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List of Issues

arising from the

Initial-Fourth Periodic Report of the Philippines

to the

Committee on Economic, Social and Cultural Rights

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**A report compiled by the World Organisation Against Torture, with contributions
from Karapatan and Pax Christi**

In the context of the project

**“Preventing Torture and Other Forms of Violence by Acting on their
Economic, Social and Cultural Root Causes”**



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Table of contents

1. Addressing Poverty and Violence: “the very heart of human rights protection

- *Introduction*
- *The gap between legal provision and implementation*
- *Poverty as a root cause of violence in the Philippines*

2. Trade Liberalization, Foreign Investment and the Risk of Violence

3. Land Reform and Violence

4. Indigenous Peoples’ Rights and Violence

- *Poverty inequality and violence against indigenous peoples*
- *The case of the impact of the Canatuan Mine on the Subanon Community, Island of Mindanao*

5. Forced Evictions and the Right to Housing

- *Urban demolitions and evictions*
- *Demolitions in Metro Manila*

6. Poverty and Violence Against Women

- *Violence against indigenous women and women living in rural areas*
- *Women migrant workers and violence*
- *The impact of trade liberalization*

7. Poverty and Violence Against Children

- *Street children, juvenile justice and violence*
- *Child labour and child trafficking*

8. Overseas Workers and Violence

9. Extrajudicial Executions and Forced Disappearances of Economic, Social and Cultural Rights Activists

- *Impunity*
- *The Melo Commission*
- *Economic, social and cultural rights defenders and the 2007 Anti-terrorism Act*

10. Recommendations

1. Addressing Poverty and Violence: “the very heart of human rights protection”

Introduction

It is increasingly acknowledged that torture and cruel, inhuman and degrading treatment or punishment and other forms of violence are related in many ways to disrespect for economic, social and cultural rights.¹ If, therefore, these phenomena are to be effectively eliminated, then their economic, social and cultural root causes must be, first, understood and, secondly, effectively addressed.²

The converse equally applies: 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. In the case of the Philippines, conflict and lack of security expose Filipinos to situations that severely impede their possibility of 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.

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

- *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 characterized 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 of official, criminal and domestic violence.*

This list of issues, prepared by the World Organisation Against Torture (OMCT) in consultation with the Karapatan and Pax Christi, is intended to draw attention to some of the key areas where there is a direct and clear link between violations of economic, social and cultural rights and violence, or the threat of violence in the Philippines. Providing guidance to the Government of the Philippines on how to address obstacles to the full enjoyment of their citizens’ social, economic and cultural rights is, therefore, not only an end in itself, but also a central strategy for reducing levels of violence in Filipino society.

As Ms. Louise Arbour, UN High Commissioner for Human Rights has observed in her preface to the OMCT study on this theme, the question of “how to prevent or reduce violence, including torture, by acting on its root causes, often found in violations of economic, social and cultural rights”, is one that “goes to the very heart of human rights protection.”³

The gap between legal provision and implementation

To understand the human rights situation in the Philippines, it is important to recognise that the country possesses a comprehensive legal framework that, *de iure*, offers vital safeguards to Filipino citizens. However, *de facto*, the law is often inconsistently implemented and enforced. In the specific case of economic, social and cultural rights, these are clearly provided for under the law, but in practice they are poorly protected. This is due in part to loopholes in the law itself and in part to endemic problems related to poor governance and corruption. The protection of workers' rights, child rights, indigenous peoples' rights, as well as land and housing rights among others, is a source of concern in terms of the effectiveness and consistency of the application of the country's legal provisions.

Poverty as a root cause of violence in the Philippines

The growth of the country's economy has not been accompanied by an equitable distribution of wealth and therefore has not contributed significantly to the reduction of poverty. It is reported that in the Philippines the poor remain poor as a result of two principal factors: the persistence of structural inequalities, and political uncertainty.⁴

In the Philippines, conflict and violence are generated by poverty, inequality (both political power and economic resources in the hands of an elite), marginalization and poor governance. At the same time, as underlined by the UN Common Country Assessment (2004), equitable economic development in the Philippines can be only achieved if peace and security standards are met.⁵

