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International Federation for Human Rights
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الفدرالية الدولية لحقوق الانسان

Report

International Fact-finding Mission

in cooperation with
the Philippine Alliance of Human Rights Advocates (PAHRA)
and the International Rehabilitation Council for Torture Victims (IRCT)

Terrorism and Human Rights in the Philippines Fighting Terror or Terrorizing?

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The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. (...) the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.

Philippine "Human Security Act," 2007, Section 2

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Introduction

The Armed Forces of the Philippines (AFP) and armed groups have been fighting for decades on the territory of the Philippines. Those armed groups include a variety of movements: the so-called “leftist” groups advocating for national democracy and economic and social rights (the New People’s Army – NPA, the armed wing of the Communist Party of the Philippines); secessionist groups calling for the independence of Mindanao – the Southern island of the country (the Moro National Liberation Front – MNLF, and the Moro Islamic Liberation Front – MILF); and groups with unclear objective which appeared more recently (Abu Sayyaf, Jemaah Islamiyah, Rajah Solaiman Movement). Some of these groups are considered as terrorist organizations.

Tensions between armed groups and the Philippine government are not a new phenomenon; but the international context in the aftermath of September 9/11 combined with the close relation between the USA and the Government of the Republic of the Philippines (GRP) has encouraged the latter to take additional measures to fight against terrorism.

President Arroyo was amongst the first heads of States to pledge an all-out support for US “war on terror”¹ under President Bush. Hence the former urged for the passage of an “anti-terror law” in the Philippines, which took effect on July 15, 2007. The so-called “Human Security Act” (HSA) has been largely criticised, including by FIDH,² as endangering basic human rights safeguards. It is further analysed in this report.

Against this background and in cooperation with its national member the Philippines Alliance of Human Rights Advocates (PAHRA) and the International Rehabilitation Council for Torture Victims (IRCT), FIDH decided to send an international independent fact finding mission to the Philippines. The mandate of the fact finding mission was to assess the human rights situation in the country in the framework of the fight against terrorism and its compatibility with the international human rights obligations of the Philippines, in particular the prohibition of torture enshrined in the International Covenant on Civil and Political Rights as well as in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both ratified by the Philippines.

The mission was composed of Mr. Nabeel Rajab (Vice-President of the Bahrain Center for Human Rights), Mr. Mouloud Boumghar (academic, France) and Mr. Frédéric Ceuppens (legal expert, Belgium). It took place between August 13 and 23, 2007. The team conducted most of its work in different areas of Metro Manila and in the island of Mindanao. It met with a large number of people and organisations from the whole range of the political spectrum.³ FIDH welcomes the cooperation of the authorities and warmly thanks PAHRA for its precious support in the preparation and coordination with various human rights organizations. More generally, FIDH extends its thanks to all the persons met by the mission.

The report starts by briefly introducing the context of the fight against terrorism in the Philippines and describing the main stakeholders (Part I). It then focuses on the legal framework (Part II) and describes the main violations perpetrated in the framework of the fight against terrorism (Part III). The report ends with recommendations to the different stakeholders with the view to ensure the necessary compatibility between the fight against terrorism and respect for human rights.⁴

1. For more details on the importance not to refer to a “war” against terrorism, see *Counter-Terrorism versus Human Rights: The Key to Compatibility*, FIDH, Analysis Report, N°429/2, October 2005. <http://www.fidh.org/IMG/pdf/counterterrorism429a.pdf>

2. <http://www.fidh.org/spip.php?article4059>

3. The complete list of the interviews made by the FIDH mission in the Philippines can be found in Annex I.

4. See *Counter-Terrorism versus Human Rights: The Key to Compatibility*, FIDH, Analysis Report, N°429/2, October 2005. <http://www.fidh.org/IMG/pdf/counterterrorism429a.pdf>

Part I. The fight against terrorism in the Philippines

Without pretending to be exhaustive, this chapter briefly describes the context of the fight against terrorism in the Philippines. It introduces to some historic, economic and political facts helping to frame the current situation. The main stakeholders are also identified.

1.1. General context

Located in South East Asia, the Republic of the Philippines comprises 7,107 islands which are commonly divided in three groups: Luzon, Visayas and Mindanao. The capital city, Manila, is located in Luzon.



Maps of the Philippines: © www.worldatlas.com

The Philippines is the 12th most populated country in the world with 96 million inhabitants. It is also the 4th largest Catholic nation with about 80% of Christians, whereas Muslims form a minority throughout the country (approximately 5%). The rest of the population is made up mostly of smaller Christian denominations as well as indigenous people, part of which are animists.⁵

5. The official website of the Republic of the Philippines: <http://www.gov.ph/aboutphil/general.asp>

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Before its independence in 1946, the country was successively dominated by Spain (16th to 19th century) and by the United States of America (1898-1946).

Before Spanish colonization, part of the inhabitants were animists while part were Muslims as a result of trade with the Arabs. Spanish colonisation imposed Christianity upon the country, and the Muslims were called Moros.⁶ Today, Bangsamoro (“the Moro People”) are mainly settled in the Southern islands of Mindanao, Basilan, Sulu, Tawi-Tawi and Palawan. They were never colonized neither by Spain, nor by the USA – which introduced a system of government that was criticised for leading to the “minorization and marginalization” of the Moros and indigenous people in Mindanao.⁷ The ancestral domain of Moros and indigenous people was declared as public land; this is an issue still bearing consequences today, the indigenous people’s claims for ancestral domains being still not recognized.

When independence was declared on July 4, 1946 and the Republic of the Philippines was established, it comprised Luzon, Visayas and Mindanao. The Moros reiterated their objections but Mindanao was nevertheless incorporated under the Republic. From the independence onwards, Muslims and indigenous people have been complaining that they are marginalised politically and economically, except for a few rich families.

The Philippines counts natural resources comprising oil, timber, nickel, cobalt, silver, gold... In addition, its soil is rich and fertile. But land tenure has been – and still is – a controversial issue across history. About half of the population is rural and agriculture is the primary and often only source of income for rural poor people, whereas important land are owned by powerful landlords. An agrarian reform is ongoing and should end in 2008, but concrete implementation is extremely protracted because of landowners’ resistance and this generates frequent tensions.

1.2. The communists

CPP, NPA and NDFP

The Communist Party of the Philippines (CPP) was re-established⁸ in 1968 by Jose Maria Sison,⁹ a professor at the University of the Philippines. CPP adopted a strategy based on the struggle for national democracy through a two-stage revolution: a protracted people’s war to be followed by a Socialist Revolution. One year later, the New People’s Army (NPA) was organized as the guerilla-military wing of the Party, to wage a peasant-worker revolutionary war in the countryside against landlords and foreign companies. CPP heads the National Democratic Front of the Philippines (NDFP), which is the political-diplomatic arm of CPP-NPA. It is estimated that the guerrilla army of CPP now consists of about 10,000 persons.¹⁰

CPP-NPA has been labelled as a terrorist organization by the US Government¹¹ and by the European Union

6. The term was given a pejorative connotation.

7. Guiamel M. Alim, *The Bangsamoro Struggle for Self-Determination*, Oona Thommes Paredes, 1997.

8. The Communist Party of the Philippines (more popularly called PKP-1930), a pro-Soviet group, was first established on November 7, 1930 by Crisanto Evangelista.

9. Mr. Sison was arrested in the Netherlands (where he lived in exile) on August 28, 2007, on charges of ordering the killings of comrades who had defected to the government side. However, judges ruled there was insufficient evidence and ordered his release.

10. E. San Juan Jr., “Terrorism and Revolution: The Struggle for National Democracy and Socialism in the Philippines.”

See <http://clogic.eserver.org/2005/sanjuan.html>

11. By Secretary of State Colin Powell on August 9, 2002 under Executive Order 13224. On August 9, 2004, the US Secretary of State re-designated them, as a Foreign Terrorist Organization under the Immigration and Nationality Act.

See <http://www.state.gov/s/ct/rls/fs/2003/17067.htm> and <http://www.state.gov/r/pa/prs/ps/2004>

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(EU) Council.¹² The Philippine government has not made a formal decision classifying CPP-NPA as a terrorist group but it openly considers it as such.¹³

CPP-NPA-NDFP sees itself as a broad political, revolutionary and liberation movement and claims that it does not attack civilian targets and that it adheres to international law. NPA nevertheless claimed responsibility for the assassination of two congressmen in May 2001 whom it considered as “legitimate targets.”

Former CPP chair Rodolfo SALAS acknowledged that in the 1980s, internal purge of persons suspected to be government and army infiltrators within CPP resulted in torture and execution of about 1,800 cadres and civilians.¹⁴ This fact is still used by the government and by the army to attribute the responsibility of current extrajudicial killings to CPP¹⁵

Peace efforts to end the armed conflict between the Government of the Republic of the Philippines and NDFP have been going on for 21 years but stalled in 2004. On June 16, 2006 the President Gloria Macapagal-Arroyo declared an all-out war against NPA. However, on September 5, 2007, she signed – conditional to the respect of certain criteria – an Amnesty Proclamation, to become effective only after Congress has approved it.¹⁶

Peace talks stalled with one substantive agreement as an achievement though, the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Laws (CARHRIHL). To oversee the implementation of this agreement by both sides, the parties have jointly appointed a Joint Monitoring Committee (JMC).¹⁷ Although it has not convened since 2004 and it has not agreed upon a common procedure,¹⁸ it has continued to register complaints about human rights violations.

FIDH believes that political negotiations and the fight against impunity of all actors are the only way forward to bring about peace in the country. As recognized by all stakeholders met, human rights violations can do nothing but undermining such a process. Hence FIDH strongly encourages efforts of both sides to shed the light on cases of alleged violations as well as to come back to the negotiation table.

Dangerous amalgam between the CPP-NPA and legal “leftist” organizations

A recent statement made by President Arroyo during a visit she paid to the Local Peace and Security Assembly (LPSA) of the Bicol region on December 13, 2007, shows that the executive branch of the Government does not always distinguish between the groups promoting an ideology in a peaceful way and groups using arms and violence to promote the same ideology. Indeed, President Arroyo thanked LPSA for

12. EU Council decision of 21 December 2005 Implementing Article 2(3) of Regulation (EC) No. 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2005/848/EC, *Official Journal of the European Union*, 23.12.2005, L 340/64.

13. See further.

14. Cornish, M., “Communist Party of the Philippines pursues a violent course against its left opponents,” *Freedom Socialist*, Vol. 26, No. 4, August-September 2005.

15. See e.g. Armed Forces of the Philippines press release, “CPP/NPA Covers Up its Activities,” September 4, 2006: <http://www.afp.mil.ph/O/news/cncov.php>

16. “Arroyo signs amnesty proclamation for communists,” Lira Dalangin-Fernandez in INQUIRER.net, last updated 01:18pm (Mla time) 09/07/2007.

