

Joint Report by NGOs with U.N. Consultative Status and endorsed by various (29) Philippine Civil Society Organizations¹

**Submission for the first session of the Universal Periodic Review
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Republic of the Philippines

Description of the methodology and the consultation process followed for the preparation of information provided under the universal periodic review

As stakeholders to the UPR, we in the Philippine NGO community prepared this report by conducting a National Consultation Workshop among local NGOs and civil society groups regarding the UPR process. This activity was organized by the Philippine Alliance of Human Rights Advocates (PAHRA) through the help of the Asian Forum for Human Rights and Development (Forum-Asia). The result of this workshop was the formation of a National NGO Caucus and a drafting committee that gathered credible and reliable information and data from the different organizations who participated in the Consultation Workshop. A draft report was distributed to various civil society organizations for validation before its submission to the OHCHR as the secretariat for the UPR process. In writing this report the drafting committee also considered the reports, recommendations, and observations of the different Special Procedures and Working Groups, which were submitted to the HRC.

It should be noted that despite the willingness of Philippine NGOs to participate and encourage a national consultation process with the State and the National Human Rights Institution (NHRI) in preparation for the UPR, the Philippine government and the NHRI have not taken any step towards this process and have been either unwilling or unable to institute dialogue and cooperation with civil society.

Issues and concerns based on the promotion and protection of human rights on the ground and implementation of international human rights obligations (specific issues)

1. While there are existing legal, constitutional, and institutional mechanisms that protect and promote human rights, these safeguards are constantly violated in actual practice by the military and law enforcement officials as they continue to disregard due process, abuse their power and commit violations of human rights. The Philippine Congress and the Department of Justice have also been ambivalent in relation to their role in addressing the issue of human rights. To validate this claim, the Special Rapporteur on Extrajudicial Executions, Philip Alston, in his preliminary report to the UNHRC last March 3, 2007 thus: *“there is a passivity (among government officials), bordering on an abdication of responsibility, which affects the way in which key institutions and actors approach their responsibilities in relation to such human rights concerns.”*

¹ This report of JOINTLY submitted by the following organizations with UN Consultative Status: the Federation Internationale des Ligues des Droits de L’Homme (FIDH), Asia Forum for Human Rights and Development (Forum-Asia), the Philippine Human Rights Information Center (PhilRights), Families of victims of Involuntary Disappearance (FIND); and, endorsed by the following organizations without Consultative Status: the Philippine Alliance of Human Rights Advocates (PAHRA), Task Force Detainees of the Philippines (TFDP), Association of Major Religious Superiors in the Phil. (AMRSP), Justice, Peace and Integrity of Creation Commission-AMRSP (JPICC-AMRSP); Balay Rehabilitation Center Inc., Claimants 1081; Moro Human Rights Center (MHRC), Philippine Network of Rural Development Inc.) PhilNet-RDI); Medical Action Group (MAG), Kasarinlan Kalayaan (SARILAYA), University Center for Human Rights Education (UCHURE), Citizens’ Council for Human Rights (CCHR), Center for Migrant Advocacy (CMA), TEACHERS, Social Watch-Phil., Action for Economic Reform (AER), Education-Network (E-net), Legal Resource Center-Kasama ng Kalikasan (LRC-KSK), Bukal Sining, Freedom from Debt Coalition (FDC), Kilusan para sa Pambansang Demokrasya-Central Luzon (KPD-CL), Alab Katipunan (AK), Pinay Kilos (PINK), Claret Justice and Peace and Integrity of Creation (Claret-JPIC), Phil. NGO Liaison Committee on Food Security and Fair Trade (PNLC); Pambansang Koalisyon ng mga Kababaihan sa Kanayunan (PKKK); Focus on the Global South; Justice, Peace and Integrity of Creation-Franciscan Sisters of the Immaculate Conception (JPICC-SFIC); and, the Philippine Coalition for International Criminal Court (PCICC), Mindanao Peoples’ Peace Movement (MPPM).

