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**ADDRESSING
THE ECONOMIC, SOCIAL AND CULTURAL ROOT CAUSES
OF
TORTURE AND OTHER FORMS OF VIOLENCE IN
THE PHILIPPINES**

**AN ALTERNATIVE REPORT TO
THE UNITED NATIONS COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

NOVEMBER 2008

Prepared by the World Organisation Against Torture in collaboration with:



**Philippines Alliance of Human Rights Advocates (PAHRA),
Karapatan (Alliance for the Advancement of People's Rights),
and
Task Force Detainees, Philippines (TFDP)**



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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.”

Ms. Louise Arbour,
United Nations High Commissioner for Human Rights ¹

¹ OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, p.9 www.omct.org.

Executive summary

This report seeks to reduce and eliminate torture, cruel, inhuman and degrading treatment, and other forms of violence in the Philippines by proposing to the Committee recommendations for action by the Government to address their economic, social and cultural root causes.

In the Philippines, poverty and inequality marginalise large sectors of society, rendering them vulnerable in their daily lives to many forms of violence, including state-sponsored violence. Persons peacefully claiming their economic, social and cultural rights or defending the rights of others are often subjected to violent attacks, killings and disappearances. And further, as a UN report has pointed out, desperation and hopelessness at their situation can lead some to resort to armed rebellion. Tragically, this violence and lack of security, in turn, severely impedes these people from escaping from poverty.

Although the Filipino economy has demonstrated healthy levels of growth in recent years, this has been accompanied by an increase in the inequitable distribution of wealth and has not contributed significantly to the reduction of poverty. Further, the Philippines has one of the highest levels of income inequality in Asia. The inability to break the cycle of poverty is “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.”

The Government of the Philippines has implemented a policy of trade liberalisation in order to attract foreign capital and to accelerate domestic economic development. Policies in mining, land reform and export economic zones have very direct links with violence. In addition, low priority has been given to social services in the national budget where severe cutbacks have been made to enable continued debt servicing. This has rendered certain groups particularly vulnerable to violence, including indigenous people, the Muslim population in Mindanao, women living in precarious conditions (indigenous women and women living in rural and conflict-prone areas) and disadvantaged and marginalised children.

Policies promoting investment in mineral extraction that do not take into account the rights of the people affected provoke demonstrations that are often met with violent reactions by private security forces. Conflict over land is also a root cause of violence in the Philippines as landowners are increasingly converting agricultural land to agro-business or other forms of economic activity to the detriment of the lives of rural communities. And similarly, the urban population is subject to violent evictions to make way for economic development projects.

Violence against unions in the Philippines has been increasing in recent years, including killings, assault of workers on picket lines, threats and intimidation and the filing of false charges against union activists. Further, 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.

Recommendations

Effectively eliminating torture and other forms of violence in the Philippines will require a multifaceted and integrated approach ensuring the implementation of economic, social and cultural rights as well as civil and political rights, as experience has shown that acting on only one of the causes of torture has little chance of success.

The recommendations in this report cover, first, specific responses to the particular violations and problems identified. Second - and because in order for recommendations to be effective, they must be accompanied by means of implementation that identify those responsible for the implementation and engage their accountability - this report suggests possible institutional mechanisms that might be entrusted with implementing certain recommendations in specific circumstances. Finally, progress will also depend on correcting the serious imbalances in Philippine economic and social policy at the macro level, and so recommendations are made to deal with those basis policies.

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Introduction

This alternative report to the Committee on Economic, Social and Cultural Rights seeks to reduce and eliminate torture, cruel, inhuman and degrading treatment, summary executions, enforced disappearances and violence against women and children by developing recommendations for action by the Government of the Philippines to address the economic, social and cultural root causes of violence. These recommendations will also concern international development agencies, private sector actors and others interested in the development of the Philippines.

Today, there is no doubt that failures to respect economic, social and cultural rights are often direct causes of violence and the human rights violations described above and that if they are to be effectively eliminated their economic, social and cultural root causes must be understood and effectively addressed.² Of course, many other measures must be taken to eliminate torture in addition to addressing its economic, social and cultural root causes.³ 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.

How the denial of economic, social and cultural rights is related to torture and other forms of violence

OMCT research has shown that denials of economic, social and cultural rights leads to torture and other forms of violence in the ways listed below and of which all or almost all are to be found in the Philippines.

- *The poor, excluded and other vulnerable groups are often the first and most numerous victims of violence, including torture and cruel, inhuman and degrading treatment.*
- *Levels of violence in a given community or society can be such that individuals or groups are unable to enjoy their economic, social and cultural rights.*
- *Violence is inflicted on persons because they demand respect for economic, social or cultural rights – their own or those of others.*
- *Denials of economic, social and cultural rights are carried out so violently as to be considered ill-treatment under international treaties.*
- *Certain violations of economic, social or cultural rights can be characterised as cruel, inhuman and degrading treatment, or in some cases as a denial of the right to life.*
- *Policies and programmes by governments, private actors or development and financial institutions can exacerbate poverty and inequalities and lead to increased levels official, criminal and domestic violence.*

² See OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, www.omct.org. In his role as UN Special Rapporteur on the Question of Torture, Sir Nigel Rodley noted, “As long as national societies and indeed the international community fail to address the problems of the poor, the marginalised and the vulnerable, they are indirectly and, as far as the risk of torture is concerned, directly contributing to the vicious circle of brutalisation that is a blot on and a threat to our aspirations for a life of dignity and respect for all”, UN Doc.A/55/290, Report of the Secretary-General transmitting the Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000, para. 37.

³ 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.

As this report shows, failures to respect the economic, social and cultural rights of a very significant sector of the Philippine population 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, the urban poor, the population of the Muslim regions, women and children. 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 rights or defending the rights of others are often subjected to violent attacks, killings and disappearances. Further, and as the UN has pointed out, desperation and hopelessness can lead some to resort to armed rebellion.

This violence and lack of security, in turn, severely impede these people from escaping from poverty, of working in just and favourable conditions, of 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 this denial of economic, social and cultural rights weakens people to such an extent that the perpetrators of violence, by virtue of their positions of power over the victims, are able to commit such violence with impunity. Thus, effectively protecting economic, social and cultural rights, by reducing inequality, empowers people, lessening their vulnerability and therefore reducing violence.

This is not a comprehensive report on the implementation of the International Covenant on Economic, Social and Cultural Rights in the Philippines, but rather targets especially important areas where violence is clearly engendered by violations of economic, social and cultural rights and where practical remedial measures can be recommended.

The analysis in this report shows clearly that, while many economic, social and cultural rights must be addressed directly, success can only be achieved by implementing a range of civil and political rights by, for example, providing an effective and independent judicial system, responsible police and military and eliminating impunity for attacks on human rights activists.

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). Important input was also provided by Bayan (Bagong Alyansang Makabayan) and the IBON Foundation.

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. Finally, OMCT carried out its own research into certain of the issues involved.

From 16 to 20 September, Ms. Jastine Barrett carried out a field mission on behalf of OMCT in order to gather further first hand information for this report and to consult Philippine non-governmental organisations on OMCT’s draft. Ms. Barrett met with representatives of the organisations listed above and OMCT wishes to thank them for their contributions. OMCT also wishes to thank Ms. Barrett for having carried out that successful mission.

This report contains many references to the United Nations Common Country Assessment of the Philippines (2004) (CCA)⁴. That report is the result of a collaborative effort of United Nations agencies, other international organisations, government agencies, 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 identified many failures to respect economic, social and cultural rights and their links to violence. Its findings and recommendations echo many of those identified by OMCT and its partners during the preparation of the present report.

⁴ Common Country Assessment of the Philippines 2004, (herein after CCA) pages 8-10
http://www.undp.org/ph/cca/Section_2_Defining_the_Development_Challenge.pdf

I. Poverty and inequality in the Philippines and the root causes of violence

Poverty

Although the Filipino economy has demonstrated healthy levels of growth in recent years, this has been accompanied by an increase in the inequitable distribution of wealth and has not contributed significantly to the reduction of poverty. In fact, according to the World Bank, despite average GDP growth of 5.4 percent between 2003 and 2006, poverty incidence increased from 30.0 per cent to 32.9 per cent, a trend that can be seen in both urban and rural areas⁵ and UNICEF reports that 15 per cent of the population currently live on less than US\$1 a day.⁶

According to information based on Government statistics submitted to OMCT's mission to the Philippines in September 2008⁷, there is an unambiguous increase in poverty levels in the country. Family incomes have not kept up with inflation and the results of the latest Family Income and Expenditure Survey (FIES) of 2006 show real average family income dropping from P145,000 in 2000 to P125,000 (at constant 2000 prices) in 2006. In particular, the poorest four-fifths of Filipino families – or some 13.9 million families – saw their real incomes fall between 5 and almost 13 per cent. That survey found, in particular, that poverty – using a low poverty threshold of P41.25 per day (or US\$0.80 at then prevailing exchange rates) – worsened from 30.0 per cent of the population in 2003 to 32.9 per cent in 2006, meaning a 3.8 million increase from 2003.

OMCT was informed during its mission to the Philippines that Government action against poverty is ineffective. While it provides targeted subsidies to particular sectors of the poor, subsidies are not given to all the poor across the board and fail to have any lasting effect on those suffering from unemployment and rising prices.

OMCT was also informed that the situation is becoming even worse today with high and rising inflation rates that reflect the punishing and rapid increases in the prices of food and oil products. The economic, social and cultural rights of the poor are thus being violated on an even wider scale.

The analysis of poverty, its causes and consequences in 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 the disadvantaged and oppressed.”⁸ This broader concept helps us identify the links between poverty and violence.

The CCA described rural poverty as “pervasive and persistent” with “roughly two-thirds of the entire population of Filipino poor reside 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”, 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)

⁵ The World Bank, Philippines - Country Brief: Recent Economic Developments.

⁶ UNICEF, State of the World's Children 2008, Table 7 Economic Indicators.

⁷ Information submitted by the IBON Foundation (27 September 2008)

⁸ CCA pages 13 - 14

political instability at the LGU level leading to sporadic programming; and (iii) a lack of trust in government leading to nonacceptance of programs by the intended beneficiaries.”⁹

Urban poverty is, to a large extent, the result of destitution in rural areas, as many migrate in the hopes 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.”¹⁰

Inequality

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 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.¹¹ 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.¹²

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.*¹³

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 being among

⁹ Ibid, page 14

¹⁰ Ibid, pages 14 - 15

¹¹ The World Bank, 2007 World Development Indicators.

¹² The Common Country Assessment (2004) 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 percent of the population declined from 4.8 percent to 4.4 percent, while the share of the richest 20 percent increased from 52.1 percent to 54.8 percent.” 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, page 19

¹³ Ibid, page 19

the lowest in Southeast Asia and in the Philippines having one of the most liberal investment regimes in the region. Certain specific government policies in the area of mining, land reform and export economic zones have very direct link with violence as will be seen in Part III.

However, this has 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 underemployment rate of 18.9 per cent from 2001 to 2007.¹⁴ This has resulted in many Filipinos moving overseas to find work (over a quarter of employed Filipinos now work overseas). Additionally, 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.

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 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 is 27.5 per cent less in real terms than in 1997.

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 lower incomes, 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 remained 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, "Growth has been poor and not 'pro-poor'".¹⁵

Root causes of violence and conflict

In the Philippines, conflict and violence are generated by poverty, inequality, marginalisation and poor governance and these fuel conflict and violence in two ways. On the one hand, and

¹⁴ Figures provided by IBON based on data from 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 long-discouraged jobseekers and those not available/willing to immediately take up work from the definition by classifying them as "NILF" ("not in the labour force").

¹⁵ CCA, page 18

as this report demonstrates, peaceful protests and demonstrations are very often met by violent repression by police, military or private security forces.

On the other hand, desperation and hopelessness at being unable to achieve legitimate economic, social and cultural goals leads some to resort to armed rebellion. In the words of the CCA, “Marginalised and disaffected groups can resort to armed rebellion to press their needs, causes and concerns.” And referring to the secessionist rebellion, the CCA concludes that that rebellion “finds its roots in a sense of social injustice and exclusion, and a desire for self-determination by the Muslim community.”¹⁶

A nationwide public consultations 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.”¹⁷

The CCA also found that “armed 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.”¹⁸ OMCT, during its mission to the Philippines, was informed that the Government perceives social tensions as a potential security issue and responds accordingly, often resulting in repression.

In addition, poverty and inequality marginalise large sectors of society, rendering them vulnerable in their daily lives to many forms of violence, including state-sponsored violence. In the case of violence against women and children and, indeed, of violence against Filipino economic migrants, the cause often lies in their lack of socio-economic empowerment, together with cultural norms that perpetuate domestic violence.

¹⁶ Ibid, page 27

¹⁷ Ibid

¹⁸ Ibid, page 28

II. Groups particularly vulnerable to violence in the Philippines

The preceding section has shown that poverty, inequality and violence impact on a very wide sector of the Philippine population. Within that population, there are several groups whose enjoyment of human rights is especially affected by poverty, inequality and violence.

A. 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 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.¹⁹

Forced recruitment of AGTA men into 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 Citizens Armed Forces Geographical Unit (CAFGU).

The men were told that if they refused to join CAFGU, they would be treated as members or supporters of the New People's Army. 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 socio-economic implications of such 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.

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 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.

