

**HUMAN RIGHTS RECORD
OF THE PHILIPPINES:
SPECTACULAR ON PAPER**

**Consideration of the second periodic report of
the Philippines (CCPR/C/PHL/2002/2) by the
United Nations Human Rights Committee**

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**HUMAN RIGHTS RECORD
OF THE PHILIPPINES: Spectacular on Paper**

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I. Introduction & Executive Summary

On 26 August 2002, the government of the Peoples Republic of the Philippines submitted its second periodic report (CCPR/C/PHL/2002/2) to the United Nations Human Rights Committee monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR). The periodic report is quite forthright about some of the human rights problems facing the country. However, it failed to indicate about the measures being taken to ensure full and effective implementation of the ICCPR.

The promotion and protection of human rights in Philippines is spectacular on paper but it is classic case of failure at implementation. The examination of the second periodic report of the Peoples Republic of the Philippines on 20 and 21 October 2003 provided an excellent opportunity to make appropriate recommendations for full and effective implementation of the ICCPR.

The Peoples Republic of the Philippines is the only country in the Asian region to enact a special law on the rights of indigenous peoples, Indigenous Peoples Right Act (IPRA) in 1997. The activities of the National Commission on Indigenous Peoples (NCIP), especially on the delineation and titling of ancestral domains, have been hamstrung by the lack of adequate funding, bureaucratic hitches, and the inexperience of NCIP itself. Most indigenous peoples remain unaware of the procedures for the delineation and titling of ancestral domains; and the NCIP has little resources, financial and human, to raise awareness on the issue.

The United Nations Special Rapporteur on the situation of

human rights and fundamental freedoms of indigenous people visited the Philippines from 2 to 11 December 2002. The Special Rapporteur reported that “one indigenous community in central Mindanao is struggling to obtain the title to their ancestral domain, currently occupied by the Central Mindanao University. In the process of claiming this right, various human rights violations, including physical harassment and threats, have been reported to the Special Rapporteur.” On 6 April 2002, Jennylou Alejan, 31, the leader of that community was shot dead by unknown assailants.

Until the Republic Act 7659, commonly known as the Death Penalty Act, is abolished, death hangs over 175 convicts, including 12 minors.¹ As of September 2003, there were seven children who were awarded death penalty. Out of them, Christopher Padua, Ronald Bragas, Elmer Butal, Ramon Nicodemus, Saturani Panggayong and Roger Pagsibigan are being held in Cell 215, Medium Security Compound at New Bilibid Prison. Larina Perpnan is being held in the Women’s Correctional Institution.² In addition, the security forces have been responsible for extrajudicial executions of 44 persons in 2001 and 41 persons in 2002.³ The government vigilante groups and the armed opposition groups such as Moro Islamic Liberation Front (MILF), New Peoples Army (NPA) and Abu Sayyaf Group (ASG) have also been responsible for violations of the right to life.

Torture is widespread in the Philippines. The Task Force Detainees of the Philippines (TFDP), a Philippine national non-governmental organisation documented torture of 49 persons from February 2001 to December 2002, of which 37 occurred in 2002. Most of the victims were Muslims from Mindanao.⁴ Impunity is one of the root causes which perpetuate torture. Perpetrators could only be charged with narrowly defined torture as “serious physical injuries.”

There are also widespread arbitrary arrest and detention and incidents of restrictions on the exercise of the right to freedom of movement through hamleting villagers, mostly indigenous peoples.

The report includes Alternate Report of Asian Centre for Human Rights, summary records of the examination of the periodic report by the UN Human Rights Committee and Concluding Observations of the Human Rights Committee.

Suhas Chakma
Director

II. Information on the implement of the Articles 6, 7, 9, 12 & 30 of Covenant

Article 6: The Right to Life

a. Death Penalty

The ambiguity of the government of the Peoples Republic of the Philippines with regard to the right to life is reflected from the contradictory statements made in the second periodic report.

Under para 490, the second periodic report states “The death penalty shall not be imposed when the guilty person is below 18 years of age at the time of the commission of the crime.” Yet, in para 511 it states, “Execution by lethal injection shall not be inflicted upon persons below 18 years of age at the time of the Commission of the crime,” thereby implying that other methods of death penalty can be imposed on children. Under Article 40 of the Revised Penal Code, only in the case of death sentence upon any person over 70 years of age, the death sentence is commuted to the penalty of *reclusion perpetua* (minimum) with the accessory penalties.

The Republic Act 7659, commonly known as the Death Penalty Act, applies in a wide range of crimes, including rape, murder, kidnapping, drugs offences, treason, piracy and bribery. Since executions resumed in 1999 after 23 years, seven people were executed by lethal injection between 1999 and 2000.⁵ President Joseph Estrada announced a suspension of executions to mark the Christian Jubilee Year in 2000. When President Gloria Arroyo came to power in January 2001, she initially continued the *de facto*

moratorium but lifted it midway through the year in response to pressure from anti-crime lobbyists and the business community. In late September 2002 President Arroyo suspended executions while a bill on abolition was before Congress. The bill is still pending.

In her July 2003 State of the Nation Address, President Arroyo commented that “[f]or the big fish in illegal drugs, it will be difficult to keep the moratorium on death penalty.”⁶ Subsequently, there were reports that an inspection of the lethal injection chamber had been ordered to “prepare it for the resumption of executions.”⁷

Until the death penalty law is abolished, death hangs over 175 convicts, including 12 minors.⁸ As of September 2003, there were seven children who were awarded death penalty. Among them, Christopher Padua, Ronald Bragas, Elmer Butal, Ramon Nicodemus, Saturani Panggayong and Roger Pagsibigan are being held in Cell 215, Medium Security Compound, New Bilibid Prison. Larina Perpinan is being held in the Women’s Correctional Institution.⁹

When the death penalty was reintroduced in 1993 its imposition on children was explicitly prohibited. Section 22 of Republic Act (RA) 7659, which amended the Revised Penal Code in order to provide for the death penalty, states:

“The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be *reclusion perpetua*.”

In addition to Section 22 of RA 7659, the imposition of the death penalty on children is also prohibited by Article 68 of the Revised

Penal Code, which sets out sentencing procedures for youth offenders. Under Article 68, offenders between the ages of nine and fifteen (who demonstrate ‘discernment’) shall receive a sentence “two degrees lower” than an adult, and those under eighteen but above fifteen shall receive a sentence of “one degree lower.” By “degree” the law refers to different gradations of severity in the same type of crime. The crime of theft, for example, is divided into several categories based on the value of the goods stolen and consequently, the law provides for differing sentences based on the “degree” of the crime. A serious crime such as forcible abduction with rape with aggravating circumstances, for example, which would be punishable by life imprisonment or death for an adult offender would then be reduced by one degree to a sentence of ten to seventeen years if committed by a youth offender over the age of fifteen but under the age of eighteen.¹⁰

Under the Philippine juvenile justice system, there is no requirement to inquire into or establish whether or not a suspect is minor. The lack of such a provision also implies that many juvenile delinquents may be treated and detained as adults until they are brought before a judicial authority.¹¹

b. Extrajudicial executions

There are widespread violations of the right to life both by the security forces and the armed opposition groups such as the Moro Islamic Liberation Front (MILF), New Peoples Army (NPA) and Abu Sayyaf Group (ASG).

The Philippine National Police (PNP) personnel often resort to summary execution of suspects, or “salvaging” while combating crimes. The PNP frequently explain these killings as the unavoidable result of armed encounters with suspects or escapees. The Philippines Commission on Human Rights found that the PNP

members were the perpetrators of 27 percent of the human rights violations involving deaths that it investigated between January and June 2002.¹²

The Task Force Detainees of the Philippines documented extrajudicial executions of 44 persons through unlawful killings and massacres during January-December 2001 and 41 persons during January-December 2002. In addition, 5 individuals disappeared in 2001 while 12 individuals disappeared in 2002.¹³ The Philippines Commission on Human Rights investigated 55 complaints of killings between January to June 2002, compared with 40 complaints during the same period in June 2001.¹⁴

Case 1: Abduction and killing of Warlito Nagasao

Mr Warlito Nagasao, an activist of the Bayan Muna party was abducted in Brgy. Campo, Laud, Echague, Isabela, on 20 March 2002. Unidentified men in plain clothes knocked on the house of Mr Nagasao before dawn on 20 March 2002. Then they forced their way in and took away Mr Nagasao, stopping his wife Ms Edna Nagasao and the children from protesting by pointing their guns at the latter. The kidnapers even told Edna Nagasao, wife of the victim that they would return Mr Nagasao in two days. Ms Edna Nagasao immediately reported the incident to the police. Together with friends from Bayan Muna, she searched for her husband in vain. His dead body was found six days later. A medico legal certificate and an autopsy report were made. The family accused the army (45th IB) for Mr Nagasao's abduction.¹⁵

Case 2: Killing of Indigenous Youth Leader Jennylou Alejan

On 6 April 2002, Mr Jennylou Alejan, 31, single, and a resident of Bukidnon, was shot dead by two unidentified assailants. Mr Alejan had been a leader of a group of Manobo and Talaandig people, the

Kibalagon-Kisanday-Narukdukan Manobo Talaandig Tribal Association, which has been involved in a long-running land dispute with Central Mindanao University (CMU), a government institution in Bukidnon. The Kibalagon-Kisanday-Narukdukan Manobo Talaandig Tribal Association is claiming as part of their people's ancestral domain a 601-hectares currently titled to the Central Mindanao University.