2. Based on the documentation of the church-based human rights organization Task Force Detainees of the Philippines (TFDP), from the period of January 23, 2001 to September 14, 2007, 409 cases of illegal arrest and detention affecting 1,460 individuals were recorded. (*see: attachment*) These individuals were arbitrarily arrested, detained for days, even weeks, without any formal charges. There were also documented cases of individuals subjected to torture and cruel, inhuman and unjust punishment. The cases of Marilou Aligato and the arbitrary arrest, detention and torture of Kaharudin Talib Usman in the course of the Philippine government's war against terror illustrate these forms of human rights violations. (*See: attachment*)

3. The use of torture to extract information or to inflict punishment continues to be employed by State agents, specifically the police forces and the military. Under the Arroyo administration TFDP has documented 125 cases of torture affecting 267 individuals. The Medical Action Group (MAG), a human rights organization focusing on right to health, conducted medical documentation for 10 cases of torture covering the period of 2006-2007. This documentation is included in the United Nations Voluntary Fund for Victims of Torture (UNVFVT) report submitted by MAG this year. A case included in the report was that of "J.D.," a 23-year-old unemployed male. He was arrested by members of the Mandaluyong Police Force in connection with the alleged shooting of Police Officer 3 John John Justo. While in detention, J.D. was repeatedly tortured and beaten up by other inmates at the instigation of the policemen manning the detention center. The medical findings of MAG showed that J.D. had contusions and abrasions all over his body. JD was also reported to be limping because his right foot was repeatedly hit by a metal rod during his interrogation.

4. Due to international pressure brought about by the visit of Prof. Philip Alston and the fact finding missions of different international organizations like the European Union, cases of extrajudicial executions have slightly decreased these past few months but not eradicated. TFDP documented the killing of peasant leader Franklin "Ka Frank" Labial on August 10, 2007. Mr. Labial was the president of the Don Carlos Bukidnon United Farmers Association, Inc. (DCBUFAI), an organization fighting against the attempt of DAVCO-SPI to acquire the lands awarded to the farmer beneficiaries under the Comprehensive Agrarian Reform Law (CARL). (*see: attachment*)

5. A major development in the issue of enforced disappearance is the promulgation by the Philippine Supreme Court of the rule on the Writ of Amparo for cases of Extrajudicial Executions and Enforced Disappearances. (*see: attachment*) However, this independent initiative of the Judiciary is being derailed by the Executive branch through an Executive Order 197 issued by the President instructing the military to observe safeguards against disclosure of military secrets and undue interference in military operations inimical to national security. (*see: attachment*)

August 13, 2007 two victims of enforced disappearance (Raymond and Reynaldo Manalo) managed to escape from their captors and are now under the protection of the Court. (*see: attachment*) Their testimony provides evidence of military involvement in the disappearance of two University of the Philippines students, Karen Empeno and Sherylyn Cadapan, and acts of torture that the military commits in interrogating suspects.

6. The human rights violations in the Philippines persist as a consequence of the counterinsurgency campaign being waged by the government. This fact has been mentioned by Prof. Alston in his preliminary report. However, to date, the Philippine government has yet to take the necessary steps toward the implementation of the recommendations made by Prof. Alston in his report.

7. The victims of the counterinsurgency campaign against the communist movement and the secessionist movement in the South are not only civil society groups but even civilians, particularly women, children and the elderly, who are caught in the crossfire between rebel groups and government forces. Balay Rehabilitation Center, a human rights organization whose primary mandate is to monitor cases of internally displaced persons, stated in their report that from January to March 2007 around 18,000 people in Midsayap, North Cotabato were displaced from their villages due to the intermittent clashes between the Moro Islamic Liberation Front (MILF) and government forces. Displacement of civilian populations commonly occurs as a consequence of intense and prolonged military operations, harassment, and massacre of families.

Issues and Observations pertaining to the Philippine Government's Voluntary Pledges and Commitments

8. The human rights community in the Philippines takes cognizance of the Philippine government's failure to realize the voluntary pledges and commitments made to the HRC. It has failed to enact pending legislation that would penalize acts of torture and enforced disappearances, and protect the rights of internally displaced persons. Since 1997, NGOs' efforts for the enactment of such legislations have been constantly stymied because they are not considered priority measures. The executive has also been reluctant to act on the ratification of the OPCAT and the Convention on Enforced Disappearance based on the reasoning that it will encroach on national sovereignty and that domestic laws can adequately deal with cases of human rights violations.

9. On the question of addressing impunity, the Philippine government has created 99 special courts to litigate cases of human rights violations. So far only few have filed cases because of fear of retaliatory attacks from alleged perpetrators who are government agents themselves. Human rights defenders and civilians still fall victims to human rights violations. To date, the Philippine Armed Forces has continued its practice of labelling NGOs and civil society groups critical of government policies and programs as "enemies of the state". In fact Col. Benedicto Jose, the head of the newly created Human Rights Office of the Armed Forces of the Philippines, in a meeting with human rights groups has branded the TFDP openly as a front organization of the Communist Party of the Philippines. Meanwhile, resistance and reluctance to provide information that could shed light on cases of human rights violations persist among witnesses, surviving victims and their relatives because of fear, retaliation and the overall culture of impunity that prevails in the country. To date, cases of human rights violations remain unresolved.