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.²⁰

¹⁹ Ibid, page 17

²⁰ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Mission to The Philippines E/CN.4/2003/90/Add.3, 5 March 2003, § 21, 29 and 32:

Indigenous peoples' rights were intended to be protected and guaranteed under Filipino law. Indeed the 1997 Philippines' Indigenous Peoples' Rights Act (IPRA) is shaped on the provisions of the draft of what is now the UN Declaration on Indigenous Peoples' Rights. 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.

B. The Muslim population in Mindanao

For over a century, first under Spanish colonial rule and then under US control, the Muslims and Lumads of the Southern region of Mindanao have suffered marginalisation and oppression. This has resulted in the fight for self-determination and the struggle for recognition of rights over ancestral domains.²¹

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 (the 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.²² A Philippine NGO reported that, accordingly to surveys carried out by the Philippine Government, ARMM is among the ten areas of the country with the highest levels of malnutrition.²³

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 over two million people being displaced since 2000. The two parties signed a ceasefire in 2003 and engaged in peace talks which culminated in an agreement to expand the ARMM. However, on 4 August 2008, the Supreme Court issued a restraining order to halt the signing of the

"[...] 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."

²¹ See Rodil, B.R., *A Story of Mindanao and Sulu in Question and Answer*, Davao City, 2003 for a detailed account of the struggles in Mindanao.

²² Internal Displacement Monitoring Centre, *Displacement increases as Mindanao's peace process stumbles on: A profile of the internal displacement situation*, 19 August, 2008, p. 27 and p. 15.

[http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8A78756DCEF68354C12574AA0050FBAC/\\$file/Philippines+-August+2008.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8A78756DCEF68354C12574AA0050FBAC/$file/Philippines+-August+2008.pdf)

²³ See also CCA p 14.

agreement (due to take place on 5 August 2008), following protests and petitions against it, mainly by Christians in the region. This triggered an outbreak of fighting between the rebels and Government forces in North Cotabato province which has led to deaths of both government soldiers and MILF rebels and to people being driven from their homes.²⁴ Fighting continued with rebel guerrillas allegedly shooting or hacking to death 37 people on 18 August 2008, leading a further 44,000 people to flee their homes in southern Lanao del Norte province. The Government responded by carrying out bombings 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 as having been internally displaced.²⁵ This seriously compromises their economic, social and cultural rights including the right to an adequate standard of living and the right to education.²⁶

C. Women²⁷

In the Philippines as elsewhere, poverty is widely understood to be a root cause of domestic violence.²⁸ Among issues of particular concern is the absence of a law on divorce,²⁹ which effectively forces women victims of domestic violence to remain with their abusive husbands. A “forgiveness” clause under the Anti-Rape Law of 1997 also helps perpetuate the cycle of violence as it effectively absolves a husband of the crime of rape if the wife “forgives” him. Muslim women are also subject to the Code of Muslim Personal Laws which allows polygamy and early and arranged marriages.³⁰

A further key issue is the lack of legislation granting women and men the same rights to administer property during marriage.³¹ The husband has the final decision over conjugal property, which effectively deprives women of their own means and livelihood and makes them economically dependent on their husbands, hence increasing their vulnerability to violence. In addition to rights over property, a husband also has parental authority and legal guardianship over the person and property of a child.³² This further impedes a woman’s independence and ability to leave an abusive husband.

Indigenous women and women living in rural areas suffer in particular from marginalisation and discrimination. In some regions, government resettlement projects award land titles and certificates of titles to crops to men as the head of the family, thereby overriding local customary law.³³ The Code of Muslim Personal Laws, applicable to Muslim women provides that a woman’s inheritance will be half that of a man’s entitlement.³⁴

²⁴ Aljazeera.net, *Philippine Muslim group “withdraws”*, 12 August 2008

<http://english.aljazeera.net/news/asia-pacific/2008/08/200881294237150536.html>; and BBC News, *Philippine troops retake villages*, 12 August 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/755584.stm>

²⁵ National Disaster Coordinating Council,

http://210.185.184.53/ndccWeb/images/ndccWeb/ndcc_update/ARMED_CONFLICT/sitrep49_complex.pdf

²⁶ Associated Press, *Philippines: Peace Deal to be Renegotiated*, 19 August 2008

<http://ap.google.com/article/ALeqM5hDjAO5PfeMIOJxfzDTvrm4AKqkwQD92M1AKG0>

²⁷ See also, CCA, pages 16 & 22

²⁸ Confirmed by the Women's Crisis Center in Manila, see Immigration and Refugee Board of Canada, 10 October 2006, <http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=450527>

²⁹ CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 31

³⁰ Philippine Human Rights Reporting Project, *Women’s rights in the Philippines Today*,

http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43

³¹ CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 32

³² Philippine Human Rights Reporting Project, *Women’s rights in the Philippines Today*,

http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43

³³ For example, the Cordillera region, where indigenous women have been denied their rights under customary law to be co-owners of land due to Government resettlement projects. See Philippine Human Rights Reporting Project, *Women’s rights in the Philippines Today*,

Women living in precarious conditions including indigenous women, women from poor Muslim communities and women living in rural and conflict-prone areas are also particularly vulnerable to violence. Furthermore, these women often lack access to adequate vital services - including support and counselling services - and have limited access to justice.³⁵

There are also a significant number of domestic workers, the majority of whom are women. Many of these have no written contracts, are underpaid, lack social protection and are vulnerable to occupational health and safety risks. Given that they fall outside the scope of the formal economy, they do not enjoy regulatory protection. Household helpers, in particular, are exploited and suffer abuse and inhuman working conditions.³⁶

Women migrant workers and violence³⁷

Another manifestation of the impact of poverty upon Filipino women is the feminisation of overseas employment. Women make up almost half of Filipino overseas workers.³⁸ Poverty is among the prime factors driving emigration in the Philippines, with an increasing number of overseas workers coming from the most vulnerable groups, including rural women, who move overseas to escape hunger at home. Skilled Filipino women who have been hindered through discrimination in the workplace also frequently move overseas as migrant workers.

Many overseas workers who migrate rely on informal channels; these channels can turn out to be vehicles for various forms of exploitation, violence and trafficking. Overseas workers may also be the victim of illegal recruitment.

Women migrant workers are, for the most part, employed as domestic workers and entertainers, and many are exposed to discrimination and the risk of physical, sexual and verbal, psychological and emotional abuse.³⁹ They may be deprived of the resources they

http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43

³⁴ Philippine Human Rights Reporting Project, *Women's rights in the Philippines Today*,

http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43

³⁵ CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006:

“29. The Committee expresses its concern about the precarious situation of rural and indigenous women, as well as the Muslim women in the autonomous region of Muslim Mindanao, who lack access to adequate health services, education, clean water and sanitation services and credit facilities. The Committee is also concerned about women's limited access to justice in cases of violence, especially in the conflict zones, and the lack of sanctions against the perpetrators of such violence. The Committee is furthermore concerned that the practice of early marriage is persistent among Muslim women.

“30. The Committee calls upon the State party to pay special attention to the needs of rural women, indigenous women and Muslim women living in the autonomous region of Muslim Mindanao, ensuring that they have access to health care, social security, education, clean water and sanitation services, fertile land, income-generation opportunities and participation in decision making processes. The Committee recommends that the State party ensure women's access to justice through the provision of legal aid and take steps to prosecute the perpetrators of violence against them. [...]”

³⁶ Philippine Human Rights Reporting Project, *Women's rights in the Philippines Today*,

http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43

³⁷ See also, CCA, page 17

³⁸ Common Country Assessment of the Philippines, 2004

http://www.undp.org/ph/cca/Section_2_Defining_the_Development_Challenge.pdf

³⁹ CEDAW, Concluding Observations on The Philippines, A/52/38/Rev.1, § 278:

“The representative noted that, in spite of the rapid economic recovery, women in the Philippines suffered disproportionately from poverty, thus contributing to the continued feminisation of overseas employment. This had led to the migration of a large number of rural women to urban areas as well as overseas. She reported that that was a major concern of the Government of the Philippines, which had set up, *inter alia*, monitoring centres, counselling services and specific support programmes, as well as providing welfare assistance.”

require for their physical and mental well-being, exposed to contract violations and occupational health hazards, excluded from health and social services or compelled to work in slave-like conditions.⁴⁰ Although measures have been taken to protect migrant workers,⁴¹ such workers continue to be exploited. Furthermore, and according to the Committee on the Rights of the Child, overseas migration can promote phenomena such as family disintegration and juvenile delinquency.⁴²

Trafficking

Lack of economic opportunities may force rural women to migrate to urban areas, where the likelihood of their being exploited is higher and overseas trafficking is also a risk. Indeed, due to the poor economic situation of many women and girls, and despite the Anti-Trafficking in Persons Act of 2003, the exploitation of Filipino women continues to increase.⁴³

Additionally, Filipino women may be subject to trafficking for the purpose of international marriages. Whilst the Philippines enacted the Anti-Mail-Order Bride Law in 1990 (RA 6955) which prohibits the business of organising or facilitating such marriages, the phenomenon persists, both as a result of organised trafficking and by women seeking a way out of poverty. Victims of trafficking may find themselves prostituted by their own husbands or find that their children are rendered “stateless” by virtue of the laws of certain countries.⁴⁴

D. Children⁴⁵

According to some measures, the situation of children in the Philippines has been steadily improving, particularly in the area of health. For example, both child and infant mortality rates have halved between 1990 and 2006 (from 62 to 32 per 1000 and 41 to 24 per 1000 respectively).⁴⁶ On the other hand, there are still significant concerns as regards children’s full enjoyment of their human rights, particularly as regards child protection, and there are observable urban-rural discrepancies in the realisation of child rights (for example, levels of birth registration in urban areas are 87 per cent, 9 per cent higher than in rural areas⁴⁷).

Street children, juvenile justice and violence

Poor, disadvantaged and marginalised children are more vulnerable to violence than their peers who enjoy the elements of an adequate protective environment. Similarly, poor and marginalised children are more likely to come into conflict with the law. Poverty and family or community breakdown can force them from their homes and lead them to live on the street.

⁴⁰ E/CN.4/2003/85/Add.4, 1 November 2002, MIGRANT WORKERS, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, Mission to Philippines

⁴¹ These include the Magna Carta for Overseas Filipinos of 1995 (RA 8042) and the Philippines Overseas Employment Administration and Philippines Overseas Labour Officers. See Philippine Human Rights Reporting Project, *Women’s rights in the Philippines Today*, http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43.

The State Report also refers to the International Social Welfare Services for Overseas Filipino National programme which aims to institutionalise the establishment of social welfare desks at diplomatic posts where there are large concentration of overseas Filipino workers, but the positive impact, if any, of this programme remains to be seen.

⁴² Concluding Observations on the Philippines, Committee on Economic Social and Cultural Rights, E/C.12/1995/7, 7 June 1995, §14

⁴³ CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 19

⁴⁴ Philippine Human Rights Reporting Project, *Women’s rights in the Philippines Today*, http://www.rightsreporting.net/index.php?option=com_content&task=view&id=45&Itemid=43

⁴⁵ See also CCA p 15-17, 42

⁴⁶ http://www.unicef.org/infobycountry/philippines_statistics.html

⁴⁷ http://www.unicef.org/infobycountry/philippines_statistics.html

In some cases, they become involved in vagrancy, petty crime and substance abuse.⁴⁸ In the Philippines these children are often apprehended without a warrant and detained without access to social workers for long periods (despite legislation providing for their immediate turn over to social workers rather than detention). They are also vulnerable to torture and ill-treatment.

The juvenile justice system in the Philippines is tainted by the inconsistency between juvenile justice legislation as granted by the law and its *de facto* practice. Furthermore, the fact that the majority of detained children are from the most marginalised and disadvantaged sectors of society means they do not have the economic possibility to appoint their own counsel. In turn, the absence of timely legal counsel undermines safeguards against torture or ill-treatment in detention. A further aspect related to economic conditions is the unreasonable amounts requested to obtain bail. In practice, this is a discriminatory mechanism and constitutes an insuperable financial barrier to children coming from disadvantaged families who, as a result, are forced to remain in extremely poor conditions of detention.⁴⁹

Child labour and child trafficking⁵⁰

The high rate of child labour in the Philippines is a source of serious concern. According to a study carried out under the CCA, in 2001 approximately 4 million children between the ages of 5 and 17 were economically active in the Philippines. About 60 per cent of those were found to be engaged in hazardous work and exposed to exploitation. The same Assessment estimated that between 60,000 and 100,000 children are victims of sexual exploitation in the Philippines. Indeed, a significant number of prostituted people in the Philippines are children.

Child labour and other forms of exploitation, including trafficking are driven by poverty. The Committee on the Rights of the Child has noted that persistent poverty and overseas migration are among the factors contributing to the growth of child trafficking in the Philippines.⁵¹

⁴⁸ Amnesty International, *Philippines, A different childhood: the apprehension and detention of child suspects and offenders* <http://web.amnesty.org/library/index/engasa350072003>

Also: CRC/C/15/Add.259, 21 September 2005, § 83:

“The Committee reiterates its grave concern at the high number of children living in the streets and their special vulnerability to various forms of violence and abuse, including sexual abuse and exploitation, economic exploitation and substance abuse. The Committee notes the lack of a systematic and comprehensive strategy to address the situation and protect children living in the streets. The Committee emphasises that unlawful arrest and detention of street children are serious violations of the provisions and principles of the Convention. Notwithstanding the efforts taken by the State party and, in particular, many non-governmental organisations working with and for street children, for example Child Hope Asia Philippines, the Committee is concerned about street children’s limited access to adequate nutrition, clothing, housing, social and health services and education. Furthermore, the Committee is concerned about health risks faced by street children, including environmental health risks, such as toxic and hazardous wastes and air pollution.”

