



## **Stakeholders Submission concerning the Universal Periodic Review of the Republic of the Philippines**

**Submitted by the Asian Legal Resource Centre**

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## **I. Introduction**

1. Following the Government of the Philippines' (GotP) first Universal Periodic Review (UPR) in 2008, a new government came to power following elections in May 2010. During the previous government, under Gloria Macapagal Arroyo, State agents stand accused of perpetrating numerous, grave human rights abuses, including torture, forced disappearances and extra-judicial killings, which were typically accompanied by total impunity. The current government, under Benigno Aquino III, has indicated greater political will in favour of human rights, however, grave rights abuses continue and the majority of recommendations from the first UPR cycle have not been implemented in a credible manner, if at all.
2. The Asian Legal Resource Centre (ALRC) urges the GotP to pledge to fully and verifiably implement all recommendations accepted by the Philippines in the first cycle, and to accept and implement all meaningful recommendations that arise out of the second cycle, notably those that concern the eradication of grave rights abuses such as torture, forced disappearances and extrajudicial killings, as well as the ongoing problem of impunity.

## **II. Developments to the normative and institutional framework since the first UPR review;**

3. Since mid-2008, the country's two Presidents have issued Executive and Administrative Orders concerning the strengthening of promotion and protection of human rights.<sup>1</sup> These include orders creating a Truth Commission in 2010, and the provision of legal aid for the poor, for example. The legislature has also enacted domestic laws,<sup>2</sup> including the 2009 Anti-Torture Act, and an act strengthening the national prosecution service. The Philippines has also ratified some international treaties,<sup>3</sup> notably the Rome Statute of the International Criminal Court.
4. The current administration has also reaffirmed its commitment to human rights. It has condemned violations and made efforts to strengthen task forces on killings and disappearances, and appointed some credible officials. However, it is not implementing concrete policies to address the systemic defects in key institutions of the rule of law, namely the police, prosecution and judiciary. It is therefore failing to address the root causes of human rights violations and the impunity that accompanies these, which continues to encourage further violations.

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<sup>1</sup> Please see Annex Section I: List of Executive and Administrative Orders issued by Presidents Arroyo and Aquino of the Philippines since 2008

<sup>2</sup> Please see Annex Section II: List of relevant domestic laws enacted

<sup>3</sup> Please see Annex Section III: International treaties ratified by the Philippines since 2008

5. The Philippines National Police (PNP) and the Armed Forces of the Philippines (AFP) have established human rights offices, ostensibly to address human rights violations, but these have not had any substantial impact. The ALRC has approached these offices concerning cases of human rights violations, including threats, arbitrary arrests and detention, torture, forced disappearances and/or extrajudicial killings. However, the responses received from them show serious shortcomings in their investigations and procedures, as well as a clear bias in favour of the alleged perpetrators.

### III. Implementation of recommendations from the 1<sup>st</sup> cycle

6. The GotP has either not implemented or only partially implemented most of the recommendations made during the first cycle of the UPR, as will be seen below:
7. **Cooperation with the international human rights system:** The Philippines has been a member of the Human Rights Council since its inception in 2006 until mid-2010, but despite this and pledges made at the time of its elections to the Council, the GotP continues to fail to cooperate to acceptable levels with key components of the international system concerning human rights violations committed by State agents. This is best illustrated by its rejection of the recommendations made by: Brazil, to “consider extending a standing invitation to the Special Procedures;”<sup>4</sup> Slovenia,<sup>5</sup> to “Enable the visit by the Special Rapporteur on the promotion and protection of human rights while countering terrorism as soon as possible;”<sup>6</sup> and the Netherlands concerning the need for follow-up action concerning extra-judicial killings taking into account the recommendations made by the Special Rapporteur on extra-judicial killing.<sup>7</sup> Since the first UPR review, no visits by Special Procedures have been conducted to the Philippines, despite pending requests by 16 mandates.<sup>8</sup>
8. Furthermore, it is disappointing that the GotP did not accept Mexico’s recommendation to take into account recommendations from Special Procedures and Treaty Bodies in the country’s National Human Rights Action Plan.<sup>9</sup>

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<sup>4</sup> From the report of the Working Group on the Universal Periodic Review, Philippines: <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/G08/136/75/PDF/G0813675.pdf?OpenElement>, recommendation paragraph 58, no. 15.

