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## Aide-Mémoire

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# Philippines

*While the Philippines are state party to most of the important UN human rights conventions and treaties, their implementation is not a policy priority. Human rights violations continue to be grave and widespread: Despite the declared willingness of the Philippine Government to resolve these issues, politically motivated killings and enforced disappearances perpetrated by alleged security forces personnel are continuing.*

### Political Situation

Since March 2005 the government of President Gloria Macapagal-Arroyo has been suffering a continuous political crisis after evidence of electoral fraud, massive corruption of public funds and widespread violations of human rights surfaced. Despite numerous political challenges from the opposition and a defeat in the senatorial elections of 2007, President Gloria Macapagal-Arroyo could repel political challenges to her presidency in 2007. In November 2007 newly elected senator Antonio Trillanes IV and a group of 30 military officers staged a failed coup attempt at a luxury hotel in Manila. However, family members of the President have allegedly been involved in various corruption scandals, such as the National Broadband Network (NBN) deal: A senate probe is currently investigating allegations that First Husband Mike Arroyo demanded 130 Million US-Dollars kickbacks for brokering the project.

Facing constant opposition and threats of public uprising and military coups, the Arroyo government has resorted to subterfuge and obfuscation, as well as taken control by infringing on civil liberties and by forming alliances with the military. There are now more than two dozen high ranking civil servants and government officials with a former military or police background in various government institutions.

A general erosion of respect for the law and the failure of the state to identify, bring to trial and sentence human rights violators continue to determine the human rights situation. This climate of impunity has over the past two years been well documented by investigations of local NGOs, such as Partnership for Agrarian Reform and Rural Development Services, Inc. (PARRDS), Citizen's Council for Human Rights (CCHR), international organisations such as Amnesty International, Human Rights Watch as well as the UN Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions, Prof. Philip Alston, as well as Prof. Rodolfo Stavenhagen, UN Special Rapporteur on Indigenous Peoples.

## Forum Menschenrechte



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While some cosmetic improvements to the normative environment of human rights legislation have been initiated by the executive department, the real problem – the lack of implementation of existing laws and the climate of impunity – is still not being tackled: In 2007 it was the supreme court, who has taken a leading role in searching for solutions regarding extrajudicial executions, while the presidency remains mostly inactive regarding human rights. On 16-17 July 2007 Supreme Justice Puno invited all sectors concerned to a National Consultative Summit on Extrajudicial Killings and Enforced Disappearances. Most speakers on the summit were convinced that parts of the security forces are responsible for the killings, while the presentations by Chief of Staff of the Armed Forces of the Philippines (AFP) General Hermogenes C. Esperon as well as General Oscar C. Calderon, Director General of the Philippine National Police (PNP) refused to acknowledge the responsibilities of security forces in many politically motivated killings and enforced disappearances. The Supreme Court, however, operates vis-à-vis a Justice Department strongly affiliated with the executive.

The confidence of the population in the rule of law has in turn been seriously damaged. Facing political instability, the president has a) shied away from the implementation of crucial reforms in the justice system and b) exacerbated the human rights situation through its handling of the current political crisis.

### **Extrajudicial Executions and Enforced Disappearances**

Two underlying main causes for many extrajudicial executions and enforced disappearances, as identified by Prof. Philip Alston in February 2007, have still not been addressed by the government. These are

- a) “the characterization [by security forces] of most groups on the left of the political spectrum as ‘front organizations’ for armed groups, particularly the New People’s Army (NPA)
- b) “the extent to which aspects of the government’s counter-insurgency strategy encourage or facilitate the extrajudicial killings of activists and other ‘enemies.’” (Prof. Philip Alston, A/HRC/4/20/Add.3)

The number of politically motivated killings involving security personnel is highly contested. The Philippine Daily Inquirer reported 296 killings of political activists between January 2001 and 22 June 2007<sup>1</sup>. The NGO Karapatan documented 836 politically motivated killings between January 2001 and 14 November 2006, as well as 68 killings between 1 January and 31 October 2007. Of those, the police unit Task Force Usig, created in 2006 to investigate political killings, discarded all but 116 “valid” cases of killed political activists and journalists by 30 August 2007.<sup>2</sup> Considering the great number of election-related killings documented by the Philippine National Police (PNP) in 2004 and 2007, 148 and 121 cases respectively, the low figure of cases declared valid by Task Force Usig seems illusive. Moreover, its inquiry lays the blame for most of the killings on the NPA, while identifying only 11 cases with military personnel as suspects or perpetrators<sup>3</sup>: This scenario of a present internal purge within the Philippine left responsible for the increasing number of extrajudicial executions has been widely dismissed as propaganda by human rights NGOs and investigative missions into the killings.<sup>4</sup> There is also an inconsistency of the Task Force Usig data with other official datasets: Between January 2005 and December 2006 alone there were 72 cases of murder where military personnel are the alleged perpetrators filed with the Commission on Human Rights<sup>5</sup>. In January 2008 six further cases were reported by human rights organisations and in Philippine news reports.

