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## **The Philippines: contribution from the World Organisation Against Torture (OMCT) to the UPR Process**

OMCT wishes to draw attention to the serious situation as regards torture and other cruel, inhuman or degrading treatment or punishment in the Philippines and, in particular, to emphasise that the *root cause of torture and other forms of serious violence is frequently to be found in the violation of the economic, social and cultural rights of Filipino citizens.*

### ***The gap between legal provision and implementation***

In order 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 extent of poverty***

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.<sup>1</sup> 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. Armed conflict, in turn, aggravates poverty of the communities directly affected, and the country in general.<sup>2</sup>

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.<sup>3</sup>

The high rate of urban poverty is largely a direct consequence of rural poverty and rural-urban migration, which in turn has contributed to rapid urbanisation. Many of the urban poor earn their 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.

### ***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.<sup>4</sup> 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.<sup>5</sup> These factors aggravate poverty and discontent, and hence intensify protest and conflict.

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. 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 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.

### ***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 a 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.

### ***Indigenous Peoples' Rights and Violence***

Indigenous peoples are among the most marginalised groups in the Philippines, and are often victims of various forms of abuse, violence and exploitation.<sup>6</sup> 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.

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.

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.<sup>7</sup>

#### ***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.<sup>8</sup>

In theory, the Government has addressed the concerns of the urban poor concern through its Urban Development and Housing Act of 1992 which is intended to provide adequate housing at affordable cost, basic services and employment opportunities for the slum residents in resettlement areas.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> This takes place despite the fact that the Constitution of the Philippines and the Urban Development and Housing Act provide legal protection for housing rights.

#### ***Poverty and Violence Against Women***

Among issues of particular concern is the absence of a law on divorce,<sup>12</sup> 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.<sup>13</sup> 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.

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

### ***Poverty and Violence Against Children***

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. As is the case for the national legal system in general, the juvenile justice system in the Philippines is tainted by the inconsistency between juvenile justice legislation as granted by the law and *de facto* practice.

Poverty and family or community breakdown can force children 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.<sup>17</sup> 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 area of concern is the unreasonable amounts requested to obtain bail. These constitute an insuperable financial barrier to children from disadvantaged families who, as a result, are forced to remain in extremely poor conditions of detention.<sup>18</sup>

Furthermore, as regards children, 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.

### ***Overseas workers and violence***

Poverty is among the prime factors driving emigration in the Philippines. Many of those looking for work overseas rely on informal channels; these channels can turn out to be vehicles for various forms of exploitation, violence and trafficking. Women make up almost half of Filipino overseas workers.<sup>19</sup> 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.<sup>20</sup>

### ***Extrajudicial Executions and Forced Disappearances of Human Rights Defenders, and in particular Economic, Social and Cultural Rights Activists***

Filipino human rights defenders, human rights lawyers, journalists, trade union leaders and indigenous or peasant activists engaged in defending economic, social and cultural rights are often victims of disappearances and summary executions.<sup>21</sup> In 2006 and 2007, reports of extrajudicial killings and executions increased dramatically (in Sulu, Luzon Island and in the centre of the Philippines).

Perpetrators of violence against human rights defenders, including 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. Furthermore, intimidation and threats of revenge impede the right to an effective remedy for persons whose rights and freedoms have been violated.<sup>22</sup> 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.”<sup>23</sup>

In August 2006, President Arroyo created the Melo Commission to investigate the killings of media and workers’ activists. Human rights groups criticize this Commission for its lack of power to conduct investigations and for its membership, which consists entirely of government-selected commissioners.<sup>24</sup> Subsequently, 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.<sup>25</sup> OMCT has been made aware of concerns that this Act may represent a further impediment to the work of human rights defenders. 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.<sup>26</sup>

### ***Recommendations***

OMCT recommends that the Government of the Philippines:

- ensure that legal safeguards guaranteed under national law are consistently applied and coherently enforced in accordance with international human rights standards;
- ensure that the human rights of Filipino citizens are not compromised in the interest of economic exploitation, and halt all projects that harm the livelihoods of Filipinos or violate their economic social and cultural rights;
- 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 and informed consent of affected communities prior to the initiation of any commercial activities on their lands, as provided by the IPRA;
- ensure that evictions are used only as a last resort, once all other alternatives have been exhausted, and that they are carried out in the full respect for human rights, in particular human dignity and the right to adequate housing;
- revise the Land Reform Programme in light of the discontent provoked by the current Agrarian Law, or draft alternative legislation that more equitably allocates lands,

guarantees property rights and better addresses the concerns and interests of small farmers and landless peasants;

- adopt a new act that foresees the possibility of divorce, in addition to legislation that ensures women and men the same rights to administer common assets during marriage;
- ensure that 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;
- 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; and guarantee that the 2007 Human Security Act is applied in the full respect of human rights.
- put an end to all acts of harassment against human rights defenders in the Philippines, in accordance with the provisions of the 1998 UN Declaration on Human Rights Defenders, especially article 12(2).

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<sup>1</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>2</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>3</sup> Information from KARAPATAN, member of the SOS-Torture Network.

<sup>4</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>5</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>6</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>7</sup> 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

<sup>8</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>9</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>10</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>11</sup> [http://www.cohre.org/view\\_page.php?page\\_id=250](http://www.cohre.org/view_page.php?page_id=250)

<sup>12</sup> CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 31

<sup>13</sup> CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 32

<sup>14</sup> CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006:

<sup>15</sup> CEDAW/C/PHI/Q/6, Thirty-sixth session, 7-25 August 2006, § 19

<sup>16</sup> CEDAW, Concluding Observations on The Philippines, A/52/38/Rev.1, § 278:

<sup>17</sup> “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

<sup>18</sup> CRC/C/15/Add.259, 21 September 2005, § 90

<sup>19</sup> Common Country Assessment of the Philippines, 2004

[http://www.undp.org.ph/cca/Section\\_2\\_Defining\\_the\\_Development\\_Challenge.pdf](http://www.undp.org.ph/cca/Section_2_Defining_the_Development_Challenge.pdf)

<sup>20</sup> E/CN.4/2003/85/Add.4, 1 November 2002, MIGRANT WORKERS, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, Mission to Philippines

<sup>21</sup> Including cases of summary executions and extrajudicial killings of Mindanao peoples.

<sup>22</sup> Concluding observations of the Human Rights Committee, The Philippines CCPR/CO/79/PHL, 1 December 2003

<sup>23</sup> 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

<sup>24</sup> See HRW Report: Scared Silent: Impunity for extrajudicial killings in the Philippines, June 2007

<sup>25</sup> [http://www.senate.gov.ph/republic\\_acts/ra%209372.pdf](http://www.senate.gov.ph/republic_acts/ra%209372.pdf)

<sup>26</sup> [http://www.tebtebba.org/tebtebba\\_files/ipr/stavenhagenpress.html](http://www.tebtebba.org/tebtebba_files/ipr/stavenhagenpress.html)