<sup>5</sup> Slovenia held the European Union Presidency during the first half of 2008 when the UPR took place, made recommendations on behalf of the EU as a whole.

<sup>6</sup> From the report of the Working Group on the Universal Periodic Review, Philippines: <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/G08/136/75/PDF/G0813675.pdf?OpenElement>, recommendation para. 58, no. 3.

<sup>7</sup> Ibid, recommendation para. 58, no. 6.

<sup>8</sup> Including by the mandates on priority issues such as the freedom of expression, the right to food, forced disappearances, human rights and counter terrorism, human rights defenders, independence of the judiciary, adequate housing and freedom of assembly.

<sup>9</sup> From the report of the Working Group on the Universal Periodic Review, Philippines: <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/G08/136/75/PDF/G0813675.pdf?OpenElement>, recommendation para. 58, no. 16.

9. The GotP did accept Slovenia's recommendation to "Report regularly to the Committee against Torture,"<sup>10</sup> and did submit a report that was reviewed by the Committee in May 2009. However, this report was already 16 years late.
10. **Recommendations:** The ALRC calls on the Government of the Philippines to take credible steps to improve its cooperation with the international human rights system, notably by:
- Issuing a standing invitation to Special Procedures and ensuring the implementation of recommendations by Treaty Bodies and Special Procedures, including in its National Action Plan, notably those by the Special Rapporteur on extra-judicial killings, the Human Rights Committee and the Committee against Torture.
  - Prioritising visits by the Special Procedures mandates on independence of the judiciary, adequate housing, forced disappearances, human rights defenders, torture and freedom of expression.
  - Ensuring that it reports on time to Treaty Bodies, notably by submitting a report to the Committee against Torture by May 15, 2013, and by submitting the report that has been due since 2006 to the Human Rights Committee.
11. **Torture:** The GotP received several recommendations concerning the pressing issue of widespread torture. Despite the GotP having accepted the recommendation by the Holy See to "Completely eliminate torture and extra-judicial killings,"<sup>11</sup> the ALRC continued to document numerous cases of torture since the Philippines' initial UPR review. The GotP also accepted recommendations by several States to sign and ratify the Optional Protocol to the Convention Against Torture (OPCAT),<sup>12</sup> but has still not done so.
12. Torture is typically used against members of the poorest, most vulnerable sections of society, as well as persons suspected of being communist rebels, or persons from the Muslim minority in the country's South, as part of counter-terrorism. It is practiced widely as part of investigations by the police concerning common criminal cases, in order to extract bribes, force confessions and ensure the interests of the country's rich and powerful.
13. Forms of ill-treatment and torture encountered by the ALRC include: incommunicado detention, notably with prolonged solitary confinement; prolonged blindfolding; prolonged interrogation; denial of sleep; denial of food and water, or being forced to eat spoiled food, or animal or human excreta; being forced to assume fixed and stressful bodily positions; harmful exposure to the sun or the cold; threats of bodily harm, execution or other wrongful acts, against a person or his/her relatives; beatings, including with truncheons and rifle butts; jumping on the stomach; electric shocks, including

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<sup>10</sup> Ibid, recommendation para. 58, no. 5.

<sup>11</sup> Ibid, recommendation para 58. No. 6.

<sup>12</sup> Ibid, recommendations by Slovenia, Mexico, the Netherlands and the United Kingdom, para 58. no.

to the genitals; cigarette burns; submersion of the head in water; suffocation with plastic bags and other materials; and the application of chilli to the genitals and other parts of the body.

