preventing this phenomenon (paras. 83 and 84).

¹⁷ The Committee on the Elimination of Discrimination against Women (CEDAW/C/PHL/CO/6), with regard to the equal participation of women in public life, has recommended that the Philippines establish concrete goals and timetables and take sustained measures for that objective (para. 24). The Committee also recommended an evaluation of the impact of free trade on the socioeconomic conditions of women (para. 26).

¹⁸ The Committee on Economic, Social and Cultural Rights (E/C.12/PHL/CO/4) also adopted a holistic approach regarding unemployment in the Philippines. The Committee recommended that the Philippines increase its efforts to reduce unemployment and underemployment through specifically targeted measures, including programmes aimed at creating employment opportunities at the local level for young, unskilled and inexperienced workers living in urban areas and persons living in rural areas (para. 19). The Committee also requested the Philippines to allocate sufficient funds for the realisation of programmes aimed at providing security of tenure and affordable housing, particularly to members of the most disadvantaged and marginalised groups (para. 29).

government policies such as those relating to trade from the points of view of the specific rights or violations targeted. The present report will seek to provide such recommendations.

I. Torture, ill-treatment, poverty and inequality in the Philippines: Setting the context

Poverty and violence

In the Philippines, conflict and violence are generated by poverty, inequality, marginalisation and poor governance. These fuel conflict and violence in two ways. On the one hand, and as this report demonstrates, peaceful protests and demonstrations are very often met by violent repression by police, the military or private security forces.

On the other hand, desperation and hopelessness at being unable to achieve legitimate economic, social and cultural goals lead some people to resort to armed rebellion. In the words of the CCA, “[m]arginalised and disaffected groups can resort to armed rebellion to press their needs, causes and concerns”. The CCA concludes that the secessionist rebellion “finds its roots in a sense of social injustice and exclusion, and a desire for self-determination by the Muslim community.”¹⁹ Further, OMCT during its missions to the Philippines was informed that the Government perceives social tensions and calls for change as potential security issues and, accordingly, often responds with repression.

A nationwide public consultation in 1993 by the Philippines National Unification Commission found that the root causes fuelling conflict included “conditions of inequity, i.e. control of power and economic resources by an elite few; abject poverty of a great number of Filipinos; poor governance; injustice; abuse of authority and violations of human rights; and marginalisation of minority groups, especially Indigenous Peoples”²⁰.

The CCA also found that “[a]rmed conflict, in turn, aggravates poverty within the communities it directly affects, and the country at large, taking its toll on an economy already suffering from low growth and low investor confidence”²¹.

In analysing poverty, its causes and consequences, the CCA notes that the concept of poverty goes well beyond economic measures and “is rooted in a state of powerlessness and not merely the absence of assets and services to meet basic needs. Vulnerability, as distinguished from poverty, refers to the debilitating effect of major obstacles to the fulfilment of one’s human rights and commonly refers to

¹⁹ CCA, p. 27.

²⁰ Ibid.

²¹ Ibid. , page 28.

the disadvantaged and oppressed".²² This broader concept helps us identify the links between poverty and violence.

The CCA described rural poverty in the Philippines as "pervasive and persistent" with "roughly two-thirds of the entire population of Filipino poor [residing] in rural areas— indeed, four of 10 rural families are poor." The poor in rural areas are mostly small and landless farmers, farm workers, fisherfolk and indigenous persons, and their "inability to own the land on which they work discourages diversification into new, higher-value crops",²³ with unequal access to ownership of resources discouraging sustainable practices.

According to the CCA, official development programmes have failed to improve the situation in part due to: "(i) graft and corruption; (ii) political instability at the LGU [Local Government Unit] level leading to sporadic programming; and (iii) a lack of trust in government leading to nonacceptance of programs by the intended beneficiaries."²⁴

Urban poverty is, to a large extent, the result of destitution in rural areas, as many migrate in the hope of finding better opportunities in the cities. The CCA reported that rapid urbanisation has caused new problems for the urban poor, including underemployment and unemployment, poor housing, lack of basic services, and enormous pressures on urban carrying capacities, particularly solid waste management, and air and water pollution. In terms of housing, "some 262,000 informal settlements are situated in what may be considered high-risk or danger areas—riverbanks, railroad tracks, shorelines, dumpsites, low-lying areas susceptible to flooding, under bridges, relocation sites lacking amenities and tenurial security, and areas under threat of eviction". The urban poor often earn a meagre living in the informal services sector and advocacy for their social inclusion includes the "right to secure tenure, or the right to feel safe in one's home, the right to control one's own housing environment and the right to a process of eviction or displacement mitigation".²⁵

Inequality and violence

Inequality is also a very important factor leading to violence. In addition to high poverty levels, the World Bank in 2007 reported that the Philippines has one of

²² Ibid. , p. 13–14.

²³ Ibid. , p. 14.

²⁴ Ibid.

²⁵ Ibid. , pp. 14-15.

the highest levels of income inequality in Asia, with the poorest 20 per cent of the population accounting for only 5.4 per cent of total income or consumption, whilst the richest 20 per cent account for 50.6 per cent.²⁶ To a large extent, growing inequality in the Philippines is the result of policies that, over time, have produced a continued inequitable distribution of productive resources in the country.²⁷

The CCA reported on a Philippine study which showed that, at the individual level, the inability to break the cycle of poverty was "largely a result of these disparities and inequalities in accessing the resources and benefits of development and the lack of accountability placed on duty-bearers". That study pointed to the following factors undermining rights-based development in the Philippines:

*Farmers have little ability to accelerate land reform against long-standing powerful landlords. Indigenous peoples, who are seeking to protect ancestral lands from mining, deforestation, or other development, have little power to serve as a counterweight to the influences of large, often corporate, interests, who seek the interpretation of conflicting national laws in their favor.*²⁸

Underlying causes of poverty and inequality

Over the last three decades, the Government of the Philippines has implemented a policy of trade liberalisation in order to attract foreign capital and to accelerate domestic economic development. This policy has resulted in agricultural and industrial tariff barriers among the lowest in South-East Asia and one of the most liberal investment regimes in the region. Certain specific government policies in the areas of mining, land reform and export economic zones have very direct links with violence.

However, these policies have not resulted in an improvement in the living standards of the great majority of Filipinos. Unemployment in the Philippines has reached record highs, with an average annual unemployment rate of 11.3 per cent and an

²⁶ The World Bank, 2007 World Development Indicators.

²⁷ The CCA helps explain the extent and root causes of that inequality. It reported that the "inequitable distribution of productive resources has led to alarming disparities in economic status across populations, no matter the level of growth" and that this inequity appears to be widening. During the period 1985 – 2000 the share in national income of the poorest 20 per cent of the population declined from 4. 8 per cent to 4. 4 per cent, while the share of the richest 20 per cent increased from 52. 1 per cent to 54. 8 per cent. Had the income distribution remained at the 1985 level, poverty would have declined by as much as 16. 5 percentage points, instead of only 9. 4 percentage points. CCA, p. 19.

²⁸ Ibid.

underemployment rate of 18.9 per cent from 2001 to 2007.²⁹ Additionally, and in spite of domestic economic growth, cutbacks in government expenditure on and investment in much-needed social services (including health and education) and infrastructure have been made to enable continued debt service.³⁰

The adverse effects of these social policies and flawed foreign trade and investment policies that undermine livelihoods and incomes are felt by the country's most vulnerable groups, especially at the lowest end of the income scale: the poorest two-fifths of the population, or some 35 million Filipinos, have significantly higher infant and maternal mortality rates and poorer access to water and sanitation than the richest two-fifths.

The CCA identifies three key explanations for why the poor in the Philippines remain poor and the vulnerable increasingly vulnerable:

... economic growth and the underlying structural inequities and foundations in the economy; a sense of insecurity relating to societal harmony and political uncertainty; and the failure to iron out many of the imbalances and inequities that prevent key agents of change — including women, the poor and the marginalised — from playing more active roles in improving their lives and those of others.

The report concludes that “[g]rowth has been poor and not ‘pro-poor’”.³¹

²⁹ Figures provided by IBON based on data from the National Statistics Office (NSO) Labor Force Survey (LFS) using a uniform definition of unemployment to make recent data comparable with those in previous years. Unemployment statistics released by the Government give the impression that rates have been improving since 2005, but this is due to a change in the definition of “unemployment” in April 2005 which excludes from the definition long-discouraged jobseekers and those not available/willing to immediately take up work by classifying them as “NILF” (“not in the labour force”).

³⁰ In addition, the Government has given low priority to social services in the national budget where severe cutbacks have been made to enable continued debt service. There is a diminished per capita social services budget amidst standing inadequacies in social services. National government spending on education has fallen from a peak of 4.0 per cent of gross domestic product (GDP) in 1998 to just 2.5 per cent in 2008. Total education spending of P2,010 per Filipino in 2008 is 14.1 per cent less in real terms than in 1998. In the period 2001-2006, interest payments on debt accounted for an average of 28.1 per cent of the total budget while education only received 15.3 per cent. Similarly, national government spending on health has fallen from a peak of 0.74 per cent of GDP in 1990 to 0.58 per cent in 1997 to 0.31 per cent in 2008. Total health spending of P253 per Filipino in 2008 was 27.5 per cent less in real terms than in 1997.

³¹ CCA, p. 18.

Concluding observations and recommendations of treaty bodies

The Committee on Economic, Social and Cultural Rights, in its latest concluding observations on the report of the Philippines (2008), expressed its deep concern that, "in spite of the high rate of economic growth achieved in recent years, the percentage of persons living below the official poverty line has actually increased to an estimated 36 per cent of the population in 2007". It also expressed its concern at "the wide regional disparities between the National Capital Region and the poorest regions of the country, in particular the Autonomous Region of Muslim Mindanao, and the significant inequalities in income distribution, especially between urban areas and poor rural areas"³² Regarding the high unemployment and underemployment rates, the Committee noted in particular that the "lack of employment opportunities has led much of the population of working age to emigrate". It urged the Philippines "to increase its efforts to reduce unemployment and underemployment through specifically targeted measures, including programmes aimed at creating employment opportunities at the local level for young, unskilled and inexperienced workers living in urban areas and persons living in rural areas"³³

The Committee on the Rights of the Child, also in its concluding observations on the Philippines, noted with concern "the high number of children living in households below the national poverty line and the wide disparities in wealth between different regions" and it expressed its deep concern "about difficulties faced by children living in poverty, as to the enjoyment of their human rights, including access to social and health services and education"³⁴ The Committee thus recommended to the Philippines Government that it take "urgent efforts to raise the standard of living among its rural and urban population living in poverty, inter alia, through implementing a poverty reduction strategy and community development, including the participation of children"³⁵

A realistic approach to eliminating torture and ill-treatment in the Philippines will require these underlying root causes to be addressed.

³² E/C.12/PHL/CO/4, para. 28.

³³ Ibid., para. 19.

³⁴ CRC/C/15/Add.259, para. 66.

³⁵ Ibid., para. 67.

II. Torture and other forms of ill-treatment that result from conflicts over land and landlessness

Landlessness and violence

Landlessness is a root cause of violence and conflict in the Philippines. As a consequence of the drive towards industrialisation, landowners are increasingly converting agricultural land to agrobusiness or other forms of economic activity. Indeed, farmers and peasants are the most affected by the land reform for at least two reasons: the land they work is being allocated for new activities, and they are prevented from acquiring their own land as a result of their limited economic means and the corruption of the land allocation system. This violates a number of their basic human rights, including the right to food and the right to housing.

Land and agrarian reform in the Philippines

In the Philippines the majority of land is in the hands of a small elite. It is reported that politicians are themselves often landowners, and that they have tailored the Land Reform Programme to serve their own interests.

The 1988 Comprehensive Agrarian Reform Programme (CARP) has long been criticised by Filipino farmers and peasants, since it was considered to have been designed from the outset to benefit landowners rather than small farmers. OMCT has expressed its concern that the land reform in the Philippines includes loopholes that compromise the full enjoyment of land rights by the most vulnerable, and that the programme contains provisions that do not allow for fair land redistribution. For example, landlords are exempted from limitations on the maximum area of land they can own if they declare their intention to convert the land from agricultural to commercial, industrial or residential use. Therefore, land remains de facto concentrated in the hands of the elite.

