Submission by ARTICLE 19, the Southeast Asian Press Alliance, Media Defence Southeast Asia, the Center for Media Freedom and Responsibility, the Philippine Center for Investigative Journalism, and the Center for International Law to the UN Universal Periodic Review of the Republic of the Philippines

Thirteenth Session of the Working Group of the Human Rights Council, May-June 2012

Executive summary

1. ARTICLE 19 is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information. ARTICLE 19 was founded in 1987 and has observer status with ECOSOC. ARTICLE 19 first worked on the Philippines in 2003, providing legal analysis on its Freedom of Information Act, and has since co-authored a baseline report entitled *Freedom of Expression and the Media in the Philippines* with the Center for Media Freedom and Responsibility in 2005, campaigned against extrajudicial violence and brutality against media workers, and contributed to the stakeholders' report for the Philippines' first cycle of the Universal Periodic Review (UPR).

2. The Southeast Asian Press Alliance (SEAPA) is a regional network of free expression groups that was established in 1998, with two of its founding members from the Phillippines. SEAPA supports its national partners in promoting and defending press freedom and citizens' rights to access to information. In March 2009, SEAPA provided support for the victims of the Ampatuan massacre, and organised a mission to the Philippines to pressure the government to prosecute the 2005 murder of journalist Marlene Esperat. SEAPA collaborated with international media freedom groups to lobby the UN Special Rapporteur on the Promotion and Protection of Freedom of Expression and Opinion on the problems of impunity in the Philippines ahead of his report to the Human Rights Council in June 2011.

3. Media Defence Southeast Asia (MD-SEA) is a regional non-governmental organisation comprised of lawyers, journalists and media activists focusing on the defence of the media and the promotion of freedom of expression within the Southeast Asia region. MD-SEA provides legal assistance to journalists and news media organisations, supports media law and freedom of information training, and provides litigation tools and strategies for lawyers working on media freedom cases.

4. The Center for Media Freedom and Responsibility (CMFR) is a private, non-stock, non-profit organisation involving different sectors of society in the task of building up the press and news media as a pillar of democratic society in the Philippines. Established in 1989, its programs uphold press freedom, promote responsible journalism, and encourage journalistic excellence.

5. The Philippine Center for Investigative Journalism (PCIJ) is an independent, non-profit media agency that specialises in investigative reporting. It was founded in 1989 by nine Filipino journalists who realised, from their years at the news desk, the need for newspapers and broadcast agencies to go beyond day–to–day reportage.

6. The Center for International Law (CENTERLAW) is a non-profit organisation dedicated to the promotion of the rule of law in the Philippines and the Asian region through internationally binding legal norms. It works in a broad range of initiatives – from free expression, to human

rights and humanitarian law issues to general international law concerns. It is engaged in strategic public interest litigation and freedom of expression advocacy. It is also a founding member of the MD-SEA.

7. Given the expertise and scope of activities of ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW, this submission focuses on the Philippines' compliance with its international human rights obligations in protecting the right to freedom of expression and right to freedom of information. The Philippines is a party to the ICCPR, and Article III (sections 4, 7 and 3) of the Bill of Rights of the People Power Constitution provides protections for freedom of expression, freedom of information, and privacy.

8. During the first session of UPR, the Philippines endorsed the recommendations to, *inter alia*, ensure that members of the security forces are trained on human rights and on their responsibility to protect human rights and human rights defenders; to completely eliminate torture and extrajudicial killings; to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible; and to maintain the momentum on addressing killings of activists and media professionals. Since then, the government has fallen short of meeting these obligations and fulfilling the agreed recommendations as set out during its first UPR cycle. The major issues of concern are:

   - **Violence against individuals exercising free speech**, and the culture of **impunity**;
   - The absence of a **right to information law;**
   - The use of **criminal defamation laws** to silence critics.