Poverty in the Philippines is clearly manifested in both rural and urban areas. Poverty in rural areas is persistent and deep-rooted, and approximately two-thirds of the country's poor live in rural areas. The large majority of farmers and peasants do not own the land on which they work, and this discourages agricultural improvements and diversifications of crops.⁶ Government land reform programmes have failed to increase agricultural productivity or introduce improvements, and local structures of governance have been unable to influence this process. Affected groups and marginalized populations have found an alternative in armed rebellion to promote their concerns and meet their needs. These movements, particularly active in the Southern Philippines, are motivated by a sense of social injustice and exclusion. Armed conflict, in turn, aggravates poverty of the communities directly affected, and the country in general.⁷

The high rate of urban poverty is largely a direct consequence of rural poverty. The migration flow rural poor to the cities has led to a rapid urbanisation process that has produced new urban poor, underemployment and unemployment, as well as lack of housing and basic services. The urban poor make their daily livelihood in the informal sector. They must deal with social exclusion and lack of appropriate policy on housing tenure, security and freedom from eviction or displacement. As a result, it is estimated that there are some 262,000 informal settlements in the Philippines where there is a risk of conflict and violence. Sustainable urbanisation is a major challenge for the Philippines, and one that inevitably requires a coordinated, multidimensional approach.⁸

2. Trade Liberalization, Foreign Investment and the Risk of Violence

In order to attract foreign capital and to accelerate domestic economic development, the Government of the Philippines has engaged in liberalization initiatives that risk undermining the economic, social and cultural rights of certain communities. Farmers struggle in the face of foreign investment and powerful landowners who are converting land from agricultural to industrial use. Indigenous peoples are struggling to protect their ancestral lands from the impact of mining, deforestation, and other development projects. Vulnerable groups such as these face serious challenges in opposing corporate interests and foreign investment companies.⁹ Consequently, only the wealthiest citizens are able to benefit from the iniquitous effects of this poorly-planned trade liberalization, while the unqualified labour force continues to be marginalized, excluded and forced to find subsistence in informal and hazardous activities.¹⁰ These factors aggravate poverty and discontent, and hence intensify protest and conflict.

On the basis of information received from various sources, OMCT is concerned at the government policy of reducing funding designated to support farmers and withdrawing crops subsidies as a consequence of free-trade agreements. This subsidy reductions have created discontent and exacerbated poverty among those belonging to the poorest strata of Filipino society.

The liberalization policy undertaken by the Government of the Philippines resulted, *inter alia*, in the adoption of the 1995 Mining Code. This Code permits 100 per cent foreign ownership of mining projects in addition to offering tax breaks. Effectively it represents a blanket legislation in favour of international mining companies to carry out mining activities on indigenous lands. As a result, the Mining Code significantly compromises the proper application of the Indigenous Peoples Rights Act (see below) together with any safeguards contained therein.

Furthermore, OMCT is concerned that workers' rights are jeopardised and/or disregarded by foreign investment companies in the context of the so-called "export economic zones". OMCT has received information that in these zones workers are denied their rights to strike and to participate in trade union activities.

OMCT is also concerned at the use of force by private security guards protecting the interests of the private companies active in mining areas and export economic zones. They frequently employ violent means to repress demonstrations by affected communities. In many cases the presence of military forces, private security forces or other kinds of armed groups leads to serious human rights abuses including arbitrary executions, ill treatment and forced evictions.

3. Land Reform and Violence

Landlessness is a root cause of violence and conflict. The Philippines is characterised by a monopolistic system of land ownership, whereby the majority of land is in the hands of an small elite. It is reported that politicians are themselves often landowners, and that the Land Reform Programme has been tailored to serve their own interests.

As a consequence of the drive towards industrialization 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 1987 Land Reform Programme has long been criticized 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. In particular, OMCT is concerned at those 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.

OMCT is also concerned that 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”.

4. Indigenous Peoples' Rights and Violence

Poverty, inequality and violence against indigenous peoples

There are approximately 140 indigenous ethno-linguistic groups in the Philippines, constituting between 15 and 20 per cent of the Filipino population. Indigenous peoples are frequently located in isolated and inaccessible areas that are, however, rich in natural resources. One of the principal challenges faced by indigenous peoples is represented by so-called 'development aggression' and commercial activities, since activities such as mining and logging affect their lands and ancestral homes.¹¹

Indigenous peoples are among the most marginalised groups in the Philippines, and are often victims of various forms of abuse, violence and exploitation.¹² 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.