The inadequacy of Filipino land reform was already identified as a source of concern in the 1995 concluding observations of the Committee on Economic Social and Cultural Rights. The Committee pointed out that the loopholes in the land reform programme hindered the proper implementation of the law and indicated that the Government of the Philippines had "failed to meet its

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own targets" and that there appeared "to be a lack of political will to redress the situation".³⁶

In December 2008, the CARP was extended for six months by Joint Resolution 19 of the Congress. However, the resolution removed the "compulsory acquisition clause" that was intended to distribute land to farmers.

The failure of the Government to properly implement the CARP has resulted in human rights violations against both those who are trying to claim land under the programme as well as those who have actually been awarded land. These families have been subject to illegal forced evictions, destruction of their properties, false criminal charges, and physical harassment and assault.

In 2007, FoodFirst Information and Action Network (FIAN) reported that since 2001, approximately 40 farmers have been killed in the course of their efforts to claim their land under the CARP.³⁷ The Partnership for Agrarian Reform and Rural Development Services (PARRDS), a coalition of farmers' organisations and NGOs, recorded 57 incidents of human rights violations against 405 agrarian reform beneficiaries in the Province of Masbate alone in 2007-2008. Reportedly, five of these incidents were committed by elements of the Philippine National Police Regional Mobile Group. The others were attributed to non-State actors, including landowners and their estate personnel or armed goons, and members of the New People's Army (NPA).

That those claiming land rights under the programme are caught up in violence is supported by the findings of the Special Rapporteur on extrajudicial, summary or arbitrary executions who confirmed that peasants found themselves implicated in conflicts among the Government, the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP/NPA/NDF), and large landowners.³⁸ Further, according to the agrarian reform organisation Kilusang Magbubukid ng Pilipinas (KMP), members and leaders of the KMP as well as allied organisations which have been campaigning against the extension of the CARP have also been

³⁶ E/C.12/1995/7, para. 19.

³⁷ FoodFirst Information and Action Network, UPR submission, November 2007, p. 1 at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PH/FIAN_PHL_UPR_S1_2008_FIANInternational_uprsubmission.pdf.

³⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to the Philippines, UN Doc. A/HRC/8/3/ Add. 2, para. 37.

the victims of disappearances and extrajudicial executions, allegedly at the hands of government forces.

Farmers and communities that campaign for agrarian reform have been targeted and harassed by soldiers. It is reported by the KMP that, in early 2008, government soldiers displaced around 10,000 anti-CARP farmers in Quezon and also burned the houses of and displaced at least 25 peasant families in Nasugbu and Batangas who supported the Genuine Agrarian Reform Bill (or House Bill 3059) which is proposed to replace the CARP, break up the land monopoly and redistribute land within five years.³⁹

Recent examples of killings related to agrarian reform

- Ms. Rachell Mae Palang, a 21-year-old nurse resident of North Poblacion, Consolacion town, Cebu; Mr. Jerry Cabungcag, a 27-year-old computer games technician and resident of Sitio Lawis, Pasil, Cebu City; and Mr. Federico Villalongha from Bohol at Sitio Taguik, Barangay Calango, Zamboangita, Negros Oriental, were killed in connection with a reported armed confrontation on 18 September 2008. According to the information received, on that day at about 3 p.m., elements of the 79th Infantry Battalion of the Philippines Army based at Siaton town, Negros Oriental, allegedly encountered a group of 15 armed men believed to be members of the NPA, following which a 45-minute gunfight ensued.
- Ms. Palang was reportedly committed to the cause of the farmers in the area where the alleged encounter took place, who are being affected by the jathropa business. (Jathropa is being used as a source of biofuel; farmers in the area reportedly complained about the destruction of their rice farmlands, having been allegedly forced into jathropa plantation.) The circumstances of the killings remain unclear, in particular with regard to the site of the killings (it was reportedly first declared that the incident took place at Malungkay-daku in Dauin, when in fact the event took place at Sitio Taguik, Barangay Calango, Zamboangita, in Negros Oriental) and the bodies were reportedly only retrieved three days later.
- Mr. Armando Dolorosa, Vice-President of the National Federation of Sugarcane Workers (NFSW) and the leader of an agrarian reform group in Manapla, Negros Occidental, was shot dead in his house by three masked men in the presence of his wife and 11-year-old son. According

³⁹ Information from Kilusang Magbubukid ng Pilipinas (KMP).

to his relatives, there are strong reasons to believe that his killing was related to the implementation of the agrarian reform programme. In 2007, Mr. Dolorosa and 36 other agrarian reform beneficiaries were granted certificates of land ownership by the Department of Agrarian Reform, and were therefore given a portion of a sugar estate. Since then, Mr. Dolorosa had been receiving death threats from persons his wife described as “planters”. He is the third local NFSW leader to be killed in Manapla since 2003.⁴⁰

- Mr. Danilo N. Qualbar, Public Information Officer of the Compostela Farmers Association (CFA),⁴¹ as well as the Cluster Coordinator of the Bayan Muna (People First) Party list, was shot to death by unidentified armed men riding a red XRM motorcycle in the barangay (village) of Osmeña on 6 November 2008 at around 5.30 p.m. as he was heading home some 4 km from Poblacion. An eyewitness told residents that Mr. Qualbar had been stopped by armed men who talked to him before he was shot.

⁴⁰ OMCT-FIDH, The Observatory for the Protection of Human Rights Defenders, Urgent Appeal PHL 001/ 0608/OBS 099.

⁴¹ The Compostela Farmers Association is an organisation that works for the rights and welfare of farmers in the province. It is a member of KMP, the nationwide organisation of Philippine peasants championing the cause of the tillers' right to land and to reap the fruits of their labour.

III. Torture and violence against indigenous peoples

There are approximately 140 indigenous ethno-linguistic groups in the Philippines, constituting between 15 and 20 per cent of the Filipino population. Indigenous peoples are among the most marginalised groups in the Philippines and are often victims of various forms of abuse, violence and exploitation. Furthermore, due to their poor living conditions and social exclusion, indigenous children, for example, are at risk of becoming involved in armed conflict and being recruited into armed groups. Armed conflict also renders indigenous women and girls more vulnerable to physical and sexual abuse and exploitation.⁴²

Forced recruitment of men from the Agta community⁴³ into the Citizens Armed Forces Geographical Unit (CAFGU)

OMCT has been informed that on 13 October 2007, the military tried to forcibly recruit all the men of the Agta community in Sitio Yukyuk into the CAFGU paramilitary force.

The men were told that if they refused to join CAFGU, they would be treated as members or supporters of the NPA. Six men escaped and have since left Sitio Yukyuk with their families to avoid being caught by the military.

OMCT is particularly concerned about the serious socioeconomic implications of forced recruitment of all the community's men and the impact this may have on the community members' livelihood, in particular their right to food.⁴⁴

Indigenous peoples are frequently located in isolated and inaccessible areas that are, however, rich in natural resources. According to the CCA, "the vulnerability of indigenous peoples to abuse, violence and exploitation" are due to major threats confronting them including:

(a) "development aggression," i.e. including major public infrastructure cutting into IP areas and commercial activities within ancestral domains, such as

⁴² CCA, p. 17.

⁴³ The Agta are a hunter-gatherer population in the Philippines, reportedly the first indigenous people to inhabit the Philippines. They are threatened with extinction.

⁴⁴ Information from TFDP.

Torture and violence against indigenous peoples

*mining and illegal logging, sometimes with the involvement of local politicians; and (b) armed conflicts, involving the military and armed insurgents, as well as tribal or clan conflicts within the communities themselves. These communities suffer from being used either as safe havens by rebel groups or as "hamlets" by the AFP.*⁴⁵

The tensions generated by the conflict between indigenous and commercial interests have frequently led to protest actions on the part of indigenous organisations, resulting in turn in social conflict and, in some parts of the country, to violent civil conflict. Often, indigenous activists are prosecuted, harassed, detained and imprisoned for their efforts to protect the economic, social and cultural rights of their communities.⁴⁶

Indigenous peoples' rights were intended to be protected and guaranteed under Filipino law. Indeed, the 1997 Indigenous Peoples' Rights Act (IPRA) was shaped on the provisions of the draft of what is now the UN Declaration on the Rights of Indigenous Peoples. Undeniably, on paper, the IPRA provides for the free, prior and informed consent of indigenous peoples; furthermore, it foresees mechanisms to halt projects that do not have the explicit consent of the communities they affect. However, in concrete terms, these provisions are systematically undermined by commercial interests, the interests of private companies and corporations that have occupied indigenous peoples' lands being better protected by the Government than indigenous land rights.

⁴⁵ CCA, pp. 42-43.

⁴⁶ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Mission to the Philippines, UN Doc. E/CN.4/2003/90/Add.3, 5 March 2003, paras. 21, 29 and 32: "... These are lingering social problems that can lead once more to social and political conflict and even violence if they do not receive prompt and effective attention" (para. 21).

IV. The Muslim population in the Philippines

For over a century, first under Spanish colonial rule and then under US control, the Muslims and Lumads of Mindanao, the southern region of the Philippines, have suffered marginalisation and oppression. This has resulted in the fight for self-determination and the struggle for recognition of rights over ancestral domains.⁴⁷

Today, the predominantly Muslim provinces of Mindanao are considerably underdeveloped in socioeconomic terms in comparison with the rest of the Philippines. It had been hoped that the establishment of the Autonomous Region of Muslim Mindanao (ARMM) would enhance social and economic development for the region's inhabitants; however, according to a report by the Internal Displacement Monitoring Centre, the percentage of the population under the poverty line in the ARMM is now almost twice as high as the national average, and literacy and school enrolment rates are significantly lower than the national average.⁴⁸ A Philippine NGO reported that, accordingly to surveys carried out by the Philippine Government, ARMM is among the 10 areas of the country with the highest levels of malnutrition.⁴⁹

Mindanao is rich in natural resources, and this has been the key source of conflict between the Government and Moro (or Muslim) separatist rebels, in particular the Moro Islamic Liberation Front (MILF). Further, the Government has largely failed to integrate the Muslim minority into the overwhelmingly Catholic economic and political society. Land disputes both within the Moro communities and between the Moro communities and the Government continue to trigger conflict. Additionally, the promotion by the Government of development projects, such as mining and dams, on land claimed by the Muslim population has led to further armed conflict.

The armed conflict between the Government and the MILF in this region has led to the displacement of over 2 million people since 2000. The two parties signed a ceasefire in 2003 and engaged in peace talks, which culminated in a memorandum on an agreement to expand the ARMM. However, on 4 August 2008, the Supreme Court issued a restraining order to halt the signing of the agreement (due to

⁴⁷ See B. R. Rodil, *A Story of Mindanao and Sulu in Question and Answer*, Davao City, 2003 for a detailed account of the struggles in Mindanao.

⁴⁸ Internal Displacement Monitoring Centre, *Displacement increases as Mindanao's peace process stumbles on: A profile of the internal displacement situation*, 19 August, 2008, pp. 15 and 27, at <http://internal-displacement.org>.

⁴⁹ See also CCA, p. 14.

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take place on 5 August 2008), following protests and petitions against it, mainly by Christians led by local politicians in the region.⁵⁰ This triggered an outbreak of fighting between the rebels and government forces in North Cotabato, Maguindanao and Lanao provinces which has led to the deaths of both government soldiers and MILF rebels and to people being driven from their homes.⁵¹ Fighting continued with rebel guerrillas allegedly shooting or hacking to death 37 people on 18 August 2008, causing a further 44,000 people to flee their homes in southern Lanao del Norte Province. The Government responded with bombing and air strikes, resulting in civilian casualties. The Government and rebels have continued fighting and, as of 30 September 2008, 292,977 people were reported by the National Disaster Coordination Council to have been internally displaced.⁵² This seriously compromises their economic, social and cultural rights including the right to an adequate standard of living and the right to education.⁵³

Case study: Assassination of Mr. Vincente T. "Roger" Paglinawan

Vincente T. "Roger" Paglinawan, a 51-year-old peasant leader residing in Sitio San Miguel, Malabog, Paquibato District, Davao City, on Mindanao Island, was assassinated on 22 November 2008. The report submitted by TFDP, a member of the OMCT SOS-Torture Network, stated that on 22 November 2008, at 5.30 p.m., Mr. Paglinawan was talking to a colleague in a nearby Purok (zone) in the vicinity of the Poblacion Malabog when he was shot by an unidentified gunman riding on a motorcycle driven by a man wearing a helmet. The gunman alighted from the motorcycle and shot Mr. Paglinawan from about 1 m away. He died instantly. A police outpost located only metres away intervened only 15 minutes later after some residents reported the incident. According to the same information, two weeks earlier, two individuals riding a motorcycle had asked neighbours on two occasions about Mr. Paglinawan and the whereabouts of the family.

