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## LIST OF ACRONYMS

AFP	Armed Forces of the Philippines
CADT	Certificate of Ancestral Domain
CAFGU	Citizens' Armed Forces Geographical Unit
CAFOD	Catholic Agency For Overseas Development
CARP	Comprehensive Agrarian Reform Law Programme
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHRP	Commission on Human Rights of the Philippines
CLOA	Certificate of Land Ownership Award
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DKMP	Democratic Movement of Farmers in the Philippines
DOJ	Department of Justice
ECC	Environment Compliance Certificate
EU	European Union
FIDH	International Federation for Human Rights
FLAG	Free Legal Assistance Group
FPIC	Free, Prior and informed Consent
IB	Infantry Battalion
ICC	International Coordinating Committee
ILO	International Labour Organisation
IPRA	Indigenous People's Rights Act
Karapatan	Alliance for the Advancement of People's Rights
LAHRA	Lanao Alliance of Human Rights Advocates
LRC	Legal Rights Centre
MILF	Moro Islamic Liberation Front
NCCP	National Council of Churches of the Philippines
NCIP	National Commission on Indigenous Peoples
NGOs	Non-Government Organisations
NHRI	National Human Rights Institution
NIPAR	New Indigenous Peoples' Army
NPA	National People's Army
NUPL	National Union of Peoples Lawyers
OMCT	World Organisation Against Torture
PAHRA	Philippine Alliance of Human Rights Advocates
PAO	Public Attorney's Office
PARAD	Provincial Agrarian Reform Adjudicator
PARO	Provincial Agrarian Reform Officer
PHRC	Presidential Human Rights Committee
PNP	Philippine National Police
SCAAs	Active Auxiliary units
SMI	Sagittarius Mines, Inc.
TCCGP	The Copper-Gold Project
TFDP	Task Force Detainees of the Philippines
TSF	Tailing Storage Facility
UN	United Nations
UNCT	United Nations Country Teams
UNHRC	United Nations Human Rights Council
UNICEF	United Nations International Children's Emergency Fund
UPR	Universal Periodic Review

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## EXECUTIVE SUMMARY

Since July 2010, **the number of reported extrajudicial killings and enforced disappearances has decreased** in the Philippines, and President Aquino has publicly committed that his Government would not allow human rights violations and would ensure that justice will be rendered. However, **the culture of violence and impunity continues** due to the absence of accountability for past human rights violations, to the feeble and superficial response to ongoing violations, and to the inaction and apathy on the part of the police to rigorously investigate grave violations. Partisan police investigation and protracted trials inspire little faith in the criminal justice system. Even though the Government has passed new laws such as the Anti-Torture Act and the Anti-Enforced Disappearance Act, constituted Human Rights Units in the Armed Forces and the National Police of the Philippines, and set up a focal point for Human Rights Defenders within the Commission of Human Rights of the Philippines, the challenge of widespread and systematic impunity remains. The plethora of laws and institutional mechanisms, purportedly for advancement of human rights, inspires little confidence, as in their actual work and practices political, economic and military actors continue to enjoy impunity.

The Mission delegation also observed the effects of the **continuous militarisation in the country**, with the military largely assuming functions of law enforcement. The emergence of multiple illegal and unaccountable private armies, legalised paramilitary groups such as the *Citizen Armed Force Geographical Unit (CAFGU)* and the Investment Defence Unit, as well as the large scale possession and availability of dangerous arms and weapons, are contributing to the climate of impunity for human rights violations, including attacks on human rights defenders.

The Mission delegation noted that there is in the Philippines a **pattern of widespread and systematic attacks on human rights defenders** who face grave risks including extrajudicial killings, torture, enforced disappearances, illegal detention, harassment through implication in false criminal cases, intimidation and threats.

**Human rights defenders at the forefront of diverse struggles in urban and rural areas of the Philippines**, including those involved in struggles around marginal farmers' right to land, indigenous peoples' rights to their ancestral domain, housing rights of urban poor, lawyers, journalists and activists involved in human rights work, **are under serious threat, constantly vilified, intimidated and "terrorised"**. They are targeted either by State and non-State actors or by both acting in collusion and coordination with each other. They are also victimised through long spells of incarceration in false and trumped up charges. They are prosecuted for criminal offences and treated as political prisoners.

The present fact-finding mission report presents the main findings of the Observatory Mission that was carried out in November 2012 in the Philippines. The document includes detailed conclusions and recommendations to the Government of the Philippines, the United Nations, the European Union and foreign embassies in the Philippines

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## I. INTRODUCTION

On behalf of the Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), two members of OMCT's General Assembly, Ms. **Claudia Samaoya** from Guatemala and Ms. **Vrinda Grover** from India<sup>1</sup>, undertook a fact-finding mission to assess the situation of human rights defenders in the Philippines, with a focus on those advocating for land and environmental rights<sup>2</sup>.

During the Mission, which took place from November 11 to 17, 2012, the Delegates held meetings and interviewed persons in Manila, Iligan (Lanao del Norte, Northern Mindanao) and Tampakan (South Cotabato) in Mindanao. During this seven-day period, the Delegates met and spoke with about 80 persons<sup>3</sup>, including representatives of civil society. These included activists associated with the Philippine Alliance of Human Rights Advocates (PAHRA), Task Force Detainees, Philippines (TFDP), Karapatan Alliance for the Advancement of People's Rights in the Philippines and National Union of People's Lawyers (NUPL), as well as with the Free Legal Assistance Group (FLAG). The delegates also met and interviewed farmers groups, indigenous peoples and faith-based organisations, which are facing threats, intimidation, attacks and victimisation in relation to their human rights activities. Interviews were also conducted with family members of human rights defenders who have been killed.

The Mission delegates were also offered the opportunity to discuss the condition of human rights defenders in the Philippines with State authorities including senior officials from the Department of Justice (DOJ), the Commission of Human Rights of the Philippines (CHRP), the National Commission of Indigenous People (NCIP), the Presidential Human Rights Committee (PHRC), the Public Attorney's Office (PAO), officers from the Human Rights Unit of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), and Government officials of Tampakan Municipality. Meetings were also held with senior representatives of the European Union (EU) and EU member-States, as well as with diplomats from the Embassies of Australia, Norway and Switzerland, to elicit their views on the condition of human rights defenders in the Philippines. Finally, the mission also met with representatives of Sagittarius Mines Inc. Xtrata transnational mining company (SMI).

The delegates express their deep appreciation to all the people they met and spoke to during the course of the mission. The delegates are grateful to civil society representatives for facilitating the interviews and providing documents and reports. The Mission is particularly indebted to the human rights defenders and their families who shared information regarding the violation of their human rights. With respect to individual cases of human rights defenders, efforts were made by the Mission to verify, cross check and authenticate facts from different sources. The Mission thanks the Government of the Philippines for its cooperation and for facilitating meetings of the delegates with Government officials.

The delegates wish to thank Ms. **Rosemarie Trajano**, from the Philippine Alliance of Human Rights Advocates (PAHRA), and also Vice-President of FIDH, for her valuable support before, during and after the mission, as well as Ms. **Raines Cortes** and Mr. **Rommel Yamzon**, who accompanied the mission in Manila and Mindanao respectively as documenters, logistics supporters and English and Tagalog interpreters.

This report includes the observations gathered during the mission, but also new and follow-up information obtained since then, both on cases and context.

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<sup>1</sup> Ms. Claudia Samaoya is the Coordinator of the Unit for Protection of Human Rights Defenders of Guatemala (UDEFEQUA). Ms. Vrinda Grover is a prominent human rights lawyer based in New Delhi, India.

<sup>2</sup> In December 2014, the Observatory dedicated its Annual Report to the issue of land rights defenders. See Observatory 2014 Annual Report, "We are not afraid; Land rights defenders: attacked for confronting unbridled development".

<sup>3</sup> For a detailed list of persons the Mission Delegates met, see Annex 1. The names of some of the interviewees are not being disclosed for security reasons.

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## II. POLITICAL AND ECONOMIC CONTEXT

### 2.1 A history of political instability and violence

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The chequered political history of the Philippines has witnessed the imposition of martial law and a fierce violent conflict, taking a heavy toll on human lives and democratic stability.

#### 2.1.1 A fragile democratic State

In 1986, the ouster of **President Ferdinand Marcos**, following popular protests that cost him the support of the armed forces, prepared the ground for the development of democracy following a decade of martial law (1972-1981). A stable democratic State however failed to take root, and the country witnessed little stability.

The presidency of **Corazon C. Aquino** was marked by serious human rights violations including a significant number of victims of dislocations due to military operations, massacres, victims of summary executions, and victims of illegal arrest and detention. The so-called Mendiola Massacre in which 13 people were killed when anti-riot forces guarding Malacañang Palace fired at farmers holding a protest rally for "genuine land reform" also happened during her term. Moreover, the presidency of **President Fidel V. Ramos**, saw the proliferation of Citizens Armed Forces-Geographical Unit (CAFGU), a paramilitary force, and the Auxiliary Police Force, an urban paramilitary force supposedly created to combat anti-insurgency. In 2001, **President Joseph Estrada** (1998-2001) was forced out on serious allegations of corruption.

His successor **President Gloria Macapagal-Arroyo** faced general public dissatisfaction and criticism of the legitimacy of her presidency, following allegations of grave electoral fraud and malpractice. To stay in power, she resorted to the imposition of martial law and emergency rule. During her presidency there was an increase in the level of extra judicial killings and enforced disappearances comparable to the extent of human rights violations during the Martial Law period. In 2006, she decreed a one-week "State of National Emergency" (February 24 - March 3, 2006). In December 2009, she again imposed martial law for eight days on the Maguindanao Province, in Mindanao, and suspended the writ of habeas corpus. This followed the worst incident of political violence in the country during which the powerful Ampatuan clan attacked a group of people travelling to file election nomination papers in Mindanao. Members of the clan killed 57 persons, including women members of the rival Mangudadatu clan, human rights lawyers, and 31 media workers. President Arroyo sent hundreds of government troops to the province to raid armouries of the Ampatuan clan. In November 2011, Ms. Arroyo was arrested following the filing of vote-fraud charges against her for electoral sabotage over a Senate seat election in 2007. She was detained in Manila until July 2012, when she was released on bail, but she was subsequently placed under hospital arrest in October 2012.

In June 2010, in a politically volatile situation, the current **President Benigno Aquino III**, son of former President Corazon Aquino, was elected amid threats from leftist insurgents to disrupt the elections. President Aquino III was re-elected for a second time in April 2013.

#### 2.1.2 A country that continues to be in the grip of multiple internal conflicts and armed groups

The Philippines continues to be in the grip of multiple internal conflicts, with serious contestation over the exercise of political power and control over land and natural resources. The situation is aggravated by the presence of armed groups including the New People's Army (NPA) of the Communist Peoples' Party, a Muslim insurgency particularly in the southern island of Mindanao, and multiple centres of power like powerful warlords with private militia, all engaged in a protracted conflict with State forces and others.

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The presence of armed non-State actors, including armed groups such as NPA and various Islamist Moro groups, contribute to high levels of violent conflicts and human rights violations, including serious threats to human rights defenders.

#### **a) Muslim insurgency in the southern island of Mindanao**

The protracted conflict by armed rebels fighting for a separate Islamic state in the southern island of Mindanao has resulted in the death of more than 120,000 persons<sup>4</sup>.

In recent years, efforts have been made to secure peace through political accords. In 1996, a peace agreement was concluded between the Government and the Moro National Liberation Front (MNLF), a Muslim separatist group. However, another group, the Moro Islamic Liberation Front (MILF), continued with its armed activities. A cease-fire was announced in 2003, and peace talks between the Government and MILF rebels resumed in December 2009, but violence on the ground continued. Peace negotiations broke down again in 2011. In October of the same year, the worst fighting since 2008-2009 broke out between the MILF and the military in the southern island of Basilan in Mindanao, which led to a mass exodus of civilians.

On October 15, 2012, the Philippine Government reached a framework peace agreement with the MILF, to end 40 years of conflict. The Government agreed to the creation of a new and larger Muslim autonomous region called the Bangsamoro. The key features of the Framework Peace Agreement are: to create a new, larger autonomous region; to gradually decommission the MILF forces; to guarantee democracy and human rights; to ensure development and fair sharing of natural wealth; to expand Sharia courts for Muslim residents in the new area.

#### **b) A situation aggravated by the presence of armed groups**

Another major political challenge to the Filipino State stems from the guerrilla army of the communist NPA, engaged in fightings in many parts of the archipelago since 1969. In February 2011, the Government and the NPA agreed to work towards a peace agreement by 2012, although mutual distrust remained a problem. At the time of this Mission, the terms of the peace agreement with the leftist rebel group were still being negotiated. However, the last negotiations broke down in 2014 and informal talks are underway aiming at facilitating the eventual resumption of the formal peace negotiations.

### **2.2 Economic context**

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#### **2.2.1 An economy suffering from an acute crisis and leading to the marginalisation of millions into poverty**

Poverty, unemployment, landlessness, land grabbing, poor socio-economic indicators of health, sanitation and education, characterise the lives of the large majority of people in the Philippines. The economy of the country, once one of the best-performing in the region, is suffering from an acute crisis rooted in a large national debt that has marginalised tens of millions of people into poverty. The economy is heavily dependent on foreign investment and remittances from hundreds of thousands of Filipinos working abroad, mainly in the Gulf.

International financial institutions, such as the International Monetary Fund, describe the Philippines as one of the emerging markets in the world<sup>5</sup> and Goldman Sachs estimates that by 2050 it will be the 14th largest economy in the world<sup>6</sup>.

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<sup>4</sup> See The World Bank, Social development Papers, Conflict Prevention & Reconstruction, *The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend*, Paper No. 2/, February 2005.

<sup>5</sup> See International Monetary Fund, *World Economic Outlook Update New Setbacks, Further Policy Action Needed*, 2012. Available at <http://www.imf.org/external/pubs/ft/weo/2012/update/02/pdf/0712.pdf>.

<sup>6</sup> See Multiplan International: The human factor, *Outlook Philippines' Economy*. Available at [http://www.multiplan-international.com/en/mod\\_news/outlook-philippines-economy/](http://www.multiplan-international.com/en/mod_news/outlook-philippines-economy/).



.....  
It is however unlikely that this economic forecast will herald equity or prosperity for the majority of the Philippine population. The Mission observed that both in urban and rural areas, a very large section of the people live in distressing conditions of socio-economic discrimination and marginalisation.

### **2.2.2 Land rights, mining operations and companies**

The issue around land rights is not new in the Philippines, but it has become a prominent issue in the public agenda due to raising tensions: disputes over land rights are frequent, the land reform is in its ultimate phase, and real estate projects are increasing, often resulting in land evictions of the urban poor. Moreover, the negative impact of extractive industries and logging activities (often with foreign investments) on the environment and the livelihoods of communities is increasing.

President Aquino III has continued the aggressive policy initiated by his predecessor of promoting large-scale mining, which is one of the key priorities under the Philippine Development Plan 2011-2016. This priority was, for instance, illustrated in August 2011 when President Aquino III brought along 15 mining executives to his official visit to China where he signed four mining agreements. By expanding the granting of mining concessions, the Government has thus increased the potential for more frequent human rights violations.

On July 9, 2012, the President approved an Executive Order imposing a moratorium on licences for new mining. This Executive Order includes mechanisms to monitor mining impact on the environment and social impact and contains protection mechanisms that have been pushed for by civil society. In parallel, real estate projects are on the rise, involving deprivation of land/home of urban poor/people working in the informal sector. A bill on management of minerals and another on land use, which would include regulation mechanisms of the private sector, have still not been adopted, in a context of lack of political will. However, the proposed national land use act was declared a priority by President Aquino during his last state of the nation speech.

Several bills that would provide for an alternative framework for the mining industry are pending before Congress to amend the current Mining Act<sup>7</sup>, such as the Alternative Mining Bill, the Mineral Management Bill or the Peoples' Mining Bill. Another proposed bill, the Philippine Mineral Resource Act, would seek to consolidate the three bills mentioned above.

Furthermore, **indigenous peoples** are an extremely vulnerable and marginalised group in the Philippines, and special measures are required to safeguard their social, economic and cultural rights. The Philippines' Constitution of 1987, the Indigenous Peoples' Rights Act (IPRA) of 1997 and the National Commission on Indigenous Peoples (NCIP), created subsequently, provide the legal framework and institutional mechanism to safeguard the rights of the indigenous peoples. However, their legal recognition and the acknowledgement of their rights came after a painstaking and drawn-out process, as the Indigenous Peoples' Rights Act was repeatedly blocked and it took three legislatures before it was finally enacted.

The **1987 Philippine Constitution** recognises the dignity of every human person, full respect for human rights, directs the State to guarantee the protection of the rights of indigenous peoples the right to their ancestral land, to ensure their economic, social and cultural well-being, and ensures the applicability of customary laws to determine ownership and extent of ancestral domain.