17. The JMC is composed of representatives of the GRP on the one side and of representatives of the CPP-NDFP-NPA on the other. Their offices are next door but there are almost no contacts between the two sides.

18. The lack of commonly agreed procedure as well as the fact that since negotiations are stalled the JMC cannot report to the panel (which is the joint supervising authority) seriously undermine attempts to shed light on allegations of human rights violations; what further undermines peace talks.

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“supporting her vision to eradicate communism in the country by the year 2010”; President Arroyo spoke about communism as such and not only about the communist insurgency.

During a meeting of the FIDH mission with the AFP Vice-Chief of Staff and a dozen of high-ranking officers at the AFP General Headquarters on August 16, 2007, AFP denied any implication in extrajudicial killings. The senior military prosecutor present at the meeting told the FIDH mission that groups such as NPA, MILF and Abu Sayyaf are clearly “enemies of the State” and that AFP is acting in the framework of the law.

The senior military prosecutor added that there are legal groups supporting NPA and MILF and that not all members of those legal groups are considered as “enemies of the State.” However, according to this high-ranking officer, some prominent members of those groups have been identified, on the basis of documents allegedly recovered by AFP, as giving the order to kill civilians. Unfortunately, AFP did not provide the FIDH mission with a written list of names and did not inform it about the resulting judicial proceedings. Moreover, the same senior military prosecutor told the FIDH mission that the AFP soldiers and officers can tell and recommend to people, especially in zones where NPA is active, to avoid joining legal groups.

“Leftist” organisations are labelled as “enemies of the State”: legal and peaceful organisations like peasant or fishermen associations, mass organisations or political parties like Bayan and Anakpawis are often amalgamated with CPP-NPA, which is an armed group.

In February 2006, President Arroyo declared a week-long state of Emergency in response to alleged conspiracies involving members of the opposition (including “leftists” but also rightists and members of the military).¹⁹ At least hundreds of “leftists” – whether belonging to legal and peaceful organizations or to armed ones – were arrested. Charges seemed largely groundless and politically motivated.²⁰

In 2005, a slide presentation entitled “Know the Enemy” was reportedly made available to the public. Among others, it listed “legal front organizations” (like party list groups, religious organizations, women organizations, student associations) allegedly allied with CPP-NPA and hence considered as “enemies of the State.” Despite official denial by AFP, it is reported by many different stakeholders that AFP further broadcasted on TV a similar propaganda film in 2006, after the issuance of the February state of emergency. The film intended to discourage people to belong to a list of legal left organizations, accusing the latter of being too close to CPP-NPA. In parallel, three books entitled “The Trinity of War” were also issued by AFP,²¹ which also contained a list of organizations labeled as allied of CPP-NPA, including peaceful and legal political parties.²² Finally, “Orders of Battle” have reportedly been established, identifying sectoral groups (people belonging to a particular category such as farmers, youth, women, workers, etc.) alleged to be fronts of the communist underground. The Order of Battle is a list of enemies ranked according to their importance. According to KMP (Philippine peasant organization), the documents do not use the term “kill” but say “neutralize.”²³ General Palparan has reportedly been the leading military figure promoting such guidelines. When asked about his previous statements accusing organizations such as Bayan, Karapatan or Gabriela as front organizations of CPP-NPA, General Palparan neither confirmed nor denied having made such statements.²⁴

19. See <http://www.fidh.org/spip.php?article3098>

20. See FIDH and PAHRA “Briefing Note on the Philippines,” on the mission of contact with civil society in the Philippines, from 20 to 26 January 2007.

21. The AFP Northern Luzon Command, led by General Palparan. The third edition – that the fact finding mission could consult – was issued in 2005.

22. See part on the AFP for a complementary analysis.

23. “From Facts to Action – Report on the Attacks against Filipino Lawyers and Judges,” Dutch Lawyers for Lawyers Foundation, July 24, 2006 and interview with KARAPATAN.

24. According to the Task Force Usig Final Report.

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The legal left-wing political party Anakpawis also has reportedly been labeled as “front organization.” As Crispin “Ka Bel” B. Beltran, member of the House of Representatives elected on the Anakpawis party-list, says: “Election law foresees that any political party advocating for or engaged in the use of arms should be dismissed. Hence, as long as no evidence is found of such acts, all political parties – including so-called ‘leftist’ ones – should not suffer from any ‘labeling.’ Would it not be the case, pressure would be put on electors so as to encourage them to support other parties.”

This practice of “labeling” is extremely worrying, especially since the majority of victims of human rights violations belong to so-called “leftist” organizations. Even if they might share the same ideology, a clear distinction should be drawn between peaceful legal parties and organizations on the one hand and the armed groups on the other hand.

1.3. The Muslim secessionists: MNLF and MILF

There are two main Muslim armed groups in the Philippines, which were initially forming one single movement: The Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF) which appeared later. Both advocate for the independence of the Southern island of Mindanao, but MILF agenda is more rooted in Islam.

The Moro National Liberation Front (MNLF)

MNLF was organized in the late ‘60s - early ‘70s by Nur Misuari, a former professor at the University of the Philippines. The goal of MNLF was to establish an independent Moro nation through an armed struggle. The armed group is mainly based in Mindanao. It is also a political organization in the Philippines, accredited by the Organisation of the Islamic Conference (OIC).

On September 2, 1996 the Jakarta Accord, brokered by OIC between MNLF and GRP was signed. This gave predominantly Muslim areas in Mindanao a degree of self-rule with the establishment of the Autonomous Region in Muslim Mindanao (ARMM). Nur Misuari became the regional governor and many of the MNLF armed units were integrated into AFP. The MNLF leader was nevertheless later arrested in 2001 and is still under house arrest today. He is very popular in the Philippines but his attempt to collaborate with GRP was seen as a mistake by some – including MILF.

According to him, MNLF reportedly still counts more than 20,000 supporters. To summarize the relations between civilians and MNLF and referring to support received from peasants, he says “You don’t cut hands which feed you!”²⁵

A tri-partite meeting was set for July 2007 between MNLF, GRP and OIC in order to revise the 1996 Jakarta peace accord. It was however delayed.

Nur Misuari said to the FIDH mission that MNLF never attacked but only defended itself and he insisted on brotherhood with his “friends indigenous and Christians.”²⁶

MNLF is not listed as a terrorist organization.

25. Interview of Mr. Nur Misuari, August 17, 2007, Metro Manila.

26. Interview of Mr. Nur Misuari, August 17, 2007, Metro Manila.

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Interview of Mr. Nur Misuari who is under house of arrest, in the presence of a spiritual leader of MNLF and under the surveillance of a guard.

The Moro Islamic Liberation Front (MILF)

MILF broke away from MNLF in 1977, in order to put more emphasis on the Islamic roots of the movement. It views poverty, the land issue and economic underdevelopment in Mindanao as a result of the colonization of the Bangsa Moro people by the Philippine government.

MILF was established by Ustaz Salamat Hashim, who became its chairman. Before his death in July 2003, he issued a statement denouncing terrorism and reiterated MILF commitment to achieve peace through a political settlement. MILF also claims to be committed to make use of anti-personnel landmines²⁷ strictly for defensive purposes and in a discriminate manner.

MILF is nevertheless carrying what it sees as a war for self-determination. Its spokesperson told the FIDH mission that MILF never initiated violence but responded when it was attacked by soldiers violating its territory, admitting that this might have caused “collateral damages.” He added that terrorism was not an issue but that it was a theme exploited by the government.²⁸ Like MNLF, MILF also acknowledges that “lost commands” and “lawless elements” taking refuge in their territories but disowned by their leadership, might be responsible for acts of violence.

MILF has not been listed as a “terrorist organization” by the US and the Philippine government²⁹ but it continues to be a target in the anti-terrorism campaign of the latter for having links with Al Qaeda and Jemaah Islamiyah (JI). MILF recognizes having been approached by the latter, but denies any collaboration with it.

MILF is said to have about 12,000 to 12,500 members.³⁰ It is mainly based in Mindanao and – like the MNLF – reportedly receives popular support.

27. <http://www.genevacall.org/resources/testi-publications/gc-24mar00-nsa.pdf>

28. Interview of the MILF spokesperson, Mindanao, August 18, 2007.

29. When asked, AFP nevertheless told the fact finding mission that MILF was to be considered as a terrorist organization.

30. This is based on the interview of Dr. Aurora Parong with Soliman Santos on July 3, 2007.

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GRP-MILF peace negotiations³¹ started in January 1997 and went back and forth until now. Attacks allegedly perpetrated by MILF against civilians, supposed links with JI and hostile attitude of the government towards MILF notably explain that the process has been slowed down. The incident of Filipino marines who were beheaded on the island of Basilan in July 2007 revived the tensions between MILF and GRP³² MILF disagrees with the GRP accusation of beheading but recognizes the killing of the marines, considered as “legitimate” targets. Exactions committed by AFP (including torture) are also criticized by MILF as an obstacle to the negotiations.

1.4. Abu Sayyaf, Jemaah Islamiyah and Rajah Solaiman Movement

The three aforementioned groups appeared more recently in the Philippines and reportedly have links with Al Qaeda, according mainly to the information provided by the USA authorities. Depending on the interlocutor from the civil society, FIDH was told that they are a “US product” or even do not exist. The majority of the people met by the mission agree on the fact that they only consist of a few criminals led more by profit than by any ideology. Human Rights Watch however listed a series of attacks perpetrated by those groups.³³

Like MNLF and MILF, they are mainly located in the Southern island of Mindanao. However, both MNLF and MILF claim to distance themselves from partnership with these extremist armed groups; individual Jemaah Islamiyah (JI) or MILF members may however join militant alliances with Abu Sayyaf Group (ASG). ASG and JI are working increasingly with Rajah Solaiman Movement (RSM), militant converts to Islam based in Manila and northern Luzon, who are a vehicle for more experienced terrorist groups to move into the country’s urban heartland.³⁴

Abu Sayyaf and Jemaah Islamiyah are considered by the USA as terrorist organizations, as well as by AFP which also listed RSM as a terrorist organization.

1.5. The Government of the Philippines

The Philippine national Government constitutes the executive branch and is headed by the President and the Vice-President who are elected directly by the people for a term of six years. The President is both head of Government and chief of State and as such also the commander-in-chief of all armed forces.

On January 20, 2001, Vice-President Gloria Macapagal Arroyo was sworn in as the 14th President of the country after President Joseph Estrada resigned.³⁵ The re-election of President Arroyo in May 2004 was criticised

29. When asked, AFP nevertheless told the fact finding mission that MILF was to be considered as a terrorist organization.