Mr. Paglinawan was the Regional Vice-President for Mindanao of Pambansang Kilusan ng mga Samahang Magsasaka (PAKISAMA) (National

⁵⁰ On 14 October 2008, the Supreme Court declared with finality that the memorandum was “contrary to law and the Constitution”.

⁵¹ Aljazeera.net, Philippine Muslim group “withdraws”, 12 August 2008 at <http://english.aljazeera.net/news/asia-pacific/2008/08/200881294237150536.html>; and BBC News, Philippine troops retake villages, 12 August 2008, at <http://news.bbc.co.uk/2/hi/asia-pacific/7555584.stm>.

⁵² National Disaster Coordinating Council, at http://210.185.184.53/ndccWeb/images/ndccWeb/ndcc_update/ARMED_CONFLICT/sitreps49_complex.pdf.

⁵³ Associated Press, Philippines: Peace Deal to be Renegotiated, 19 August 2008, at <http://ap.google.com/article/ALeqM5hDjAO5PfeMIOJxfzDTvrm4AKqkwQD92M1AKG0>.

Federation of Peasant Organizations); a Section Chair of the AKBAYAN party list in Paquibato District, Davao City; a board member of Malabog Integrated Enterprises Development Cooperative; a member of Lupong Tagapamaya (the barangay justice system); and a church lay leader. The International Secretariat of OMCT expressed its grave concern about the killing of Mr. Paglinawan, in particular in the context of a pattern of targeted attacks on political activists in the country. This case was transmitted to the Government of the Philippines on 17 December 2008.⁵⁴ To date no clarifications or further information has been received.

⁵⁴ Case PHL 171208, available at www.omct.org.

V. Torture and other forms violence deriving from mining policy and activities

The Government of the Philippines adopted its 1995 Mining Code as part of its economic liberalisation policy. That code has been described as blanket legislation in favour of international mining companies enabling them to carry out mining activities on indigenous lands, and as “one of the most favourable to foreign mining companies anywhere in the world”.⁵⁵

1995 Mining Code – key provisions and concerns

- 100% foreign ownership of mining projects is allowed (previously there was a limit of 40%).
- A corporation may claim an area of up to 200 blocks (1 block = 81 hectares) onshore and up to 400 blocks offshore, while individuals are restricted to 20 blocks in one province and 40 within the country.
- Companies can repatriate all profits and are guaranteed against expropriation by the State. Tax holidays are allowed.
- The Government commits itself to ensure the removal of all obstacles to mining, including settlements and farms.

The 1995 Mining Code is one act that is used to avoid the proper application of the subsequently adopted Indigenous Peoples' Rights Act (IPRA). Significant mineral deposits lie in indigenous territories and in many cases, the Mining Code allows permits to be granted for mining on indigenous lands that are in theory protected under the IPRA. Furthermore, poorly regulated mining projects, ostensibly aimed at increasing employment and improving the living conditions of the population, do not represent a sustainable development alternative. Additionally, such projects frequently displace indigenous people, and fail to provide for their resettlement.

Mining activities can therefore have a negative socioeconomic impact on the affected populations, including water deprivation and pollution, health threats, forced displacement and threats to livelihood. Indeed, the British NGO, Survival International, described the 1995 Mining Code as “the major

⁵⁵ <http://www.newint.org/issue299/light.htm>. Foreign companies themselves were reportedly invited to help draft the law during a workshop held on the occasion of the 1993 Pan Asian Mining Congress.

Torture and other forms of violence deriving from mining policy and activities

current threat to the future of tribal people in the Philippines".⁵⁶ Further, the implementation of the Mining Code is in contradiction with section 16 of Article II of the 1987 Constitution of the Philippines, which requires the State to "protect and advance the right of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature", and causes a significant risk to the environment.

Indigenous peoples, communities and organisations have been struggling for their socioeconomic rights for many years. However, due to their lack of political influence, as well as the failure of the competent agencies to apply the law, cases are repeatedly decided in favour of mining companies. In addition, not all communities are aware of their rights and the remedies available to them, and many of them lack the legal means to file a complaint. In many cases companies and government bodies have claimed that they met the requirement of free and prior consent; however, later investigations reveal that the majority of the affected peoples in fact opposed the mining activities. In this respect, government agencies continue to fail to register or record such opposition, which consequently remains unacknowledged.⁵⁷

The violent reaction to peaceful protests is well illustrated by the case of mining activities and the death of protesters at the nickel mine on Sibuyan Island. In November 2007, OMCT issued an Action File⁵⁸ calling for a halt to mining activities on that island. The highlights of the Action File are as follows:

Mining activity on Sibuyan Island and violence⁵⁹

Mining activity on Sibuyan Island

Sibuyan Island in Romblon Province has a population of more than 50,000 people and is home to 1,500 Sibuyanons Mangyan Tagabukid indigenous persons, who rely on agriculture and fishing for their economic development.

⁵⁶ <http://www.prrm.org/publications/gmo2/vib.htm>.

⁵⁷ Breaking promises, making profits, A Christian Aid and PIPLinks Report (2004), at http://www.piplinks.org/development_issues/phillippines_report.pdf.

⁵⁸ See www.omct.org.

⁵⁹ See OMCT Action File (PHL 301107. ESCR) at www.omct.org

In 2007, Pelican Resources, an Australian company, formed a joint venture with the Sibuyan Nickel Properties Development Corporation (SNPDC) to establish, under the guise of small-scale mining operations, a large-scale nickel mining plant on the island. One of the world's largest mining companies, BHP Billiton, entered into a five-year agreement (with the possibility of a further eight-year extension) for the supply of 500,000 tonnes of nickel. The Sibuyanons Against Mining Movement also reports that a further 13 mining sites have been planned on the island. Reportedly, up to six rivers would be affected by the new mining activities, directly affecting the indigenous population. Protests took place in October 2007 against the mining operation, during which one of the activists, Armin Marin, was shot dead by an SNPDC private security guard.

Many of the residents of the island continue to oppose the projects – which are being implemented with little or no public consultation – and are demanding the closure of the mining operations and the withdrawal of all permits to explore and mine on Sibuyan. However, they are afraid that private security guards will use force and violence again in the future. Indeed, as reported by the Filipino NGO Kalikasan, so far 17 people who opposed mining projects in their respective areas had been killed.

Recommended action

In order to prevent further violence and help ensure the rights of the people living on the island, OMCT called on the **Government of the Philippines** to halt mining activities on Sibuyan Island and to establish an independent commission to review respect for the rights of the local population and to seek ways to protect their rights in the future, and recommended calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission.

OMCT also called on **mining corporations** and their partners and owners to carry out their activities in strict respect for the human rights, economic, civil, cultural, political and social, of the populations affected by their activities and establish control mechanisms that ensure the respect for those rights and ongoing dialogue with the populations concerned.

OMCT further called on the **European Union** to ensure that human rights are respected in the implementation of the 2007-2013 EU-Philippines Country Strategy Paper.

VI. Labour rights, trade unions and violence

Attacks on trade unionists and labour lawyers

During OMCT's mission to the Philippines in September 2008, it was reported that the rights of workers in the Philippines are frequently disregarded for the benefit of transnational corporations and foreign investors. Workers are subjected to poor and often dangerous working conditions as well as unfair labour practices. Additionally, workers are frequently engaged on short-term contracts which deprive them of full employment status and related benefits (including social security). A further key feature of the labour landscape is the violation of workers' rights to form unions, to collective bargaining and to strike.

Violence against unions in the Philippines has been increasing in recent years, including killings, assaults of workers on picket lines, threats and intimidation, and the filing of false charges against union activists. In the first half of 2008, the Centre for Trade Unions and Human Rights (CTUHR) documented five separate incidents of assault against workers taking action, affecting 1,025 individuals. On 6 March 2008, the Manila District Police violently dispersed a lawful demonstration of approximately 400 workers, unionists and supporters who were protesting against the Labour Secretary's failure to enforce court decisions favourable to workers and protect them against unfair labour practices. Seventeen workers were seriously injured, one of whom later died. Six were arrested and charged with illegal assembly, robbery, assault of a person in authority and causing physical injuries, but were later freed while the case was pending.⁶⁰

Under the guise of maintaining industrial peace, military detachments are frequently set up in companies affected by strikes or where unions are active. Communities perceived to be strongholds of informal workers' associations and other militant organisations are also militarised. Military personnel are used to violently disperse legitimate strikes, protest actions and peaceful assemblies, ostensibly to safeguard the companies against disruption. This repression of labour activities, together with harassment, intimidation and vilification campaigns, serves to stifle existing or budding labour organisations.⁶¹

Unions are also often vilified as "front organisations" or supporters of the CPP or the NPA. For example, OMCT has been informed that on 20 November 2007,

⁶⁰ Information from CTUHR.

⁶¹ Information from the trade union centre Kilusang May Uno (KMU).

the President and the secretary of the Marikina City Federation of Public School Teachers, who had been trying to establish a citywide public school teachers' union, were harassed and intimidated by the military. All of the city's teachers were forced to attend a forum in which the military stated that teachers unions were legal fronts for the communists.

Case Study: Arbitrary detention of Atty. Remigio Saladero, Jr.⁶²

OMCT has been informed of the arrest of **Atty. Remigio Saladero, Jr.**, a human rights and labour attorney, member of the National Union of Peoples' Lawyers, the chief legal counsel for the trade union centre Kilusang Mayo Uno (KMU) and Chairperson of the Board of the Pro-Labour Legal Assistance Centre (PLACE), which handles 700 pro bono labour, human rights, criminal, civil and administrative cases.

On 23 October 2008, members of the Philippines National Police (PNP) from Antipolo city reportedly entered Mr. Saladero's office, showed him an arrest warrant for murder and attempted murder and took him into custody. The warrant was allegedly defective, as it bore the wrong name and was dated back to 2006. Mr. Saladero was officially charged, along with 72 other persons. Five other human rights defenders were arrested during October and November. All six were detained at the Mindoro Provincial Jail. Mr. Saladero is also facing other judicial proceedings. Following the bombing of a Globe Telecoms Cell Site in Lemery Batangas on 2 August 2008, the military and Globe Telecoms filed a complaint against 27 leaders and activists from the Southern Tagalog Region, including Mr. Saladero, for "conspiracy to commit rebellion, arson and destruction of property".

On 5 February 2009, Mr. Saladero and the five other human rights defenders were released after the court granted a "motion to quash the information" filed by the defendants and ruled that a prosecution case for multiple crimes ("multiple murder and multiple frustrated murder") filed under only one case was not permissible.

Barely a week after his release, a new murder case was filed against Mr. Saladero and 64 others in Rodriguez, Rizal. Mr. Saladero filed for a writ of *amparo*, but it was denied by the courts. (The writ of *amparo* prevents military officers in judicial proceedings from issuing denials regarding

⁶² See OMCT, the Observatory for the Protection of Human Rights Defenders Urgent Appeal PHL 002/1008/ OBS 175 of 30 October 2008 www.omct.org

petitions for information on disappearances or extrajudicial executions; under *habeas data*, plaintiffs or victims have the right to access information on their lawsuits.)

There is strong reason to believe that these charges have no basis, and were manufactured in order to harass Mr. Saladero for his work as a defender of the human rights of workers and trade unions. Mr. Saladero was indeed one of those who argued before the Supreme Court on the constitutionality of President Gloria Arroyo's "calibrated pre-emptive response policy". Mr. Saladero has been subjected to various attacks in the past, mostly from the military, for representing suspected members of the NPA in Rizal. Furthermore, the organisation PLACE, of which Mr. Saladero is a member, has been subjected to harassment and surveillance from unidentified men believed to be military agents.