The conflict over the land has lasted many years. Mr Alejan was employed as a forest guard of CMU in January 2000. He however resigned in February 2001 to protest against the alleged abuses being committed by the university administration and university guards against his community. He then became an active organisation leader. An attempt was made on his life in August 2001 where he directly accused the university's security forces for the attempt. Five persons have been killed since 1984, all apparently in connection with the CMU land dispute. A woman, Winnie Guimba, was killed allegedly by university guards in 1984. Bonifacio Alba (Datu Malinao), another tribal leader, was killed in 1989, allegedly by university forest guards and soldiers. Ten years later in 1999, three more persons namely Maximo Lemosenero, Ramil Lemosenero and Virgilio Lemosenero were killed in the area allegedly by members of the police from Maramag, Bukidnon. Another indigenous group staking a similar claim on a piece of CMU property has also experienced harassment from university guards, including the illegal demolition and destruction of various properties and places of worship.¹⁶

c. Vigilante groups

The security forces have supported the establishment of many vigilante groups especially from Moro and indigenous Lumad communities. These vigilante groups are then integrated into the Civilian Armed Forces Geographical Units (or CAFGU). Some of

the groups include the Alamara (in Bukidnon, Davao del Norte, Arakan Valley, and Davao City); the Pulang Mandalagan Command (in Davao del Norte); the Black Fighters (operating in Davao City); and the Alsa Lumad (in Davao Oriental).¹⁷ Also, 120 Ata tribesmen have been recruited into the CAFGU in 2002 in addition to the 400 recruited in 1997.¹⁸

The UN Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people after his mission to Philippines noted that “CAFGUs set up by the army in numerous indigenous municipalities, whose semi-military activities often tend to divide local communities and set one group against another.” The Under-Secretary of National Defence informed the Special Rapporteur that these units should be considered as reserve units of the armed forces, which occasionally carry out military activities when the need arises. However, indigenous peoples reported that these are not regularly trained military units and that their objective was to control the political and social life of local communities, in disregard of the latter’s traditional customs. They reported that divisions among indigenous peoples were created by a tactic whereby the military actually chooses the community leaders (Datu) in order to manipulate and control the community.¹⁹

Article 7: Torture

Members of the armed forces - army, marine, navy and the police and the CAFGU use torture against suspects and detainees to extract confessions of being members of the armed opposition groups - NPA, the MILF, the Abu Sayyaf, or to admit participation in terrorist activities such as bombing. Since February 2001 when President Gloria Arroyo took over, TFDf documented torture of 49 persons of which 37 occurred in 2002. TFDf stated that most of the victims were against Muslims and occurred in Mindanao. The victims also include minors and female.²⁰

The constitution of the Philippines prohibits torture, and evidence obtained through its use is legally inadmissible in court. However, there is ambiguity in the definition of torture. Perpetrators could only be charged with committing crime for “serious physical injuries.” As the government of the Peoples Republic of the Philippines rightly states in its periodic report, “one common difficulty torture victims encounter in filing a case is the alleged use of torture methods that bear no physical signs or indications of such treatment, e.g., by tying plastic bags over the heads to suffocate the alleged victim; by forcibly holding the head under waterby threatening the victim with rape, if female and other physical treatment” (para 628).

Government forces had beaten up the 27 Muslims who were arrested on 31 March 2002 in Zamboanga City on the suspicion that they were members of the Abu Sayyaf Group.²¹

Two Muslim-Kalagans from Compostela Valley Province and one Muslim in General Santos were tortured after they were arrested on January 29, 2001 and April 23, 2002, respectively.²²

Four army soldiers from the 51st Infantry Battalion, accompanied by CAFGU men, beat up a Subanen in Zamboanga del Sur on April 17, 2002.²³

Article 9: Right to liberty and security of person

The constitution of the Philippines requires a judicial determination of probable cause before issuance of an arrest warrant and prohibits holding prisoners incommunicado or in secret places of detention. However, police in a number of cases arrested and detained citizens arbitrarily.

The Philippines Commission on Human Rights investigated 17 cases of illegal arrest and detention in 2002.²⁴ The TFDP

documented 69 cases of arbitrary arrest and detention during the same period.²⁵ The TFDP and Philippine Human Rights Information Center both estimate that there are about 200 political prisoners in the country and that some of these individuals remained in custody for periods longer than their stated jail terms. The government denies that there are any political detentions or detainees.

On 23 April 2002, a team of police and soldiers arrested Abubakar Amilhasan, 44, Arsul Ginta, 31, and Jehon Macalinsal, 19 who are members of the Samahan ng Makabayang Moro Alay sa Tunay na Kalayaan at Demokrasya (SAMAYA), an affiliate of the Bayan Muna party, in a dawn raid of a house in Brgy. Calumpang, General Santos City. The organisation had been giving refuge to some people escaping from their militarised communities in the rural areas. Residents of the house were all herded out. They were guarded at gunpoint. The house search was done solely by members of the raiding team. The search allegedly yielded an assortment of weapons purported to be owned by those arrested. Valuables were later reported to have been lost. The three who were arrested were detained at a police precinct in General Santos City. No case was filed against them.²⁶

On 25 April 2002 Mr Ronald Lumbao, leader of the pro-Joseph Estrada Peoples' Movement Against Liberty (PMAP) was arrested after he was implicated in the rally that turned violent on 1 May 2001 (which is now called EDSA 3) around Malacañang. He has been charged with rebellion.²⁷

In January 2002, police without warrants detained seven activists from Karapatan, a group linked to the Communist Party of the Philippines, in Cagayan de Oro, Misamis Oriental. Police released three of the detainees within days.²⁸

Article 12: Freedom of movement

The right to freedom of indigenous peoples is seriously affected

by establishment of “strategic hamlet” where the military compel indigenous peoples to congregate in specified locations against their will and restrict their free movement by imposing a curfew. The UN Special Rapporteur on the situation of human rights and fundamental freedom reported that “indigenous farmers suffer limits on the time allowed for tilling lands” in the context of fighting the New Peoples Army.²⁹

Article 30: Indigenous Peoples

The government of the Peoples Republic of the Philippines has taken few measures for effective implementation of the Indigenous Peoples Rights Act, 1997. The National Commission on Indigenous Peoples (NCIP) is the primary government agency responsible for implementation of the IPRA.

The role of the Commissioner for the NCIP is crucial in the implementation of IPRA. However, as of October 2003, the term of the Commissioner has been extended only by five months instead of extending it for the full term or appointing a different commissioner for the full term. This has serious implications on the independence of the Commissioner in terms of taking crucial decisions for implementation of the IPRA. Similarly, the government of the Peoples Republic of the Philippines has been considering winding up the **Task Force 63**, the highest level body established and chaired by the President of the Republic, for dealing with emergency issues regarding indigenous peoples.

The NCIP has failed to effectively implement the IPRA due to the lack of adequate funding, bureaucratic hitches, and the inexperience of the NCIP itself. Although, the NCIP has set delineation and titling of ancestral domains and development and protection of ancestral domains as its primary tasks, it does not have adequate resources to raise awareness about the process of obtaining the

title under the Act. Indigenous peoples remain largely unaware of the procedures to demarcate the ancestral domains and obtain the titles.

As the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples after his mission to the Philippines noted, “whilst some progress has been made in this respect, it is also clear that the legal recognition of ancestral domains and land titles has been a slow and cumbersome process, full of pitfalls and ambiguities, which often drive indigenous communities to despair of the usefulness of IPRA as an effective legal instrument.” According to the law, ancestral domain claims are to be converted into actual land titles. The Special Rapporteur was informed that only one certificate of ancestral domains has been so converted by NCIP in Bakun, to the great disappointment of indigenous communities who expected the process to be smoother and more efficient.³⁰

As the Special Rapporteur also reported “one indigenous community in central Mindanao is struggling to obtain the title to their ancestral domain, currently occupied by the Central Mindanao University. In the process of claiming this right, various human rights violations, including physical harassment and threats, have been reported to the Special Rapporteur.”³¹

As stated above in this report, on 6 April 2002, Jennylou Alejan, 31, a leader of a group of Manobo and Talaandig people, the Kibalagon-Kisanday-Narukdukan Manobo Talaandig Tribal Association (KKINAMATTA) which has been claiming as part of their people’s ancestral domain a 601-hectare currently titled to the Central Mindanao University, a government institution was shot dead.

