PHILIPPINES

Civil Society Report on the Implementation of the ICCPR
(Replies to the List of Issues CCPR/C/PHL/Q/4)

• Philippine Airlines Employees Association (PALEA)
• Center for Human Rights and Development (CHRD)
• Aniban ng mga Manggagawa sa Agrikultura (AMA)
• Kongreso ng Pagkakaisa ng Maralita sa Lungsod (KPML)
• Task Force Detainees of the Philippines (TFDP)
• Human Rights Defenders – Pilipinas (HRD-P)
• International Gay and Lesbian Human Rights Commission (IGLHRC)
• Philippine Coalition on Convention of the Rights of Persons with Disabilities
• Youth for Rights (Y4R)
• Medical Action Group (MAG)
• Women’s Legal Bureau (WLB)
• Philippine Alliance of Human Rights Advocates (PAHRA)
• Institute for Social Studies and Action (ISSA)
• Partido Lakas ng Masa (PLM)
• Association of Displaced Filipino Workers (ADFW)
• Bukluran ng Manggagawang Pilipino (BMP)
• Balay Rehabilitation Center (Balay)
• Rainbow Rights Project (R-Rights)
• Children’s Legal Rights and Development Center, Inc. (CLRD)
• Sulong Comprehensive Agreement for the Respect of Human Rights and International Humanitarian Law (Sulong CARHIHL)

Geneva - Manila, 26 September 2012

With the support of the Centre for Civil and Political Rights
COMMENTS FROM
CIVIL SOCIETY ORGANISATIONS IN PHILIPPINES
ON THE LIST OF ISSUES

REVIEW OF THE FOURTH PERIODIC REPORT OF PHILIPPINES
(CCPR/C/PHL/Q/4)
106th session of the Human Rights Committee
Geneva – October 2012

The authors of the report are greatful to REDRESS for the information provided to reply to the question 2.

List of abbreviation:

ARMM  Autonomous Region of Muslim Mindanao
AFP   Armed Forces of the Philippines
AFP-HRO Armed Forces of the Philippines - Human Rights Office (AFP-HRO)
CICL  Children in Conflict with the Law
CLRD  Children’s Legal Rights and Development
CHRP  Commission on Human Rights of the Philippines
CSO   Civil Society Organisations
DDS   Davao Death Squad
EJK   Extrajudicial killings
EP-JUST European-Philippine Justice Support Program
HRV   Human Rights Violations
NMM   National Monitoring Mechanism
PMA   Philippine Military Academy
RH    Reproductive Health
TFDP  Task Force Detainees of the Philippines
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Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (Article 2)

1. What is the status of the Covenant and the Optional Protocol under domestic law in the State party? Please state whether the provisions of the Covenant are directly applicable by domestic courts and to what extent they are invoked and applied. Please also provide information on the availability and accessibility of remedies for individual claiming a violation of the rights contained in the Covenant.

By virtue of the incorporation clause, the Covenant and the Optional Protocol are part of domestic law. Article III, Section 2 of the 1987 Constitution of the Philippines provides for the incorporation of international law into the domestic law, as follows:

The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

The Philippine Supreme Court has explained this provision in the following manner in Tanada v Angara, G.R. No. 118295, 2 May 1997:

By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is pacta sunt servanda -- international agreements must be performed in good faith. “A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties x x x. A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken.”

The Philippine Supreme Court has further clarified in Bayan v. Zamora, G.R. No. 138570, 10 October 2000, that, upon ratification of a treaty, equivalent to its final acceptance, it becomes obligatory and incumbent on the part of Philippine Government, under the principles of international law, to be bound by the terms of the agreement. The Court has explained:

As a member of the family of nations, the Philippines agrees to be bound by generally accepted rules for the conduct of its international relations. While the international obligation devolves upon the state and not upon any particular branch, institution, or individual member of its government, the Philippines is nonetheless responsible for violations committed by any branch or subdivision of its government or any official thereof. As an integral part of the community of nations, we are responsible to assure that our government, Constitution and laws
will carry out our international obligation. Hence, we cannot readily plead the Constitution as a convenient excuse for non-compliance with our obligations, duties and responsibilities under international law.

Beyond this, Article 13 of the Declaration of Rights and Duties of States adopted by the International Law Commission in 1949 provides: “Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.”

Equally important is Article 26 of the convention which provides that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” This is known as the principle of pacta sunt servanda which preserves the sanctity of treaties and have been one of the most fundamental principles of positive international law, supported by the jurisprudence of international tribunals.

In theory, the Covenant and Optional Protocol can be directly invoked. Given the monist legal regime of the Philippines, there is no need for any enabling legislation for generally accepted principles of international law including international treaty law to apply. In Datu Firdausi Abbas v. Comelec, G.R. Nos. 89651 & 89965, 10 November 1989, the Philippine Supreme Court has explained that the Tripoli Agreement, as a binding treaty or international agreement, ‘would then constitute part of the law of the land.’ The Court has stated quite emphatically in Abaya v. Sec. Ebdane, G.R. No. 167919, 14 February 2007, and DBM v. Kolonwel Trading, G.R. No. 175608, 8 June 2007, that, under the fundamental principle of international law of pacta sunt servanda, any treaty or international or executive agreement to which the Philippine government is a signatory shall be observed.

However, there is a lack of appreciation for the status and importance of international law in the Philippines. Lawyers seldom invoke it, and judges and justices are reluctant to rely on it. The Philippine Supreme Court itself has sent some mixed signals on the place of international law in the Philippine legal system. For instance, in Lim v. Executive Secretary, G.R. No. 151445, 11 April 2002, citing the earlier cases of Ichong v Hernandez, G.R. No. L-7995, 31 May 1957, and Gonzales v Hechanova, G.R. No. L-21897, 22 October 1963, the Philippine Supreme Court has qualified, ‘In other words, our Constitution authorizes the nullification of a treaty, not only when it conflicts with the fundamental law, but, also, when it runs counter to an act of Congress.’ In Gonzales, the Philippine Supreme Court had not given effect to commercial agreements between the Philippines on the one hand, and Vietnam and Burma on the other, while in Ichong, the Court had stated:

Another subordinate argument against the validity of the law is the supposed violation thereby of the Charter of the United Nations and of the Declaration of the Human Rights adopted by the United Nations General Assembly. We find no merit in the Nations Charter imposes no strict or legal obligations regarding the
rights and freedom of their subjects (Hans Kelsen, The Law of the United Nations, 1951 ed. pp. 29-32), and the Declaration of Human Rights contains nothing more than a mere recommendation or a common standard of achievement for all peoples and all nations (Id. p. 39.) That such is the import of the United Nations Charter aid of the Declaration of Human Rights can be inferred the fact that members of the United Nations Organizations, such as Norway and Denmark, prohibit foreigners from engaging in retail trade, and in most nations of the world laws against foreigners engaged in domestic trade are adopted.

The Treaty of Amity between the Republic of the Philippines and the Republic of China of April 18, 1947 is also claimed to be violated by the law in question. All that the treaty guarantees is equality of treatment to the Chinese nationals "upon the same terms as the nationals of any other country." But the nationals of China are not discriminating against because nationals of all other countries, except those of the United States, who are granted special rights by the Constitution, are all prohibited from engaging in the retail trade. But even supposing that the law infringes upon the said treaty, the treaty is always subject to qualification or amendment by a subsequent law (U. S. vs. Thompson, 258, Fed. 257, 260), and the same may never curtail or restrict the scope of the police power of the State (plaston vs. Pennsylvania, 58 L. ed. 539.)

2. Please indicate what procedures are in place for the implementation of the Committee’s View under the Optional Protocol. Please indicate what concrete steps have been taken to implement the Committee’s View adopted in respect of the State party in which the Committee found a violation of the Covenant

Implementation of the Committee’s views under the Optional Protocol remains a subject of major concern for CSOs in the Philippines. In most of the cases, no action has been taken by the State Party to implement the Committee’s recommendations.

The Report “The failure of the Philippines to Implement views in individual communications”1 from the NGO REDRESS (submitted to the HR Committee in September 2012), provides an in-depth account of the lack of implementation of the Committee’s decisions, including an analysis of State Party’s lack of cooperation.

A brief overview of the implementation of the recent cases decided by the HR Committee is presented below. It is based on the research by REDRESS.

<table>
<thead>
<tr>
<th>Case</th>
<th>Violations</th>
<th>Recommendations</th>
<th>Follow-up</th>
</tr>
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</table>
| Hernandez v. Philippines 1559/2007 | Article 2(3), Article 6(1) | - Criminal proceedings are expeditiously completed  
- All perpetrators are | As of January 2012 it was reported that no action had been taken to implement the Views. The one suspect held at the time of the communication in relation to the |


| Article 6, with article 2(3) | Impartial, effective and timely investigation into the circumstances of the death, Prosecution of perpetrators, Adequate compensation. |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------

In 2009, Ombudsman Merceditas Gutierrez, dismissed the complaint. On 10 January 2012, the Ombudsman Conchita Carpio Morales reversed the resolution that dismissed the criminal and administrative charges filed by Mr Pestaño’s parents for his murder. The Ombudsman found probable cause to indict Naval Captain Ricardo Ordoñez and nine other naval officials for murder. Ombudsman Morales also found the respondents administratively liable for Grave Misconduct and ordered them dismissed from service. The Information for murder was filed with the Sandiganbayan on 11 January 2012. However recent information provided by REDRESS (25 September 2012) revealed that: “Since 10 months, there has been no action by the Sandiganbayan to issue warrants of arrest against the respondents from the Philippine Navy. The respondents filed a motion to dismiss saying that the ranks of the accused at the time of the crime in 1995 were below the level required for the Sandiganbayan to acquire jurisdiction. Still no decision on that motion to-date, which is terribly disappointing. Many people are starting to question the political will of the incumbent Aquino administration to prosecute various cases against respondents from the military and police establishments”


<table>
<thead>
<tr>
<th>Article 2(3), article 6(1), article 9(1)</th>
<th>Initiation and pursuit of criminal proceedings to establish responsibility for the kidnapping and death of the victims, Payment of appropriate compensation.</th>
</tr>
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</table>

Despite sustained pressure from the victims’ family and authors’ representatives, as of April 2012 no action had been taken in relation to the case, and no compensation has been provided to the authors of the communication


<table>
<thead>
<tr>
<th>Article 14 (3c)</th>
<th>Effective remedy, including the prompt review of their appeal before the Court of Appeal, Compensation for the undue delay</th>
</tr>
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</table>

On 16 November 2009, the authors submitted that their case, which had been ready for consideration by the Supreme Court since 5 May 2008, had now been delayed due to the same court’s decision on 23 June 2009 to consider this case jointly with several others. The Supreme Court heard the final appeal in the criminal case on 7 September 2010 and affirmed the Court of Appeal’s decisions. The victims filed motions for reconsideration, but were denied with finality on 8 February 2011 for lack of merit. In December 2011 it was reported that the Board of Pardons and Parole had recommended to the President on 28 September 2011 the commutation of sentence to 16 years, however no pardon has yet been granted and the authors remain in prison as at 12 December 2011. As of September 2012 the authors were still seeking executive clemency.


<table>
<thead>
<tr>
<th>Article 14</th>
<th>Compensation</th>
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On 26 February 2008, the Regional Trial Court (RTC) of

2 The special court for cases involving government officials.
<table>
<thead>
<tr>
<th>Case</th>
<th>Article(s)</th>
<th>Issue</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>al. v. Philippines, 1320/2004, (2007)</strong></td>
<td>(1), with article 2 (3)</td>
<td>Prompt resolution of the case on the enforcement of the US judgement</td>
<td>Makati issued an order setting the case for Judicial Dispute Resolution (JDR), dismissing their complaint of unreasonable delay. A motion for the reconsideration of the TCR order of 8 June 2010 was submitted but not acted upon. In 2011 a new trial judge granted the motion for reconsideration and set the enforcement proceeding for trial. That trial began in February 2012 and is still underway, with the final hearing dates scheduled for September 2012.</td>
</tr>
<tr>
<td><strong>F.-J. Larrañaga v. Philippines, 1421/2005, (2006)</strong></td>
<td>Article 6(1); article 7; &amp; article 14 (1,2,3b,c,d,e , 5),</td>
<td>Effective remedy, including commutation of his death sentence - Early consideration for release on parole.</td>
<td>Death sentence was commuted to life imprisonment in 2006 along with many others prior to issuance of Committee’s Views. Shortly afterwards the death penalty was abolished in the Philippines. In March 2007 a court order recognised that the author was not precluded by the decree abolishing the death penalty from consideration for parole. In October 2009 the author was transferred under a prisoner transfer agreement from the Philippines to Spain. In March 2011 the Spanish courts confirmed that the author’s anticipated release date was 28 September 2034.</td>
</tr>
<tr>
<td><strong>L. Rouse v. Philippines, 1089/2002 (2005).</strong></td>
<td>Articles 14(1, 3c, e) &amp; 7</td>
<td>Effective remedy, including adequate compensation</td>
<td>No information available</td>
</tr>
<tr>
<td><strong>Rolando v. Philippines, 1110/2002, (2004)</strong></td>
<td>Articles 6 (1), 9 (1, 2, 3) &amp; 14 (3d)</td>
<td>Appropriate remedy including commutation of his death sentence</td>
<td>On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to reclusión perpetua, a lengthy form of imprisonment. However, the Philippines Revised Penal Code, provides that any person sentenced to reclusión perpetua shall be pardoned after 30 years. In light of the commutation of the author’s sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.</td>
</tr>
<tr>
<td><strong>R. Rayos v. Philippines, 1167/2003, (2004).</strong></td>
<td>Articles 6, (1) &amp; 14 (3b)</td>
<td>Effective and appropriate remedy, including commutation of death sentence</td>
<td>On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to reclusión perpetua, a lengthy form of imprisonment. However, the Philippines Revised Penal Code, provides that any person sentenced to reclusión perpetua shall be pardoned after 30 years. In light of the commutation of the author’s sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.</td>
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| **A. Wilson v. Philippines, 868/1999, (2003).** | Articles 7, 9, (1, 2, 3) & 10 (1, 2) | Compensation (violations under article 9) - Comprehensive and impartial investigation on violation under articles 7 and 10 - Investigation on violations under articles 7 and 10 - Compensation for immigration fees and visa exclusion | An investigation was carried out in 2005 by the City Jail Warden of the Valenzuela City Jail where Mr. Wilson was confined, revealed that there was no record of a serious shooting incident as claimed by the author. The Committee regards the State party’s response as unsatisfactory and considers the dialogue on-going. In September 2009 the victim, brought a petition against several Philippine ministers and officials as respondents before the Supreme Court, founded on the state’s non-compliance with the Committee’s views. The government responded in May 2010, taking the position that the Covenant and the OP do not form part of the domestic laws and the Philippine government is under no obligation to enforce or implement the Committee’s

Article 6 (1) - Effective and appropriate remedy, including commutation the death sentence

On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to reclusion perpetua, a lengthy form of imprisonment. However, the Philippines Revised Penal Code, provides that any person sentenced to reclusion perpetua shall be pardoned after 30 years. In light of the commutation of the author’s sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.