Based on the information received, the arrest and continuing harassment of Remigio Saladero, Jr. appear to be further evidence of the ongoing arbitrary arrests and harassment of human rights defenders in the Philippines.

Export economic zones

Workers' rights are also jeopardised and/or disregarded by foreign companies in the context of the so-called "export economic zones". Although Filipino labour law applies to these zones in theory, in practice the Department of Labour has been unwilling or unable to enforce the law in the zones and to carry out independent inspections. As a result, "no union, no strike" policies are implemented by foreign companies with little or no opposition from local government officials. Trade unionists are dismissed and discriminated against, as are workers who join unions, and union organisers are denied access to the zones.

Working conditions in the economic zones are poor and workers are subjected to exploitative practices. Workers may be paid less than the minimum wage, be required to work excessive hours and may, in addition, be exposed to serious occupational health and safety risks (including exposure to dangerous chemicals) as companies operating within the zones often do not comply with health and safety regulations.⁶³ These conditions can lead to protests and strikes by workers, which are forcibly repressed.

⁶³ International Confederation of Free Trade Unions, "Internationally- Recognised Core Labour Standards in the Philippines: Report for the WTO General Council Review of the Trade Policies of the Philippines", September 1999.

Use of force to protect private economic interests

OMCT is particularly concerned at the use of force by private security guards protecting the interests of the private companies that are active in mining areas and export economic zones. These guards frequently employ violent means to repress demonstrations by workers and affected communities. Further, the presence of military forces, private security forces or other kinds of armed groups in a given area frequently leads to serious human rights abuses including arbitrary executions, ill-treatment and forced evictions.

The Philippine Economic Zone Authority (PEZA) police themselves have been involved in violence and human rights abuses. In the Cavite economic zone near Manila, strikes by workers have consistently been violently suppressed. In September 2006, workers who went on strike demanding better wages, benefits and working conditions were subjected to food blockades after PEZA police and private security guards hired by Chong Won Fashion Inc. failed to forcibly disperse them. In June 2007, striking workers from the same factory were violently attacked by unidentified men with firearms and weapons. They were eventually forced to abandon their picket lines. In August 2007, striking workers at the Phils Jeon Garment factory were tied up, blindfolded and forcibly abducted by men wearing ski masks and were dropped, together with their belongings, outside the zone.⁶⁴

⁶⁴ See *Bulatlat*, "Export processing zone workers victims of unfair labor practices", vol. VII, No. 34, 30 September – 6 October 2007; Asian Human Rights Commission Urgent Appeals, "Food blockade imposed on workers on strike", 26 September 2006; and Asian Human Rights Commission Urgent Appeals, "Two female striking workers allegedly kidnapped and dumped in a canal in Cavite", 8 August 2007.

VII. Counter-insurgency activities, militarisation and violence in response to claims for social justice

It is worth repeating here the finding of the CCA that the roots of violence in the Philippines can be seen in the fact that “marginalised and disaffected groups can resort to armed rebellion to press their needs, causes and concerns” and that the secessionist rebellion “finds its roots in a sense of social injustice and exclusion, and a desire for self-determination by the Muslim community”.⁶⁵

The Government’s response to the claims for social justice and respect has been an intensified counter-insurgency strategy that has resulted in the militarization of specific areas that in itself involves serious human rights abuses and a policy of repression against human rights defenders, especially those involved in economic, social and cultural rights (See also section VIII on page 37).

Since January 2001, the Philippines Government has acted against dissenting groups, in particular leftist organisations, including the Communist Party of the Philippines, and has launched military counter-insurgency operations across the country. Ostensibly these are directed against communist rebels (in particular the CPP and its military wing, the NPA). However, they have increasingly targeted civil society groups, including those engaged in defending economic, social and cultural rights, alleging that they are fronts for communist insurgents. Indeed, anyone who criticises or takes action against Government policies is branded an “enemy of the State”.

The counter-insurgency strategies and militarization are also being used to stabilise areas where mining, logging and other development projects are to be implemented. The military are mobilised where there is resistance to such projects to protect the interests of, for example, foreign large-scale mining companies. Many of these projects are on indigenous lands.

The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, recognised this militarization of indigenous areas in the Philippines as a grave human rights problem, given that members of indigenous communities are either caught up in the fighting between the military and the insurgents, or are themselves accused of rebellion, being members or sympathisers of the NPA or engaging in “terrorist” activity simply because of their involvement in legitimate protest and defence

⁶⁵ CCA, p. 27.

of their (often economic, social and cultural) rights.⁶⁶ The fear of being targeted inevitably discourages many people from pursuing their demands for respect of their economic, social and cultural rights.

Further, counter-insurgency operations that involve the deployment of large numbers of military troops in rural areas can directly compromise the economic, social and cultural rights of the inhabitants of these areas. OMCT has been informed that the deployment of a large number of troops has been accompanied by an increase in torture and other human rights violations.⁶⁷ An example of this is contained in OMCT's Action File on military activity in the rural communities of Surigao del Sur summarised below.

The following is a summary of an OMCT Action File issued on 3 December 2007:

**Anti-insurgency operations by the Philippine military seriously
compromise the economic, social and cultural rights of
indigenous communities in Surigao del Sur⁶⁸**

In April and May 2005, counter-insurgency activities in Surigao del Sur, home to a number of indigenous Lumad communities, resulted in extensive human rights violations, including the forced evacuation of 11 communities, comprising some 1200 individuals, while five other communities were held under food and economic blockades. Civilians were also physically assaulted and interrogated about the whereabouts of members of the New Peoples Army, and forest areas and crops were strafed and bombarded.

From 4 November 2007, military activities intensified once again in this area with around 500 military personnel from the 58th Infantry Battalion of the Armed Forces of the Philippines stationed in and around the homes of members of Lumad indigenous communities.

Reportedly, civilians were used as shields, schools and other buildings appropriated as military barracks, children questioned by soldiers, community members denied access to their fields, families forced to seek shelter in makeshift evacuation centres and individuals forcibly enrolled as military guides.

⁶⁶ E/CN.4/2003/90/Add.3, p. 2.

⁶⁷ Information from Karapatan, member of the SOS- Torture Network.

⁶⁸ See OMCT Action File PHL031207. ESCR at www.omct.org.

This has significantly compromised the community members' right to an adequate standard of living, in particular their right to adequate food, clothing and housing and to the continuous improvement of living conditions, as well as their right to education. Moreover, it is in direct contravention of Filipino legislation on the protection of children during armed conflict, which provides: "Public infrastructure such as schools, hospitals and rural-health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots."

Further, there are also reports that two armoured personnel carriers from the Semirara Mining Corporation (the biggest coal producer in the Philippines) assisted the military in this operation. This company is said to have an interest in moving its operations to the Tandag-Tago-Liangga coal quadrant which overlaps with the area targeted by the military for counter-insurgency activities.

OMCT made a number of recommendations, and in particular called upon the Government of the Philippines to ensure that its military fully respects the human rights of the men, women and children in every area in which it operates and to compensate individuals for any damage or loss caused by military operations.

No response has been received to OMCT's appeals.

In these operations, women and children in particular are at risk of violations including rape, sexual harassment, forcing girls to serve as "comfort women" in military camps and forced prostitution. This violates Filipino law, including legislation on the protection of children during armed conflict which declares children to be "zones of peace" and provides that they shall not be attacked and "shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment"⁶⁹ However, the violations go unpunished due to the lack of political will and the climate of impunity that pervades Filipino society.

⁶⁹ UNICEF Innocenti Research Centre, *Summary Report of the Study on the Impact of the Implementation of the Convention on the Rights of the Child*, 2004, p. 7.

VIII. Summary executions, enforced disappearances and other forms of violence against economic, social and cultural rights activists

Attacks on human rights activists

As mentioned above, an alarming number of Filipino human rights defenders, human rights lawyers, trade unionists and indigenous or peasant activists engaged in defending economic, social and cultural rights are victims of disappearances and summary executions.⁷⁰ They are often targeted under the guise of counter-insurgency measures, their organisations having at one time or another been branded by the military and/or police as “enemies of the State” or as “fronts of the CPP/NPA” because of their human rights-related activities, but also because of their opposition to mining operations and other mega-projects which pose a significant threat to local communities.

The organisation Indigenous Peoples Watch-Philippines has reported that 119 indigenous leaders or human rights defenders were killed in the period from April 2001 to January 2007⁷¹ and the organisation Karapatan puts the overall figure of extra-judicial killings from January 2001 to June 2008 much higher, at 910.⁷² FIND (Families of Victims of Involuntary Disappearance) recorded 278 cases of enforced disappearances from 2001 until March 2009.⁷³

Details of the recent situation in the Philippines relating to attacks on human rights activists working for economic, social and cultural rights were contained in a paper presented by Mr. Teodoro de Mesa, Chairperson of the Philippine Alliance of Human Rights Advocates and Convenor of the Citizens’ Council for Human Rights, to OMCT’s Special Procedures Seminar in June 2008.⁷⁴ Many of the paragraphs in this section are based on that paper, which is available from OMCT.

⁷⁰ Including cases of summary executions and extrajudicial killings of Mindanao peoples.

⁷¹ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, General considerations on the situation of human rights and fundamental freedoms of indigenous peoples in Asia, UN Doc. A/HRC/6/15/Add. 3, para. 34.

⁷² <http://www.karapatan.org/karapatan-monitor-2Qtr08>.

⁷³ Information from FIND.

⁷⁴ Teodoro M. de Mesa, “Impunity: a spreading malignancy in the Philippine human rights situation”, paper submitted to the OMCT seminar on “Addressing the economic, social and cultural root causes of violence through the UN special procedures system”, June 2008. See also Human Rights Watch, Scared Silent: Impunity for Extrajudicial Killings in the Philippines, June 2007. See further OMCT’s urgent appeals for further cases.

Summary executions, enforced disappearances and other forms of violence against economic, social and cultural rights activists

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, has reported on the deaths of peasant activists, stating that, although it was not always clear whether a particular extrajudicial execution was related to the victim's participation in agrarian reform programmes, he had interviewed, on a relatively narrow interpretation, at least 10 witnesses to agrarian-reform related killings.⁷⁵ These killings and forced disappearances are closely linked with, if not actually caused by the victims' struggle for economic, social and cultural rights.⁷⁶

In November 2008, the Committee on Economic, Social and Cultural Rights in its concluding observations on the report of the Philippines expressed its concern "about reports that forced disappearances and extrajudicial killings of trade union activists, indigenous leaders, peasant activists advocating for the implementation of the agrarian reform and human rights defenders engaged in defending the economic, social and cultural rights of their communities continue to occur, despite the measures adopted by the State party" and that it was "particularly concerned about the limited progress made by the State party in investigating cases of forced disappearances and extra-judicial killings and in prosecuting the perpetrators of these crimes". The Committee urged the Philippine Government "to take all necessary measures for the protection of trade union activists, indigenous leaders, peasant activists and human rights defenders engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors". It further called on the Government "to ensure that all alleged cases of forced disappearances and extrajudicial killings are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted and appropriately punished, if found guilty."⁷⁷

In his paper Mr. de Mesa refers to the deaths of several hundred persons who were known for their open stand and advocacy for fundamental freedoms, social justice and human rights. The victims are usually described as leaders of people's organisations and/or cause-oriented groups, farmers, workers, youths, professionals, journalists and church people killed by hooded men. More often than not they or their organisations have been branded at one time or another by the military and/or police as "enemies of the state" or as "fronts of the CPP or the NPA".⁷⁸ The paper contains several examples of recent cases of attacks on economic,

⁷⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to the Philippines, UN Doc. A/HRC/8/3/Add. 2, para. 37 and note 49.

⁷⁶ de Mesa, op. cit.

⁷⁷ E/C.12/PHL/CO/4, para. 15.