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<sup>7</sup> See Republic Act No. 7942, an Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation, adopted on March 3 1995.

.....  
The 1997 **Indigenous People's Rights Act** (hereafter referred to as IPRA)<sup>8</sup> recognises ancestral domains and the right to self-determination and provides for the creation of a National Commission on Indigenous Peoples (NCIP).

The provisions of the IPRA require that free, prior and informed consent (FPIC) of indigenous peoples is mandatorily obtained, before any economic activity can be undertaken on their territories. Pursuant to the IPRA Certification Precondition requirement under the Act, the NCIP Head Office shall be the nodal agency. The NCIP is required to certify that the subject area is neither covered by ancestral land/domain applications nor occupied by indigenous peoples. Indigenous human rights defenders from South Cotabato and Manila however reported to the Mission that this law was routinely flouted and in most cases FPIC of indigenous peoples was obtained by means of misinformation, misrepresentation, bribery and intimidation.

The IPRA was enacted to protect the rights guaranteed to indigenous peoples, however other laws, policies and practices have systematically eroded the rights of indigenous peoples, thus rendering the IPRA toothless. For instance, the 1995 Mining Act, which allows for 100 per cent foreign ownership of mining ventures and the eviction of indigenous communities, violates the collective rights of indigenous peoples. Various international human rights agencies and mechanisms such as CESCR<sup>9</sup>, UNCT<sup>10</sup> and UNICEF<sup>11</sup> have observed that the Philippines' Mining Act of 1995 contained provisions that were clearly in contradiction with the IPRA and international human rights standards and asked the Government to ensure that economic activities, especially mining, carried out on indigenous territories do not adversely affect the protection of the indigenous peoples' rights.

The competing priorities of the 1995 Mining Act and the rights of indigenous peoples to self-determination and ancestral domain guaranteed by the Constitution of 1987 and the IPRA of 1997 therefore contain the seeds for further violence. In particular, mining activities often result in the displacement of indigenous populations and other rural communities and cause the depletion of the natural resources necessary for their livelihoods.

The Mission delegates' interviews with indigenous human rights defenders further revealed that the Government policy to encourage multinational corporations to invest in mining in their territories has further jeopardised the rights of indigenous peoples. In order to protect the interests of corporate entities, mining security forces, the military, the police and other security forces have resorted to widespread intimidation and use of force against indigenous peoples and small-scale miners at mining sites. The priority given to mining operations has led the Government to focus on the so-called "security" of mining operations. For instance, in 2012, President Aquino III announced the commissioning of special civilian active auxiliaries (SCAA) or paramilitary groups to increase the number of security forces of mining companies.

During a meeting of the Mission delegates, a member of the NCIP strongly advocated that the right to development is the key human right for indigenous peoples, adding however that "without mining and other industries, indigenous peoples would be excluded from the process of development". The NCIP member further refuted the claims of human rights organisations expressing concern about impunity for violations against indigenous peoples. In her view, if cases of violations against indigenous peoples are not addressed by courts, this is because "they prefer to settle their disputes through customary law". The NCIP member also asserted that NCIP was fulfilling its mandate of promoting the rights of indigenous peoples.

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<sup>8</sup> See Republic Act No. 8371, An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities / Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriate Funds Therefor, and for Other Purposes.

<sup>9</sup> See CESCR, *Concluding Observations on Guatemala*, 2008, UN Doc E/C.12/PHL/CO/4, para. 16.

<sup>10</sup> See UNCT, *submission to the Human Rights Council's 2011 Universal Periodic Review of the Philippines*, Para. 9 -10.

<sup>11</sup> See UNICEF, *Philippines submission to the Human Rights Council's 2011 Universal Periodic Review of the Philippines*, p. 7. Available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/UNICEF\\_UPR\\_PHL\\_S13\\_2012\\_UNICEF\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/UNICEF_UPR_PHL_S13_2012_UNICEF_E.pdf)

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A common criticism voiced by many human rights defenders and organisations interviewed by the Mission delegates was that the NCIP, rather than promoting the rights of indigenous peoples and its processes for granting the FPIC or the Certificate of Ancestral Domain Title (CADT), has been facilitating the settlement of mining companies. Indeed, if guidelines and processes exist for the issuance of a CADT and a Certificate of Ancestral Land Title (CALT), they have not been reviewed to facilitate the delivery of such CADT and/or CALT to indigenous peoples for their lands. Moreover, while indigenous populations have had difficulties to prove their ancestral ownership of their land, land grabbers and cronies of local officials can illegally obtain titles to the same lands and enjoy the protection of the law. This double standard feeds anger and resentment amongst the indigenous communities, and most indigenous human rights defenders met by the Mission delegates expressed little faith in the NCIP.

During the second Universal Periodic Review (UPR) at the UN Human Rights Council (UN HRC) in 2012, the Commission on Human Rights of the Philippines (CHRP) stated that policies intended to help vulnerable groups including indigenous persons were poorly implemented<sup>12</sup>. The CHRP called for a household survey for indigenous communities to determine performance in the supply of needs and services. The CHRP also stated that with the expansion of concessions for mining, vigilance must be exercised against violations of human rights, particularly the rights of indigenous peoples<sup>13</sup>.

The Philippines' Government has still not ratified the ILO Convention No. 169 on indigenous and tribal peoples. In 2011, the ILO Committee of Experts had noted with regret that the Government's report contained no information on discrimination against indigenous peoples, and asked the Government to provide full details on the measures taken or envisaged, including through the implementation of the relevant provisions of the IPRA, to protect indigenous peoples against discrimination; as well as on measures taken, if any, to ensure that indigenous peoples have access to land and resources to allow them to engage in their traditional occupations<sup>14</sup>. Moreover, the response of the Philippines to the CERD on the subject matter of Land Rights Certificates is pending since 2010.

Disputes over land rights and campaigns against mining and dam projects infringing on the rights of local communities are therefore sensitive activities in the country, and rural populations as well as those defending such rights are often met with violence, as we will see in Chapter IV.

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<sup>12</sup> See Commission on Human Rights of the Philippines (CHRP), *Submission to the Universal Periodic Review – Philippines*, June 2012, para. 28.

<sup>13</sup> *Idem*, para. 33.

<sup>14</sup> See International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 102nd Session, 2013, Report III (Part 1A), Doc ILC.102/III (1A).

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### III. AN ONGOING CULTURE OF VIOLENCE AND IMPUNITY: A CONSEQUENCE OF SYSTEMIC FLAWS AND INFIRMITIES

The Philippines has since 2001 continued to witness high levels of extra-judicial killings, enforced disappearances, torture and other grave human rights violations, while impunity for hundreds of cases of extrajudicial killings and enforced disappearances and torture prevail. It is accepted that since July 2010, the number of reported extrajudicial killings and enforced disappearances has decreased in the Philippines, and President Aquino has publicly committed that his Government would not allow human rights violations and would ensure that justice will be rendered. However, the culture of violence and impunity remains.

For instance, between 2001 and August 2010, 305 cases of **extrajudicial executions** have been recorded by the Asia Foundation (among whom: 32% activists, 10% farmers)<sup>15</sup>. From 2001 to June 2010 KARAPATAN documented 1206 victims of extrajudicial killings<sup>16</sup> and from July 2010 to October 2014 it has documented 222 victims<sup>17</sup>. For its part the Commission on Human Rights of the Philippines (CHRP) has received complaints concerning 385 incidents of extrajudicial killings (totalling 589 victims) for a period ranging from 2001-mid 2010<sup>18</sup>.

Numerous cases of **torture** have also been reported. For instance, TFDP documented 105 cases of torture, totalling 163 victims, between 2008 and 2010<sup>19</sup> and has documented 17 cases affecting 21 victims between the start of 2014 and September 8. As for Karapatan, from 2001 to June 2010, Karapatan documented 1,099 cases of torture and from July 2010 to September 30, 2014, Karapatan documented 104 victims of torture<sup>20</sup>.

**Enforced disappearances** also continue to occur in the country and hundreds of cases from the past remain unsolved. Figures seem to indicate that the number of cases of enforced disappearances per year has been approximately the same since the end of the Marcos era (875 cases were documented during the 21-year rule of Marcos while 945 cases have been documented in the last 25 years). Between 2008 and June 2011, the cases of 79 victims of enforced disappearance were documented by the NGO FIND (50 were found alive, 5 bodies were discovered and 24 remain missing)<sup>21</sup>. For its part, the CHRP received 78 complaints of incidents of enforced disappearances (totalling 210 victims) for the period 2001-mid 2010. As for Karapatan, it has documented 23 victims of enforced disappearances from July 2010 to December 2014 and 206 victims of enforced disappearances from 2001 to June 2010, all of whom are still missing to this date<sup>22</sup>.

To that extent, in 2012, the United Nations Human Rights Committee (CCPR) regretted in its Concluding Observations the continuing occurrence of extra-judicial killings and the high rate of enforced disappearances, as well as the poor results of investigations and the lack of prosecution, including the slow progress in the 2009 Ampatuan massacre (see below)<sup>23</sup>. The CCPR also expressed concern about the role of the private armed and the military auxiliary groups as well as the high number of loose weapons in circulation in the country<sup>24</sup>.

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<sup>15</sup> See The Asia Foundation, Parreno, A., *Report on the Philippines Extrajudicial Killings, 2001-2010*. para.13. Available at <http://asiafoundation.org/publications/pdf/969>.

<sup>16</sup> See Karapatan, *Year-End Report on the Human Rights Situation in the Philippines*, 2010. Available at <http://karapatan.org/2010-human-rights-report>.

<sup>17</sup> Information provided by Karapatan.

<sup>18</sup> CHRP Submission to the Universal Periodic Review – Philippines June 2012, para 11. Available at [http://lib.ohchr.org/HR-Bodies/UPR/Documents/session13/PH/CHRP\\_UPR\\_PHL\\_S13\\_2012\\_CommissiononHumanRightsofthePhilippines\\_E.pdf](http://lib.ohchr.org/HR-Bodies/UPR/Documents/session13/PH/CHRP_UPR_PHL_S13_2012_CommissiononHumanRightsofthePhilippines_E.pdf). Also, see Case Reports Analysis of CHRP Legal and Investigation Office.

<sup>19</sup> Information provided by TFDP.

<sup>20</sup> Information provided by Karapatan.

<sup>21</sup> See Asia Pacific Forum, *Submission for UPR*, 2012, p.5

<sup>22</sup> See Karapatan, *Year-End Report on the Human Rights Situation in the Philippines*, 2010. Available at <http://karapatan.org/2010-human-rights-report>.

<sup>23</sup> See CCPR, *Concluding Observations on the Philippines*, UN Doc CCPR/C/PHL/CO/4, paras. 14-16.

<sup>24</sup> *Idem*, paras. 14-16.

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### 3.1 The proliferation of private security forces and arms, a grave threat to civilians

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The failure of the Government to disarm and disband private armed groups continues to place civilians at serious risks. Indeed, the web of militarisation continues to spawn in the Philippines, with a complex labyrinth of armed forces, paramilitary, private security forces and private militias controlling large swathes of land. The perpetuation of multiple illegal and unaccountable private armies, State-supported paramilitary groups such as the Citizen Armed Force Geographical Unit (CAFGU) and the Industrial Defence Force (IDF), as well as the large scale possession and easy availability of dangerous arms and weapons, all contribute to the climate of impunity for human rights violations, including the attacks on human rights defenders.

After the Maguindanao massacre in Mindanao in November 2009, also known as the Ampatuan massacre<sup>25</sup>, an Independent Commission Against Private Armies was established in May 2010. Its reports determined that at least 72 groups were active in the country, while 35 had been dismantled. The mandate of the Independent Commission ended in 2010, and was not renewed by the new administration, nor was its report made public<sup>26</sup>. The Commission did not establish the responsibility of any of the perpetrators of the massacre.

Private armed groups continue to operate under President Aquino, particularly in areas marked for mining and other land acquisition activities. Those groups are in many cases responsible for arbitrary detention, torture, and killings of local community leaders of indigenous peoples and human rights defenders advocating their rights. The Aquino Government has continued with the policy of militarisation through establishing armed "force multipliers", which also include members of private armed groups, such as the Civilian Volunteer Organisations, Police Auxiliary Units and the CAFGU. In October 2011, President Aquino endorsed the Armed Forces' proposal to deploy militias, officially "to strengthen security for mining operations". It was decided that Special CAFGU Active Auxiliary units (SCAAs), would be funded and directed by mining companies. In 2012, he announced the commissioning of SCAA units or paramilitary groups to increase the security forces of mining companies. As outlined in some of the cases documented below, the CAFGU has been directly responsible for repression and attacks on human rights defenders<sup>27</sup>.

A stark illustration reminiscent of martial law which subsists in the Philippines' legal framework is **Executive Order 546**, enacted on July 14, 2006 by President Gloria Macapagal-Arroyo, to authorise the Philippines National Police (PNP) and the Armed Forces of (the Philippines (AFP) to conduct joint operations, under the guise of fighting the insurgency waged by the NPA for over 43 years. The Order 546 directs the PNP to actively support the AFP in internal security operations aimed at the suppression of insurgency and other "serious threats to national security". It also empowers the PNP to employ Barangay<sup>28</sup>-based law enforcement officers as "force multipliers".

During the campaign for the 2010 presidential elections, President Aquino had unequivocally promised to revoke Executive Order 546, stating that, "Never again will public funds be used to support and maintain a private security force<sup>29</sup>". However, after taking office, he publicly backtracked in November 2010, stating that he was not in favour of dismantling the Citizen's Armed Forces Geographical Units (CAFGUs) and other military-supervised paramilitary groups, and that getting rid of them "is not the solution"<sup>30</sup>. He argued that communities, particularly in the countryside, "have a right to protect themselves" against communist

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<sup>25</sup> On November 23, 2009, 58 people were killed by a group of around 200 armed men as they were on their way to register the candidacy of a local vice mayor in the southern Philippines island of Mindanao for the upcoming gubernatorial elections. Those killed included family members and supporters of the local vice mayor as well as media workers and passers by.

<sup>26</sup> See Amnesty International, *Philippines submission to the Un Human Rights Committee for the 106th session of the Human Rights Committee*, 15 October – 2 November 2012, p. 15.

<sup>27</sup> See for example case of harassment of farmers and human rights defenders by the Yap-Lao family, p. 33 of this report.

<sup>28</sup> Smallest administrative unit in the country.

<sup>29</sup> See HRW, *Philippines: Keep Promise to Disband Paramilitaries*, 2012. Available at <http://www.hrw.org/news/2012/03/30/philippines-keep-promise-disband-paramilitaries>

<sup>30</sup> Idem.

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insurgents and Islamic separatists<sup>31</sup>. In October 2011 President Aquino, further entrenched the role of paramilitary groups and announced that they would from then on be used to protect mining companies from insurgents.

Civilian Volunteer Organisations, police auxiliaries and Barangay defence forces are sometimes hired out to private companies, including mining firms. The deployment of these forces in remote areas further increases the risk of violations of the rights of indigenous populations.

As of early 2011, there were reportedly 50,000 members of State-sponsored militias, in addition to an estimated 120,000 soldiers in active service<sup>32</sup>.

### **3.2 The role of the Armed Forces of the Philippines (AFP) and the Philippines' National Police (PNP) in human rights violations: complicity and inaction**

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The **Armed Forces of the Philippines** (AFP) and the **Philippines' National Police** (PNP) have been specifically indicted for abusing their power and authority to commit egregious human rights violations, including against human rights defenders. Just to mention one example, Gen. Jovito Palparanis AFP's member was responsible of the implementation of Oplan Bantay Laya (the Internal Security Plan of the previous Government), which resulted in vicious human rights abuses for which he was arrested in August 2014<sup>33</sup>.

In the wake of growing criticism, the Government created a human rights unit within the AFP<sup>34</sup> and the police<sup>35</sup>, that intended to oversee and monitor cases of human rights violations filed against soldiers and law enforcement personnel. The government subsequently launched on December 2012, a human rights handbook for the AFP<sup>36</sup> and the Philippine National Police (PNHP) human rights desk operations manual<sup>37</sup>.

In his interview with the Mission delegates, the Human Rights Officer of the AFP agreed that no member of the armed forces had ever been convicted for a human rights violation, including in case of crime such as torture or extrajudicial execution. The Mission delegates were told of a couple of instances where the armed forces personnel had been charged. However, the prosecution against them by the Department of Justice has stalled. The Human Rights Officers declared that human rights organisations were biased and did not raise their voice when members of the security forces were targeted and killed by armed insurgents. They regretted that only violations by the security forces personnel were highlighted.