The following table is a summary of the current implementation of the recommendations. It is based on the grading system developed by the Centre for Civil and Political Rights:

**Grading system:**
- Grade A: Action largely satisfactory
- Grade B1: Substantive action taken, but additional information required
- Grade B2: Initial action taken, but additional action / information required
- Grade C: No action taken by the State Party to implement the recommendation.

It shows that:
- The most recent Views have not been implemented (grade C). Only the very early stages of the implementation of the recommendations relating to investigation have taken place, so it is not possible to predict any positive outcome (grade B2). The State Party has never implemented any recommendations relating to prosecution and compensation (grade C).
- Older cases mainly dealt with violations under Article 6. The abolition of the death penalty in 2006 was a positive development, which went some way towards implementing the Committee’s Views in relation to these cases.

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<tr>
<th>Case</th>
<th>Recommendations</th>
<th>Grade</th>
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<tbody>
<tr>
<td></td>
<td>- Perpetrators prosecuted</td>
<td>C</td>
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<tr>
<td></td>
<td>- Reparation</td>
<td>C</td>
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<tr>
<td></td>
<td>- Prosecution</td>
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<td>- Early consideration for release on parole.</td>
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<tr>
<td>L. Rouse v. Philippines, 1089/2002 (2005)</td>
<td>- Effective remedy, including adequate compensation</td>
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</tbody>
</table>
3. Please explain whether any steps have been taken to strengthen the mandate of the Commission on Human Rights of the Philippines and to provide it with adequate resources, in line with principles relating to the status of national institutions for the promotion and protection of Human Rights (Paris Principles). Please provide an update on the status of Senate Bill No. 2818 which, inter alia seeks to confer prosecutorial powers on the CHRP. Please also provide information on the establishment of a human rights commission for the Autonomous Region in Muslim Mindanao as foreseen in Republic Act 6734.

The bill for the charter of the Commission on Human Rights of the Philippines (CHRP) was filed in 2011 and is yet to be adopted. This is due to the indecisiveness of CHRP on the provision of prosecutorial power, although in the Human Security Act of 2007 Section 55, the CHRP has already been vested this authority.

The Charter Bill of CHRP filed in Congress would provide the commission with residual prosecutorial power for human rights violations (HRVs) that could not be acted upon by the Department of Justice immediately. This will entail substantial resources or budget for the institution for capacity building activities, additional personnel and resources to sustain case management. As for the CSOs, this provision could be an advantage since the reform in the justice system would take time. The commitments of government agencies on the recommendations of Special Rapporteur on extra-judicial killings, Professor Philip Alston and European Union - Philippines Justice and Peace Project (EP-JUST), to have special prosecutors and courts for victims of HRVs especially extrajudicial killing, enforced disappearance, and torture have not been accomplished.

The current manner of selection by appointment of the President of Commissioners of the CHRP would also be resolved if the Charter is passed into law. The method of selection of the Commissioners by appointment of the President without thorough screening and nominating system has always been questioned by the CSOs. This method is always subject to political maneueverings and result most of the time to incompetent and inefficient members of the Commission affecting the whole operations of the Institution. The Charter will also provide full fiscal autonomy and determine its own organizational structure for more efficiency and independence.
While the Charter is still pending which could greatly strengthen the Commission, the seriousness of the national government in ensuring that CHRP can do its work efficiently and effectively be questioned at this time. Despite additional substantive additional roles of the CHRP from new domestic legislations such as the Anti-Torture law, the International Humanitarian Law (IHL), the Magna Carta for Women, and the Human Security Act, the Commission has no fiscal autonomy and twice had budget cuts. The CSOs asking assistance from CHRP would often receive replies that CHRP personnel cannot attend to request for QRTs, investigations, and conduct of human rights education activities because they lack personnel, resources for transportation, including office equipment.

The CSOs especially PAHRA actively pushed and worked with the CHRP to create the Regional Office in the Autonomous Region of Muslim Mindanao (ARMM). However, after the office was created last May 2012, the Department of Budget and Management said that there is no budget allotted for the office in the national level. This prompted the Regional Congress in ARMM to create a separate Human Rights Commission in ARMM where budget can be readily be available as provided by the Muslim Mindanao Act 228. The ARMM Human Rights Commission is currently in its setting up stage.

**Counter-terrorism measures and respect of Covenant guarantees (art. 2)**

4. Please indicate the measures that have been adopted to ensure that the implementation of the Human Security Act of 2007 in the State party’s activities to combat terrorism complies with the Covenant. Please provide information on the nature of crimes that fall under the definition of “terrorism crimes” under the Human Security Act of 2007.

The Human Security Act (HSA) of 2007 or Republic Act No. 9373 is supposed to be a policy of the State to protect life, liberty and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations, which are all noble causes. Unfortunately, the HSA makes human rights violations lawful as well.

The HSA authorizes preventive detention, expands the power of warrantless arrest and allows for unchecked invasion of our privacy, liberty and other basic rights. Persons

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3 Muslim Mindanao Autonomy Act; begun and held in Cotabato City on 14 May 2012, an Act operationalizing section 16- Article 3 of Republic Act 9054, establishing a charter for a human rights commission in the autonomous region in Muslim Mindanao, providing guidelines for its operations, appropriating funds therefore and for other purposes.
merely suspected of engaging in terrorism may be arrested without warrant and detained without charges.\textsuperscript{4}

According to Section 18 of the HSA, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council can take into custody any person charged with or suspected of terrorism or conspiracy to commit terrorism, for three days without incurring criminal liability for the delay.

Only after this period the suspected person has to be delivered to proper judicial authorities.

In Section 3, terrorism is broadly defined as any person who commits an act punishable under the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection)
c. Article 134-a (Coup d’etat), including acts committed by private persons;
d. Article 248 (Murder)
e. Article 267 (Kidnapping and Serious Illegal Detention)
f. Article 324 (Crimes Involving Destruction), or under
   (1) Presidential Decree No. 1613 (The Law on Arson)
   (2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990)
   (3) Republic Act No. 5207 (Atomic Energy and Regulatory and Liability Act of 1968)
   (4) Republic Act No. 6235 (Anti-Hijacking Law);
   (6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives

Thereby, sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand.\textsuperscript{5}

Given these criteria, words such as “widespread” and “extraordinary” are ambiguous definitions. U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Sheinin said, that the

\textsuperscript{4} Diokno, Jose Manuel, FAQ on the Human Security Act, ([PDI 7/15/2007]
\textsuperscript{5} http://www.senate.gov.ph/republicActs/ra9372.pdf
overly broad definition is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the Covenant.⁶

**Non-discrimination, equality between men and women (arts. 2, para (1), 3 and 26)**

5. Please provide information on the measures taken to eliminate all forms of discrimination in the State party. What is the scope and status of Anti-Discrimination bill(s) that have been presented to the Congress? Please explain the measures being taken to ensure that homosexuality is not subjected to criminal sanctions under the Revised Penal Code. What measures are being taken to eliminate discrimination on the ground of sexual orientation and gender identity?

- **Scope and Status of the Anti-Discrimination Bill in Congress**
  The anti-discrimination bill (ADB) that has been lobbied by LGBT activists for the past twelve years has been re-filed in the Senate⁷ and in the Lower House of Congress⁸ during the 15th Congress. The ADB seeks to prohibit and penalize a wide-range of discriminatory policies and practices against Filipino LGBT persons in schools, workplaces, commercial establishments, public service, health institutions, police and the military.

  The Senate was able to have the bill approved on the third reading as part of a comprehensive anti-discrimination legislation that covers not only Sexual Orientation and Gender Identity (SOGI) but also race, religion and ethnicity, among others. The bicameral conference committee must approve the comprehensive anti-discrimination bill before it can be submitted for approval and signing to the Philippine President and enacted into law. However, with the impending national elections in May 2013, the chances for a national anti-discrimination legislation to protect LGBT persons being passed into law is getting slimmer as the end of the 15th Congress draws near.

- **Criminalization of Homosexuality under the revised Penal Code**
  Police raids⁹ on LGBT venues continue to take place without warrants. Police illegally detain, verbally abuse and extort money from victims. Furthermore, police will

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⁹ The Club Bath Raid of April 2012
frequently charge victims with violating the public scandal provision of the Revised Penal Code and the Anti-Trafficking law.

With the recent partnership forged with the Presidential Human Rights Committee (PHRC) headed by Undersecretary Severo Catura, on July 18, 2012 the PHRC granted the requests of gay activists to organize a dialogue with the Philippines National Police (PNP) to put a stop to illegal raids by errant police officers. From the tripartite discussion the PHRC committed to reiterate the memorandum they sent to the PNP urging them to review and adhere to the legal process in conducting raids, while the PNP promised to re-orient the police on the legal procedure during raids with emphasis to the recent police policy that prohibits arbitrary arrest.

• **Discrimination on the Basis of Sexual Orientation and Gender Identity**

Local government units from different cities all over the Philippines have been proactive in passing and filing city ordinances banning LGBT discrimination. In Quezon City, antidiscrimination in employment was enacted in 2004 and LGBT-friendly provisions are supplemented in the Quezon City Gender and Development Ordinance. Albay Province and Bacolod City passed an anti-discrimination ordinance. In addition to passing antidiscrimination legislation, Angeles City also created a Gay Rights Desk. In Cebu City

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http://missosology.info/forum/viewtopic.php?f=8&t=134977&sid=5a1fd1aa945bd66519b9234c6d097d637
Phil Gay raid of 2008
10 http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook2.htm
11 The Presidential Human Rights Committee (PHRC) was created in 2003 to act as the "advisory body to the President in effectively addressing all human rights issues in the Philippines. http://www.hurights.or.jp/archives/focus/section2/2010/03/human-rights-in-the-philippines-government-response.html On December 2011, the PHRC conducted an LGBT forum and invited members of the government from the different department and institutions of government to learn about SOGI issues and to guide the PHRC in incorporating SOGI issues in the National Human Rights Plan that they are obligated to produce for the Philippines. The LGBT forum forged a direct and open partnership with the PHRC.
15 The Gay Rights Desk (GRD) will act like the Angeles City Multi-Sectoral Consultative Council (ACMCC), a citizen consultative mechanism where vital programs and decisions of the city government are consulted, processed and discussed. With the GRD, LGBT persons in the city can expect various types of services and projects for the promotion of their rights and welfare; Angeles City mayor backs gay ordinance. Punto Central Luzon, November 2011 http://www.philstar.com/nation/article.aspx?articleid=753223.
while an anti-discrimination ordinance is being deliberated\textsuperscript{16}, a city resolution was filed urging the Department of Interior and Local Government (DILG) to issue a memorandum to all government agencies to include the LGBT sector in their Gender and Development (GAD) Programs\textsuperscript{17}.

In the House of Representatives, Representative Raymond Palatino of the Kabataan Party list filed House Resolution No.1333\textsuperscript{18}, which seeks to investigate prejudicial, discriminatory, and unjust practices and policies against LGBT students implemented and tolerated in schools and will be partnering with the Department of Education (DepEd) and other government agencies to explore the inclusion of a Comprehensive Gender Curriculum on basic and secondary education and in vocational and technical schools to incorporate discussion on issues of LGBT persons\textsuperscript{19}.

In May of 2012, the Department of Education issued DepEd Order No. 40 or, “The DepEd Child Protection Policy” to guarantee the protection of children in schools from any form of violence, abuse or exploitation regardless of sexual orientation and gender identity.

- **Marginalization and Exclusion of SOGI issues by the State**

While there has been a slight openness and support for LGBT rights from few legislators and state agencies, there are also glaring instances of discrimination through marginalization and exclusion of SOGI issues from various State branches and departments.

In the State Report for the ICCPR of the Philippines for its fourth periodic review\textsuperscript{20}, the comprehensive report under Right to Life (Art 6)\textsuperscript{21} failed to mention the gravity and gruesomeness of LGBT killings that is continually increasing\textsuperscript{22} and in the State’s efforts


\textsuperscript{17} Anti-Discrimination Ordinance Approved on First Reading http://www.sunstar.com.ph/cebu/local-news/2011/12/10/lgbts-fight-respect-acceptance-195192


\textsuperscript{19} Aside from DepEd, partnering government agencies are the Commission on Higher Education (CHED) Government agencies such as the Technical Education and Skills Development Authority (TESDA), Philippines Commission on Women (PCW) and CHR. Video news can be seen online: “Ilang LGBT, nakaranas ng diskriminasyon sa paaralan” (Numerous LGBT students experience discrimination in school). http://www.youtube.com/watch?v=p3XXwpgrRs&feature=youtu.be, http://www.gmanetwork.com/saksi

\textsuperscript{20} Department of Justice (DOJ) prepared the report in coordination with the Department of Foreign Affairs (DFA) and PHRC. The report incorporated various reports from Philippines agencies, with the CHR and selected civil society organizations (CSOs) CCPR/C/PHL/4

\textsuperscript{21} Page 20, CCPR/C/PHL/4

\textsuperscript{22} Since 1996 till May 2012, a total of 163 have been murdered. Since the country has no clear definition of hate crimes, the victims could be more. http://www.sunstar.com.ph/bacolod/opinion/2012/05/18/sanchez-murderous-social-media-222087
in addressing non-discrimination (Art 2)\textsuperscript{23}, the report enumerated proposed anti-discrimination legislations but failed to include the anti-discrimination legislation for LGBT persons which has been present since 1999 and is still pending in Congress.

In House Bill No. 4244 or “The Reproductive Health Bill, sexual orientation was initially included in the Declaration of Policy statement under section two\textsuperscript{24} but was deliberately taken out by President Benigno Aquino\textsuperscript{25}, singling out the rights of LGBT persons from among other sectors enumerated in that section who will be protected from discrimination with regard to their sexual and reproductive health and rights.

Once the President of the Philippines signs into law the amended Republic Act 9048 (RA 9048) or the “Clerical Error Law of 2001” which retained section 5\textsuperscript{26}, it will be impossible and illegal for transsexual and intersex persons in the Philippines to change their first name and sex in their birth certificates. LGBT groups headed by the Society of Transsexual Women of the Philippines (STRAP)\textsuperscript{27} have actively engaged with the Senators who authored the bills\textsuperscript{28} and on March 2012, were given assurance that they

\textsuperscript{23} Page 26, CCPR/C/PHL/4

\textsuperscript{24} “The Responsible Parenthood, Reproductive Health and Population Development Act of 2011” Section 5 provision reads: “The State recognizes and guarantees the exercise of the universal basic human right to reproductive health by all persons, particularly of parents, couples and women, consistent with their religious convictions, cultural beliefs and the demands of responsible parenthood. To this end, there shall be no discrimination against any person on grounds of sex, age, religion, sexual orientation, disabilities, political affiliation and ethnicity. In substitution of House Bill Nos. 96, 101, 513, 1160, 1520 and 3387.

www.congress.gov.ph/download/basic_15/HB04244.pdf


\textsuperscript{25} Sexual orientation was in the draft combining Congressional revisions but through the Legislative-Executive Development Advisory Council (LEDAC), the draft bill showed notes from President Aquino where “sexual orientation” was put in brackets and removed. Philippine President Aquino Tries To Strike Out LGBT Protections from Health-Care Bill. Sharyn Jackson. August 7, 2012.