⁷⁸ de Mesa, op. cit. , pp. 1 and 2.

social and cultural rights activists.⁷⁹

Recent cases of attacks on economic, social and cultural rights activists

- Alberto Yusi, President of Alsa-Paraoma-Masbate, Ticao Farmers' Federation (TFF) and Samahan ng mga Anak ng Magsasaka ng Famosa (SAMFAI), Inc., was shot dead by unidentified armed men early on 20 July 2008 at Barangay Famosa, Monreal, Masbate, after being interrogated. His family, who were held at gunpoint, witnessed his murder.
- Junrie Alvarez Pagaspas and Rene Delara Llabres, both members of Samahan ng mga Magsasaka ng Hacienda Batuan (SAMAHABA), a peasant group which had petitioned the Department of Agrarian Reform to put Hacienda Batuan under CARP coverage, were summarily executed by armed men near their homes in Sitio Biton, Barangay Royroy, Batuan, Masbate, on 6 July 2008.
- Franco Corpuz, leader of the farmers' group Alliance of Farmers in Central Luzon (AMGL-NE), and Nardo Serrano, a leader of the Central Luzon Aeta Association (CLAA), were abducted on 8 February 2008. Mr. Corpuz's body was returned the following day bearing signs of torture.
- KaTeldo Rebamonte, a peasant leader of the Masbate People's Organisation, was killed on 16 January 2008.
- Reynold Carillo and Flaviano Arante, both peasant activists from Negros Oriental, were abducted in December 2007 and January 2008, respectively.
- Charlie Solayao, Vice-Chairperson of the Tacloban section of the Association of Urban Poor Communities and an active campaigner against the demolition of sidewalk vendors' stalls in Tacloban market, was killed on 17 July 2007.
- Mark Anthony "Butchoy" Vale, the leader SAMAHABA, was summarily executed on 22 December 2007 by 6-12 unidentified armed men, believed to be local members of the NPA contracted by a landowner to discourage SAMAHABA from pursuing its land claims.
- Manuel Balani, a local agrarian and anti-mining activist, was killed in late 2006.

⁷⁹ Ibid.

⁸⁰ Ricardo A. Sunga III, "Written Submission Under the UPR: On Torture, Enforced Disappearances and Extrajudicial Killings". Free Legal Assistance Group, November 2007.

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- Reverend Jemias Tinambacan was killed while driving his van in Mindanao on 9 May 2006. Reverend Tinambacan was the Executive Director of an NGO called Mission for Indigenous and Self Reliance People's Assistance (MIPSA), which organises local people and conducts livelihood programmes.
- Kathy Alcantara, a leader-organiser of the Pambansang Kilusan ng Makabayang Magbubukid (PKMM) (National Movement of Nationalist Farmers), was killed in mid-morning on 5 December 2006 by men on motorcycles in Central Luzon just a short distance from an ongoing PKMM seminar of which she was both organiser and resource person.
- Karen Empeno and Sherlyn Cadapan were abducted in 2006 and are now considered victims of a forced disappearance. They were conducting research sympathetic to small-scale farmers.

Hidden extent of violations

The extent of extrajudicial executions, enforced disappearances and torture in the Philippines cannot be completely known, in part because of the impunity enjoyed by the armed forces and police. The following case of the Manalo brothers, Raymond and Reynaldo, illustrates this hidden dimension of repression.⁸¹

Case of Raymond and Reynaldo Manalo

On 14 February 2006, armed men snatched Raymond and Reynaldo Manalo from their homes; the armed men were looking for another brother, Bestre, believed to be a member of NPA, but as Bestre was not at home, the armed men took the two brothers instead. For the first three and a half months of their captivity, their captors tortured them almost daily and transferred them from one military camp or facility to another. A writ of habeas corpus was served twice on the military, but they denied holding either or both of the brothers.

Armed Forces General Jovito Palparan spoke to them during their captivity; they recognized General Palparan as they had seen him on television. During their captivity, they saw and talked to other victims who had also suffered enforced disappearance and torture; they even witnessed other victims being extrajudicially killed.

After about a year and a half in captivity, the Manalo brothers succeeded in escaping.

⁸¹ de Mesa, op. cit., p. 2.

The Philippines Supreme Court believed the brothers' account of human rights violations against their persons despite Government and military denials, and granted the brothers' petition for a writ of *amparo*.

The enforced disappearance and torture of the brothers confirm the poor implementation of civil and political rights in the Philippines. But what is particularly alarming in the brothers' sworn account is that they saw other victims of torture and enforced disappearance, and people being extrajudicially killed.

It is furthermore extremely disturbing to witness the extent to which the perpetrators of these acts go to suppress evidence; their conduct, including burning the bodies of their victims,⁸² can only be described as ruthless. Concomitantly, the climate of fear and the culture of impunity generated by these heinous acts and the failure to punish the perpetrators are much more extensive and intensive in their consequences on the lives of survivors and their families than is immediately apparent. Such an environment acts as a serious deterrent to people in effectively participating in their own development.⁸³

Impunity

According to the de Mesa paper, these serious violations of basic human rights go unresolved, with no one brought to justice and convicted, thereby entrenching ever deeper the culture of impunity. The ultimate violation, which is the taking of life, underscores the indivisibility of human rights. Extrajudicial killings, which are classified as violations of civil and political rights, are closely linked to if not actually caused by the victims' struggles for their economic, social and cultural rights. In fact, impunity, especially for extrajudicial killings, enforced disappearances and torture, often presupposes a history of impunity for violations of economic, social and cultural rights.⁸⁴

Violence against activists is rarely adequately investigated by the authorities and the perpetrators of such violence continue to enjoy impunity. This inevitably has an

⁸² The burning of bodies was also alluded to in the affidavit of torture victim Ver Eustaquio, a leader of the organisation United Masses for Democracy and Justice, submitted by Mr. Eustaquio and his companions when they filed charges of abduction and torture against the alleged perpetrators.

⁸³ de Mesa, op. cit. p. 2.

⁸⁴ Ibid. , pp. 1 and 2.

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effect on human rights defenders themselves and on their efforts to mobilise public opinion in the fight for respect for their economic, social and cultural rights.

It is widely documented that the Philippine National Police (PNP) is unwilling or incapable of investigating disappearances or extrajudicial killings believed to have been perpetrated by the AFP. Despite considerable evidence implicating members of the AFP, not a single soldier has been convicted of any politically motivated killings, and soldiers have been convicted in only one enforced disappearance case.

In August 2006 the Melo Commission was established to investigate the killings of media and workers' activists. However, this Commission has been strongly criticised by human rights groups for its lack of power to conduct investigations and for its membership, which consists entirely of commissioners selected by the Government.⁸⁵ Nonetheless, the Melo Commission did conclude that the majority of the killings could be attributed to members of the Philippine military, and also pointed to the inadequacies of investigations by the PNP into the killings. Whether these findings will lead to any prosecutions or more effective investigations remains to be seen.

The Human Rights Committee, for its part, in its concluding observations on the Philippines, expressed concerns about, "the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators".⁸⁶ It also expressed "concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse ... that have neither been investigated nor prosecuted."⁸⁷

A further issue is the climate of fear that pervades Filipino society. Many victims and/or relatives of victims either do not bring proceedings for abduction, torture or illegal detention, or fail to pursue them, due to fear of reprisals from the police or the military. Witnesses are also often unwilling to provide evidence or testify due to their fear of retaliation. In its concluding observations, the Human Rights Committee expressed concern at reports of intimidation and threats of retaliation

⁸⁵ Human Rights Watch, op. cit.

⁸⁶ CCPR/CO/79/PHL, para. 8.

⁸⁷ Ibid. , para. 11.

impeding the right to an effective remedy for persons whose rights and freedoms have been violated.⁸⁸

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has reported that the military itself is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated,⁸⁹ and senior military officers are unwilling to accept that superior commanders may be legally responsible for acts of their subordinates under the principle of command responsibility. He concluded that there is a “passivity bordering on abdication of responsibility ... in relation to such human rights concerns”,⁹⁰ and that “the priorities of the criminal justice system have also been distorted, and it is increasingly focused on prosecuting civil society leaders rather than their killers”.⁹¹

Weakness of the judiciary and violations of human rights⁹²

Serious violations of human rights and impunity for those responsible are made possible by the fact that the judiciary in the Philippines is not independent, due both to its susceptibility to political influence and to its vulnerability to attacks by the military. At least 10 judges and 15 lawyers have been killed since 2001, while others have been subject to threats and harassment. This leads to a weakening of the judiciary and contributes to the climate of impunity. As the International Fact Finding Mission of the Dutch Lawyers for Lawyers Foundation reports: “The harassment and killings of members of the legal profession undermine the independence of judges and lawyers and, as a consequence, also the rule of law and the faith in (the function of) the judiciary system.”⁹³

Legislative developments have further exacerbated the situation. In March 2007, President Arroyo signed the 2007 Human Security Act. With the aim of fighting terrorism, this new law permits the 72-hour detention of suspects without charge. It also gives law enforcement officers the power to carry out surveillance and wiretapping and to sequester assets.⁹⁴ This Act may represent a further

⁸⁸ Ibid. , para. 8.

⁸⁹ A/HRC/8/3/Add. 2, para. 28.

⁹⁰ Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to the Philippines, UN Doc. A/HRC/4/20/Add. 3, 22 March 2007, para. 10.

⁹¹ A/HRC/8/3/Add. 2, p. 2.

⁹² See also CCA, p. 26.

⁹³ Dutch Lawyers for Lawyers International Fact-Finding Mission, *From Facts to Action: Report on the Attacks against Filipino Lawyers and Judges*, 24 July 2006, p. 6.

⁹⁴ http://www.senate.gov.ph/public_acts/ra%209372.pdf.

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impediment to the work of human rights defenders and, in particular, to that of activists in the field of economic, social and cultural rights by making them more vulnerable to arrest under the guise of anti-terrorist operations. There are indeed reports of members of indigenous communities being charged with and prosecuted for engaging in terrorist activities as a result of their efforts to defend their human rights.⁹⁵

Further, Executive Order No. 739 issued on 19 August 2008, which focuses on counter-insurgency measures, provides for the imposition of sanctions against anyone (including government officials) who gives material and political support to the communist insurgents. OMCT has expressed its concern about the broad wording of this Order which could easily lead to abuse.

It was hoped that the recent introduction of the writ of *amparo* and the writ of *habeas data* would reduce the level of impunity for enforced disappearances and extrajudicial killings. However, whilst there was some evidence of initial success, on the whole the courts have shown themselves reluctant to grant these writs.⁹⁶ Indeed, some petitions for the writ of *amparo* have been dismissed on the grounds that the petitioner had failed to prove that his/her rights to life, liberty or security were violated or under threat, despite the fact that the introduction of the writ was intended to facilitate protection orders rather than place the burden on the petitioners to prove that they are under threat.

There is also concern that the scope of the writ of *amparo* will be limited given Administrative Order 197, which calls for "legislation for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security". By invoking this Order, the military (and Government) may try to rely on national security or confidentiality of information to thwart a petition for *amparo*.

Moreover, a 2004 Supreme Court decision has made it more difficult for victims of torture to obtain redress and see the perpetrator(s) brought to justice. This decision places the burden of proof on the victim to prove torture took place and requires substantiation of the victim's claim by independent evidence other than his or her own.⁹⁷

⁹⁵ http://www.tebtebba.org/trebtebba_files/ipr/stavenhagenpress.html. It has also been reported that an Aeta young man has been charged under the Human Security Act 2007 for terrorist activities. He is the first person to be charged under the Act.

⁹⁶ See de Mesa, op. cit.

⁹⁷ Supreme Court of the Philippines, *People of Philippines v. Dindo "Bebot" Mojillo*, G. R. No. 145566, 9 March 2004.

Justifying attacks on human rights activists; the military's vilification campaign⁹⁸

The campaign⁹⁹ vilifying people's organisations as "enemies of the State", with consequent harassment and intimidation of the members, and the use of the term "order of battle" in referring to lists of such organisations reveal a pattern that can only come from a State policy. Although unwritten and unofficial, the results of the policy are just as deadly for people as they are disastrous for human rights.¹⁰⁰

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions independently found an "order of battle" during his official visit, and the report of the EU Needs Assessment Mission has this to say on the subject: "...in Region 3, the Brigade level Order of Battle lists 300 individuals. It was reported to the Mission in that Region that Orders of Battle are amended and updated from time to time."¹⁰¹

Officials in the military headquarters in Manila questioned the authenticity of the document.

