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**Contribution from the
World Organisation Against Torture (OMCT)
to the
Universal Periodic Review (UPR) Process**

INDIA

THE PHILIPPINES

TUNISIA

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INDIA: Contribution from the World Organisation Against Torture (OMCT) to the Universal Periodic Review (UPR) Process

OMCT wishes to draw the attention to the serious situation as regards torture and other cruel, inhuman or degrading treatment or punishment in India, with a specific focus *on violence against children, economic, social and cultural root causes of torture and the situation of human rights defenders in the country.*

Firstly, OMCT is highly concerned that, although India has signed the UN Convention Against Torture, it has failed to ratify it yet.

1/ Human rights violations from members of the Border Security Force (BSF) in West Bengal

In 2007, OMCT denounced cases of human rights violations (torture, extra-judiciary executions by members of the Border Security Force - BSF) that mainly took place in West Bengal.

In addition, OMCT documented cases of **children** who have been arbitrarily killed by BSF members for, among other reasons, smuggling cows, in particular in West Bengal. OMCT also denounced cases of children being detained and tortured by police officials after being accused of robbery. In most cases, authors of these violations against children remain unsanctioned.

2/ Economic, social and cultural root causes of torture

The economic, social and cultural root causes of torture are particularly clear in India: for example, the **poorest and most marginalised groups** - including *Dalits* and *Adivasis* - experience severe discrimination and are especially vulnerable to torture and other cruel, inhuman or degrading treatment or punishment, including arbitrary arrest and detention. While the caste system is now illegal under Indian law, it continues to exert a strong *de facto* influence on Indian society, and vulnerable communities are often denied effective channels of complaint and must contend with disinterest on the part of the responsible authorities.

Women and **children** are also particularly vulnerable to economic, social and cultural rights abuses including in relation to nationality, property rights, trafficking and sexual abuse, education, employment and health, including reproductive health. In many cases, these abuses in turn increase the vulnerability of women and children to violence and ill-treatment and reduce their possibility of seeking redress.

India's rapid economic transformation is having a profound impact on the country. The effects of this transformation are iniquitous. In particular, OMCT wishes to draw attention to the establishment of Special Economic Zones, which involve allocating agricultural land for industrial purposes. In practice, this means taking land away from small-scale farmers and threatening traditional livelihoods. Where this leads to protest, this is often suppressed by force.

3/ The situation of human rights defenders in India¹

- In 2006, the Foreign Contribution Management and Control (FCMC) Bill 2005, which was to replace the 1976 Foreign Contribution Regulation Act (FCRA, already very restrictive regarding registration and the reception of foreign funds by NGOs), was finally dropped thanks to NGOs pressure. However, in December 2006, the government introduced the 2006 Foreign Contribution Regulation Bill (FCR), the provisions of which are similar to the FCMC. In particular, the FCR prohibits the acceptance and use of foreign contributions for "any activity prejudicial to national interests". In addition, through the FCR, the government would be able to control which organisations received foreign contributions, from whom, and for what purpose. Under Section 3(1)(f) for instance, an organisation of a political nature that is not legally a political party is not allowed to receive foreign funding, while Section 5(1) empowers the central government to

determine whether an organisation is “of a political nature” on the basis of its activities or programmes. Section 12(3)(b) of the bill further stipulates that the central government shall issue a registration certificate or grant authorisation to receive foreign funding if the organisation has “undertaken important activities in its field in the interest of the population”, without specifying what constitutes “an important activity”. In addition, similarly to the FCMC, the FCR introduces a costly registration renewal requirement applicable every five years for NGOs receiving foreign contributions, whereas registration was free of charge and permanent under the FCRA. Lastly, the FCR sets a limit of 50 % for the amount of foreign funds that NGOs can allocate for their administrative operations. Although the FCR was scheduled for debate in Parliament during the March 2007 budgetary session, as of late November 2007, it was still being considered by the Standing Committee on Home Affairs of the Indian Parliament².

- Defenders fighting for the rights of people who have been displaced by the construction of dams on the Narmada River have been subjected to numerous reprisals. The dam would damage the ecosystem and force the displacement of millions of poor peasants belonging mainly to tribal fishing communities and to the *Dalit* caste.
- Moreover, OMCT was particularly concerned by reports of acts of harassment against members of the National Project on Prevention of Torture in India (NPPT), brought to its attention by its network member People’s Watch.