The Special Rapporteur also noted that in some cases, these ancestral domains certificates create tension among indigenous communities. In San Luis, for instance, two ancestral domains

certificates were issued to local commanders of the Civilian Armed Forces Geographical Units (CAFGUs), an irregular military formation, by the Department of Environment and Natural Resources (DENR), which led to a dispute with neighbouring indigenous communities. The Special Rapporteur was informed that there was no consultation or agreement on issuing these certificates. Therefore, some indigenous peoples perceive that ancestral domains certificates are also being used as land-grabbing mechanisms by powerful individuals among their members who have access to information, legal assistance and logistical and political support.³²

In addition, there are conflicts between the 1995 Mining Act and IPRA. The rights of indigenous peoples to their ancestral domains and lands and natural resources recognised under the IPRA are in fact limited by section 56 of IPRA. It provides that property rights within the ancestral domains already existing and/or vested shall be recognized and respected. Thus, mining companies licensed by the Government under the 1995 Mining Act continue to operate in these domains despite opposition by indigenous communities and organisations.

III. Conclusions and recommendations

The Philippines is a classic case of failure at implementation of human rights standards while according many rights on paper. The examination of the second periodic provides an opportunity to make appropriate recommendations to the government of the Peoples Republic of the Philippines for effective enjoyment of human rights and fundamental freedoms.

Asian Centre for Human Rights (ACHR) requests the United Nations Human Rights Committee to consider, among others, the following recommendations in its Concluding Observations on the Philippines for effective implementation of the International Covenant on Civil and Political Rights (ICCPR):

1. Abolish death penalty and to transfer the juvenile delinquents who have been awarded death penalty from prisons to juvenile homes;
2. Take effective measures for implementation of the UN Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions;
3. Disband vigilante groups supported by the armed forces;
4. Make necessary amendments in the law to broaden the definition of torture to include all forms of torture;
5. Ban hamleting of indigenous peoples;
6. Take necessary measures to address the conflict between the Indigenous Peoples Rights Act and Mining Act of 1995 and to ensure that in case of conflict the IPRA prevails over the Mining Act of 1995;

7. Take effective measures to increase the capacity of NCIP in terms of adequate institutional, human and financial resources including fully qualified staff to deal with development and human rights issues in defence of indigenous communities including speeding up the process of delineation of ancestral territories; and
8. Ratify International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.



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HUMAN RIGHTS COMMITTEE

Seventy-ninth session

**SUMMARY RECORD OF THE FIRST PART
(PUBLIC)* OF THE 2140th MEETING**

**Held at the Palais Wilson, Geneva,
on Tuesday, 21 October 2003, at 3 p.m.**

Chairperson: Mr. AMOR

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**CONSIDERATION OF REPORTS SUBMITTED BY
STATES PARTIES UNDER ARTICLE 40 OF THE
COVENANT (continued)**

Second periodic report of the Philippines (continued)

The meeting was called to order at 3.10 p.m.

**CONSIDERATION OF REPORTS SUBMITTED BY
STATES PARTIES UNDER ARTICLE 40 OF
THE COVENANT (agenda item 6) (continued)**

**Second periodic report of the Philippines (continued)
(CCPR/C/PHL/2002/2; CCPR/C/79/L/PHL)**

1. **At the invitation of the Chairperson, the members of the delegation of the Philippines resumed their places at the Committee table.**
2. **The CHAIRPERSON** invited the delegation to complete its responses to questions 21 to 34 of the list of issues (CCPR/C/79/L/PHL) and to questions raised orally by Committee members.
3. **Ms. GUTIERREZ** (Philippines) said that her delegation had been unable to contact the prosecutor handling the cases of the human rights defenders Eden Marcellana and Eddie Gumanoy in order to clarify the status of the proceedings because of the time difference between Geneva and Manila. She would pass on the information to the Committee as soon as it became available.
4. The Committee had asked about practical steps to ensure that the system of warrantless arrest was not abused, especially during anti-insurgency and anti-vagrancy drives. In the case of insurgents, the armed forces were bound by rules of engagement for the conduct of combat operations. In that connection, she drew attention to paragraph 518 of the report (CCPR/C/PHL/2002/2). Anti-vagrancy measures were usually applied to minors and the practice was to turn them over to their parents or to barangay (local council) captains, not on account of vagrancy but on account of violations of the curfew imposed on minors by local government units. Glue-sniffing

street children were usually taken to shelter homes or, if necessary, to drug rehabilitation centres.

5. The New People's Army (NPA) had recruited minors and deployed them in combat operations. Since 1997, 210 cases of child victims of recruitment by insurgents had been documented: 133 had surrendered, 72 had been apprehended and 5 had been killed in clashes. She cited, among others, the case of a 12-year-old captured during an encounter in March 2000 who had been trained to handle and assemble an Armalite rifle.
6. The Department of National Defense had signed a memorandum of agreement with the armed forces of the Philippines, the Department of the Interior and Local Government, the Philippine National Police, the Department of Social Welfare and Development, the Department of Health, the Commission on Human Rights, the Office of the Presidential Adviser on the Peace Process and the National Program for Unification and Development Council on the handling and treatment of children involved in armed conflict. The memorandum specified the roles of the different agencies, referring in that context to the Convention on the Rights of the Child, the United Nations Guiding Principles on Internal Displacement and Republic Act 7610, which provided a legal mandate to protect and promote the child's best interests and stated that children, as "zones of peace", should not be recruited to become members of any military unit or any other armed group or be allowed to take part in hostilities either directly or indirectly. The memorandum also affirmed the State's responsibility to treat children involved in armed groups who were rescued or who surrendered as victims rather than offenders.

7. The delegation needed more time to obtain the following data: on child soldiers and the employment of children under 15 years of age; on legal aid and its compliance with article 14 of the Covenant; on reports of the exploitation of women workers in the free-trade zones, especially allegations that they were not paid the minimum wage or compensated for overtime work; on compliance with the provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; on cases in which the Covenant had been directly invoked in the courts; on the proportion of men and women in public service and the impact of the Philippine Development Plan for Women; on the cases of Juan Pala and other journalists; and on affirmative action for indigenous people. The delegation would provide answers later in the week to questions about the reintroduction of the death penalty and about military units or officers who had been disciplined or sanctioned in connection with enforced or involuntary disappearances.
8. With regard to the two bills regarding torture pending before Congress, the comments of a member of the Committee would be taken into account to ensure that the best possible definition of torture was adopted. A bill on the rights of homosexuals was also pending before Congress.
9. Steps were being taken to prevent abusive recourse to warrantless arrests during counter-insurgency operations. Captured insurgents were detained by the armed forces for 36 hours for tactical interrogation. The crime of rebellion was a serious offence warranting such a measure. After that period, they were turned over to the police and the courts for the preferment of appropriate charges. Some insurgents preferred to remain in military custody for their own safety. In such cases, they were asked to execute a waiver.

10. With regard to the role of the prosecution in the investigation of cases, she said that the prosecutor, on receiving a complaint, filed an information with the court when the evidence so warranted. In the case of warrantless arrests, inquiries were immediately conducted to ensure that the proper information was filed in court. Prolonged detention could entail prosecution of an officer under the Revised Penal Code.
11. The Public Attorney's Office and the National Prosecution Service were agencies of the Department of Justice. Neither prosecutors nor public defenders received high salaries but most remained in office out of dedication to the administration of justice. They were also attracted by the prospect of promotion and perhaps eventually entering the judicial branch.
12. **Sir Nigel RODLEY** said that the definition of torture in a bill before Congress read out by the delegation at the previous meeting corresponded to some extent to the definition contained in article 1 of the Convention against Torture but did not have the full purposive element of that definition. He wondered whether the delegation could explain why not.
13. The Committee had been informed by Amnesty International that the Philippine vagrancy legislation was sometimes used as a pretext for arbitrary arrest and detention. In particular, women sex workers were said to be routinely arrested by plain-clothes police officers driving private vehicles who failed to produce proper identification. They reportedly extorted money from the women or subjected them to sexual violence. Detained women and children were also allegedly subjected to sexual assault or promised release in return for sexual favours.
14. **Ms. GUTIERREZ** (Philippines) undertook to make representations to Philippine lawmakers to ensure that the

definition of torture adopted by Congress was that contained in the Convention against Torture.