Violence against individuals exercising free speech, and the culture of impunity

9. Stakeholders in the Philippines' first UPR cycle noted that the two years leading up to the review were marked with physical attacks and murder directed towards individuals exercising their right to freedom of expression, with at least six journalists killed in 2006 and two in 2007. It was emphasised that individuals who were critical of military and civil officials were targeted, and were often victims of extrajudicial killings, enforced disappearances, arbitrary arrests, ill-treatment and torture in police custody, and threats and acts of harassment. The stakeholders also raised concerns over the murders of indigenous rights defenders, noting that 123 of these defenders were killed between 2001 and 2007.

10. Since the first UPR, the level of violence against journalists and media workers has dramatically increased, with one of the worst incidents of media killings in recent history to occur in 2009, elevating the Philippines to the third most dangerous country in the world for journalists to work. The Philippines has become deeply rooted in a culture of impunity, and with this has come an erosion of respect for the right to freedom of expression.

11. ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW are of the view that the situation in the Philippines has worsened for the following reasons:

    (a) *Ampatuan (or Maguindanao) Massacre.* On November 23, 2009, in Ampatuan Town, Maguindanao province, a 58-person convoy, including 32 journalists and media workers, were gunned down and strewn into a mass grave by approximately 200 armed men. The convoy was on its way to register local vice mayor, Ishmael 'Toto' Mangudadatu, as a candidate for the provincial governorship elections. The armed men, allegedly linked to incumbent governor Andal Ampatuan Jr., ordered everyone out of the vehicle and

executed all 58 individuals. There are strong indications that the attack was politically motivated and ordered by senior members of the Ampatuan family. According to the local media, Mangudadatu belongs to a clan that has been engaged in a long-running feud with the Ampatuan family, which has intermittently governed the region since 2001. Such brutal criminal behaviour prevented many journalists from covering elections for fear of further violence.

This massacre is not an isolated incident, but part of a larger trend of violence employed by the Ampatuan family in silencing their opposition. Despite significant international attention charges against senior family members, violence in the area persists. Reports indicate that the Ampatuans killed many eye-witnesses to the massacre for "knowing too much". Additionally, commemorators gathering near the massacre site to mark the two-year anniversary of the murders were confronted with three bombs, one of which exploded. The provincial police chief noted that the bombs were too small to inflict harm, but were planted as a scare tactic to discourage people from attending the memorial.

Currently, 196 suspects have been charged and many are on trial for the massacre, including Andal Ampatuan Jr., his father and former Maguindanao governor, Andal Ampatuan Sr., and his brother, Zaldy Ampatuan, former governor of the Autonomous Region in Muslim Mindanao. ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW are pleased that, in this instance, senior officials are not immune from the legal justice system and will be tried for their involvement in the massacre. Furthermore, the Supreme Court's decision to allow for live coverage of the trials is seen as a positive development. However, there are serious concerns over the independence and effectiveness of Quezon City Regional Trial Court Branch 221, designated by the Supreme Court as the "Special Court" to deal exclusively with the Ampatuan Massacre, to carry out full and fair trials. Two years after the incident, there have been no convictions and the legal proceedings have been severely delayed due to heavy political interference and overall inefficiency. ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW urge the government to review the existing Rules of Court, which have been used and abused to delay the prosecution of cases and court proceedings.

There is also the matter of the state's responsibility to compensate the victims of the massacre, considering that the perpetrators are all agents of the state. Under international law, their conduct is wholly attributable to the state itself. In other words, the victims of the massacre should not be made to wait. The state should pay reparations to the victims independent of the personal liabilities of the perpetrators.

(b) *Murders and killings.* There were reports of approximately 38 cases of media related murders in 2009, 3 in 2010, and 7 in 2011. Furthermore, many indigenous rights defenders continue to be targeted and killed for their work since the Philippines' first UPR cycle. For example:

- On 11 November 2011, Alfredo "Dodong" Velarde Jr. was shot outside the compound of the local newspaper "Brigada News". The radio station manager of "Brigada News" told CMFR that Velarde had a dispute with local tabloid dealers. Froebel Kan Balleque, spokesperson and counsel of "Brigada News", told CMFR that the killing of Velarde might have been work-related because "there's rivalry or competition inside the company."