4/ The case of the Indian National Human Rights Commission

Impunity of authors of human rights violations

During the parliamentary session held from July 24 to August 25, 2006, the *Lok Sabha* (lower chamber of Parliament), followed by the *Rajya Sabha* (Council of States), amended the 1993 Protection of Human Rights Act (PHRA) that set up the Indian National Human Rights Commission (NHRC). Unfortunately, while the National Human Rights Commission (NHRC) is now able to visit prisons without prior announcement, it is still not allowed to visit detention places used by the army and the paramilitary forces, nor to investigate the existence of illegal detention places in states such as Jammu and Kashmir. In this regard, impunity of officials and members of the security forces perpetrating human rights violations remains a critical issue. Moreover, the issue of corruption remains a serious problem.

Reaction of the NHRC to the 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders³

In a letter of July 6, 2007 responding to the 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders, the NHRC “disdainfully disagree[d]” with what it called the report’s “diatribes” against India⁴. That is, the NHRC disagreed with the report’s conclusion that India comes up short in its protection of human rights defenders. Indeed, with respect to India, the 2006 Annual Report of the Observatory identifies 14 individuals by name who had been arrested or otherwise subject to criminal investigations by Indian authorities, or who had their work disrupted by government action or inaction. In addition to listing individual defenders, the report also briefly discusses a proposed amendment to India’s already very restrictive Foreign Contribution Regulation Act (FCRA)⁵.

Even though the NHRC’s letter begins with the categorical declaration that “[t]he report is completely unfounded, uncalled-for and either based on poor research or insinuation”, it limits itself almost entirely to commenting on the brief section relating to amendments to the FCRA and the Protection of Human Rights Act (PHRA) - the NHRC founding statute. In response to some six pages of specific allegations of government misconduct and intransigence targeting specifically-named human rights defenders in India, the NHRC offered nothing but a blanket denial that such allegations were “completely unfounded”.

The NHRC’s agenda in refusing to engage with much of the substance of the Observatory report is evident from the remainder of the letter, which quickly moves from colourful language attacking the report to similarly colourful language extolling the virtues of the Constitution, the Government and the Court. The reader is informed that “the Constitution of India provides for the enjoyment of Fundamental Rights”; that “[t]he Government has a firm and abiding commitment to [the Constitution]”; and that “[t]he Supreme

Court of India is the sentinel of Fundamental Rights”. The NHRC’s letter goes on to attack the Observatory report by attempting to justify the need for the FCRA and an amendment strengthening it⁶.

The NHRC’s new policy position on the FCRA - that there is no reason for anyone to object to it - is profoundly discouraging. Aside from even acknowledging the legitimate concerns of the NGO community - once praised by the NHRC as “its natural allies, sternest critics and indispensable partners” - the NHRC’s letter suggests that NGOs who question this law or any law passed by Parliament are somehow suspect or disloyal.

5/ Recommendations

In view of these elements, OMCT recommends that the Government of India:

- Guarantee in all circumstances the physical and psychological integrity of Indian citizens, including human rights defenders;
- Ensure that legal safeguards guaranteed under national law are consistently applied and coherently enforced in accordance with international human rights standards;
- Order thorough and impartial investigations into human rights violations in order to identify all those responsible, bring them to trial and apply the penal and/or administrative sanctions as provided by law;
- Ensure that children are not unlawfully arrested and detained; ensure that in case of legal arrest, children are granted legal services and are protected from police brutality, irrespective of their economic means;
- Ensure that the human rights of Indian citizens are not compromised in the interest of economic exploitation, and halt all projects that harm the livelihoods of Indians or violate their economic social and cultural rights;
- Put an end to all acts of harassment against all human rights defenders in India, in accordance with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Article 12(2), which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- Ensure respect for human rights and fundamental freedoms throughout the country in accordance with national laws and international human rights standard.

¹ See Annual Report 2006 of the Observatory for the Protection of Human Rights Defenders.