While, on paper, indigenous peoples' rights are protected and guaranteed by the 1997 Philippines' Indigenous Peoples' Rights Act (IPRA) - based on the provisions of the draft of what is now the UN Declaration on Indigenous Peoples' Rights - in concrete terms the provisions of this Act are systematically undermined by other laws, *inter alia*, the 1995 Mining Code. In many cases this Code provides for mining permits on indigenous lands which are, in theory, protected under the IPRA.

The tensions generated by the conflict between indigenous and commercial interests have frequently led to protest actions on the part of indigenous organizations, resulting in turn in social conflict. Often, indigenous activists are prosecuted, harassed, detained and imprisoned for their efforts to protect the economic, social and cultural rights of their communities.¹³ OMCT is particularly concerned that, on many occasions, peaceful opposition by local communities and indigenous peoples to mining operations that violate their economic, social and cultural rights and endanger their way of life has been met with violence. In this respect, OMCT deplores the fact that, on 3 October 2007, during a protest against mining activities in Sibuyan Island, Armin Marin, an indigenous activists, was killed by a gunshot.

OMCT points out that poorly regulated mining projects, ostensibly aimed at increasing employment and improving living conditions of the population, do not represent a sustainable development alternative. OMCT recalls that mining activities can 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.

Specifically, with respect to the situation of indigenous communities, OMCT express two key concerns:

- Widespread poverty among Filipino indigenous peoples is related to the issue of land use and to the unequal allocation of benefits deriving from the economic development

process. Social and political tensions in rural areas have led, and will continue to lead to violent civil conflict in various parts of the country.

- In the light of the liberalization policy undertaken by the Government of the Philippines, the interests of private companies and corporations that have occupied indigenous peoples' lands are better protected by the Government than indigenous land rights.

The case of 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.¹⁴

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:

- Militarization 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.

The State Report on indigenous issues

§ 444: Liberating the Indigenous People from Indignity

A capability-building program which is designed to uplift the self-worth of indigenous peoples. Exercise cultural awareness in them and strengthen their positive indigenous values, system and practices. The project is currently being pilot-tested in Lamitan, Basilan, and Zamboanga City.

§ 594: Agrarian Reform Community Development Strategy

A focused, gender-sensitive approach intended to empower, and build the social capital of under-represented and marginal groups (such as small farmers, farmworkers, agricultural lessees, subsistence fisherfolk, indigenous people and rural women) in rural communities;

§1008: S&T Intervention Program for the Poor, Vulnerable and Disabled.

The program aims to provide the poor and the disadvantaged sectors of the civil society access to DOST generated/sourced technologies and science-based approaches to resource management to meet the minimum basic needs and to facilitate technology based-livelihood opportunities through the efficient and effective delivery of S&T services. Through the Program, the marginalized coastal and upland communities, indigenous communities, displaced communities, persons with disabilities and other vulnerable groups will be provided techno-transfer training, technical assistance, higher skill/knowledge acquisition, equipment grant and/or prototyping, and linkages for resource generation, including marketing and financing, integrated with value orientation to provide a holistic approach to development.

§1009: S&T for Mindanao.

The program aims to build up the Mindanao region's technological capability in order to boost its long-term attractiveness to investors. It has generated the support and collaboration of various line agencies, and the local governments including some cultural minorities from Mindanao. The Program has two major components: 1) Technology Program for Micro and Small Scale Enterprises; and b) Mindanao S&T Human Resources Development Program. To optimize the use of limited government resources, the Program will focus on four priority sectors, namely: 1) food industry; 2) marine; 3) horticulture; and 4) furniture.

5. Forced Evictions and the Right to Housing

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.¹⁵

In theory, the Government has addressed the concerns of the urban poor concern 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.¹⁶ 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.¹⁷

Urban demolitions and evictions

Over recent years, the Philippines has been 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.¹⁸ This takes 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 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.”¹⁹

Demolitions and evictions in Metro Manila

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.²⁰

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.

The State Report on housing issues

§ 608 : Legislation on Squatting and Eviction

Another important feature of UDHA (*Urban Development and Housing Act*) is that it discourages eviction or demolition as a practice. Eviction is allowed only under the following conditions, viz: when persons occupy danger areas; or when government infrastructure projects with available funding are about to be implemented; or when there is a court order for eviction and demolition. The law also outlines the guidelines for eviction, viz – the provision of basic services and facilities in resettlement sites, livelihood support, meaningful participation and adequate social preparation for the affected households, close coordination between sending and host local government units, grievance redress and related aspects.