⁴⁹CRC/C/15/Add.259, 21 September 2005, § 90

⁵⁰ See also, CCA page 15

⁵¹ CRC/C/15/Add.259, 21 September 2005, § 86:

“[...] But the Committee is gravely concerned about trafficked Philippine children both within the country and across borders. The Committee expresses its concern about existing risk factors contributing to trafficking activities, such as persistent poverty, temporary overseas migration, growing sex tourism and weak law enforcement in the State party.”

III. The impact of mining, export zones and land reform on indigenous people, small farmers and the urban poor

A number of specific economic policies in the Philippines lead to serious violations of human rights of vulnerable groups, such as indigenous people, small farmers and the urban poor and are the direct cause of violence.

A. Mining and its impact on indigenous people and local communities

The economic liberalisation policies of the Government of the Philippines resulted, *inter alia*, in the adoption of the 1995 Mining Code that has been described as a blanket legislation in favour of international mining companies to carry out mining activities on indigenous lands and as “one of the most favourable to foreign mining companies anywhere in the world”.⁵² 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.⁵³

1995 Mining Code – key provisions of concern

- 100% foreign ownership of mining projects is allowed (previously there was a limitation up to 40%).
- A corporation may claim an area up to 200 blocks (1 block = 81 hectares) onshore and up to 400 blocks offshore, while individuals face the restriction of 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 such act that is used to avoid the proper application of the subsequently adopted Indigenous Peoples' Rights Act (IPRA). Despite the apparent legal protection of indigenous peoples' economic, social and cultural rights, mining represents a concrete threat to indigenous peoples' lands, since significant mineral deposits lie on indigenous territories. In many cases, the Mining Code offers mining permits on indigenous lands that are in theory protected under the IPRA. Furthermore, poorly regulated mining projects, ostensibly aimed at increasing employment and improving living conditions of the population, do not represent a sustainable development alternative.

Mining activities can therefore have a negative socio-economic impact on the populations affected by these projects, 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 current threat to the future of tribal people in the Philippines”.⁵⁴ Further, the implementation of the Mining Code is in contradiction with Section 16 of Article II of the 1987 Constitution of the Philippines that requires the State to “protect and advance the right of the people to a balanced and healthy ecology in accord with rhythm and harmony of nature” and causes a significant risk to the environment.

Indigenous peoples, communities and organisations have been struggling for their socio-economic rights for many years. However, due to the lack of political influence, as well as the

⁵² <http://www.newint.org/issue299/light.htm>

⁵³ http://www.piplinks.org/development_issues/philippines_report.pdf

⁵⁴ <http://www.prrm.org/publications/gmo2/vib.htm>

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 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 revealed that the majority of the affected peoples opposed the mining activities. In this respect, government agencies continue to fail to register or record such opposition, which consequently remains unacknowledged.⁵⁵

Mining activities can affect the enjoyment of a whole range of the economic, social and cultural rights of indigenous peoples. That is clearly illustrated by the report of the United Nations Special Rapporteur on the situation and human rights and fundamental freedoms of indigenous people concerning the Canatuan Mine on the Subanon Community, Island of Mindanao.

**The impact of the Canatuan Mine on the Subanon Community,
Island of Mindanao**

The Subanon tribe has been displaced over several decades, driven by an increasing number of government development projects. Over the years, the resistance of the Subanon to this treatment has led to serious conflict, violence and human rights violations involving the Filipino Army.

TVI Pacific Inc. is a Canadian mining company which was granted mining rights in Sitio Canatuan. The TVI Pacific project is based on an agreement between the company and the Government of the Philippines. The operations involve the exploitation of an area historically occupied by the Subanon people, and in particular of a mountain considered sacred by this community. The company's operations have reportedly been the cause of a number of violations:

- Militarisation of and acts of violence on the ancestral land by the company's security guards, establishment of checkpoints, etc.
- Changes in water quality reported by farmers and fishermen in the area surrounding the mine. Communities living on the coastline complain of high levels of sediments and the bitter taste of the water. By 2007, TVI Pacific had taken no steps to provide a water treatment plant.
- Forced evictions took place in 2003 when TVI Pacific was granted permission by the Philippines Government to forcibly demolish the facilities of small-scale miners and remove those miners from the area. On 22 May 2006, a miner's family was forcibly removed and their homes destroyed by security forces. Bulldozers were also used to destroy gardens in which miners grew food.

Peaceful anti-mine protests lead to violence

Economic policies aimed at promoting investment in mineral extraction are frequently neither balanced with the human rights of the communities involved, nor are in line with the right to basic necessities such as clean air, safe water and unpolluted soil. The absence of adequate protection leads communities to struggle for their rights. Indeed, communities often resist development projects that destroy their traditional economy, community structures and cultural values, thereby endangering their way of life. This, in turn, can provoke violent

⁵⁵ *Breaking Promises, making profits* - A Christian Aid and PIPLinks Report (2004)
http://www.piplinks.org/development_issues/philippines_report.pdf

reactions by security forces hired by mine owners against individuals engaged in legitimate and peaceful protests, including harassment, ill-treatment, arbitrary arrest, torture, forced disappearances and even executions.

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 File (see annex 1) calling for halt to mining activities on that island. The highlights of the Action File are as follows:

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.

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 5-year agreement (with the possibility of a further 8-year extension) for the supply of 500,000 tons of nickel. The Sibuyanons Against Mining Movement also reports that a further 13 mining sites have been planned on the island. Reportedly, up to 6 rivers would be affected by the new mining investments, directly affecting the indigenous population. Protests occurred in October 2007 against the mining operation, during which one of the activists, Armin Marin, was shot dead by a private security guard of the SNPDC.

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 withdrawal of the mining operations and removal 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 were opposing mining projects in their respective areas had been killed.

Recommended action

In order to prevent further violence and the 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, to seek ways to protect their rights in the future and recommends 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 human rights are respected in the implementation of the 2007-2013 EU-Philippines Country Strategy Paper.

B. Land Reform and Violence

In the Philippines landlessness is a root cause of violence and conflict. As a consequence of the drive towards industrialisation taking place in the Philippines, landowners are increasingly converting agricultural land to agro-business 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 on 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.

The Philippines is characterised by a monopolistic system of land ownership, whereby 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 is concerned 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. This is the case, for example, with exemptions from the land quota system whereby landlords are exempted from limitations on the maximum area of land they can own if they declare their intention to convert this land from agricultural use to commercial, industrial or residential use. Therefore, lands remain *de facto* concentrated in the hands of an 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 own targets” and that there appeared “to be a lack of political will to redress the situation”.

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 under the programme. 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.⁵⁶ 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,

⁵⁶ FoodFirst Information and Action Network, UPR submission, November 2007, p. 1
http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PH/FIAN_PHL_UPR_S1_2008_FIANInternational_uprsubmission.pdf

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 Executions who confirmed that peasants found themselves implicated in conflicts among the Government, the CPP/NPA/NDF, and large landowners.⁵⁷ 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 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 that, in early 2008, government soldiers displaced around 10,000 anti-CARP farmers in Quezon and also burned the houses 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.⁵⁸

C. Forced Evictions

In the Philippines, more than one third of the urban population lives in informal settlements. More than half of these urban poor families (1.4 million) live in Metro Manila.⁵⁹

In theory, the Government has addressed the concerns of the urban poor through its "Urban Development and Housing Act" (UDHA), which is intended to provide adequate housing at affordable cost, basic services and employment opportunities for the slum residents in resettlement areas.⁶⁰ However, owing to insufficient capacities at the local level and the lack of appropriate mechanisms to ensure cooperation and consultation in problem-solving, the conditions of urban slum residents have only worsened, and they continue to face the threat of eviction and demolition from both the government and private landowners.⁶¹

Urban demolitions and evictions

Over recent years, the Philippines Government has engaged in a policy of urban "beautification" and "development". The associated projects have involved the eviction of hundreds of thousands of people living in the urban areas concerned. Of these, the landless urban poor are the most severely affected by forced evictions.⁶² These take place despite the fact that the Constitution of the Philippines and the Urban Development and Housing Act of 1992 (UDHA) provide legal protection for housing rights. COHRE – The Centre for Housing Rights and Evictions – has observed that "the Government of the Philippines continues to use

⁵⁷ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Mission to the Philippines, § 37.

⁵⁸ Information from Kilusang Magbubukid ng Pilipinas (KMP).

⁵⁹ Common Country Assessment of the Philippines, 2004

http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁶⁰ Common Country Assessment of the Philippines, 2004

http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁶¹ Common Country Assessment of the Philippines, 2004

http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁶² http://www.cohre.org/view_page.php?page_id=250

various strategies such as pressuring residents to relinquish these rights by signing waivers and then 'voluntarily' relocating them to sites that are not fit to be lived in."⁶³

Among the cases brought to OMCT's attention, it is reported that on 27 February 2007, personnel from the Metro Manila Development Authority (MMDA) together with armed police initiated the forced eviction of families living under the South Superhighway Bridge and the San Andres Bridge 1 in Manila. During this operation, two hundred MMDA personnel and other armed police forces allegedly evicted 54 families living in the area and demolished their homes. Many people, mostly women and children, were injured during the demolitions. Five men were severely beaten by MMDA personnel.⁶⁴

OMCT, during its mission to the Philippines, was informed that further forced evictions took place in 6th and 7th Streets, Barangay Mariana, New Manila, Quezon City in Metro Manila on 16 January 2008, when a demolition team contracted by the Univac Development Incorporated demolished approximately 80 houses with the help of Quezon City Police.

OMCT wishes to draw attention to the fact that the issue of forced evictions in the Philippines was already identified as an element of concern in the 1995 concluding observations of the Committee on Economic Social and Cultural Rights. In particular, the Committee referred to the scale of forced evictions and "the manner in which they are carried out", emphasizing that such a situation was not compatible with the respect for the right to housing.

D. Labour rights, trade unions and violence

During its mission to the Philippines, OMCT was informed that the rights of workers in the Philippines are frequently overridden 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, assault of workers on picket lines, threats and intimidation and the filing of false charges against union activists. Unions are also often vilified as "front organisations" or supporters of the Communist Party or the New People's Army.

Union Strikes in Tarlac, Central Luzon

The Central Azucarera de Tarlac (CAT) of Hacienda Luisita is the biggest sugar refinery and plantation in Luzon. It is owned by the Cojuangco family, one of the richest and most politically influential families in the Philippines.

On 6 November 2004, workers at the CAT went on strike as a result of oppressive and exploitative working conditions. The Central Azucarera de Tarlac Labour Union (CATLU) and the United Luisita Workers' Union organised simultaneous strikes demanding wage increases, other benefits and land distribution.

The Department of Labour and the CAT management tried unsuccessfully to break up the strike and subsequently, on 16 November 2004, armed police, supported by elements of the

⁶³ http://www.cohre.org/view_page.php?page_id=250

⁶⁴ http://www.cohre.org/view_page.php?page_id=260

Armed Forces of the Philippines, attacked the picket line, killing seven unarmed protesters and injuring more than 100 others. Following this violent confrontation between protesters and government forces, a number of leaders and active supporters of the striking farm workers were murdered, including Ricardo Ramos (the former CATLU president), City Councillor Abel Ladera, peasant leader Marcelino Beltran, Father William Tadena and Supreme Bishop Alberto Ramento.

The strike ended in December 2005 with the workers winning substantial benefits.

Like so many others cases in the Philippines, the issue of land lay at the heart of the conflict. The purchase of the hacienda by the Cojuangco family had been subject to the condition that the land would eventually be distributed to the farmers. However, this has never happened. Following the strike, the workers and farmers won the right to till a substantial part of the hacienda's land, but the dispute over land distribution continues.

The Hacienda Luisita case is just one of the many cases of violence faced by trade unions in the Philippines.⁶⁵ In January 2002, a strike by workers against unfair labour practices at the Nestlé factory in Cabuyao, Laguna province was violently dispersed by the Philippine National Police (PNP) and the Philippine Army's Regional Special Action Force. This was followed by further violence in June 2002 and June 2003, when it is reported that the dispersal teams used truncheons, water cannons and bladed clubs. In each of the dispersals, between 18 and 50 workers were seriously injured. The president of the Pagkakaisa ng Manggagawa sa Timog Katagalugan (PAMANTIK) Union, Diosdado "Ka Fort" Fortuna, experienced constant harassment from Nestlé's private guards and surveillance by the PNP. In September 2005, Ka Fort was shot and killed on his way home by two men on motorcycles.

OMCT has also been informed that on 20 November 2007, the President and the secretary of the Marikina City Federation of Public School Teachers, who had been trying to establish a city-wide 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.

OMCT is concerned that measures such as these impede the right to organise and form trade unions and for such trade unions to function freely.

Export Economic Zones

Workers' rights are also jeopardised and/or disregarded by foreign investment 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 investment companies with little or no opposition from local government officials. Trade unionists are dismissed and discriminated against, as are workers who join unions, and organisers of unions 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

⁶⁵ Other cases include the violent suppression of strikes at the Toyota Motor Philippines Corporation plants in Bicutan, Paranaque in Metro Manila and Sta. Rosa, Laguna and at the Lepanto Consolidated Mining Corporation mine in Benguet province.

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.⁶⁶ These conditions can lead to protests by workers and strike actions which are forcibly repressed.