The Officers of the PNP and AFP did not consider the deployment of the armed forces for purposes of so-called "internal security" or "counter insurgency operations" as being contrary to the Philippines international human rights obligations, on the grounds that the Republic Act No. 8551 of 1998 gives mandate to the AFP to lead the operations, with the assistance of the PNP.

Many officials interviewed by the Mission delegates mentioned the case of the infamous General Jovito Palparan Jr., who had ironically become a symbol of the widespread lack of

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<sup>31</sup> Idem.

<sup>32</sup> See Amnesty International, Submission to the UN Universal Periodic Review, May-June 2012, p. 12.

<sup>33</sup> See Karapatan, available at <http://www.karapatan.org/Arrest+of+Palparan+an+indictment+of+the+AFP+hierarchy> and <http://www.nupl.net/international-lawyers-against-the-special-treatment-being-afforded-to-human-rights-violator-ex-maj-gen-jovito-palparan/>

<sup>34</sup> The directive to establish the Human Rights Offices in the Army, Air Force and Navy was issued on November 8, 2010. At present, the AFP only has the Human Rights Office based at the AFP general headquarters in Camp Aguinaldo.

<sup>35</sup> HR Desks were activated pursuant to GENERAL ORDERS NUMBER DPL-07-20 dated December 30, 2007 under the Offices of the Directors of the National, Operational Support Units, Regional Directors of Police, Regional Offices, Provincial Directors of Police Provincial Offices, City Directors of City Police Offices, District Directors of District Police Offices and Chiefs of Police of the City Police Offices and City/Municipal Police Stations.

<sup>36</sup> See Dubbed as the "AFP Soldiers Handbook on Human Rights and International Humanitarian Law," the book contains all laws, directives and issuances related to human rights. See <http://www.philstar.com:8080/headlines/639950/afp-launches-human-rights-book>.

<sup>37</sup> The manual aims to delineate the duties and responsibilities of all human rights desk officers of the PNP throughout the country, laying down procedures the police should follow. Available at [http://www.hss.de/fileadmin/suedostasien/philippines/downloads/human\\_rights\\_desk\\_manual.pdf](http://www.hss.de/fileadmin/suedostasien/philippines/downloads/human_rights_desk_manual.pdf).

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accountability for human rights in the Philippines since the authorities had at the time failed to arrest and prosecute him after he was charged with the enforced disappearance of activists **Sherlyn Cadapan** and **Karen Empeño**, two students at the University of the Philippines who were engaged in community organising and support for farmers in Hagonoy, Bulacan, who were abducted in June 2006 by men under the command of then Maj. Gen. Palparan. The latter also seems to be linked to the killings of **Eden Marcellana**, Karapatan Southern Tagalog Secretary General, and **Eddie Gumanoy**, a peasant leader, who were abducted in April 2003 by soldiers in Mindoro Oriental while conducting a fact-finding mission on human rights violations perpetrated by General Palparan and his men, and whose bodies were found lifeless with gunshot wounds and torture marks. In 2008, the United Nations Human Rights Committee released its views on the case, after a complaint was filed by Karapatan and relatives of the victims, concluding that the Philippine Government failed to protect the rights of Ms. Marcellana and Mr. Gumanoy and provide remedies for redress for the relatives of the victims. The Committee also urged the Philippine Government to initiate and pursue criminal proceedings against Palparan and his men, and to ensure that such violation do not recur in the future<sup>38</sup>.

General Palparan who went into hiding in December 2011 after he was indicted of two counts of kidnapping and illegal detention, was hiding for nearly three years before he was arrested in August 12, 2014. While General Palparan's example was frequently cited to explain that such impunity would no longer be tolerated, and while the Under Secretary of the Department of Justice stated to the Mission delegates that an international man-hunt was on to nab Gen. Palparan. No serious action or investigation seemed to have been carried out at the time of the mission to locate, try and sanction him according to law.

More generally, the Mission delegates observed that due to the continuous militarisation in the country, the military has largely assumed functions of law enforcement. They also observed that the initiatives taken by the Government to put human rights at the core of the functioning of the security forces had failed to take root in practice or positively impact the situation of human rights defenders, still vulnerable to human rights abuse and violations.

The consistent view of all human rights organisations, human rights defenders and even some foreign diplomatic missions met by the Mission delegates was that even the most egregious human rights violations by the army and paramilitary forces are rarely investigated and prosecuted. Military operations continue to be shrouded in secrecy and are not subject to scrutiny of an independent Prosecutor and Judiciary. This spawns a culture of impunity that instigates further violations. Unless concrete steps are taken justice will remain elusive for victims of human rights abuses. In the run up to the 2013 elections, many human rights groups had once again raised the demand for the disbanding of the state backed paramilitaries and repeal of Executive Order 546.

The Human Rights Officer of the PNP also informed the Mission delegates that efforts were ongoing to upgrade the forensic skills of the investigating agency. The Philippines' Government had in its 2008 report<sup>39</sup> to the United Nations itself acknowledged that strengthening the witness protection program and upgrading the forensic capability of the PNP and the National Bureau of Investigation (NBI), inter alia, were imperative. Given the over reliance of the police on eyewitnesses and the absence of a robust witness/victim protection program, it is not surprising that most cases of violations against human rights defenders lead to acquittals. In such circumstances, the enhancement of forensic skills of the PNP would certainly benefit the investigation and prosecution. However, it is relevant to note that support for forensic training, infrastructure and development by international donors has been ongoing in recent years which so far has not led to clear improvements in the level of forensic investigation in the country.

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<sup>38</sup> See Human Rights Committee, *Communication No. 1560/2007*, UN Doc CCPR/C/94/D/1560/2007.

<sup>39</sup> See *Philippine National Report To The Human Rights Council For The Universal Periodic Review, 2011*, paras. 107 & 132.

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### 3.2.1 An ongoing culture of impunity despite legislative and institutional reforms

As seen above, the absence of robust, professional and independent State institutions is largely responsible for the recurrence of human rights violations. The police, the army and even the judicial system do not meet the prerequisites of professionalism, independence and allegiance to rule of law and human rights.

A general climate of impunity prevails in the country and civilian and military justice is weak. To address this major issue, National Monitoring Mechanisms have been established, which include the government, civil society and the CHRP to monitor progress in resolving cases of extrajudicial executions, disappearances and torture. However, the authorities have failed to address the involvement of security forces and local officials in the violations.

The pace of effective investigations, prosecutions and trials of persons suspected of committing human rights violations has been very slow or stalled. Even worse, State forces have continued to be involved in serious human rights violations such as torture, ill-treatment, unlawful killings and enforced disappearances. Many cases of alleged human rights violations have never been brought to court. Only a handful of cases have been prosecuted (from 2001 to August 2011, only 1,37% of 364 extrajudicial executions had been solved<sup>40</sup>. The conviction rates stands at an abysmal 16%<sup>41</sup>. None of the perpetrators of disappearances have been jailed, and only 5,8% of the killings of journalists have resulted in convictions<sup>42</sup>. Moreover, it is worth noting that only foot soldiers have been arrested and prosecuted while the masterminds in the military and police have not been brought to justice.

Taking office in June 2010, President Benigno Aquino III had declared that human rights would be respected and protected<sup>43</sup>. However, reneging on his electoral promises to repeal laws that encouraged abuses and impunity by security forces, President Aquino continued to implement his predecessor's counter-insurgency programme ("OplanBayanihan"). Similarly, Executive Order 546 remains in force, providing a facade of legality to the deployment of the army and civilian armed forces in dealing with internal conflicts, in contravention of democratic norms and human rights.

Despite his assertions, little progress has therefore been recorded in addressing impunity for serious violations of human rights. Hundreds of cases of extrajudicial executions and enforced disappearances from the last decade remain unresolved. Unlawful killings and enforced disappearances continue to occur.

### 3.2.2 Legislative and institutional reforms

Responding to the scathing criticism of its human rights record by domestic human rights organisations, UN bodies and INGOs, the Philippines Government under President Aquino introduced legislative and institutional reforms aiming to address the situation. A step in this direction is the enactment of laws prohibiting torture and enforced disappearances. Despite these advancements, the challenge of widespread and systematic impunity remains.

#### a) The Anti Torture Law (2009)

The **Anti-Torture Act** was passed in 2009. Section 13 of the law recognises the principle of "command responsibility", holding criminally liable a superior military, police or law enforcement officer.

Despite the criminalisation of torture and other cruel, inhuman and degrading treatment, the PNP and AFP continue to routinely practice or be complicit in torture cases, including against human rights defenders. The Mission delegates have not heard of any cases of prosecution or

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<sup>40</sup> See Asia Foundation, Atty. Al A. Parreno, *Report on the Philippine Ejes, 2001-August 2011*.

<sup>41</sup> See AMP, joint *submission to UPR*, p.4. Available at [www.malaya.com.ph/12132010/news8.html](http://www.malaya.com.ph/12132010/news8.html).

<sup>42</sup> *Idem*.

<sup>43</sup> This was repeatedly stated throughout the electoral campaign.



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punishment in relation to such crimes and that has remained the case up to this date. Intensive efforts are required at all levels to ensure that the absolute prohibition of torture is duly incorporated in the working culture of the PNP, the AFP and other security forces, and that torture is absolutely prohibited, even in counter insurgency operations. The Human Rights Unit of the AFP and the PNP has a special duty to intensify its training efforts, and courts must systematically prosecute all perpetrators, including men in uniform.

On a negative note, although the Philippines acceded to the **Optional Protocol to the Convention against Torture** (OPCAT) in April 2012, the Department of Justice made a declaration under Article 24 of the OPCAT upon accession, postponing the implementation of Part III (related to the SPT's mandate) for three years.

### **b) The "Anti-Enforced or Involuntary Disappearance Act" (2012)**

On December 21, 2012, the Philippines' Government enacted the "Anti-Enforced or Involuntary Disappearance Act" through Republic Act No. 10353. According to Congressman Edcel Lagman, who authored the bill, "The law seeks to end impunity of offenders even as it envisions a new (...) breed of military, police and civilian officials and employees who respect and defend the human rights and civil liberties of the people"<sup>44</sup>.

Echoing the UN Convention Against Enforced or Involuntary Disappearances, which the Philippines has not yet ratified, this law under Section 3(b) defines "Enforced or involuntary disappearance" as "the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law". The law stipulates that enforced disappearances will have a different legal treatment than kidnappings and could even result in a life prison sentence. Moreover, the Filipino armed forces will be unable to make use of orders of battle<sup>45</sup>, which has until this point justified the detention of those suspected of crimes. This law also prohibits secret detention facilities and authorises the Government to conduct "regular, unannounced (...) inspections of all places of detention and confinement". Moreover, Section 7 of the act imposes a statutory *duty* on any person, including Inquests, Public Prosecutors, Judicial or Quasi-judicial officials, and other employees who have information about the whereabouts of the victim, to report it to government agencies, the victim's family, or human rights organisations. The Act also provides for the creation of an updated list of all the people held in the Philippines' detention facilities.

Furthermore, the offence of causing enforced or involuntary disappearance is defined as a continuing offence, hence the statute of limitations shall not hinder the prosecution of perpetrators. The Act also provides state protection for all those involved in the search, investigation and prosecution of enforced or involuntary disappearances, including the families of the victims and rehabilitation of victims and their immediate relatives.

The enforced disappearance of human rights defenders was a systematic and widespread policy during the martial law established in 1972 by the regime of President Ferdinand. According to Karapatan, more than 1,000 human rights defenders and suspected supporters have disappeared since the 1972-1986 Marcos dictatorship, more than 200 under President Gloria Macapagal-Arroyo (2001-2010) and this crime amongst others against human rights defenders continues *even under President Aquino*<sup>46</sup>.

With the legal architecture in place, the Government of the Philippines must now show political will and prosecute those responsible for these crimes, and punish them regardless of rank or position.

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<sup>44</sup> See <http://newsinfo.inquirer.net/327641/aquino-set-to-enact-law-giving-hope-to-desaparecidos>

<sup>45</sup> An "order of battle" is a list of persons the AFP claims to be combatants or supporters of insurgent groups. A number of political activists who have appeared in such lists are among those who have been killed in the Philippines allegedly by military and paramilitary units.

<sup>46</sup> See start of Chapter II above and <http://karapatan.org/2010-human-rights-report>.

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### **c) Ambiguous and inadequate definition of extra-judicial killing**

One of the most serious issues confronting the Filipino State is the killing of civilians, including human rights defenders, by State and State sponsored actors. However, despite international scrutiny, impunity remains the rule.

One major hurdle is the failure of the Government to adopt a clear and uniform definition of extra-judicial killing in accordance with international standards. Due to the disagreement over what constitutes extra-judicial killing, the crime of extra-judicial killing remains un-codified. The Department of Justice told the Mission delegates that the working definition formulated by the Technical Working Group of the Department of Justice recognises the following as extra-judicial killing: (1) where the victim is targeted because of political and religious belief or affiliation; (2) the perpetrator can be a state actor or non-state agent; (3) the circumstances of the killing point to an extra-judicial killing.

The documentation of extra-judicial killings in the Philippines by the UN Special Rapporteur on Extra-Judicial Executions and human rights groups demonstrates a distinct pattern of human rights defenders and other victims being targeted by State agents<sup>47</sup>. Thus, notwithstanding pro human rights declarations, the failure of the Aquino Government to adopt a definition of extra-judicial killing in compliance with international human rights law has given confused signals to the Police and the Prosecutor. The dispute over which killings would fall within the purview of the crime of extra-judicial killing has given impetus to decades of impunity that surrounds extra-judicial killings in the Philippines.

### **3.2.3 Weak institutional human rights mechanisms that do little to reverse the climate of impunity**

#### **a) A judicial system that fails to properly address human rights violations**

In order to address cases of extrajudicial executions, competencies have been assigned to the Supreme Court and to the Special Prosecutors, and Special Courts are designated by the judiciary<sup>48</sup>. The Supreme Court designated some 99 special courts to hear cases of extrajudicial killings. However, this designation of already existing courts to hear such cases produced no results as no cases were filed within these courts. The Supreme Court has since abolished these special courts, reverting to the practice of designating all regional courts as special courts to try cases involving extrajudicial killings. Insofar as this discourages the participation of witnesses and leads to delays in prosecutions of cases involving extrajudicial killings, the changes should be revisited<sup>49</sup>.

Furthermore, this has not sped up the process of prosecution or trials. The data from the available records collected shows that it takes an average of five years, two months and 11 days for a case of extrajudicial killing to undergo the criminal process - assuming it goes through the process. This data is also based on cases that were still undergoing criminal prosecution as of 2010 (20 percent are undergoing trial and 6 percent are undergoing preliminary investigation). Thus, this average may still increase if these cases are not resolved rapidly<sup>50</sup>.

Moreover, many prosecutors prosecute for "physical injuries", which fall outside of the Anti-Torture Act, resulting in the application of lower penalties. One of the conclusions of this mission in this regard is that the problem is not only the lack of political will to implement the Act but also the fact that law enforcers and prosecutors have little knowledge of the provisions of the Anti-Torture Act.

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<sup>47</sup> See, Special Rapporteur on extra judicial, summary or arbitrary executions, report mission to Philippines, 2008, A/HRC/8/3 add.2, para. 11. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/130/01/PDFG0813001.pdf?OpenElement>

<sup>48</sup> See Special Rapporteur on extrajudicial, summary or arbitrary executions, *Follow up to country recommendations Philippines*, 2009, A/HRC/11/2/Add.8, para.42.

<sup>49</sup> See The Asia Foundation, Parreno, A. *Report on the Philippines Extrajudicial Killings, 2001-2010*. 2011.

<sup>50</sup> See AMP, joint *submission to UPR*, p.4.

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The Department of Justice has set up a special task force to examine all reported and unresolved cases of extrajudicial executions and enforced disappearances. The task force is headed by the Under Secretary of the Department, assisted by prosecutors, State counsel and other officers.

80 per cent of the investigating officers in the country do not have formal training in investigation techniques and many police stations lack the simplest equipment - such as crime-scene tape, video or photo camera. Moreover, the mission could conclude that prosecutors did not cooperate fully with the police during investigations<sup>51</sup>.

The previous Government of President Arroyo created various task forces with a number of different mandates to carry out independent, credible and impartial investigations into cases of extra-judicial killings and enforced disappearances. However, none of these task forces is considered to meet the threshold of truly "independent, credible and impartial"<sup>52</sup> (e.g. Task Force USIG, Task Force for the Security of Judges, Prosecutors and IBP Lawyers, Task Force 211).

### **b) The Commission on Human Rights of the Philippines**

The Commission on Human Rights of the Philippines (CHRP), was created by the Executive Order no. 163, in accordance with the 1987 Constitution, which mandated the creation of an independent commission to monitor government's compliance with its human rights obligations under international treaties. Given the endemic inequality, discrimination, and wide range of human rights violations, the CHRP plays a pivotal role in the Philippines.