10. An important area of concern is the implementation of the Human Security Act of 2007. Although its full impact on the issue of human rights is yet to be seen, no less than the Special Rapporteur on Terrorism and Human Rights, Martin Scheinin, in a statement issued last March 12, 2007 urged the Philippine Congress to reconsider the implementation of the law since it could have a negative impact on human rights in the country and could undermine the rule of law. He further added that there are some positive aspects of the definition of terrorist acts in the Human Security Act but the end result is an overly broad definition which is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the International Covenant on Civil and Political Rights (ICCPR).

11. The Philippine government has also instituted measures that would further limit NGO and civil society participation in governance instead of strengthening it. One example is the reconstitution of the Presidential Human Rights Committee (PHRC), which led to the arbitrary removal of two human rights NGOs, the Philippine Alliance of Human Rights Advocates (PAHRA) and the Families of Victims of Involuntary Disappearance (FIND) from its membership. Originally, the PHRC was established in 1988 as a consultative body between NGO and the government under the supervision of the Department of Justice (DOJ). However, recently, supervision of the PHRC was transferred through an administrative order to the Office of the President.

It should also be noted that the National Action Plan which the PHRC is overseeing with the Philippine NHRI was drafted without the participation of human rights groups in the Philippines. There is also failure on the part of the NHRI and the Department of Interior and Local Government (DILG) to implement its plan to make Barangay Human Rights Action Centers (BHRAC) fully operational, which could help strengthen human rights awareness and NGO partnership at the grassroots level. BHRACs were either co-opted by politicians as part of their political machinery to serve their own vested interests or ceased completely to function.

12. The contents of the Philippine government's program and its conduct, in attaining the MDG goals as presented by the Philippine Mission to the United Nations, fail to adhere to the principles set forth in the Declaration on the Right to Development, adopted in the General Assembly Resolution 41/128 on December 4, 1996. The Declaration gives emphasis on the human person as the central subject of the development process being both the main participant and beneficiary of development, and recognizes that the creation of conditions favorable to the development of peoples and individuals is the primary responsibility of their States.

The 10-Point Pro-Poor Agenda of President Arroyo which is more concerned with developing infrastructure and fiscal capacity of government through taxation and encouraging foreign investors fails to address the issues of poverty and hunger, ignores the role of civil society, and disregards the effect of these economic programs on grassroots communities. In practice, such economic measures have often led to violations of economic, social and cultural rights.

13. The Philippine government's determined efforts to push for the revitalization and liberalization of the mining industry also results in a complex web of human rights violations affecting the Filipinos in general, and the host communities in particular who in most cases are indigenous peoples. Mining is being touted by the government as the primary development tool aimed at addressing the perennial problems of unemployment and poverty. However, the framework of the Philippine government as reflected in its mining-related policies is in violation of the people's right to meaningful and active participation, free and prior informed consent, right to life, security and liberty, and other individual and collective rights. These violations are highlighted in the research of the Philippine Human Rights Information Center (PhilRights) titled "A Human Rights Situational Analysis of Select Mining Communities in Oriental Mindoro and Nueva Vizcaya." (*see: attachment*)

The displacement of farmers and indigenous peoples from their land and means of livelihood due to the encroachment of mining corporations and implementation of so-called development projects is directly linked to the failed economic development programs of the Philippine government. According to the World March of Women National Coordinating Body (WMW-NCB) in their paper presented during the Nyeleni Conference on Food Security in Mali, Africa last February 2007, food sovereignty and security are threatened by the Philippine's neo-liberal policies. The paper asserted that deregulated mining and logging enterprises, agribusiness using chemical intensive farming and aqua-culture are not only negatively affecting the Philippine's biodiversity, but are also posing serious health hazards to its human resources.

A fact-finding team lead by Rt Honourable Clare Short, MP that investigated the effects of mining in the Philippines also noted the havoc mining wrecks on the livelihood, health, and human rights of indigenous peoples and other local communities. It also noted with concern how indigenous peoples are being tricked by mining corporations into allowing them access to indigenous peoples' ancestral domains. By law, it is required that indigenous peoples give their free, prior, and informed consent (FPIC) before any project proceed within their territories. The fact-finding team learned of several incidents where companies violated the legal guidelines and "engineered" the required consent.