14. Torture continues to be accompanied by impunity, due to a lack of consequences for those who perpetrate it, and a lack of effective avenues available to victims seeking redress. This results from the absence of an independent complaints mechanism concerning abuses by State agents, as well as an ineffective witness and victim protection system. Given this, the GotP's rejection of a recommendation by Switzerland on the need to strengthen witness protection concerning extra-judicial killings, which is equally relevant to torture, must be reversed by the current government.
15. While the government enacted the Anti-Torture Act in 2009, this remains to be implemented sufficiently in practice to enable the substantial improvements to the investigation and prosecution systems that are required in order to prevent the use of torture. For example, under Section 9 (a), victims of torture are entitled to have a prompt investigation by the authorities, which must be completed within 60 days from the time of the complaint. However, delays to the conclusion of investigation reports routinely delay or prevent the filing of charges against the alleged perpetrators in court, contributing to impunity. The police also abuse the legal process, by filing unwarranted motions to have charges dropped, further obstructing cases. The lack of use of forensic practices in securing evidence, and the lack of immediate sanctions against State agents accused of perpetrating torture, further undermine victims' attempts to seek justice. Since the law took effect in December 2009, in only one case of torture - that of victim Darius Evangelista - has a prosecution been launched, with charges having been filed in August 2011.
16. Under Section 12 of the Anti-Torture Act, alleged victims of torture must benefit from physical and psychological medical examinations by a doctor, and a medical report must be attached to the custodial investigation report provided to court. At present, such examinations are typically not conducted and vital forensic evidence that they could provide is therefore lacking, seriously undermining prospects for victims seeking redress.
17. Furthermore, investigations by the CHR, one of the agencies mandated to investigate complaints of torture, are generally flawed and defective. The CHR often fails to: investigate allegations of torture; conclude investigations promptly; provide adequate legal assistance; provide adequate protection to complainants and their families, even those facing threats of reprisal; provide medical facilities for the treatment and rehabilitation of victims; and provide compensation commensurate with the severity of the human rights violation. Compensation at present is limited to the 10,000.00 pesos (around US\$230) maximum allowed under Republic Act 7309 (1992) establishing the Board of Claims under the Department of Justice.
18. Video footage of the use of torture techniques on trainee policemen by other policemen in 2008, recorded by policemen at the police academy and in police stations, as well as on soldiers by the military during combat training, which

surfaced in 2010 and 2011 respectively, are indicators of the pervasive nature of torture within the authorities and the levels to which its use is accepted.<sup>13</sup> The authorities, including the CHR, are not conducting investigations concerning these cases, citing a lack of complaints or the fact that they were perpetrated prior to the enactment of the Anti-Torture Act, as justifications for their lack of action.

**19. Recommendations:** The government of the Philippines must:

- Eradicate the use of torture, in line with commitments made during the first UPR cycle;
- Ratify the OPCAT without delay, also in line with prior UPR commitments;
- Reform the CHR, police, prosecution and judiciary to ensure that all allegations of torture are effectively investigated and prosecuted;
- Effectively implement the Anti-Torture Act, notably provisions ensuring that investigations are conducted within 60 days, and that full medical examinations are systematically conducted and provided to court;
- Ensure adequate reparation for victims of torture, in line with international standards, as under the current system the maximum of around US\$230 is woefully inadequate;
- Ensure that it submits a report to the Committee Against Torture on schedule by May 15, 2013;
- Fully implement the recommendations made by the Committee against Torture to date.

**20. Extrajudicial killings:** The GotP accepted recommendations concerning the problem of extrajudicial killings during its first UPR review, from the Holy See to “Completely eliminate torture and extrajudicial killings” and from Switzerland to “Intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible.”<sup>14</sup> The ALRC has repeatedly denounced the use of targeted extrajudicial killings by the Philippines’ military that has resulted in hundreds of deaths since 2001. Following the visit of the Special Rapporteur on extrajudicial killings in February 2007 and his reporting to the Human Rights Council, concerted international pressure on the GotP resulted in the frequency of killings diminishing. However, the practice was never eliminated and the frequency of killings had begun to increase again as of 2010. The main factor underpinning the failure to eliminate these grave and numerous violations of the right to life is the system of impunity that continues to shield perpetrators. The lack of investigations and prosecutions concerning extrajudicial killings means that there is no effective deterrent that would assist in the elimination of this practice.

21. A report concerning November 2007 to July 2010 by Task Force 211, a Presidential task force ostensibly created to “prevent, investigate, prosecute

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<sup>13</sup> Please see Annex Section IV: Summary of video recordings of acts of torture

<sup>14</sup> Ibid, recommendation para 58. No. 6.

and punish political violence,” observed that “extrajudicial killings persist.” Of the 200 cases included in the report - which is only a fraction of the many hundreds reportedly committed by the military since 2001 - only four resulted in convictions, 20 remained pending and 16 had been dismissed by courts. The dismissals and acquittals exhibited “an apparent common trend: the inability of the government to present supporting evidence to secure a conviction.”