² See http://rajyasabha.nic.in/legislative/amendbills/home/press_releasecxii_2006.pdf.

³ This paragraph is based on an in-depth analysis realised by Human Rights Features (HRF) n° 173, 15 September 2007, a joint initiative of the South Asia Human Rights Documentation Centre (SAHRDC), member of SOS-Torture network, and the Human Rights Documentation Centre (HRDC), <http://www.hrdc.net/sahrhc/hrfeatures/HRF173.htm>.

⁴ See <http://www.nhrc.nic.in/Word-image.doc> for the full version of the letter.

⁵ See above.

⁶ The FCRA places a stranglehold on all foreign funding for NGOs in India by requiring them to register with the Home Ministry and receive their permission before obtaining monies from overseas. FCRA approval is a matter of political expediency at the discretion of the Home Ministry. Human rights projects that the Government considers uncontroversial such as AIDS orphans or dowry deaths are relatively easily approved for foreign funding, while projects dealing with human rights violations that call into question the authority of the security apparatus, such as killings by security forces in Kashmir or even incidents of routine torture in jails, find their applications stalled, rejected or approved only on the basis of restrictive conditions.



THE PHILIPPINES: contribution from the World Organisation Against Torture (OMCT) to the UPR Process

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

1/ The gap between legal provision and implementation

In order to understand the human rights situation in the Philippines, it is important to recognise that the country possesses a comprehensive legal framework that, *de iure*, offers vital safeguards to Filipino citizens. However, *de facto*, the law is often inconsistently implemented and enforced. In the specific case of economic, social and cultural rights, these are clearly provided for under the law, but in practice they are poorly protected. This is due in part to loopholes in the law itself and in part to endemic problems related to poor governance and corruption.

2/ The extent of poverty

Poverty in the Philippines is clearly manifested in both rural and urban areas. Poverty in rural areas is persistent and deep-rooted, and approximately two-thirds of the country's poor live in rural areas. The large majority of farmers and peasants do not own the land on which they work, and this discourages agricultural improvements and diversifications of crops.¹ Government land reform programmes have failed to increase agricultural productivity or introduce improvements, and local structures of governance have been unable to influence this process. Affected groups and marginalized populations have found an alternative in armed rebellion to promote their concerns and meet their needs. Armed conflict, in turn, aggravates poverty of the communities directly affected, and the country in general.²

Counter-insurgency operations that involve the deployment of large numbers of military troops in rural areas can directly compromise the economic, social and cultural rights of the inhabitants of these areas. OMCT has been informed that in areas where a large number of troops are deployed, this has been accompanied by an increase in torture and other human rights violations.³

The high rate of urban poverty is largely a direct consequence of rural poverty and rural-urban migration, which in turn has contributed to rapid urbanisation. Many of the urban poor earn their livelihood in the informal sector. They must deal with social exclusion and lack of appropriate policy on housing tenure, security and freedom from eviction or displacement. As a result, it is estimated that there are some 262,000 informal settlements in the Philippines where there is a risk of conflict and violence.

3/ Trade liberalization, foreign investment and the risk of violence

In order to attract foreign capital and to accelerate domestic economic development, the Government of the Philippines has engaged in liberalization initiatives that risk undermining the economic, social and cultural rights of certain communities. Farmers struggle in the face of foreign investment and powerful landowners who are converting land from agricultural to industrial use. Indigenous peoples are struggling to protect their ancestral lands from the impact of mining, deforestation, and other development projects. Vulnerable groups such as these face serious challenges in opposing corporate interests and foreign investment companies.⁴ Consequently, only the wealthiest citizens are able to benefit from the iniquitous effects of this poorly-planned trade liberalization, while the unqualified labour force continues to be marginalized, excluded and forced to find subsistence in informal and

hazardous activities.⁵ These factors aggravate poverty and discontent, and hence intensify protest and conflict.

The liberalization policy undertaken by the Government of the Philippines resulted, *inter alia*, in the adoption of the 1995 Mining Code. This Code permits 100 per cent foreign ownership of mining projects in addition to offering tax breaks. Effectively it represents a blanket legislation in favour of international mining companies to carry out mining activities on indigenous lands. Furthermore, OMCT is concerned that workers' rights are jeopardised and/or disregarded by foreign investment companies in the context of the so-called "export economic zones". OMCT has received information that in these zones workers are denied their rights to strike and to participate in trade union activities.