- In October 2011, two media workers were killed in separate incidents. Johnson Pascual, editor-in-chief of the local paper *Prime News*, was shot and killed on 7 October 2011 in Isabela province whilst driving in his car. Local reports indicated that Pascual was shot twice before he swerved and drove his vehicle into a ravine. On 14 October 2011, tribal leader and radio commentator Datu Roy Bagtikan Gallego was shot dead in Lianga town, Surigao del Sur province. Gallego was openly critical of mining operations and a strong advocate for tribal rights. He was ambushed on the national highway and killed just before he was to launch a new radio program. Both Gallego's and Pascual's murders involve unidentified gunmen with unconfirmed motives; however there are high suspicions that the motives are related to their work.

- On 17 October 2011, Fr. Fausto "Pops" Tenorio, an Italian missionary who was a staunch supporter of indigenous rights and an adversary of mining projects, was gunned down in broad daylight at a church compound in Arakan Town in North Cotabato. Local authorities as well as his colleagues say that his death is related to his work in defending the rights of the indigenous people in gaining ownership of their ancestral land.

- The separate murders of Romeo Olea on 13 June 2011, Gerardo Ortega on 24 January 2011, Joselito Agustin on 16 June 2010, and Desidario Camangyan on 14 June 2010, are all confirmed to be related to their work as journalists. All four men worked in radio broadcasting and were targeted for their public criticism of local officials, corruption, provincial mining projects and illegal logging.

- In 2009, Datu Mampaagi Belayong, the Founding Chairman of Linundigan, an organisation that works to promote the rights of indigenous peoples in the province of Agusan del Sur, was murdered by Task Force Gantangan, a paramilitary group operating in the area. On 30 June 2011, Arpe Belayong, the brother of Mampaagi Belayong and Director of Linundigan, and his nephew Solte San-ogan, were killed in an ambush by members of another paramilitary group, Salakawan. This last attack occurred after a claim was made for ancestral land by a Salakawan member. In the attack, Arpe Belayong's children aged 4 and 14 also suffered non-fatal gunshot wounds.

(c) *Threats and intimidation tactics*. Death threats and other threats against journalists, media workers and human rights defenders are taken seriously in the Philippines, where the probability of such threats leading to murder is likely. Fear of reprisals has caused many to go into hiding, and has created a chilling-effect amongst community members and their ability to exercise the right to freedom of expression. For example:

- A Catholic church-owned radio station dzVT in San Jose, Occidental Mindoro was set on fire by unidentified men on 26 October 2011. Although police have yet to confirm the motives behind the attack, a reporter in San Jose told CMFR that a possible motive could be dzVT's commentaries against a local politician.

- On 15 September 2011, the daughter of Palawan-based radio broadcaster Louie Larroza was blindfolded and grabbed into a black vehicle. She was released unharmed after eight hours, however the kidnappers were able to evade arrest. Larroza of dyEC radio said the abduction of his daughter may have been "a warning for [him] to stop [his] broadcasts" on corruption and other illegal activities in the province.

- Jerome Tabanganay, a broadcaster of a government-run radio station, claimed that he was assaulted by Governor Jocel Baac on 7 June 2011 during a live broadcast. Tabanganay told CMFR that Baac threatened to kill him. Although the beating was recorded on air, Baac denied hitting and threatening the broadcaster.

- Following the deaths of Linundigan members Mampaagi Belayong, Arpe Belayong and Solte San-ogan, 23 human rights defenders and their families left the province of Agusan del Sur in August 2011 for fear of being targeted by paramilitary forces. On 11 October 2011, six leading members of Linundigan also went into hiding for their safety. Reports indicate that attacks and threats against Linundigan members and their families by paramilitary groups are related to their defence of indigenous rights and their stance against government-supported logging and mining operations in the province.