The CHRP is empowered to investigate complaints of human rights violation; provide legal assistance to victims of human rights violations; visit jails and other detention centres, and monitor the government's compliance with international human rights law and treaties. The CHRP has one central office in Manila, and 12 regional offices.

In 2010, the CHRP received 263 complaints of human rights violations committed by the PNP, the AFP and other security forces. The CHRP stated that the commission's investigation office functioned independent lyin fact-finding and preliminary investigations. The CHRP also has its own forensics section to aid investigations. Yet, the Mission was informed that although hundreds of families of victims of killings and disappearances filed complaints with the CHRP, for the most part the institution failed to thoroughly and consistently investigate these complaint and did not identify perpetrators.

The CHRP received a 'A' grade rating by the International Coordinating Committee (ICC) of National Human Rights Institutions. However, the CHRP does not have the power to determine its organizational structure, nor does it enjoy financial autonomy, and its budget was twice reduced by the government. These deficiencies affect the CHRP's independence and its ability to impartially execute its mandate of monitoring and ensuring that state agents' actions are in accordance with international human rights law.

Two recent developments have threatened the independence of the Commission: 1) a Supreme Court pronouncement in February 2007 that the CHRP enjoys only limited financial autonomy; and 2) the enactment of the Human Security Act of 2007, which granted the Commission prosecutorial powers and more responsibilities<sup>53</sup>, which does not match well with its role as an independent monitor since prosecution should be a task of the executive.

The Mission was also told that the CHRP lacks effectiveness as the success of the CHRP is entirely contingent on the cooperation of the police and the Armed Forces, and therefore the President and other agencies.

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<sup>51</sup> See Lawyers for Lawyers, *submission to UPR*, 2012, p.4.

<sup>52</sup> See D and ANHR, Diakonie and Action Network Human Rights, *Joint UPR submission*, November 2007

<sup>53</sup> See Report of Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Philippines, 16 April 2008, UN Doc.A/HRC/8/3/Add.2, paras. 52-45 and 71.

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### **c) An inadequate witness / victim protection mechanism**

The issue of a weak witness protection programme has been identified by the UN Special Rapporteur on Extra-Judicial Killings, Mr. Philip Alston, as one of the most significant causes of the continued impunity<sup>54</sup>. Despite this analysis, the Philippines rejected, during its last UPR in April 2012, the recommendation to strengthen its witness protection programme<sup>55</sup>.

The situation is exacerbated by the fact that there is no comprehensive witness/victim programme available to provide any real measure of security to witnesses, including human rights defenders.

In cases where human rights defenders are targeted, the accused are more often than not socially, economically, and politically powerful persons. In sharp contrast, the human rights defenders and the witnesses generally belong to socially, economically, and politically marginalized communities, which renders them acutely vulnerable.

The Republic Act No. 6981 or "The Witness Protection, Security and Benefit Act" was adopted in April 1991. It "seeks to encourage a person who has witnessed or has knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority, by protecting him/her from reprisals and from economic dislocation". The Act tasks the Department of Justice through its Secretary to formulate and implement a witness protection programme pursuant to the provisions of the Act. Any person guilty of harassing a witness from attending or testifying before the investigative body, reporting of criminal offense or seeking arrest of another person in connection with the crime "shall be fined not more than three thousand pesos or suffer imprisonment of not less than six months but not more than one year, or both, and he/she shall also suffer the penalty of perpetual disqualification from holding public office in case of a public officer".

The UN Special Rapporteur on Extra-Judicial Killings, Mr. Philip Alston, in his report on the Philippines, noted that the absence of witnesses is the primary reason behind extra-judicial executions hardly ever leading to convictions, as the lack of witnesses does not allow the case to move from the initial investigation to the prosecution stage<sup>56</sup>. The cause for witnesses being absent has been attributed to the vulnerable position in which the act of testifying against state security personnel puts them. This vulnerability is increased by the deeply flawed implementation of the statute that established the witness protection programme. Firstly, even though the statute provides for protection of at risk family members into the programme, in practice this is seldom enforced. Secondly, protection is withdrawn as soon as a case fails to succeed in court, despite the fact that the risk faced by the witness may continue.

In addition, the witness protection programme is administered by the National Prosecution Service (NPS), The discretion of proposing protection is given to the prosecutor as opposed to a separate witness protection office under the Department of Justice (DOJ) that is independent of the prosecutors and takes a more proactive role in providing witness protection. The Department of Justice told the Mission that they were seeking a larger budgetary allocation to make the Witness Protection Programme effective. The Mission was repeatedly told by human rights defenders that in practice no protection is available, leading to most witnesses refusing to come forward to make statements to the police or testify before the courts. In the absence of witness testimony, crimes - including those against human rights defenders - go unpunished.

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<sup>54</sup> See Switzerland recommendations available at [http://www.upr-info.org/followup/index/page/13th\\_UPR\\_session](http://www.upr-info.org/followup/index/page/13th_UPR_session)

<sup>55</sup> Idem.

<sup>56</sup> See *Observatory Annual Report 2011*.

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### 3.3 Impunity for abuses against human rights defenders

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**The pervasive and systematic impunity that prevails in the Philippines underlies threats to human rights defenders and is at the heart of the alarming situation they face.**

In many of the cases of murder of human rights defenders reported to the Mission, there were clear signs of harassment and intimidation prior to the killing. In addition, human rights defenders often informed the police about death threats they received. However, due to collusion on some occasions between the aggressors, the police and other state agents, authorities ignored their complaints and failed to take preventive action. Arrests were never made on the complaints of the human rights defenders, thus emboldening the aggressors to intensify their attacks against them.

Similarly, in many of the cases that were reported to the Mission, the police categorically refused to investigate the murder of human rights defenders, arguing that the family of the victims was unable to provide the police with names of eyewitnesses of the crime. It is alarming that the Philippine National Police (PNP) placed the burden of tracking and producing the witnesses and evidence on the victims' families instead of fulfilling its duty of investigating the crime and gathering evidence. By abdicating its statutory responsibility, and duty of investigating alleged perpetrators, the PNP contributes to the impunity enjoyed by those targeting human rights defenders.

Responding to complaints of human rights violations against human rights defenders, a senior DOJ official informed the Mission that a Technical Working Group had been constituted. This Technical Working Group, in consultation with other government bodies and human rights groups, was compiling and preparing a common list of human rights defenders who had suffered human rights violations. According to the official the DOJ would subsequently investigate those cases. Despite this positive initiative the Mission was concerned that the DOJ's list was not comprehensive. For example the DOJ had no information about the extra-judicial killing of Messrs. Gilbert Paborada and Moises Fuentes (see below). To address this issue, the DOJ indicated that the Technical Working Group was open to receiving names of human rights defenders from local NGOs.

**For impunity to be rooted out it is essential that government ensures that all previous cases of violations against human rights defenders are thoroughly investigated, the alleged perpetrators prosecuted, and, if found guilty, punished in accordance with international human rights standards.**

The Mission observed that human rights organisations and human rights defenders frequently turned to the CHRP to intervene in cases of threats, intimidation, or killing of human rights defenders. Complaints were filed with the CHRP in the hope that it would conduct an independent probe into the violations, particularly those committed by the security forces and the police. CHRP officials told the Mission that they responded promptly in the case of the Morong 43<sup>57</sup> and the Capion massacre (see below) through its regional offices. However, the Mission heard from many human rights defenders that CHRP failed either to send its officers to investigate the complaint or to take any serious action to provide justice or security to the human rights defenders victims.

On the issue of protection of human rights defenders, the CHRP Focal Director informed the Mission that there were no specific laws, policies or mechanisms within the CHRP to respond to complaints of violation suffered by the human rights defenders. The CHRP officials agreed with the Mission that ad hoc personnel and framework should be adopted to protect the rights of human rights defenders. The CHRP officials admitted that human rights defenders were under threat and often red-tagged and subjected to repressive measures by the police and security forces. The CHRP officials also stated that a clear understanding and consciousness of the significant role performed by human rights defenders was yet to develop among law enforcement agencies, state departments, and the judiciary.

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<sup>57</sup> See [http://www.congress.gov.ph/download/basic\\_16/HB01472.pdf](http://www.congress.gov.ph/download/basic_16/HB01472.pdf)

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It is relevant to note that the House Bill 1472 "Human Rights Defenders' Protection Act of 2013", which seeks to recognise the role of human rights defenders and provide protection mechanisms especially to those who are at risk has been pending since 2007 when it was first filed<sup>58</sup>.

The CHRP appeared to be responsive to the recommendation made by PAHRA that human rights defenders should be tasked with by the CHRP to conduct fact-finding missions, investigations, and other human rights-related activities in collaboration with the CHRP. The CHRP officials said that a report containing this recommendation had been prepared and forwarded for consideration to the Commission and that a decision was awaited.

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Senior representatives of the European Union (EU) and diplomats from the Embassies of Australia, Norway, and Switzerland the Mission met by the Mission, stated that the scale and intensity of human rights violations in the Philippines had reduced and there was a marked improvement since the Marcos and Arroyo era. They observed that the government had made efforts to improve the legal framework through the introduction of various laws to protect human rights. However, they agreed that access to justice and impunity for violations remained two critical areas of concern under the Aquino administration.

In particular, the European diplomats were of the view that serious crimes like extra-judicial killings continued under Aquino and marginalised groups were unable to access justice. To remedy this, they felt the Philippines must seek technical assistance from European countries.

To meet this challenge the EU had undertaken a major project, EP-JUST. Building on the gains of an earlier project, in 2012 a nationwide four-year project was launched by the EU under the banner of "Justice for All". The primary focus of the project is to strengthen the legal system and make it responsive to crimes such as extra-judicial killings, and curb impunity. The main thrust of this programme is to ensure that the most vulnerable groups can access justice. To counter extra-judicial killings, some key areas for reform proposed by EU are: community-based policing; protection of witnesses; reduction of court delays; and amendment of procedures that allowed repeated adjournments of court proceedings. The EU was also in the process of finalising a Bilateral Framework Corporation Agreement with the Philippines government, in the context of which human rights concerns would be discussed. Smaller projects of the EU focused on access to justice in areas of armed conflict. The EU has funded a few shelters run by Church based groups for the safety of human rights defenders who were targeted.

The EU and other diplomats regarded the government's creation of highly-militarised zones as detrimental to human rights and said that that reform of the security sector was necessary to curb human rights violations. The EU representatives also agreed that commercial activities of mining companies and other extractive industries in indigenous peoples' are a striggered violent conflict.

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**As we have just seen, a plethora of laws and institutional mechanisms that have been adopted, purportedly for advancement of human rights, does not inspire the people's confidence, as in practice those in position of political, economic, and military power continue to enjoy impunity.**

**Human rights defenders across the Philippines have been targeted and their work for protection of human rights impeded. The Mission noted that human rights defenders were targeted by state and non-state actors, sometimes acting in collusion and coordination with each other.**

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<sup>58</sup> Idem.

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## IV. CRIMINALISATION OF HUMAN RIGHTS DEFENDERS

The Mission discerned several patterns and forms of targeting of human rights defenders through their criminalisation. In particular, human rights defenders are facing red tagging and false labelling as well as false criminal cases and long incarcerations.

The criminalisation of human rights struggles is used to manipulate national and international opinion and to silence all critics of the severe and flagrant violations committed by the State and its agencies.

### 4.1 Red tagging and vilification of human rights defenders

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The Mission observed that **human rights defenders were victims of red tagging and libel, in an attempt to give a cloak of legitimacy to the unlawful physical assaults, harassment and threats directed against them.**

In particular, human rights defenders engaged in struggles for enforcement of economic, social and cultural rights, were often red tagged as "communists", or members of the outlawed NPA.

In the Cordillera region, Karapatan's sources were able to obtain a copy of an order of battle list containing 28 names of Karapatan human rights workers and indigenous and peasant leaders. This list included the names of **Jude Baggo**, Karapatan Cordillera chapter secretary general, and **William Bugatti**, its coordinator in Ifugao. Baggo has been vilified publicly by Army officers in the media and during factfinding missions. Bugatti experienced surveillance, harassment and vilification as well prior to his killing in March 2014

In November 2012, the DND Secretary signed the updated DND-DILG Joint Order number 14-2012 which specifies the total amount of PhP466.88 million (approximately 8.5 million euros) monetary reward for 235 "wanted communists" which has led to various "mistaken-identity arrests" such as those of Rolly Panesa, a security guard who was wrongly arrested accused of being a certain "Benjamin Mendoza", or Ofelia Inong, thought to be a certain "Lolita Loguibis," allegedly a finance and logistics officer of the NPA, who had a PhP2.05 million bounty on her head.

Several peace consultants of the National Democratic Front of the Philippines (NDFP), who were included in the list, were also arrested and are currently detained, including Wilma Austria (P10M), Benito Tiamzon (P10M), Leopoldo Caloza (P2.9M), Roy Erecre (P5.6M), Loida Magpatoc (P5.6M) and Jaime Soledad (P550k). Also in the said list are disappeared peace consultants Leo Velasco and Prudencio Calubid, and the son of the NDFP spokesperson in Cordillera, Grayson Naogsan, who is currently detained. The following activists in the said list were also arrested: Dionisio Almonte, Ramon Argente, and Jesus Abetria.

Similarly, human rights defenders imparting paralegal training to the urban poor or resisting plans for the gentrification of the city were reportedly tagged as "anti-development" and "leftists". This red tagging made the human rights defenders working with the urban poor and homeless targets of human rights violations.

**Amelita Gamara** and **Roy Velez**, trade union and urban poor organisers in Metro Manila, are facing numerous criminal and fabricated charges, after their support and participation in the campaigns of residents in Silverio Compound Paranaque, where a violent demolition occurred in April 2012. The said demolition resulted to one resident killed, ten illegal arrests, and numerous cases of physical injuries. After the said incident, charges were filed against Gamara and Velez in different provinces.

#### **4.2 Human rights defenders framed in false criminal cases, protracted trials and long incarceration**

It was reported to the Mission that **penal laws and the criminal justice system were on most occasions used to further harass, control, imprison and malign human rights defenders.**

**A common tactic used by the police and administration to harass human rights defenders is to file trumped up charges against them.** Especially vulnerable to being framed in false cases were the human rights defenders resisting the entry of mining and other extractive industries (see Chapter IV for more details), as well as human rights defenders exposing human rights violations committed by the army and paramilitary forces.

The Mission delegation heard about cases where in flagrant abuse of the law and authority, the PNP foisted serious crimes, ranging from "attempt to murder" to "possession of firearms or explosives", to "arson", "kidnapping" or "robbery", and other similar crimes on human rights defenders.

**These grave charges authorise the police to place the human rights defenders under arrest with little possibility of bail, thus effectively removing the human rights defenders from the arena of human rights struggle.**

This is also **a way to portray human rights defenders as criminals in society**, rather than activists seeking enforcement of human rights for marginalised communities.

Given the decrepit state of the criminal justice system, even if the human rights defender is eventually acquitted for lack of any evidence, she or he could still face many years of incarceration before release. **This also has a considerable chilling effect on other human rights defenders and the community.**

In this context, the case of Mr. **Temogen "Cocoy" Tulawie** was frequently referred to by NGOs and human rights defenders met by the Mission delegates as an example of trumped up charges being levelled against human rights defenders.

#### **Incarceration of Temogen "Cocoy" Tulawie**

Mr. Temogen "Cocoy" Tulawie is a prominent human rights defender who, through his organisation Bawgbug, undertook monitoring and documentation of cases of human rights violations within the Muslim communities in the Autonomous Region of Muslim Mindanao. For over two decades, Mr. Tulawie was engaged in the protection of the rights of the people in Jolo, Sulu (Mindanao Province), seeking to hold local government officials and the military officers accountable for abuses of power.

When on March 31, 2009, Governor Abdusakur Tan declared a state of emergency in the Province of Sulu, Mr. Tulawie filed a petition before the Supreme Court challenging this imposition, on the ground that it was without legal authority. The state



of emergency imposed by the Governor allowed mass arrests, illegal search and seizures, and provided the formation of the Civilian Emergency Force, implicitly legalising private armies.

On January 14, 2012, Mr. Tulawie was arrested from his home in Davao City, allegedly for being part of a conspiracy in a 2009 bomb blast case. The Governor of Sulu is one of the twelve persons who were injured in the said bomb blast. Moreover, being an active party in the case, the Governor has been regularly filing motions through his private attorneys. Mr. Tulawie has consistently maintained his innocence and is being falsely accused due to his human rights work.

Central to the Tulawie case is the issue of the venue of the trial. In June 2011, the Supreme Court, arguing that Mr. Tulawie would not be afforded a fair trial in Jolo, transferred his trial to Davao City. Again, in August 2012, the case was transferred from Davao to Manila Regional Trial Court (RTC), Branch 19, as there existed information about a plot to kill Mr. Tulawie in jail. At the time of the Mission, the case had been transferred to Metro Manila. Mr. Tulawie is currently detained at the Manila City Jail.