15. Any complaints from victims of extortion or other illegal acts by police officers should be brought to the attention of the Department of Justice; the officers concerned would be liable to prosecution under the Revised Penal Code. The National Commission on the Role of Filipino Women could assist in documenting the cases.
16. **The CHAIRPERSON** welcomed the wide range of information provided by the State party in its voluminous report. While the Committee's concluding observations would take account of the additional written material to be provided later that week, he pointed out that not all Committee members were proficient in the language in which the material would be provided. With regard to the late submission of the report, he urged the State party to adhere in future to the scheduled submission dates in its own interest and in that of the Committee. The delegation's answers to the list of issues had been short on practical detail. Information on legislation and policy was certainly useful but the Committee also needed to know about specific cases and trends so that it could assess the day-to-day human rights situation.
17. It was unclear whether the Covenant, which seemed to have primacy over legislation but not over the Constitution, could be invoked before the courts and effectively applied. The related decision by the Philippine Supreme Court and statements by senators were not reassuring in that regard.
18. The Committee was concerned about certain provisions of the bill on terrorism, especially the list of acts to be included in the definition, which could hardly be justified by reference to Security Council resolution 1373 (2001). What scope was left

for human rights if the fight against terrorism could be invoked to justify all kinds of excesses, including assaults on the environment?

19. He agreed with Sir Nigel Rodley that the proposed definition of torture fell short of that contained in article 1 of the Convention against Torture, which the State party had ratified.
20. Questions about the indigenous peoples of the Philippines remained unanswered, and there were still many concerns regarding the situation of children, particularly children in armed conflict. As to the children on death row, whose age appeared to be unknown, it was difficult to understand how judgement could have been passed until it was clear they were not minors; it was up to the State party to establish their status first. With regard to deportations, the State party naturally had a sovereign right to deport foreigners who posed a risk to State security, but there must be a minimum of conditions, and those should be defined in the context of the Covenant.
21. Given the goodwill shown by the delegation during the dialogue, the Committee expected that it would receive full responses to its remaining questions and concerns.
22. **Ms. GUTIERREZ** (Philippines) thanked the Committee for the opportunity to present and discuss her country's second periodic report.



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HUMAN RIGHTS COMMITTEE

Seventy-ninth session

SUMMARY RECORD OF THE 2138th MEETING

Held at the Palais Wilson, Geneva,

on Monday, 20 October 2003, at 3 p.m.

Chairperson: Mr. AMOR

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER

ARTICLE 40 OF THE COVENANT

Second periodic report of the Philippines

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER

ARTICLE 40 OF THE COVENANT (agenda item 6)

Second periodic report of the Philippines (CCPR/C/PHL/2002/2; CCPR/C/79/L/PHL)

- 1. At the invitation of the Chairperson, the members of the delegation of the Philippines took places at the Committee table.**
- 2. Ms. GUTIERREZ (Philippines)** said that the Covenant had entered into force for the Philippines on 23 January 1987. She reaffirmed her country's commitment to human rights and democracy, and paid tribute to those who had given their lives in its long and bitter struggle for independence. The capacity of her Government to promote and protect civil and political rights had been strengthened considerably during the period covered by the combined second and third periodic report (April 1989 to February 2001). While poverty alleviation had remained the highest priority, the Government had also focused on national reconciliation and the consolidation of democracy. It was fully committed to cooperating with human rights organizations and promoting a free and responsible press. Its human rights strategy included training programmes for law enforcement officials, and an extensive public awareness campaign.
- 3. The CHAIRPERSON** invited the delegation to reply to questions 1 to 20 of the list of issues (CCPR/C/79/L/PHL).
- 4. Ms. GUTIERREZ (Philippines)**, replying to question 1, said that, in the case of **People v. Mercado**, the appellants had asserted that the reintroduction of the death penalty constituted

a violation of the Covenant. However, the Supreme Court had ruled that capital punishment was a legitimate limitation on the right to life, pursuant to article 6 of the Covenant, provided it was used only for the most serious offences. The Philippines had not in fact ratified the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. Republic Act 7438 and Republic Act 7309, concerning the rights of detainees and benefits accruing to the victims of unjust imprisonment, incorporated the relevant principles of the Covenant.

5. Referring to question 2, she said that State agents were bound by the provisions of the Covenant. Moreover, the Philippine Commission on Human Rights had been established to investigate allegations of human rights abuses committed by State agents or other armed groups, and domestic law provided for remedial measures in relation to such abuses. Aggrieved parties were entitled to bring separate civil suits for damages, without prejudice to prosecution of the violators under criminal law. Crimes against the fundamental laws of State, such as arbitrary detention, searching domiciles without a warrant and disruption of peaceful meetings, were punishable under articles 124 to 131 of the revised Penal Code.
6. The Philippine Commission on Human Rights (question 3) had been established to investigate human rights abuses by State agents during the martial-law period, and was free to conduct inquiries without undue political pressure. It was an independent constitutional body, and its recommendations were given due weight and credence by the Philippine authorities.
7. Victims of human rights abuses (question 4) could seek remedies through the Commission on Human Rights. On the basis of recommendations by the Commission, the Department

of Justice was mandated to conduct preliminary investigations and file the appropriate charges. Victims could also seek damages for violations of their constitutional rights and liberties, such as illegal confinement, under article 32 of the Civil Code.

8. Recognizing its international obligations, her Government seriously considered all requests for interim measures of protection from the Committee (question 5). However, implementation of its commitments, particularly in relation to domestic law, was strictly the prerogative of the State party.
9. Referring to question 6, she said that adequate human rights protection was afforded to suspects in terrorist-related investigations, so that no one was deprived of life, liberty or property without due process of law. Constitutional freedoms were guaranteed at all times, and the privilege of habeas corpus could only be removed for a period not exceeding 60 days following invasion or rebellion or if public safety so required. Counter-terrorism legislation currently before Congress contained provisions to protect civil and political rights even in the context of the war against terrorism.
10. The Constitution provided that no person should be denied the equal protection of the law, and prohibited all forms of racial discrimination (question 7). Pursuant to article 3 of the Labour Code, the Government also had a responsibility to ensure equal employment opportunities for all, regardless of sex, race or creed.
11. Progress had been made in securing better participation of women in political life, and many women occupied important positions in government (question 8). Statistics concerning the participation of women in public life would be submitted at a later date.

12. Republic Act 7659 provided for the imposition of the death penalty (question 9) for the following heinous crimes: treason, rape, kidnapping, serious illegal detention, robbery with violence, intimidation, destructive arson, plunder, the importation, delivery, sale, possession or use of prohibited drugs, murder, piracy, mutiny on the high seas or in Philippine waters, qualified bribery, parricide and infanticide. The reintroduction of the death penalty was justified by the recurrence of rampant criminality, and served as a powerful deterrent. In accordance with article 3 of the Constitution, it was only applicable to the most heinous, odious and perverse crimes, which were an outrage to the common standards of decency and morality in a just and civilized society. The delegation would provide details of crimes that carried a mandatory or possible death sentence (question 10) at a later stage in the discussion.
13. Replying to question 11, she said that, as of 1 October 2003, a total of 979 death sentences had been handed down, of which 145 had been upheld by the Supreme Court, and 834 were still under review. There had been 7 executions, and 145 prisoners were awaiting execution. However, a moratorium had been declared on application of the death penalty for offences other than drug-related crime, and debate over its abolition continued in Congress.
14. 15. Several minors had been sentenced to death (question 12) because their age had not been determined at the time of their trial. Of those convicted, 20 had been released subsequently, and 7 had been transferred to medium-security prisons, pending release. The imposition of the death penalty on minors was prohibited by law.
16. The Government was still investigating all cases of extrajudicial killings (question 13), and was not in a position

to provide information concerning the assassination of two human rights defenders and the abduction of two others in April 2003. If the Committee was referring to the case of Eden Marcellana, which had been brought before the courts, her delegation could provide further details.

17. A non-governmental organization (NGO) which served as a member of the Special Committee for the Protection of Children had reported the killings of 29 suspected criminals, including youth gang members and street children in Davao (question 14). The Special Committee had evaluated the witnesses to determine whether they qualified under the witness protection programme, and the case had been referred to the Commission on Human Rights. However, there was still insufficient evidence for the appropriate charges to be filed in court. The lack of cooperation of vital witnesses, for fear of reprisals, and the lack of popular support for the victims had impeded the collection of such evidence.
18. Neither vigilante groups nor extrajudicial killings were permitted by Philippine law (question 15). It was unclear how many vigilante groups existed, in view of the clandestine nature of their activities.
19. A draft law on the punishment of acts of torture (question 16) was on its second reading in Congress. Torture was defined therein as any act by which severe pain or suffering, whether physical, mental or pharmacological, was intentionally inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, for such purposes as obtaining information or a confession, punishment, intimidation or coercion.
20. The perpetrators of acts of torture, or anyone else present during the perpetration of such acts, were liable to criminal

prosecution. An order from a superior officer could not be invoked as justification for torture. Torture that resulted in the death of any person would be treated as murder. As protection against ill-treatment, detainees were subject to medical examinations and visits by representatives of the Commission on Human Rights. The Constitution provided that anyone arrested for an alleged offence had the right to remain silent and to be accompanied by appropriate legal counsel, preferably of his or her own choosing. Any confession obtained through torture or ill-treatment was deemed to be null and void.