In June 2007, three anonymous generals reported about a top-level military conference in Luzon in 2005, during which extrajudicial executions were openly discussed as a response to the communist insurgency. Press Secretary Ignacio Bunye as well as Secretary Norberto Gonzales dismissed the reports as “unverifiable” and chose not to comment on anonymous and unverifiable information.<sup>6</sup>

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<sup>1</sup> Philippine Daily Inquirer: “Arroyo to media: Gov’t to end killings, libel suits”, 22 June 2007

<sup>2</sup> Task Force Usig Accomplishment Report, 30 August 2007

<sup>3</sup> Ibid

<sup>4</sup> See: Reports by Amnesty International, Human Rights Watch (June 2007), Karapatan (November 2007), PARRDS or Prof. Philip Alston (February 2007)

<sup>5</sup> Masterlist of Cases filed with the CHR where Military Personnel are the alleged Perpetrators, Commission on Human Rights Computer Databank

<sup>6</sup> Philippine Daily Inquirer, Palace rejects ‘unverifiable information’ on killings, 25 June 2007

Extrajudicial executions of local urban poor alleged criminals have become commonplace in at least two major cities: Cebu and Davao City. Davao is notorious for the Davao Death Squad (DDS) - between 1998 and early 2005 there were 320 extrajudicial executions by the DDS. The victims are often petty criminals and urban poor street youths. During the 2004 local elections Mayor Duterte stated that the number of extrajudicial executions in response to crime will double if he is re-elected. He is hence seen as the main culprit behind the DDS and reiterated his support for the DDS in early 2008. In December 2004 Cebu Mayor Osmena formed the Hunter Team – a special force of 16 snipers who are paid by the number of crimes they allegedly prevented. The Mayors Duterte and Osmena are staunch supporters of President Arroyo and the government has not yet opposed the DDS and the Hunter Team.

Armed opposition groups are also responsible for severe and widespread human rights abuses. Human rights abuses committed by the Maoist NPA include the killing of Raymundo Tejeno on 20<sup>th</sup> March 2003 and various harassments and death threats against land-reform activists on Bondoc Peninsula. Armed opposition groups are also known for severe human rights abuses in other parts of the Philippines. At the same time, the rival Revolutionary People's Army (RPA) has allegedly a strategic alliance with military forces against the NPA in Negros.

A list of 1335 killings allegedly perpetrated by NPA forces has been filed at the Joint-Monitoring Committee. However, despite numerous requests for substantiating documentation, hardly any was provided. Observers allege a political nature behind the list, since nearly 90% of its cases were filed by the military on a single day in late 2006. It is important to point out, that apart from the military, police and government officials no human rights organisation draws a connection between the recent upsurge of killings and a supposed internal purge within the left.

However, Prof. Alston points to NPA practices inconsistent with international humanitarian law and describes the so-called "people's court system", which still uses capital punishment against "intelligence personnel", as "either deeply flawed or simply a sham," since it circumvents due process, as it lacks "anything that could be reasonably be characterized as a penal code" (Philip Alston, Final Report, November 2007). Impunity, therefore is also happening in the wider context of political violence in the Philippines.

## **Anti-Terrorism Legislation and Human Rights**

Security policies and infringements on civil rights in the face of political crisis are often portrayed as a contribution to the global war against terrorism. However, Philippine human rights organisations are convinced that the so called "war against terrorism" is currently used as a pretext to suppress peaceful opposition. For example, Amnesty International's 2006 report (ASA 35/006/2006) and follow up memorandum (ASA 35/010/2006) point to a pattern of politically targeted extrajudicial executions connected to the broader context of a current counter-insurgency campaign of the Philippines government and the Armed Forces of the Philippines (AFP) against the Maoist New People's Army (NPA). In February 2008, two alleged assassination plans by Abu Sayyaf as well as the NPA against President Arroyo were revealed by the military. However, in the light of new calls for Arroyo's resignation from the opposition the media widely assumed subterfuge as a motive behind the revelations.