E. 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 such 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 the improvement of salary scales, benefits and better 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, workers from the same factory who were on strike 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.⁶⁷

⁶⁶ 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", 27-29 September 1999.

⁶⁷ 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 to a canal in Cavite*, 8 August 2007.

IV. Extrajudicial executions and forced disappearances of economic, social and cultural rights activists, impunity and the failures of the judicial system

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.⁶⁸ 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.

According to a report of Indigenous Peoples Watch-Philippines, 119 indigenous leaders or human rights defenders were killed in the period from April 2001 to January 2007.⁶⁹ Karapatan puts the overall figure of extra-judicial killings from January 2001 to June 2008 much higher at 910.⁷⁰

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, also 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 programs, on a relatively narrow interpretation, he had interviewed at least 10 witnesses to agrarian-reform related killings.⁷¹ These killings and forced disappearances are closely linked with, if not actually caused by the victims’ struggle for economic, social and cultural rights.⁷²

Recent examples set out below of attacks on human rights activists working for economic, social and cultural rights were presented in a paper entitled “Impunity: A spreading malignancy in the Philippine Human Rights Situation” to OMCT’s Special Procedures Seminar 2008.⁷³ See Annex 2 for that paper and its recommendations.

⁶⁸ Including cases of summary executions and extrajudicial killings of Mindanao peoples.

⁶⁹ 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*, A/HRC/6/15/Add. 3, § 34.

⁷⁰ http://www.karapatan.org/files/KarapatanMonitor_2Q_edited%20FINAL.pdf

⁷¹ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Mission to the Philippines, § 37 and n. 49.

⁷² Teodoro M. de Mesa, “Impunity: A Spreading Malignancy in the Philippine Human Rights Situation”, paper submitted to OMCT seminar on “Addressing the economic, social and cultural root causes of violence through the UN Special Procedures System”, June 2008.

⁷³ See HRW Report: *Scared Silent: Impunity for extrajudicial killings in the Philippines*, June 2007. See also OMCT’s urgent appeals for further cases.

Recent examples of attacks on human rights activists working for economic, social and cultural rights

- Ricardo Ramos, president of the Central Azucarera de Tarlac Labour Union, was killed on 25 October 2005 by the army.
- Reverend Jemias Tinambacan was killed in an attack 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.
- 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.
- Manuel Balani, a local agrarian and anti-mining activist, was killed in late 2006.
- Armando Javier, a peasants' rights activist was killed in his home in October 2005.
- 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 in Tacloban market, was killed on 17 July 2007.
- Armando Dolorosa, a leader of the National Federation of Sugarcane Workers (NFSW), was gunned down in Manapla on 6 June 2008. According to local police records, he was the third local NFSW leader killed in Manapla since 2003.
- Mark Anthony "Butch" Vale, the leader of the 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, was summarily executed by six to 12 unidentified armed men, believed to be local members the New People's Army contracted by the landowner to discourage the SAMAHABA from pursuing their land claims, on 22 December 2007.
- Ka Teldo 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.
- 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. Corpuz was returned the following day bearing signs of torture.
- Alberto Yusi, the 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 gun point, witnessed his murder.
- Junrie Alvarez Pagaspas and Rene Delara Llabres, both members of Samahan ng mga Magsasaka ng Hacienda Batuan (SAMAHABA), were summarily executed by armed men near the homes in Sitio Biton, Barangay Royroy, Batuan, Masbate on 6 July 2008.

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

Recent 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.⁷⁴ OMCT has been made aware of concerns that this Act may represent a further impediment to the work of human rights defenders and, in particular, to that of activists in the field of economic, social and cultural rights. OMCT is particularly concerned that the Human Security Act will render activists still more vulnerable to being apprehended 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.⁷⁵

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 is concerned about the broad drafting of this Order which could easily lead to it being abused.

Impunity for violence committed against activists

Bringing an end to impunity and reforming and strengthening the judiciary as well as the military and police forces is crucial to the protection of economic, social and cultural rights and to the fight against poverty and inequality. The above-mentioned paper (annex 2) provides a vivid description of the impunity enjoyed by those who attack human rights activists and the failures of the judiciary, executive and police and military to deal with the situation.

There is a general climate of impunity in the Philippines with respect to violence perpetrated (often by members of the military) against indigenous leaders, trade unionists and other activists engaged in the protection of economic, social and cultural rights. Perpetrators of such violence are rarely prosecuted, and the government has failed to implement appropriate measures to investigate such crimes.

It is widely documented that the PNP is unwilling or incapable of investigating disappearances or extrajudicial killings believed to have been perpetrated by the Armed Forces of the Philippines (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.

The UN Special Rapporteur on Extrajudicial Executions has reported that the military itself is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are

⁷⁴ http://www.senate.gov.ph/republic_acts/ra%209372.pdf

⁷⁵ http://www.tebtebba.org/tebtebba_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 this Act.

implicated,⁷⁶ 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,”⁷⁷ 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.”⁷⁸

In addition, and unfortunately, the Ombudsman, who should assume responsibility for the investigation and conduct the prosecution of crimes where public offices are implicated, lacks the necessary independence.

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”. It also expressed, “concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse [...] that have neither been investigated nor prosecuted.”⁷⁹

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 government-selected commissioners.⁸⁰ 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.

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 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 impeding the right to an effective remedy for persons whose rights and freedoms have been violated.⁸¹

The Judiciary⁸²

Impunity is compounded 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

⁷⁶ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, § 28.

⁷⁷ Preliminary note on the visit of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, to the Philippines A/HRC/4/20/Add.3*, 22 March 2007, § 10

⁷⁸ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Mission to the Philippines, p. 2.

⁷⁹ Concluding observations of the Human Rights Committee: Philippines, 1 December 2003, CCPR/CO/79/PHL

⁸⁰ See HRW Report: *Scared Silent: Impunity for extrajudicial killings in the Philippines*, June 2007

⁸¹ Concluding observations of the Human Rights Committee: Philippines, 1 December 2003, CCPR/CO/79/PHL

⁸² See also, CCA page 26

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.”⁸³

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 extra-judicial killings (the writ of *amparo* prevents military officers in judicial proceedings from issuing denials regarding petitions on disappearances or extrajudicial executions, while under *habeas data*, plaintiffs or victims have the right to access information on their lawsuits). However, whilst there was some evidence of initial success, on the whole the courts have shown themselves reluctant to grant these writs.⁸⁴ 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 the writ of *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.⁸⁵

Until fundamental changes take place within the Government, the military, the police and the judiciary, impunity will continue to reign, impeding the development of civil society and preventing human rights activists from fighting for respect of economic, social and cultural rights.

⁸³ 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.

⁸⁴ Teodoro M. de Mesa, “Impunity: A Spreading Malignancy in the Philippine Human Rights Situation”, paper submitted to OMCT seminar on “Addressing the economic, social and cultural root causes of violence through the UN Special Procedures System”, June 2008.

⁸⁵ Supreme Court of the Philippines, *People of Philippines v. Dindo “Bebot” Mojillo*, G.R. No. 145566, 9 March 2004.

V. Counter-insurgency activities, militarization and violations of human rights

It is worth repeating here the findings 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.”⁸⁶

The Government’s response 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. This takes the form of extrajudicial killings and enforced disappearances and is coupled with impunity for those responsible for these acts.

Since January 2001, the Philippines Government has acted against dissenting groups, in particular leftist organisations, including the Communist Party of the Philippines (CPP), 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 New People’s Army (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.

The counter-insurgency strategies and militarization have also been used to stabilise areas where mining, logging and other development projects are to be implemented. The military is mobilised where there is resistance to such project 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 of their rights (often economic, social and cultural).⁸⁷ 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 in areas where a large number of troops are deployed, this has been accompanied by an increase in torture and other human rights violations.⁸⁸ An example of this is contained in OMCT’s Action File on military activity in the rural communities of Surigao Del Sur summarised below. For more information see Annex 3.

⁸⁶ CCA, page 27

⁸⁷ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Mission to The Philippines E/CN.4/2003/90/Add.3, 5 March 2003, p. 2

⁸⁸ Information from KARAPATAN, member of the SOS-Torture Network.

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

In April and May 2005, counter-insurgency activities in Surigao del Sud, 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 as to the whereabouts of members of the NPA, 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 being 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. 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-Lianga 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.
(see Annex 2)

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 as "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”.⁸⁹ However, the violations go unpunished given the lack of political will and the climate of impunity that pervades Filipino society.

⁸⁹ 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.

VI. Recommendations

This report shows that effectively eliminating torture and other forms of violence in the Philippines will require a multifaceted and integrated approach ensuring the implementation of economic, social and cultural rights as well as civil and political rights. In particular, attention must be given to implementing the long neglected economic, social and cultural rights in the Philippines, in particular those whose violation is at the root of violence. Experience shows that acting on only one of the causes of torture has little chance of success.

The recommendations this report suggests to the Committee cover, first, some specific responses to the particular violations and problems identified. However, experience has also shown that to be effective recommendations need to be accompanied by means of implementation that identify those responsible for the implementation and engage their accountability. This report, based on examples which have shown promise, will suggest possible institutional mechanisms that might be entrusted with implementing certain recommendations in specific circumstances.

Finally, since progress will also depend on correcting the serious imbalances in Philippine economic and social policy at the macro level, recommendations are made to deal with those issues including the implementation of the recommendations of the 2004 UN Common Country Assessment.

Part I. Responding to specific human rights issues

A. Human rights of indigenous people and others living in rural communities

Relating to mining activities, indigenous peoples and rural communities

Action must be taken to protect indigenous people and rural communities from the violation of their human rights by mining activities. This should include;

- Revision of the 1995 Mining Act or preparation of a new draft alternative legislation on mining policy. The revision or the new legislation should be based on a participatory process that more effectively protects the interests of the affected local communities, including indigenous peoples;
- Halt immediately all mining activities that have or risk having a serious impact on the human rights of those communities concerned;
- Stop issuing further mining licenses until adequate and viable legislation, along with monitoring mechanisms to protect the environment and the economic, social and cultural rights of the indigenous peoples and others concerned have been established;
- Enforce the requirement of the free, prior and informed consent of affected communities, as provided by the IPRA, and investigating cases where this obligation has been violated, neglected or inadequately respected;
- Ensure that mining activities respect the human rights of those concerned, including labour rights, women's rights and property rights and that the resettlement of people respects international standards;

- Establish an independent commission to review respect for the rights of the local population in connection with mining projects and to seek ways to protect their rights in the future and consider calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission;
- Ensure that an equitable share of the revenues of mining projects go to the local communities concerned, once the community itself has expressed clear and unquestionable consent.

Regarding land reform

- Revise the Land Reform Programme in light of the discontent provoked by the current Agrarian Law, or draft alternative legislation that more adequately allocates lands, guarantees property rights and better addresses the concerns and interests of small farmers and landless peasants;
- Provide the needed economic and technical assistance and monitor the implementation of land reform and its impact on human rights, including violence against those defending rural communities through an independent mechanism with the participation of those concerned and with the assistance of United Nations experts (see above).

B. Regarding labour and trade union rights

- Ensure the full respect for International Labour Standards and request the International Labour Office assist the Government in ensuring respect for those rights. In particular, request the International Labour Office to organize training activities, provide advice on respect for international labour standards and investigate and take proper action in cases of violence;
- Ensure respect for International Labour Standards in all export economic zones;
- Ensure that violence and harassment of trade union leaders and workers ceases;
- Investigate and report publicly on all allegations of violence against trade union leaders and workers;
- Inform companies operating in export economic zones of their obligations to respect labour standards, monitor their performance and report publicly.

C. Regarding forced evictions

- Implement and effectively enforce the 1992 Urban Development and Housing Act;
- Ensure that any evictions are used only as a last resort, once all other alternatives have been exhausted and that they respect international standards;
- Ensure that evictions are carried out in the full respect for human rights, in particular human dignity and the right to adequate housing.

D. Regarding the situation of women

- Develop and implement programmes of employment creation and training in order to provide Filipino women with economic opportunities that will enable them to remain in the country.
- Act effectively against trafficking by adopting preventive measures and strictly enforcing anti-trafficking legislation.
- Encourage the adoption of a new act that foresees the possibility of divorce.
- Encourage the adoption of legislation that ensures women and men the same rights to administer common assets during marriage;
- Develop and implement education opportunities to discourage early marriages;
- Protect migrant workers by establishing a programme to monitor and report on the violations of their rights and conclude bilateral agreements with receiving countries for that purpose.

E. Regarding the situation of children

- Ensure the effective implement of the current legislation protecting and promoting the rights of children and enforce all related safeguards;
- Ensure that Filipino children are not unlawfully arrested and detained; ensure that in case of legal arrest, children are granted legal services, are held in separate facilities from adults and are protected from police brutality, irrespective of their economic means;
- Implement the current provisions on child labour.
- Act effectively against trafficking by adopting preventive measures and strictly enforcing anti-trafficking legislation.

F. Regarding human rights during military operations

- Ensure through training and independent monitoring that military operations do not restrict the economic and social activities of those living in affected areas and that military personnel respect their human rights;
- Military personnel should refrain from staying in houses of civilians, occupying schools or setting up camp close to civilian homes;
- Any and all allegations of violations of human rights by the military should be the subject of an independent investigation.