21. The Government was taking steps to update its list of official places of detention and to compile a database of detainees, which would be accessible to the bar associations and the general public (question 17).
22. Evidence obtained from a detainee in an unofficial place of detention was presumed to have been obtained by irregular means (question 18). Where there were indications that any evidence had been obtained through the use of force, intimidation, threats, undue pressure or trickery, it was deemed inadmissible in court. Under Republic Act 7438, any extrajudicial confession made by a person arrested, detained or under custodial investigation should be in writing and signed by that person in the presence of counsel or, in the latter's absence upon a valid waiver, in the presence of parents, elder brothers or sisters, or a spouse, municipal major, municipal judge, district school supervisor, priest or minister of the church, depending on the wishes of the person concerned. Otherwise extrajudicial confessions were inadmissible as evidence in any proceedings. Moreover, any waiver made by a person arrested or detained under article 125 of the revised Penal Code or under custodial investigation was null and void unless made in writing and signed in the presence of counsel.

23. Turning to question 19, she said that a pending bill in Congress, House Bill No. 2433 entitled “Act Enhancing the Administration of Juvenile Justice”, established the Office of Juvenile Justice and Delinquency Prevention under the Department of Justice and a Juvenile Training Centre at the Bureau of Corrections. Rules and regulations governing the establishment of detention centres in coordination with the Department of the Interior and Local Government had been issued to local government units.
24. Responding to question 20, she said that the Bureau of Corrections had promulgated an operating manual to ensure uniform and humane treatment of prisoners. It included provisions for bedding and food to ensure that they complied with the United Nations Standard Minimum Rules for the Treatment of Prisoners.
25. **Mr. SHEARER** said he regretted that 13 years had elapsed since the State party’s submission of its initial report. At the same time, he welcomed the Philippine authorities’ openness to the work of both local and international NGOs, which had provided the Committee with a wide range of supplementary information.
26. The delegation’s answers to questions 1 to 20 of the list of issues had not been sufficiently detailed. In particular, the Committee would have liked to know more about specific measures to counteract impunity for human rights violations. It would appreciate a description, backed by statistics if possible, of how the legislation mentioned by the delegation was implemented in practice.
27. The delegation’s response to question 5 concerning implementation of the Committee’s Views under the Optional Protocol on the case of **Carpo et al. v. The Philippines** had

been extremely brief and somewhat dismissive. He asked for further explanation of the Government's reaction to the Views.

28. With regard to question 13, a number of NGOs and other sources had informed the Committee that extrajudicial killings were a major problem in the Philippines. According to the delegation, the Government was still "consolidating" information on the subject so that it could not yet be made public. The case referred to was indeed that of the two human rights defenders, Eden Marcellana and Eddie Gumanoy, who had been abducted by masked men and shot dead in April 2003 on returning from a human rights fact-finding mission. He was unsure what the delegation meant when it stated that the case had been "filed in court". Had the collection of evidence been impeded by intimidation or fear of retaliation? He wondered what kind of obstacles could be impeding the attainment of justice in respect of such a serious violation of human rights.
29. The delegation had referred to a "lack of popular support" for the victims of the killings mentioned in question 14. If the local population did not support vigorous action by the authorities against extrajudicial executions or ill-treatment in those cases, was it because of the victims' political associations, their ethnicity, their religion or some other factor?
30. On question 15, the State party had said it was unable to verify how many vigilante groups were currently operating. He asked the delegation to explain the Government's apparent inability to take vigorous action against groups that so clearly violated not only Philippine law but also the Covenant.
31. **Mr. RIVAS POSADA** said that the delay in submission of the second periodic report of the Philippines made it more difficult for the Committee to fulfil its human rights monitoring role. Moreover, the State party had been unable to benefit from an

ongoing dialogue with the Committee. The delegation had provided excessively detailed information on the institutional, constitutional and legislative situation in the Philippines and insufficient information about results achieved in practice. He enquired about the rank of the Covenant in the constitutional and legal hierarchy of the Philippines. What happened where a provision of the Covenant was incompatible with domestic legislation? The Committee was particularly interested in hearing about practical measures to ensure that public officials did not enjoy impunity for human rights violations and that victims of such violations were compensated, as required by the Covenant.

32. How did the functions of the Philippine Commission on Human Rights set up in 1987 differ in practice from those of the Presidential Committee on Human Rights set up shortly afterwards? He was particularly interested in hearing about their respective investigative powers and their authority to institute legal proceedings in response to reports of human rights violations.
33. The delegation had mentioned provisions of the Civil Code recognizing the right of victims of violations to pecuniary or economic compensation. However, it had not provided a full picture of the compensation system. It was unclear whether the mere acknowledgement by a judicial body that a violation of a right had occurred was a sufficient ground for obtaining compensation or whether additional judicial or administrative proceedings were necessary.
34. **Mr. SCHEININ** commended the self-critical approach adopted in the State party but regretted that the delegation's answers to the questions in the list of issues had been somewhat laconic. He also commended the Philippines for its ratification

of the Optional Protocol, permitting an individual right of complaint which was not common in the region.

35. With regard to question 5 of the list of issues, the delegation had emphasized the principle of **pacta sunt servanda**. While he agreed that the State party must comply in good faith with its obligations under international law, he was troubled by the reference to its prerogative in terms of enforcement of domestic law. In the case of individual complaints, the only way to comply with its international obligations was to give the Committee time to conclude its deliberations without taking such an irreversible step as execution of the alleged victim, as had occurred in three cases. According to NGO sources, there were rumours that other persons who had petitioned the Committee were scheduled for execution. He asked the delegation to clarify whether the State party was committed to refraining from executing a person whose case was pending under the Committee's individual complaints procedure.
36. In the light of the reports submitted by the Philippines to the Counter-Terrorism Committee of the Security Council, he was unsure whether certain counter-terrorism measures taken by the State party were compatible with the Covenant. In the second report, for example, it had listed by name certain individuals classified as terrorists who were currently detained pending trial. How could that approach be reconciled with the presumption of innocence and the guarantee of a fair trial? Both reports stated that there was no Philippine law defining terrorism but the Committee had heard from other sources that such a bill was pending before Congress and would like to ensure that the definition was not unduly vague. In some countries the crime of terrorism attracted heavy penalties but did not include all necessary elements of crime. The principle of legality - a non-derogable right under the Covenant - was

thus compromised. He wished to be assured that the Philippine definition referred to terrorist intent only in combination with an ordinary crime and not independently. He understood from external sources that the proposed penalty for the crime of terrorism was life imprisonment but that the death penalty was also under discussion.

37. With regard to requests for extradition, he asked whether the rule of non-refoulement was absolute in the Philippines, so that nobody could be deported if they were at risk of torture or other forms of ill-treatment.
38. The Philippines had informed the Counter-Terrorism Committee of various measures regarding exchanges of information, including the communication of passenger lists. He asked what human rights guarantees were attached to such cooperation when the country concerned had not ratified the Covenant or the United Nations Convention against Torture.
39. The delegation had cited a number of political or domestic-law justifications for the reintroduction of the death penalty. What interested the Committee was the justification under international law. The correct interpretation of article 6 of the Covenant was that action to abolish the death penalty could not be reversed. Capital punishment was reserved for States parties that had not abolished it. In that connection, he asked whether any crime had still been punishable by the death penalty prior to its reinsertion in the Penal Code.
40. Although the delegation had not yet provided the figures requested in question 10, he had heard from other sources that 46 crimes carried the death penalty and that the death penalty was mandatory in the case of 25 of those crimes. The Committee had found that mandatory capital punishment, where a court was left with no other option, was an arbitrary

deprivation of life within the meaning of article 6 (1) of the Covenant. It had also interpreted “most serious crimes” in article 6 as referring to a narrow category of crimes, usually involving violence against a person leading to or intended to lead to loss of life. The list of crimes carrying the death penalty in the Philippines was far broader than that interpretation. He asked the delegation to elaborate on the concept of a “heinous” crime under domestic law and of “most serious crimes” under the Covenant.