On March 6, 2013, during the Court hearing seeking bail for Mr. Tulawie in Manila, the Prosecutor presented a total of seven witnesses, five from the military and police and two self-confessed conspirators of the March 13, 2009 bombing. The police and military testimonies made no mention of Mr. Tulawie's involvement in the incident and only described the incident and the destruction that resulted from the bombing. In the other two confession-testimonies, there were significant factual inconsistencies, which indicate that these witnesses have been inserted only to bolster the trumped up charges against Mr. Tulawie. It is noteworthy that even though the confessional statements of one of the witnesses is extremely self incriminating, he has been enlarged on bail, with the assistance of a lawyer engaged for him by Governor Abdusakur Tan. From the Court hearings thus far, the case of the prosecution seems to lack any real evidentiary basis.

It is to be noted that Mr. Tulawie enjoys support from several national and international authorities in addition to civil society: Congressman Akbayan Bello visited him in the Davao City Jail and expressed his support. CHRP Chairperson, Ms. Etta Rosales, also "openly aired her support for Tulawie's innocence". The European Union (EU) too has been monitoring this case.

Yet as of August 2014, Mr. Temogen "Cocoy" Tulawie remained detained in Manila City Jail.

The Mission was also told about the case of Messrs. **Rafael Limcumpao, Domingo Alcantara** and **Archie Bathan**, three human rights defenders protesting against a nuclear plant in Bataan Province, who were arrested on false charges of murder and illegal possession of ammunition in 2009 and continue to languish in jail.

**Ongoing arbitrary detention of human rights defenders Rafael Limcumpao, Domingo Alcantara and Archie Bathan since 2009**

As of April 2011, Messrs. **Rafael Limcumpao** and **Domingo Alcantara**, respectively peasant and community organisers, as well as Mr. **Archie Bathan**, Secretary General of the Nuclear-Free Bataan Movement (NFBM), who were all arrested on May 27, 2009 by the PNP, remained detained in Bataan provincial jail (Balanga city) on charges of "attempted murder" and "illegal possession of explosives and firearms".

Prior to their arrest, they had planned to organise campaigns to protest the possible renewed operation of the Bataan Nuclear Power Plant in the area, which is likely to bring about serious environmental and health implications for local residents.

Mr. Limcumpao and Mr. Alcantara were released in January 2014 while Mr. Bathan was released on December 15, 2014. Their case was dismissed but Mr. Limcumpao posted bail on other pending cases.

The Mission also met with Pastor **Edwin Egar**, of the United Church of Christ in the Philippines (UCCP), who was among 72 human rights and labour activists in Southern Tagalog who were falsely charged with "frustrated murder" and "bombing" and imprisoned. Pastor Egar was actively engaged in advocacy for the rights of workers, peasants and fishermen and in organising the families of the victims. The 72 activists were arrested between October and November 2008, for the killing of two policemen and a civilian driver in an ambush in Puerto Galera, Mindoro Oriental, in March 2006. The case against them was finally dismissed only in May 2012.

The case of Mr. **Ericson Acosta**, a journalist, artist, and cultural worker, was also reported to the Mission.

**Arbitrary detention of journalist and defender Ericson Acosta**

On February 13, 2011, while Mr. **Ericson Acosta** was conducting research on human rights and environmental issues in the upland village of San Jorge in Samar Island, the Philippine military arrested him without a warrant, on suspicion of being a member of the New People's Army (NPA). After three days of interrogation and torture, a trumped-up charge of "illegal possession of explosive" was filed against him to justify his arrest. Mr. Acosta could not file for bail, as the arraignment proceedings were delayed.

At the time of the Mission, more than 21 months after detention without trial, Mr. Acosta's petition for review was still pending before the DOJ, and the CHR had yet to take any action on the complaint of Mr. Acosta's family.

Almost two years after his arrest, on February 5, 2013, Mr. Acosta was finally released after the DOJ granted Mr. Acosta's motion for review of his case and directed the Samar Provincial Prosecutor to withdraw the case against him.

Mr. Acosta was subsequently advised to file counter cases against the identified military and police personnel who have blatantly violated his right to life and personal liberty.

Indeed, to counter these false cases against human rights defenders the new strategy adopted by human rights lawyers has been to file countersuits, both civil and criminal, against the perpetrators. Counter cases were for instance filed in the case of farmer leader Mr. Jonas

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Burgos and others. This new strategy was successful, in providing the legal and institutional challenge to the current justice system and, for the HRDs who survived, it provided security and relief by bringing the issue before the public.

However, in this context, one should note the **absence of adequate remedies for human rights defenders to counter false accusations and arbitrary detentions**. In particular, **the Writ of Amparo has proved to be an inadequate remedy to secure release of human rights defenders** languishing in jail pending trial. Human rights lawyers pointed out that **the absence of sufficient number of judges also led to interminable delays in trials**. The CHRP officers too were quite critical of the criminal justice system. They admitted that in many courts across the Philippines, positions of judges were lying vacant causing serious delays in court cases dragging on for years. A case would take three-four years before a trial court and approximately seven-eight years before the Supreme Court. The CHRP also candidly admitted that the office of the Prosecutor was not an autonomous office as it came under the purview of the DOJ.

**All this points to serious structural shortcomings in the Philippines criminal justice system that requires urgent corrective actions.**

**Another major hurdle in securing justice**, including release on bail and acquittal of human rights defenders from trumped up charges, **is the absence of competent, committed but at the same time affordable legal representation**. Unable to pay the high fees of lawyers, many human rights defenders implicated in false cases have no other choice but being represented by lawyers provided by the Public Attorney's office. The absence of a robust legal aid system of effective legal representation renders the human rights defenders further vulnerable.

Furthermore, **progressive lawyers who represent human rights defenders are themselves at risk**. For instance, lawyers from the Free Legal Assistance Group (FLAG), at the helm of the anti death penalty campaign, were branded as criminals.

For instance, Counsels from the National Union of People's Lawyers and human rights workers of Karapatan are being branded through the media and during fact finding missions, as "terrorists" and "communists," and they have subsequently experience numerous threats, harassment, surveillance and other forms of intimidation

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## V. LAND AND INDIGENOUS HUMAN RIGHTS DEFENDERS PARTICULARLY TARGETED

The Mission delegation travelled to Lalla Municipality of Lanao del Norte, Northern Mindanao, to assess the condition of human rights defenders engaged in land struggles and in the implementation of the Comprehensive Agrarian Reform Law Programme (CARP), which was introduced by the Philippines' Government as a land reforms initiative to provide land to the tiller.

The Mission delegates also went to South Cotabato, to meet with human rights defenders engaged with issues relating to the rights of indigenous peoples, in particular in relation to illegal appropriation of their ancestral domains by mining and agro business companies.

### 5.1 Human rights defenders supporting farmers in Lanao del Norte, Mindanao: a lethal pattern of brazen killings

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Lanao del Norte is located in Northern Mindanao, and serves as a land bridge that links Western Mindanao to Central and Eastern Mindanao. The land there is quite fertile and yields several crops and forestry-based production. The coastal towns are sustained by the availability of abundant fish. Major production includes rice, fruits, corn and aquaculture products. There are more than 70,000 hectares of coconut land in Lanao del Norte, which is the second largest producer of copra.

At the Office of the Democratic Movement of Farmers in the Philippines (*Demokratikong Kilusang Magbubukidsa Pilipinas - DKMP*) District II Headquarters, the Mission delegates met and interviewed farmers, small land owners, and families of land human rights defenders who have been killed or targeted for asserting their human rights.

Karapatan documented 185 land rights activists, all of them peasants and indigenous peoples, who became victims of extrajudicial killing under the Aquino administration<sup>59</sup>.

**Farmers and, even, Barangay (local government) officials implementing the Government's agrarian reform programme of land redistribution for landless farmers indeed face serious threats to their life and liberty.** Some have been shot at, others have been criminalised and many intimidated by threat of violence or abusive libel charges.

For instance, Ms. **Venecia "Inday" Natinga Nestor** was shot on a public highway in Lanao del Norte, in broad daylight on June 19, 2012 after a series of threats and harassment for being a strong advocate of the protection of the rights of small farmers and actively pushing for land redistribution. A consistent advocate of agrarian reform, she was very vocal against land grabbing and active in pressuring government agencies involved in the processing of land claims:

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#### **Murder of farmer leader Venecia "Inday" Natingga**

On June 19, 2012, at around 5pm, Ms. **Venecia "Inday" Natinga**, prominent farmer leader affiliated with the DKMP-Lanao, was murdered by motorcycle borne assailants on the highway of Kapatagan, Lanao del Norte. She was returning home from the town centre on a motorcycle when she was killed. She bore seven gun-shot wounds, including a fatal bullet wound in the head.

Since 1994, Ms. Venecia "Inday" Natinga was actively engaged with issues of agrarian reform and land tenure. She was a strong advocate for the protection of the rights of small farmers. She was a former Barangay Captain of Pulang Yuta, Kapatagan,

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<sup>59</sup> Information provided by Karapatan in December 2014.

Lanao del Norte, and former Chairperson of Barangay Agrarian Reform Council. She believed that peace and development would become a reality only if tenant farmers were given land rights. She was very vocal against the complicity of government agencies with powerful landlord lobbies in land grabbing and the processing of land claims.

On June 21, 2012, the local police of Iligan City conducted an investigation, however no arrests were made.

According to Ms. Venecia "Inday" Natinga's husband Nestor Natinga, a week before "Inday" was shot dead, she and other paralegals and officers of DKMP - Lanao received death threats, because of their uncompromising stance to uphold the rights of farmers in the province.

It is alleged by her family and colleagues that Rolando Hecera, senior Police Officer and son of the former owner of Segovia Estate, was behind the killing, as Ms. Venecia "Inday" Natinga had been instrumental in assisting tenant farmers claim ownership of a small portion of his estate under CARP. Police investigations into the case have revealed that it was in fact Rolando Hecera who had induced two persons, Messrs. Joven Segovia and Jose Elcarte, to commit the killing. One of the gunmen had inadvertently dropped his mobile phone at the crime scene, which was traced to Joven Segovia. Further, an eyewitness testified that he had seen the two gunmen when they shot at Ms. Natinga, and positively identified them as Messrs. Joven Segovia and Jose Elcarte. He also told the police that he had been approached by Mr. Hecera earlier on to commit the killing, which he had refused.

However, as of September 2014 the case had not progressed any further. The case of the brazen and brutal killing of Ms. Natinga was also forwarded to the CHRP, however there has been no reply from the Commission.

Due to the ongoing threat to their life and safety, Ms. Natinga's husband and children have been compelled to move to another location.

### **Assassination of Mr. Cosme Leopoldo Fernandez**

On March 11, 2012, at around 6pm, Mr. **Cosme Leopoldo Fernandez**, a farmer and human rights defender, was killed in full public view at the marketplace in Kapatagan, Lanao Del Norte. He was shot twice in the back while riding his motorcycle, by two-armed motorcycle borne men. He succumbed soon after. Reportedly, eye witnesses of Mr. Fernandez' assassination are afraid to give testimony to the police as they fear that the perpetrators would attack them. Mr. Fernandez had actively spearheaded the struggle of tenants to retain control over their land within San Luis Estate in Barangay Pinuyuk, Lala, Lana Del Norte.

These three hectares of land, currently under dispute, fall within the purview of the CARP, which provides that the farmer who tills the land will own the land. The problem stems from a settlement that was signed between Mr. Rodrigo San Luis, a landlord who claims ownership over the land, and the farmers, who were then cultivating crops on the said land. The deed of settlement required the farmers to vacate this land in exchange for a 1/4th hectare of land to be given to each such farmer. However the farmers were not allotted any land and hence the deed did not materialise. Subsequently, Mr. San Luis began using his private security guards to harass tenant farmers and prevent them from harvesting their agricultural production. After a landlord's guard allegedly shot one labourer in the leg while he was harvesting the rice

of Mr. Cosme Fernandez in January 2012, and after Mr. Fernandez began supporting the labourer through his criminal case, he faced a variety of acts of harassment, which included a false rape case being brought against him.

On March 6, 2012, the tenant farmers filed a case in relation to their illegal ejection against Mr. San Luis before the Provincial Agrarian Reform Adjudicator (PARAD). On August 30, 2012, PARAD dismissed their complaints for lack of merit, thus rejecting their demands for reinstatement.

The tenant farmers continue to face grave threats and intimidation from Mr. San Luis and his men. Moreover the police in Mr. Fernandez's murder case had made no progress as of September 2014.

### **Extra-judicial killing of Mr. Moises C. Fuentes**

On June 16, 2012, at around 1:00 pm., Mr. **Moises C. Fuentes**, Head of the Kuya Christian Farmers' Association, a farmers' land reform organisation, and member of the Human Rights Defenders Philipinas, Bukidnon Chapter, was gunned down by an unknown attacker at his residence in Bukidnon, in the presence of his wife. He sustained five gunshot wounds, which caused his death instantly.

It was subsequently claimed that Mr. Fuentes was part of a "hitlist" that allegedly contained names of persons including peasant leaders who had successfully petitioned the Government to place the Ocaya ranch under CARP. In February 2010, the Department of Agrarian Reform (DAR) distributed fifty hectares of the Ocaya ranch, including 9.8 hectares to the Kuya Christian Farmers' Association. However, these farmers were harassed by armed guards and forced to leave the land awarded to them within three months of their settling there. In December 2011, through the efforts of the Provincial Agrarian Reform Officer (PARO), these farmers were reinstated.

It must be highlighted that most of the Government officials the Mission delegates interviewed refused to provide us with any information about the Moises Fuentes case. In fact the DOJ went as far as to say that if his name was not on their official list, then Moises Fuentes did not exist.

This case clearly points to the **need for a comprehensive list being drawn up and updated by the DOJ** - in close collaboration with human rights organisations - **containing the names of victims of extra-judicial killings, enforced disappearances or any other human rights violations**. Unless a proper and accurate database is developed and updated, it is unlikely that the Aquino Government will be able to fulfil its promise to provide justice to human rights defenders and curb impunity.

**Farmers and land human rights defenders have also been seriously threatened and intimidated by the dominant landlords of their areas, including by being associated to false criminal cases:**

### **Harassment of farmers and human rights defenders by Yap-Lao family**

The Yap-Lao Estate is located at Sagadan, San Pablo, Zamboanga del Sur. In 1986, during the Presidency of Ferdinand Marcos, 14 farmers received land titles under the land reform programme. The Yap-Lao family, headed by Mr. Mustafa Yap, asserted that they have re-purchased the land from a bank in 1987, and hence the farmers

should pay them rent. In 1988, the Certificate of Land Ownership Award (CLOA) title was confirmed by the President and was addressed to the farmers in 1999. In 2009, once the farmers became aware of their right to this land, they refused to pay rent to Yap-Lao family.

In 2010, the Yap-Lao family filed a claim for cancellation of the CLOA issued by the Department of Agrarian Reforms in favour of the farmers. After losing the case, the Yap-Lao family filed an appeal before the Central Office of Agrarian Reform. The farmers remain in a state of uncertainty, pending the final verdict.

In addition to the fact that the Yap-Lao family refuses to recognise the 14 farmers' legitimate titles over land, family members have filed criminal cases of "theft" and "attempt to murder" against three farmers and human rights defenders advancing their cause in order to intimidate the farmers and force them to abandon their claims. The Prosecutor's Office dismissed these false cases against the farmers, on the ground that farmers hold a valid CLOA and so cannot be described as thieves on their own land.

Furthermore, there are serious allegations connecting the Yap-Lao family to the killing of one farmer in 2011, Mr. **Francisco Arais**, who received a land title pursuant to the agrarian reform and was shot dead while returning home on his motorcycle. It is worth noting that all farmers involved are human rights defenders including members and officers of local organization campaigning for land reform.

On November 28, 2011, upon instructions of the Yap-Lao family, members of CAFGU<sup>60</sup> accompanied by hired goons indulged in indiscriminate shooting and ransacked the homes of resisting farmers. Even though a case was filed and one suspect identified by them, no action has been taken against the accused persons by the local police. On the contrary one of the farmers is facing a counter criminal case.

#### **Assassination attempt, judicial harassment, threat and attack of land human rights defender Robinson Ansag and his family**

In March 2011, Mr. **Robinson Ansag** prevented the landlord Rodolfo Limosnero's men from illegally harvesting a tenant farmer's coconuts. The landlord's men, in retaliation, tried to kill him with a *bolo* (a sharp edged agricultural implement). As Mr. Robinson Ansag was a member of the Barangay Community Police, he arrested the attacker. However, soon a false case of attempted murder was lodged against Mr. Robinson Ansag at the behest of the landlord. Robinson was kept in jail for 10 months and then released on bail of 200,000/- pesos (3,601 EUR). Too poor to engage his own lawyer, Mr. Robinson Ansag was represented by a lawyer from the Office of the Public Attorney.