30. This is based on the interview of Dr. Aurora Parong with Soliman Santos on July 3, 2007.

31. For further information, see a.o. International Crisis Group, “Southern Philippines Backgrounder: Terrorism and the Peace Process,” 13 July 2004, ICG Asia Report No. 80, Singapore/Brussels.

32. Two reports were issued, one of them pointing out to the responsibility of Abu Sayyaf under the leadership of a local elected.

33. *Lives Destroyed – Attacks on Civilians in the Philippines*, Human Rights Watch, July 2007. Available at:

<http://hrw.org/reports/2007/philippines0707/>

34. For further information, see International Crisis Group, “Philippines Terrorism: The Role of Militant Islamic Converts,” Asia Report No. 110, 19 December 2005.

35. President Estrada was charged of plunder, bribery, graft and corruption, betrayal of public trust and culpable violation of the Constitution.

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for alleged election fraud³⁶ as well as collusion between the President and the army. The political situation remained unstable until on February 24, 2006 when the President declared a state of national Emergency.³⁷ This state of emergency was allegedly declared on the basis of a “clear threat” to the Republic caused by elements of the political opposition, the extreme left represented by CPP-NPA-NDFP and by the extreme right represented by “military adventurists” and the press.³⁸ It was lifted on 3 March 2006.

Several initiatives have been undertaken by the Government in order to cope with the widespread national and international expressions of concern regarding extrajudicial killings.³⁹ The most important ones were the setting up of the Task Force Usig (TFU) and of the Melo Commission. TFU was criticised by several Lower House representatives as well as by civil society organizations for its lack of impartiality and objectivity.⁴⁰ The final report of the Melo Commission has been made public after the initial report of Philip Alston, the UN Special Rapporteur on Extrajudicial Killings, published in February 2007, recommended to make it public.

A number of observers interviewed by the FIDH mission expressed fear that *de facto* martial law be reinstated under the cover of the fight against terrorism.⁴¹ The adoption of the Human Security Act (HSA) and alleged provocations by the army to undermine peace talks would be part of such an agenda.

1.6. The Armed Forces of the Philippines

Along with the President, the Armed Forces of the Philippines (AFP) are one of the main stakeholders in the fight against terrorism. Along with the police, the army is generally pointed out as the main perpetrator of human rights violations in the Philippines: most of the civilians met during the fact finding mission said they were more scared by the army than by terrorist groups.

The army however took several initiatives to ensure respect for human rights in the framework of the fight against terrorism. AFP told the fact finding mission that it provides soldiers with courses on human rights law, sometimes sending some of them abroad to benefit from international training. A campaign informing soldiers on the HSA is ongoing. An AFP Human Rights Office was also created, intended to oversee and monitor cases of human rights violations filed against soldiers. AFP further announced the setting up of five general court-martials that will specifically try cases of human rights violations allegedly perpetrated by military personnel.

36. There have been allegations of a taped conversation between Mrs Arroyo and an official of the Commission on Elections in which Mrs Arroyo reportedly gave instructions to the commissioner to ensure her 1 million vote margin against her rival.

37. Under Presidential Proclamation 1017.

38. Governmental News Statement; PGMA declares a State of National Emergency, February 24, 2006. Available at: <http://www.gov.ph/news>

39. The Department of national defense and the AFP requested to draft an updated document on command responsibility; the Department of Justice and Commission on Human Rights asked to constitute a joint fact finding body to charge and prosecute involvement of military personnel in the killings; the Department of Justice also asked to broaden and enhance the Witness protection programme; the Chief justice of the supreme court announced the creation of 99 special courts to try those accused of killings of a political or ideological nature; an additional 25 million pesos (USD 510,000) has been provided to the Commission on Human Rights to enable it to better address the problem; the Presidential Human Rights Committee has been rejuvenated. See Implementation of general assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council,” Preliminary Note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February 2007), 22 March 2007.

40. See “From Facts to Action – Report on the Attacks against Filipino Lawyers and Judges,” International Fact Finding Mission, released by the Dutch Lawyers for Lawyers Foundation on July 24, 2006, pp. 26-27.

41. President Marcos declared martial law in September 1972. He lifted it in 1981 but nevertheless remained powerful, practicing authoritarian rule.

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So far however, the fact finding mission could hardly find any case where a member of AFP had been convicted, despite serious allegations of involvement of a lot of them – including General Palparan – in enforced disappearances and cases of torture.⁴²



Meeting of the Fact Finding Mission with the AFP – Metro Manila

Another worrying issue is the question of the leadership in the fight against terrorism. According to the Philippine Constitution the civilian authority is, at all times, supreme over the military.⁴³ Yet when asked, AFP told FIDH that it is AFP which “takes the leading role and the Police the supporting role.”⁴⁴ The mayor of Zamboanga said it depends on the circumstances.⁴⁵ This vagueness further contributes to creating a climate of impunity since responsibilities are not clearly identified.

Eventually, it is worth mentioning that the army also relies upon civilians for fighting terrorism, further blurring the line of responsibilities by using so-called CAFGUs (Citizens Armed Forces Geographic Units). Such units are frequently accused of abuses, victims pointing out to the fact that CAFGUs are not adequately trained whereas they are armed. AFP told the FIDH mission that it provides them with 48 hours training on international humanitarian law.

1.7. The USA

US influence is very high on the Philippine government, among others for historical and economical⁴⁶ reasons. President Arroyo was one of the first Heads of State to claim support to the US after September 9/11. She notably made a lot of efforts for the HSA to be passed.

42. See below.

43. Article II, Section 3.

44. Interview of AFP, August 16, 2007, Metro Manila.

45. Interview of the Mayor of Zamboanga City, Zamboanga City, August 21, 2007.

46. Trade relations between both countries are important as well as the common interest of fighting terrorist groups, but natural resources like oil – especially in the South of the Philippines – and the strategic position of the Philippines in South East Asia could also explain the strong US influence in the Philippines.

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According to a bilateral agreement commonly referred to as the “Visiting Forces Agreement,”⁴⁷ US troops are not allowed anymore to be based on the Filipino territory but may visit it from time to time. In practice however, US troops seem to be present in permanence, especially in the Southern island of Mindanao. It was unclear for many stakeholders – including members of the Senate⁴⁸ – how many US troops were in the country or what they were doing.

Many critics point out to the fact that US soldiers would have illegally gone beyond their mandate – consisting of training Filipino GIs – by getting directly involved in military operations against rebels.⁴⁹ Some doctors also told the FIDH mission that techniques of torture in the Philippines and in Guantanamo revealed worrying similarities, which may witness practices of subcontracting of torture. However, the mission was unable to confirm such allegations.

47. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America regarding the treatment of United States Armed Forces visiting the Philippines, 1998.

48. Interview of Senator Madrigal, August 14, 2007, Metro Manila.

49. According to a person interviewed by the FIDH mission, a journalist of the Agence France Presse (AFP) has reportedly provided evidences of US troops leading Filipino soldiers in the fight against armed groups in Mindanao.

Part II. Legal framework

1.1. Human rights framework

International human rights commitments of the Philippines

The Philippines is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and to the Optional Protocol to the ICCPR.⁵⁰ Article 7 of the ICCPR provides that “No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

The Philippines is also a State Party to the Convention on the Rights of the Child (CRC) and to its Optional Protocol on the involvement of children in armed conflict, as well as to the 1949 Geneva Conventions and to their Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts. Article 3 of the 1949 Geneva Convention (I) for the Ameliorations of the Condition of Wounded and Sick in Armed Forces in the Field, prohibits cruel treatment and torture in the case of armed conflict not of an international character occurring on the territory of a High Contracting Party. Article 4(1) of the Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts also prohibits torture.

The State also committed to respect the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).⁵¹ But beyond formally agreed international agreements, prohibition of torture is a norm of *jus cogens*, i.e. a peremptory norm of general international law. It is “absolute and non-derogable” and “no exceptional circumstances whatsoever may be invoked by a State to justify acts of torture” as stated by the Committee Against Torture in its General Comment No. 2, concerning the implementation of Article 2 of the CAT.⁵²

Regional human rights commitments

At the regional level, the Association of Southeast Asian Nations (ASEAN)⁵³ recently adopted, on 13 January 2007, in Cebu, Philippines, the ASEAN Convention on Counter Terrorism, which has not entered into force yet.

Respect of international human rights law is expressly mentioned in the Convention in the situation where a person is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the Convention.

The establishment of a Human Rights Body is foreseen in the ASEAN Charter adopted in November 2007, but this mechanism and its powers have not been decided yet.

50. The Philippines signed the Optional Protocol to the ICCPR, aiming at the abolition of the death penalty on September 20, 2006 but did not ratify it yet.

51. The Philippines acceded to the CAT on 18 June 1986 without any reservation.

52. CAT/C/GC/2CRP1/Rev.4, 23 November 2007, para. 1 and 5.

53. ASEAN is composed of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

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Domestic human rights standards

The Philippine Constitution of 1987 prohibits torture, as provided in Article III – Bill of Rights Sections 12.2, 12.3, 12.4, 17⁵⁴ and Sections 19.1 and 19.2.⁵⁵ Section 12.4 states that “the law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.” However, there is currently no domestic law penalizing torture in the Philippines, though bills have been filed in Congress since 2001.⁵⁶ This is contrary to both the ICCPR and the CAT to which the State acceded.

1.2. Anti-terrorism legal framework

Definition of terrorism in international public law

The problem of terrorism is unfortunately not a new one. But for some years now the terrorist threat has increased and spread throughout the world. Although the terrorist attacks of 11 September 2001 against the United States are striking because of the number victims (3,000 people), they are, however, all the more remarkable on account of the unprecedented series of anti-terrorist measures they unleashed.

As the go-between for the Member States of the United Nations, on 28 September 2001 the Security Council reacted first by adopting Resolution 1373 (2001) that established the basic principles for combating terrorism. In the months that followed, the passing of anti-terrorism laws spread throughout the world like wildfire. Since 2001, many States passed or announced measures to combat terrorism; some of these measures or initiatives became, and still are, a cause of concern to the international bodies and mechanisms for the protection of human rights at global and at regional and national level. During this period, the Security Council adopted several resolutions on the issue terrorism.

Since 1963 the international community elaborated 13 universal legal instruments to prevent terrorist acts. Those instruments were developed under the auspices of the United Nations and its specialized agencies and the International Atomic Energy Agency (IAEA) and are open to participation by all UN Member States. In 2005, substantive changes were introduced to three of these universal instruments to specifically account for the threat of terrorism; on 8 July of that year States adopted the Amendments to the Convention on the Physical Protection of Nuclear Material, and on 14 October they agreed to both the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime

54. Philippine Constitution Section 12 (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him [any person under investigation]. Secret detention places, solitary, incommunicado or other similar forms of detention are prohibited. Section 12 (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. Section 12 (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. Section 17 states that No persons shall be compelled to be a witness against himself.