14. A survey conducted by the Social Weather Station (SWS) from September 2 to 5, 2007, showed that fifty-two percent or about nine million Filipino families rate themselves poor as of the third quarter of 2007. The survey also revealed that 43 percent, or about 7.5 million Filipino families consider themselves poor in terms of food. Statistics also show that 17.6 million Filipinos are calorie-deficient, 2.2 million Filipino children under five years old are underweight and point-three million Filipino children will die each year before their fifth birthday from lack of nutrition.

15. The 10-point Pro-Poor Agenda states that water services were provided to 26 out of the 210 waterless areas in Metro Manila through the Metropolitan Waterworks and Sewerage System (MWSS) concessionaires benefiting 18,729 households. However the truth is only 42% of the population have access to water and although there is access, the fact is up to 58% of the groundwater in the Philippines is contaminated with coliform. Water is also fast becoming a commodity due to privatization of water services. Hence, accessibility means the capacity to pay, which unfortunately not all Filipino families have. (*See: attachment*)

16. The income level of Filipino families drastically decreased due to widespread unemployment. The ranks of unemployed have swelled from 3.043 million in 1998 to 3.874 million in 2002. Most of the jobs created are contractual/transient in nature covering mainly the service and informal sector. This does not indicate solid economic growth and development.

17. The upsurge in deployment of migrant workers is driven by the stark poverty and unemployment domestically. But their stories are replete of abuse from their employers, and lack or absence of adequate protection and welfare mechanisms provided by the Philippine government to address their concerns.

18. Access to education is one of the priority items in the 10-point Pro-Poor Agenda. However, the educational sector in general, and its accessibility in particular, continues to be an issue of concern. The midterm reports on the MDG and the Education For All (EFA) Development Index indicate that despite the consistent growth in the enrollment rate in basic education, which is pegged at 2.5 percent per year over the past two decades, key performance indicators have been declining consistently since 2001. These fall way short of the EFA targets for the corresponding years. Net enrollment, cohort survival and completion rates for both elementary and secondary levels were all on the decline. In the school year 2005-2006, participation rate in elementary education went down to 84.41 percent from 90.10 percent recorded in 2001-2002. Meanwhile, dropout rates posted record levels in both elementary (10.57 percent) and secondary schools (15.81 percent). The Department of Education reported that more learners drop from the system particularly in the lower grade levels even before functional literacy is acquired.

19. The lack of adequate social services and the worsening poverty is tied up to the issue of the Philippine government's priorities as reflected in the annual national budget. The concluding observation made by the Committee on Economic Social and Cultural Rights states that the servicing of the external debt, have had a constraining influence on the implementation of the Philippine government's obligation to the ICESCR. In fact, one of the hindrances in terms of prioritizing the budget for social services is the existence of the Automatic Appropriations Law, which provides for the automatic appropriation of a large chunk of the national budget for debt servicing, interest payment, and amortization. The Committee also notes with concern that a greater portion of the remaining budget after automatic appropriation is devoted to military expenditure, which is far bigger than the combined budget, allotted to housing, agriculture and health.

The Philippine NGO community presents the following recommendations to the Government of the Republic of the Philippines (GRP) through the Human Rights Council:

1. To immediately ratify international human rights instruments to which the GRP is not a Party to, which seek to promote and provide for human rights safeguards and mechanisms. These instruments include but are not limited to the Optional Protocol Against Torture (OPCAT) and the Convention on Enforced Disappearance.
2. To ensure compliance with its international obligations by enacting domestic legislations reflective of its commitment to universal human rights principles and rescinding policies that violate them. A shift in its present development framework particularly on poverty reduction and job creation by putting premium on the fulfillment and protection of human rights is required. We recommend the repeal of Republic Act 7942 or the Philippine Mining Act of 1995 and instead, craft a mining law consistent with the recognition and promotion of people's right to development; immediate passage of laws on involuntarily disappearance, internally displaced persons and torture; and strict implementation of legislations and instruments which seek to provide for respect of human rights including the Constitutional provision on the rights of the accused and the Indigenous Peoples' Rights Act or Republic Act 8371.
3. We recommend the urgent repeal of the Human Security Act of 2007 as it provides a very wide leeway for law enforcers to commit human rights violations. The Act is also collectively seen as a repressive political tool, thus its repeal is deemed imperative.
4. To prioritize basic services including education, health, housing, water etc. over debt servicing in the annual national budget. This calls for the immediate repeal of the Automatic Appropriations Law.
5. We call on the Philippine government to implement the recommendations contained in the Alston and Staffenagen Reports on the country.