The same EU report described the counter-insurgency strategy as follows;

The overall counter-insurgency strategy, including military involvement in civil affairs, blurs the differentiation between combatants and non-combatants, thus contributing to the extrajudicial killing and forced disappearances. On more than one occasion, AFP personnel confirmed that civilians who supported the counter-insurgency through political affiliation, financial support, or legal representation were legitimate military targets.¹⁰²

⁹⁸ de Mesa, p. 3.

⁹⁹ Free Legal Assistance Group: "... soldiers conduct 'public meetings' where they present a version of the power point presentation 'Knowing the Enemy' and read aloud the names of 'wanted persons' listed in the Military Order of Battle.

¹⁰⁰ For example, the indigenous people of the Ata- Matigsalug, who complained against military operations that resulted in their internal displacement, were accused of being "used" by militants. See the report of Jean Marie Ferraris, Legal Resource Center, Davao City.

¹⁰¹ European Commission, External Relations Directorate General, "EU Needs Assessment Mission Philippines, 18- 28 June 2007. Report", p. 35,

¹⁰² Ibid.

**NGO and grass-roots initiatives to end human rights violations and combat
impunity¹⁰³**

Mr. de Mesa reports on the campaigns to expose grave human rights violations that have been carried out and sustained by concerned groups both in the national and international arena. Part of the campaigns is human rights education and para-legal training to enable communities, especially those in difficult and/or militarized areas, to assert their human rights whether before State or non-State actors. Efforts are also continuously made to organize formations of human rights defenders and to dialogue with appropriate government officials and bodies with a view to obtaining a breakthrough against impunity. People's diverse actions, on their own and/or in solidarity with others, toward the common goal of eliminating impunity elicited different responses from the three branches of the Philippine Government.

Making justiciable many human rights treaties that the Philippine Government has signed and ratified is an important objective of the campaigns. There are, for example, no laws criminalising torture and enforced disappearances, contrary to the international commitments of the Philippines under article 7 of the International Covenant on Civil and Political Rights. The Philippines is also a State party to the Convention against Torture. While human rights groups welcome the signing of the Optional Protocol to the Convention against Torture, it has not yet been ratified. Additionally, its full effectiveness would only be felt if a law were passed criminalizing torture.

Bills criminalizing torture and enforced disappearances have been drafted that closely follow the definitions in and provisions of the related international conventions. Their passage into law could help realise justice for people on the ground, coupled with favourable circumstances.

According to the EU Needs Assessment Mission, “[t]he legal framework, including standard operating procedures, for investigating extrajudicial killing is in place, but seems not to be implemented or applied.”¹⁰⁴ Furthermore, “[a] main obstacle to successful investigation of extrajudicial killings, given by officials within the Philippine authorities concerned, is the unwillingness of witnesses to come forward”¹⁰⁵ FLAG had enumerated the weaknesses of the Government’s Witness

¹⁰³ de Mesa, op. cit. , pp. 4-7.

¹⁰⁴ EU, op. cit. , p. 15.

¹⁰⁵ Ibid.

Protection Program in its report to the Special Rapporteur on extrajudicial, summary or arbitrary executions.¹⁰⁶

The Special Rapporteur stated at the end of his initial report: "... I would stress that these recommendations will make little difference unless there is a fundamental change of heart on the part of the military or the emergence of civilian resolve to compel the military to change its ways."¹⁰⁷

Building groups of human rights defenders at the grass-roots level is an imperative and not an option when the rule of law is weakened and a culture of impunity pervades Philippine society. Consider, for example, that the initiative to investigate in the first instance belongs to the State. In circumstances where public powers do not undertake investigations, the initiative should be taken by the victims, the members of their families and human rights organizations. A human rights perspective enhances peoples' analysis of issues and events. Organising such groups helps to ensure a sensitised citizenry with appropriate skills, and an engaged civil society. Aware of their dignity as expressed in their human rights, the affected people would be in a position to exact accountability from all actors,¹⁰⁸ State or non-State, while fully understanding that the State is the primary duty-holder.

¹⁰⁶ Free Legal Assistance Group. "Extrajudicial, Summary or Arbitrary Executions in the Philippines, 2001- 2006" submitted to Prof. Philip Alston in February 2007.

¹⁰⁷ See de Mesa, op. cit.

¹⁰⁸ The following are examples of documenting and demanding accountability from perpetrators of human rights violations: Task Force Detainees of the Philippines (TFDP), Mindanao, case of Bacar and Carmen Japalali, killed allegedly by members of the 404th Infantry Battalion of the Philippine Army, 8 September 2004; Partnership of Agrarian Reform and Rural Development and Services (PARRDS) et al., "Statistical Findings on Human Rights Violations" and "Distribution of Cases and Victims of Human Rights Violations per Subject Area". February 2005. These papers, covering the period from August 1997 to September 2004, present well-documented cases wherein the human rights of farmers are violated by State agents and State-backed militia as well as abused by non-State actors, not only landlords and private armed goons, but also members of NPA. Other cases come from areas where people, especially indigenous peoples, are dislocated and harmed and their sources of subsistence are taken over or destroyed by mining and logging companies.

XI. Conclusions and recommendations

Conclusions

This report demonstrates that to achieve the objectives of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Philippines, the root causes of those practices that are to be found in failures to respect basic economic, social and cultural rights in the country must be eliminated.

Based on information and analysis from national and international NGOs, on two information-gathering missions to the country, and conclusions of United Nations treaty bodies, United Nations special rapporteurs, the World Bank, the United Nations County Team as expressed in the Common Country Assessment of the Philippines and others, the present report describes how the poor, vulnerable and marginalised of the Philippines, in their daily struggle for existence and in their legitimate activities to claim and protect their rights, are met with violence on a large scale.

Farmers and indigenous peoples seeking continued access to their means of living, the Muslim population of the Philippines seeking respect for their culture and way of life, workers seeking to protect their rights, victims of large-scale mining operations, and human rights defenders working to protect those populations and their rights are subjected to torture, summary executions, forced disappearances and other forms of ill-treatment from public and private sources. Peaceful protests are seen as subversive by the Government and criminalised, and rural populations, under the guise of anti-subversive military operations, are prevented from growing their own food, their children are prevented from going to school and they are subjected to torture, ill-treatment, killings, disappearances and other serious human rights violations.

The summary executions, disappearances and torture that take place in the Philippines continue because of impunity; no perpetrators are brought to justice and convicted. A climate of fear pervades Filipino society, and many victims and/or relatives of victims either do not bring proceedings for abduction, torture or illegal detention, or fail to pursue them due to fear of reprisals from the police or military.

Further, the criminalisation of protests, and the vilification campaigns directed against those who speak out to defend their basic human rights and the labelling

Conclusions and recommendations

of their organisations as “enemies of the State” create a culture of justification for extrajudicial executions, disappearances and torture.

The information in this report confirms the concerns that the Committee expressed in paragraphs 32 and 33 of the List of issues to be considered in the examination of the Philippines’ report.¹⁰⁹ In paragraph 32 the Committee referred to reports of serious violations of the rights of human rights defenders, including indigenous rights defenders, trade unionists and peasant activists. In paragraph 33, the Committee referred to reports that indigenous peoples are among the most marginalised groups in the Philippines and are often victims of various forms of abuse, violence and exploitation, and that due to poor living conditions and social exclusion, indigenous children are at risk of becoming involved in armed conflict and being recruited into armed groups, and that armed conflict renders indigenous women and girls more vulnerable to physical and sexual violence.

The issues in the present report were also dealt with by the Committee on Economic, Social and Cultural Rights in its concluding observations on the report of the Philippines under the International Convention on Economic, Social and Cultural Rights¹¹⁰ in November 2008. The Committee expressed concerns and made recommendations relating to attacks on human rights activists defending economic, social and cultural rights (para. 15), to the adverse impact of mining activities on indigenous peoples’ territories (para. 16), and regarding the precarious situation of people living in informal settlements and subjected to illegal forced evictions (para. 29).

The Committee made a number of other recommendations the implementation of which would be essential to eliminating the root causes of violence and torture in the Philippines. They included expanding the mandate of the Commission on Human Rights to include economic, social and cultural rights (para. 13), increasing expenditures on housing, health and education (para. 17), increasing efforts to reduce employment and underemployment (para. 19), protecting workers in the informal economy (para. 20) and implementing effective policies to protect the rights of overseas Filipino workers (para. 21). The Committee also expressed concern at the increase in poverty at a time of high economic growth (para. 28).

It is clear that to be effective, actions against the root causes of torture described in this report and against the practices of torture, cruel and inhuman treatment, forced disappearances and summary executions must go hand in hand in a

¹⁰⁹ CAT/C/PHL/Q/ 2 of 15 December 2008.

¹¹⁰ E/C. 12/PHL/CO/4.

targeted, coordinated and holistic manner. Reinforcing legislation, training and monitoring of the police and armed forces and strengthening the judiciary will ultimately be ineffective without respect for basic human rights such as access to land, decent work, education, respect for culture, access to health care and special measures to protect the most vulnerable. These rights are interrelated, and success depends on progress being made in the diverse areas at the same time. This is the approach recommended by the United Nations Common Country Assessment of the Philippines 2004 to address the issues of conflict and security (see chapter VII).

It is thus suggested that the Committee against Torture, in its recommendations to the Government of the Philippines on "other positive measures of prevention and protection"¹¹¹ urge the Government to promote a coordinated and holistic approach to the implementation of the Committee's own recommendations and those of the Committee on Economic, Social and Cultural Rights as well as those of other United Nations treaty bodies.

Recommendations

A multidimensional and regional approach to eliminate torture and other forms of violence resulting from violations of economic, social and cultural rights

This report shows that in many cases torture and other forms of violence, whether they relate to conflicts over land, indigenous peoples, mining activities, the Muslim population or anti-insurgency operations, can be identified with a specific geographical location, which would enable a focused multidimensional approach to be adopted.

The Philippine Government together with the United Nations and development agencies should establish **specific programmes of preventive measures** in each geographical region affected by violence. Those measures should aim at protecting, in an integrated manner, economic, social and cultural rights and civil and political rights, in particular by implementing the relevant recommendations of the Committee against Torture, the Committee on Economic, Social and Cultural Rights and other United Nations treaty bodies. OMCT's research has shown that such programmes can produce important improvements across the whole range

¹¹¹ Committee against Torture, general comment No. 2 (2007): implementation of article 2 by States parties.

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of human rights.¹¹²

In particular, the programme for each specific region should include:

- Initiatives relating to economic and social development (employment creation, education initiatives, health services, housing, nutrition, enhancing the status of women, etc.);
- Initiatives aimed at respecting and protecting the cultural rights of all groups in the Philippines, including the Muslim population and indigenous peoples and the land rights of the latter;
- Initiatives aimed at enhancing the rule of law including strengthening and training the judiciary, training the police and local administrators, relevant military units and personnel in human rights (including economic, social and cultural rights), and ceasing to use civilians as auxiliaries of the AFP in the fight against so-called “terrorism”; and
- The establishment of a permanent monitoring function in those areas to ensure official compliance (by law enforcement officials, local government and the military) with human rights law and good practices.

The elements of each programme should be designed and implemented with the participation of representatives of the different communities concerned. The programme should be directed by an independent body composed of government officials, representatives of the different communities concerned and civil society and with the participation of development specialists from the United Nations. They should take into account other development initiatives to avoid duplication. In connection with indigenous people's rights, and land and housing issues, consideration should be given to associating the relevant UN special rapporteur. The programmes should have the funds necessary to carry out their activities as well as the required legal authority and powers and should report publicly on an annual basis on their activities.

A nationwide rights-based approach to development

Integrating a rights-based approach into economic and social policy would make an important contribution to the reduction and elimination of torture and ill-treatment.

¹¹² See for example “Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study”, chapter 4 - Argentina: Country Profile and Case Study, at www.omct.org and Report of the coordinator of the ad hoc group of experts on extreme poverty of the Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2004/25, annex, paras. 14-18.