The Human Security Act of 2007, an anti-terrorism law that became effective on 15 July 2007, poses a serious threat to existing human rights legislation. Criticism over the broad definition of terrorism is at the heart of all the five petitions filed against the law at the Supreme Court. According to the NGO Free Legal Assistance Group (FLAG), "the Human Security Act (HSA) is one of the most incoherent, disorganized and disjointed laws our Congress has ever passed. (...) The law has no discernible structure, no headings or subheadings, and no groupings of sections. Provisions follow one another without logical connection (...)." <sup>7</sup> In the light of the climate of impunity regarding prosecution of security forces involved in human rights violations, NGOs fear the law will serve as a pretext to justify the criminalization of political dissent. As of February 2008, there were no implementing guidelines for the law in place.

## **Enforced disappearances**

Disappearances have contributed to the erosion of the peace process with the NPA over recent years. In August 2007, the farmers Raymond and Reynaldo Manalo surfaced and alleged that they were forcibly abducted by unidentified armed men on February 14, 2007 in San Ildefonso, Bulacan and tortured and subjected to inhuman treatment during their 18-month old captivity. They also alleged, that General Jovito Palparan had questioned them during their captivity. They sought the protection of the Supreme Court,

<sup>7</sup> Philippine Daily Inquirer, FQA on the Human Security Act, 15 July 2007.

who issued a temporary restraining order (TRO) enjoining the Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) from causing the arrest or enforced disappearance of two farmer brothers. There are no reports regarding official, government initiated or impartial investigations into both matters, yet.<sup>8</sup> The Manalo case is one of many cases of enforced disappearance and abduction and impunity.

Leftist activists "disappeared" as a matter of routine under the government of President Marcos, who was overthrown in 1986 and began to decline in the early 1990s. They are still reported periodically in the course of anti-insurgency operations against the armed wing of the legal Communist Party of the Philippines (CPP), the New People's Army (NPA), which has been fighting the government since the 1970s. Thousands of people still remain "disappeared". Under the Arroyo administration the numbers of "disappearances" have tripled: from 15 in 2001 - 2002 to 66 victims in 2003 – 2004.

### **Torture**

Torture in police custody is often experienced. The human rights NGO TFDP documented 95 cases of torture with 201 victims between January 1st 2001 and August 1st 2005. Amnesty International reports widespread use of harassments, beatings, sexual abuse and torture in custody in their 2003 report "Philippines: Torture Persists: Appearance and Reality within the Criminal Justice System" (AI Index: ASA 35/001/2003). While formally prohibited by law, torture during interrogation is not prevented, due to a lack of official investigation of allegations and cases of torture and due to weak institutional control mechanisms. There is great concern that the new Human Security Act will provide a legal backdrop to torture in custody, as it allows for unwarranted arrest for up to three days.

### **Violence against women**

In January 2004, the Philippine Congress enacted legislation criminalizing acts of violence against women and their children within intimate relationships (Anti-Domestic Violence against Women and their Children Act, 2004). Despite this achievement, incidents of domestic violence remain endemic. On average, six out of ten women from poor communities experience domestic violence. Prostitution and human trafficking have also increased. Police, instead of protecting the victims, respond with raids, where they primarily arrest the prostitutes - not the traffickers and other criminals. Once in custody, the women are in danger of being victimised again by being raped and tortured. The lower their social status, the more likely the women are to suffer from such human rights violations. (for details see, for example: Amnesty International report "Philippines: Fear, shame and Impunity: Rape and Sexual Abuse of Women in Custody" (AI Index: ASA 35/001/2001). There are reports of widespread use of harassments, beatings, sexual abuse and rape of prisoners, in particular women, in custody. While formally protected by the law, a lack of official investigation and weak institutional control mechanisms fail to prevent torture during interrogation.

Women's groups in the Philippines continue to campaign for the effective implementation of the above mentioned anti-domestic-violence legislation through adequately financed government monitoring programmes and training. One of these groups is the "Legal Alternatives for Women Center, Inc.", based in Cebu City. Doing this work, Law Inc. members risk their life. One of their woman lawyers, Atty. Arbeit Sta. Ana-Yongco, was killed in the morning of 11 October 2004 inside her law office, situated in her own residence. She was shot at close range by a gunman: two shots into the neck, two shots into her right cheek. The killing looked like an execution. The perpetrator went unpunished. The case was never fully investigated.