Subsequently, in September 2011, at 6:00 a.m., when Mr. Robinson Ansag's son, aged 22 years, was tending to his livestock, he was stopped by landlord's men and shot in the leg. The bullet is still lodged in the thigh. Moreover, Mr. Robinson Ansag's wife and son were both threatened by the landlord's men that they would be eliminated under the cover of darkness. Although they filed a case of attempt to murder against Mr. Rodolfo Limosnero, the later was soon released on bail of 5,000 pesos (90,02 EUR). In addition, in January 2012, the Office of the Prosecution did not retain the charge of "attempt to murder", and diluted the same to "serious physical injury". In October 2012, on the first scheduled hearing of the case the accused failed to appear before the Court.

Mr. Ansag and his family were subsequently forced to live away from their home and land. During his absence, the landlord has harvested Mr. Ansag's two hectares of land.

<sup>60</sup> This area is under the control of the CAFGU, which is further run by the AFP.

Mr. Ansag has brought his case before the regional office of the CHRP, but did not receive any response or assistance from them.

Members of the Church too are targeted and killed, as they support the struggles of the peasants and fishermen.

It was also reported to the Mission delegation that **attacks on women human rights defenders were particularly noticeable in areas where they opposed the intrusion of mining companies on their lands**. For instance, from 2011-2012, the regional chapters of the National Alliance of Women in the Philippines (GABRIELA) documented at least seven cases of rape against women human rights defenders. Often women survivors of rape were reluctant to raise the issue publicly, and hence the number of incidents of sexual violence may be much higher. It was reported that rape, as well as the threat of sexual violence, was frequently used by the Army, PNP and other paramilitary forces against women human rights defenders. Concern was also expressed by women's rights activists that incidents of sexual violence against women human rights defenders were on the rise as perpetrators, being generally men in uniform, enjoyed absolute impunity.

Moreover, **human rights NGOs and Church based organisations** working for promotion and protection of economic, social, and cultural rights **are often vilified and maligned as communists linked with the NPA**.

#### **Disappearance of farmer leader Jonas Burgos**

On April 28, 2007, Mr. Jonas Burgos, an active human rights advocate and a member of a farmer's organisation that the army had accused of being a front for the communist armed group NPA, was abducted from a mall on a busy Saturday morning in Quezon City, in full public view. Four men and a woman forced him into a van and since then the whereabouts of Burgos are not known.

The license number of the van noted by a security guard led his family to apprehend the involvement of the army since, upon inquiry, the family learnt that the car bearing that number plate was reportedly in the custody of the 5th and 6th Infantry Battalion of the Philippines Army. Yet, the military denies having had any hand in his enforced disappearance. The abduction was witnessed by many people, but fear of the army deterred anyone from coming to Burgos' aid at that time, and not a single witness has stepped forward to give testimony about the abduction.

Mr. Burgos' mother, Edita Burgos, subsequently started a campaign to find her missing son, which has generated awareness on the issue of enforced disappearances in the Philippines. As a consequence Ms. Edita Burgos and her family members have faced many threats for raising the issue of Mr. Burgos' disappearance and for pointing an accusatory finger at the army.

On March 27, 2013, in major breakthrough, the Court of Appeals ruled that a former army officer was responsible for the disappearance of Mr. Jonas Burgos. Subsequent to this ruling, Ms. Edita Burgos presented new evidence in the case, including a photograph of her son taken shortly after he was abducted. Following submission of this new evidence, President Aquino issued an order for a "focused, dedicated and exhaustive" investigation into Mr. Burgos "disappearance". Since April 2013, the National Bureau of Investigation (NBI) jointly with the CHRP, is conducting further investigation into the disappearance of Mr. Jonas Burgos. Moreover, the Supreme Court has directed the DOJ and the NBI to provide protection to the Burgos family.



According to officials of the Inter-Agency Committee on Extra Judicial Killings Enforced Disappearances and Human Rights Violations, a committee created by the Aquino administration, the Jonas Burgos investigation is a top priority for the Government.

On September 4, 2013, the high ranking military officials responsible for the abduction and disappearance of activist Jonas Burgos were absolved from criminal charges of arbitrary detention, murder and obstruction of justice filed by Mrs. Edita Burgos, mother of Jonas. Mrs. Burgos came to know of the decision of the Department of Justice because one of those whom she charged, Gen. Eduardo Ano, presented it before the Commission on Appointments where he is in the process of being confirmed as chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP). He was eventually confirmed as ISAFP chief on February 19, 2014.

Also exonerated in the criminal charges filed by Mrs. Burgos in June 9, 2011 at the DOJ were Gen. Hermogenes Esperon, then Philippine Army (PA) Commanding General Lt. Gen. Romeo Tolentino, Lt. Gen. Alexander Yano, and then Philippine National Police (PNP) chief Avelino Razon, Jr., Lt. Col. Melquiades Feliciano, and other members of the Army's 56th Infantry Battalion who were said to be responsible for the abduction of Jonas.

A small ranking member of the AFP, Maj. Harry Baliaga, who is identified by the witnesses as one of those who abducted Jonas on April 28, 2007, became the lone respondent in the criminal charges filed by Mrs. Burgos, which is now at the pre-trial stage at the Quezon City Regional trial Court Branch 216. Baliaga is currently released on bail, purportedly shouldered by the Philippine Army. His warrant of arrest was issued by the QC RTC on October 21, 2013.

On June 5, 2011, the Supreme Court, after several motions filed by the Burgos family questioning the previous rulings of the Court of Appeals on the case of Jonas, ordered the military to produce Jonas Burgos. The SC also issued a writ of habeas corpus and ordered the Court of Appeals to revive the habeas corpus case filed by Jonas' mother Edita T. Burgos against the military.

The CA conducted its hearings and investigations, resulting to its decision dated March 18, 2013 finding the AFP accountable for the enforced disappearance of Jonas. New evidence, including an after-apprehension report, a psychosocial processing report and an autobiography of Jonas Burgos which were all copies of confidential records from the Philippine Army, were brought before the attention of the Burgos family, prompting them to file for an ex-parte motion on April 1, 2013, submitting the new evidence as proof that an intelligence unit of the 7th Infantry Division of the Philippine Army, the 56th Infantry Battalion and the 69th Infantry Battalion were operating together in the abduction of Jonas.

In April 12, 2013, the SC ordered the AFP Chief of Staff Gen. Emmanuel Bautista to submit a report on the whereabouts of the military personnel mentioned in the new documentary evidence submitted by Mrs. Burgos. On February 4, 2014, the SC ordered the DOJ to probe the new evidence submitted by Mrs. Burgos and for the Commission on Human Rights (CHR) to gain access to documents related to the 2006 abduction of five supporters of deposed president Joseph Estrada in Quezon City. Mrs. Burgos had noted similarities between the cartographic sketches of her son's abductors and those who seized Estrada's supporters, dubbed the "Erap 5."

**These killings and attacks are not random acts, rather they point to a pattern of intimidation, physical assault and even extra-judicial killings and enforced disappearances, unleashed**

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**against farmer leaders and peasants who assert their legal rights over the land allotted to them as part of the agrarian reforms programme by the Filipino State.**

The lack of political will to enforce the agrarian reform programme of land redistribution is illustrated by the absence of any close monitoring of the allocation of land to the tenants by Government agencies. No noteworthy institutional mechanisms or processes are in place to ensure that the farmers who receive land can retain the same without fear of reprisal or attacks from the former landowners or warlords. The failure of the Government of the Philippines to anticipate opposition to CARP and institute measures to meet the same, lays bare the bias of the State.

In several of these cases, farmers and land human rights defenders have been forced to migrate out of their homes, leaving their lands and livelihoods behind when they are no longer able to withstand the constant intimidation and imminent threat to their lives. In most of the cases the Mission delegates found that **land human rights defenders and farmers were often implicated by the landlords, in collusion with the police, in false cases** of as serious a nature as murder and rape.

In other cases, land human rights defenders reported that the landlords who harass and intimidate them were **resorting to accusations of libel and defamation** when they raised the concerns of the farmers. It is clear therefore that the economic clout of the landlord is reinforced by the might of the State apparatus against human rights defenders seeking basic land rights.

In cases where the farmers have taken recourse to the law to re-confirm their legitimate rights over their lands, and the legal system has ruled in their favour, landlords have resorted to extreme forms of violence to intensify the intimidation against farmer and land human rights defenders. Powerful landowners and warlords, often in collusion with the police and other armed forces, have carried out murderous assaults on farmers and the human rights defenders who support their cause. Even in the murders, there is a clear pattern, with the motorcycle borne killers being a recurrent motif.

**The law**, instead of protecting the rights of the vulnerable farmers and human rights defenders, **is being used** by the powerful landowners **as an instrument of harassment and subjugation**. The systemic flaws in the legal system further accentuate the injustice that the human rights defenders and other victims suffer. **Many farmers and land human rights defenders have been implicated in false criminal cases**. Given the slow and tardy pace of the legal system and the high legal fees charged by private lawyers, farmers and human rights defenders invariably languish in prison, as the trial drags on. The lawyers from the Office of the Public Attorney, who provide legal defence to indigent litigants, do not inspire much confidence in the farmers and the human rights defenders. The farmers and human rights defenders pointed out to the Mission delegates that these legal defenders provide extremely ineffective legal representation. This was further compounded by instances of corruption, where the lawyers accepted bribes from the rich landlords to weaken the prosecution case against them.

Further, the absence of a robust witness/victim protection mechanism has a debilitating impact on criminal cases, with witnesses wary and reluctant to inform the police and to testify before the Court. Thus, murders committed brazenly in full public view escape any legal scrutiny, further emboldening attacks on human rights defenders.

Human rights defenders and their families embroiled in the legal system experience grave personal hardship and suffering. These killings and assaults of human rights defenders also have a marked demoralising effect on other farmers and human rights defenders acting for their rights.

Despite the existence of bodies such as the NCIP and CHRP, human rights defenders and farmers could not cite any instance of an effective or successful intervention by these agencies. In certain cases human rights defenders and NGOs have requested the CHRP to visit the

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area to assess human rights violations and the status of human rights defenders. A reply from the CHRP is awaited. For now **human rights defenders advocating for land rights are faced with grave risks to their life.**

## **5.2 Human rights defenders supporting the rights of indigenous peoples in Tampakan, South Cotabato**

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The near pristine natural beauty of South Cotabato conceals the aggressive onslaught that has been carried out on the fragile ecology, the cultural heritage, and communal life of indigenous peoples by mining and other extractive activity. The extractive industry has led to large scale ecological degradation in the area, and the ancestral rights of indigenous people over land and natural resources have been brazenly violated,

### **5.2.1 Large scale ecological degradation and violations of the rights of indigenous peoples by mining and agro-business operations: the case of the Sagittarius Mines Inc. (SMI) copper -gold project in Tampakan**

In South Cotabato, the Mission met with many human rights defenders who work to protect the rights of indigenous peoples. They narrated specific cases to the Mission where mining and agro business companies were illegally appropriating the ancestral domains of the indigenous peoples. In most cases, the security forces colluded with the business companies to terrorise and intimidate the indigenous peoples. Socio-economic and cultural rights of the indigenous peoples were blatantly violated. Institutional mechanisms, like the National Commission on Indigenous Peoples (NCIP) and Commission on Human Rights of the Philippines (CHRP), were ineffective and unable to stop the alienation of indigenous land without their consent.

There were cases in which agricultural companies, including Global Fruits Inc and Pioneer Hybrid Seeds, sprayed harmful pesticides over indigenous lands and built pipelines through their land, which would likely result in the destruction of the livelihood and lands of the indigenous peoples.

The Mission also learnt about how the rights of the **Tibuli Manobo tribe** from Barangay Ned lake Sebu, in South Cotabato, were under assault from the Consunji Mining Company. In 1991, Consunjibegan to survey the land of the indigenous peoples for mining purposes without consulting them. The first to make inroads on behalf of the company were their private security guards. Soon after the survey, the indigenous peoples were pushed out and displaced from their land. The security personnel of the company harassed them and threatened them to prevent them from returning to their ancestral lands. After seven years, they were allowed to return to areas bordering their ancestral domain but were not allowed by Consunji to return to or cultivate their original land. The Tibuli Manobo tribe sought the help of the state and a congress representative to facilitate a dialogue between the indigenous peoples and Consunji but the latter refused to participate. The indigenous peoples subsequently approached the NGO Legal Rights Centre, which applied for the cancellation of the free, prior and informed consent (FPIC) since the NCIP granted Consunji the right to operate in the ancestral domain of the Tibuli Manobo tribe without carrying out genuine consultation with them. Moreover, the Tibuli Manobo tribe people are currently facing severe harassment and violence after being labelled 'communists' by the soldiers of the 27th Infantry Battalion of the Filipino Army, which is posted in that area.

**In the Tampakan region, opinions remain sharply divided with regard to the copper-and-gold mining project initiated by Sagittarius Mines Inc. (SMI) in Tampakan,** which is slated to cover four ancestral domain territories: Sultan Kudarat, Bong Mal, Malangon, and Danlag. The Mission met with a range of individuals, including senior officials of the local municipal government, SMI representatives, members of the Diocese and Catholic Church, human rights NGOs, and indigenous peoples.

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### Arguments used by some actors in favour of SMI mining project

- **The SMI mining project will bring development and benefits for the region and local population:** when meeting the Mission, Municipal Mayor of Tampakan Leonardo Escobillio, a strong proponent of the SMI mining project, advocated that the partnership of the local government with SMI brought development and benefits for the region and the local population. He said that under its Corporate Social Responsibility (CSR) programme SMI provided funds for primary and secondary education as well as 50% financial assistance to establish a vocational school in the region. Further, 70% of the roads in the area were maintained by the mining company. Similarly, representatives of SMI Xstrata met by the Mission claimed that SMI's mining venture provided the indigenous peoples with an "opportunity to rise above the abject poverty in which they lived" and listed the CSR benefits that the people of the area were enjoying.
- **The project would have overwhelming support from the local population,** including the tribal chieftains of the indigenous peoples, according to Mayor Leonardo Escobillio and representatives of SMI Xtrata. A broad-based consultative process was conducted by local authorities with different stakeholders, including NGOs, people's organisations, indigenous peoples, farmers groups and religious groups. Except for a small anti-mining group that included the local Church and left-wing groups, everyone else supported the SMI mining project.
- Mayor Leonardo Escobillio and SMI representatives **denied that mining operations had any adverse impact on the ecosystem of the area,** including water resources. Mr. Escobillio observed that in any case the agriculture in the area was rain fed and not dependent on irrigation. He also stated he was preparing new plans to compensate for the loss of agricultural produce due to mining. However, the Mayor provided no concrete document detailing the alternative plan to the Mission.

However, the Mayor conceded that the SMI mining project was illegal because it failed to comply with the Environmental Code of the provincial government, which banned open pit mining.

Moreover, it is worth noting that prior to his election to the office of the Mayor of Tampakan, Mr. Escobillio headed LVES Cobillo Engineering and General Services. The company, owned by the Mayor's family, was the main supplier of trucks and construction material to SMI for all its commercial activities in the area. Currently, Mr. Escobillo's wife Mrs. Luz is the owner of this company. Mrs. Luz is also holding the position of Ambassador of the Tourism Ministry of Tampakan. The Mayor however brushed aside any suggestion that the business links between LVES and SMI may have influenced his decision to endorse the mining project. The Mayor also denied any conflict of interest in relation to his involvement in the company.

Not surprisingly, SMI representatives spoke very highly of Mayor Escobillo, and refused to respond to any questions about the Mayor's support for SMI. In addition, they summarily dismissed all concerns raised by the Mission as "communist propaganda".

### Arguments used against SMI mining project

- Grave concerns were expressed over the **potential damage and destruction that the SMI mining project would cause to the environment, water sources, and food availability** in the area<sup>61</sup>.

In particular, it is feared that the project would destroy six major river systems in the region and render 2,000 hectares of fertile agricultural land sterile. Presently, South Cotabato is a food surplus region and contributes to the food security of the Philippines. According to Tampakan Deputy Mayor Relly A Leysa, 17,000 hectares of rice growing fields would be

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<sup>61</sup> See Interviews with Bishop Dinualdo D. Gutierrez of the Diocese of Marbel and Municipal Vice Mayor of Tampakan Relly A Leysa.

rendered unsuitable for cultivation by this mining project. The SMI mining project, which is expected to cover 90,000 hectares, would significantly affect food security for the local population. It was specifically mentioned that mining activities by the SMI would have a detrimental impact on the water sources of the region. The mining project will lead to irreparable pollution of water streams and place water sources under the control of the mining company, thereby jeopardizing the water security of the indigenous population.