The Committee might therefore wish to recommend to the Government:

- The establishment of democratic and transparent mechanisms with an explicit economic, social and cultural rights mandate to oversee decisions on economic policies and to identify possible risks of violence. This mechanism should include the Philippine Commission on Human Rights, relevant economic planning agencies and civil society;
- The adoption of a rights-based approach to development projects, including full and thorough consultation with the affected communities and an environmental and human-rights impact assessment prior to decision-making and, during the implementation of projects, monitoring of compliance with the commitments entered into by the corporations involved;
- The expansion of the mandate of the Commission on Human Rights to include economic, social and cultural rights;
- The authorisation for an independent monitoring body to enter economic export zones and economic enclaves to monitor compliance with labour standards and ILO Conventions Nos. 87 and 98.

Facilitating the participation of civil society organisations

In order to facilitate the participation of civil society organisations in preventing and eliminating torture and ill-treatment and to end the climate of impunity, the Committee may also wish to consider recommending that the Government:

Openness to civil society participation and trade union activities

- Put an end to the attacks on those seeking to protect their human rights or the rights of others and to the criminalisation of protests, and recognise officially the legitimacy of actions by civil society organisations to protect human rights; this should be included in the human rights training of police, military and public officials;
- Ensure that violence against and harassment of civil society, trade unions, workers and human rights defenders ceases, and investigate all allegations of such violence and harassment;
- Support the efforts towards the creation of a strong civilian resolve to halt extrajudicial executions, enforced disappearances and harassment, for example through the development of training and sustained professional

Conclusions and recommendations

- development of human rights defenders from the barangay (village) to the national level;
- Support the efforts of civil society organisations to ensure the security and the support of victims and witnesses to extrajudicial executions and other grave human rights violations, as well as their families, as part of sustaining their courage to combat impunity by providing protection measures, financial and psychological support and access to justice;
- Support the development and sustainability of Community as the fifth pillar of the Philippine criminal justice system through the systematic and formal training of human rights defenders as trainers in para-legal work, and their possible designation as community monitors of human rights implementation;

Ending impunity

- Ensure the implementation of appropriate measures to investigate and prosecute cases of extrajudicial executions, forced disappearances and other human rights violations, including those by non-State actors, respecting at all time fair trial guarantees;
- Support the establishment of a transparent monitoring mechanism to oversee the investigation of extrajudicial killings and the prosecution of perpetrators. This mechanism should be independent of Government and be comprised of constituents of Philippine society, including members of civil society;
- Investigate, pursuant to the Melo Commission recommendations, the allegations of human rights violations against then Gen. Jovito Palparan, Jr., starting with the decision on the case of the Manalo brothers;

Legal and judicial issues and protecting human rights

- Criminalize torture in domestic legislation in accordance with article 4 of the Convention against Torture;
- Ratify the International Criminal Court so as to broaden the avenues of redress for victims of gross human rights violations;
- Ratify without delay the Optional Protocol to the Convention against Torture;
- Encourage the Supreme Court to resolve pending petitions against the 2007 Human Security Act and to act in favour of protecting the human rights and civil liberties of the people;
- Support the recommendations of the Supreme Court and the Chief Justice to expand and enhance the access of the poor to justice as well as establish

procedures that can help uphold economic, social and cultural rights;

- Empower the Commission on Human Rights to carryout unannounced visits to all detention facilities and military establishments and camps;
- Include basic education on human rights in secondary education;
- Establish a legal aid programme to provide financial assistance to the poor and thus enhance their access to justice;
- Ensure implementation of and compliance with laws that uphold the human rights of citizens and promulgate the relevant bills that remain pending;
- Prevent interference in the judiciary and in the work of lawyers who take up cases in relation to human rights violations, particularly extrajudicial killings, enforced disappearances and torture;
- Extend a permanent invitation to the UN special procedures, and invite in particular the UN Special Rapporteur on the question of torture, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, the UN Working Group on Enforced or Involuntary Disappearances, as well as the UN Working Group on Arbitrary Detention.

Individual cases

This report and the others submitted to the Committee contain many cases of individual violations of human rights as well as situations in which numerous people are affected by mining or other operations. The Committee may wish to ask the Government to make publicly available information on the action taken in relation to those cases and situations in order to demonstrate the progress being made.

Implementing Committee recommendations

The Committee may also wish to request the Government to officially involve civil society organisations in the implementation of its recommendations and to periodically report publicly on the progress.

X. Concluding Observations of the Committee against Torture

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ADVANCED UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Concluding observations of the Committee against Torture

THE PHILIPPINES

1. The Committee considered the second periodic report of the Philippines (CAT/C/PHL/2) at its 868th and 871st meetings (CAT/C/SR.868 and 871), held on 28 and 29 April 2009, and adopted, at its 887th and 888th meetings (CAT/C/SR.887 and 888), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the Philippines, which, while generally following the Committee's guidelines for reporting, lacks statistical information and practical information on the implementation of the provisions of the Convention and relevant domestic legislation. The Committee regrets that the report was submitted 16 years late.

Concluding observations of the Committee against Torture

3. The Committee expresses its appreciation for the extensive written responses to its list of issues (CAT/C/PHL/Q/2/Add.1), which provided important additional information. The Committee also appreciates the comprehensive and fruitful dialogue conducted with the high-level delegation and the additional oral information provided by representatives of the State party during the consideration of the report.

B. Positive aspects

4. The Committee welcomes that in the period since the consideration of the latest periodic report, the State party has ratified or acceded to the following international instruments:
 - a) The Convention on the Rights of Persons with Disabilities, in 2008;
 - b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2003;
 - c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2003, and the Optional Protocol to the Convention on sale of children, child prostitution and child pornography, in 2002;
 - d) The Optional Protocol to the International Covenant on Civil and Political Rights, in 1989, and the Second Optional Protocol to the Covenant, in 2007;
 - e) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in 1995;
 - f) The Convention on the Rights of the Child, in 1990; and
 - g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2002, supplementing the United Nations Convention against Transnational Organized Crime.
5. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:
 - a) The adoption, in 2006, of the Juvenile Justice Welfare Act (RA 9344) as well as the creation of the Juvenile Justice Welfare Council to ensure the effective implementation of the Act;

- b) The enactment, in 2006, of Republic Act 9346, abolishing the death penalty;
 - c) The adoption, in 2004, of the Anti-Violence against Women and Their Children Act (RA 9262) which defines violence against women and their children, providing for protective measures for victims and penalties for the perpetrators of the violence;
 - d) The adoption, in 2003, of the Anti-Trafficking in Persons Act (RA 9208);
 - e) The adoption, in 1997, of the Indigenous People's Rights Act (RA 8371);
 - f) The issuance, in December 2008, of Administrative Order 249 which directed concerned Executive branches of government to institute policies, programs and projects that would further enhance human rights in the Philippines; and
 - g) The promulgation, in October 2007, by the Supreme Court of the Recourse to the Rule of Writ of Amparo and the Rule of the Writ of Habeas Data.
6. The Committee notes with appreciation that the State party has initiated a number of practical policies, programmes and projects, including the "Access to Justice for the Poor" Project (AJPP), the Mobile Court or "Justice on Wheels"- programme of the Supreme Court and the recent directive by the National Police Commission to activate human rights desks in all police stations nationwide.

C. Principal subjects of concern and recommendations

- #### **Torture and ill-treatment and insufficient safeguards during police detention**
7. Notwithstanding the assurances provided by the State party to the Committee that "torture or ill-treatment on suspects or detainees is not tolerated or condoned by the Philippine National Police (PNP) and that erring PNP personnel are dealt with accordingly", the Committee is deeply concerned about the numerous, ongoing, credible and consistent allegations, corroborated by a number of Filipino and international sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, despite the enactment of the Law on the Rights of Persons Arrested, Detained or under Custodial Investigation (RA 7438), there are insufficient legal safeguards for detainees in practice, including:
- a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police custody;
 - b) Absence of systematic registration of all detainees, including minors, and failure to keep records of all periods of pretrial detention; and

Concluding observations of the Committee against Torture

- c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members (arts. 2, 10 and 11).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a policy of total elimination in respect of any ill-treatment or torture by State officials.

As part of this, the State party should implement effective measures promptly to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation, including minors, are included in a central register which functions effectively.

The State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Moreover, it should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.

Extrajudicial killings and enforced disappearances

8. The Committee notes the efforts undertaken by the State party in respect of extrajudicial killings, including the establishment, in 2006, of the independent Commission to Address Media and Activist Killings (the Melo Commission) and various coordination and investigative task forces, including the Task Force USIG. However, the Committee expresses its grave concern at the number of such killings that have occurred in the past years and at reports that, although the total number of killings has declined significantly, such killings as well as enforced disappearances continue. (arts. 12 and 16)

The State party should take effective steps to investigate promptly, effectively and impartially all allegations of involvement of members of law enforcement agencies in extrajudicial killings and enforced disappearances. The State party should inform the Committee in its next periodic report of efforts and measures undertaken to address extrajudicial killings and other human rights abuses, including those by non-State actors. In this respect, the State party should implement the recommendations contained in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/8/3/Add.2), following his visit to the Philippines in February 2007.

Impunity

9. The Committee is deeply concerned that credible allegations of torture and/or ill-treatment committed by law enforcement and military services personnel are seldom investigated and prosecuted and that perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the grave nature of their crimes. The Committee reiterates its grave concerns over the climate of impunity for perpetrators of acts of torture, including military, police and other State officials, particularly those holding senior positions that are alleged to have planned, commanded or perpetrated acts of torture. (arts. 2, 4 and 12)

The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention.

Furthermore, State officials should publicly announce a policy of total elimination in respect of acts of torture and other cruel, inhuman and degrading treatment or punishment and support prosecution of the perpetrators of such acts.

Definition of torture

10. The Committee notes the State party's statement to the Committee that the Revised Penal Code guarantees that all acts of torture are classified as criminal offences with corresponding penalties under Philippine laws as well as the explanation provided by the delegation in this respect. However,

Concluding observations of the Committee against Torture

the Committee is concerned that the State party has not incorporated into national law the crime of torture as defined in article 1 of the Convention. While noting information provided as to the recent passage of the Anti-Torture Bill in the House of Representatives, the Committee is concerned at the delay in legislating on this matter. (arts. 1 and 4)

The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all of the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself. The Committee therefore urges the State party to enact the Anti-Torture Bill as soon as possible.

Human rights defenders and other individuals at risk

11. The Committee notes with concern the numerous documented reports of harassment and violence against human rights defenders that hamper the capacity of civil society monitoring groups to function effectively. The Committee is also concerned at reports that others are also commonly victims of serious human rights violations, including torture, ill-treatment, killings, disappearances and harassment. Among those so affected are indigenous rights defenders, such as Lumads of Mindanao and Igorots of the Cordillera, trade union and peasant activists, journalists and reporters, medical personnel, and religious leaders. (arts. 2, 12 and 16)

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts.

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, including by prosecuting and punishing all acts of violence and abuses against such individuals

and ensuring implementation of positive measures of prevention and protection.

De facto practice of detention of suspects

12. The Committee is deeply concerned about the de facto practice of detention of suspects by the PNP and the Armed Forces of the Philippines (AFP) in detention centers, safe houses and military camps. Although authorities are required to file charges within 12 to 36 hours of arrests made without warrants, depending on the seriousness of the crime, lengthy pretrial detention remains a problem, due to the slow judicial process. The use of arrests without warrants is reportedly extensive, and criminal suspects are at risk of torture and ill-treatment. Arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment. (arts. 2 and 11)

The State party should take all necessary measures to address the de facto practice of detention of suspects by the PNP and the AFP, especially lengthy pretrial detention and arrests without warrants. In this respect, the State party should take all appropriate measures to further reduce the duration of detention in custody and detention before charges are brought, and develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.

Terrorism legislation

13. The Committee recognizes the difficult situation arising from the internal armed conflict in the Philippines and that the State party is faced with a long-lasting insurgency.