\textsuperscript{26} Section 5 Republic Act No. 9048 reads “no petition for correction of erroneous entry concerning the date of birth or the sex of a person be entertained except if the petition is accompanied by earliest school record or earliest civil documents such as, but not limited to, medical records, baptismal certificate and other documents issued by religious authorities; nor shall any entry involving change of gender corrected except if the petition is accompanied by certification issued by an accredited government physician attesting to the fact that the petitioner has not undergone sex change or sex transplant”. This section was retained in the final approved HB 4530 and SB 3113.

\textsuperscript{27} http://www.tspphilippines.com/

\textsuperscript{28} Senate Bill No. 3113 and House Bill No. 4530, “An act further authorizing the city of municipal civil registrar or the consul general to correct clerical or typographical errors in the date of birth or sex or a person appearing in the civil register without need of a judicial order amending for this purpose the pertinent provisions of Republic Act No. 9048”


will seek the removal of section five during the deliberation at the bicameral meeting. In June of 2012, one of the Senators changed his position and proposed that another bill be filed to address the legal needs of transgender persons. At present, the consolidated version of the bill has been signed by the Speaker of the House and the Senate President and is now with the President waiting for his approval and signature.

In January 2012 during the Philippine National AIDS Council plenary meeting, the Department of Health (DOH) Secretary Enrique Ona discriminately suggested that “parents should rein in their homosexual children and get them tested” to address the rapid rise of HIV cases in the country. His statement aggravated the factors that help contribute to the growing cases of HIV/AIDS in the Philippines. The homophobic remark was not taken lightly by HIV/AIDS and LGBT activists who called for the Health Secretary’s resignation.

Aside from the fact that the Philippines is one of only seven countries in the world where HIV rates are rapidly rising, men who have sex with men (MSM) are identified as major driver of the epidemic. Among the factors contributing to the rise of HIV/AIDS cases in the Philippines, the most prevalent are having unprotected sex and sex with multiple partners. These factors are exacerbated by the Catholic Church’s ban

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32 AIDS and TB http://opinion.inquirer.net/18759/aids
33 A new report coming out of the Philippines indicates HIV rates are on the rise in the Southeast Asian country. While fewer than 10,000 confirmed cases (almost all among gay men) is a relatively small number in a country of almost 100 million, that rate has tripled in the past few years. The Philippines’ Ticking HIV Time Bomb. http://www.queerty.com/report-the-philippines-ticking-aids-time-bomb-20120726/#ixzz2467gSbOV Of the 9,669 reported cases from 1984 to May 2012, 20-29 year old age group has had the most number of cases http://www.pnac.org.ph/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=417&cntnt01origid=266&cntnt01returnid=39
on condom use, the lack of public education about HIV, the shame of living with the disease prevents many from acknowledging infections and seeking help and the absence of public-awareness campaigns and cultural taboos against homosexuality, HIV/AIDS and even sex. With the fact from global experience that countries where there is discrimination against gays or other groups, the epidemic spreads even more quickly\(^{37}\), the scenario to control and decrease HIV/AIDS transmission becomes bleak.

- **Effect of State Discrimination on Society**
  The State’s dismal treatment of LGBT individuals intensifies discrimination of LGBT persons within Philippine society and social institutions.

A recent study on bullying in middle school showed that Filipino children have a higher rate of being “made fun of” by other children (57 percent to 58 percent) than schoolchildren in Australia, Hong Kong, Indonesia, Japan, Malaysia, New Zealand, Singapore and Taiwan\(^{38}\) and a report by the Sydney Morning Herald showed that 50% of nine-year-old Filipino children surveyed said they were bullied regularly\(^{39}\).

Being young and not conforming to the gender roles assigned to one’s sex increases the risk of discrimination and abuse for LGBT persons. This double-victimization\(^{40}\) is aggravated by the absence of support mechanisms and school policies addressing this concern or the failure of schools to implement rules to safeguard students from experiencing abuse from other students, school staff and administrators and teachers. The absence of support forces LGBT students to live with the abuse, transfer to another school or, in severe cases, stop attending school altogether\(^{41}\).

Homophobia, stigma and prejudice toward LGBT persons that is still propagated in society may have triggered feelings of fear and contempt from parents that discovering their child’s sexual orientation and/or gender identity compels them to inflict harm out of frustration or as a preventive measure for their child from expressing their sexuality. Police were able to rescue a sixteen-year-old youth when her grandmother threatened


\(^{38}\) In all categories, the Philippines ranked higher than the rest: 39 percent experienced theft; 36 percent were physically hurt; 45 percent were forced to do things they didn’t want; and 30 percent were left out of groups. Bullying in Middle Schools: An Asian Pacific Regional Study. Shu-Ling Lai, Renmin Ye and Kuopao Chang. Asia Pacific Education Review (2008, Vol. 9, No. 4, p.503-515, Figure 1 http://www.springerlink.com/content/327g2243g9112871/


\(^{40}\) http://www.up.edu.ph/index.php/read-more/22-forum/151-making-up-safe-for-lgbts

to cut her throat with a knife upon disclosure of her relationship with a female lover.\footnote{The incident was captured entirely on camera and was shown on TV when the police rescued the woman in GMA reality-drama program “Rescue”. Woman threatens gay granddaughter with knife on ‘Rescue.’ June 27, 2012 http://www.gmanetwork.com/news/story/263304/newstv/rescue/woman-threatens-gay-granddaughter-with-knife-on-rescue} while a father who is still detained in prison explained that he poured boiling water over his nineteen-year-old gay son after he found out that he is also gay like his two other brothers.\footnote{see footnote}

- **LGBT Discrimination by the Catholic Church**

It is important to note the Philippine Catholic Church’s blatant campaign against LGBT persons and how it contributes to the rampant discrimination and violence experienced by LGBT persons in the Philippines.

The Catholic Bishops Conference of the Philippines (CBCP) and Episcopal Commission on Family and Life (ECFL) has been fervently demanding Congress for the removal of “sex, gender, sexual orientation and gender identity”\footnote{see footnote} in the comprehensive anti-discrimination ordinances filed in the Senate\footnote{see footnote} and in the House of Representatives\footnote{see footnote} claiming that its inclusion will only “create problems regarding ethics, marriage, the family and religious freedom” and reasons that “the difference in sex or gender does not belong to the same level as the difference in race, color, religion, or ethnicity”\footnote{see footnote}.

Misinformation about the inclusion of SOGI in the anti-discrimination bills are being circulated to convince legislators and society that LGBT persons are not discriminated against or abused but are depicting themselves as being oppressed to gain public sympathy.\footnote{see footnote} Antagonists of the anti-discrimination bill claim that the passage of an anti-discrimination legislation will just open the door for same-sex marriages\footnote{see footnote}, which was never present in the anti discrimination bill since its first filing in 1999 and up to the present.

\begin{itemize}
\item[] 42 The incident was captured entirely on camera and was shown on TV when the police rescued the woman in GMA reality-drama program “Rescue”. Woman threatens gay granddaughter with knife on ‘Rescue.’ June 27, 2012 http://www.gmanetwork.com/news/story/263304/newstv/rescue/woman-threatens-gay-granddaughter-with-knife-on-rescue
\item[] 43 Gay burned from hot water from father
\item[] 44 see footnote
\item[] 45 see footnote
\item[] 46 see footnote
\item[] 47 Senate ‘anti-discrimination bill’ mandates religious intolerance – lawyer http://cbcpforlife.com/?p=5234
\item[] 48 “Presenting themselves as victims of oppression is one of the steps in advancing homosexual rights, ultimately to include the recognition of such rights by the law” said Dr. Ligaya Anacta Acosta, regional director of Human Life International (HLI) Asia and Oceania. http://cbcpforlife.com/?p=5301
\end{itemize}
RECOMMENDATIONS

The State Party should:

- Prioritize the passage of a comprehensive anti-discrimination legislation pending in Congress that includes protection of LGBT persons in the Philippines.

- Veto Republic Act 9048 (RA 9048) or the “Clerical Error Law of 2001” and amend RA 9048 by repealing section five that specifically prevent transgender persons from changing their name and sex in their legal papers.

- Seek Policy Reform in the Philippines National Police by including a non-discrimination provision for LGBT persons.

- Require the Presidential Human Rights Commission (PHRC) to include the rights of LGBT persons in the National Human Rights Plan by having concrete programs in the National plan to address and prevent violence and discrimination of LGBT persons.

6. Please provide information on the measures being taken to improve de facto: (a) women’s status in political, economic and social life; (b) the percentage of women employed in elected positions and the public sector, and (c) equal pay for work of equal value between men and women. Please indicate the specific steps taken to eliminate the persistent patriarchal attitudes and deeply rooted stereotypes regarding the roles and responsibilities of women and men in the family and society. Furthermore, please indicate the policies adopted to deal with the overrepresentation of women in the informal employment sector and the rights of women migrant workers who are at risk of multiple forms of discrimination.

The government has enacted numerous policies and laws including the Republic Act No. 9710, An Act Providing for the Magna Carta of Women, that would recognize that the economic, political and socio-cultural realities affect women’s current condition, the State affirms the role of women in nation building and ensures the substantive equality of women and men⁵⁰, yet they did not deliver the intended benefits for women as extensively and effectively as hoped for.

The pervasiveness of various forms of discrimination in the lives of Filipino women remains. The government’s extensive push for economic programs that is anchored on neo-liberal framework exacerbates the social and economic inequality of women. They are continuously relegated to jobs known to have low wage, with long hours of work and with little or no benefits at all. During the 2008 financial crisis, women were the most disproportionately affected as they constitute 80% of the workers in the Philippine

⁵⁰ Section 2, Republic Act No. 9710, An Act providing for the Magna Carta of Women
export processing zones; and were the first to lose their jobs\textsuperscript{51}. Female labor force participation rate has consistently lagged behind the rate for males despite women having higher education levels.

Women’s political marginalization is an indicator of the state’s failure to advance and promote their meaningful participation and representation. In the May 2010 automated local and national elections, only 18.4 % of the elected posts were won by women candidates despite women’s high voter turn-out\textsuperscript{52}. Often, women in position are extensions of men as wife, daughter or mother. Still, women are absent in important decision making-bodies such as in peace negotiation process. According to an article about Philippine elections in 2010, based from Senator Pia Cayetano, of the 17, 385 elected public officials from the national to the local levels, men comprise an overwhelming 82. 7 % (14,369 positions) compared to women. Women make up only 4 of the current 23 members of the Senate.

The ratio is smaller for elected women at the local level. The gender breakdown for local government posts are as follows: Governor (62 men, 18 women); Vice Governor (67 men, 13 women); Board Members (635 men, 123 women); Mayors (1, 319 men, 273 women); Vice Mayors (1,362 men, 230 women); and Councilors (10, 776 men, 3,016 women)\textsuperscript{53}.

The Philippine government is complicit in its violations of Filipino women migrants rights under the CEDAW and the General Recommendation 26 because of its indiscriminate and deliberate promotion of labor migration, targeting large numbers of women to fill the high demand especially for household service work, though fully aware of the unregulated conditions of work, the history of abuse, the many potentials for domestic and sexual violence, low wages, long hours, and other abuse, vulnerabilities of high demand for work in sectors that remain informal and irregular, bereft of adequate legal protection, - like service work and work in the entertainment industry – has the effect of impairing the recognition, enjoyment and exercise by women of their rights\textsuperscript{54}. In 2010, there was a massive increase of 98\% of Filipina domestic workers working abroad, a swift rise to 94, 880 in 2010 from 47, 841 in 2008\textsuperscript{55}. In a study published by the Committee on Workers Overseas Welfare 70\% of workers employed as caregiver or without a specific work qualification suffers continuous physical and psychological harassment.

It has been cited in numerous reports that a gender budget reflects commitment to gender equality and its expenditure can be traced and monitored, which improves transparency and accountability at the national and local levels. The Gender and

\textsuperscript{51} UN Women
\textsuperscript{52} Philippine Commission on Women (PCW). Fact Sheet on Filipino Women 2010
\textsuperscript{53} http://thediplomat.com/philippines-election-2010/insiders-diary/women-power.html
\textsuperscript{54} Culled from the Women’s Legal and Human Rights Bureau submission to the UPR
\textsuperscript{55} Philippine Overseas Employment Agency
Development (GAD) Budget Policy embedded in a specific provision of the General Appropriations Act (GAA) that provides for support of the implementation of GAD Plans from at least 5% of the allocations of government agencies and local governments has been subjected to misalignment and abuse and is crowded out by debt service priorities56.

A senate report on GAD implementation indicates the inconsistency and unreliability of public resource allocations for gender. The biggest fall was from 2003 when allocation reached PhP4.7 billion or five times its amount in 2002 to less than a billion pesos or Php951.7 million in 200757. It spiked up to P6.5 billion in 2006 but in 2010 dropped to almost the same level as when the policy began to be enforced. The whole 15 years since implementation, the GAD allocation never made it to one percent of the total budget of the national government58.

7. Please indicate any measures taken to fully implement the Magna Carta for Women of 2009. Also, please indicate any measures taken to revise the Code of Muslim Personal Laws which, inter alia, discriminates on the basis of religion with regard to the age of marriage for girls, and also permit polygamy and arranged marriages. Furthermore, please explain how the provisions of the Anti-Rape Law of 1997, which permit a wife, as an offended party, to forgive her husband for the crime of spousal rape, are compatible with the covenant.

The adoption of Magna Carta of Women in 2009 was a landmark gain for women as it serves as the comprehensive women’s human rights law that seeks to eliminate all forms of discrimination against women. However, effective implementation of the law remains issue of high importance. In the 2006 Concluding Comment by the CEDAW Committee, it noted the lack of progress in undertaking and completing necessary systemic review and revisions of discriminatory provisions in national legislation59.

The law provides for the monitoring of progress and implementation and impact of Magna Carta of Women, yet there are no established guidelines and mechanisms since its passage. The Commission on Human Rights as Gender Ombudsman has yet to disseminate, if any, policies, development and implementation of program and activities related to the promotion and protection of women’s human rights, as provided for in the Implementing Rules and Regulations (IRR) of the Magna Carta.

The existence of discriminatory provisions in law such as in the Code of Muslim Personal Laws, Family Code, Civil Code and Revised Penal Code, the Anti-Rape Law of 1997

56 Women’s Legal and Human Rights Bureau submission to the Universal Periodic Review 2011.
58 ibid.
59 CEDAW/C/PHI/CO/6, §11.
among others; and the absence of laws such as the Reproductive Health Bill, Anti-Prostitution and Divorce Bill constitute a violation of government to their obligation to ensure gender equality and the full enjoyment of women’s human rights.