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

4/ Land Reform and Violence

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

As a consequence of the drive towards industrialization taking place in the Philippines, landowners are increasingly converting agricultural land to agro-business or other forms of economic activity. Indeed, farmers and peasants are the most affected by the land reform for at least two reasons: the land they work on is being allocated for new activities, and they are prevented from acquiring their own land as a result of their limited economic means and the corruption of the land allocation system.

5/ Indigenous Peoples' Rights and Violence

Indigenous peoples are among the most marginalised groups in the Philippines, and are often victims of various forms of abuse, violence and exploitation.⁶ Furthermore, due to their poor living conditions and social exclusion, indigenous children are at risk of becoming involved in armed conflict and being recruited into armed groups. Armed conflict also renders indigenous women and girls more vulnerable to physical and sexual abuse.

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

OMCT points out that poorly regulated mining projects, ostensibly aimed at increasing employment and improving living conditions of the population, do not represent a sustainable development alternative. OMCT recalls that mining activities can have a negative socio-economic impact on the populations affected by these projects, including water deprivation and pollution, health threats, forced displacement and threats to livelihood.

The tensions generated by the conflict between indigenous and commercial interests have frequently led to protest actions on the part of indigenous organizations, resulting in turn in social conflict. Often, indigenous activists are prosecuted, harassed, detained and imprisoned for their efforts to protect the economic, social and cultural rights of their communities.⁷

6/ Forced Evictions and the Right to Housing

In the Philippines, more than one third of the urban population lives in informal settlements. More than half of these urban poor families (1.4 million) live in Metro Manila.⁸

In theory, the Government has addressed the concerns of the urban poor concern through its Urban Development and Housing Act of 1992 which is intended to provide adequate housing at affordable cost, basic services and employment opportunities for the slum residents in resettlement areas.⁹ However, owing to insufficient capacities at the local level and the lack of appropriate mechanisms to ensure cooperation and consultation in problem-solving, the conditions of urban slum residents have only worsened, and they continue to face the threat of eviction and demolition from both the government and private landowners.¹⁰

Over recent years, the Philippines has been engaged in a policy of urban “beautification” and “development”. The associated projects have involved the eviction of hundreds of thousands of people living in the urban areas concerned. Of these, the landless urban poor are the most severely affected by forced evictions.¹¹ This takes place despite the fact that the Constitution of the Philippines and the Urban Development and Housing Act provide legal protection for housing rights.

7/ Poverty and Violence Against Women

Among issues of particular concern is the absence of a law on divorce,¹² which effectively forces women victims of domestic violence to remain with their abusive husbands. A second key issue is the lack of legislation granting women and men the same rights to administer property during marriage.¹³ This effectively deprives women of their own means and livelihood and makes them economically dependent on their husbands, hence increasing their vulnerability to sustained violence.

Some groups of women are particularly vulnerable to violence. This is the case, for example, for women living in precarious conditions including indigenous women, women from poor Muslim communities and women living in rural and conflict-prone areas. Furthermore, these women often lack access to adequate vital services - including support and counseling services - and have limited access to justice.¹⁴ In addition, lack of economic opportunities may force rural women to migrate to urban areas, where the likelihood of their being exploited is higher and overseas trafficking is also a risk. Indeed, due to the poor economic situation of many women and girls, and despite of the Anti-Trafficking in Persons Act of 2003, the exploitation of Filipino women continues to increase.¹⁵

Another manifestation of the impact of poverty upon Filipino women is the feminization of overseas employment. Rural women are particularly affected by this phenomenon owing to their poor living conditions. Many Filipino women migrant workers, employed as entertainers and domestic helpers, are exposed to the risk of working conditions akin to slavery and to physical and sexual abuse.¹⁶

8/ Poverty and Violence Against Children

In all cases, poor, disadvantaged and marginalized children are more vulnerable to violence than their peers who enjoy the elements of an adequate protective environment. Similarly, poor and marginalized children are more likely to come into conflict with the law. As is the case for the national legal system in general, the juvenile justice system in the Philippines is tainted by the inconsistency between juvenile justice legislation as granted by the law and *de facto* practice.