G. Ensuring the rule of law and protecting the poor and human rights activists and defenders from violence

- Ensure the implementation of appropriate measures to investigate cases of extrajudicial executions and forced disappearances; ensure that the work of the inquiry commission is carried out in an effective and fully independent manner;
- Call on the Supreme Court to resolve pending petitions against the 2007 Human Security Act and to act in favour of protecting 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, including:
 - Review of procedures that can protect poor and marginalized from SLAPP cases (Strategic Lawsuit Against Public Participation) as well as study the possibility of introducing SLAPP-back actions.
- Support the efforts towards the emergence of a strong civilian resolve to halt extrajudicial executions and enforced disappearances, such as, through the development of training and sustained professional development of human rights defenders from the barangay (village) levels to the national level;
- Support the interim efforts of civil society organisations (CSOs) to ensure the security of 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 possibly be designated as community monitors of the human rights implementation;
- Support the “establishment of a transparent monitoring mechanism to oversee the investigation of extrajudicial killings and the prosecution of perpetrators”. This mechanism is to be independent of Government and be comprised of constituents from Philippine society, including members of civil society;
- Facilitate the implementation of the EU Guidelines on Human Rights Defenders, including the security of Philippine human rights defenders;
- Provide technical and financial assistance to lawyers who take up cases in relation to human rights violations, particularly extrajudicial killings, enforced disappearances and torture.

In particular, the Committee should call on the Philippine authorities to;

- a. free immediately all persons arbitrarily detained in the framework of the fight against terrorism, or to bring charges against them and produce them before a court of law;
- b. stop using civilian auxiliaries of the AFP in the fight against so called “terrorism”, and as a minimum and immediate step, to ensure that these auxiliaries are properly trained in the field of human rights and prevention of torture;

- c. criminalize torture in domestic legislation in accordance with Article 4 of CAT;
- d. ratify the International Criminal Court so as to broaden the avenues of redress for victims of gross human rights violations;
- e. investigate, as 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;
- f. investigate human rights violations by non-State actors and prosecute them in full respect of the fair trial guarantees;
- g. extend a permanent invitation to the UN special procedures, and invite in particular the UN Special Rapporteur on Torture, the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the UN Working Group on Enforced and Involuntary Disappearances, as well as the UN Working Group on Arbitrary Detention;
- h. use a rights-based approach/framework in governance and in development projects;
- i. ensure that all non-State actors strictly abide by international human rights and humanitarian law and cease and desist from further perpetration of human rights violations.

Part II. Institutional basis for action⁹⁰

Protecting human rights in rural areas

A concerted multidimensional effort is needed to deal with poverty, inequality and violence in the rural areas of the Philippines either as regards indigenous people or others. The Philippine Government together with the United Nations and development agencies should establish *specific programmes of prevention measures* in each region affected by violence. Those measures should include initiatives relating to economic and social development (employment creation, education initiatives, health services, enhancing the status of women etc), enhancement of the rule of law (strengthening and training the judiciary, training the police and local administrators in human rights and relevant military units and personnel) and the establishment of a permanent monitoring function in those areas to ensure official compliance (law enforcement officials, local government and the military) with human rights law and good practices.

The elements of the 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 different communities concerned and civil society and with the participation of development specialists from the United Nations. In connection with indigenous people's rights, consideration should be given to associating the UN Special Rapporteur on Indigenous People. 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 its activities.

⁹⁰ See for example "Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study", Chapter 4 Argentina: Country Profile and Case Study. www.omct.org and Ad Hoc Working Group of Experts on Extreme Poverty of the Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2004/25, Annex, paras. 14-18

Protecting the human rights of those living in informal urban communities

Given the wide range of human rights violations to which people living in informal urban settlements are subjected, a specific programme similar to that recommended for indigenous and rural communities should be developed to provide economic and social development (employment creation, education initiatives, health services, enhancing the status of women etc), enhancement of the rule of law (strengthening and training the judiciary, training the police and local administrators in human rights and relevant military units and personnel). A mechanism should be established to, with the participation of those concerned, design, implement and monitor the programme.

Part III. Recommendations regarding overall social and economic policies

In order to help correct the serious imbalances in Philippine economic and social policy at the macro level the Committee may wish to recommend to the Government that it:

-Establish an independent mechanism to carry out an ongoing human rights impact analysis of Philippine economic and social policy both before policies are adopted and in connection with their implementation and the actual impact on peoples lives.

-This would include a formal review of the consistency of the country's foreign trade and investment policies with its human rights obligations, and assess the extent to which these have supported and/or undermined the capacity of the Philippines to meet its commitments under International Human Rights Law, in particular the two International Covenants;

- Undertake measures to ensure that the country's main economic planners, trade negotiators, and parliamentarians responsible for crafting socioeconomic policy are fully aware of their obligations and commitments under International Human Rights Law.

And that Philippine courts rule that economic, social and cultural rights self-executing so that the macro-economic policies of government can then be subjected to judicial review of their conformity with the Government's human rights obligations.

Addressing the Millennium Development Goals

The Committee may wish to recommend to the Government that importance be given to implementing the recommendations of the Common Country Assessment 2004 that cover the whole range of human rights and to addressing the three main obstacles to achieving the Millennium Development Goals that it identified; great disparities in the Philippine economy and society, failures in the area of governance and a very high level of population growth.

The CAA described those economic and social disparities as,

“(i) ownership - such as of land and natural resources; (ii) access to quality public services in areas of education, health and capital; and (iii) participation and decision-making power - that impact on the ability of women, citizens, and workers to influence the future development of their families, livelihoods, and communities and that leave many national and local institutions unable to resist the pressures of powerful segments of society to reduce the inequities between the sexes and among regions and socioeconomic groups. In a society where corruption and good governance issues are prevalent throughout, it is a particular challenge to make progress in this regard.”

Relating to governance, the Assessment found that “At its most fundamental level, progress is needed in areas of graft and corruption, accountability, and transparency in every branch of government, and from the national down to the local level.”⁹¹

Peace and security

The recommendations of the CCA for dealing with peace and security are equally valid for dealing with official violence outside the areas of armed conflict and merit being adapted for the whole country.

“The government, working in partnership with civil society and the donor community, must be resolute in addressing the issues of conflict and security. At a minimum, this will require: (i) policy coherence within the framework of a social consensus to end the armed conflicts through peaceful means — one that is deliberately oriented to the pursuit of social, economic and political reforms to address the root causes of conflict, and outlives changes in government administration; (ii) reforms within the security sector, to ensure greater accountability of the military under a civilian leadership by, among others, building competence, professionalism and efficiency; respect for human rights; gender and cultural sensitivity, and accountability to civilian authority; and (iii) greater accountability and competence from the law-enforcement agencies to produce results and build public confidence in the ability of government to guarantee the security of its citizens. Alongside government initiatives, there must be a deliberate effort to build and sustain a citizens’ constituency to drive parallel efforts towards a just and enduring peace.”

These recommendations coincide with those coming today from organisations in the Philippines and, as this report shows, little if any progress has been made in implementing them since the report was published in 2004.

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 as examples of on going practices. 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.

⁹¹ CAA page 44

Annex 1
OMCT ACTION FILE (PHL 301107.ESCR)
The Sibuyan Island case

Mining activity on Sibuyan Island, Romblon Province, the Philippines, must be halted to prevent further killings and violence

The peaceful opposition by local communities and indigenous people to mining that violates their rights and endangers their way of life on the Filipino Island of Sibuyan has been met with violence resulting in the killing of some 17 persons, the most recent the shooting death of the leader of a protest movement by a security guard of the Sibuyan Nickel Properties Development Corporation on 3 October 2007.

Respect for the rights of local communities inscribed in Philippine law, notably the 1997 Indigenous Peoples' Rights Act, has been overridden by the application of the 1995 Mining Law designed to promote foreign investment. This has resulted in many illicit mining activities and increased opposition of the populations directly concerned.

To prevent further violence and killings, the International Secretariat of the World Organisation Against Torture (OMCT) calls 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, to seek ways to protect their rights in the future and recommends calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission.

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

The mining situation on the island

Sibuyan Island is an island in the Romblon Province, south of Manila, in the Philippines. The island enjoys global importance thanks to its flora and fauna, including the fact that 33 per cent of the island (44,500 hectares) is covered by forest and has been declared a national park. The island has a population of more than 50,000 inhabitants and is the home of the Sibuyanons Mangyan Tagabukid indigenous group of some 1,500 individuals living in two separated areas. Agriculture and fishing are crucial sources for their economic development.⁹²

⁹² <http://www.cmln-sea.org/nations.php?id=21>

The first mining establishment on the island was approved in July 2006. Recently, the Australian company Pelican Resources (PRL),⁹³ under the guise of small-scale mining operations, established a large-scale nickel mining plant on the island.⁹⁴ The result is a joint venture with the Sibuyan Nickel Properties Development Corporation, a consortium of mining companies. Furthermore, one of the world's largest mining companies, BHP Billiton, has secured an agreement with the holders of the project that will supply 500,000 tones of laterite nickel per annum. The agreement will initially last for 5 years and with the possibility of an extension of further 8 years.

The liberalization policy undertaken by the Government of the Philippines is aimed at increasingly attracting foreign investment and that the 1995 Mining Code was conceived for this specific purpose;⁹⁵ Specifically, the Mining Code allows greater foreign ownership, and provides for repatriation of profits and tax breaks in favour of international mining companies. Indeed, it was described by the *Mining Journal* as “among the most favourable to mining to be found anywhere”.⁹⁶ Foreign companies themselves were invited to help draft the law during a workshop held on the occasion of the 1993 Pan Asian Mining Congress.⁹⁷

According to the Island's residents, up to 6 rivers would be affected by the new mining investments; in this respect, indigenous peoples in the island will be directly affected, although they hold a certificate of ancestral domain title covering almost 20 per cent of the island.⁹⁸ Last year 8,000 people marched to the mining site to express their disagreement.⁹⁹

The Sibuyanons Against Mining Movement, also reports that a further 13 mining sites have been planned on the island.¹⁰⁰ Many of the residents of the island are opposing the projects.¹⁰¹ A report of a fact finding mission conducted in August 2006 and led by the British Member of Parliament and former Minister, Ms. Clare Short,¹⁰² highlighted that provincial government and the companies involved are ignoring the needs of local communities. The mission pointed out that the mining projects are taking place with little or no public consultation, and despite the protests and the opposition of the majority of the Island's inhabitants to such projects.¹⁰³

Following the recent violent events, including the case in question, residents of Sibuyan island and other groups are now demanding the withdrawal of mining operations and the removal of all permits to explore and mine on Sibuyan. The people of Sibuyan are afraid that private

⁹³ <http://investing.businessweek.com/research/stocks/snapshot/snapshot.asp?symbol=PEL.AX>

⁹⁴ http://www.manilastandardtoday.com/?page=felMaragay_oct29_2007

⁹⁵ <http://www.austrade.gov.au/Mining-to-the-Philippines/default.aspx>

⁹⁶ <http://www.newint.org/issue299/light.htm>

⁹⁷ http://www.piplinks.org/indigenous_rights/indigenous_rights.htm

⁹⁸ “Mining in the Philippines : Concerns and Conflicts (Report of the Fact Finding Mission, July-August 2006)” http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf

⁹⁹ http://www.alysantagilmina.org/index.php?option=com_content&task=view&id=185&Itemid=37

¹⁰⁰ <http://www.minesandcommunities.org/Action/press1670.htm>

¹⁰¹ http://www.manilastandardtoday.com/?page=felMaragay_oct29_2007

¹⁰² The Fact Finding mission was organized by: CEESP (Commission on Environmental, Economic and Social Policy), the Irish Centre for Human Rights, the Society of St. Columban, and PIPLinks (Philippines Indigenous Peoples Links). On 25 January 2007, the former UK Minister for International Development, Clare Short, currently Member of the UK Parliament, has launched a critical report on the destructive mining practices in the Philippines, following a fact-finding mission, led by the UK MP, in the Philippines, in July -August 2006.

¹⁰³ “Mining in the Philippines : Concerns and Conflicts” (Report of the Fact Finding Mission, July-August 2006) http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf

security guards will use force and violence again in the future.¹⁰⁴ Indeed, as reported by the Filipino NGO Kalikasan and mentioned above, so far 17 killings related to the people's opposition to mining projects in their respective areas have taken place.¹⁰⁵

The killing of the anti-mining activist

OMCT has learned that on 3 October 2007, hundreds of anti-mining activists were protesting in Sitio Olango in Barangay España, San Fernando, Sibuyan Island. The protest was aimed at opposing the mining activities in the area; during the demonstrations Armin Marin, one of the activists, was killed by a gunshot. Marin, 42 years old, was a former member of the environment group WWF-Philippines and a municipal councilor of San Fernando town in Romblon.

Reportedly, Mario Kingo, a member of the private security guards of Sibuyan Nickel Properties Development Corporation, was inside the jeep of the company holding a gun. Following a heated confrontation with the security guards, Marin, who was leading the protest, was shot in front of the temporary office of the mining firm.¹⁰⁶

The dynamics of the killing are tainted by contradictions and conflicting versions. Police filed a murder case against Mario Kingo; according to this report, Kingo claimed self defense, explaining that when driving the firm's jeep, the path was obstructed by the rally held by Marin and other protesters. The gun used by Kingo - a 38 caliber - was then reportedly sequestered, and it was subsequently found that two bullets had been used. Witnesses say that they heard three gunshots.¹⁰⁷ According to the version of the events advanced by the Sibuyan Nickel Properties, Marin died accidentally, and Kingo was attacked by the rally's participants. Conversely, WWF, quoting witnesses, stated that "the jeep driver held Armin with his left hand, while he pointed a gun at the councilor's mouth with his right hand".¹⁰⁸ The police regional director, Louie Palmera, stated that Kingo was also charged with contravening the gun ban that had been established by the Commission on Election.¹⁰⁹

Irrespective of the exact description of the event, OMCT expresses its serious concern that an individual engaged in a legitimate and peaceful protest was killed by a firearm, all the more, since the killing occurred during the above mentioned gun ban.