55. Section 19 (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua. Section 19 (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

56. The House of Representatives of the 13th Congress (which ended on 30 June 2007) indeed approved an anti-torture bill on the 3rd reading but a similar bill at the Senate remained at the Senate Committee on Justice. More recently, a Senate Bill n° 1978 for an “Anti-Torture Act of 2007” (of which the long title is an Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Prescribing Penalties Therefore and for Other Purposes) was filed on 19 December 2007. It provides for the prohibition of torture in all circumstances according to the relevant international law norms. See the official website of the Senate: www.senate.gov.ph/lis/bill_res.aspx?congress=14&q=SBN-1978

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Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

In line with the United Nations Global Counter-Terrorism Strategy adopted by the UN General Assembly on 8 September 2006, in the form of a Resolution and an annexed Plan of Action, Member States are currently negotiating another universal binding instrument: a draft comprehensive convention on international terrorism. This convention is expected to include a general definition of terrorism.

Indeed, though Member States adopted a Global Counter-Terrorism Strategy, no general and accepted definition of terrorism exists in international law. The difficulties in reaching a broadly accepted definition of the crime of terrorism are just as much political and ideological as legal. The former Special Rapporteur of the UN Sub-Commission on Human Rights accurately summarized the problem: *“It may be that the definitional problem is the major factor in the controversy regarding terrorism. This is all the more true when considering the high political stakes attendant upon the task of definition. For the term terrorism is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgment and is used selectively. In this connection, some writers have aptly underlined a tendency amongst commentators in the field to mix definitions with value judgments and either qualify as terrorism violent activity or behaviour which they are opposed to or, conversely, reject the use of the term when it relates to activities and situations which they approve of. Hence, the famous phrase ‘one man’s terrorist is another man’s freedom fighter’.”*⁵⁷

These problems are still prevailing and the most interesting definition remains the one proposed by the UN High Level Panel On Threats, Challenges and Changes.

During preparations for the summit meeting held on the 60th anniversary of the UN, the UN Secretary-General made significant efforts, supported by FIDH, urging that a definition of terrorism be finalized and a convention be adopted.

The proposal describes terrorism as: “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”⁵⁸

As stated in the FIDH Report *Keys for compatibility*, this definition does not alleviate apprehension caused by the vague character of the description, which states “by its nature or context.” However, the proposal made by the High Level Panel – and reiterated by Kofi Annan – is the most interesting one at this stage.

Necessary respect for human rights

Whatever the definition, as the Secretary-General recommended in his report *Uniting Against Terrorism* “ensuring the defence of human rights is inherent and essential to any counter-terrorism strategy.”⁵⁹ In their 2006 Strategy to combat terrorism, UN Member States stated that they must comply with their obli-

57. Koufa, Kalliopi K., *Terrorism and Human Rights*, Progress Report, UN document E/CN.4/Sub.2/2001/31, 27 June 2001, para. 25, p. 8.

58. See para. 164 d) report by the Secretary General’s high level panel on threats, challenges and changes: <http://www.un.org/secureworld/>, and the Open Letter the FIDH sent to the U.N. Secretary General, Kofi Annan, concerning Chap. VI, devoted to terrorism, dated 7 December 2004: http://www.fidh.org/article.php3?id_article=2106

59. *Uniting against terrorism: recommendations for a global counter-terrorism strategy*, Doc. A/60/825, para. 110.

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gations under international law, in particular human rights law, refugee law and international humanitarian law, on the basis of the General Assembly resolution 60/158 of 16 December 2005, which provides the fundamental framework for the “Protection of human rights and fundamental freedoms while countering terrorism.”

States Parties to the International Covenant on Civil and Political Rights, like the Republic of the Philippines, are more particularly under the obligation to ensure that measures taken to implement Security Council Resolutions on terrorism are in full conformity with the Covenant.⁶⁰ States Parties are requested in particular to ensure that such measures are in conformity with articles 6, 7, 9 and 14 of the Covenant and that the definition of terrorism does not lead to abuse.

International commitments of the Philippines

The Republic of the Philippines precisely justifies its involvement in “the global fight against terrorism” on the basis of the above cited Resolution 1373 (2001) which, according to the GRP’s interpretation, “mandates [UN] member-countries to join the international coalition to combat terrorism.”⁶¹

Before 2001, the Philippines were already a party to six universal conventions on terrorism.⁶²

Since 2001, the Republic of the Philippines became a party to six other universal conventional instruments on terrorism.⁶³ It also signed on 15 September 2005 the International Convention for the Suppression of Acts of Nuclear Terrorism adopted in New York on April 13, 2005. The Republic of the Philippines is consequently a party to all universal conventional instruments on terrorism in force.⁶⁴

Regional commitments of the Philippines

At the regional level, the Association of Southeast Asian Nations (ASEAN)⁶⁵ adopted the ASEAN Declaration on Joint Action to Counter Terrorism on 11 May 2001 and a Declaration on Terrorism on 3 November 2002. More recently, on 13 January 2007, in Cebu, Philippines, they adopted the ASEAN Convention on Counter Terrorism, which is not into force yet.

60. See for instance Human Rights Committee, Concluding observations CCPR/CO/77/EST, para. 8 (2003); CCPR/CO/75/NZL, para. 11 (2002).

61. See The Annual Philippines Foreign Policy Overview for the Diplomatic Corps, 17 January 2002, available on the website of the Department of Foreign Affairs: <http://www.dfa.gov.ph/archive/fpo2002.htm>

62. - the Convention on Offences and Certain Other Acts Committed On Board Aircraft entered into force for the Philippines on 26 November 1965;

- the Convention for the Suppression of Unlawful Seizure of Aircraft entered into force for the Philippines on 26 March 1973;

- the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation entered into force for the Philippines on 26 March 1973;

- the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents entered into force for the Philippines on 26 November 1976;

- the International Convention Against the Taking of Hostages entered into force for the Philippines on 14 October 1980;

- Convention on the Physical Protection of Nuclear Material entered into force for the Philippines on 22 September 1981.

63. - the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, on 17 December 2003;

- the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

- the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf on 6 January 2004;

- the Convention on the Marking of Plastic Explosives for the Purpose of Detection 17 December 2003;

- the International Convention for the Suppression of Terrorist Bombings

- the International Convention for the Suppression of the Financing of Terrorism on 7 January 2004.

64. For a summary of each of these multilateral binding instruments, see UN website: <http://untreaty.un.org/English/tersumen.htm#1>

65. See above.

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The ASEAN Convention on Counter Terrorism does not provide a specific definition of terrorism. It only refers to the existing offences as defined by any of the 14 universal conventional instruments on terrorism listed in its article II, para. 1. The ASEAN Convention on Counter Terrorism aims at deepening cooperation among law enforcement agencies and relevant authorities of the Parties in countering terrorism. The text calls for increased sharing of information and intelligence but it contains no explicit provision related to the establishment of a unified list of terrorist groups.

However, Ambassador Benjamin Defensor, the Chairman of the APEC Counter-terrorism Task Force declared publicly on January 2007 that ASEAN countries also agreed to have a unified list where each nation will submit names of groups and these will be compiled to form the regional list. Ambassador Defensor added that the Philippines would include “the Communist Party of the Philippines and its armed wing, the New People’s Army, as well as the Abu Sayyaf bandits in its list.”⁶⁶

The Convention does not apply when an offence is committed within a single party without any extraneousness element.

The Human Security Act

Provisions violating international human rights law

At the national level, involvement in “the global fight against terrorism” on the basis of the above cited Resolution 1373 (2001) has led to the adoption of Republic Act n° 9372, also called “Human Security Act,” entered into force on 15 July 2007. This legislation has already been criticized by many including FIDH, but some issues of concern are raised hereafter.

Republic Act n° 9372 (RA 9372) officially entitled “An act to secure the State and our people from terrorism” was passed by the Senate and the House of Representatives on February 8, 2007 and February 19, 2007 respectively. Despite the fact that an antiterrorism legislation had been pending for years, President Arroyo put pressure for the adoption of the HSA before the legislative elections of May 2007. The HSA entered into force on July 15, 2007.

This law defines new crimes such as terrorism and conspiracy to commit terrorism. Terrorism is defined in Section 3 of the HSA: “Any person who commits an act punishable under any of the following provisions of the Revised Penal Code (...) thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism.”⁶⁷

In comparison, the UN High-Level Panel definition imposes that “the action must be intended to cause death or serious bodily harm to civilians or non-combatants.” This fundamental aspect of terrorist acts is not taken into account in the definition enshrined in the Philippine legislation.

At the time when the legislation on terrorism was pending, awaiting adoption by the Congress of the Philippines, the UN Human Rights Committee had expressed its concerns about the possible “negative

66. See Joyce Pangco Pañares and Michael Caber, “ASEAN okays unified list of terror groups,” *Manila Standard Today*, 12 January 2007, available on http://www.manilastandardtoday.com/?page=news1_jan12_2007

67. The provisions of the Revised Penal Code listed in Section 3 of the RA 9372 are the following: 1. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters); 2. Article 134 (Rebellion or Insurrection); 3. Article 134-a (Coup d’Etat), including acts committed by private persons); 4. Article 248 (Murder); 5. Article 267 (Kidnapping and Serious Illegal Detention); 6. Article 324 (Crimes Involving Destruction). Other texts are listed: 1. Presidential Decree No. 1613 (The Law on Arson); 2.

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impact on the rights guaranteed by the International Covenant on Civil and Political Rights” that could have “the broad and vague definition of acts of terrorism.”⁶⁸ The definition provided by the HSA is “overly broad” as stated by the UN Special Rapporteur on the promotion and the protection of human rights and fundamental freedoms while countering terrorism.⁶⁹

This definition refers to acts already criminalized but it also uses very vague expressions such as “widespread and extraordinary fear and panic among the populace” or “unlawful demand.”

Such a definition is consequently not compatible with Article 15 of the ICCPR and the principle of legality it embodies. This principle requires that both criminal liability and punishment be defined by *clear* and *precise* provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a subsequent law imposes a lighter penalty.

Section 3 of the HSA appears to be contrary to the principle of legality and consequently constitutes an arbitrary definition.⁷⁰ Respect for the principle of legality, which is consubstantial to the rule of law and “inherent in the ICCPR as a whole”⁷¹ is crucial. It is key for the respect of other guarantees embodied in the ICCPR such as presumption of innocence, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention or the right to a fair trial.