Though important, the promotion of women’s human rights should not end with enactment of legislations. There is a need to look into how available remedies are able to respond, in practice and in reality, to women who suffer from discrimination.

**State of emergency (Art. 4)**

8. Please provide information on any states of emergencies that were declared during the reporting period. In this regard, please provide information on the rights that were subject to restriction during such state of emergencies.

On February 24, 2006, on the eve of the 20th Anniversary of the People Power in the Philippines, President Gloria Macapagal-Arroyo issued Proclamation No. 1017 invoking the Philippine Constitution, Article 12, Section 17 and declared a State of National Emergency after the Armed Forces of the Philippines said it uncovered a coup plot involving the withdrawal of support of some members of the military.

After the declaration, on the same day, a rally of around 20,000 protesters led by civil society leaders was violently dispersed by members of the Criminal Investigation and Detection Group (CIDG) operatives of the Philippine National Police. Twenty six persons were arrested and brought to Camp Karingal. Other rallyists were hurt when about 300 anti-riot police officers started to disperse the crowd using fire hose and started to push and shove the protesters away from the Santolan flyover.

Though the State of Emergency was lifted on March 3, 2006 by virtue of Proclamation No. 1021, the government revived the use of a law created by Former President Ferdinand Marcos in 1985, Batasang Pambansa Number 880 also known as the Public Assembly Act of 1985. The law was used by the police as basis for subsequently arresting and charging anti-Arroyo protesters who have been staging weekly rallies and demonstrations[^60]. The implementation of the law used Calibrated Pre-emptive Response (CPR) and upheld the “no permit, no rally” policy.

Human rights law group Free Legal Assistance Group (FLAG) filed a petition with the Supreme Court (SC) to question the constitutionality of these policies, especially the right to peaceably assemble enshrined in the 1987 Constitution. Unfortunately, the Supreme Court dismissed the case. However, the Solicitor General of the Philippines conceded that the use of the term (CPR) should be discontinued, since it does not mean

[^60]: [http://pcij.org/blog/2006/03/21/batas-pambansa-bilang-880](http://pcij.org/blog/2006/03/21/batas-pambansa-bilang-880)
anything other than the maximum tolerance policy set forth in Batas Pambansa 880. The SC also stressed that maximum tolerance means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in dispersal of the same.

On November 23, 2009, 57 individuals, 39 of whom were journalists, were killed, and one remains missing, in what is now known as the Ampatuan massacre. The following day, President Arroyo put the provinces of Maguindanao, Sultan Kudarat and the City of Cotabato under a State of Emergency through Proclamation 1946. President Arroyo declared a state of martial law in the province of Maguindanao and suspended the privilege of the writ of habeas corpus, only giving exemptions for identified areas of the Moro Islamic Liberation Front (MILF), referring to the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities.

The current Aquino government has not lifted the declaration of state of emergency in Maguindanao. In a press briefing in Malacañang on June 20, 2011, Presidential Communications Development and Strategic Planning Office Secretary Ramon Carandang said feedback from the consultations undertaken with concerned local government units found that people living in the area “wanted” the state of emergency to be implemented further. One of the reasons cited for the continued imposition of the state of emergency in the province is the presence of private armies. However, no concrete actions are being implemented in dismantling them.

RECOMMENDATIONS

The State Party should:

- Lift the state of emergency in Maguindanao.

Right to Life (article 6)

9. Please respond to allegations that extrajudicial killings and enforced disappearances remain a wide-spread phenomenon in the State party. Please provide updated information on: (a) the investigations carried out; (b) the types of penalties imposed, and (c) any compensation awarded to the victims. In relation to the so-called ‘Ampatuan Massacre’ that compensation witnessed the killing of 58 people in Maguindanao on 23 November 2009, please provide updated information on the details of the case.

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61 http://sc.judiciary.gov.ph/G.R.%20Nos.%20169838%20169848_CPR.htm
62 ibid.
Furthermore, please state the measures taken to ensure the safety of investigators and witnesses from harassment, intimidation and assassination attempts. Please provide information on the measures taken to ensure effective human rights training for members of security forces. What is the status of Senate Bill No. 2817 on Enforced or Involuntary Disappearance of 2011? What is the status of the National Monitoring Mechanism that was set up to, inter alia, monitor progress in addressing extrajudicial executions and enforced disappearances?

From 2006 to 2011, Task Force Detainees of the Philippines (TFDP) has documented 168 cases of extrajudicial killings (EJK) with 186 victims including those allegedly perpetrated by members of the Davao Death Squad (DDS).

The common victims of EJK were political dissidents and critics of the Arroyo administration. Even those who were in legitimate civil society organizations were vilified and targeted.

The DDS killings warranted a mention in the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston (A/HRC/11/2/Add.8-29April2009) citing it as perhaps the most troubling development, targeting petty criminals; the killings have clear patterns – similar described perpetrators, victims and methods – and are rarely the subject of successful police investigation 64.

Also, the study made by Atty. Al Parreno mentioned that 31 cases of extrajudicial killings were documented from January 2008 to 15 August, 2010, eight of which happened under the Aquino administration. It also unearthed 305 cases from 2001-August 2010 of which 32 % of the victims were human rights defenders. From the same 305 EJK cases, 56.29% were filed before a prosecutor, 33.22% were tried in court but only 1.05% had convictions 65.

The Ampatuan Massacre captured the state of impunity in the Philippines. As of 31 August 2012, out of the 197 charged with 57 counts of murder, only 97 persons have been arrested and only 76 have been arraigned 66.

The trial court has yet to set the arraignment of other accused persons such as Zaldy, Akmad “Tato”, and Sajid Islam, all surnamed Ampatuan 67.

Since the beginning of judicial proceedings concerning the Ampatuan case, a total of six persons were killed. Out of these six, three were witnesses in those same proceedings.

65 See the full report here: http://www.asienhaus.de/menschenrechte-philippinen/dokumente/EJKReport_Parreno.pdf
66 See: http://www.cmfr-phil.org/ampatuanwatch/2012/08/the-ampatuan-massacre-a-thousand-days-after/
67 Ibid.
In addition three other persons, who were relatives of other witnesses, were killed to frighten them to speak\(^{68}\).

A first witness, Suwaid Upham, was shot dead by an unidentified gunman on June 14, 2010. According to reports, Upham applied on March 2010 for admission to the Department of Justice’s (DOJ) Witness Protection Program but officials of the agency failed to interview the witness despite two scheduled meetings.\(^{69}\)

A second witness, Alijol Ampatuan, was killed in February 2012. He was one of the persons at large accused for the massacre that the prosecution had been searching to make as a state witness.\(^{70}\)

A third witness was killed in March 2012. Esmail Amil Enog, testified in court on July 28, 2011 that he drove dozens of gunmen to the site of the massacre in Southern Maguindanao province from the residence of one of the suspect.\(^{71}\) Enog has been missing since March 2012 and his body was found on May, dismembered in a signature style – with a chainsaw.\(^{72}\)

With regard to the killings of LGBT, the Philippine LGBT Hate Crime Watch monitored from media reports and oral testimonies 141 deaths of LGBTs with varying elements of motives of hate or bias, extrajudicial killing, and/or discrimination-related violence related to sexual orientation and gender identity since 1996.

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**BICUTAN SEIGE**

On March 15, 2005, in an alleged rebellion and attempted jail break led by Commander Kosovo, a massacre of 32 detainees and physical assault of six others was allegedly committed by members of the PNP Special Action Force (SAF) against detainees in Metro Manila District Jail, Camp Bagong Diwa, Bicutan.

According to victim Abdurajak Gamar, at about 9:00 AM, the SAF threw tear gas and hand grenades to their cells that wreaked havoc among the detainees. Their cells were peppered with bullets. The detainees were afraid that they would be hit by shrapnel from the grenade. Afterwards, the SAF ordered the detainees to remove their shirts and crawl out of their cells. They were all made to go to the rooftop where they were made to stay under the scorching heat of the sun. They were beaten up by SAF and BJMP personnel, taking turns using their guns and kicking them with combat boots.

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\(^{68}\) [http://newsinfo.inquirer.net/219509/another-witness-in-maguindanao-massacre-killed](http://newsinfo.inquirer.net/219509/another-witness-in-maguindanao-massacre-killed)


\(^{70}\) ibid.


On enforced disappearance, the Families of Victims of Involuntary Disappearance (FIND) has documented 79 victims for the period of 2008 to 2011. Of this number, 50 surfaced alive, while 24 are still missing, and five were found dead\textsuperscript{73}.

A highly publicized case was the disappearance of Sherlyn Cadapan and Karen Empeño, both college students from the University of the Philippines, who were taken from their rented house in Hagonoy, Bulacan on June 26, 2006\textsuperscript{74}. Raymond Manalo, a surfaced victim of enforced disappearance who came forward to testify in the Cadapan/Empeño case, implicated retired General Jovito Palparan, a favored army man by President Arroyo, in the disappearance of the students.

A bill on enforced disappearances is still pending in Congress. It was first filed in 1990 during the 8th Congress. Now on its 15th Congress, the bill has been approved on third and final reading in both houses of Congress and is scheduled for plenary deliberations in September 2012. In addition, the Philippine government has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

- **National Monitoring Mechanism (NMM)**

With regard the National Monitoring Mechanism (NMM), it was convened in May 2012 as an off-shoot of the European-Philippine Justice Support Program (EP-JUST) implemented from 2010 to 2011. The lead convenors of the NMM are the CHRP and the Presidential Human Rights Committee. The NMM is composed of concerned government agencies and civil society organizations with a mandate in charge of monitoring the nation’s progress on cases of extrajudicial killings, enforced disappearance and torture. Four meetings were conducted in May, June and July and August 2012 to establish the NMM, the last meeting was the discussion of the guidelines for a possible Memorandum of Agreement (MOA) among participants. The discussion on the MOA was not completed. Until now the NMM has not been reconvened.

PAHRA suspended its attendance in the July 2012 meeting of the NMM due to the non-compliance at that time of the security forces (Philippine National police and the Armed Forces of the Philippines) to submit reports to CHRP’s national legal office as agreed upon in a March 2011 Case Conference of human rights violation cases in Central Luzon. The referred reports are critical for the CHRP to complete its investigation on a specific torture case (Salas, et. al), extrajudicial killing/IHL violation (3 Miraflores brothers) and key to possible leads for an enforced disappearance incident (Fortuna and Garcia). (Attach cases as Annexes). PAHRA pursued with the process and resumed participation in the 17 August 2012 meeting encouraged by an earlier Executive Session of the NMM.

\textsuperscript{73} Joint Civil and Society Report for the 2\textsuperscript{nd} Cycle, Universal Periodic Review
\textsuperscript{74} http://newsinfo.inquirer.net/112599/what-went-before-abduction-of-up-students-karen-empeno-and-sherlyn-cadapan
and the initial report of the Armed Forces of the Philippines (AFP) to CHR on one of the cases. Until the writing of this document, no further reports have been furnished to the CHR on the other two cases.

Similarly, PAHRA and its members are encountering the seemingly insincere actions of the Armed Forces of the Philippines (AFP) - Human Rights Office (AFP-HRO) on cases of HRVs brought to its office. In February 2011, PAHRA and FIND requested the assistance of the Office regarding the Paper Industries Corporation of the Philippines (PICOP) six cases (6 young men killed inside military camp in Agusan Del Sur, 2000), but no update has been received since then. Last February 2012, PAHRA members again sought the assistance of the AFP-HRO on a torture case in Albay, Bicol regarding the military personnel who have been indicted and with warrants of arrest but are no longer in the roster of the military and nowhere to be found. The Office during the meeting in February 2011 informed the CSOs that an investigation is underway and promised that the report would be submitted to the CHR. Once again, no report has been submitted.

The CSOs are at a lost if the CHRP and the Presidential Human Rights Committee (PHRC) are really serious in pursuing the NMM given that the two institutions of the security forces/uniformed services decisive for its success are, in the least, seem not to be serious in implementing their obligation of due diligence. CSOs would not like to surmise that the AFP and the PNP, through their Human Rights Offices, are finding it easy to parry and tire the sincere, non-partisan efforts of civil society’s human rights defenders through their public relations campaign without getting to the resolution of grave human rights violations perpetrated by their officers and personnel.

If these actions of the CHRP and the Government Agencies are precedents of what the NMM’s processes would be towards the prevention and/or the breaking of impunity of EJK, enforced disappearances and torture, the CSOs are afraid that the spent efforts and resources for establishing the National Monitoring Mechanism may be an exercise in futility.

RECOMMENDATIONS

The State Party should:

• Investigate all the cases of extrajudicial killings in a prompt and effective manner, bringing perpetrators to justice, and providing effective remedies to victims.

• Expedite the investigation on the Ampatuan case, prosecute, and punish the responsible of the human rights violations.

• Investigate, prosecute and punish the authors of the killings of the witnesses of the Ampatuan case.
• Initiate and implement effective witness and victim protection programme.

• Adopt the bill on enforced disappearances that is still pending in Congress.

10. In May 2010, the Independent Commission against Private Armies reported that there were at least 72 private armed groups. It is also reported that the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and politicians support militias and private armed groups, which groups are largely responsible for the killing of political dissidents, journalists, trade union activists and human rights defenders. Please provide information on the measure that the State party is taking to disband and disarm these groups and ensure that perpetrators of any human rights violations are prosecuted and if convicted, punished with appropriate penalties.

Private armies supported by politicians and even AFP, have always been a part of the Philippine political landscape but were highlighted to the international community after the occurrence of the Ampatuan Massacre. The gravity of the incident raised questions in the minds of the Filipino people on how the AFP and PNP, and possibly, even then President Arroyo, have turned a blind eye on the brazen existence of a private army of a known political clan and ally.

On 8 December, 2009, President Arroyo created an Independent Commission Against Private Armies (ICAPA) headed by retired Associate Justice Monina Arevalo Zenarosa through Administrative Order 275. It forwarded two resolutions (Resolution No. 001-10 and Resolution No. 002-10) to the AFP and the PNP directing these organizations to increase efforts to disband partisan armed groups in order to secure safe and credible elections in May 2010.

Among the provisions of the resolutions are the following:

• AFP was urged to conduct an inventory of firearms and ammunition issued to the Civilian Armed Forces Geographical Unit (CAFGU);

• AFP was urged to monitor CAFGU and Special Civilian Active Auxiliaries personnel to detect the possibility of their involvement in election-related violence and report on the matter within ten days; AFP was directed to increase troop presence in known security-risk areas and to set up more checkpoints in the coastal areas lying between the provinces of Lanao del Sur and Masbate, due to reports of unregulated firearms shipments;

• PNP was directed to conduct a physical inventory of firearms issued to provincial jail guards, provincial security forces, civilian volunteer organizations, and police
auxiliary units and/or Barangay tanods [watchmen] and to report on the matter within ten days; and

- PNP was directed to regulate the unauthorized use of police and military uniforms and vehicles and to bring about the arrest of civilians and unauthorized personnel engaged in such unlawful activity\textsuperscript{75}.