Poverty and family or community breakdown can force children from their homes and lead them to live on the street children. In some cases they become involved in vagrancy, petty crime and substance abuse.¹⁷ In the Philippines these children are often apprehended without warrant and detained without access to social workers for long periods. They are also vulnerable to torture and ill-treatment. The fact that the majority of detained children are from the most marginalized and disadvantaged sectors of society means they do not have the economic possibility to appoint their own counsel. In turn, the absence of timely legal counsel undermines safeguards against torture or ill-treatment in detention. A further area of concern is the unreasonable amounts requested to obtain bail. These constitute an

insuperable financial barrier to children from disadvantaged families who, as a result, are forced to remain in extremely poor conditions of detention.¹⁸

Furthermore, as regards children, the high rate of child labour in the Philippines is a source of serious concern. According to a study carried out under the UN Common Country Assessment (2004), in 2001 approximately 4 million children between the ages of 5 and 17 were economically active in the Philippines. About 60 per cent of those were found to be engaged in hazardous work and exposed to exploitation. The same Assessment estimated that between 60,000 and 100,000 children are victims of sexual exploitation in the Philippines.

9/ Overseas workers and violence

Poverty is among the prime factors driving emigration in the Philippines. Many of those looking for work overseas rely on informal channels; these channels can turn out to be vehicles for various forms of exploitation, violence and trafficking. Women make up almost half of Filipino overseas workers.¹⁹ They may be exposed to discrimination and risk becoming victims of physical attacks, sexual assault and verbal, psychological and emotional abuse. They may be deprived the resources they require for their physical and mental well-being, exposed to contract violations and occupational health hazards, excluded from health and social services or compelled to work in slave-like conditions.²⁰

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

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

Perpetrators of violence against human rights defenders, including activists engaged in the protection of economic, social and cultural rights are rarely prosecuted, and the government has failed to implement appropriate measures to investigate such crimes. Furthermore, intimidation and threats of revenge impede the right to an effective remedy for persons whose rights and freedoms have been violated.²² The UN Special Rapporteur on extrajudicial executions concluded that there is a “passivity bordering on abdication of responsibility [...] in relation to such human rights concerns.”²³

In August 2006, President Arroyo created the Melo Commission to investigate the killings of media and workers’ activists. Human rights groups criticize this Commission for its lack of power to conduct investigations and for its membership, which consists entirely of government-selected commissioners.²⁴ Subsequently, on March 2007, President Arroyo signed the 2007 Human Security Act. With the aim of fighting terrorism, this new law foresees the 72-hour detention of suspects without charge. It also gives law enforcement officers the power to carry out surveillance and wiretapping and to sequester assets.²⁵ OMCT has been made aware of concerns that this Act may represent a further impediment to the work of human rights defenders. OMCT is particularly concerned that the Human Security Act will render activists still more vulnerable to being apprehended under the guise of anti-terrorist operations. There are indeed reports of members of indigenous communities being charged with and prosecuted for engaging in terrorist activities as a result of their efforts to defend their human rights.²⁶

11/ Recommendations

OMCT recommends that the Government of the Philippines:

- ensure that legal safeguards guaranteed under national law are consistently applied and coherently enforced in accordance with international human rights standards;
- ensure that the human rights of Filipino citizens are not compromised in the interest of economic exploitation, and halt all projects that harm the livelihoods of Filipinos or violate their economic social and cultural rights;