§ 639: One major undertaking of the Government that has led to securing the housing tenure of informal settler on a massive scale is the relocation project for the “riles” dwellers living along the Northrail and Southrail lines. In Northrail, the government has relocated a total of 21,023 families from the Metro Manila and Bulacan Segments, completing phase 1 of the clearing and resettlement operations. These families have voluntarily moved to their respective resettlement sites, which the government has dubbed the Northville communities. This is the most massive relocation project to be undertaken by the government so far, HUDCC did without the violent conflicts associated with relocation. For the Southrail project, which involves the rehabilitation of the existing PNR Commuter Service line from Caloocan to Alabang, a total of 7,404 families have been relocated, particularly along the Manila, Makati and Cabuyao Segments. To sustain the momentum, the President instructed HUDCC to clear the large portion of Manila along with Taguig and Muntinlupa.

§648: Last 28 May 2001, President Gloria Macapagal-Arroyo issued Executive Order No. 20 reaffirming the government’s commitment to mass housing as a centerpiece program in its poverty alleviation effort.

§649: In order to address the housing problem, particularly those belonging to the bottom 40 per cent of urban households, the Arroyo administration pursued the regularization of tenure of informal settler families (ISFs) through the issuance of Presidential proclamations declaring parcels of public lands open for disposition to qualified beneficiaries. In addition, the Government targeted the conversion of government idle or vacant lands into housing sites that are intended to benefit low-salaried government employees, including soldiers and policemen.

6. Poverty and Violence Against Women

It is widely recognized that in many cases, poverty is a root cause of domestic violence. In the Philippines, this link is confirmed by the Women's Crisis Center in Manila.²¹ Among issues of particular concern is the absence of a law on divorce,²² which effectively forces women victims of domestic violence to remain with their abusive husbands. A second key issue is the lack of legislation granting women and men the same rights to administer property during marriage.²³ This effectively deprives women of their own means and livelihood and makes them economically dependent on their husbands, hence increasing their vulnerability to sustained violence.

Violence against indigenous women and women living in rural areas

Some groups of women are particularly vulnerable to violence. This is the case, for example, for women living in precarious conditions including indigenous women, women from poor Muslim communities and women living in rural and conflict-prone areas. Furthermore, these women often lack access to adequate vital services - including support and counseling services - and have limited access to justice.²⁴ In addition, 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 of the Anti-Trafficking in Persons Act of 2003, the exploitation of Filipino women continues to increase.²⁵

Women migrant workers and violence

Another manifestation of the impact of poverty upon Filipino women is the feminization of overseas employment. Rural women are particularly affected by this phenomenon owing to their poor living conditions. Many Filipino women migrant workers, employed as entertainers and domestic helpers, are exposed to the risk of working conditions akin to slavery and to physical and sexual abuse.²⁶ (See also section on *migrant workers* below).

The impact of trade liberalization

Elements of the trade liberalization undertaken by the Government of the Philippines may have an adverse impact on Filipino women, particularly those women living in rural areas²⁷. As noted, projects associated with this liberalization may have serious repercussions for rural livelihoods and further contribute to the trend towards the feminization of migration and its related problems, including violence against women migrant workers.²⁸ Furthermore, and according to the Committee on the Rights of the Child, overseas migration can promote phenomena such as family disintegration and juvenile delinquency.²⁹

The State Report on Women

§ 62: Towards this end, the Government of the Philippines has adopted laws to correct the historical disadvantages of women in various aspects of life. These include laws prohibiting discrimination in employment, emphasizing the right to education of women and the girl child, removing obstacles to women's entry into the police and military, and criminalizing sexual

harassment in educational and training environment and in the workplace.

§ 432: Violence against woman:

Republic Act 9262, otherwise known as The Anti-Violence Against Women and their Children Act of 2004, criminalizes people who commit acts of physical, sexual, psychological (including verbal), and economic abuse and violence against women and their children in a marriage, when dating, or in a common-law relationship. For the first time, a Philippine law protects women who are abused by their spouses, former partners, or lesbian partners. It also includes the “battered woman syndrome” as a justifying circumstance for self-defense, leaving the woman-victim free from any civil or criminal liability if she injures or kills her abuser.