Further the construction of large storage facilities for toxic waste rock, a by-product of mining, poses a serious risk to the environment. The mining area falls along the seismic fault line and hence carries a serious threat to the people living near the mine. The SMI Environmental Impact Statement itself states, "Following a preliminary dam break analysis the Tailing Storage Facility (TSF) has been given an Extreme Consequences Classification during operation and closure due to high potential loss of life and high environmental damage if failure occurs".

- It was also emphasized that **the local indigenous peoples would reap no benefits from the mine, which** would only cause them **the loss of their ancestral lands and violate their socio-economic and cultural rights.**

The mining project would not provide any adequate or dignified employment or income opportunities for the indigenous peoples. At most, temporary and low paid opportunities may be available for a few people as drivers and security guards.

Their lands are also overrun by the mining company. For instance, it was reported to the Mission that Governor Datu Suharto Tengwas coercing the indigenous peoples and Barangay officials of Sultan Kudarat to approve mining operations in the Barangay of Baysarafina and Sto Nino. The mining company, which only had permission to explore the area for future mining, began extracting minerals from the area without obtaining the necessary legal permission or carrying out any consultation with the indigenous peoples. The original contract for mining was secured by GRC, a local company, with a foreign Korean partner. The rights were subsequently sold to SMI, which sought the services of 46th Infantry Battalion and another battalion to guard the area. To facilitate the activity of the mining company, the National Commission on Indigenous Peoples (NCIP) declared the site as uninhabited by indigenous peoples although the Tibuli tribe lives in the adjacent area. The indigenous peoples are barred from going to the mining site area by private security guards. Moreover, according to the indigenous peoples met by the Mission, the mining and blasting activities of the company were having a negative impact on the rain pattern, agricultural production, and the community.

- In sharp contrast to Tampakan Mayor Leonardo Escobillio, Deputy-Mayor Relly A Leysa was quite critical of the SMI project. The meeting with the Deputy-Mayor revealed that the Municipal Government was divided over the SMI project. **There was also no consensus on the SMI mining project among the people of Tampakan.**

Deputy-Mayor Relly A Leysa stated that the SMI mining project had not yet received clearance and that many issues were still unresolved, including compliance with provincial and national laws. In particular, Provincial Ordinance No. 02/2010 prohibits open pit mining. The Deputy-Mayor also shared a letter dated January 9, 2012, addressed to Mr. Forrestal, President of SMI, from the Department of Environment and Natural Resources (DENR) Director, which rejected SMI's application for an Environmental Compliance Certificate (ECC).

The Deputy Mayor also underscored that most communities had rejected the SMI mining project. In his view most of the indigenous peoples living within the SMI project area were opposed to the mine and through deception and fraud the consent of only a few tribal chieftains had been obtained.

Furthermore, the Deputy-Mayor was highly critical of the business transactions between SMI and the company run by the Mayor's family, terming it both illegal and immoral. The Deputy-Mayor stated that the Philippine Republic Act No. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees prohibits public officials and their relatives, up to four degrees of consanguinity, to do business with interest groups, especially those that would undermine the interest of the people.

### **5.2.2 Indigenous human rights defenders at risk for opposing mining, deforestation, and other development projects**

**Indigenous human rights defenders** peacefully campaigning to protect their ancestral lands from the impact of mining, deforestation, and other development projects and asserting their legitimate and ancestral claims **are particularly at risk in areas where conflict over land and natural resources has been aggravated by activities of national and transnational companies engaged in acquisition of land for mining and/or agro-industry**. They face extrajudicial killings, enforced disappearances, intimidation, torture, false criminal charges, and threats.

**Karapatan documented 54 indigenous rights defenders who are victims of extrajudicial killing under the Aquino administration.**

#### **Assassination of indigenous human rights defender Gilbert Paborada**

On October 3, 2012, at about 3:00 pm, Mr. Gilbert Paborada, Chairperson of Pangalasag, a community-based organisation consisting of the indigenous Higaonon people, which was part of a movement against the palm oil plantation in Opol, Misamis Oriental, was shot dead by two unidentified assailants as he was about to disembark from a tricycle in San Nicolas, Puntod, in Cagayan de Oro City. He sustained five gunshot wounds and died on the spot.

Although decades of dispossession of their ancestral lands eroded the culture and customary laws of the Higaonon in Opol, some leaders, like Mr. Gilbert Paborada, formed the "Pangalasag" or "Indigenous Shield" to defend their land and customary laws from aggressors.

Mr. Paborada was actively involved in the struggle of the indigenous people against the palm oil plantation operated by the US –based A. Brown Company, Inc., in the town of Opol. The company, through deceit, fraud, harassment, intimidation, and violent attacks on the Lumads, forcefully acquired the land. The chemical-intensive nature of activities in the production of palm oil had a harmful impact on the environment and the health of the indigenous population. In addition, the company did not secure the indigenous people's Free, Prior and Informed Consent (FPIC) as mandated by national law.

Mr. Paborada's vocal activism drew the ire of the company. On February 10, 2011, guards of the A. Brown Company threatened to shoot him. In a separate incident, it was reported that a company representative had warned Mr. Gilbert Paborada to stop his campaign or he would "regret what happens to his life". In March 2011, following these threats, Mr. Paborada relocated to Cagayan de Oro City for safety reasons, but he continued to lead the campaign.

In early 2012, Mr. Paborada participated in a fact-finding mission that presented its findings and a petition on the plantation during a dialogue between the company and the residents affected by the plantation. However, no consensus was reached since Opol Mayor Dexter Yasay opposed the petition and sided with the company.

Subsequent to his murder, Mr. Paborada's family members did not file any police complaint since the assailants had not been identified. His wife was certain that the killing was connected to Mr. Paborada's anti-palm oil plantation campaign and suspected the involvement of Opol Mayor Dexter Yasay in her husband's murder. In response, the Mayor threatened to file a defamation case against Mr. Paborada's wife. Mr. Paborada's family members, with the assistance of NGOs, filed a formal complaint to the CHRP.

At the time of the Mission, relatives and close friends of Mr. Paborada remained under surveillance and the indigenous people continued to face threats, harassments, and intimidation from officials and company personnel.

### **Assassination of indigenous leader Jimmy Liguyon**

On March 5, 2012, indigenous chieftain and Captain of Dao Barangay, Datu Jimmy Liguyon, was shot dead in front of his family members by Alde Salusad, the leader of the New Indigenous Peoples' Army (NIPAR), a local paramilitary force.

Mr. Liguyon was a staunch critic of mining, and had firmly opposed operations of mining companies and local organisations, such as Sanmatrida (San Fernando Matigsalug Tribal Datus), which tried to lure mining companies to the region. The Sanmatrida has been aggressively pushing for the entry of large-scale mining firms in the municipality of Dao Barangay. Mr. Liguyon, in his capacity as the Barangay Captain of Dao, refused consent for mining and did not sign the Sanmatrida Certificate of Ancestral Domain Title (CADT), in the ancestral domain lands of his tribe.

Alde Salusad had formed the NIPAR while his father Benjamin Salusad is a member of the Citizen's Armed Forces Geographical Unit (CAFGU), a militia group under the command and supervision of the Filipino Army. Both the CAFGU and NIPAR are attached with the 8th Infantry Battalion of the Filipino Army in San Fernando, Bukidnon Province.

Eyewitness reports claimed to have heard Alde Salusad say after the killing, "I killed the captain village chief because he would not sign the Sanmatrida and had refused to give certification to Sanmatrida". Moreover, Mr. Salusad is also alleged to having made death threats opponents of mining operations in the area, especially from the Liguyon family.

Prior to his death, Mr. Liguyon had reported that he faced harassment from the Salusads. However the administration and the police failed to provide any protection to him. The NCIP and DENR failed to carry out any investigation into Mr. Jimmy Liguyon's killing.

More than a year after the murder the perpetrators are still at large. Warrants of arrest against Alde Salusad and Benjamin Salusad remain unenforced. In the meantime, Mr. Alde Salusad and his NIPAR associates continued to terrorise Mr. Jimmy Liguyon's tribe, causing massive evacuations of the indigenous people from their ancestral domain lands to the Provincial Capitol in Malaybalay, Bukidnon. The high level of militarization due to the presence of a large number of armed personnel, including NIPAR, CAFGU and the 8th Infantry Battalion of the Philippine Army, poses a serious threat to the rights and lives of indigenous peoples.

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In the Tampakan region, **human rights defenders opposing SMI mining project are particularly vulnerable**, not only because of the partisan and motivated stance of the Executive Head of Tampakan - as vested business interest rather than welfare of Tampakan appeared to motivate the Mayor's vocal support for the SMI project - but also because of the deployment in the area of the 27th Infantry Battalion of the Filipino Army as well as CAFGU. The deployment of security forces is aimed at intimidating and coercing the indigenous peoples into relinquishing their ancestral domain. Tampakan Mayor Leonardo Escobillio justified the presence of the 27th Infantry Battalion of the Filipinos Army in the area on the ground that the NPA had been active in the region since 2009. However, the Deputy-Mayor expressed deep concern regarding the presence of large number of armed forces, including the 27th Infantry Battalion, CAFGU, and private security guards, which had resulted in an escalation of violent conflict and a rise of crime rate.

As a result of the ongoing militarization, **human rights defenders opposing the SMI copper-and-gold mining project** - including indigenous leaders and members of the Church who stand in solidarity with the indigenous peoples - **are specifically and continuously targeted and are vulnerable to attacks.**

The extra-judicial killing of indigenous leader **Juvy Capion** and her two minor children on October 18, 2012, in Tampakan, by members of the 27th Infantry Battalion of the Philippine Army exemplifies the dangerous and violent conditions in the area.

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**Extra-judicial killing of indigenous leader Juvy Capion and her two minor children**

On October 18, 2012 at about 6:00 in the morning, 13 members of the 27th Infantry Battalion of the Filipino Army under the command of 1st Lt. Dante Jimenez opened heavy and indiscriminate fire on the hut of the Capion family. Ms. **Juvy Capion**, a 27-year-old active member of KALGAD, a local organisation opposing the SMI mining project on their ancestral domain in Bong Mal Province, who was two months pregnant at that time, and her minor sons John Mark aged seven, and Jordan, aged 13, were killed. Her five year-old daughter Juvicky Capion was wounded on the left side of her head.

The soldiers reportedly wiped the bloodstains from both inside and outside the hut to remove all evidence of the gruesome massacre. Subsequently, in flagrant violation of the cultural rights and beliefs of indigenous peoples, the AFP placed the bodies on the ground and exposed them to the elements for almost eight hours.

The army soldiers claimed they had fired in response to gunshots from the hut. However, eyewitness testimony clearly indicated that the firing by the 27th Infantry Battalion was unprovoked and disproportionate. Forensic evidence, such as inconsistencies between the number of bullets shells recovered and the number of bullet entry holes on the hut, lead to the conclusion that the firing was disproportionate.

The public fury that followed the killings of Ms. Juvy Capion and her two little children compelled the government to order the withdrawal of the 27th Infantry Battalion from the area and to order an internal inquiry into the massacre. When the Mission met with General Nestor M. Fajura, Police Chief Superintendent, Chief of Human Rights Affairs Office of the PNP, and General Domingo Tutaan, Chief of Human Rights Affairs Office of the AFP, it discussed the Capionkillings with them. The representative of the army and the police expressed reluctance to comment on the killings, as the report of the inquiry committee was still pending with the review board of the AFP and the findings had not yet been made public.

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The CHRP also dispatched its lawyers and investigators to Tampakan to report on the case. Following the CHRP inquiry report, Lt. Dante Jimenez, the Commanding Officer of the 27th Infantry Battalion, and 12 soldiers were ordered to face a General Court Martial for violations of the Article of War 76 ("misbehaviour before the enemy"), Article of War 96 ("conduct unbecoming an officer and gentleman") and Article of War 97 ("conduct prejudicial to good order and military discipline"). In a report to the Army's Board of Inquiry, Lt. Jimenez admitted he failed to assess whether the individuals in the area of the operation were civilians. The report of the Board of Inquiry maintained that the deaths of Ms. Juvy Capion and her children were the result of a legitimate encounter, and held that Lt. Jimenez and his men only committed "tactical lapses".

In a resolution dated 5 August 2013, which was also approved by Provincial Prosecutor Artemio Tajon, Prosecutor Jayson Banjal found no probable cause against and exonerated the soldiers for the murder of Capion and her sons. The Office of the Provincial Prosecutor clearly disregarded the statements of several witnesses who were at the site of the massacre shortly after it happened, which are vital testimonies to establish the liability of the AFP troops. One of the witnesses even heard the soldiers talk about 'finishing off' a child who survived the massacre so no witness remains. Witnesses also attested to the way the military cordoned off the area, having sole control over the crime scene and the lifeless bodies.

In November 2013, the motion for reconsideration of the decision of the prosecutor's office of Digos City dismissing the case against 15 soldiers was filed. Atty. Emeliano Deleverio of the Union of People's Lawyer in Mindanao (UPLM) said they firmly believe there is "probable cause to indict respondents for the death and injury of the victims. UPLM, the counsel for the Capion family in the case against the soldiers cited the following facts as enough bases to prosecute the respondents:

- Respondents admit that they were in the place of the crime at the time it happened;
- Respondents were armed with M-16 rifles;
- Among the shells recovered from the crime scene were those from an M-16 rifle;
- Three of the respondents admitted having fired their guns;
- Their shots were aimed at the men who hid behind the hut;
- The victims were inside the hut where the shots were directed;
- Respondents admitted that they moved the victims out of the hut— a very unusual thing to do when one seeks to administer first aid as it could be done without moving them and risk further injury;
- Respondents failed to refute the witnesses' allegation that they cleaned the house; and
- Witnesses positively pointed to respondents as the persons present in the crime scene immediately after its commission.

"These facts put respondents directly in the crime scene and strongly indicate that they have caused the death and injury of the victims," the UPLM said.

On January 2, 2014, the case was forwarded for review to Regional Prosecutor Antonio Arellano of Region 11 Office of the Prosecutor in Davao City for further evaluation. The perpetrators remain free from arrest.

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In this regard, the meeting of the Mission with a member of the National Commission on Indigenous Peoples (NCIP) was not encouraging. The NCIP member was quite critical of indigenous human rights defenders who opposed mining in their lands. And in reference to the Capion killings, the NCIP member condemned Mr. Daguil Capion, leader of the B'laan tribe who has taken arms as part of his struggle, as a gun-runner, hence not deserving of any protection from the NCIP. The NCIP member was quite dismissive of the Mission raising questions about the Capion killings and advised the Mission "to pay attention to the rights of genuine indigenous peoples and not be misled by human rights organisations and the media".

Similarly, on the Capion killings, the SMI representatives met by the Mission maintained that Mr. Capion was a wanted criminal and that security forces were performing their mandated duty.

The Mission was further disappointed to see that the Australian embassy was not monitoring or holding to account the Australian Corporation SMI Xstrata, engaged in mining in Tampakan. The Australian embassy was reluctant to comment on the Capion killings in Tampakan, where commercial interests of the Australian company SMI were involved.

Similarly, the Swiss diplomat argued passionately that mining by transnational corporations would usher in prosperity and equity for indigenous peoples. It appeared that Swiss economic interests in mining and other industries in the Philippines had influenced the Embassy's perspective on the issue of mining in indigenous territories and had blunted their intervention in the ensuing human rights violations.

### **5.3 Excessive and indiscriminate use of force against human rights defenders of urban poor**

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The Mission was also informed of attacks against human rights defenders working against the eviction and demolition of homes of the urban poor<sup>62</sup>.

Manila, with a population of around 11 million, attracts the marginalised and poor who migrate to the city looking for work. Due to poverty and unemployment many live precariously in slum areas.

According to Defender Job Philippines, during the first two years of Aquino administration, there were 53 incidents of forced evictions and demolitions, affecting 68,020 families. During the forced evictions, the police accompanying the demolition squad used excessive and indiscriminate force, causing the death of 10 persons. In addition, 15 persons received gunshot wounds and 179 were seriously injured, while 103 people were arrested when they resisted the evictions. The photographs shown to the Mission clearly revealed that police were using firearms against the unarmed urban poor and the human rights defenders. Police snipers were also deployed during these operations.

Complaints were lodged with the DOJ and the CHRP against the disproportionate and unjustified use of lethal force by the PNP, during the evictions and demolition. Human rights defenders advocating the cause of the urban homeless continued to be at the receiving end of excessive brutality and violence from the PNP.