However, the Committee is concerned about the 2007 Human Security Act (RA 9372) which has been criticized for its overly broad definition of "terrorist crimes", the strict application of a penalty of 40 years of imprisonment, the competence of various bodies authorized to review the detention of an individual, and the restrictions on movement. The Committee is also concerned that the Act allows for suspects to be detained without warrant or charge for up to 72 hours. (arts. 2 and 16)

The State party should review the 2007 Human Security Act and amend it, as necessary, to bring it into conformity with international human rights standards.

Non-refoulement

14. The Committee notes the statement by the delegation that the State party has neither engaged nor participated in any form of "extraordinary renditions" or refoulement and that there has been no instance where it has received a request indicating that the person to be extradited would be in danger of being subjected to torture. Notwithstanding the proscription included under Section 57 "Ban on Extraordinary Rendition" of the 2007 Human Security Act, the Committee is concerned that the Act appears to permit persons apprehended in the Philippines to be rendered to countries that routinely commit torture, as long as the receiving State provides assurances of fair treatment. (art. 3)

The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.

In this respect, the State party should ensure that the relevant judicial and administrative authorities carry out a thorough and exhaustive assessment, prior to making any expulsion order, in all cases of foreign nationals who have entered or stayed in the Philippines unlawfully, including individuals who may constitute a security threat, in order to ensure that the persons concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country to which each of them would be returned.

Prompt, effective and impartial investigations

15. While noting that many agencies have a mandate to investigate complaints of torture and ill-treatment, the Committee is concerned at the high number of complaints of torture and ill-treatment by law enforcement officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. Additionally, these bodies lack independence to review individual complaints about police and military misconduct. (arts. 12 and 16)

The State party should strengthen its measures to ensure prompt, thorough, impartial and effective investigations into all allegations of

torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with *prima facie* cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation, or continue any reported impermissible actions in breach of the Convention.

The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to ensure that the law enforcement personnel who are responsible for violations prohibited by the Convention are held accountable.

Effectiveness and independence of the Commission on Human Rights

16. The Committee is concerned that, in a number of instances, the Commission on Human Rights of the Philippines (CHRP) has been denied entry into jails and detention facilities mostly under the jurisdiction of the military. The Committee is also concerned that Section 19 of the 2007 Human Security Act grants the CHRP authority to prolong detention of suspects. In the view of the Committee, these measures compromise the capacity of the CHRP to monitor the State party's human rights compliance. (arts. 2, 11 and 12)

The State party should take the necessary steps to strengthen the mandate, including access to detention facilities, and independence of the CHRP, including through adoption of the proposed CHRP Charter as well as allocation of sufficient resources for its effective implementation. The visitation mandate of the CHRP should include unhampered and unrestrained access to all detention facilities, including those under the jurisdiction of the military.

Ill-treatment in detention centres

17. While welcoming the measures undertaken by the State party through the Bureau of Jail Management and Penology (BJMP) to improve conditions of detention, including the release of a total of 3,677 inmates in 2008 or 9 per cent of the prison population, the Committee is concerned that there is severe overcrowding, sub-standard facilities and lack of basic facilities. (arts. 11 and 16)

The Committee recommends that the State party:

- a) Continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities;
- b) Adopt the BJMP Modernization Act of 2007 (House Bill No. 00665), filed on 30 July 2007 that seeks to upgrade the physical facilities of jails and detention centres; and
- c) Take effective measures to further improve living conditions in the detention facilities.

Sexual violence in detention

18. While noting the enactment of a number of relevant laws and that the State party has established a total of 31 female dormitories, the Committee expresses serious concern at numerous allegations of cases of rape, sexual abuse and torture committed against women detainees by the police, military and prison officials/personnel. In this respect, the Committee is concerned about reports that in many provincial jails, officials continue to place women together with male inmates, and that male corrections officers continue to guard female inmates in violation of agency regulations. (arts. 11 and 16)

The State party should take effective measures to prevent sexual violence in detention, including by reviewing current policies and procedures for the custody and treatment of detainees, ensuring separation of juvenile detainees from adults, and of female detainees from males, enforcing regulations calling for female inmates to be guarded by officers of the same gender, and monitoring and documenting incidents of sexual violence in detention, and provide the Committee with data thereon, disaggregated by relevant indicators.

The State party should also take effective measures to ensure that detainees who allegedly are sexually victimized are able to report the abuse without being subjected to punitive measures by staff, protect detainees who report sexual abuse from retaliation by the perpetrator(s), promptly, effectively and impartially investigate and prosecute all instances of sexual abuse in custody and provide access to confidential medical and mental health care for victims

of sexual abuse in detention, as well as access to redress, including compensation and rehabilitation, as appropriate.

Furthermore, the Committee calls upon the State party to consider enacting the draft Prison Rape Elimination Act of 2008.

Children in detention

19. While appreciating the State party's clarification of measures undertaken to reduce the number of children in detention, including the enactment of the 2006 Juvenile Justice Welfare Act (RA 9344), a variety of social welfare services provided for children in conflict with the law and the release of 565 minors in 2008, the Committee is concerned that a significant number of children remain in detention and at reports of a *de facto* practice of not separating children from adults in detention facilities throughout the country, despite the requirement included in the Juvenile Justice Welfare Act demanding such separation. (arts. 11 and 16)

The State party should further reduce the number of children in detention and ensure that persons below 18 years of age are not detained with adults; that alternative measures to deprivation of liberty, such as probation, community service or suspended sentences are available; that professionals in the area of recovery and social reintegration of children are properly trained; and that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions.

Training

20. The Committee takes note of the detailed information provided by the State party on the inclusion of human rights components in the training programmes and sessions for all military and law enforcement units of the Government, in close cooperation with the CHRP. However, the Committee is concerned at the lack of information on monitoring and evaluation of the impact of these training programmes in reducing incidents of torture and ill-treatment. (art. 10)

The State party should further develop and strengthen educational programmes to ensure that all officials, including law enforcement officials and prison staff are fully aware of the provisions of the Convention, that reported breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant

personnel should receive specific training on how to identify signs of torture and ill-treatment, and such training should also include the use of the Istanbul Protocol which should be provided to physicians and translated into the Filipino and other languages, as appropriate, and utilized effectively. Furthermore, the State party should assess the effectiveness and impact of such training/educational programmes.

Witness protection

21. While noting the information provided by the State party, including the draft legislation to strengthen the Witness Protection Programme (WPP) and recent activities of the WPP, the Committee expresses its concern at reports that the Programme is not sufficiently implemented, that intimidation of witnesses deters them from coming forward to use the program and that detainees who suffer ill-treatment are often coerced by the police to sign waivers or statements to the contrary. The Committee is concerned at the statement by the delegation that "except in a few highly urbanized cities conditions in Philippine courts hardly inspire confidence in the witnesses that they are well protected if they participate in the trial". (art. 13)

The State party should, as a matter of priority, take the necessary measures to strengthen the WPP under the Witness Protection, Security and Benefit Act (RA 6981) to guarantee the safety of witnesses to torture incidents and other human rights violations. The State party must give high priority to the funding and effectiveness of this programme.

Redress, including compensation and rehabilitation

22. The Committee welcomes the creation of a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes. Nonetheless, the information submitted to the Committee regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases is insufficient, and the Committee is concerned at reports of inadequate compensation and arbitrary refusals and delays concerning compensation. The Committee regrets the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psycho-social rehabilitation, provided to these victims. However, it takes note of the information provided in the replies to the list of issues that the formulation of a Rehabilitation Program within one year from the entry

into force of the proposed Anti-Torture Bill is stipulated in the Bill. (art. 14)

The State party should strengthen its efforts to provide victims of torture and ill-treatment with fair and adequate compensation, redress and as full rehabilitation as possible. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

Coerced confessions

23. While noting that Section (d, e) of Republic Act 7438 and Section 25 of the 2007 Human Security Act prohibit the admissibility of evidence obtained through torture or duress, the Committee is concerned at reports that such prohibition is not respected in all cases and that the burden of proof as to whether the statement has been made as a result of torture rests with the suspect, not the prosecution. (art. 15)

The State party should take the necessary steps to ensure inadmissibility in court of confessions obtained under torture or duress in all cases in line with the provisions of article 15 of the Convention.

Children involved in armed conflict

24. The Committee appreciates the various legislative and other measures adopted by the State party, including the 2001 Comprehensive Program on Children Involved in Armed Conflict, the creation, in 2004, of an Inter-Agency Committee on Children Involved in Armed Conflict, the activities of the National Commission on Indigenous Peoples in this respect as well as the visit of the UN Secretary General's Special Representative on Children and Armed Conflict in December 2008. Nonetheless, the Committee expresses serious concern about allegations of continued abduction and military recruitment of child soldiers by the non-State armed groups, including the Moro Islamic Liberation Front, the New People's Army and the Abu Sayyaf. (art. 16)

The State party should take the necessary steps, in a comprehensive manner and to the extent possible, to prevent the abduction and military recruitment of children by armed groups that are distinct from the armed forces of the State. The State party should also take

the necessary measures to facilitate the reintegration of former child soldiers into society.

Domestic violence

25. The Committee takes note of various measures taken by the State party, including the enactment, in 2004, of the Anti-Violence Against Women and their Children Act (RA 9262) and the established of a significant number of Women and Children Desks in police stations all over the country and the Women and Children Protection Centre of the PNP. However, the Committee expresses its concern about the prevalence of violence against women and children, including domestic violence. It is further concerned about the lack of State-wide statistics on domestic violence and that sufficient statistical data on complaints, prosecutions and sentences in matters of domestic violence were not provided. (arts. 1, 2, 12 and 16)

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence. The Committee calls upon the State party to allocate sufficient financial resources to ensure the effective implementation of the Anti-Violence Against Women and their Children Act. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with the victims. In addition, the Committee recommends that the State party strengthen its efforts in respect of research and data collection on the extent of domestic violence.

Furthermore, the State party is encouraged to promptly enact the Magna Carta of Women (House Bill 4273) which is the national translation of the Convention on the Elimination of All Forms of Discrimination against Women.

Trafficking

26. While noting the significant efforts of the State party, including the recent convictions of traffickers, the adoption, in 2003, of the Anti-Trafficking in Persons Act (RA 9208) with the creation of the Inter-Agency Council Against Trafficking (IACAT) to coordinate and monitor its implementation as well as the "We are not for sale: Victims of Human Trafficking Speak Up Project", the

Committee is concerned that the Philippines continues to be a source, transit and destination country for cross-border trafficking of women and children for sexual exploitation and forced labour. The Committee regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages. (arts. 2, 12 and 16)

The State party should take all necessary measures to implement the current laws combating trafficking and provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigation into all allegations of trafficking and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.

Data collection

27. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and military personnel, as well as on extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence. The Committee takes note of the statement in the report that “a statistical presentation of action done on complaints related to acts of torture is hampered by the absence of a law specifically defining torture.”(arts. 12 and 13)

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence as well as on redress, including compensation and rehabilitation provided to the victims.

28. While welcoming the various efforts by the State party towards its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Committee encourages the State party to consider ratifying the Optional Protocol as soon as possible.

Concluding observations of the Committee against Torture

29. The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.
30. While noting that the State party has ratified all the core United Nations human rights treaties currently in force, the Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
31. The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.
32. The State party is encouraged to disseminate widely the reports submitted by the Philippines to the Committee and the concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.
33. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 15, 16, 18 and 19 above.
34. The State party is invited to submit its next periodic report, which will be considered as its third periodic report, by 15 May 2013.

The Philippines. An Alternative Report to the UN Committee Against Torture

The World Organisation Against Torture (OMCT) and its Filipino partners submitted this alternative report on the human rights situation in the Philippines to the UN Committee Against Torture during the Committee's 42nd session (27 April – 15 May 2009). The purpose of this report is to identify the violations of economic, social and cultural rights that are the root causes of torture and other forms of violence in the Philippines and recommend action to eliminate torture and other forms of violence by addressing those root causes.

This report was prepared in collaboration with two Filipino human rights NGOs:

- Philippine Alliance of Human Rights Advocates (PAHRA)
- Karapatan (Alliance for the Advancement of People's Rights).

This Publication also includes the concluding observations adopted by the UN Committee Against Torture.



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