§ 428: The husband and the wife have the right to divorce under the Muslim Code (Art. 34).

§ 462: Anti-trafficking

Congress also passed the Anti-Trafficking in Persons Act of 2003 (RA 9208). The law defines trafficking in persons as "recruitment, transport, transfer or harboring or receipt of persons with or without the victims' consent or knowledge, within or across national borders by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The law gives legal protection to trafficked persons, regardless of whether or not they have given their consent. As such, all trafficked persons, without qualification, shall be recognized as victims of trafficking and shall not be penalized for it. The victims or survivors shall be entitled to the witness protection program, and to services such as counseling, temporary shelter, education, health care and legal assistance.

§ 444: National Family Violence Prevention Program

A community-based strategy which educates family members on how to protect themselves against violence within the context of family relations. It mobilizes communities and inter-agency structures to consolidate efforts in support to families at risk of domestic violence through the organization and strengthening of Barangay Councils for the Protection of Children, Family Councils, development of family advocates/family watch and peer support to victims, as well as the training of Katarungang Pambarangay members on proper mediation of domestic violence through the conduct of the Family Group Conference.

7. Poverty and Violence Against Children

Street children, juvenile justice and violence

In all cases, poor, disadvantaged and marginalized children are more vulnerable to violence than their peers who enjoy the elements of an adequate protective environment. Similarly, poor and marginalized 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 children. In some cases, they become involved in vagrancy, petty crime and substance abuse.³⁰ In the Philippines these children are often apprehended without warrant and detained without access to social workers for long periods. They are also vulnerable to torture and ill-treatment.

The fact that the majority of detained children are from the most marginalized 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.³¹

The juvenile justice system in the Philippines is tainted by the inconsistency between the juvenile justice legislation as granted by the law (*de jure*) and its *de facto* practice. OMCT recommends the Committee to urge the Government of the Philippines to ensure the concrete implement of the country's juvenile justice legislation and put into practice all related safeguards. These should include the assurance that Filipino children are not unlawfully arrested and detained, and that, in case of legal arrest, children are granted legal services and are protected from police brutality, regardless of their economic means.

Child labour and child trafficking

The high rate of child labour in the Philippines is a source of serious concern. According to a study carried out under the UN Common Country Assessment (2004), 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.

Child labour and other forms of exploitation, including trafficking are driven by poverty. The Committee on the Right 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.³²

The State Report on children

§ 490: Juvenile Justice

Republic Act 9344, otherwise known as Juvenile Justice and Welfare Act of 2006, provides for the immediate turn over of children in conflict with the law to social workers upon apprehension instead of jailing them as was the practice. It also provides for the referral of children's cases to community-based rehabilitation programs (diversion programs) instead of going to trial, and for juvenile delinquency prevention programs as well as rehabilitation and reintegration.

§426: Youth detention

The presiding judge of the Family Court, who shall undergo training in dealing with child and family relations cases, shall have direct control and supervision of the youth detention home that the LGU shall establish to separate the youth offenders from the adult criminals. Alternatives to detention and institutional care shall be made available to the accused such as counseling, recognizance, bail, community continuum or diversions from the justice system and that the human rights of the accused are fully respected in a manner appropriate to their well-being.

§ 444: Rehabilitation Program for Street Children Recovering from Substance Abuse – a residential center-based program that utilizes the Modified Social Stress Model as a framework of intervention to help street children exposed to substance abuse has a healthier life and prevents the harmful use of substances. The project is being pilot-tested at DSWD-NCR' s Haven for Street Children in Alabang, Muntinlupa City.

Halfway Home for Children in Conflict with the Law – provides aftercare support to youth who have completed their rehabilitation program and with court order for release either to their families or for independent living preparing them emotionally, socially and economically for eventual reintegration to society. The project is being pilot tested in Region XI (Davao City) in partnership with Bahay Kalamboan, an NGO catering to street children.

Overseas workers and violence

Poverty is among the prime factors driving emigration in the Philippines. 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 Filipino workers increasingly include persons from vulnerable groups, who move overseas to escape hunger at home.