But on April 2010, said commission admitted that they would not be able to eliminate all private armies in time for the May 10 elections, saying it is a “dream” that cannot be achieved\textsuperscript{76}. In the same article, it was mentioned that the PNP and the military had engaged 26 private armies but only 9 were fully dismantled. It also mentioned a rise in the number of private armies from 88 to 107 in a month’s time\textsuperscript{77}.

The ICAPA also submitted a report (Zenarosa report) to President Aquino but is yet to determine whether the findings would be released to the public and its recommendations adopted\textsuperscript{78}.

The PNP, in a report to ICAPA, said that it had confirmed the existence of 112 private armies scattered across the country, some with as few as four members, but others with hundreds\textsuperscript{79}. Most alarming, the report said many members of the private armies were armed and paid by the national government, supposedly for law enforcement or counter-insurgency purposes, several witnesses told the commission. These “volunteer groups” or “auxiliary” units are set up for legal objectives such as anti-drug campaigns or even traffic control, commission member Edilberto Adan was quoted as saying in a recent report. “But in reality, it turns out they are used for partisan activities by the local government that created them,” added Adan, a former military general\textsuperscript{80}.

This can include government militiamen – part-time soldiers supposedly under military control – who are supposed to defend their communities from communist or Muslim insurgents and bandits. But such militiamen sometimes end up as enforcers of the local kingpin who supplements their meager P2, 700 monthly allowances. Even regular soldiers and policemen can be recruited into private armies through money or political favors, the commission found. It also pointed to other deep-rooted problems behind the private army phenomenon. It cited the country’s flourishing gun culture, the widespread disregard for the law in settling disputes and the continued existence of a brand of feudalism where many poor people find themselves relying on a few powerful men\textsuperscript{81}.

\textsuperscript{75} http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205401891_text
\textsuperscript{76} http://www.thepoc.net/breaking-news/local/6208.html
\textsuperscript{77} ibid.
\textsuperscript{78} See full report: http://noynoy-aquino.politicalarena.com/news/content/noy-reviewing-ze-arosa-report/page:8
\textsuperscript{79} http://www.philstar.com/Article.aspx?articleId=590848&publicationSubCategoryId=200
\textsuperscript{80} ibid.
\textsuperscript{81} ibid.
But in the news, it is said that the “private armies” of the warlords are now men serving as members of paramilitary groups said to be protecting local communities. According to report, the men disguised themselves as evacuees in order to help soldiers drive away Bangsa Moro Islamic Freedom Movement and led the soldiers to two fortified hilltop enclaves of the BIFM.

Private armies are said to augment the official security forces, and help defend communities threatened by communist or Muslim separatist guerrillas.

11. Please respond to allegations that there is a high rate of teenage pregnancies, clandestine abortions, and maternal mortality in the State party that are allegedly attributable to the strict anti-abortion provisions under the Revised Penal Code of 1930 and restricted access to contraceptives and family planning services. It is reported that in 2008 alone as estimated 500,000 abortions took place in the State party resulting in 90,000 women seeking treatment for abortion-related complications and a total 1,000 women died. Please indicate the measures being taken to revise the Penal Code which proscribes abortion without exceptions. What measures are being taken to eliminate maternal mortality? Furthermore, please state the measures being taken to repeal an Executive Order No. 0003 issued by the city of Manila that bans the use and access of modern contraceptive products and services in health facilities funded by the local government unit, which ban has been emulated by other provinces such as Bataan. What is the status of the Reproductive Health bill?

Based on the handbook titled "Sexual and Reproductive Health and Rights: Reference for Advocacy in the Philippines" published by the Institute for Social Studies and Action (2011), these are "Philippine Realities" as of 2011:

- The Philippines has one of the highest maternal mortality ratios in the Western Pacific region with 162 maternal deaths per 100,000 live births (DOH 2010). In 2008, around 3,700 women died during childbirth or due to miscarriages. (Guttmacher Institute 2009)

- The major causes of maternal mortality are the following: hypertension complicating pregnancy, childbirth and purperium (29%), postpartum hemorrhage (15%), and pregnancy with abortive outcome (8%). About 0.1% of maternal deaths are due to hemorrhage in early pregnancy while all the other complications related to pregnancy account for 47% of maternal mortality.

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83 ibid.
84 ibid..
85 "Department of Health 2010," Maternal Mortality by Main Cause, Number Rate/1000 Live births & Percentage Distribution, Philippinese, 2005"
Without access to legal abortion, women with life threatening pregnancy-related complications are forced to choose between risking death or disability by continuing the pregnancy or undergoing an unsafe abortion. However, abortion in unhygienic settings can result to complications like infection, hemorrhage, septic shock, anemia, abdominal injury (such as uterine perforation), cervical or bowel damage, and toxic reactions to chemicals or drugs used to induce the abortion. It also increases the risk for ectopic pregnancy and infertility due to potential pelvic infections. In addition, unsafe abortion can be fatal when complications are not properly treated.

Many young people lack accurate and appropriate information on reproductive health (RH). They do not know how to protect themselves from RH complications and are unaware of how and where to access information on available health services. Only 24% of sexually active teenagers use any form of contraception because many of them do not have information about contraceptives.

Among women aged 15-19 who ever had sexual intercourse, only 5% used a condom at their first sexual encounter.

There is increasing percentage of adolescents beginning sexual activities, child bearing, and live-in arrangements. This data show the importance of including adolescent reproductive health in both private and public school curriculum.

Only 25% of Filipino youth admit to feeling comfortable with their level of knowledge regarding sex. And almost half of young people are unaware that pregnancy is possible after only one sexual intercourse.

In Manila, Executive Order 0003 by then Mayor Lito Atienza in 2000 banned city health centers and hospitals from providing contraception has had a detrimental effect on the poorest women who rely heavily on government facilities for reproductive health services. (Fujimura-Fanselow, A. and O’Neil, E. 2007) In January 2008, a group of Manila residents filed a class action suit against the City of Manila and the implementation of EO 003.

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87 National Demographic and Health Survey 2008 Calverton, Mayrland, USA: National Statistics Office (Philippines) and ICF Macro, 2009
On January 2008, the case, Lourdes Osil et al. v. Mayor of Manila, with Beth Pangalangan as lead counsel, labeled the provisions of EO 0003 as a violation of various treaties that the Philippines is a signatory of. These include the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); various provisions found in the 1987 Constitution and the Magna Carta for Women of 2009.

Report of the group of CSOs in the regions of Isulan, Sultan Kudarat (Ladies Circle, RH Media Advocates, Muslim Religious Leaders) confirmed the lack of access to sufficient information on RH and sexuality education was a big factor why teenagers got pregnant. They recommended that duty bearers need to intensive courses on RH as one way of reducing teenage pregnancy. Other CSOs in other parts of the country which were partners of Institute for Social Studies and Action (ISSA) in project Civil Society Organizations for Human Rights Advocacy and Monitoring of Philippine Signed Commitments to the CEDAW and ICPD (CHAMPS) also reported increasing rates of teenage pregnancy in their areas.

It should be noted that an Inter-Agency on Adolescent Sexual and Reproductive Health Program composed of NAPC, DOH, DSWD, TESDA, Task Force Batang Ina, Woman Health Phil., NYC and UNFPA is organizing the First National Summit on Teen Pregnancy on Sept. 14, 2012 in Manila.

**Prohibition of torture and cruel, inhuman or degrading treatment; liberty and security of person, treatment of persons deprived of their liberty, independence of the judiciary and fair trial (articles 7, 9, 10 and 14)**

12. Please provide information on the accessibility of family courts established in major cities to protect women against violence. Please provide information on the progress made to combat violence against women since the establishment of these family courts, the use of protection orders and shelter services, as well as rape crisis centres that were due to have been set up in provinces and cities. Please provide statistical data on prosecutions, convictions, sanctions and the remedies provided with respect to violence against women in the State party.

Also included in the Philippine realities in the handbook titled "Sexual and Reproductive Health and Rights: Reference for Advocacy in the Philippines", one in five Filipino women aged 15 to 49 has ever experienced physical violence since age 15.

For women who have been married, the main perpetrators of physical violence are husbands and, to a lesser extent, mothers or stepmothers, fathers or stepfathers, and other relatives. Among never married women, the main perpetrators of physical
violence are mothers or stepmothers, fathers or stepfathers, sisters or brothers, and boyfriends. Physical injuries/wife battering, rape, acts of lasciviousness were the top three cases of violence against women (VAW) reported to the PNP-WCPC from 1999 to 2009.

A total of 3,159 rape cases were reported to the authorities country-wide in 2009, up 22% from the 2,585 recorded in 2008. The 2009 figures translate to an average of almost nine rape cases being committed everyday or one incident every two and a half hours.

As a whole, the justice system is characteristically slow, tedious and expensive. Furthermore, disability-, gender-, and age-appropriate accommodations in law enforcement, prosecution, court and prisons have not been provided.

Despite a National Plan of Action target in 2007 to establish a system for sign language interpreting, no mandated national policy or system for standards, accreditation, dispatch or code of conduct, exists to date.

The Department of Justice (including the Phil National Police, National Bureau of Investigation and Bureau of Jail Management and Penology) have no policy on sign language interpreting. Thus, deaf persons are charged, arrested, detained, investigated, prosecuted, or incarcerated without fully understanding / being fully understood. From 2006-2012, the Philippine Deaf Resource documents 80 cases with deaf persons as respondents. Twenty-six percent of cases with known data involve respondents who are deaf minors.

Supreme Court policy provides interpreting only if a deaf person needs to be understood (6). Of 214 cases involving deaf parties, only 24% have appointed sign language interpreters. For 63 cases with unschooled deaf parties requiring deaf relay interpreting, only 25% have appointed interpreters. In 16 cases of gender-based violence filed by unschooled deaf complainants requiring deaf relay interpreting, only 13% have appointed interpreters.

It should be noted that throughout the country there are over 2,000 court interpreters for spoken languages, working as fulltime salaried employees. On the other hand, compensation for sign language interpreters is not even appropriated in the national budget of either the Dept of Justice or the Judiciary. Neither is there any provision for

90 Philippine National Police – Women and Children Protection Center (PNP-WCPC) 2010 citing 2008 data
91 ibid.
92 PREDA Foundation, 2010
94 ibid.
accessibility through sign language interpreting the local governments’ Katarungang Pambarangay (village justice system). Likewise, there is no policy for communication accessibility in cases with the National Labor Relations Commission, or the Philippine Mediation Center.

13. Please provide information on the measures taken to combat the alleged widespread torture and ill-treatment of individuals, which are allegedly perpetrated by law enforcement and military personnel. Please respond to allegations that such acts are seldom investigated and prosecuted thereby perpetuating a climate of impunity in the State party. Please provide information on: (a) the progress made to address complaints of torture or ill treatment against the police, military and other officials; (b) the number of complaints received; (c) investigations carried out; (d) type of penalties imposed; (e) compensation awarded to the victims of torture or ill treatment and (f) training in human rights for the police, military and other officials. Furthermore, please provide information on the measures taken to prosecute police officers who were caught on camera torturing Darius Evangelista.

While the Anti-Torture Act of 2009 provides criminalization of torture in accordance with the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), non-compliance and complicity by law enforcement agencies have rendered the law ineffective in fighting impunity for torture cases. Despite the law, use of torture by State security forces and law enforcement agents is persistent in the Philippines.

Based on the Commission on Human Rights of the Philippines (CHRP) data from July 2010 to July 2011, 18 cases of torture were recorded in Mindanao.

The Philippine government implemented an 18-month program under the auspices of the European Union-Philippines Justice Support Programme (EPJUST) to strengthen the capacity of the criminal justice system, the CHRP, and Civil Society Organizations (CSOs) in addressing and resolving cases of human rights violations. However, there is lack of information on monitoring and evaluation of the impact of these training programs in reducing incidents of torture and other human rights violations.

Likewise, there is lack of appropriate measures to investigate cases of torture allegedly committed by State security forces and law enforcement agents, and the perpetrators are either rarely investigated or prosecuted.

The government has undertaken institutional reforms to investigate complaints of torture and other cases of human rights violations allegedly committed by State security forces and law enforcement agents, i.e. the Office of the Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), the Philippine National Police (PNP)-Internal Affairs Services (IAS), and the Human Rights Affairs Offices of the PNP and the Armed Forces of the Philippines (AFP) both established in 2006.
These mechanisms however are not functioning independently and effectively as alleged suspects are not subject to suspension or reassignment during the process of investigation and very few who are responsible are investigated or prosecuted.

The Philippine Alliance of Human Rights Advocates (PAHRA), Task Force Detainees of the Philippines (TFDP), Balay Rehabilitation Center and Medical Action Group (MAG) among others with support from the International Rehabilitation Council for Torture Victims (IRCT) have been actively involved in the following cases of torture in the Philippines, which shows only that the military and law enforcement agents continue to practice torture:

1. Lenin Salas, Jose L. Gomez, Jerry Simbulan, Rodwin M. Tala and Daniel Navarro vs. PSupt. Madzgani M. Mukaram and John Does as respondents, docketed as NPS Dockets No. III-13-INV-10-01135 for violation of Republic Act No. 9745 otherwise known as the Anti-Torture Act of 2009;

In connection with the Lenin Salas et al case against PSupt. Mukaram, the torture complaint was filed last September 21, 2010 at the Office of the City Prosecutor of the City of San Fernando, Pampanga. The Office of City Prosecutor of the City of San Fernando, Pampanga issued resolutions dated July 21, 2011 and November 21, 2011, and dismissed the complaint against respondents.

The decision of the Prosecutor attested that in the case finding it is probable that torture had taken place based on the forensic medical reports submitted in court but at the same time dismissed the victims’ claim that they could only identify their assailants through their voices since the victims were blindfolded from the time of arrest and during the alleged torture. This decision has now been appealed through a petition for review filed before the Department of Justice (DOJ) but as of August 5, 2012, no decision has been issued. The alleged victims are still detained on criminal charges and their relatives have complained about harassment and intimidation from unidentified men, whom they believe to be members of security forces.


In relation to Cabais’ case, on December 13, 2010, the CHRP regional office in Bicol filed, on his behalf, a case of torture against the soldiers involved. In January 2011, the Municipal Circuit Trial Court (MCTC) of Polangui-Libon-Oas issued a warrant of arrest for several members of the 2nd Infantry Battalion of the Army’s 9th Infantry Division. In March 2011, due to fears of reprisals, Balay, MAG and IRCT facilitated and ensured Cabais’ release on bail.
The prosecutor in this case found probable cause for the issuance of a warrant for the arrest of alleged torture perpetrators of Cabais. However, the warrant of arrest could not be served because the AFP officials claimed that the accused soldiers named on the warrant were not in their roster despite the official records indicating their names, rank, position and unit. As of August 5, 2012, the accused soldiers remain at large.