FIDH is deeply concerned about the negative impact that the definition of terrorism embodied in the HSA could have on the exercise of fundamental freedoms, such as the right to freedom of assembly or expression (Article 19), the right to freedom of association (Article 22), and the right to take part in the conduct of public affairs (Article 25). This fear is motivated by some provisions of the anti-terrorism law, such as Section 6: “any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice (...), takes part subsequent to its commission in (...) by profiting himself (...) of the crime.”

The provision related to the proscription of “terrorist organizations” and the possibility offered to the law enforcement agencies to make their members susceptible to increased surveillance and to arrest suspects without warrant might open the door to increasing human rights violations. The current practice of labelling peaceful activists as terrorists strengthens the fear that these provisions could be used for politically motivated repression.

The new Anti-Terrorism law further expands powers of arrest and detention and allows for expanded powers of surveillance and investigation particularly on searches and seizures. Moreover, it establishes an Anti-Terrorism Council, composed of high-level government officials, with far-reaching powers. The accountability of such body for human rights violations in the fight against terrorism is not addressed at all in the Act.

Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990); 3. Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968); 4. Republic Act No. 6235 (Anti-Hijacking Law); Presidential Decree No. 532 (Anti-Piracy and Anti-highway Robbery Law of 1974); and, Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives).
68. CCPR/CO/79/PHL, 1 December 2003, para. 9.

69. See Statement delivered on March 12, 2007, HR/07/36, available at:

www.unhchr.ch/hurricane/hurricane.nsf/view01/33A881E349623E3CC125729C0075E6FB?opendocument

70. On the concept of arbitrariness in the context of Article 12 of the ICCPR, see the Human Rights Committee General Comment No. 29, para. 29. In the context of Article 9 of the ICCPR, “‘arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and illegality.” See Human Rights Committee, Views of 15 March 2006, Communication No. 1085/2002, *Abdelhamid Taright and al. vs Algeria*, para. 8.3.

71. Human Rights Committee, General Comment No. 29, para. 16.

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Section 53 of the HSA creates an Anti-Terrorism Council (ATC) chaired by the Executive Secretary and composed of the Secretary of Justice, the Secretary of Foreign Affairs, the Secretary of National Defense and other key ministries. Section 54 of the HSA provides the ATC with far-reaching powers. The Anti-Terrorism Council formulates and adopts plans, programmes and counter-measures against terrorists; it also coordinates “all national efforts to suppress and eradicate” terrorism.

FIDH recognizes the need to ensure effective coordination of counter-terrorism policies and legislation as a legitimate objective. However, FIDH is deeply concerned with the fact that, on the top of these policy-making and coordination functions, the ATC, among others, “directs the speedy investigation and prosecution of all persons accused or detained for the crime of terrorism or conspiracy to commit terrorism and other offenses punishable” under the HSA “and monitors the progress of their cases.” In addition, records of its proceedings and decisions are “subject to such security classifications as the Council may, in its judgment and discretion, decide to adopt to safeguard the safety of the people, the security of the Republic, and the welfare of the Nation” (Section 53). This provision is in line with the Administrative Order No. 197, which calls for “legislation (...) for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security.” It represents a threat to the effectiveness of possible judicial procedures or inquiries, specifically to the equality of arms protected by Article 14 of the ICCPR which guarantees to persons charged with a criminal offence “access to documents and other evidence; this access must include all materials (...) that the prosecution plans to offer in court against the accused or that are exculpatory.”⁷²

The HSA blurs the line between the roles of the Judiciary and the Executive. In that regard, FIDH recalls that the Human Rights Committee “considers that a situation where the functions and competences of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of independent and impartial tribunal within the meaning of article 14, paragraph 1, of the Covenant.”⁷³

In addition, Sections 18 and 19 of the HSA raise concerns related to respect of Article 9 of the ICCPR and the risk of torture.

Section 18⁷⁴ provides for a period of detention without judicial warrant of arrest. Police or law enforcement personnel, duly authorized in writing by the Anti-Terrorism Council, have the power to apprehend or arrest, detain and take into custody a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism. The police or law enforcement personnel have three days to deliver the charged or suspected person to the proper judicial authority. On the other hand, *before detaining the suspect*, the police or law enforcement personnel shall present “before any judge at the latter’s residence of

72. See Human Rights Committee, General Comment No. 32, 23 August 2007, para. 13 and 33.

73. Human Rights Committee, Views of 20 October 1993, *Oló Bahamonde vs. Equatorial Guinea*, No. 468/1991 para. 9.4.

74. Section 18, Period of Detention Without Judicial Warrant of Arrest. – The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three (3) days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act. The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter’s residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and

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office nearest the place where the arrest took place at any time of the day or night.” Among other things, the judge has to ascertain the identity of the suspect and of the police or law enforcement personnel and to determine by questioning and personal observation whether or not the suspect has been subjected to torture. After that and within three days, the judge shall submit a written report to the court that has jurisdiction over the case. Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel has to notify in writing the judge of the court nearest the place of apprehension or arrest.

Section 18 adds that “the penalty ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify any judge as provided in the preceding paragraph.”

Given the fact that torture is most often committed during the custodial investigation, FIDH regrets that Section 18 of the HSA does not impose the obligation to the judicial authority to check at the end of the custodial investigation period whether or not the suspect has been subjected to torture or ill-treatment.

Section 19⁷⁵ of the HSA authorizes law enforcement agencies, in the event of an actual or imminent terrorist attack, to detain suspects up to three days “with the written approval of,” among others, “a municipal, city, provincial or regional official of a Human Rights Commission” nearest the place of arrest. This wording may designate the national human rights institution (the Commission on Human Rights of the Philippines – CHRP), although there is uncertainty in that regard. The CHRP is a constitution-created body in charge of promoting and protecting human rights. Article XIII, Section 18 of the 1987 Constitution and Section 3 of Executive Order No. 163 determines the CHRP powers and functions. The CHRP may, inter alia, investigate violations involving civil and political rights and grant immunity from prosecution to any person whose testimony could determine the truth in any investigation conducted by it or under its authority. FIDH is concerned regarding the possible competence of CHRP officers to review detention of a suspected terrorist under Section 19 of the HSA. Indeed, Article 9 (3) of the ICCPR provides: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.” CHRP officers, who are not judges, cannot be seen as officers “authorized by law to exercise judicial power.” According to the constant case law of the Human Rights Committee, “it is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent,

the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three (3) calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: Provided, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify any judge as provided in the preceding paragraph.

75. Section 19, Period of Detention in the Event of an Actual or Imminent Terrorist Attack. – In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three (3) days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five (5) days after the date of the detention of the persons concerned: Provided, however, That within three (3) days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

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objective and impartial in relation to the issues dealt with.”⁷⁶ According to the Constitution and Executive Order No. 163, the Commission appoints the CHRP officers and the CHRP chairman and members are appointed themselves by the President of the Republic. Moreover, the Philippine law does not provide reliable independence guarantee neither to the CHRP members nor to its officers. The CHRP officers should not be characterised as having the institutional objectivity and impartiality necessary to be considered an “officer authorized to exercise judicial power” within the meaning of Article 9 (3) of the ICCPR.

Section 19 of the HSA regulates a period during which the risk of torture is very high. It contravenes Article 9(3) of the ICCPR and can be considered as condoning the use of torture.

Moreover, restriction on travel is authorized by Section 26 of the anti-terrorism law for persons charged with terrorism or conspiracy “in cases where evidence is not strong.” On the top of restriction on travel, such a person can also be placed under house arrest by judicial order and deprived of means of communication with people outside the residence. Such a provision appears to be contrary to Articles 9, 12, 14 and 15 of the ICCPR may give rise to abuse and arbitrariness, especially given that the Anti-Terrorism Council is provided with far-reaching and unchecked powers.

The HSA provides some safeguards though, through provisions such as the necessity for judicial authorization, judicial custody for surveillance materials, reiteration of the rights of the accused including prohibition of torture (Section 24); bar to another prosecution under the Revised Penal Code or any Special Penal Laws (Section 49), ban on extraordinary rendition (Section 57); inadmissibility in any proceedings of evidence resulting from threat or torture (physical and mental) (Section 24). Besides, penalties for non-respect of the HSA are many and important. According to a Filipino lawyer met by the mission, the argument of such heavy penalties can be useful when reminded to militaries or police officers detaining presumed terrorists in custody. However, this can also have a pervert effect: both the army and the police might rely upon the HSA when inquiring (for taking advantage of its “facilities”) but nevertheless charge the suspect on another basis (like illegal possession of ammunition). This way, penalties and fines could not be imposed while the margin of manoeuvre would nevertheless be wide...

Hence, FIDH has serious doubts about the effectiveness of these safeguards.

Ineffectiveness of the Human Security Act's protective provisions

According to the AFP Vice-Chief of Staff,⁷⁷ the new law on terrorism is “watertight” because it “says you can do two things [against terrorism] and twenty are prohibited [because of human rights]” in the same time. “Thus, anti-terrorism personnel will be very cautious being not yet familiar with this legislation,” the AFP Vice-Chief of Staff added. He also predicted that, consequently, law enforcement agencies would prefer to charge suspects using the provisions of the Revised Penal Code rather than RA 9372. Such an attitude would be motivated by the fear of consequences of the safeguards’ implementation, especially the penalty of imprisonment for any person who uses, against a charged or a suspected person, threat, intimidation, coercion, or torture (Section 25) and that 500,000 PhP a day (approximately USD 12,500) shall be paid, in case of detention, deprivation of liberty or arrest without a warrant, to the person charged with terrorism upon his acquittal or the dismissal of the charges against him (Section 50).

76. See recently, Human Rights Committee, Views of 20 March 2007, Communication No. 1348/2005, *Rozik Ashurov on behalf of his son, Olimzhov Ashurov vs. Tajikistan*, para. 6.5.

77. Meeting with the FIDH mission at the AFP General Headquarters, August 16, 2007.

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On the one hand, according to the official discourse, the new law is necessary to “give the government’s all-out war against terror ‘legal teeth’”⁷⁸ and it “complements” what AFP was already doing before its adoption.⁷⁹ On the other hand, the law enforcement agencies, in practice, seem not to feel comfortable with this law. This contradiction raises doubts on the relevance of the new law.

According to the AFP Vice-Chief of Staff, International Humanitarian Law is part of the curriculum of both the regular armed forces and the CAFGU (see part I) and they both respect human rights on the field. However, the fact that the cautious attitude of AFP concerning the new law is motivated by the fear of being punished because of human rights violations says a lot about the current state of impunity which prevails in the Philippines, in particular in the field of extrajudicial killings. This attitude is alarming and gives credibility to the concern expressed by members of civil society that these “safeguards”, especially the financial cost of an acquittal, could have an adverse effect: members of the law enforcement agencies could prefer to kill the suspect instead of taking the risk of having to face the financial cost of an acquittal.