22. As mentioned previously, the GotP did not accept recommendations by the Netherlands to implement recommendations made by the Special Rapporteur on extra-judicial killings<sup>15</sup> or by Switzerland to “Strengthen the witness protection programme and address the root causes of this issue in the context of the reform of the judiciary and the armed forces.”<sup>16</sup> The lack of effective witness protection is a major factor that enables continuing impunity for the perpetrators of human rights violations in the Philippines.
23. The case of Ms. Siche Bustamante-Gandinao, who was killed on March 10, 2007, allegedly as a reprisal after having provided information concerning extrajudicial killings to Special Rapporteur Philip Alston, is symbolic of the lack of protection provided to witnesses. The ALRC is not aware of any effective action by the authorities concerning this key case to date. The victim did not qualify for witness protection under the Witness Protection Programme (WPP), as the case concerning the crime she had witnessed had not yet been filed in court. The screening process for admittance into the WPP is routinely delayed and there are no provisions for much-needed interim protection for witnesses.
24. Proposed amendments to the Act under Philippine Senate Bill No. 2368, which seeks to protect witnesses testifying in legislative inquiries, and House of Representatives Bill No. 15, which seeks to record witness testimonies in case they are unable to testify, remain pending and must be enacted without delay. Even with these amendments, however, fundamental flaws to the criminal justice system will remain obstacles to the prosecution of State-agents responsible for grave rights abuses such as torture, forced disappearance and extrajudicial killings.
25. As part of the UPR in 2008, the GotP pledged “To maintain the momentum on addressing killings of activists and media professionals.” However, the killing of 58 persons, 32 of whom were media practitioners, on November 23, 2009, in the southern province of Maguindanao, in what is being called the “Maguindanao massacre,”<sup>17</sup> is a tragic indicator of the government’s failure in this regard. Local policemen, soldiers and paramilitary forces who supported the Ampuatan clan, killed a convoy of Esmael Mangudadatu’s family-members and media workers who were travelling to submit his Certificate of Candidacy (CoC) as part of Provincial Governor elections. They were summarily executed and their bodies were disposed of in a mass grave.

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<sup>15</sup> Ibid, recommendation para 58. No. 6.

<sup>16</sup> Ibid, recommendation para 58. No. 11.

<sup>17</sup> Please see Annex Section V: Summary of the Maguindanao massacre

26. Two years after the massacre, while 93 of the alleged perpetrators have been arrested, the murder trial is facing serious delays, notably due to numerous petitions for bail by accused persons, as well as petitions to be excluded from murder charges and legal challenges concerning evidence, all of which are being used as delaying tactics. Furthermore, around 100 alleged perpetrators have not been arrested.
27. The effect that the lack of witness protection can have on assisting impunity is evident concerning the Maguindanao massacre, as many witnesses facing threats have not testified in court. Witness Suwaib Upham (nickname Jessie) received threats and was eventually killed on June 14, 2010. One of the complainants, Myrna Reblando, the wife of murdered journalist Alejandro "Bong" Reblando, had a bounty of 3 million pesos (around US\$69,000) on her head, and despite the CHR in Mindanao confirming the threat to her life, no protection was provided to her or her family, forcing her to leave the Philippines.
28. **Recommendations:** The government of the Philippines must accept and fully implement all recommendations made to it concerning extrajudicial killings in the first UPR cycle. To address its lack of effective steps concerning extrajudicial killings, it must:
- Immediately ensure that no further extrajudicial killings by State agents take place;
  - Reform the police, judiciary and armed forces in order to ensure effective investigations and prosecutions of all alleged killings;
  - Fully implement the pending recommendations of the Special Rapporteur on extrajudicial killings;
  - Strengthen witness protection, notably by amending the Witness Protection, Security and Benefit Act to ensure interim protection measures are available to witnesses while their applications under the Witness Protection Programme are being processed, as well as to ensure protection for victims' relatives who are seeking justice.
29. **Forced disappearances:** The GotP did not accept recommendations by Mexico and Slovenia to "Sign and ratify the International Convention on the Protection of All Persons from Enforced Disappearance."<sup>18</sup> The ALRC continues to document cases of forced disappearance of persons accused of being communists or their supporters, or arbitrarily accused of being terrorists, or even persons in ordinary criminal cases when the police or soldiers want to cover up evidence of abuses such as torture. There remain no effective legal remedies concerning forced disappearance, making it imperative for the Philippines to ratify the Convention and criminalise forced disappearance under domestic law.

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<sup>18</sup> Ibid, recommendation para 58. No. 4.