3. **Case of Abdul-Khan Ajid y Balintining in Sumisip, Basilan.**

Ajid was stripped naked and gasoline was poured on his body, including in his ears. His interrogators rubbed red chillies on his anus, after which a bottle full of gasoline was also forced into it. Then his captors set him on fire. This was how Ajid, the suspected member of the Abu Sayyaf arrested by members of Army Special Operations Task Force (SOTF) in Basilan, said his interrogators treated him while under military custody after his arrest at home in Sumisip, Basilan last July 23, 2011.

His relatives were able to see him only when Judge Leo Prinsipe of the Regional Trial Court (RTC) in Basilan granted the petition for a writ of habeas corpus. They brought Ajid to the Basilan Community Hospital, but he was later transferred to the Zamboanga City Medical Center for treatment of his third degree burns. The doctors who examined him were at first reluctant to issue a findings related to torture. They apparently fear the reprisal of authorities that may be implicated in the incident. Subsequently NGO doctors made a thorough examination of the victim in accordance with the Istanbul Protocol and concluded that the victim suffered torture as defined by law and the Convention Against Torture.

Investigation was conducted by the military when the NGOs filed a complaint with the AFP Human Rights Office. Based on information given by Colonel Domingo Tutaan Jr., head of the AFP Human Rights Office, four members of the Army SOTF were disarmed, relieved of their duties and restricted to their station in Basilan. Facing investigations are Captain Sherwin Guidangen, Staff Sergeant Elmer Magdaraog, Sergeant Edgardo Santos and Sergeant George Awing. As of August 6, 2012, there is no development on the case.

4. **The case of torture against Senior Inspector Joselito Binayug in a police station in Manila**

In August 2010, a national television news program broadcast a mobile-phone video of a police officer torturing a suspected criminal (identified as Darius Evangelista) while other officers at Asuncion police station in Manila looked on. Evangelista has not been found.

The PNP dismissed Senior Inspector Joselito Binayug from the service on January 14, 2011 after Task Force Asuncion, which was formed to investigate allegations of torture at the Asuncion police station, confirmed that he was the police officer in the video. It
was reported in June 2011 that dismissed Police Inspector Binayug was a part-time instructor at the privately run Philippine College of Criminology-Manila Law College (PCCR-MLC), where he taught Crime Detection Investigation.

Manila RTC Branch 1 Judge Tita Bughao Alisuag issued a warrant for the arrest of seven police officers including a superintendent dated November 3, 2011, for allegedly torturing to death Darius Evangelista, after finding probable cause for violating the Anti-Torture Act of 2009. They are Senior Inspector Joselito Binayug, SPO3 Joaquin de Guzman, SPO1 Rodolfo Ong Jr., SPO1 Dante Bautista, PO1 Nonito Binayug, PO1 Rex Binayug and Supt. Rogelio Rosales Jr., because of “command responsibility” since he was the chief of the Police Station 11 in Binondo, Manila, at the time of the alleged torture. Nonito is Binayug’s younger brother while Rex is a relative.

SPO1 Rodolfo Ong and PO1 Rex Binayug were placed under arrest after they surrendered in April 2012. The principal suspect Joselito Binayug and four others accused remain at large.

**RECOMMENDATIONS:**

**The State Party should:**

- Announce public statement to end impunity for torturers as an important policy pronouncement that torture will not be tolerated.

- Ensure all detainees are afforded in practice, all fundamental legal safeguards from the very outset of their detention. These include, in particular the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of their detention, including the charges filed against them, as well as appear before a judicial authority within the prescribed time limit depending on the gravity of the alleged offense and in accordance with law.

- Institutionalize mechanism that law enforcement agents and State security members that are alleged to have planned, commanded and perpetrated acts of torture should be reassigned and/or suspended during the process of investigation depending on the grave nature of their alleged crimes.

- Ensure and elaborate on the respective mandates of several mechanisms and describe how they coordinate their activities to avoid overlaps and how their mandates are clarified in investigating torture complaints.

14. Please respond to allegations that arrests without warrants are widespread particularly under the Human Security Act of 2007, which Act also allows detention
without charge for up to 72 hours. It is also reported that most individuals are held in detention for longer than the maximum prison terms that they would have served if convicted. Please provide information on the measures taken to ensure compliance with the provisions of the Covenant with respect to persons deprived of their liberty.

From 2003 to 2011, TFDP has documented 891 cases of arbitrary arrest and detention with 2,886 victims. It documented a case of arrest and detention using the Human Security Act in 2008. Edgardo Candule, an Aeta farmer was arrested in Barangay Carael, Botolan, Zambales on March 21, 2008 allegedly by 20 members of the Philippine National Police with long firearms and clad in full battle gear.

The victim was brought to the Botolan PNP and was later transferred to Camp Conrado S. Yap in Iba, Zambales. Inside the camp, Candule claimed that he was interrogated by men who did not identify themselves. He was placed in a room where he was punched and electrocuted to force him to admit that he owns the 0.45 caliber pistol, a magazine assembly for caliber 0.45 and live ammunitions which were allegedly seized by the police during the search in the house. He was also threatened to be killed should he deny being a member of the New People’s Army. The police also allegedly said that Candule along with his group were under surveillance for so long for their alleged terrorist activities in the area. Candule was later transferred to a provincial jail in Iba, Zambales on March 24, 2008. He was only brought to court a month after on April 29, 2008.

On November 10, 2010, he was discharged from prison when the case filed against him, one for illegal possession of firearms and ammunitions and the other for the HSA were both dismissed.

The HSA Section 50, supposedly has a safety net to protect those who will be accused of terrorism without basis - a damage clause for five hundred thousand pesos for every day that he or she has been detained or deprived of liberty or arrested without a warrant as a result of such accusation. The amount of damages, according to the provision, should be automatically charged against the appropriations of the police agency or the Anti-Terrorism Council that brought or sanctioned the filing of charges against the accused. It also said that the compensation shall be released within 15 days from the date of the acquittal of the accused. However, Candule has not received compensation up to now. He claims he is entitled to 480.5 million pesos from the police. The case is still in court.

15. Please explain the measures that have been taken to investigate the circumstances surrounding the illegal arrest of 43 health workers in Morong town on 6 February 2010, who were detained until 11 December 2010. Furthermore, please respond to allegations that the AFP and the PNP arrest and detain individuals arbitrarily and that in 2010 alone 80 and 142 cases of arbitrary arrest and detention, respectively, were documented.
What measures have been taken for the investigation and prosecution of law enforcement personnel involved in arbitrary arrest and detention

Bases on TFDP documentation, victim of arbitrary arrest and detention from 2010 to 2011 were 239.

Article 125 of the Revised Penal Code (RPC) provides that no custodial investigation shall be conducted and the suspected person can only be legally detained by the investigating officer for the allowable period called “12-18-36 hours” (as per amendment under Executive Order No. 272 dated 25 July 1987). A person subject of an arrest without a warrant must be delivered to the proper judicial authorities within 12-36 hours depending on the gravity of the alleged offense.

The 1987 Constitution guarantees that “no search warrant or warrant of arrest shall [be] issued except upon probable cause,” but the police and military on most occasions arbitrarily and excessively violate this with impunity. It has become a “systematic and widespread” practice by them to execute arrests and searches even without a lawful court order using justification such as ‘hot pursuit operation.’

Although the government outlined how legal safeguards for detained persons as stipulated in Republic Act (RA) No. 7438, in practice, this is extensively violated by authorities. There are reported cases that arresting officers do not have proper identification neither the required warrant of arrest. They merely “invite” the victim for questioning.

Likewise, in most cases, victims of arbitrary arrest and detention were those arrested without warrant or merely “invited” for questioning by law enforcement personnel or military. Although the law guarantees the same protection both to persons arrested with and without warrant (read: “invited”), the reality on the ground tells otherwise. Under the Rules of Court, Rule 122, persons arrested without a warrant may ask for a preliminary investigation where they can produce evidence in their defense, or request to be submitted to inquest proceedings to determine if they should be held in custody and charged in court. Individuals arrested without a warrant must be brought to a judicial authority within 36 hours for crimes such as rebellion. However, in many circumstances, these legal safeguards are not fully implemented.

The pre-trial investigation procedure suffers from significant deficiencies, which prevent many cases from ever reaching the courts. The lack of forensic medical capacity, the fear of victims and witnesses to testify, and the reluctance of the investigating authorities to prosecute create an environment where it is very easy to discard cases even before they reach the courts. The lack of quality documentary and testimonial evidence offer a good excuse to close most investigations at the investigatory stage.

RECOMMENDATIONS:
The State Party should:

- Ensure effective measures to reduce the duration in custody and detention before charges are filed in court.

- Institutionalize and strengthen the multi-stakeholder National Monitoring Mechanism (NMM) on cases of human rights violations. This mechanism could be strengthened through replication at local levels and ensure appropriate allocation of resources by the government through international funding donors.

- Ensure the systematic compilation of updated list of detention centers and facilities under the jurisdictions of the PNP, AFP and other concerned government units including data of prisoners and inmates therein such as, among others, names, date of arrest and detention, and the crime or offense committed. Ensure such list be made available to the public at all times.

16. The Department of Interior and Local Government (DILG) reported that most places of detention in the State party operate at an average of 400 per cent over their designated capacity, and that Manila city prison that was built to hold 1,000 inmates, held 5,300 inmates by the end of 2010. It is also alleged that juveniles are not segregated from adult prisoners. Furthermore, it is reported that in many provincial prisons, female prisoners are held together with male inmates, and that male correction officers continue to guard female inmates. Please provide information on the measures being taken to reduce overcrowding and improve the sanitary conditions of prisons in the State party to comply with the rights under the Covenant. What alternative forms of sentencing has the State party adopted to foster prison decongestion? What measures are being taken to segregate juveniles and adult prisoners, on the one hand, and female and male inmates on the other hand?

The Bureau of Corrections (BuCor) which is under the Department of Justice (DOJ) is in charge of confinement/safekeeping of offenders for national penitentiaries and correction of offenders whose sentence is above three years. While the Department of Interior and Local Government (DILG) oversees two custodial clusters, the Bureau of Jail Management and Penology (BJMP) which takes custody and safekeeping of municipal, city and district prisoners, as well as national detainees awaiting investigation, trial or transfer to the national penitentiaries: Philippine National Police (PNP) which directly runs about 61% of the total jail facilities within the jurisdiction of the BJMP and the provincial jails managed by Local Government Units (LGUs).

The Department of Social Welfare and Development (DSWD) which maintains regional rehabilitation centers for juvenile delinquents; and the Provincial Governments which exercise supervision and control over provincial and sub-provincial jails for offenders
convicted with a prison sentence of six months and one day to three years and detainees whose cases are being tried by regional trial courts.

The Department of National Defense (DND) also has special detention centers for persons deprived of their liberty under military custody.

In terms of resources, the BJMP has an appropriated budget of P4.47 billion in 2010. Under the 2011 budget, estimated P5.15 billion has been allocated for BJMP. These amounts include the P50-a-day subsistence allowance and P3-a-day medicine allowance per detainee. While the BuCor, it has an appropriated budget of P1.37 billion in 2010. Under the 2011 budget, estimated P1.51 billion has been allocated for BuCor. These amounts also include the P50-and P3-a-day subsistence and medical allowances. Inmates in provincial jails are worse off with an average food budget of only P20 to P30 per inmate per day. The national average budget is 0.35 centavos per inmate.

Conditions of detention in prisons and other places of detention are considered as inhuman and degrading treatment. A case in point is the New Bilibid Prison (NBP) in Muntinlupa City which was constructed in 1935, since that time there have been no major renovations done on the prison facilities and its administration building. Jails are similarly in dire need of proper maintenance and repair. It is to be noted that some improvements have been made but by support from the international humanitarian and human rights organizations like the International Committee of the Red Cross (ICRC).

According to the BJMP data, as of May 2012, out of the 414 jails in their control, 314 of these are suffering from jail congestion at 318% congestion rate. As of May 2012, there are 69,735 inmates and detainees under the jurisdiction of the BJMP. According to the Commission on Human Rights of the Philippines (CHRP), the congestion rate on the national average is at 292 percent congestion. In Metro Manila alone per inmate, it is 410 percent or 0.89 square meter per inmate. There are seven regions which are worse off than the national average for jail congestion. Most congested jails are in Region 4.

The national standard is for each inmate to have a reasonable living space of at least 4.7 square meters. But with the actual capacity increasing thrice as much as the ideal capacity, each inmate is now squeezed into a cell area of less than 1 square meter. That space is not even enough for one inmate to fit when he or she sleeps lying down, one sleeps while sitting or standing, or agrees with others to take turns to sleep.

Related to the issue of overcrowding is the lack of adequate bedding, not provided with beds and with mattresses or blankets, inmates use pieces of cartons to serve as barrier between the body and the cold cell floor.

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95 See full report: http://www.bjmp.gov.ph/data/congestion_rate.html
Lack of potable water and poor ventilation in many jails in the country causes health related problems among inmates. In some, the result is the non-rehabilitation of inmates and detainees. Tuberculosis, for example, from 2004 to the 3rd quarter of 2010, a total of 253 inmates died from pulmonary TB, which remains one of the leading reasons for jail mortality. There were 1,566 TB cases in 2004, which peaked to 2,092 cases in 2009. TB incidence is about 3.5 percent of the total jail population, a high-risk tipping point—and a very lethal one.

On the social infrastructure aspect, high jail congestion ups the ante to compete for very scarce resources—and puts the jails highly vulnerable to violence. Overcrowding and scarcity are potentially viral in igniting the fuse of intolerance, tension, animosity, discord, gang wars and even death.

On the document management, adding to the delay in the case is the lack of a centralized system of data and document management by the prison and jail institutions. Thus, probation, parole and other alternative modes of correction and rehabilitation are not maximized simply because information about the inmates and detainees could not be retrieved.

Likewise, it is unclear whether provincial LGUs submit a tally and statistical information to the DILG on a regular basis since local executives have the mandate to devise their own prison registry system.

Based on the BJMP regulations, female and male inmates should be held in separate facilities and in national prisons, overseen by guards of the same sex, but these were not uniformly enforced.

According to the government’s responses to the UN Committee against Torture (CAT) Follow-up to the Concluding Observations in 2010, the regular inspection of lock-up cells, which is currently being undertaken by the PNP, functions as a measure to prevent sexual violence in detention.

However, based on reports, women in detention are also reportedly the victims of torture and other forms of ill treatment, including rape and sexual abuse, by prison officials with impunity. Women are vulnerable especially where the prison and jail officers are of the opposite sex. A clear contributing factor to sexual violence against women in prisons is non-separation of male and female inmates. In provincial and district jails, male guards sometimes supervise female inmates directly or indirectly. This situation could lead to sexual harassment against female inmates such as with the case of Marilou Aligato, political detainee at Sub-Provincial Jail in Ormoc City, who filed a sexual harassment case against her jail guard in 2008.