The Armed Forces of the Philippines introduced the FIDH mission to the different mechanisms and initiatives put in place to ensure respect for human rights. FIDH seriously doubts that such mechanisms are being effectively implemented, as very few perpetrators of extrajudicial killings (and no high-ranking officials – even if the Melo Commission report recommends to carry out an investigation on General Palparan) have been prosecuted so far, whereas the estimates vary from 100 to 800 or more extrajudicial killings in the Philippines since 2001.⁸⁰ This extremely worrying situation raises the question of the efficiency of the judiciary on the one hand, and of the political will to prosecute the perpetrators on the other. The inefficiency of the Government “Witness Protection Programme” is also repeatedly referred to as the main reason why victims and witnesses are reluctant to show up. AFP accuses human rights NGOs to prevent victims to show up, whereas the latter respond that they prefer protecting them since there are no guarantees for their security.

Beyond the lack of resources of the judiciary, judges and lawyers are reportedly themselves victims of pressures or of extrajudicial killings. According to the Dutch Lawyers for Lawyers Foundation, 10 judges and 15 lawyers have been killed since 2001 in the Philippines.⁸¹ None of the killers has so far been convicted. This contributes to a “culture of impunity”, which condones the perpetration of further human rights violations.

A misleading semantic

The 2007 new anti-terrorism legislation, Republic Act n° 9372, is officially entitled “An act to secure the State and our people from terrorism.” The short official title is “Human Security Act.”

Section 2, paragraph 3, of the HSA provides that “*State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of conflict by building state capacity and promoting equitable economic development.*”

78. See the statement of President Arroyo, “PGMA Signs into Law Human Security Act of 2007”, The Official Website of the Republic of the Philippines, www.gov.ph/news/default.asp?i=17332

79. Meeting with the AFP Vice-Chief of Staff.

80. See Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, to the Philippines (12-21 February 2007), A/HRC/4/20/Add.3, 22 March 2007, para. 3.

81. “From Facts to Action – Report on the Attacks against Filipino Lawyers and Judges,” Dutch Lawyers for Lawyers Foundation, July 24, 2006.

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This wording is close to the generally accepted definition of human security, especially in the UN framework. Human security implies a shift from the exclusive attention given to security of the State to taking into consideration the security of the people. It also means, *inter alia*, addressing security challenges not only through military or police means but through an approach which takes into consideration the inter-related political, social, environmental, economic and cultural aspects of security.⁸² Using such a wording gives a kind of respectability to the new legislation.

However, at first glance, it is obvious that the assertion of a comprehensive approach in the fight against terrorism has not been translated into legal provisions in the Act. Even the statements by members of the Executive show that the asserted comprehensive approach does not guide the official policy in the fight against terrorism and does not seem to be a significant component of it.

The same use is made of the reference to human rights, which are at the core of human security. Some supporters of the new anti-terrorism legislation stated that it is an act on human rights.⁸³ They claim the Act embodies so many safeguards that it is actually a text protecting human rights. Republic Act n° 9372 (Section 2) makes, indeed, a reference to upholding “basic rights and fundamental liberties as enshrined in the Constitution,” and to “respect for human rights which shall be absolute and protected at all times.” However, FIDH seriously doubts about the effectiveness of such a general “safeguard” knowing that the implementation of some fundamental rights enshrined in the Constitution, such as the prohibition of torture, is problematic because of the lack of domestic legislation in this domain. Moreover, no specific reference is made to international human rights law.

The HSA qualifies terrorism as a crime against humanity and against the law of nations. In the Rome Statute of the International Criminal Court (ICC), terrorist acts are not automatically assimilated neither to crime against humanity nor to other international crimes of the competence of the ICC. The Philippines signed the Statute on December 28, 2000, but did not ratify it. To ratify the Statute of Rome would be a sign of the sincerity of the Republic of the Philippines to effectively combat crimes against humanity and war crimes whoever the perpetrators are.

82. See for example the Commission on Human Security's Report, Human Security Now, New York, 2003: <http://humansecurity-chs.org/finalreport/English/FinalReport.pdf>

83. See cited above meeting with the AFP Vice-Chief of Staff.

Part III. Main violations perpetrated in the framework of the fight against terrorism

3.1. Torture

The absence of a law criminalizing torture

On March 16, 1998, the Government of the Republic of the Philippines (GRP) and NDFP signed a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL). This document has been signed in the framework of the formal peace talks between the Negotiating Panels of GRP and NDFP aiming at putting an end to the armed conflict between GRP and CPP/NPA/NDF (see part I). The CARHRIHL⁸⁴ prescribes the upholding of human rights and respect for international humanitarian law in the ongoing armed conflict. Under the CARHRIHL (Part III, Article II, 7), one has the right not to be subjected to physical or mental torture, solitary confinement, rape and sexual abuse, and other inhuman, cruel or degrading treatment, detention and punishment.

As there is currently no law specifically penalizing acts of torture, criminal cases have to be filed against perpetrators of torture for crimes such as maltreatment (Article 235 of Revised Penal Code [RPC]); rape (Article 266 A and B of RPC); murder if torture results in the death of the victim (Article 248 of RPC); mutilation (Article 262 of RPC); serious or less serious or slight physical injuries (Articles 263, 265 and 266 of RPC); administering injurious substances or beverages (Article 264 of RPC); grave coercion (Article 286 of RPC) and/or violation of RA 7438 (rights of persons arrested, detained or under custodial investigation).

This situation is contrary to the international commitments of the Republic of the Philippines under Article 7 of the ICCPR.

Since 1989, the government has not submitted any report to the Committee Against Torture to which State Parties “shall submit (...) reports on the measures they have taken to give effect to their undertakings under this Convention.”⁸⁵

As a State party to the CAT, the Republic of the Philippines “must make the offence of torture punishable under its criminal law, in accordance, at a minimum, with the relevant provisions of the Convention.” Moreover, to file a case against perpetrators of torture for other crimes, such as ill-treatment – since torture has not been made a criminal offence in domestic law – is contrary to the CAT. Indeed, the Committee Against Torture recalls that, “in comparison to torture, ill-treatment differs in the severity of pain and suffering”; consequently, “it would be a violation of the Convention to prosecute conduct solely as ill-treatment where elements of torture are also present.”⁸⁶

As a State Party to the CAT, the Philippines is also “obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity (...) or under colour of law (...) from consenting to or acquiescing in any acts of torture.”⁸⁷ Provisions such as Sections 24 and 25 of the 2007 new anti-

84. A Joint Monitoring Committee (JMC) has been created to monitor compliance with the CARHRIHL. The JMC is composed of members chosen by the GRP Panel and members chosen by the NDFP Panel. A complaint process before the JMC has also been created in order to receive and examine complaints of violations of the rights embodied in the CARHRIHL. The Joint Secretariat first receives the complaint. The Joint Secretariat is composed of people of both Parties. The complaint is forwarded to the GRP Monitoring Committee (GRP-MC) and NDFP Monitoring Committee (NDFP-MC). They conduct separate screening of the complaints. The JMC examine at the end the complaint and decide by consensus whether or not to refer it to the Party concerned for comments, investigation, and appropriate action. The Joint Committee did not meet since April 2004.

85. Article 19 of the CAT.

86. CAT/C/GC/2CRP1/Rev.4, para. 9 and 10.

87. CAT/C/GC/2CRP1/Rev.4, para. 17.

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terrorist law, RA 9372 (see above), constitute a first positive step. They prohibit torture and coercion in investigation and interrogation and make it punishable. However, the reluctance expressed by the AFP Vice-Chief of Staff (when asked by the FIDH mission) on implementing this new law – motivated by the alleged burden of its “safeguards” (to human rights) – raises doubts about the effectiveness of such a prohibition.

The absence of express prohibition of torture in the Filipino domestic legislation is alarming, in a context of “persistent and widespread use of torture” as already noted by the Human Rights Committee in 2003.⁸⁸ The FIDH mission observed a similar situation during its visit in 2007. Moreover, in zones of armed conflict, acts of torture “accompany every military operation” as stated by the Commission on Human Rights’ Regional Director in Zamboanga, Attorney José Manuel Mamauag.⁸⁹

No law on the principle of command responsibility

Testimonies collected by the FIDH mission confirm that torture occurs in most cases when the Armed Forces of the Philippines (AFP) and the law enforcement agencies arrest an individual suspected of rebellion or of being an “enemy of the State.” Some persons met by the mission spoke about a “culture of torture” within AFP. Victims met by the mission unanimously pointed out to the responsibility of AFP or to the Philippine National Police (PNP). Civilian auxiliaries under the control of AFP (so-called CAFGU: see part I) are also accused of practicing torture.

In such a context, the lack of a law punishing superior officers for the acts of their subordinates or other persons subject to their control under the principle of “command responsibility” is particularly problematic. Senate Bill No. 1427, for “An Act Punishing Government Officials or Superiors for Crimes or Offences Committed by Their Subordinates under the Principle of Command Responsibility” has been filed on 6 August 2007 to address this deficiency. But at the moment, Executive Order 226 issued by President Fidel V. Ramos on 17 February 1995 remains the main domestic legal text governing the issue. Executive Order 226 states that, “Any [AFP] officer shall be held accountable for neglect of duty under the doctrine of command responsibility, if he has knowledge that a crime or offence shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge he did not take preventive or corrective action either before, during or immediately after its commission.” Beyond the fact that torture is not a crime under domestic law, this text is not sufficient for the Republic of the Philippines to meet its commitments under the CAT.

Indeed, Article 2, paragraph 3, of the CAT provides that, beyond AFP officers, all “those exercising public authority – including public officials – cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates when they knew *or should have known* that such impermissible conduct was, or was likely to occur and they took no reasonable and necessary preventive measures.” (emphasis added)

Moreover, Article 2, paragraph 3, of the CAT embodies the principle that “the order of a superior or public authority can not be invoked as a justification for torture” and that subordinates should be held accountable individually for torture. On the other hand, a person who refuses an order to torture should be protected by the State. Such a protection is not specifically embodied in the new anti-terrorism legislation (see above).

88. In its concluding observations on Philippines, CCPR/CO/79/PHL, 1 December 2003, para. 11.

89. Meeting with the FIDH mission in Zamboanga City, August 21, 2007.

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Investigation and burden of proof

As a State Party to the CAT, the Republic of the Philippines has the obligation to fully investigate allegations of torture through competent, independent and impartial prosecutorial and judicial authorities.⁹⁰ This very important obligation of investigation is linked to the prohibition of admission, as evidence, of testimony obtained under torture or duress as provided for by the Philippine Constitution of 1987,⁹¹ Article 7 of the ICCPR⁹² and Article 15 of the CAT. Section 25 of the 2007 anti-terrorism law, RA 9372, also prohibits the admissibility of evidence obtained through torture or duress.