Legal context

Indigenous peoples' rights are protected and guaranteed by the Filipino law. Indeed the 1997 Philippines' Indigenous Peoples' Rights Act (IPRA), is shaped on the provisions of the draft of what is now the UN Declaration on Indigenous Peoples' Rights. Undeniably, on paper, 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, *inter alia*, the 1995 Mining Code, which in many cases offers mining permits on those

¹⁰⁴ "Murder in paradise: green groups in arms". The Inquirer, 6 October 2007

¹⁰⁵ <http://bulatlat.com/2007/10/green-groups-condemn-killing-anti-mining-advocate-romblon>

¹⁰⁶ <http://www.infomine.com/news/headline/welcome.asp?NewsID=69339>

¹⁰⁷ http://www.alyansatigilmina.org/index.php?option=com_content&task=view&id=185&Itemid=37

¹⁰⁸ http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=92896

¹⁰⁹ The Commission for the Elections established a gun ban in view of the Synchronized Barangay (village) and Sangguniang Kabataan (youth council) elections on the forthcoming 29 October 2007. The Philippine National Police (PNP) is the competent authority for the implementation of the ban.
http://www.comelec.gov.ph/announcements/resolutions/2007/res_8298.html

indigenous lands in theory protected under the IPRA. Indeed, the Mining Code hinders the proper application of the IPRA.

The British NGO Survival International described the 1995 Mining Code as “the major current threat to the future of tribal people in the Philippines”. Mining activities not only have a high environmental impact, but, more importantly, represent, for the poorest people of the country, a threat to their livelihood and lands.¹¹⁰ OMCT wishes to draw the attention to the provisions of the Mining Code that are of particular concern in this respect:¹¹¹

- 100% of the foreign ownership is allowed (previously there was a limitation up to 40%).
- A corporation may claim an area up to 200 Blocks (1 block = 81 hectares) onshore and up to 400 block offshore, while individuals face the restriction of 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 implementation of the Mining Code is also in contradiction with Section 16 of Article II of the 1987 Constitution of the Philippines; “The State shall protect and advance the right of the people to a balanced and healthy ecology in accord with rhythm and harmony of nature”.

Indigenous peoples communities and organisations have been struggling for their socio-economic rights for many years. However, due to the 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 their remedies; many of them lack legal means to file a complaint. In many cases companies and government bodies have claimed they met the requirement of free and prior consent, however, later investigations showed that the majority of the populations affected opposes the mining activities. In this respect, government’s agencies continue to fail to register or record opposing positions, which consequently remain unacknowledged.¹¹²

Mining activities’ impact on economic, social and cultural rights

OMCT is concerned that, even though on paper law in the Philippines defends indigenous peoples’ economic, social and cultural rights, mining still represents a concrete threat to indigenous peoples’ lands, since many mineral deposits lie on indigenous territories.

OMCT is also concerned that economic policies aimed at promoting investment in mineral extraction are frequently neither balanced with the human rights of communities involved, nor are in line with the right to basic necessities such as clean air, safe water and unpolluted soil. The absence of adequate protection leads communities to struggle for their rights. Indeed, communities resist development projects that destroy their traditional economy, community structures and cultural values. This, in turn, can provoke violent reactions by security forces hired by mine owners against the objecting communities, including harassment, ill-treatment, arbitrary arrest, torture and forced disappearances.

¹¹⁰ http://www.piplinks.org/development_issues/philippines_report.pdf

¹¹¹ <http://www.mgb.gov.ph/policies/Republic%20Acts/RA%207942.htm>

¹¹² “Breaking Promises, making profits” A Christian Aid and PIPLinks Report (2004)
http://www.piplinks.org/indigenous_rights/indigenous_rights.htm

OMCT, in particular, expresses its deep concern at the killing of Armin Marin that took place in a general situation of insecurity, protest and discontent resulting from a poor implementation of mining policy in the Philippines. It is an example of the violent consequences of the Philippines mining policy and of the unscrupulous promotion of mining at the cost of the social, economic and cultural rights of people concerned.

Recommended action

Regarding the killing of Armin Marin, OMCT recommends that the Government of the Philippines take action to:

- Shed light on the circumstances of the event and start and complete a prompt and genuine investigation aimed at achieving accountability;
- Provide remedies and redress for the family of the victim;
- Take all necessary steps in order to prevent similar cases occurring in the future.

Regarding the situation on Sibuyan Island and in the Philippines in general, OMCT calls on the Government of the Philippines to:

- Halt immediately all mining activities on the island until procedures are in place to ensure respect for the human rights of those living on the island;
- Establish an independent commission to review respect for the rights of the local population in connection with mining projects and to seek ways to protect their rights in the future and consider calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission;
- Stop issuing further mining licenses until adequate and viable legislation, along with monitoring mechanisms to protect the environment and the economic, social and cultural rights of the indigenous peoples and others concerned have been established;
- Enforce the requirement of the free, prior and informed consent of affected communities, as provided by the IPRA, and investigating cases where this obligation has been violated, neglected or inadequately respected;
- Revise the 1995 Mining Act or draft alternative legislation on mining policy. OMCT encourages the Government of the Philippines to base the new legislation on a participatory process that more effectively protects the interests of the affected local communities, including indigenous peoples;
- Ensure that an equitable share of the revenues of mining projects go to the local communities concerned, once the community itself has expressed clear and unquestionable consent;
- Ensure respect for human rights, including labour rights, women's rights and property rights and ban the involuntary resettlement of people linked to mining operations.

OMCT also calls 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, with particular concern for the rights of indigenous peoples as set forth in United Nations instruments;
- Establish mechanisms to ensure the respect for those rights that guarantee a ongoing and structured dialogue with the populations concerned;
- publish periodic reports on measures taken to ensure respect and to promote dialogue with the concerned populations.

The European Union

The European Union (EU) is one of the principal partners of the Philippines in the field of development assistance, and poverty reduction is the main objective of EU development policy. In 2007 the EU reviewed its technical and financial assistance strategy for the Philippines through the ‘2007-2013 EU-Philippines Country Strategy Paper’;¹¹³ an essential part of the EU strategy to fight poverty includes promoting internal stability and security.

OMCT thus calls on the *European Union*, in its activities in the Philippines and in its relations with the Government, to:

- Ensure that mining activities that receive the direct or indirect support of the European Union respect the human rights of the populations concerned, including the indigenous peoples, in light of their UN-proclaimed rights, and that in relation to such activities the local communities concerned receive an equitable share of the revenues;
- Encourage the Government to implement the other recommendations contained in this document;
- Ensure that any general EU-sponsored investments is based on a human-rights assessment and accompanied by a strict scrutiny on possible violations of economic social and cultural rights;
- Ensure that all EU financial actions in the area of economic development in the Philippines are taken with a view to encouraging dialogue and inclusion among all sectors of the society;
- Ensure that the rights of indigenous peoples are effectively mainstreamed in the implementation of the Philippines Country Strategy Paper.
- Encourage the establishment of an independent body to review and advise on the impact of EU-funded development projects on indigenous communities. Ideally, this body should be composed of professional staff and include also representatives of indigenous peoples, civil society and academics.
- Ensure periodic public reports on respect for human rights within the implementation of the 2007-2013 EU-Philippines Country Strategy Paper.

¹¹³ European Commission Country Strategy Paper 2007-2013. The Philippines.
http://ec.europa.eu/external_relations/philippines/csp/index.htm

Annex 2

IMPUNITY: A Spreading Malignancy in the Philippine Human Rights Situation¹¹⁴

by

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Introduction: Impunity Cutting Across All Human Rights

A leader of the National Federation of Sugarcane Workers (NFSW), Armando Dolorosa, 45 was gunned down by three masked men in Manapla, Negros Occidental on 6 June 2008. Negros is part of a group of islands called the Visayas Islands in the Philippines.

According to Dolorosa's wife, Janetta, she suspects that her husband's murder had something to do with the implementation of the agrarian reform program. She said her husband and 36 other agrarian reform beneficiaries were given certificates of land ownership award by the Department of Agrarian Reform (DAR) last year, to own a portion of a sugar estate. Mr. Dolorosa was the third local NFSW leader slain in Manapla since 2003, local police records show.

Eric Cabanit, staunch peasant leader since martial law period, was extra-judicially killed in Davao City, Mindanao, while he was marketing together with his daughter.

Kathy Alcantara, a woman leader-organizer of the *Pambansang Kilusan ng Makabayang Magbubukid* (PKMM)- [National Movement of Nationalist Farmers], was killed mid-morning of December 5, 2006 in Brgy. Gabon, Abucay, Bataan in Central Luzon. She was just a short distance from an on-going seminar of PKMM of which she was both organizer and resource person when she was gunned down by killers on motorcycles. People who turned to look when they heard the shots were not in a position to recognize the motorcycle riders who in the meantime had sped away.

Their deaths add to the several hundreds of persons who were known for their open stand and advocacy for fundamental freedoms, social justice and human rights. They are usually, among others, women and men leaders of people's organizations and/or cause-oriented groups, farmers, workers, youth, professionals, journalists, church people killed by hooded men. Characteristics of their deaths are more often than not that they or their organizations have been branded at one time or another by the military and/or police as "enemies of the state" or as "fronts of the Communist Party of the Philippines (CPP) or that of the New People's Army (NPA), the armed wing of the CPP. Their deaths unresolved, with no perpetrators brought to justice and convicted, entrench deeper the culture of impunity. The extreme violation, which is the taking of their lives, underscore the indivisibility of human rights. The killings, which are classified as violations of civil and political rights, are closely linked if not actually caused by the victims' struggles for economic, social and cultural rights. In fact, impunity, especially in extra-judicial killings, enforced disappearances and torture, often presuppose a history of impunity in economic, social and cultural rights. The cases of Armando Dolorosa, Eric Cabanit and Kathy Alcantara attest to this truth.

¹¹⁴ Paper submitted to OMCT (World Organization Against Torture) for the seminar "Addressing the Economic, Social and Cultural Root Causes of Violence through the UN Special Procedures System", Geneva, 23-27 June 2008

Unknown Extent of Impunity

The extent of impunity in relation to the human rights situation in the Philippines, particularly in extrajudicial executions, enforced disappearances and torture, at the moment, can never be completely known. In fact, it is hidden from us because it may be bigger than meets the eye. Allow me to illustrate this fact through a brief case presentation of the Manalo brothers, Raymond and Reynaldo¹¹⁵.

- On 14 February 2006, armed men snatched them from their homes; the armed men were looking for another brother, Bestre, believed to be a member of the New People's Army, a rebel group; as Bestre was not around, the armed men took them instead;
- For the first three and a half months of their captivity, their captors tortured them almost daily;
- Their captors kept transferring them from one military camp or facility to another;
- The writ of habeas corpus were presented twice to the military, but the latter denied holding any or both of the brothers;
- General Jovito Palparan of the Armed Forces of the Philippines talked to them during their captivity; they recognized General Palparan as they had seen him on television prior to their captivity;
- During their captivity, they saw and talked to other victims who had suffered the same fate of torture and enforced disappearance; they even witnessed other victims being extra-judicially killed; and
- After about a year and a half of captivity, they succeeded in escaping.

No less than the Philippine Supreme Court believed the brothers' account of human rights violations against their persons, over government and military denials. The Supreme Court 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 how they saw:

- Other victims of torture and enforced disappearance, and
- Other victims being extra-judicially killed.

Consequently, this glimpse that the brothers' escape gave us into the phenomenon of impunity¹¹⁶ gives us a staggering, if not horrifying, possibility, of a much bigger number than whatever quantity of documentary evidence could be presented in this or any conference. Furthermore, the extent to which the perpetrators of these acts would go so as to suppress any evidence can only be called ruthless. They burn the bodies of victims.¹¹⁷ Concomitantly, the climate of fear and the culture of impunity generated by these heinous acts are much more extensive and intensive, as well as in their consequences in the lives of survivors and their families, than meets the eye. Such an environment severely impedes people in effectively participating in their development.

¹¹⁵ Sunga III, Ricardo A. "Written Submission Under the UPR: On Torture, Enforced Disappearances and Extrajudicial Killings". Free Legal Assistance Group, November 2007.

¹¹⁶ United Nations. "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity". Under DEFINITIONS, it states: "Impunity" means the impossibility, *de iure* or *de facto*, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims."

¹¹⁷ This burning of bodies was also alluded to in the affidavit of torture victim, Ver Eustaquio, mass leader of the organization "United Masses for Democracy and Justice", when he and his companions filed charges of abduction and torture against their alleged perpetrators.

Corruption: A Component of Impunity

Ms. Gloria Arroyo, as both Chief Executive of the Republic of the Philippines and Commander-in-Chief of the Philippine Armed Forces of the Philippines had thrown obstacles on the people's way to access information that are vital to the latter's societal and personal lives. These obstacles, among others, are exemplified in Executive Order 464¹¹⁸, Memorandum 108¹¹⁹, the use of executive privilege¹²⁰, and an Administrative Order 197¹²¹. These legal measures supplement and exacerbate an already existing coercive environment and climate of fear among the people.