- ensure that the ancestral lands of indigenous peoples are adequately protected from potentially harmful development projects. In this respect, enforce the requirement to obtain the free and informed consent of affected communities prior to the initiation of any commercial activities on their lands, as provided by the IPRA;
- ensure that evictions are used only as a last resort, once all other alternatives have been exhausted, and that they are carried out in the full respect for human rights, in particular human dignity and the right to adequate housing;
- revise the Land Reform Programme in light of the discontent provoked by the current Agrarian Law, or draft alternative legislation that more equitably allocates lands, guarantees property rights and better addresses the concerns and interests of small farmers and landless peasants;
- adopt a new act that foresees the possibility of divorce, in addition to legislation that ensures women and men the same rights to administer common assets during marriage;
- ensure that children are not unlawfully arrested and detained; ensure that in case of legal arrest, children are granted legal services and are protected from police brutality, irrespective of their economic means;
- ensure the implementation of appropriate measures to investigate cases of extrajudicial executions and forced disappearances; ensure that the work of the inquiry commission is carried out in an effective and fully independent manner; and guarantee that the 2007 Human Security Act is applied in the full respect of human rights.
- put an end to all acts of harassment against human rights defenders in the Philippines, in accordance with the provisions of the 1998 UN Declaration on Human Rights Defenders, especially article 12(2).

¹ Common Country Assessment of the Philippines, 2004

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

² Common Country Assessment of the Philippines, 2004

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

³ Information from KARAPATAN, member of the SOS-Torture Network.

⁴ Common Country Assessment of the Philippines, 2004

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

⁵ Common Country Assessment of the Philippines, 2004

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

⁶ Common Country Assessment of the Philippines, 2004

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

⁷ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Mission to The Philippines E/CN.4/2003/90/Add.3, 5 March 2003, § 21, 29 and 32

⁸ Common Country Assessment of the Philippines, 2004

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

⁹ Common Country Assessment of the Philippines, 2004

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

¹⁰ Common Country Assessment of the Philippines, 2004

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

¹¹ http://www.cohre.org/view_page.php?page_id=250

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

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

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

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

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

¹⁷ “Philippines, A different childhood: the apprehension and detention of child suspects and offenders”

<http://web.amnesty.org/library/index/engasa350072003>

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

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

¹⁹ Common Country Assessment of the Philippines, 2004

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

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

²¹ Including cases of summary executions and extrajudicial killings of Mindanao peoples.

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

²³ Preliminary note on the visit of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, to the Philippines A/HRC/4/20/Add.3*, 22 March 2007, § 10

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

²⁵ http://www.senate.gov.ph/republic_acts/ra%209372.pdf

²⁶ http://www.tebtebba.org/tebtebba_files/ipr/stavenhagenpress.html



Tunisie: Contribution de l'OMCT à l'Examen Périodique Universel (EPU)

Ces dernières années en Tunisie, la situation quant au respect des droits de l'homme n'a cessé de se détériorer.

1/ Violations des droits de l'homme dans le cadre de la lutte contre le terrorisme¹

Le 10 décembre 2003, la « Loi relative au soutien des efforts internationaux de lutte contre le terrorisme et à la répression d'argent » entrainé en vigueur. Par la définition large et équivoque de l'acte terroriste donnée dans le corps de la loi de 2003, toujours plus de personnes sont directement visées par ces pratiques et leur protection est rendue de plus en plus difficile par l'ensemble des mesures restreignant les droits de la défense. Ainsi, la loi anti-terroriste de 2003 est également utilisée comme une arme de répression des militants engagés dans les champs politique, social et associatif.

Entre autres dispositions violant les libertés fondamentales de tout citoyen tunisien, on constate : un allongement des délais de prescriptions, une pénalisation du refus de témoigner, l'élimination de la possibilité de récuser un juge, la saisie des biens lorsque pèse une suspicion sur un individu, et surtout l'octroi de l'anonymat aux forces de police en cas de poursuites éventuelles.

Dans la majorité des cas, aucune preuve d'acte ou de projet violent n'a pu être établi au cours des procès basés sur la loi anti-terroriste et le cours de l'instruction dans ces affaires a été davantage orienté vers l'investigation des opinions et convictions religieuses des prévenus qu'à rechercher des éléments de preuves établissant des actes prohibés par la loi.

Les cas documentés font état d'arrestation sans mandat, de falsification des PV pour prolonger les délais de garde à vue, de détention au secret et du refus d'informer la famille. Les familles sont aussi particulièrement exposées, de plus en plus souvent victimes de mauvais traitements.