41. **Mr. ANDO** said that the long absence of a dialogue with the Philippines had been a major handicap for the Committee. He agreed with other speakers that the enumeration of legal and administrative provisions in the report should be supplemented by details concerning implementation.
42. With regard to question 7 of the list of issues, he enquired about the definition of race in the Philippines as a ground for prohibiting discrimination. How could a person claim that discrimination on grounds of race had occurred and what procedures were in place to ascertain whether the claim was justified? Where it was found that a claim was justified, what concrete remedies were available? Referring to the Committee’s jurisprudence, he said that article 26 of the Covenant was deemed to cover not only civil and political rights but all public acts, whether judicial or administrative, including those relating to social and economic rights. He asked whether protection in the Philippines extended to all categories of rights.
43. Article 3 of the Covenant, which prohibited gender discrimination, covered a wide range of issues relating not only to legal provisions but also to education and awareness. He wished to know what kind of awareness programmes

existed at the primary, secondary and higher levels of education and what kind of training was provided to ensure that schoolteachers, law enforcement officials and judges did not violate article 3.

44. **Mr. KHALIL**, referring to paragraph 597 of the report, asked whether the delegation could explain the discrepancy between the proposed new legislation on torture and actual practice. There were persistent reports of delays in effective investigation of cases, particularly those involving suspected insurgents, and of a climate of impunity with regard to ill-treatment of detainees during custodial investigation.
45. In connection with paragraph 625, he said secret places of detention still existed, despite the constitutional prohibition, and he wondered whether the proposed legislation provided for their abolition. Was there a legal requirement to keep records of arrest and detention, and if so, were such records available to directly interested parties?
46. Referring to paragraph 943, he said that, as one of the first States parties to the Convention on the Rights of the Child, the Philippines had introduced a wide range of legislation to protect children in conflict with the law. Practice had not, however, kept pace with the legislation: there were still reports of ill-treatment of minors by officials and of minors being held in the same cells as adults.
47. Street children were particularly at risk. They were sometimes beaten and handcuffed on arrest and many were subjected to lengthy pre-trial detention, with delays in processing cases. He wondered whether they were entitled to legal counsel. The problem of street children in general perhaps called for closer State supervision and support for NGOs working with children.

48. According to the report, children appearing in court enjoyed certain special rights, but instituting juvenile courts would surely help reduce the number of children held in overcrowded prisons. He wondered whether the Philippines was thinking of doing so.
49. **Mr. BHAGWATI** said it was the manner in which legislation was applied in practice that impacted on ordinary people's welfare, and he would have liked more details concerning implementation. Referring to paragraph 371 of the report, he asked what the composition of the Judicial Academy was. How were its members appointed, did they receive any practical training and to whom were they answerable?
50. With regard to the Philippine Commission on Human Rights, he said the report gave no specific information on the number of members, how they were appointed, whether they were removable and what their functions were. He wondered how many violations the Commission had investigated and with what results. To what extent were NGOs involved in the Commission's work? He would also like to know whether draft legislation was put to the Commission in order to check for potential human rights violations. Lastly, he asked how many recommendations the Commission had made and how many of those had been implemented.
51. The provisions of the Covenant had been incorporated into domestic law. He wondered, however, whether any of the rights protected under the Covenant had been directly invoked or enforced in court judgements. Were violations of those rights punishable under the law? With regard to the State party's prerogative to accept the Committee's recommendations or not, he would like to know whether the Committee's recommendation in the specific case mentioned

in question 5 of the list of issues had in fact been followed, and if not, why not.

- 52. Mr. YALDEN** said that, notwithstanding the volume of the report, there were regrettable omissions. It was not sufficient, for example, merely to make reference to the State party's reports to other treaty-monitoring bodies, particularly as in some cases they had been submitted several years previously.
53. The report dealt with the issue of racial discrimination but made no mention of discrimination on other grounds such as gender, disability or religion. He wondered whether the Philippine Commission on Human Rights had jurisdiction to deal with complaints of discrimination. How were such complaints made and dealt with? Lastly, referring to paragraph 467 of the report, he wondered what progress had been made with the legislation on gay rights.
- 54. Ms. CHANET** said one major question addressed at the time of the Committee's consideration of the initial report of the Philippines had been the issue of paramilitary forces, militias and vigilantes. The second report revisited the issue, albeit rather briefly, and there was a lack of detail concerning the role and powers of the various military and paramilitary forces. She wondered what legal provisions governed the army's use of paramilitary forces and whether the Government had simply accepted the military's denial of the allegations of human rights violations mentioned in paragraph 547 without instituting any commission of inquiry.
55. The Committee had been informed during its consideration of the initial report that the Philippine Commission on Human Rights was competent to deal with violations committed by the armed forces, which would make it the strongest national human rights institution in the world. It was still unclear,

however, how such violations were brought to the Commission's attention, so she would appreciate more information on the subject.

56. She agreed with her colleagues' comments concerning the reintroduction of the death penalty, and found it difficult to tell from the report whether that penalty was imposed only for the most serious crimes, in accordance with article 6 of the Covenant. The plethora of amended legislation referred to in paragraph 508, for example, was confusing. She wondered what definition of torture the State party applied and what jurisdictions were competent to deal with torture cases.
57. Information concerning the situation of children in the Philippines was alarming, particularly in the light of article 10 of the Covenant. What was the minimum age at which a child could be arrested, and how was that age determined, if not on appearance alone? There were apparently seven children currently on death row, which was difficult to reconcile with the fact that, under the law, the death penalty could not be imposed on minors.
58. **Mr. KÄLIN** said he shared Mr. Scheinin's concern at the delegation's reply to question 5 of the list of issues. He was not sure how to interpret the Government's position given the comments of the Supreme Court in its ruling on the Echegaray case, to the effect that the Philippines could not "be deemed irrevocably bound by the said Covenant and Protocol, considering that [those] agreements [had] only reached the committee level". Did the Government share that opinion? If so, on what basis did it deal with the Committee?
59. There appeared to be a certain amount of confusion concerning the State party's obligations: on the one hand, there was no doubt that the Philippines was fully bound by the Covenant

and the Optional Protocol, which were contractual obligations vis-à-vis all the other States parties; however, the principle of **pacta sunt servanda** should be distinguished from the issue of the extent to which the Committee's Views in a given case were legally binding. Strictly speaking, its recommendations were not legally binding, but at the same time the States parties had elected the members of the Committee and entrusted them with the task of supervising implementation of the Covenant. It was in that context that the Committee pronounced its Views and recommended interim measures of protection, inter alia.

60. He would like to know, therefore, how he should interpret the delegation's emphasis on the State party's prerogative. Did it imply, for example, that there was no need to take account of the Committee's Views when replying to follow-up questions to the Government? Or did it mean that, in the Government's opinion, recommendations for interim measures of protection were indeed simply recommendations? In fact such recommendations - unlike the Committee's Views on a given case - did not address the question whether or not a human rights violation had been committed, but reflected the Committee's insistence on the contractual obligation undertaken by the State party to let the Committee consider cases under the first Optional Protocol. He would welcome clarification of the State party's position concerning the content of the duty to cooperate with the Committee.

61. **Mr. GLELE AHANHANZO** said he would have appreciated some illustrations of the effect of legislation in practice. Many references were made in the report to amendments to legislation, but neither the original legislation nor the specific content of the amendments was explained. It was therefore difficult to tell whether developments in legislation implied movement towards greater respect for the Covenant. In

particular, he requested concrete examples of implementation of the measures mentioned in paragraphs 401 to 405 of the report.

62. Referring to paragraph 406, he wondered what developments had taken place with regard to human rights education since 1994. What was the content of human rights education and what percentage of the population actually benefited? He wondered which of the Philippines' eight main languages were used as vehicles for human rights education, and in which regions. Lastly, he would like to know what real impact human rights education had had on levels of police violence.
63. He asked whether there had been any evaluations of the work of the Philippine Commission on Human Rights. He would like to know what impact its activities had had on human rights awareness among the public at large and on the functioning of State institutions. Documentation on that point would be much appreciated.
64. **Mr. LALLAH** said a central issue was the Government's attitude to its obligations under the Covenant, and particularly under article 2. Like other colleagues, he had been somewhat disturbed to learn of the attitude adopted by the courts in the various cases mentioned.
65. He expressed concern that the judicial authorities were not properly apprised of the provisions of the Covenant. For example, the Supreme Court had decided that the Philippines could not be deemed to be irrevocably bound by the Covenant and the Optional Protocol "considering that those agreements had reached only the committee level". He wondered what other level there could be in terms of the implementation of the Covenant. All State authorities, whether legislative, executive or judicial, had a responsibility to implement the

obligations undertaken by the Government. The role of the Committee was to monitor the actions of those authorities and indicate areas of concern. The delegation's response to the Committee's comments in that regard had not been satisfactory; it went without saying that States parties themselves were primarily responsible for implementing the provisions of the Covenant and the Optional Protocol.