The stonewalling to truth allows impunity to dig deeper into the ground because of the State's unwillingness to give in to demands of transparency and accountability. These actions run counter to subsequent principles in combating impunity¹²² as seen particularly in the case of star-witness, Jun Lozada, in the bribery/corruption case pertaining to a communications project between the Philippines and China. What is pertinent in the present discussion is that Mr. Lozada was abducted and could have been a victim of enforced disappearance had it not been for the persistence of his wife and of the media to know his whereabouts from the authorities. Access to some witnesses of the abduction and other persons with corroborating information were denied to the counsels of Mr. Lozada. The project and the persons involved in the deal between became an arena for disinformation, especially the part wherein substantial loans were going to be made and paid for by the Filipino people and consequently would cut through the basic services needed especially by the poor. The project was announced to have been cancelled by Ms. Arroyo. It must be pointed that at least 30% of our national budget is automatically appropriated to our external debt. Corruption thus breeds violations of esc rights of people.

Vilification Campaign: Military Response to Protests Against HR Violations

The vilification campaign¹²³ against people's organizations as "enemies of the State" with consequent harassment and intimidation of the members, the use of the "order of battle or OB" listings 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 and disastrous for human rights issues.¹²⁴

¹¹⁸ This Executive Order bars any government official of the Executive branch to testify before any legislative inquiry without the permission of the Chief Executive. In the meantime, this E.O. has been substantially nullified by a Supreme Court decision. Pangalangan, Raul C. "Be careful what you wish for", Philippine Daily Inquirer (PDI), March 7, 2008, p. A14.

¹¹⁹ Ibid.

¹²⁰ After the Supreme Court struck down significantly E.O. 464, the same SC made a "dangerously crippling decision" regarding executive privilege. Bernas, Joaquin G., S.J. "A dangerously crippling decision". PDI, March 11, 2008, p. A15

¹²¹ Administrative Order 197 issued by Ms. Gloria M. Arroyo on September 25, 2008. Note specifically provision no. 2: "The DND/AFP shall draft legislation in consultation with the Presidential Legislative Liason Office and Congress allies for safeguards against disclosure of military secrets and undue interference to military operations inimical to national security."

¹²² United Nations. "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity". [Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119. [E/CN.4/Sub.2/1997/20/Rev.1](#), 2 October 1997, Original: English; this report is also known as the "Joinet Report".]

¹²³ Free Legal Assistance Group: "In other cases, 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*;'

¹²⁴ A recent event illustrates this point. The indigenous people of the Ata-Matigsalug who were internally displaced due to military operations in their areas were being accused as being used by militants in the former's

Aside from Prof. Alston's independent find of an "order of battle" list during his official visit as U.N. Special Rapporteur on Extrajudicial Killings, the Report of the EU Needs Assessment Mission, Philippines, has this to say:

...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.¹²⁵

Officials in the military headquarters in Manila questioned the authenticity of the document. In the same EU report, an earlier paragraph of the same section on the Armed Forces of the Philippines can give a chilling effect on people's organizations and even cause-oriented individuals.

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.¹²⁶

The People's Struggles to Break Impunity: Government and Military Responses

The campaigns to expose grave human rights violations have been made and sustained by concerned groups both in the national and international arenas. Part of the campaigns is human rights education and para-legal trainings to enable communities especially in difficult and/or militarized areas to assert their human rights whether to 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 towards obtaining a breakthrough against impunity. People's diverse actions, on their own and/or in solidarity with others, toward the common goal of breaking impunity elicited different responses from the three branches of Philippine government.

The Chief Executive and Commander-in-Chief of the Armed Forces of the Philippines, for example, praised the work and record of then General Jovito Palparan, Jr.¹²⁷ who was suspected as responsible for the extrajudicial killings done in the areas of his different assignments.

Till now, determined efforts are made to make justiciable many human rights treaties that the Philippine government had already signed and ratified, especially the ICESCR. That bills formulated to this end have not been certified urgent by the Chief Executive show the rank of importance Ms. Arroyo's administration gives to the justiciability of human rights.

There is, for example, an absence of laws criminalizing torture and enforced disappearances. This situation is contrary to the international commitments of the Republic of the Philippines under Article 7 of the ICCPR. The Philippines is a State Party to the Convention against Torture (CAT). And yet, the FIDH mission in 2007 stated that "...in zones of armed conflict,

complaints against the said operations, according to military-organized groups of indigenous people. See report of Jean Marie Ferraris, Legal Resource Center, Davao City.

¹²⁵ European Commission, External Relations Directorate General. "EU Needs Assessment Mission Philippines, 18-28 June 2007. Report", p.35

¹²⁶ European Commission, External Relations Directorate General. "EU Needs Assessment Mission Philippines, 18-28 June 2007. Report", p.35

¹²⁷ Gen. Palparan was chief of the 7th Infantry Division (ID), which includes command responsibility over troops deployed in Central Luzon. Charges of robbery, grave coercion and serious illegal detention were filed against him and 13 others, mostly Army soldiers recently for taking over a mine site in Masinloc, Zambales. Please see Guinto, Joel. INQUIRER.net – "Army probing troops with Palparan in Zambales port takeover".

acts of torture accompany every military operation”.¹²⁸ While human rights formations welcome the signing of the Optional Protocol to the Convention against Torture (OPCAT), its full effectiveness can only be felt when a law is passed criminalizing torture. At the moment, most if not all human rights defenders do not think one could certainly make a “presumption of regularity” of respect for human rights, especially against torture, when arrests or abductions are made by the military or the police of people perceived to be “enemies of the State”.

Impunity thus could persist due to the absence of laws that translate ratified international human rights instruments into national laws. Impunity could also thrive through laws that masquerade to protect human rights, such as the new anti-terrorism law, the Human Security Act of 2007, which uses “a misleading semantic”¹²⁹.

In fairness, there are now bills on criminalizing torture and on enforced disappearances which closely follow definitions and provisions in the related international conventions. Their passage into laws could help in realizing justice for people on the ground coupled with favorable circumstances.

In the meantime, the laws leading to the resolutions of cases of extrajudicial killings and enforced disappearances have been found wanting. Victims and relatives of victims who pursued justice through the legal system have been frequently frustrated by persons and processes meant to assist them to obtain redress. For example, FIDH keenly observed that: Article 7 of the ICCPR and article 15 of the CAT [to both of which the Philippines is a State party], Section 25 of the 2007 anti-terrorism law, RA 9372, also prohibited the admissibility of evidence obtained through torture or duress.

However, the actual case of the Supreme Court in this domain threatens the effectiveness of this principle. Indeed, the Supreme Court considers that “the confessant bears the burden of proof that his confession is tainted with duress, compulsion or coercion by substantiating his claim with independent evidence other than his own self-serving claims that the admissions in his *affidavit* are untrue and unwillingly executed. Bare assertions will certainly not suffice to overturn the presumption.”¹³⁰

It is in this context that the judicial activism of the Supreme Court led by Chief Justice Puno resulting to the issuance of the writ of amparo and the writ of habeas data must be seen.

The two writs created hope that they would decrease occurrence of *ejk*'s and enforced disappearances. In fact, initial successes have been obtained. Some people who were abducted were surfaced.¹³¹ But then, for fear of retaliation and of the possibility of undergoing another round of harassment and intimidation or even worst, that of being extra-judicially killed, the victims and/or relatives do not pursue the filing of charges against, among others, abduction, torture and/or illegal detention. In fact, there are some who were surfaced expressed gratitude to the military for “keeping them safe”. Some even returned with the military to the latter's camp. Others who have been brought back home by the military after almost a year of

¹²⁸ FIDH. “Report: International Fact-finding Mission in cooperation with the Philippine Alliance of Human Rights Advocates (PAHRA) and the International Rehabilitation Council for Torture Victims (IRCT), April, 2008, p.28. “[Torture] may be usual in the process of abduction by the military, the police or their civilian auxiliaries.”, p.30

¹²⁹ *Ibid.*, pp.25-26. There are no specific references to international human rights law. It must be remembered too that while there is mention of a general “safeguard” and “respect for human rights”, for one there is still no domestic legislation against torture which makes implementation problematic.

¹³⁰ FIDH, *op.cit.*, p.33. For instance, Supreme Court of the Philippines. *People of Philippines vs. Dindo “Bebot” Mojillo* G.R. No. 145566, March 9, 2004.

¹³¹ Ruel Munasque, a youth leader, taken by the military in Mindanao, was released on November 7, 2007.

enforced disappearance are even too afraid to even just officially acknowledge that they have been surfaced and are alive.

There is at least one case wherein a writ of amparo was filed against the human rights organization, Karapatan. The military made use of the family of a youth who was in the protection program of the said organization. This showed that the military are learning how to make use of both law and intimidation to further entrench impunity against the people.

According to the EU Needs Assessment Mission: “The legal framework, including standard operating procedures, for investigating extrajudicial killing is in place, but seems not to be implemented or applied.”¹³² 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.”¹³³ FLAG had enumerated the weaknesses of the government’s Witness Protection Program in its report to the Special Rapporteur on Extrajudicial Killings.¹³⁴

From investigations to court hearings to protecting witnesses, the Philippine criminal justice system needs to win back the trust and confidence of the general public.

As for the AFP, it is not seen as politically neutral entity in terms of its constitutional mandate. The current degree of involvement of the AFP in civil affairs is counterproductive in developing democracy, especially among the grass-roots communities, as well as the democratic processes and institutions. It is hoped that the new human rights office of the AFP, so as not to end up as a mere window-dressing, would provide not only the education and training to officers and soldiers up to the local level on human rights and international humanitarian law but would also monitor their obligations of conduct and of result regarding human rights practices especially in difficult areas.

The posturing of the top officers the AFP and the PNP last February 25 headed by the Chief of Staff, Hermogenes Esperon confirmed themselves as a partisan force for the incumbent political power but apart from the people. It is doubly alarming because as mentioned earlier, the military has still the general mind-set of the Cold War.

It is thus not surprising that Prof. Alston stated at the end of his initial report:

But 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. Then, and only then, will it be possible to make real progress in ending the killings.

Concomitantly, real progress in the participation of people to realize their economic, social and cultural rights can only be done when the said fundamental changes have set in government and in the military.

Working for the Emergence of Civilian Resolve

Building formations 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. Furthermore, impunity in the whole range of human rights persists not because it is formidable, but because civil society, and even human rights defenders are fragmented.¹³⁵

¹³² EU, op.cit., p.15

¹³³ Ibid.

¹³⁴ Free Legal Assistance Group. “Extrajudicial, Summary or Arbitrary Executions in the Philippines, 2001-2006” submitted to Prof. Philip Alston in February 2007

¹³⁵ EU Needs Assessment Report, op.cit., p.44. “Though widespread and vibrant, civil society in the Philippines is fractured.... The consequences of this split are still reflected in civil society activity today.”

Considering, for example, that the initiative to investigate in the first instance belongs to the State and in circumstances where public powers do not undertake it, that initiative should be taken by the victims, the members of their families and human rights organizations; a human rights perspective enhances the peoples' analysis of issues and events. Organizing such formations ensures a sensitized citizenry with appropriate skills and an engaged civil society. Aware of their dignity as expressed in their human rights, the affected people would exact accountability from all actors¹³⁶, whether state or non-state yet without confusing that the state is the primary duty-holder.

Barangay constituencies had earlier been drawn to a signature campaign to change the form of government without total disclosure of the issues involved. The Supreme Court later ruled against it.¹³⁷ It was a massive fraud of the Filipino people. The necessity and urgency of establishing formations of human rights defenders at the barangay/village level had also been highlighted by a full page ad of the *Liga ng mga Barangay* (League of Barangay's) calling a week before the Barangay elections for the passage of a bi-lateral treaty between the Philippines and Japan (JPEPA).¹³⁸

In reiteration, fighting impunity should not just be in the realm of civil and political rights, but much more now in the arena of economic, social and cultural rights¹³⁹. The rights to food, water, electricity and other basic services in this present crisis should be link to the loss of people's money due to corruption such as the NBN-ZTE deal with China. The concomitant violations in the economic, social and cultural spheres in the government's fight against terrorism must also be noted and denounced. Civilian resolve should not just break impunity, but to reclaim back one's own and the people's dignity and obtain justice for us all.

Recommendations for the International Community

1. **Support the efforts towards the emergence of a strong civilian resolve** to halt extrajudicial executions and enforced disappearances, such as, through the building of

¹³⁶ 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", "Distribution of Cases and Victims of Human Rights Violations per Subject Area". February, 2005. These papers, covering the period from August 1997- 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 by landlords and private armed goons, but also by members of the New People's Army of the Communist Party of the Philippines. 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.

¹³⁷ Philippine Daily Inquirer, October 26, 2006, p. A6. The Supreme Court voted to dismiss the petition for a people's initiative to amend the constitution and "primarily assailed the supposed irregularities in the 6,327,952 signatures that *Sigaw/Ulap* claimed to have gathered".

¹³⁸ Philippine Sunday Inquirer, Oct. 21, 2007, p.A13. Japan-Philippines Economic Partnership Agreement (JPEPA). One of the most controversial points in the whole agreement is the importation from Japan o the Philippines of medical waste and its disposal. Many fear this agreement would compromise the people's right to health. See also Atty. Tanya Lat, IDEALS, "Japan-Philippines Economic Partnership Agreement: A Toxic Treaty". Information in the paper was presented to a Senate hearing.