However, the actual case law of the Supreme Court in this domain threatens the effectiveness of this principle. Indeed, the Supreme Court considers that “the confessant bears the burden of proof that his confession is tainted with duress, compulsion or coercion by substantiating his claim with independent evidence other than his own self-serving claims that the admissions in his *affidavit* are untrue and unwillingly executed. Bare assertions will certainly not suffice to overturn the presumption.”⁹³

This case law is contrary to Philippine international commitments such as Article 14 of the CAT which provides that “each State Party shall ensure that any individual who alleges he has been subjected to torture (...) has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.” Section 24 of the new anti-terrorism law (see above) does not specifically address the question of the burden of proof, so that the person who alleges he/she has been a victim of torture bears the burden of proof. Consequently, there are doubts about the conformity of this provision with Philippines’ international commitments.

FIDH recommends the adoption of a law, which will allow an effective prevention, prohibition and criminalisation of torture and ill-treatment and will effectively prohibit admission in judicial proceedings of testimony under torture or duress and ensure investigation in case of allegations of torture. This new law should fully satisfy the requirements of Article 7 of the ICCPR and the CAT. In addition, the Philippine Government should ensure that the principle of command responsibility is respected.

3.2. Enforced disappearances

The absence of a law criminalizing enforced disappearances

Enforced disappearance amounts to a violation of Article 7 of the ICCPR (which prohibits torture), both for the disappeared person and for his/her family.

Victims are suffering from being held indefinitely without any contact with their families and the outside world. Consequently, enforced disappearances amount for the victims to a violation of Article 7 of the ICCPR, which prohibits torture and cruel or inhuman treatment.⁹⁴ As a source of anguish, distress and continued uncertainty as to the fate of the victims, enforced disappearances amount also to a violation of Article 7 of the ICCPR for the victims’ families.

Moreover, as emphasized by the Human Rights Committee’s position, any act leading to an enforced disappearance constitutes a violation of many rights enshrined in the ICCPR, including the right to liberty and

90. CAT/C/GC/2CRP1/Rev.4, para. 26.

91. Sections 12.3, in relation to Sections 12.2 and 17.

92. Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 10 March 1992, para. 12.

93. For instance, Supreme Court of the Philippines, *People of Philippines vs. Dindo “Bebot” Mojillo* G.R. No. 145566, March 9, 2004.

94. See for instance Human Rights Committee, Views of 10 July 2007, Communication No. 1327/2004, *Grioua vs. Algeria*, para. 7.6.

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security of the person (Article 9) and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10). It also violates or constitutes a grave threat to the right to life (Article 6) and to the right to recognition as a person before the law (Article 16).

There is no domestic law in the Philippines criminalizing enforced disappearances. During the 13th Congress, a bill for An Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance and for Other Purposes has been approved by the House of Representatives on 29 May 2006 and received by the Senate on 31 May 2006. On August 7, 2007, Senator M. A. Madrigal has filed a Senator Bill No. 1489 for An Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance. But this bill is still pending before the Committee.

Enforced disappearances, as well as extrajudicial killings – which are “spectral remains from the Martial Law regime” according to Chief Justice Puno – still occur in the Philippines.⁹⁵ A recent illustration of this phenomenon is given by the case of the **Manolo Brothers, Raymond and Reynaldo**. They were forcibly abducted on February 14, 2006 in San Ildefonso, Bulacan, and have surfaced on August 13, 2007 after having escaped from their captors. Beyond the fact that their disappearance amounted to torture for them and their family, the narration of torture during their captivity confirms the fear of FIDH that such a practice may be usual in the process of abduction by the military, the police or their civilian auxiliaries.

This is even more worrying since enforced disappearances, at least for short periods, seem to be common in the Philippines as Philip Alston also noticed in early 2007⁹⁶; especially in the framework of the fight against so-called “terrorists” or “enemies of the State.”⁹⁷ Contrary to extrajudicial killings targeting activists – which are usually reported by their organizations – families of disappeared persons do not systematically report enforced disappearances.⁹⁸

The writ of amparo: an encouraging but insufficient step

Recently, the Supreme Court improved the domestic legal framework. Pursuant to the recommendations of the *National Consultative Summit on Extrajudicial Killings and Enforced Disappearances* called in July 2007 by Chief Justice Puno, it adopted the Rule on the *writ of amparo* (*amparo* means protection).

The *writ of amparo* is a remedy available to any person whose right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. In case of an enforced disappearance, the aim of the petition is to obtain the release of the disappeared person. It allows, *inter alia*, for inspection of places of detention to locate victims of illegal arrest or disappearance; the authorities may be required to produce documents necessary to determine the victims’ plight.

95. See the speech of Chief Justice Renato S. Puno, delivered on November 17, 2007, available at:

www.supremecourt.gov.ph/speech11-19-07-speech.pdf

96. See Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, to the Philippines (12-21 February 2007), A/HRC/4/20/Add.3, 22 March 2007, para. 11-12.

97. According to Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly on 20 December 2006, “‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.

98. According to Senator M. A. Madrigal, 184 persons forcibly disappeared in the country from 2001 to August 2007. See the Explanatory Note introducing Senator Bill No. 1489 for An Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance, filed on 7 August 2007. Karapatan provided the FIDH with the same figures concerning documented cases.

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The Rule was drafted pursuant to the Supreme Court's constitutional power to promulgate Rules for the protection and enforcement of constitutional rights. Under the Rule, the petition for the *writ of amparo* may be filed nationwide or on any day and at any time before the Regional Trial Court of the place where the threat, act, or omission was committed, or with the Sandiganbayan,⁹⁹ the Court of Appeals, and the Supreme Court. Free of charge, the filing is open, besides the aggrieved party, to his relatives and to any citizen, organization, association or institution if there is no known member of the immediate family or relative of the aggrieved party.

The Rule on the *writ of amparo* took effect on October 24, 2007, creating hope for decreasing occurrence of enforced disappearances and the practice of torture against disappeared persons. A first known successful *amparo* petition led, on November 7, 2007, to the release of a youth leader, Ruel Muñasque, taken by the military in Mindanao.¹⁰⁰

FIDH is aware of the very encouraging potential of the *writ of amparo*. However, Administrative Order No. 197 issued in October 2007 and which calls for "legislation (...) for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security" threatens its effectiveness.

FIDH believes that the best protection the authorities can offer against enforced disappearances is to ratify the International Convention for the Protection of All Persons from Enforced Disappearances and to penalize enforced disappearances pursuant to article 4 of this Convention.

3.3. Arrest without a warrant

The period between the arrest and the presentation of the arrested person before a judicial authority is a period during which the person arrested can be subjected to torture or ill-treatment. Most of the victims met by the FIDH mission were subjected to torture after being arrested without a warrant, before they were presented to a judicial authority. Hence giving an appropriate protection to the arrested person during this period is key to prevent torture and ill-treatment. Conversely, to broaden the scope of arrests without a warrant and to extend the deadline to present the arrested person before a judicial authority facilitate torture and ill-treatment.

Article 9 of the ICCPR provides that:

- “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

99. The Sandiganbayan is a Court specially created to eliminate graft and corruption practices or public offenders in the branches of government.

100. See www.supremecourt.gov.ph/news/courtnews%20flash/2007/11/11080701.php

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4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Section 2 of the Philippine Bill of Rights guarantees “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant arrest shall be issued except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”

The protection against arbitrary arrest afforded by the Philippine Constitution is not absolute. Section 5, Rule 113 of the Revised Rules of Court, which governs arrest without warrant, represents an exception to the due process clause in the Constitution.¹⁰¹ Section 5, para. a) is related to a situation where a crime is committed or attempted in the presence of the arresting officer. Section 5, para. b) presents the requirement of “personal knowledge”, on the part of the arresting officer, of facts indicating that an offence had “just been committed”, and that the person arrested had committed that offence.

In addition to these exceptions, an extensive jurisprudence interprets certain crimes as “continuing offences” and allows for arrest and detention without a warrant. The crime of rebellion, for instance, is considered to be a “continuing offence” and a *suspected* insurgent or rebel may be arrested anytime as he is considered to be committing the crime. Such a consequence seems to go much beyond the clear definition of the crime of rebellion provided in the Revised Penal Code Article 134 which reads as follows: “The crime of rebellion or insurrection is committed by rising publicly and taking up arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of Philippines or any part thereof, of anybody of land, naval or other armed forces, or depriving the Chief Executive or the legislature, wholly or partially, of any of their powers or prerogatives.”

The *Umil vs. Ramos* ruling of October 3, 1991 (GR No. 81567), taken by the Supreme Court at the time when the Anti-Subversion law (RA 17000) was still in force, considers rebellion as a “continuing offence.” To base arrest without a warrant on the doctrine of continuing offence amounts to giving a license for the illegal or arbitrary detention of persons on pure suspicion, hence opening the door to torture. This is all the more worrying since rebellion charges have already been used against political opponents.¹⁰²

Individuals subjected to arrest without a warrant are not without legal remedies though. Such individuals may ask for a preliminary investigation under Rule 122 of the Rules of Court, where they may produce evidence in their defence, or submit themselves to inquest proceedings to determine whether or not they should remain under custody and be charged in court. Further, a person subject of an arrest without a warrant must be delivered to the proper judicial authorities within 36 hours for crimes such as rebellion (Article 125 of the Revised Penal Code). This is a period during which forced confessions may be sought and can leave a detainee at risk of torture and ill-treatment. However, in many cases these guarantees are not respected.

101. Section 5, Rule 113 of the Revised Rules of Court provides as follows: “A peace officer or a private person may, without warrant, arrest a person: a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (...).”

102. See <http://www.fidh.org/IMG/pdf/0702note-philippines.pdf>

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The FIDH mission visited several detainees in the National Bilbid Prison, in Muntinlupa, Metro Manila, (August 18, 2007), in the Special Intensive Care Area of Camp Badongiwa, Metro Manila District Prison (August 18, 2007), and in Davao Jail City (August 20, 2007). Most of them were accused of being members of NPA, or of MILF or Abu Sayyaf Group. They all claimed that they have been subjected to torture and/or ill-treatment during the time of custodial investigation. Almost all of them have been arrested without a warrant and they have not been presented to “proper judicial authorities” within 36 hours. Moreover, when they have been brought before a judicial authority, victims of torture were either not asked if they had been treated in a way conform to law, or, when they said something about torture or ill-treatment, their statement has not been taken into account.