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96 http://www.state.gov/j/drl/rls/hrrpt/2011/eap/186301.htm
97 See UN Doc. CAT/C/PHL/CO/2/Add.1
According the TFDP analysis, there are cases where women inmates and detainees are not allowed to have conjugal visit as compared to male inmates and detainees whose partners and wives are allowed to stay with them and enter the prison premises for specified period of time.

Juveniles or Children in Conflict with the Law (CICL) continue to suffer inhumane conditions in jails in terms of food, facilities, treatment (verbal, physical, emotional abuse). In terms of health conditions, many suffer skin diseases because of food, overcrowding, unventilated and unhygienic detention facilities. Most diseases of children are scabies, ringworms, tuberculosis and diarrhea.

For less grave offenses or victimless offenses under the Juvenile Justice Law, cases drag a long time for the CICL especially if the Court Judge schedules a hearing every six months (obvious in Regional Trial Court Branch 9 in Manila, Antipolo RTC and other Courts).

No measures are being undertaken to address these issues, because these issues have been the same issues in the previous years, but until now, no improvements have been made.

Children were detained with adult inmates in overcrowded facilities, exposing CICL to abuse by other prisoners. CICL were also denied prompt access to social workers, lawyers and families following arrest, and suffered lengthy delays before being brought before a judge and before their trials were concluded. The old and the sick inmates, because of the long delay in the disposition of their cases, some inmates and detainees are already aged inside the detention facilities. Others have become sick while inside the correctional facilities.

Indeed, conditions in detention facilities across the country breed torture and various forms of other cruel, inhuman or degrading treatment and punishment such as “takal” (initiation hazing) system. Many of these troubling conditions have been well documented and at the acquiescence of jail authorities. Gangs hold tremendous sway inside the detention facilities, and corrections officials often cede power to so-called “mayores” or gang leaders due to corruption or in an effort to preserve institutional order. Detainees most vulnerable to abuses and extortion regularly seek protection from the gangs, often providing money or sex in return.

On October 17, 2010, staff of the Task Force Detainees of the Philippines (TFDP) went to the Bataan District Jail (formerly Bataan Provincial Jail) following a request for assistance from a relative of a political detainee. This involved the personnel and officials of the BJMP Region III who arbitrarily demolished the inmates’ “tarima” or make-shift cubicles, starting with those being used by political detainees. This prompted the inmates to hold
a noise barrage. The BJMP-Region III used unnecessary, excessive force to quell this act of protest by the inmates in the Bataan Provincial Jail.

The nature and location of some injuries sustained by many detainees suggest that they were beaten allegedly by jail guards. Indeed, the use of pressurized water hose had already caused the detainees to lie prostrate on the ground. Worse, rubber bullets were fired at some detainees, belying the claim of jail guards that the gun shots were only warning shots. These rubber bullets were not officially issued by the government and their use was not officially sanctioned.

Prior to the demolition, the BJMP closed down the cooperative store run by political detainees. Conjugal visits were also shortened to an hour. There were also reports of excessive frisking and inspection of relatives during visits. ⁹⁸

In terms of alternative measures to deprivation of liberty such as community service or suspended sentences are available to address the prison decongestion, there has been no significant actions being done by the government. Given the budgetary constraint facing the country’s correction system, it is both prudent and judicious to continuously be on the move for alternative solutions and innovations when it comes to rehabilitation of elderly, ill and infirm that will bring greater efficiency in rehabilitation of prisoners as well as towards conformity to the principle of restorative justice.

**RECOMMENDATIONS:**

**The State Party should:**

- Ensure the enactment of House Bill No. 316 otherwise known as the BJMP Modernization Act this 15th Congress that seeks to upgrade the physical facilities of jails and detention centers which includes addressing the functional overlaps and diffusion in the conduct of corrections and restoration activities of inmates and detainees.

- Ensure the improvement of information technology systems and expertise to systematically and properly maintain inmates’ records

- Work for development and immediate adoption of unified and coherent set of policies, standards, rules and procedures on prison and jail management and parole, probation and pardons administration.

- Ensure effective and sufficient fund allocation to prisons and jails and put in place mechanisms to bring them in accordance with international standards.

⁹⁸ Task Force Detainees of the Philippines, Ang Matuwid na Daan – The Road Not Taken? The 2010 Human Rights Situation
• Ensure and guarantee access of CSOs/NGOs to prisons and all places of detention in provision of support services to detainees and prisoners.

• Ensure the full implementation of the Juvenile Justice and Welfare Act (RA 9344) by establishing diversion as the country’s preferred method of rehabilitating minors and allocating adequate budgetary requirements for the implementation of RA 9344 and other children’s rights laws.

17. According to information before the Committee, places of detention under the mandate of the Bureau of Corrections and the PNP are congested mainly with pre-trial detainees. Please provide information on any measures being taken by the State party to expedite the prosecution of cases and reduce the number of pre-trial detainees in the State party’s prisons and detention facilities.

Jail conditions in the country have contributed to sub-human conditions and ill-treatment of inmates. Some inmates took turns sleeping, and others slept on their feet. Lack of potable water and poor ventilation continued to cause health problems in jails. The slow judicial process exacerbates the problem of jail overcrowding and a system built for punishment, not for rehabilitation of offenders.

The custodial system in the Philippines is structured in a fragmented way. Such a decentralized system and local government autonomy make it difficult for government to implement measures to monitor and prevent acts of torture and cruel, inhuman or degrading treatment or punishment most especially in provincial and district jails which are obscure places from the national government’s vantage point. Provincial jail administration also has no comprehensive programs and lacking in standards in terms of methods of operations.

Absence of systematic registration of all inmates including minors and failure to keep updated records of all periods of pre-trial detention of inmates in a systematic recording system result in many inmates prolonged detention after they should have been released.

RECOMMENDATIONS:

The State Party should:

• Ensure the improvement of over-all management capacity and resources of agencies involved in custodial and correction activities.

• Strengthen the partnership between and among the Department of Justice (DOJ), Department of Interior and Local Government (DILG), the Commission on Human
Rights of the Philippines (CHRP) and relevant Civil Society Organizations (CSOs) working in the field of prison reforms in monitoring, developing and implementing relevant actions on prison reforms.

18. Please respond to allegations that there is widespread corruption in the judiciary. Please indicate any measures taken to combat this phenomenon and, also to improve judicial efficiency by filling in the 531 vacancies for judgeship position in the State party. Finally, please respond to reports, that although the law prescribes time limits for the disposition of cased by courts, it takes, for instance, an average of 5 to 10 year to obtain a conviction which partly affects the length of pre-trial detention.

Corruption is a serious issue that the Philippine judiciary is trying to address. The impeachment of Chief Justice Renato Corona in 2012 indicates that corruption may be taking place at the highest level of the judiciary, where the Chief Justice was impeached for his failure to disclose his Statement of Assets, Liabilities and Net worth (SALN). On the other hand, his removal from office by impeachment demonstrates Philippine society’s growing resolve to bring those responsible for corruption to justice.

There have been efforts to document judicial corruption. A Social Weather Station perception-based study in 2005 found: Corruption remains a major problem. According the US State Report on the Philippines in 2010, the judicial system (in the Philippines) suffered from corruption and inefficiency. Personal connections and sometimes bribery resulted in impunity for some wealthy or influential offenders, contributing to widespread scepticism that the judicial process could deliver due process and equal justice.

The example of Corona’s successor, Chief Justice Maria Lourdes Sereno, in releasing immediately to the public her Statements of Assets, Liabilities and Net Worth, can be considered a measure for combating judicial corruption. Other measures include those aimed at improving judicial efficiency such as A.M. No. 11-6-10-SC, the experimental Guidelines for Litigation in Quezon City Trial Courts, and the Rule of procedure for small claims cases.

The process for filling vacancies in the judiciary is a related concern. This process involves a Judicial and Bar Council, a multi-sectoral body, which submits lists of nominees, from which the Philippine President appoints members of the judiciary. Appointment of judges and justices by the President risks making them feel beholden to the President. Furthermore, it is the President who appoints members of the Judicial and Bar Council. Presidential appointment similarly risks making the members of the Judicial and Bar Council feel inclined to decide in accordance with the President’s preferences.

http://www.state.gov/documents/organization/160099.pdf
Delays in the administration of justice are another concern. In the Philippines, it takes five to ten years to obtain a conviction. Article VII, Section 15(1) of the 1987 Constitution of the Philippines requires all cases to be decided within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts. But these periods are not followed.

Elimination of slavery and servitude (art. 8)

| 19. Please provide updated information on: (a) the progress made to prevent trafficking in human beings, which is allegedly prevalent among women and girls for employment, prostitution and exploitation, (b) the prevalence of this phenomenon, expressed in up-to-date statistical data disaggregated by gender, age and ethnic origin; (c) the number of prosecutions, convictions, and sanctions imposed on persons involved in human trafficking; (d) any training programmes for professionals involved in implementing the State party’s measures against trafficking, including the police, the judiciary, members of the prosecution authorities and social workers; and (e) the successes and constraints of any programmes that are intended to assist victims of trafficking. In this context, please provide specific information on the implementation of the Anti-Trafficking in Persons Act. |

Human Trafficking has continued to remain a problem in the Philippines. In 2003, the Philippines passed Republic Act 9208 or the Anti-Trafficking in Persons Act of 2003 to combat the problem of trafficking. The US State Department classifies the status of the Philippines in the Trafficking Victims Protection Act’s (TVPA) to be under tier 2 or “those governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) the absolute number of victims of severe forms of trafficking is very significant or significantly increasing, or b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year”. 100 This is mainly due to the inability of the Philippine government to secure a significant number of convictions under the trafficking law. 101

The government has instituted further measures to combat trafficking including strict immigration controls. However, this raises risk of discrimination against women, and

100 Trafficking in Women and Children in Zamboanga, Basilan, Sulu and Tawi-tawi by United Nations Global Initiatives to Fight Human Trafficking
101 ibid.
profiling based on racial features. Legitimate travellers including migrant workers have been wrongfully prevented from travelling as a result. 102

A study conducted by Ateneo Human Rights Center (AHRC)103 on trafficked women in Zamboanga, Basilan Sulu in Tawi-Tawi gives the numbers of assisted victims and would-be victims of trafficking in persons from the Overseas Passengers Assistance Center (OPAC) show that 17.22% came from the Autonomous Region of Muslim Mindanao (ARMM) and whooping 46. 24% comes from Region IX, or the Zamboanga Peninsula.

20. Please explain the measures that are being taken to eliminate child labour, which is reportedly prevalent in the State party particularly in the informal business sector. Furthermore, please provide an update on the progress of the case involving a Metro Manila Garment factory that employed 10 child labourers

According to the documentation of Children’s Legal Rights and Development (CLRD)104, in the context of their direct service to Children in Conflict with the Law (CICL), it has documented cases of involuntary servitude and child labor which are prevalent in child detention centers (disguised as youth homes). Children were forced to cook food for the management, wash all dishes, clothes for in-house parents and wardens, clean toilet bowls of each cells and dormitories with their bare hands and without water. The youngest detainees are often bullied to do these dirty jobs.

These are prevalent in the child detention homes in Metro Manila where CLRD often conducts its visits.

In the cases of child sexual abuse (CSA) cases that CLRD handled and documented in Metro Manila, the CSA survivors were mostly scavengers picking up garbage and sell them, the others are vegetable vendors and domestic workers already at the age of 15.

These issues are unfortunately not being addressed in the absence of any program by the local government units.

Over the past decade, the incidence of child labor in the Philippines increased by almost 30% from 4.2 million in 2001 to 5.5 million last year105. This report was based on the surveys conducted by the National Statistics Office (NSO), the Federation of Free Workers (FFW), and the International Labor Organization (ILO).

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102 Commission on Human Rights of the Philippines Submission to the Universal Periodic Review-Philippines, June 2012
104 http://clrdc.wordpress.com/
105 http://www.interaksyon.com/article/35801/child-labor-in-philippines-up-by-30-percent-over-10-years
Out of this number, 2.993 million of this children were reported to be exposed to hazardous child labor\textsuperscript{106}. Hazardous child labor was higher among boys, with 66.8% as compared to girls with 33.2%\textsuperscript{107}. More than half of the child workers are employed in the agriculture sectors, mostly boys while the service sector employs more girls. There are also allegations that the children employed in hazardous conditions could include those involved in the worst form of child labor – the sex trade, drug trafficking, other illicit activities and armed conflict\textsuperscript{108}.

**Freedom of movement and right to privacy (articles 12 and 17)**

| 21. According to information before the Committee, political dissidents, human rights defenders and members of their families are put under surveillance by State authorities. Please explain how such measures are compatible with the Covenant. |

In 2009, a power point presentation entitled “JCICC AGILA, 3RD QTR 2007 OB VALIDATION RESULT”, allegedly from the Armed Forces of the Philippines 10th Infantry Division, otherwise known as the “Order of Battle” (OB), numerous political opposition, human rights defenders, lawyers and journalists were linked to or members of the White Area Committee (WACOM) of the Communist Party of the Philippines.

TFDP Personnel, Rita Melecio, a human rights worker since 1998, involved in documenting cases of human rights violations and helping political detainees, found her name in the said OB list. She is listed as Marietta Mulato (her maiden name) allegedly using an alias as Maring.

Prior to the report being made public, Melecio was able to find out that unknown persons have been asking about her and her work from neighbours in her hometown Toril, Davao. She later discovered that one of the persons asking about her was a member of the Military Intelligence Group (MIG) and a known rebel returnee who was working as an asset for the PNP.

The organization TFDP is also listed as a target in the presentation.

**Freedom of opinion and expression, and freedom of association (articles 19 and 22)**

\textsuperscript{106} http://newsinfo.inquirer.net/218947/philippines-has-3-m-child-laborers-nso-ilo
\textsuperscript{107} http://www.interaksyon.com/article/35801/child-labor-in-philippines-up-by-30-percent-over-10-years
\textsuperscript{108} http://newsinfo.inquirer.net/218947/philippines-has-3-m-child-laborers-nso-ilo
22. Please provide information on the measures taken to combat the use of bribes mainly by politicians to induce favourable reporting among journalist in the State party. Please explain the measures being taken to address the widespread harassment and killings of media practitioners, in particular journalists. Please respond to reports that the State party has failed to adequately investigate these killings and that prosecutions have been slow.

The use of bribes mainly by politicians to induce favourable reporting among journalist in the state party is rampant and the government is not doing anything to thwart this practice. Still continuing, measures taken by the government is minimal, superficial. Despite the unabated killings of journalists, the government does not have concrete measures taken to avert the killings. The government is consistent in creating task forces to address the problem, no conclusions/convictions. The task forces are good only for investigations but no resolution.

In 2009, a CNN report declared the Philippines as the most dangerous country for journalist due to the Maguindanao Massacre which was the single worst mass killing of journalist in history\(^{109}\). However, even before the massacre and even after the massacre, numerous journalists have been killed allegedly by those they have reported in unfavourable light.