Par ailleurs et bien qu'incriminée en droit national, il a été constaté ces dernières années une généralisation du recours à la torture à tous les niveaux de la procédure pénale. L'entrée en vigueur de la loi antiterroriste a coïncidé avec la recrudescence du fléau de la torture. Loin d'être « sanctionnées par des peines d'une sévérité extrêmes »², ces pratiques sont utilisées en toute impunité et les bourreaux ne font l'objet d'aucune poursuites satisfaisantes, ni condamnation effective.

En octobre 2007, un certain nombre de prévenus dans des affaires de « terrorisme » ont déclenché à la prison de La Mornaguia une grève de la faim dans le but de réclamer l'amélioration de leurs conditions de détention et de faire cesser les mauvais traitements auxquels ils auraient été soumis. Cette action aurait déclenché une violente répression.

2/ Atteintes à la liberté d'association et de réunion

La liberté d'association en Tunisie demeure entravée par la non-reconnaissance persistante de nombreuses organisations indépendantes. La reconnaissance dont bénéficient certaines organisations ne les protège pas du harcèlement judiciaire et policier mis en place par les autorités afin d'entraver leur action.

La société civile indépendante tunisienne continue de subir des atteintes diverses à sa liberté de réunion. Depuis juin 2007, les informations indiquent que les intimidations de la police politique envers les membres des organisations de défense des droits de l'homme ne cessent de s'intensifier.

Cas individuels de répression des défenseurs des droits de l'Homme

Nombre de défenseurs à titre individuel ont subi des harcèlements. Ces actes de harcèlement visent à mettre fin aux activités de dénonciation des violations menées par différents acteurs de la société civile et se manifestent sous la forme de : dépôt de plaintes iniques, surveillance continue des moyens de communication, restrictions de voyage, refus de renouveler les documents de voyage, agressions physiques et verbales des défenseurs et de leur famille, menaces, campagnes de diffamation, etc.

3/ Atteintes à la liberté d'expression et à la liberté de la presse

La presse et les journalistes indépendants sont également la cible de mesures répressives, et le droit à la liberté d'expression est quasi systématiquement bafoué sur le territoire. Internet est sous haute surveillance, les autorités contrôlent la messagerie et bloquent les sites Internet à contenu critique. Plusieurs personnalités et rédactions ont été particulièrement ciblées par les autorités ces derniers mois.

4/ Atteintes au principe de l'indépendance du judiciaire

L'instrumentalisation de l'appareil judiciaire par les autorités tunisiennes révèle l'absence d'indépendance du judiciaire en Tunisie. En effet, les autorités sont fréquemment à l'origine de plaintes contre les organisations de défense des droits de l'homme qui visent à limiter voir bloquer entièrement leurs activités.

5/ Recommandations

Au vu de ces éléments, l'OMCT recommande au gouvernement tunisien de :

- Garantir en toutes circonstances l'intégrité physique et psychologique des citoyens tunisiens, y compris les défenseurs de droits de l'homme ;
- Garantir l'indépendance de l'institution judiciaire et veiller à l'application des conventions internationales ratifiées par l'Etat tunisien ;
- Instaurer des mesures efficaces de prévention contre l'usage de la torture et d'autres traitements cruels, inhumains et dégradants à l'encontre de personnes détenues par la police ou en prison ;
- Assurer une enquête immédiate, indépendante, impartiale pour toute allégation de torture et autres peines ou traitements cruels, inhumains ou dégradants et poursuivre en justice, le cas échéant, les auteurs de tels actes ;
- Assurer aux victimes de la torture le droit à réparation équitable et adéquate ;
- Prendre des mesures visant à rendre les lieux de détention conformes aux standards internationaux
- Mettre un terme à toute forme de harcèlement à l'encontre de tous les défenseurs des droits de l'homme en Tunisie en se conformant aux dispositions de la Déclaration sur les défenseurs des droits de l'homme, adoptée par l'Assemblée générale des Nations unies le 9 décembre 1998, et plus particulièrement à son article 12.2 qui dispose que « l'Etat prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination *de facto* ou *de jure*, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration ».

¹ Voir Rapport CLNT, organisation membre du réseau SOS-Torture , Rapport avril 2007.

² Cinquième rapport périodique soumis par le Tunisie au Comité des droits de l'homme le 25 avril 2007, CCPR/C/TUN/5, paragraphes 145