66. Any efforts to reintroduce the death penalty were in violation of the Covenant. Under no circumstances did article 6 (2) of the Covenant constitute a derogation from article 6 (1). Conversely, as indicated in general comment No. 6, all measures to abolish the death penalty were considered as progress in the enjoyment of the right to life.
67. He was concerned about the Government's discouraging attitude towards NGOs working in the field of human rights in the Philippines. According to reports, a representative of one such organization had faced more than 50 charges before the courts in connection with his efforts to promote and protect human rights, but he had never been convicted. The Government should be more supportive of the efforts by NGOs to implement the provisions of the international agreements to which the Philippines was a party.
68. By ratifying the Optional Protocol, the Philippines had expressly recognized the competence of the Human Rights Committee to receive and consider communications from individuals who maintained that their civil and political rights had been violated. One such individual, Mr. Piandong, had exercised his right under the Optional Protocol to bring his case before the Committee. If he was executed before the Committee had the opportunity to consider his case, the Government of the Philippines would be sending out a clear

signal that it did not take its obligations under the Optional Protocol seriously.

69. He wished to know more about the role of the Philippine Human Rights Commission, particularly as there were a number of cases of human rights violations in which it seemed that the Commission could have intervened but had not done so. One such case had remained unresolved for 20 years. It was unacceptable for human rights violations to go unpunished for such a long time.
70. **Sir Nigel RODLEY** noted with regret that the delegation had been unable to provide concrete examples of specific measures that had been taken to fight impunity for violations of the Covenant committed by State agents, and had failed to describe the extent to which offences had been investigated and offenders prosecuted and punished. It was equally disappointing that the delegation had been unable to provide information about cases of extrajudicial killings.
71. On 18 May 1995, 11 persons had allegedly been killed in cold blood on Commonwealth Avenue, Quezon City, while in the custody of law enforcement officials. At the head of the list of those implicated in that crime had been Chief Superintendent Panfilo Lacson. It was alarming that, despite the substantial evidence pointing to his involvement, Lacson had never been found guilty and, moreover, had become a senator. A number of legal measures had been taken on behalf of the accused to prevent any kind of judicial action against them. Furthermore, it was alleged that key witnesses to the crime had been driven out of the country or intimidated into withdrawing their statements. Further information should be provided about the current status of the case. He would be interested in knowing, in particular, whether there had been any formal court hearings

or indictments against the persons in question, and whether any measures had been taken in response to other extrajudicial executions alleged to have been committed by the security forces. He would also like to know on what grounds it had been decided that deterrence was a serious justification for reintroduction of the death penalty.

72. One of the bills to criminalize torture that were currently being considered by Parliament appeared to contain a very narrow definition of torture and referred only to acts by which pain or suffering was intentionally inflicted on a person for such purposes as obtaining information or a confession. He wondered why the definition provided in that bill did not reflect that contained in the Convention against Torture. He would be interested in knowing how long it would take for the legislation to pass through Parliament and whether the issue was receiving priority attention.
73. According to reports, a confession in the Philippines was inadmissible only if it was shown to have been obtained by improper means. Furthermore, it appeared that there was a presumption that statements made to the police had not been coerced. It seemed that the burden was on the accused to prove that he or she had not been tortured. He wished to know whether the delegation considered it appropriate to place such a burden on a person who was in the custody of the security forces.
74. **Ms. GUTIERREZ** (Philippines) said that her Government was negotiating mutual legal assistance treaties with receiving States to protect trafficked Philippine women and children. Furthermore, it had developed a set of implementing regulations in connection with the Anti-Trafficking in Persons Act of 2003. All government departments and agencies working in the field of women's and children's rights were required to

institute information, education and advocacy campaigns in order to raise awareness of the adverse effects of trafficking in persons. Under the new legislation, a set of guidelines had been established relating to the interception, arrest and investigation of traffickers, providing for the immediate filing of criminal charges against persons caught in the act of trafficking persons in the Philippines. In addition, trafficked persons were entitled to legal protection and immunity from prosecution. The Anti-Illegal Recruitment Branch of the Philippine Overseas Employment Association (POEA) had incorporated a module on trafficking into its pre-employment seminars. The question was also being addressed at the regional level in a campaign targeting law enforcement officials.

75. As of September 2003, some 3,000 cases of sexual exploitation of children and child trafficking had been reported in accordance with the Special Protection of Children Against Abuse, Exploitation and Discrimination Act and its implementing regulations.
76. Under the Constitution, no arrest could be made without a warrant issued by a judge. The exceptions to that rule were set out in the Rules of Criminal Procedure, according to which a police officer without a warrant was authorized to arrest a person who had committed, was actually committing, or was attempting to commit an offence in his presence or when an offence had just been committed and the police officer had personal knowledge of the facts. That provision did not run counter to article 9 (1) of the Covenant because, in such cases, the police officer had more than sufficient evidence to suspect that the person was guilty of the offence. Moreover, it would not be practical for the police officer to secure an arrest warrant from the court as the suspect would no doubt flee and the situation would render law enforcement ineffective. In all cases,

arresting officers were obliged to inform the arrested persons of the reason for their arrest and apprise them of their constitutional rights.

77. Under existing Philippine laws, an accused person enjoyed the right to a speedy trial and also the speedy disposition of his or her case. To further ensure that right, an Act to Ensure a Speedy Trial of All Criminal Cases had been adopted in 1998. The principal mandate of the Public Attorney's Office within the Department of Justice was to provide legal aid to poor litigants. Between 1998 and 2002, the Office had granted legal aid in almost 800,000 cases. In the private sector, the Integrated Bar of the Philippines and a number of NGOs provided free legal assistance to those in need.
78. The Philippine Constitution provided that no person should be deprived of his or her liberty or property without due process of law. In all cases involving the deportation of undesirable aliens, due process was observed. Administrative hearings were conducted whereby such aliens were afforded every opportunity to defend themselves. Under Philippine law, summary deportation was authorized for overstaying aliens and in cases involving the expiration or cancellation of passports.
79. All civilians had a constitutional guarantee to the liberty of abode and travel and could therefore not normally be displaced. However, that guarantee did not apply during armed conflicts, when displacements were sometimes necessary in order to protect the safety of civilians. The Department of Social Welfare and Development and the Department of National Defence were responsible for providing food, clothing and shelter to displaced communities during an armed conflict. The Mindanao Coordinating Council had been established in

order to eliminate the gap between national policies on displacement issues and actual implementation on the ground.

80. Her Government was not aware of any zoning operations conducted by the military against indigenous populations. Such operations were a violation of the right to liberty guaranteed by the Constitution. Without a search warrant, no member of the armed forces had the right to enter and search a person's home.
81. 82. The imposition of a curfew for minors was considered by the Government to be a reasonable way of protecting them from being victimized by criminal elements in the streets. Through the exercise of its police powers, the Government could regulate the movement of minors during certain hours for reasons of public safety.
83. Although there were a number of bills relating to the legalization of divorce pending in Congress, the question was still being debated. Existing laws allowed only the annulment of a marriage and legal separation.
84. Under the Family Code, any child born out of wedlock was considered to be illegitimate. In most cases, illegitimate children enjoyed the same rights as legitimate ones. Steps had been taken to amend the provisions of the Civil Code so as to improve the inheritance rights of illegitimate children under certain conditions. A bill allowing children born out of wedlock to use their father's surname had been approved on second reading in August 2003. Under the new legislation, adopted children could inherit from their adoptive parents.
85. The Omnibus Rules Implementing the Labour Code had been promulgated in order to ensure that employers properly implemented the provisions of the Labour Code that set the

minimum age for the employment of children, working hours and security at work. Children below the age of 15 could work only under the direct responsibility of their parents or guardians in a non-hazardous undertaking where the work did not in any way interfere with their schooling. Young persons between 15 and 18 years old could be employed in any non-hazardous work. Employers could not discriminate against such persons with regard to the terms and conditions of their employment on account of their age.

86. The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act provided that every child had the right to protection against exploitation, improper influences, hazards and other conditions or circumstances prejudicial to his or her physical, mental, emotional, social and moral development. For example, any child employed in the entertainment industry must give his or her express consent before a contract was signed and no children were allowed to be used in advertisements for alcoholic beverages or tobacco. The Special Committee for the Protection of Children monitored implementation of the child labour legislation in force.

The meeting rose at 6 p.m.