(d) *Impunity*. Violence against journalists, media workers, and human rights defenders have long persisted in the Philippines largely due to the fact that the government has failed to effectively investigate and bring those responsible to justice. Approximately 180 journalists and media professionals were murdered or killed since 1986, with the motives linked to their work or still unconfirmed. Approximately 50 of those killings occurred since the Philippines' last UPR cycle. Since 1986, there have been only ten convictions of such cases, but nine dismissals and acquittals; 46 cases are still on trial. The most recent acquittal happened in April 2011, when the Regional Trial Court of Puerto Princesa 95 acquitted former police officer Aaron Golifardo from killing broadcaster Fernando Batul in May 2006. There have been no convictions since President Benigno Aquino III stepped into office on 30 June 2010, nor have there been any convictions of senior military officers, to date, for either their direct involvement in the killings or through command responsibility. Furthermore, since Fr. Fausto "Pops" Tenorio's death not a single credible result of the government's investigation has been presented to the public, and the paramilitary still remains within the province of Agusan del Sur and continues to instill fear amongst indigenous community members.

12. ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW find little evidence that the government has enabled the environment for freedom of expression to progress since the its first UPR cycle. The recommendations relating to the rule of law have not been implemented. For instance, the government committed then to ensure that members of the security forces are trained on human rights and on their responsibility to protect human rights and human rights defenders; completely eliminate torture and extrajudicial killings; to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible; and to maintain the momentum on addressing killings of activists and media professionals. However, since the first UPR cycle, instead of more protections for journalists, media workers and human rights defenders, there has been a sharp increase in the number of unlawful killings of those who exercise free speech. There have also been few prosecutions of those responsible for these alarming crimes. This has fostered a culture of impunity for perpetrators of violence against journalists, media workers and human rights defenders, where one risks his or her life for simply speaking out.

The absence of a right to information law

13. Although freedom of information is enshrined under Article III, Section 7 of the 1987 Constitution, there still lacks a law to provide the mechanisms for government agencies to follow through in their duty to disclose information on government transactions. Media and civil society groups in the Philippines have been pushing for the passage of the Freedom of Information Act for the last 14 years. During the 2010 elections, President Aquino promised to assign first priority to the passage of a pending freedom of information bill into law, and in June 2010, as president, he launched his government on the principles of transparency, accountability, and good governance. However, in the last 19 months of the new government, the bill has become stagnant.

14. The Aquino Administration is currently working on the Freedom of Information Act, but there are fears that this version of the bill will prove to be more restrictive than previous drafts. Reports indicate that the Aquino Administration's version has more exceptions than the information subject to mandatory disclosure. There are also concerns that the executive will have an overbroad definition of national security, that information will only be made available to the public once a policy has been enacted but not during its deliberations, and that there will not be adequate protections to the right to privacy. The long list of exceptions potentially proposed by the Aquino Administration, if enacted, will only go to further hinder freedom of information, and can be easily invoked by government agencies to justify denial of access.

15. The lack of political will also goes against the spirit of the Open Government Partnership (OGP), a global initiative to fight corruption, promote transparency, and empower citizens to strengthen governance. The Philippines is one of the eight countries, with only two from Asia, to be in the steering committee of the OGP. At the official launch of the OGP in New York on 20 September 2011, President Aquino gave a speech where he failed to present the low priority given to the passage of a freedom of information law in the country.

16. ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW emphasise that the public has a right to scrutinise the actions of its leaders and to engage in full and open debate about those actions. It must be able to assess the performance of the government, which depends on access to information about the state of the economy, social systems and other matters of public concern.

The use of criminal defamation laws to silence critics

17. Stakeholders in the Philippines' first UPR cycle raised their concerns over criminal defamation as laid out in Articles 353-359 of the 1930 Philippines Criminal Code, a conviction which can amount up to four years in jail. The law, still in force, states that "[e]very defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown". Therefore, the burden is not on the prosecution to prove malice, but rather, the burden is on the defendant to prove good intention and justifiable motive to overcome the implicated malice. Under international standards on freedom of expression, truth is a complete defence to an allegation of defamation. Individuals or media outlets should never be found liable for defamation unless they are shown to have made a false assertion of fact.