On January 24, 2011, Gerardo “Gerry” Ortega, a broadcaster in Palawan was killed in a store in Puerto Princesa City. A certain Marlon Recamata was caught with the help of passing fire-fighters and bystanders. His alleged accomplices – Dennis Aranas and Armando Noel Loria – fled.\(^ {110}\)

The alleged perpetrator confessed and said that he and his group were hired to kill Gerry for PHP150, 000.00 by Rodolfo Edrad, Jr. a former close-in security of former Palawan Governor Joel Reyes and a former aide for former Marinduque Governor Jose Antonio Carreon.

On Feb 5, 2011, Edrad surrendered, saying he feared for his life. He later admitted to investigators that Reyes and Carreon were the ones who ordered the killings.\(^ {111}\)

According to Patria Gloria, Gerry’s Widow, her husband had criticized Reyes in his daily radio program for the latter’s purported inability to stop the abuses and violations of environmental laws committed by mining companies in Palawan.\(^ {112}\)


\(^{110}\) http://newsinfo.inquirer.net/161089/what-went-before-the-gerry-ortega-slay-case

\(^{111}\) ibid.

\(^{112}\) ibid.
Reyes was able to escape the law allegedly with aid of two immigration employees at the Ninoy Aquino International Airport\textsuperscript{113} on March 2012.

23. Please respond to reports that foreign workers are prohibited from forming or joining trade unions unless the State party has a reciprocal agreement on this matter with their countries of origin. Please explain what measures are being taken to abolish this requirement.

CSOs are not familiar of the issue of the right of foreign workers joining unions. They are not privy to the measures taken by the government.

**Non-discrimination, marriage, family and measures for the protection of minors (arts. 2, 23, 24 and 26)**

24. Please respond to reports that domestic lay does not provide for divorce but that the courts generally recognize the legality of divorces obtained in other countries if one of the parties is a foreign national. Further, please respond to allegations that although marriages can be terminated through a legal annulment, the cost precludes annulment as an option for most families such that couples from many lower-income families simply separate informally without severing their marital ties. Please explain the measures taken to protect the rights of children in the event of informal separation particularly with regards to custody. Please explain what measures are being taken to ensure the registration of birth for all children in the country.

In its 2006 Concluding Observations CEDAW Committee expressed its concern about the lack of law on divorce, making it impossible for women to obtain legal divorce\textsuperscript{114}. The absence of a divorce law in this country affects more women than men because more women suffer from failed marriages due to their economic and many other forms of disempowerment. The absence of a divorce law is detrimental as it forces individuals to remain in irreparable relationships, exposes women and children to violence. Divorce can be a remedy to these situations and an enabling mechanism for individuals to pursue their well-being and development.\textsuperscript{115}

According to the Family Code (article 45), annulment of marriage is the only next possible remedy for the absence of divorce. The grounds for the nullity of marriage can be regards to technical requirements such as age of minority, lack of authority of solemnizing officer, absence of marriage license, bigamous or polygamous marriage,  

\textsuperscript{113} http://newsinfo.inquirer.net/263918/immigration-chief-wont-quit-despite-uproar-over-reyes-brothers-escape  
\textsuperscript{114} CEDAW/C/PHI/CO/6 §31.  
\textsuperscript{115} Women’s Legal and Human Rights Bureau submission to the Universal Periodic Review
mistaken identity, failure to secure judgement of annulment of previous marriage, incestuous marriage, void due to public policy or psychological incapacity.\textsuperscript{116}

A common ground encountered in practice is “psychological incapacity” because, the other grounds for a traditional annulment would have become inoperative because of cohabitation and perhaps because it is a catch all ground that has resisted precise definition by the courts\textsuperscript{117}.

According to research carried out by De Borja Law\textsuperscript{118}, in using the ground for psychological capacity for annulment would entail getting a psychologist/psychiatrist who will do the evaluation and be a witness to court. The evaluation costs between 15,000 pesos to as high as 40,000 pesos. Others charge additional per diem for testifying in court and the rate would depend on the venue of the proceedings.\textsuperscript{119}

Aside from this, additional costs will depend on the lawyers, the venue of the case (out of town cases usually entail more costs and expenses), the issue involved (property and custody issues).\textsuperscript{120} The cost for such nullity of marriage is too high for an average Filipino/Filipina.

Unfortunately, the President has not made the matter of legalizing divorce in the Philippines a priority. He stressed that his administration would focus first on getting the RH bill passed in Congress before taking up the contentious issue of legalizing divorce in the Philippines\textsuperscript{121}.

RECOMMENDATIONS:

The State Party should:

- Introduce a legislation which permits divorce, and remariage after divorce. Equal rights between men and women to administer property during marriage and equal rights to property on divorce should be granted.

25. According to information before the Committee, minors continue to be used in a production of child pornography and cybersex operations. Please provide information on: (a) the prevalence of this phenomenon, expressed in up-to-date statistical data disaggregated by gender, age and ethnic origin; (b) the number of prosecutions, convictions and sanctions imposed on persons involved in implementing the State

\textsuperscript{116} http://jlp-law.com/blog/annulment-divorce-legal-separation-in-the-philippines-questions-and-answers/
\textsuperscript{117} http://deborjalaw.com/2009/04/11/philippine-annulment-top-ten-10-questions
\textsuperscript{118} http://www.deborjalaw.com
\textsuperscript{119} ibid.
\textsuperscript{120} ibid,
\textsuperscript{121} Elefante, Fil V. 2011, May 23 “Pinoy: no to Divorce” http://philippinesgraphic.com
party’s measures against child pornography, including the police, the judiciary, members of the prosecution authorities and social workers; and (d) the successes and constraints of any programmes that are intended to assist minors as victims of pornography.

CSOs are not familiar of this issue and are not in position to provide information.

26. Please respond to allegations that children continue to be recruited by militias for insurgency activities where they are involved as combatants and perform auxiliary tasks. Please provide information on the progress made so far to prevent the recruitment and use of child soldiers. Please explain the measures being taken to address the reported increase in recruitments in 2010/11 and ensuring effective monitoring, as well as coordination and sharing of information among all relevant international and national stakeholders.

On allegations that children continue to be recruited by militias for insurgency activities where they are involved as combatants and perform auxiliary tasks there seems to be a grain of truth to the above mentioned statement of allegation. Despite their repeated policy announcements against recruitment of children, there are a couple of incidents that were monitored and documented by Sulong CARHRIHL of violations of the “Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law” (CARHRIHL) by the Parties to the agreement. The practice may not be pervasive but it is nevertheless resorted to as indicated by the field reports sent to Sulong CARHRIHL by its partners.

Four incidents of minors being recruited by the New People’s Army were documented by Sulong CARHRIHL and one (1) incident of being recruited for Citizens Armed Force Geographical Unit (CAFGU). All the children are between ages 13 to 17 and members of Indigenous People. Activities range from being used as a spy, camp guard or cook, and some to become combatant.

Even as the institution cannot ascertain the exact number of children involved in armed conflicts, PhilRights has been part of the drafting and lobbying for the passage of a bill which seeks to protect children in situations of armed conflicts, a broad category which includes children involved in armed conflicts.

Last May 23, 2011, the House of Representatives passed on Third Reading House Bill 4480 (An Act Providing for the Special Protection of Children in Situations of Armed Conflicts.

The bill was transmitted to the Senate for consideration the same day it was passed on 3rd Reading.

122 http://www.sulongnetwork.ph/new/about-us
Right to participate in public life and vote in free and fair elections, equality and non-discrimination (art. 25 and 26)

27. Please respond to reports that in 2009 the AFP issued a statement that it would allow lesbians and homosexuals to serve in the military provided that they adhere to the Code of Ethics, which includes policies against the expression of their homosexuality among military personnel. Furthermore, please respond to reports that the AFP issued a warning to gay police officers that they must not act in manner that is associated with homosexuality such as ‘swaying of hips’ or engaging in ‘lustful conduct’ failing which their employment would be terminated. How are such instructions compatible with the Covenant? Please explain what actions are being taken to tackle homophobic attitudes and prejudices in state institutions and society?

During the Twelfth Congress (2001-2004), the Armed Forces of the Philippines (AFP), in its formal position paper at the public hearing of the anti-discrimination bill in Congress stated, “individuals who display and manifest overt acts of their homosexual orientations and the propensity to indulge in homosexual acts shall be excluded in the profession of arms. The Philippines National Police (PNP) also warned police officers that they would be relieved from duty, “if they sway their hips while marching, or if they engage in lustful conduct.”

However, from March 2009 to May 2012 the AFP, PNP and Philippine Military Academy (PMA) have been consistently stating in the media that they will not prevent gays, lesbians and bisexual persons from entering their institutions provided they will not engage in any indecent behaviour or show latent or overt homosexuality while strictly adhering to rules and regulations.

Through their media announcements, it seems on the surface that the Philippine military and the police are adhering to the non-discrimination clause of the Philippine Constitution (Art 2) and the ICCPR by its declaration of openness to admit gays, lesbians and bisexual persons in military and police service. Upon closer inspection the conditions required from gay, lesbian and bisexual applicants and cadets showed the

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127 The Philippine Military Academy is the country’s premier military training school. www.pma.ph
prejudices and negative stereotypes they have towards LGBT persons. Also, the military’s apparent strict adherence exclusively towards heterosexist gender binary (masculine and feminine) roles discriminate against those that fall short to this standard they consider as the benchmark of what constitutes being decent, proper and respectful.

The PMA publicly admitted that even though they do not prohibit gays in their military school, “having gays was not yet quite accepted in the PMA. As it is in Filipino culture, (gays are) not yet very acceptable outright.”

The generalized negative stereotyping of LGBT persons and the misconception that a person’s sexual orientation defines one’s gender expression are most evident on the common position of the APF, PNP and PMA towards gay and effeminate behaviour. Cadets who display effeminate or gay behaviour, which is against the code of conduct of the police and armed forces, will be punished either with a reprimand and/or a dishonourable discharge. It is also glaring that transgendered persons were not invited to join the military nor the police.

If the AFP, PNP and the PMA are serious in their non-discriminatory position they should open their invitation to transgendered persons to join the military and the police and they should formalize their non-discriminatory position by revising their respective Code of Ethics, making it illegal to discriminate persons who enter military and police service regardless of one’s sexual orientation and gender identity.

RECOMMENDATIONS:

The State Party should:

- Require AFP, PNP and PMA to formalize their non-discriminatory position towards LGBT persons by amending their respective Code of Ethics, particularly removing any discriminatory provisions on homosexuality

28. According to information before the Committee, the Commission on Elections (COMELEC) rejected an application for accreditation by an LGBT group LADLAD to participate in the 2010 elections on grounds of morality arguing that homosexuals are a threat to young persons. Please explain what measures are being taken to provide an environment in which all political parties and their members have equal rights and legal status to participate freely in the State party’s periodic elections.

On November 11, 2009, the Commission on Election (COMELEC) dismissed the petition of LADLAD LGBT Party list to run in the May 2010 national elections claiming that

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129 PMA now open to gays but don’t show it. Dona Pazzibugan and Frances Mangosing, July 2012. http://newsinfo.inquirer.net/226686/pma-no-ban-on-gay-lesbian-enrollees
LADLAD promotes “immorality” and “a threat to the moral and spiritual degradation of the youth.”

LADLAD filed a petition to the Supreme Court on January 4, 2010 to overturn the COMELEC decision, which was supported by the Commission on Human Rights (CHR) when it filed a Motion to Intervene opining that the denial of LADLAD’s petition on moral grounds violated the standards and principles of the Philippines Constitution, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil, Political Rights (ICCPR).

On April 10, 2010 the Supreme Court of the Philippines written by Associate Justice Mariano del Castillo approved the petition of LADLAD to participate as a legitimate party-list while citing that the COMELEC failed to justify “what societal ills are sought to be prevented, or why special protection is required for the youth. Neither has the COMELEC condescended to justify its position that petitioner’s admission into the party-list system would be so harmful as to irreparably damage the moral fabric of society.”

The decision also mentioned that, “as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community.” And that, “moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. The denial of LADLAD’s registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest.”

It added that LADLAD’s “blanket justifications give rise to the inevitable conclusion that the COMELEC targets homosexuals themselves as a class, not because of any particular morally reprehensible act. It is this selective targeting that implicates our equal protection clause.” Furthermore, “laws of general application should apply with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors.”

The decision of the COMELEC clearly shows how state actors with personal religious homophobic biases discriminate and abuse the basic human right of LGBT persons. At the same time the decision of the Supreme Court recognizes the LGBT sectors right to association and expression and the right to participate freely in, which sets a legal precedent for the recognition of the LGBT as a sector.

RECOMMENDATIONS:

The State Party should:

- Require the COMELEC to produce a Policy Paper and/or a Resolution in its commitment and adherence to the non-discrimination (Art 2), equality (Art 2) and secularism (Art 6) clause of the Philippines Constitution in decision concerning application for accreditation of individuals and groups who want to exercise their right to political participation.

**Right of Persons belonging to minorities (Article. 27)**

<table>
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<th>29. Please provide information on any measures being taken to implement the Indigenous Persons Rights Acts, as well as to address the human rights violations of indigenous peoples in areas of armed conflict where they have allegedly been displaced, subjected to enforced disappearance and abducted by armed groups. Please respond to allegations that the AFP revived the vigilante group Alsa Lumad (Rise, Indigenous Peoples) and is arming indigenous groups as part of the AFP’s counter-insurgency strategy against and is arming indigenous groups as part of the AFP’s counter-insurgency strategy against the New Peoples’ Army (NPA). Please provide information on the measures being taken to ensure that indigenous peoples are protected from abduction, disappearance, and that their rights under the Covenant are fully respected.</th>
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CSOs are not familiar of this issue and are not in position to provide information.

**Dissemination of information relating to the Covenant and the Optional Protocol (Article 2)**

| 30. Please provide information on the steps taken to disseminate information on the Covenant and the First Optional Protocol, the submission of the fourth periodic report of the State party, and its forthcoming examination by the Committee. Please also provide more information on the involvement of representatives of ethnic and minority groups, civil society, non-governmental organizations, and the national human rights institution in the preparatory process of the report. |

In the 4th Philippines Report to the CCPR, (I. Introduction No. 7) it mentioned about consultations on the report conducted with the CSOs, including PAHRA, its member organizations Balay Rehabilitation Center, Task Force Detainees of the Philippines and the Families of Victims of Involuntary Disappearance.

No one from these organizations remembered any consultation called by the Department of Justice (DOJ) for the particular report. There were several engagements
in fora, meetings and cases with the Department and so with other agencies related to the varied concerns of human rights violations but not in particular for the 4th report to the HR Committee. There are incidences when the Government has given inaccurate and misleading information in their reports to the UN that consultations were conducted with CSOs. During the Philippines UPR 1st cycle review in 2008, the PHRC reported the same and the CSOs already brought this to their attention.

Dissemination of information on the Optional Protocol and 4th periodic report as well as Treaties, and other reports submitted to the UN has always been a weakness by the Government. The CSOs, on their own initiative with the desire to maximize the UN instruments and reporting procedures for their advocacies are abreast with developments.