Women make up almost half of Filipino overseas workers.³³ They may be exposed to discrimination and risk becoming victims of physical attacks, sexual assault and verbal, psychological and emotional abuse. They may be deprived the resources they 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.³⁴

The State Report on overseas workers

§93: unemployment

Unemployment is basically an urban phenomenon.

§ 94: underemployment is a more serious problem in the Philippines labor market because it cuts across all age barriers and its magnitude is almost twice that of the unemployed persons.

§ 96: Underemployment is more a rural phenomenon

§445: Special Programs for Overseas Filipino Workers

As a response to the emerging issue of the migration of Filipino workers, the DSWD, in coordination with DOLE, pilot-tested the International Social Welfare Services for Overseas Filipino National. The program aims to institutionalize the establishment of social welfare desks at diplomatic posts where there are large concentration of overseas Filipinos workers.

§ 164: informal sector

In the informal sector, marginal labor standards in work conditions adversely affect the attainment of a state of productive employment. It can also be noted that unemployment and underemployment are prevalent in the agricultural sector, mostly due to the seasonality of work. Low labor and land productivity also pose complex problems.

§165 formal sector

In the formal sector, the most common negative factors include wage levels and benefits, limited job choices, limited access to basic services, limited bargaining power of workers and perceived weakening of unions, and the increasing incidence of contractualization and flexibilization.

9. Extrajudicial Executions and Forced Disappearances of Economic, Social and Cultural Rights Activists

Filipino human rights defenders, human rights lawyers and indigenous or peasant activists engaged in defending economic, social and cultural rights have been victims of disappearances and summary executions.³⁵ The following cases have been selected to illustrate this phenomenon:³⁶

- Ricardo Ramos, president of the Central Azucarrera 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 organizes 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.

Impunity

Perpetrators of violence against activists engaged in the protection of economic, social and cultural rights are rarely prosecuted, and the government has failed to implement appropriate measures to investigate such crimes, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples. Furthermore, intimidation and threats of revenge impede the right to an effective remedy for persons whose rights and freedoms have been violated.³⁷ The UN Special Rapporteur on extrajudicial executions concluded that there is a "passivity bordering on abdication of responsibility [...] in relation to such human rights concerns."³⁸

The Melo Commission

In August 2006, President Arroyo created a commission to investigate the killings of media and workers' activists. Human rights groups criticize the Melo Commission for its lack of power to conduct investigations and for its membership, which consists entirely of government-selected commissioners.³⁹

Economic, social and cultural rights defenders and the 2007 Anti-terrorism Act

On March 2007, President Arroyo signed the 2007 Human Security Act. With the aim of fighting terrorism, this new law foresees 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.⁴⁰ 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.⁴¹

The State Report on the rights of human rights activists

§ 34: unlawful detention

Under the Philippine Rules of Court, a person who has been unlawfully detained or deprived in any other manner of his liberty may file before any Regional Trial Court or the Court of Appeals or directly with the Supreme Court, a petition for the issuance of a writ of *habeas corpus* to obtain his temporary release.

§35: human rights violations

An individual whose human rights were deemed violated may seek immediate assistance from the various government agencies concerned, such as but not limited to the following: PCHR; PNP; Department of Social Welfare and Development (DSWD), National Bureau of Investigation; Public Attorney's Office; Prosecutor's Office; Bureau of Immigration and Deportation, Office of the Solicitor General; Office of the Ombudsman or *Tanodbayan*; Presidential Anti-Crime Commission; Bureau of Jail Management and Penology for prisoners and other similar agencies.

§129: Collective Bargaining

The Philippine Constitution guarantees the rights of workers to organize and to bargain collectively, as well as to participate in policy and decision-making processes directly affecting them.

§ 285: Right to strike

The right to strike of all employees in the private sector is both constitutional and statutory

10. Recommendations

In general terms:

OMCT urges the Government of the Philippines to ensure that the legal safeguards guaranteed under national law are consistently applied and coherently enforced, in particular those provisions listed under article 2 of the 1987 Constitution of the Philippines¹

In the context of trade liberalization and the promotion of foreign investments:

- Ensure that the human rights of Filipino citizens are not compromised in the interest of economic exploitation. Halt all projects that harm the livelihoods of Filipinos or violate their economic social and cultural rights;
- Ensure that workers rights are *de facto* respected, in particular as concerns the so-called Export Economic Zones;
- Constrain and discipline the excessive and uncontrolled power of private security guards working to protect the interests of foreign or domestic companies.