### **Investment Policies**

Human rights violations are also connected to foreign direct investments and private national investments. Workers rights within export-processing or special industrial zones are often violated and local small-scale farmers get expelled from the territory of such zones without compensation. Agricultural lands owned by the land-owning elite are often considered fenced-in patches of impunity: On entering the hacienda, national law becomes secondary to the landowner's hacienda law. The implementation of the Comprehensive Agrarian Reform Law (CARL) has hence met with the violent resistance of large-scale landowners, such as Victor Reyes, Michael Matias or Allan Uy. Human rights abuses in the land reform area particularly Negros island, but also in other parts of the Philippines, such as Bondoc Peninsula, include harassments, murder and deceptive legal cases filed against harvesting peasants by large-scale

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<sup>8</sup> SC Issues TRO against Arrest of Two Farmers by DND, AFP, Supreme Court Press Release, 24th August 2007

landowners hindering the implementation of landreform legislation, as documented by NGOs such as the PEACE Foundation or Partnership for Agrarian Reform and Rural Development Services (PARRDS).

Particularly regarding the mining sector there is great cause for concern regarding the effects of foreign direct investments into mining projects in culturally or environmentally volatile areas. Since the presidency of Arroyo, progressive human rights legislation such as the Indigenous People's Rights Act (IPRA) or CARL has been overruled in favour of foreign direct investments and individual interests. Multiple human rights abuses have for example been documented connected to the operations of the Canadian mining company TVI Pacific in Canatuan, Zamboanga del Norte. Whereas IPRA gives indigenous peoples a certain degree of autonomy for their lands, and asks for their prior and informed consent, e.g. to mining operations there, a Supreme Court Ruling of 1 December 2004 contravenes this progressive legislation. It gives business interests priority over indigenous rights, if such business interests are declared to be "in the national interest". Together with an executive order (EO 270) that promotes mining all over the Philippines, the consequences for the human rights of indigenous peoples – on whose land the majority of mining operations are – are disastrous.

**Misereor, Missio-München, VEM and Philippinenbüro im Asienhaus are therefore calling on the Human Rights Council:**

- assess commitment no. 19 of the Permanent Mission of the Philippines to the UN, given to the UNHRC on 18 April 2007, that it "condemns extrajudicial killings in the strongest terms and (...) shall continue to strongly address the issue," (UN General Assembly A/61/882) particularly with regards to the involvement of military personnel in cases of extrajudicial killings.
- to urge the Philippine Government to implement the recommendations of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Philip Alston and the Special Rapporteur on Indigenous Peoples Rodolfo Stavenhagen, who visited the Philippines in February 2007 and instruct Special Representative of the Secretary General for Human Rights Defenders Hina Jilani, the Special Rapporteur on Torture Dr Manfred Nowak, the Special Rapporteur on Human Rights and the War on Terror Martin Scheinin and the Special Rapporteur on Freedom of Expression Ambeyi Ligabo, the Special Rapporteur on the Independence of Judges and Lawyers Leandro Despouy to investigate politically motivated human rights abuses.
- to strengthen the role of such representatives and independent mechanisms regarding the human rights situation in the Philippines in the light of the Universal Periodic Review of the Philippines and to integrate victims' organisations and human rights organisations into the periodic review mechanism.
- ask the Philippine Government to present an accomplishment report regarding the 99 special courts installed to hear and decide cases of extrajudicial killings, with regards to commitment no. 20, that such courts shall "preferentially hear and expeditiously decide on such cases" (UN General Assembly A/61/882).
- to independently investigate serious discrepancies in the number of military personnel charged by the specially created Task Force Usig compared to cases filed with the Commission on Human Rights and other bodies, and thus establish whether the police and army have obstructed justice by blocking efforts to uncover abuse by security forces, in order to take account of commitment no. 20, "to uphold justice and strengthen efforts to address impunity." (UN General Assembly A/61/882).

**Misereor, Missio-München, VEM and Philippinenbüro im Asienhaus are therefore calling on the German Government**

- to assess the implications of the human rights situation in the Philippines on development cooperation through an inter-agency meeting including the Human Rights Officer of the German Federal Foreign Office, the Philippines Desk Officer as well as the Southeast Asia Department of the Foreign Office and the Federal Ministry for Economic Cooperation and Development, the Philippines Desk of the European Commission, human rights organisations and the authors of this Aide Mémoire.