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<sup>62</sup> See Interview with Defender Job Philippines, a human rights organisation campaigning for workers rights, strengthening of trade unions and against the eviction and demolition of homes of the urban poor.  
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The Observatory  
THE PHILIPPINES - Human rights defenders at the forefront despite an ongoing culture of violence and impunity

Documented by TFDP, violence erupted when the eviction team clashed with residents during demolition of houses in P. Narciso Street near Pinaglabanan Shrine, Barangay Corazon de Jesus, City of San Juan on January 25, 2011 at around 8:00am.

Around forty persons suffered injuries including women, children and elderly and were rushed to nearby hospitals after the eviction team forced their entry inside the barricaded made by residents. Both sides threw bottles, rocks and debris prompting the police intervention headed by their ground commander Police Superintendent Tomas Arcallana which ultimately led to an intense commotion. Anthony Caver, 25, a resident was hit in the face with a stone allegedly thrown by the police. Some members of the demolition crew also sustained minor injuries. San Juan City Engineer Danilo Mercado who led the demolition crew in breaking the barricade was hit in the head with one of the hard objects thrown.

Firefighters sprayed water while police also dispersed tear gas at the protesters which affect residents who were not involved including Rommel Baliwagan, 21 years old.

Several houses were demolished to pave the way for the construction of a new San Juan City Hall. Around 100 families were forcedly evicted from their homes and are expected to be relocated to Rodriguez town in Rizal. More than 1,000 families will be affected by the project and may lose their homes.

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## VI. CONCLUSION AND RECOMMENDATIONS

### 6.1 Conclusion

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The Mission appreciates that the Aquino administration publicly committed to ensuring respect for the human rights of the peoples of the Philippines. However, due to the absence of accountability for past human rights violations, inadequate responses to ongoing violations, and police inaction, the culture of violence and impunity continues.

For Filipinos to make a break from an abusive past and end the persistent impunity, legislative and institutional reforms are required.

As an essential first step in this direction, the Government should recognise that human rights defenders have a legitimate role to play in ensuring peace, justice, and democracy.

Historically, authorities have viewed human rights defenders as 'enemies of the state' and anyone speaking the language of human rights has been labelled as a communist. Even though the Philippines have transitioned from Marcos's martial law era to a democratically elected government, many of the persons in position of power and authority continue to perceive human rights defenders as subversive and dangerous. The culture among officials and within the state structure has not altered and this is the reason why extra-judicial killings, enforced disappearances, and torture of human rights defenders continue unabated.

The Mission notes with concern that there is compelling evidence that human rights defenders, in particular those advocating for land and environmental rights, are under serious threat, are constantly vilified, intimidated and "terrorised". Human rights defenders are targeted by state and non-state actors, sometimes in collusion and coordination with each other. Human rights defenders are also victimized through long spells of incarceration on false and trumped-up charges. A climate of pervasive and systematic impunity is at the heart of this alarming situation.

Urgent protection measures and unequivocal steps to address the lack of accountability for attacks on human rights defenders are required. The government must act to respect and protect the rights of those who continue to work for human rights even in a climate of stigma and fear.

The members of the Mission observed that the Aquino administration is sensitive and attentive to criticism levelled by European and North American countries with regard to its human rights record. Many of the legal and structural reforms were undertaken by the Aquino administration in response to international scrutiny. As a result, it is important that the international community uses its leverage to advance human rights in the Philippines.

### 6.2 Recommendations

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In light of the issues presented in this report, urgent protection measures and unequivocal steps to address the lack of accountability for serious abuses against human rights defenders are now required. The government must demonstrate its intent to respect and protect the rights of human rights defenders who operate in a climate of stigma and fear.

To this end, the Observatory for the Protection of Human Rights Defenders makes the following recommendations:

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### **To the Government of the Philippines:**

- To guarantee in all circumstances the physical and psychological integrity of all human rights defenders in the Philippines, including those addressing land-related concerns, and put an end to all acts of harassment against human rights defenders;
- To conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, as well as with international human rights instruments ratified by the Philippines by enacting into law the bill for the protection of the rights of human rights defenders;
- To promote a campaign to dignify human rights defenders and create administrative measures to address instances where government officials indulge in vilification;
- To conduct a competent, independent, prompt, and impartial investigation into all allegations of human rights violations, including those involving multinational corporations;
- To guarantee the right to fair and speedy trials and an end to impunity for human rights violations against human rights defenders;
- To ensure that the burden of proof in cases involving violation of human rights committed against human right defenders lies with the state, not with the victim;
- To strengthen witness protection mechanisms to inspire confidence and encourage victims and other witnesses to come forward and testify without fear of reprisals;
- To invoke the doctrine of command responsibility in government and security forces to end impunity;
- To carry out independent investigation and effective prosecutions of extrajudicial killings, torture, and enforced disappearances;
- To prosecute members of security forces indicted for human rights violations and, if found guilty, punish them in accordance with international standards;
- To disband local militias and paramilitary forces, and rescind Executive Order 546;
- To urgently review institutional mechanisms tasked with determining the ancestral ownership of land and resources of indigenous people, as there are serious allegations of corruption and collusion, compromising the rights of the indigenous people, against the nodal agency NCIP;
- To urge the Commission of Human Rights of the Philippines to create mechanisms for the recognition and protection of human rights defenders, especially those working in high-risk areas;
- As proposed in the second Universal Periodic Review, to adopt measures to provide protection for human rights defenders, particularly through deputising human right defenders, including giving them the 'privilege of visitation';
- To implement the recommendations formulated by the UN Special Rapporteur on Extrajudicial Killings following the visit he carried out in 2007, and those formulated in the UPR of the Philippines in 2012;
- To issue a standing invitation for all UN special mechanisms and procedures, especially the UN Special Rapporteurs on Human Rights Defenders; Indigenous Peoples, and against Extrajudicial and Summary, or Arbitrary Executions;
- To lift their declaration pursuant to Article 24 of the Optional Protocol on the UN Convention Against Torture;
- To put an end to counter-insurgency measures and policies which result in extrajudicial killing, enforced disappearances and numerous rights violations;
- To review existing laws and policies in close consultation with human rights defenders to ensure full compliance with human rights standards in order to create an enabling environment that allows human rights defenders, including land rights defenders, to be able to work effectively and without threat of attack or judicial harassment by State or non-State actors; legislation that restricts their work, including in particular legislation that unnecessarily and disproportionately restrict the exercise of the rights to freedoms of association, expression and peaceful assembly should be ended, amended and/or repealed;

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- To put an end to any criminalisation of social protest and to ensure that those peacefully protesting against land rights violations are effectively protected from violations, notably by ensuring that law enforcement officials are properly equipped, trained and subject to effective civilian oversight and effective human rights and anti-discrimination policies.

**To the United Nations, specifically the UN Treaty Bodies and Special Procedures:**

- To continue to grant particular attention to the protection of human rights defenders in the Philippines, in accordance with the UN Declaration on Human Rights Defenders and follow-up on the implementation of recommendations issued on the Philippines;
- To acknowledge and grant particular attention to the legitimate role and important work that human rights defenders carry out, including land and indigenous human rights defenders, by taking into account their specific situation of extreme vulnerability;
- To address, jointly between the UN Special Rapporteur on the situation of human rights defenders and other relevant Special Procedures, letters of allegation to the authorities of the Philippines, to take-up and follow-up on individual cases of violations against human rights defenders, and to highlight the issue of human rights defenders in the country in their next report to the Human Rights Council;
- To condemn publicly violations against human rights defenders and stress that those responsible for such abuses must be held accountable.

**To the European Union and foreign embassies in the Philippines:**

- To urge the Philippines to investigate all human rights violations, including enforced disappearances and extrajudicial killings, and bring those responsible to justice and to closely follow up the development of specific cases;
- To continue to grant particular attention to the protection of human rights defenders in the Philippines, in accordance with the UN Declaration on Human Rights Defenders, the EU, the Swiss, and the Norwegian Guidelines on Human Rights Defenders;
- To condemn, including through high-level public statements, harassment, arbitrary arrests, and violence against human rights defenders, and stress that those responsible for such abuses and violations must be held accountable;
- To engage a dialogue with the authorities on the concerns set out in this report as well as on the measures to be taken by the Philippines authorities to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under the Filipino State's jurisdiction, individually and in association with others, are able to enjoy all human rights and fundamental freedoms;
- To ensure that the delegations and Head of Missions take all protective, preventive, and reactive measures, including local statements and proactive démarches, in line with the various EU Guidelines, including those on torture and on violence against women. Regarding the EU Guidelines on Human Rights Defenders, ensure:
  - regular meetings with human rights defenders;
  - prison visits to human rights defenders detained; and
  - observation of trials held against human rights defenders;
- To use dialogue to monitor progress and raise other matters of concern, denounce shortcomings, and send strong messages of support for human rights defenders. Use dialogues also to obtain further commitments and progress, assess results based upon clear and meaningful benchmarks and substantive indicators, and make those assessments public. Ensure the dialogues can produce positive human rights outcomes and do not become rituals used to deflect international scrutiny of the government's human rights record;
- To ensure that the delegations and Head of Missions diffuse the CSR guidelines to the European enterprises, and, as requested by the European Parliament in January 2013, ensure that officers based in EU delegations are given regular training on CSR, in particular

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with respect to the implementation of the UN Guiding Principles on Business and Human Rights, and that the EU delegations function as EU focal points for complaints concerning EU companies and their subsidiaries. In addition, take additional steps in order to:

- render human rights due diligence mandatory for EU-based companies. This shall require companies to identify, prevent, mitigate, and account for human rights impacts and risks linked to their operations, products or services, including throughout their entire supply chains, and operations abroad;
- adopt clear and mandatory requirements for the disclosure of EU-based companies' policies and impacts on human rights and the environment, including throughout their supply chain, as well as effective enforcement of such reporting requirements;
- facilitate affected persons/communities access to courts and effective remedies in the home country;
- exclude companies engaging in activities violating human rights in the Philippines from public procurement procedures and call for tenders in the EU and its member states.

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## ANNEX 1: PERSONS MET BY THE MISSION

### A. Meetings with Government Officials and Statutory Bodies

- **Philippine National Police (PNP):** Gen. Nestor M. Fajura, CSEE: Police Chief Superintendent; Chief of Human Rights Affairs Office
- **Armed Forces of the Philippines (AFP):** Gen. Domingo Tutaan, Jr.: Chief of Human Rights Office
- **Commission on Human Rights of the Philippines (CHRP):** Dir. Karen Lucia Gomez-Dumpit: HRD Focal Director; Director of Government Linkages Office
- **CHRP:** Atty. Homer: Field Operations Officer
- **Department Of Justice (DOJ):** Mr. Francisco F. Baraan III: Undersecretary
- **DOJ:** Mr. Villanueva: Support Staff
- **Presidential Human Rights Committee (PHRC):** Undersecretary Severo S. Catura: Executive Director in Manila
- **PHRC:** Mr. Tito Marshall Fajardo
- **PHRC:** Mr. Victor Caguimbal
- **Public Attorney's Office (PAO):** Atty. Silvestre A. Mosing: Deputy Chief Public Attorney
- **PAO:** Atty. John Philip L. Reyes
- **National Commission for the Indigenous Peoples (NCIP):** Dir. Dahliayn Dait-Cawed: Chief of Human Rights Office
- **Municipality of Tampakan:** Leonardo Escobillo: Mayor
- **Municipality of Tampakan:** Relly A. Leysa: Vice Mayor

### B. Meeting with SMI representatives

- **Sagittarius Mines Inc. (SMI):** Ian Callow: Public Affairs Manager
- **SMI:** Jonathan Josen: Public Affairs Manager

### C. Meetings with civil society representatives and human rights defenders

- **Alliance to Stop Mining (ATM):** Mr. Jaybee Garganera
- **Bayan (New Patriotic Alliance):** Mr. Renato Reyes: Secretary General
- **Defend Job Philippines:** Ms. Melona Daclan
- **Democratic Movement of Farmers in the Philippines (DKMP):** Nestor Natinga: Member
- **DKMP:** Luzviminda B. Fernandez: Member
- **DKMP:** Lydia C. Mangcau: Provincial Chairperson
- **DKMP:** Mario Pungasi: Deputy Secretary
- **Desaparecidos:** Families of the Disappeared for Justice: Ms. Girlie Padilla
- **Diocese of Marbel:** Bishop Dinualdo D. Gutierrez
- **Free Legal Assistance Group (FLAG):** Atty. Ricardo Sunga
- **GABRIELA:** Ms. Joan Salvador: Secretary General, International Relations Department
- **GABRIELA:** Ms. Jane Balleda: Member
- **Human Rights Defenders (HRD) Pilipinas:** Dr. Renato Mabunga: Chairperson
- **Justice and Peace:** Rolando M. Aguring
- **KALUMARAN:** Mr. Genasque Enriquez: Secretary General
- **KALUMARAN:** Mr. Chava Villabona
- **Kalumbay Regional Lumad Organisation:** Jomorito Goaynon
- **KARAPATAN:** Ms. Cristina Palabay: Secretary General
- **KARAPATAN:** Ms. Marie Hilao-Enriquez: Director
- **KARAPATAN:** Ms. Glendhyl Malabanan: Secretary General, KARAPATAN Southern Tagalog



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- **Kilusang Magbubukidng Pilipinas (KMP):** Mr. Danilo Ramos: Chairperson
  - **KUMASA Timog Katagalugan:** Mr. Axel Pinpin
  - **Lanao Alliance of Human Rights Advocates (LAHRA):** Abdul Gaffar B. Zacaria
  - **LAHRA:** Burt MondenoObedencio
  - **Lay Empowered Through Principled Politics (LET-PP):** Jimmy S. Momo
  - **LET-PP:** Delia A. Salde
  - **LET-PP:** Allan D. Beato
  - **LET-PP:** ErlanPresga
  - **Missionary Sisters of Mary (MSM), Rural Missionaries of the Philippines (RMP)- Northern Mindanao Sub-Region:** Sr. Ma. Famita Somogod
  - **National Council of Churches of the Philippines (NCCP):** Rev. Fr. Rex RB Reyes Jr.: Secretary General
  - **NCCP:** Pastor Edwin Egar
  - **National Union of People's Lawyers (NUPL):** Atty. Edre U. Olalia: Secretary General
  - **Nuclear-Free Bataan Movement:** Derek Cabe
  - **People's Forum on Peace for Life:** Ms. Mayeth Sapigao: Program Assistant responsible for Local Women's Program
  - **Philippine Alliance of Human Rights Advocates (PAHRA):** Mr. Max de Mesa
  - **PAHRA:** Ms. Rosemarie Trajano
  - **Philippine Human Rights Information and Research Center (PhilRights); NGO-PO ESCR Network:** Dr.Nymia Pimentel Simbulan: Executive Director
  - **PhilRights:** Mr. Bernie Larin: Information Officer,
  - **Social Action Center (SAC) of the Diocese of Marbel:** Fr. Gillarme Joy B. Pelino
  - **SAC of the Diocese of Marbel:** Rene Pamplona
  - **SAC of the Diocese of Marbel:** Sister Susan Bolano
  - **SAC of the Diocese of Marbel:** Roselle A. Mungca
  - **SAC of the Diocese of Marbel:** RosantoFlaviano
  - **SAC of Pamolok:** Mila T. Adam
  - **SAC of Sto. Nino:** Marina F. Tupaz
  - **SentroKitanglad:** John Ryan Mendoza
  - **Sumpay Mindanao:** Mark Lester Mandor: Information officer
  - **Task Force Detainees of the Philippines (TFDP):** Ms. Rita Melecio
  - **Tibuli Manobo Tribe:** Datu Victor Danian: Chieftain
  - BiboyMek
  - Zoinda B. Binjor
  - Rosita Casib Capion
  - Minmin Barrios
  - Antonie Cascosia
  - Robinson Ansag
  - Vivian H. Bangcong
  - Dexter Wagas

#### **D. Meetings with diplomatic missions**

- **Delegation of the European Union (EU) to the Philippines:** Mr. Lubomir Frebort: Counsellor, Head of the Political, Press and Information Section
- **Delegation of the EU to the Philippines:** Mr. Philipp Woschitz: Political and HR Officer; Political, Press and Information Section
- **Embassy of Australia:** Mr. Geoff King: Counsellor, AusAID
- **Embassy of Australia:** Mr. Will Robinson: Second Secretary (Political)
- **Embassy of Switzerland:** Mr. Juerg Casserini: Counsellor and Deputy Head of Mission
- **Embassy of Switzerland:** Mr. Yannick Reichenau: Attaché to the Embassy
- **Embassy of Norway:** Mr. Knut-Are S. Okstad: Counsellor/Deputy Head of Mission



Created in 1986, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social assistance to victims of torture and ensures the daily dissemination of urgent interventions across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also submits individual communications and alternative reports to the United Nations mechanisms, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

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## **Establishing the facts**

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## **Supporting civil society**

Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## **Mobilising the international community**

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## **Informing and reporting**

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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### Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by OMCT and FIDH: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

**To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:**

E-mail : [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80

OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29