Regarding indigenous peoples:

- Ensure that the ancestral lands of indigenous peoples are adequately protected from potentially harmful development projects. In this respect, enforce the requirement to obtain the free, prior and informed consent of affected communities prior to the initiation of any commercial activities on their lands, as provided by the Indigenous Peoples Rights Act (IPRA).
- Recalling that the 1995 Mining Code hinders the proper application of the IPRA, revise the Mining Act or draft alternative legislation that effectively protects the interests of indigenous peoples.

Regarding forced evictions:

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

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.

Regarding the situation of women

- 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.

¹ <http://www.gov.ph/aboutphil/constitution.asp>

Regarding the situation of children

- Implement 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 and are protected from police brutality, irrespective of their economic means;
- Implement the current provisions on child labour.

Regarding extrajudicial executions and forced disappearances

- 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;
- Ensure that the 2007 Human Security Act will be used only for the purposes of addressing imminent and tangible terrorism threats, and in the full respect of human rights. Ensure that the preventive measures encompassed in the law will not be regarded as instruments aimed at legitimizing the harassment, seizure, detention, ill-treatment, torture or extrajudicial executions of persons working to promote and protect not only economic, social and cultural rights, but human rights in general.

¹ 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 marginalized 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, §37.

² Of course, many other measures must be taken to eliminate torture in addition to addressing its economic, social and cultural root causes. 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.

³³ p.9, OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, www.omct.org

⁴ Common Country Assessment of the Philippines, 2004
http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁵ Common Country Assessment of the Philippines, 2004
http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁶ Common Country Assessment of the Philippines, 2004
http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁷ Common Country Assessment of the Philippines, 2004
http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁸ Common Country Assessment of the Philippines, 2004
http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

⁹ Common Country Assessment of the Philippines, 2004
http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf

¹⁰ Common Country Assessment of the Philippines, 2004

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

¹¹ Common Country Assessment of the Philippines, 2004

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

¹² Common Country Assessment of the Philippines, 2004

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

¹³ 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:

“[...] 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.”

¹⁴ 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, §32: “At the present time, the Subanon people demand “the full recognition of their ancestral land rights ... that will allow them to contribute to the process of defining a development ... that is people-centred”

¹⁵ Common Country Assessment of the Philippines, 2004

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

¹⁶ Common Country Assessment of the Philippines, 2004

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

¹⁷ Common Country Assessment of the Philippines, 2004

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

¹⁸ http://www.cohre.org/view_page.php?page_id=250

¹⁹ http://www.cohre.org/view_page.php?page_id=250

²⁰ http://www.cohre.org/view_page.php?page_id=260

²¹ Immigration and Refugee Board of Canada, 10 October 2006,

<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=450527>

²² CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 31

²³ CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 32

²⁴ 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. [...]”

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

²⁶ 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 feminization 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.”

²⁷ CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 25

²⁸ CEDAW, Concluding Observations on The Philippines, A/52/38/Rev.1, § 283

²⁹ Concluding Observations on the Philippines, Committee on Economic Social and Cultural Rights, E/C.12/1995/7, 7 June 1995, §14

³⁰ “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 emphasizes 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 organizations 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.”

³¹ CRC/C/15/Add.259, 21 September 2005, § 90

³² 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.”

³³ Common Country Assessment of the Philippines, 2004

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

³⁴ E/CN.4/2003/85/Add.4, 1 November 2002, MIGRANT WORKERS, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, Mission to Philippines

³⁵ Including cases of summary executions and extrajudicial killings of Mindanao peoples.

³⁶ See HRW Report: Scared Silent: Impunity for extrajudicial killings in the Philippines, June 2007. See also OMCT’s urgent appeals for further cases.

³⁷ Concluding observations of the Human Rights Committee, The Philippines CCPR/CO/79/PHL, 1 December 2003

³⁸ 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

³⁹ See HRW Report: Scared Silent: Impunity for extrajudicial killings in the Philippines, June 2007

⁴⁰ http://www.senate.gov.ph/republic_acts/ra%209372.pdf

⁴¹ http://www.tebtebba.org/tebtebba_files/ipr/stavnhagenpress.html