¹³⁹ Cfr. Infocus: a semestral human rights situationer, issue no.5. Quezon City: Philippine Human Rights Information Center (Philrights), 2007. The issue presented the tackling of issues of education, food, health, the overseas Filipino workers and housing from a human rights perspective or from a rights-based approach. Dealing with the impunity of a non-state actor, a multinational company, in relation to aerial spraying of pesticides and its adverse impact on people's health is an urgent concern of communities in Davao City belonging to the organization *Mamamayan Ayaw sa Aerial Spray* (MAAS) or People Against Aerial Spray. Phil. Democracy Assessment: Economic and Social Rights

formations and sustained professional development of human rights defenders from the barangay (village) levels to the national level.

2. Support the interim efforts of CSO to ensure the security and the sustaining 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 break through impunity by providing protection measures, financial and psychological support and access to justice.
3. 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 possibly be designated as community monitors of the human rights implementation.
4. Support the “establishment of a transparent monitoring mechanism to oversee the investigation of extrajudicial killings and the prosecution of perpetrators”. This mechanism is to be independent of government and be comprised of constituents from Philippine society, including members of civil society.
5. Facilitate the implementation of the EU Guidelines on Human Rights Defenders, including the security of Philippine human rights defenders.
6. Provide technical and financial assistance to lawyers who take up cases in relation to human rights violations, particularly, extrajudicial killings, enforced disappearances and torture.
7. **Persuade or pressure the Philippine authorities**
 - a. to free immediately all persons arbitrarily detained in the framework of the fight against terrorism, or to bring charges against them and produce them before a court of law;
 - b. to stop using civilian auxiliaries of the AFP in the fight against so called “terrorism”, and as a minimum and immediate step, to ensure that these auxiliaries are properly trained in the field of human rights and prevention of torture;
 - c. to criminalize torture in domestic legislation in accordance with Article 4 of CAT;
 - d. to ratify the International Criminal Court so as to broaden the avenues of redress for victims of gross human rights violations;
 - e. to investigate, as 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;
 - f. to investigate human rights violations by non-State actors and to prosecute them in full respect of the fair trial guarantees;
 - g. to extend a permanent invitation to the UN special procedures, and invite in particular the UN Special Rapporteur on Torture, the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the UN Working Group on Enforced and Involuntary Disappearances, as well as the UN Working Group on Arbitrary Detention.
 - h. to use a rights-based approach / framework in governance and in development projects.
8. **Encourage the Supreme Court** to call a Summit on the justiciability of economic, social and cultural rights, especially in the light of recent developments.
9. **Call on non-State actors** to cease and to desist further perpetration of human rights violations and to strictly abide by international human rights and humanitarian law.

Annex 3
OMCT Action File (PHL 031207.ESCR)
Anti-insurgency operations by the Philippine military seriously compromising the economic, social and cultural rights of indigenous communities

OMCT ACTION FILE: PHL031207.ESCR
PHILIPPINES: MILITARY ACTIVITY SERIOUSLY AFFECTING THE SAFETY AND WELLBEING OF RURAL COMMUNITIES IN SURIGAO DEL SUR

Anti-insurgency operations by the Philippine military are seriously compromising the economic, social and cultural rights of indigenous communities

The International Secretariat of the World Organisation Against Torture (OMCT) has received information from KARAPATAN - The Alliance for the Advancement of People's Rights - a member of the SOS-Torture Network, concerning intensifying military activity in the area of Surigao del Sur, in *the Philippines*, in the context of counter-insurgency operations against the New People's Army. In particular, OMCT is concerned at reports that around 500 military personnel from the 58th Infantry Battalion of the Armed Forces of the Philippines have been stationed in and around the homes of members of Lumad indigenous communities since 4 November, 2007.

OMCT wishes to draw attention both to the direct impact that this armed conflict has on the civilian populations of this area and to the serious implications for the social, economic, and cultural rights of the members of the affected communities. These communities already number among some of the poorest and most vulnerable in the Philippines. The disruption military operations cause to their living standards, their ability to provide food and safe housing for their families, and to their children's education only serves to exacerbate their vulnerability.

OMCT is particularly concerned that civilians have been 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. The latest reports from KARAPATAN indicate that the build-up of troops is continuing, suggesting that the military operation will be a long one. OMCT calls for urgent action to ensure that the extensive human rights violations that took place in the context of similar military operations between April and May 2005 are not repeated.

To prevent further human rights violations, OMCT calls 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.

Background

According to reports from KARAPATAN, the 58th Infantry Battalion of the Army of the Philippines has been increasingly active in areas of Surigao del Sur in the month of November. These troops are engaged in counter-insurgency activities against the New People's Army (NPA), the military wing of the Communist Party of the Philippines. The area of these military operations is also home to a number of indigenous Lumad communities.¹⁴⁰ The Lumad face serious challenges in securing their rights to their ancestral lands, despite the provisions of the 1997 Indigenous Peoples' Rights Act. Their livelihood and survival are increasingly threatened by the activities of multinational corporations, mining companies, logging companies and other economic interests.

KARAPATAN also indicates that the military operation is being assisted by the Semirara Mining Corporation, the biggest coal producer in the Philippines. It is reported that a military contingent that arrived in Emerald community, Diatagon on November 11 not only included two trucks, two 105mm cannons and some 50 fully-armed men, but also two armoured personnel carriers bearing the name of Semirara. This Corporation's exploration permit on Semirara Island, Caluya, Antique is due to expire this year, and Semirara Mining is said to have an interest in moving operations to the Tandag-Tago-Lianga coal quadrant, one of six potential areas for coal mining in the country approved by the Department of Energy. This quadrant overlaps with the area currently targeted by the military for counter-insurgency activities.

Surigao del Sud has already seen serious human rights violations due to activities conducted by the Army of the Philippines. In April and May 2005, counter-insurgency activities resulted in 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 as to the whereabouts of members of the NPA, and forest areas and crops were strafed and bombarded.

Human Rights Violations

OMCT is concerned that the manner in which the current military actions are conducted puts local communities at risk and that human rights violations have already occurred. Specifically, OMCT has received reports that schools and other buildings have been appropriated as military barracks, civilians have been used as shields, children and teachers have been questioned by soldiers, movement of civilians has been restricted, community members have been denied access to their fields, families have been forced to seek shelter in makeshift evacuation centres and individuals have been forcibly enrolled as military guides.

Appropriation of public and private buildings

Shortly after midnight on 5 November, a group of soldiers arrived at Simowao community, where they woke up teachers from the Simowao Tribal School in order to use the school for sleeping accommodation. Soldiers returned around 3am on 10 November and again occupied the school. On 11 November, a group of around 100 soldiers set up camp close to the homes of the residents of Emerald community and took over a partly-constructed sari-sari store as a station for military personnel. That evening some of the troops stayed in tents, while others slept in the houses of local residents. At Manluy-a, some 100 soldiers stayed in the local school and in the homes of local residents, with as many as 4 to 10 military personnel

¹⁴⁰ The Lumad have never engaged in armed struggle against the Government of the Philippines. They have, however, been recruited by armed groups representing Moro indigenous communities and by the NPA. They have also been recruited into paramilitary organisations by the armed forces to fight the Moros and the NPA.

stationed in each house. On 15 November a number of soldiers arrived in the Lumad community of Kubuluhan, San Agustin, where they broke the lock of the teachers' cottage at the Lumad Community School and transformed both the cottage and the adjoining school building into a billet. The military presence in these communities contributes to a sense of insecurity among residents, to the extent that they will not leave their homes at night for fear of the soldiers billeted in and around their homes.

Civilians used as shields

The strategy of setting up camp in the middle of local communities offers soldiers a degree of protection from attacks, but puts civilians at serious risk. On 13 November it is reported that the military stationed at Emerald warned school children and teachers at the nearby Simowao Tribal Filipino Community School, as well as local residents, that in the event that the Army was attacked, they would harm civilians.

Community members, including children, questioned by soldiers

On November 4, two teachers at the Manluy-a Tribal Filipino Community School were questioned by soldiers wearing black uniforms and no identification. They were interrogated as to their salaries, what grades they taught and who provided support for the school. Community members residing close to the school were also questioned. On 5 November, children aged between 7 and 10 arriving at Simowao Tribal School were interrogated as to whether they had seen men carrying guns or if their older brothers or sisters were members of the NPA. The children who were questioned also had their names recorded. Five days later soldiers returned to question the teachers at the same school. On 12 November, two teachers at the Alternative Learning Centre for Agricultural Development in Emerald were questioned by soldiers and were ordered to provide their cell phone numbers. On 13 November, soldiers returned to Simowao Tribal Filipino School to question both teachers and children. Military personnel billeted in community members' houses have frequently asked children about their involvement in NPA activities and indicated that if they have elder brothers or sisters who are members of the NPA that they must surrender.

Checkpoints and control of civilians' movements

In areas under military occupation the movements of community members are monitored and restricted, and it has been reported that certain families were able to eat only once a day due to restrictions imposed on community members' access to their crops. Checkpoints have been set up at several locations, including around Simowao and Emerald, and those who pass these points have their belongings searched and must provide ID or a *cedula* (residence certificate), cell phone number and the engine and licence numbers of their vehicle. On 17 November, the military called a community assembly in Kubuluhan, San Agustin, at which they instructed community members not to go to their farmlands and indicated that their name and business of every person entering or leaving Kubuluhan would be recorded. The military also refused requests from community members to be allowed to leave the area for their own safety.

Evacuations to makeshift centres

The fear of being caught in exchanges of fire has driven many to flee their homes – leaving behind belongings and livestock – and seek refuge in makeshift evacuation centres. On 17 November, for example, 62 families from remote communities of barangay Buhisan left behind livestock and belongings to reach the relative safety of the barangay centre. On 21 November, after over one hour of dialogue with the military, more than one thousand Lumads and settlers were allowed to leave nine other communities, carrying what belongings they could. They walked for more than 15 kilometres to the barangay centre of Diatagon, Lianga,

where they joined 48 families who had fled the hinterland communities of San Agustin four days before. They are now staying at the same cramped and cold evacuation centres that served as their homes during the 2005 evacuations in San Agustin and Lianga. It was also reported that at least 23 families along with two literacy teachers from the Lumad community of Manluy-a were prevented by the military from leaving their village. They were eventually permitted to join the rest of their community in Diatagon following the intervention of a group of municipal government agencies, the barangay council of Diatong and concerned church members.

On 25 November, staff of the Tribal Filipino Program in Surigao del Sur issued an urgent message that food stocks in the Diatagon gym, which serves as the evacuations centre, were running dangerously low. There remained only two sacks of rice to feed some 2000 evacuees, and three children had been taken to the district hospital because of convulsions. They also indicated that the evacuees included 12 pregnant women who needed special care, and 30 babies below the age of one. There was also a shortage of sleeping mats, blankets, milk and medicines.

Individuals forced to serve as guides and to support military operations

On 12 November a 19-year old from Upper Oregon, San Isidro, Lianga, was arrested by the military while harvesting rattan. He was then forced to act as a guide for four days until he was freed after his family petitioned the battalion headquarters. On 16 November an abaca¹⁴¹ stripper was forced to accompany the soldiers in their operations and latest information indicates that he is still being held. Reports coming from San Isidro, Tandag, suggest that soldiers were recruiting youths who were out of school to support military activities.

Economic, social and cultural rights and violence

The operations being carried out by the Philippine military are ostensibly part of a counter-insurgency initiative against the NPA, however they also serve to stabilise this area in order to facilitate mining activities, a development which local communities strongly oppose. It is these same communities that are experiencing the repercussions of this military activity, not least in terms of their human right to an adequate standard of living, established under Article 11 of the International Covenant of Economic, Social and Cultural Rights, and in particular their right to adequate food, clothing and housing, and to the continuous improvement of living conditions. The disruption caused by military operations, together with the evacuation of several communities has also caused the suspension of classes at seven Lumad Literacy Schools and one Lumad High School, thus compromising the community members' right to education, enshrined under Article 13 of the Covenant and Article 28 of the Convention on the Rights of the Child. The effect of these developments is to exacerbate the socio-economic vulnerability of communities that already experience serious marginalisation.

¹⁴¹ Abaca is a fibre from the bark of the abaca plant, used to make rope, fabric and paper.

Requested Action

Please write to the Government of the Philippines asking it to ensure that:

- military personnel engaged in activities in Surigao del Sur refrain from staying in the houses of civilians, occupying schools or setting up camp close to civilian homes;
- the presence of the Philippine Army does not restrict the economic activity of community members or their ability to provide food for themselves and their families;
- military personnel conduct themselves in a manner that fully respects the human rights of the men, women and children they encounter in the course of their activities;
- civilians are in no way put at risk during military operations;
- soldiers refrain from harassing schoolchildren and teachers and that the right to education is not compromised in any way;
- those families and individuals living in makeshift evacuation centres receive adequate food and care;
- households that have lost belongings or livestock or suffered economically as a result of military operations are fully compensated.

Also request the Government of the Philippines to:

- carry out a full and independent investigation into the events in Surigao del Sur and to make the results of this report public.

Please also remind the Government of the Philippines to respect the protections afforded to indigenous communities under the 1997 Philippines' Indigenous Peoples' Rights Act, and to ensure that these protections are in no way compromised by other legislation, including the country's 1995 Mining Code.

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Please also write to the Embassy of the Philippines in your country.

Information on action taken and follow-up

OMCT would appreciate receiving information on any action taken in relation to the matters dealt with in this Action File so that it might be shared with OMCT's network and others interested in this issue. Please quote the code of this appeal on the cover page in contacting us.

Geneva, 3 December, 2007