18. Journalists and media workers continue to face the threat of criminal defamation suits, for such activities as tackling public interest issues. Criminal defamation suits initiated by those in power

give them an unfair advantage against the media, and have led to an environment of self-censorship in the Philippines. For example:

- Reporter Marites Danguilan Vitug was forced to post bail on 2 September 2011 for criminal defamation charges that she had defamed Supreme Court Justice Presbitero Velasco in a recent book entitled *Shadow of Doubt*. In the book, Vitug quoted residents of the Marinduque constituency as saying that Justice Velasco had helped his son, Lord Allan Velasco, during a congressional campaign and promised to underwrite campaign expenses. It is uncertain how the case will proceed through the lower courts, given that the Supreme Court oversees the legal system.

- Radio journalist Alberto Loyola**,** who works for Radio DxRJ, was arrested on 18 April 2011 on two criminal defamation charges brought on by local city councillor Chonilo Ruiz. Loyola accused Ruiz of lying about the city budget, and if convicted, can face up to six years in jail.

- On 4 March 2011, Edgardo Maliza, a correspondent for the "Gold Star Daily" paper was arrested on libel charges in Cagayan de Oro City. Maliza faces a criminal defamation charge for allegedly maligning former Department of Environment and Natural Resources (DENR) regional director and now Undersecretary Ernesto Adobo. Maliza wrote two articles reporting on the alleged failure of Adobo to take action on anomalous transactions in the regional DENR office. The police released Maliza the same day after the he posted a bail bond, but there has since been no progress on his case.

19. ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW believe that defamation should be decriminalized, and that the media should have the rights and freedom to perform its functions. Courts must consider the interests of the public in deciding cases involving defamation suits.

Recommendations

20. In response to these concerns, ARTICLE 19, SEAPA, MD-SEA, CMFR, PCIJ, and CENTERLAW call on the UN Human Rights Council to make the following recommendations to the Philippines government:

- Ensure that all restrictions on freedom of expression meet international standards and particularly meet the three part test: that restrictions on freedom of expression be provided by law, pursue a legitimate aim and are 'necessary in a democratic society';
- Extend official invitations to the Special Rapporteurs on the independence of judges and lawyers; the promotion and protection of freedom of expression and opinion; and extrajudicial, summary or arbitrary executions to visit the Philippines and facilitate the discharge of their mandates;
- Ensure that the trials of all alleged perpetrators of the 2009 Ampatuan Town Massacre and are fully open and transparent so that the public may observe proceedings without hindrance, and take all steps to speed up the resolution of these cases and to make certain there is no political interference in any aspect of the cases as they proceed. Furthermore, the government must ensure that immediate and adequate reparations be made to the victims of the massacre;
- Issue a Congressional statement in the defence of the rights of journalists and the media covering armed conflict, and recognising the state’s commitments to the Geneva Conventions

Additional Protocol I (Article 79) regarding the protection of journalists engaged in dangerous professional missions in areas of armed conflict, the Universal Declaration on Human Rights, the United Nations Security Council Resolution 1738, and acknowledging the vital role journalists play in strengthening democracy by informing communities and scrutinising power;

- Direct police and authorities to take appropriate immediate steps to conduct effective and impartial investigations into new attacks on journalists, media workers, and human rights defenders (murder, assault, abduction, threats and intimidation) and provide adequate resources to ensure perpetrators are identified and swiftly brought to justice and that victims or next to kin are fully compensated;
- Ban all paramilitary and militia forces due to their long and continuing history of serious human rights violations, including the killing of journalists, media workers and human rights defenders;
- Approve the proposed "Freedom of Information Bill" upon widespread consultation held with all stakeholders. The government must take into account the concerns raised over exceptions, the lack of public interest overrides, and fears that the proposed Information Commission would be an impediment to accessing information;
- Repeal criminal defamation and impose limits on the use of civil defamation charges by public bodies and officials, and on the amount of damage claims.