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**Concluding observations of the
Human Rights Committee:
Philippines (01/12/2003)**

CCPR/CO/79/PHL. (Concluding Observations/Comments)

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HUMAN RIGHTS COMMITTEE

Seventy-ninth session

**CONSIDERATION OF REPORTS SUBMITTED BY
STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

THE PHILIPPINES

1. The Human Rights Committee considered the consolidated second and third periodic reports of the Philippines (CCPR/C/PHL/2002/2) at its 2138th, 2139th and 2140th meetings, held on 20 and 21 October 2003 (see CCPR/C/SR.2138, 2139

and 2140). It adopted the following concluding observations at its 2153rd and 2154th meetings (CCPR/C/SR. 2153 and 2154), held on 30 October 2003.

A. Introduction

2. The Committee notes the submission of the consolidated second and third periodic reports of the Philippines, which contain detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the dialogue with the State party after an interval of more than 14 years. The Committee considers that the failure to submit a report for such a long period constitutes a failure to observe its obligation under article 40 of the Covenant.
3. The Committee welcomes the information provided in the report. While appreciating the delegation's comments on a series of questions posed orally by members of the Committee, it regrets that an extensive number of questions remained wholly or partly unanswered at the conclusion of the discussion. Some additional written material received on 24 October 2003 was taken into account by the Committee.

B. Positive aspects

4. The Committee appreciates the progress made by the State party to reform its domestic legal order to comply with its commitments under the Covenant. It welcomes, among other actions, the ratification of the Optional Protocol to the Covenant in August 1989. The Committee considers that the process of reform should be accelerated and strengthened.
5. The Committee notes with satisfaction that the State party has facilitated international assistance in relation to education and training on the protection of human rights.

C. Principal subjects of concern and recommendations

6. The Committee notes the absence of information regarding the status in domestic law of the Covenant and on whether any Covenant provisions have been invoked in court proceedings to date.

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations subscribed to under the Covenant.

7. The Committee regrets the lack of information on the procedure for the implementation of the Committee's Views under the Optional Protocol. In particular, it is concerned by the grave breaches by the State party of its obligations constituted by its lack of compliance with the Committee's requests for interim measures of protection in cases submitted under the Optional Protocol (*Piandiong, Morallos and Bulan v. Philippines*).

The State party should establish procedures to implement Views of the Committee and to ensure compliance with requests for interim measures of protection.

8. The Committee is concerned about the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators. Furthermore, the Committee is concerned at reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated.

(a) The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 6

and 9 of the Covenant, and ensure effective enforcement of the legislation.

(b) The State party should provide information on the outcome of the proceedings related to the cases of Eden Marcellana and Eddie Gumanoy and the execution of 11 persons on Commonwealth Avenue, Manila, in 1995.

9. The Committee has noted pending legislation related to terrorism awaiting adoption by the Congress of the Philippines. While the Committee is mindful of the security requirements associated with efforts to combat terrorism, it is concerned by the exceedingly broad scope of the proposed legislation, as acknowledged by the delegation. The draft legislation includes a broad and vague definition of acts of terrorism which could have a negative impact on the rights guaranteed by the Covenant.

The State party should ensure that legislation adopted and measures taken to combat terrorism are consistent with the provisions of the Covenant.

10. The Committee notes the current partial moratorium on execution of death sentences (while drug-related crimes are excluded from this moratorium), but it remains concerned by the adoption of legislation providing for the death penalty after article 3, section 19(1), of the Constitution of the Philippines had prohibited the imposition of the death penalty. In any event, the Committee has noted that the death penalty is mandatory for a number of crimes and extends to an excessive number of offences which do not fit the definition of the “most serious” crimes within the meaning of article 6, paragraph 2, of the Covenant. The Committee notes that the death penalty is prohibited for persons under 18 years of age, but is concerned that minors have been sentenced to death, seven of whom are currently detained on death row.

The Committee urges the State party to take measures to repeal all laws which have made it possible to impose the death penalty and to accede to the Second Optional Protocol to the Covenant. It should also ensure compliance with article 6, paragraph 5, of the Covenant prohibiting the imposition of the death sentence for crimes committed by persons below eighteen years of age.

11. The Committee expresses concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse, including of detainees, many of whom are women and children, that have neither been investigated nor prosecuted. Such a situation is conducive to perpetration of further violations of human rights and to a culture of impunity.

The State party should adopt and enforce legislative and other measures to prevent such violations, in keeping with articles 6 and 9 of the Covenant and to improve the implementation of relevant laws. The State party should conduct prompt and impartial investigations, and prosecute and punish the perpetrators.

12. The Committee is concerned about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of the Covenant. The Committee notes that evidence is not admissible if it is shown to have been obtained by improper means, but remains concerned that the victim bears the burden of proof in this event.

The State party should institute an effective system of monitoring treatment of all detainees, to ensure that their rights

under articles 7 and 10 of the Covenant are fully protected. The State party should ensure that all allegations of torture are effectively and promptly investigated by an independent authority, that those found responsible are prosecuted, and that victims are given adequate compensation. Free access to legal counsel and a doctor should be guaranteed in practice, immediately after arrest and during all stages of detention. All allegations that statements of detainees have been obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture, and the burden of proof, in such cases, should not be borne by the alleged victim.

13. The Committee notes with concern numerous instances of trafficking (art. 8) of women and children in the Philippines, both within the country and across its borders. While noting the importance of existing legislation (R.A. 9208) in this domain, it is concerned that insufficient measures have been taken actively to prevent trafficking and to provide assistance and support to the victims.

The State party should take appropriate measures to combat trafficking in all its forms, by ensuring effective enforcement of the relevant legislation and imposing sanctions on those found responsible. The Committee encourages the State party to ensure gender-specific training to sensitize the officials involved with problems faced by victims of trafficking, in accordance with articles 3, 8 and 26 of the Covenant.

14. The Committee is concerned that the law allowing for warrantless arrest is open to abuse, in that arrests in practice do not always respect the statutory conditions that the person arrested is actually committing a crime or that the arresting officer has “personal” knowledge of facts indicating that the person

arrested committed the crime. The Committee is also concerned that a vaguely worded anti-vagrancy law is used to arrest persons without warrant, especially female prostitutes and street children.

The State party should ensure that its laws and practices with regard to arrest are brought into full conformity with article 9 of the Covenant.

15. The Committee is concerned at continuing reports of displacement of persons and evacuation of populations, including indigenous population groups, in areas of counter-insurgency operations.

The State party should take urgent measures to ensure the protection of civilians in areas affected by military operations, in accordance with its human rights obligations.

16. The Committee welcomes the adoption of the Indigenous Peoples' Rights Act (IPRA) in 1997 and the subsequent establishment of the National Commission on Indigenous Peoples (NCIP), but remains concerned about the lack of effective implementation of the legislation. The Committee welcomes the positive measures noted by the delegation, but considers their scope to be limited. It is further concerned at the human rights implications for indigenous groups of economic activities, such as mining operations.

The State party should ensure effective enforcement of the above legislation and ensure that indigenous peoples' land and resource rights enjoy adequate protection in relation to mining and other competing usage, and that the capacity of the National Commission on Indigenous Peoples is strengthened. Positive measure should be expanded to include land rights issues.

17. The Committee is concerned that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable. While recognizing that certain legislation has been adopted in this respect, many problems remain in practice, such as:
- a) The absence of adequate legislation governing juvenile justice and the deplorable situation of children in detention, including those held without evidence for prolonged periods of time;
 - b) Persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (art. 7);
 - c) Street children vulnerable to extrajudicial executions and various forms of abuse and exploitation;
 - d) Children as young as 13 allegedly being used by armed groups without adequate measures of protection by the State (art. 24);
 - e) Economic exploitation of children, in particular in the informal sector.

The State party should:

- a) Expedite the adoption of legislation governing juvenile justice which complies with international standards of juvenile justice in accordance with article 10, paragraph 3, of the Covenant. The Committee recommends that training for professionals in the area of administration of juvenile justice be enhanced and that human and financial resources for effective implementation of the new legislation be secured;

- b) Devise programmes for street children which offer support and assistance. Support to relevant non-governmental organizations is encouraged in this respect;
 - c) Take all appropriate measures to ensure protection of children who have been involved in armed conflict and provide them with adequate assistance and counseling for their rehabilitation and reintegration into society (art. 24); and
 - d) In relation to child labour, the State party should pay particular attention to the situation concerning the monitoring and effective implementation of labour standards for street children and children working in the informal sector, as well as those working in the Free Trade Zone.
18. While the Committee takes note of the constitutional provisions guaranteeing equal treatment of all persons before the law, the lack of legislation explicitly prohibiting racial discrimination is a matter of concern (arts. 3 and 26).

The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.

D. Dissemination of information about the Covenant (art. 2)

19. Attention of the State party is drawn to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/

Rev.1). The fourth periodic report should be prepared in accordance with those guidelines and submitted by 1 November 2006. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's consolidated second and third periodic report and the present concluding observations be published and widely disseminated throughout the country.

20. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 10, 11 and 14. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

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