Testimonies by victims of torture confirm the assessment made by Prof. Philip Alston, UN Special Rapporteur on extrajudicial executions, concerning enforced disappearances. Prof. Alston reported a state of “passivity, bordering on an abdication of responsibility, which affects the way in which key institutions and actors approach their responsibilities in relation to such human rights concerns.” This is specifically the case of prosecutors, “whose role is absolutely central in the Philippines justice system.”¹⁰³

For instance, the FIDH mission had an interview with Yusuf Sarddai, 35 years old, in Metro Manila District Prison. Yusuf Sarddai was arrested without a warrant on November 2, 2001. He has been tortured during 4 days in Camp General Batalia in Zamboanga until he admitted to be a member of Abu Sayyaf Group and that he participated in kidnapping Sipadan hostages in Jolo in 2000. During this period, he has not been allowed to contact a lawyer. Yusuf Sarddai was handcuffed and tied to a table while three men wearing civilian clothes interrogated him. He has been punched, mostly in the thorax, and threatened with a gun when he was not admitting membership in ASG.

Yusuf Sarddai has been brought before a judge only after he signed an extrajudicial confession at the end of the 4-day torture period. After 2 months in Sulu Provincial Jail (in Jolo, the capital of Sulu province), he has been transferred to Metro Manila District Prison in January 2002. One year later, he has been charged with the murder of two security guards in Davao, in May 2002. Yusuf Sarddai did not reverse his confession and attended no hearing since 2005. In August 2007, almost 6 years after his arrest, Yusuf Sarddai was still waiting for his trial. Yusuf Sarddai told the FIDH delegation his brother, Anwar, died on May 20, 2007, as a result of torture inflicted by AFP members.

In the case of Bobby Alonto, 39 years, married, 2 children, another detainee the FIDH mission met in Metro Manila District Prison, a group composed of members of the PNP and soldiers wearing uniforms arrested him without a warrant on July 13, 2001, at his place in Isabela City, Basilan. Bobby Alonto has not been informed of the reasons of his arrest. He has been first brought to the Provincial Engineers Office, where Marines from the 3rd Marines Battalion were present and then transferred to the Army 103rd Brigade in Isabela. He found several suspects there. He has been interrogated separately from them. In August 2007, five of them were detained in Metro Manila District Prison: Sadat Husin, Marvin Hasin, Sajeed Asaja, Marvin Ramiso and Abdulgafar Yusuf. Interrogators wanted him to confess membership in Abu Sayyaf Group. When denying, Bobby Alonto was punched, mainly in the thorax and in the abdomen; interrogators used pliers to pull his toenails. In one instance, after a gunshot, interrogators told Bobby Alonto that a suspect had been killed and that the same would happen to him if he kept denying. Later, Bobby Alonto has been charged with the kidnapping in Tumahubong, in Basilan. This kidnapping happened in March 2000. Bobby Alonto

103. See Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, to the Philippines (12-21 February 2007), A/HRC/4/20/Add.3, 22 March 2007, para. 11-12.

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said that he was in jail at that time.¹⁰⁴ He added that when he has been presented before a judge in Manila in January 2002, he told the judge that he had been subjected to torture. The judge listened to him and said nothing. In August 2007, Bobby Alonto was still in jail waiting for his trial.

Sadat Husin, 34 years old, married, father of one child, has been arrested the same day than Bobby Alonto on July 13, 2001 in Isabela City. During three days, mostly during daytime, he has been subjected to torture, in almost the same way than Bobby Alonto, to confess membership in ASG. Sadat Husin says that interrogators did not want him to confess anything particular but membership in ASG. Sadat Husin has been charged with the kidnapping of Tuma Hubong, in Basilan. Sadat Husin says that some victims of this kidnapping were his former classmates and that one of them wrote an affidavit certifying that he did not see him among the kidnapers. In August 2007, Sadat Husin was still in jail waiting for his trial.

Beyond the violation of the CAT and Article 7 of the ICCPR, both prohibiting torture, such situations amount to a violation of Article 9 of the ICCPR, especially its paragraph 3. FIDH recalls that under the ICCPR “pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party.” Such a long pre-trial detention could be characterized as arbitrary taking into account the fact that the Human Rights Committee’s jurisprudence “confirms that ‘arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and illegality. Further, continued pretrial detention following legal arrest must not only be lawful, but also reasonable in all respects.”

FIDH recommends that arrest without a warrant should be strictly limited and the legal exceptions strictly interpreted. FIDH recalls that the Republic of the Philippines is bound by Article 9 of the ICCPR and its requirements and calls for an effective respect of this provision. Moreover, FIDH recalls that Article 14 of the ICCPR states that everyone charged with a criminal offence has the right to be tried without undue delay.

3.4. Conditions and length of pre-trial detention

The FIDH mission visited four detention centres in the Philippines, two in Metro Manila and two others in Mindanao. 917 pre-trial detainees and 34 sentenced persons were jailed in the Metro Manila District Prison. “Political prisoners” were detained in the Special Intensive Care Area (SICA), 117 allegedly members of ASG, 8 persons accused of being involved in General Santos Bombing¹⁰⁵ and 6 alleged members of MNLF.

The FIDH mission met with persons detained in the SICA, a building including a ground floor and three other floors. All the 131 “political prisoners” were detained in the ground floor composed of a range of twelve cells on each side. A kind of courtyard separates the two ranges of cells. The courtyard is 42 feet long and 5 feet large from a range of cell to the other. A kind of cage is installed in the middle of the courtyard. Detainees are not allowed to have a walk except in this courtyard and are not allowed to go out the SICA

104. Bobby Alonto has shown to the FIDH mission a Probation Certificate (Case No. 3110-164) released by the Parole and Probation Administration of Isabela City dated February 6, 2002. The certificate, signed by Tarcisio A. Tampos, Chief Probation and Parole Officer, indicates that Bobby Alonto has been arrested in February 4, 2000 for violation of Section 16 of RA 6425 (“The Dangerous Drugs Act of 1972”). The certificate adds that Bobby Alonto was released on May 24, 2000, when his application for probation was approved by Judge Felisberto C. Gonzales of the Regional Trial Court, Branch 1, Isabela, Basilan.

105. General Santos is a City in Mindanao. The said bombing occurred on December 12, 2004 and 15 civilians died and 69 others were injured.

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building. Those restrictions were put into place after the “Bicutan Siege” of March 2005, which was condemned by human rights organisations.¹⁰⁶

Detainees are allowed to host for few hours their relatives including children. However, most of these detainees are not from Metro Manila and come from Mindanao where their families reside without being in a position to afford a visit. Further, prisons are overcrowded, as budget for building new prisons is not available. Finally, most of the prisoners have been awaiting their trial for several years. Some of them ignored what they were charged for and the majority of them only saw a judge once or twice on a period of several years, if any. Among them were adults but also children. Bimbas M. Abubakar was abducted in Basilan by AFP when he was 14 years old on his way to school. He suffered from torture by people wearing uniforms but with no sign of identification, who wanted him to acknowledge that his name was Ahmad and that he was a member of ASG. Later on he was brought to jail far away, in Manila, where his family cannot afford paying him a visit (only his sister came, 3 times). He is now 20 years old and is still waiting for his trial. In the meantime he received a bullet in his head and in his knee during the Bicutan siege. After human rights NGOs raised awareness on his case, he was allowed to get cured in a hospital, as the wound of his head got so infected that his life was threatened. The Bicutan Siege occurred in March 2005. Abubakar was only allowed to get out of the jail to extract the bullet in his head on October 15.

FIDH recalls that detainees in pre-trial detention are presumed innocent until proven guilty according to law and that they should be treated with respect of their human dignity. FIDH also calls upon the Philippine Government to dedicate more money to the building and maintenance of prisons as well as to the efficiency of the judiciary.

3.5. Selected cases of human rights violations

The use of torture and cruel, inhuman or degrading treatment is widespread in the Philippines, especially against those suspected of being “terrorists.” Certain persons met by FIDH spoke about a “culture of torture” within the Armed Forces of the Philippines.¹⁰⁷ Torture occurs mainly during the investigation period, between the moment of the arrest and the transfer of the suspects to jail. The FIDH mission to the Philippines was able to meet many victims of torture and family members of torture victims. Almost all torture victims that the FIDH mission met accused the army and the police. Sometimes, they also accused the army of subcontracting torture to armed civilian auxiliaries.

Case 1 – Severe physical and mental torture leads a couple to commit suicide

On October 9, 2006, Lt. Ruezal and five other soldiers brought **Librado Gallardo**,¹⁰⁸ the Chairperson of the local United Methodist Church Council and his sister **Neneng** to the village hall for interrogation. She was accused of feeding the NPA but was later allowed to go home. **Librado** was told to remain in the village hall and then leave late at night. The hall had been occupied a day earlier by 50 elements of the 48th Infantry Battalion of the Philippine Army.

When **Librado** got home, he was complaining of pains in the chest, stomach, throat and neck as a result of severe torture, while twelve soldiers took up residence at the house of his sister **Neneng**.

At 9 am on October 10, 2006, soldiers again forcibly took **Librado** with his wife **Martina** and his sister **Neneng**.

106. For detailed comments on the violent events which occurred in March 2005 – the so-called “Bicutan siege” – see “What is the truth about the Bicutan Siege? Tales of excessive Use of Force, Extrajudicial Executions, Massacre, Torture, Cruel and Inhuman Treatment,” prepared by PAHRA with the collaboration of victims and various stakeholders. The FIDH mission had the opportunity to hear terrible testimonies of victims of that “siege.”

107. Attorney Manuel Mamauag Mnsa – regional HR director of the Philippine Commission on Human Rights.

108. International Reactions Fail to Stop Killings and Disappearances: <http://www.bulatlat.com/news/6-46/6-46-killings1.htm>

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Librado was blindfolded, kicked and beaten all around his body, and humiliated while still in his house with his family. He was brought to a house nearby which was used as a temporary military headquarters, where he was beaten and tortured repeatedly. He was interrogated for a few days and forced to make false confessions, and to say that he was a member of the New People's Army.

During the interrogation, he was suffocated by covering his face with a plastic bag, he soiled his pants due to the severe beatings, torture and suffocation, while blindfolded at all times. He was threatened by the soldiers that he would be killed along with his family.

On the evening of 11 October, **Librado** and his wife **Martina** gathered their children and expressed their fears about the military threats, and their worries about the lives of their family. They stated that they could not bear the harassment, intimidation, the severe mental and physical torture, especially since they did not know if there would be an end to it. They informed their children that they had decided to end up their pain and suffering by committing suicide. At that time they asked the children to leave the room.

The couple were found later lying in their terrace, their lips dark, and foam dripping from their mouths. In fact they put an end to their suffering by ending their lives with drinking pesticide.

This incident has not been investigated.¹⁰⁹

Case 2 – Arrest with no warrant, severe physical and mental torture, sexual assault and harassment

The 50 year-old **Angelina Bisuna De Ipong**,¹¹⁰ as she was known, was a peace advocate working in Western Mindanao. With her degree in History, she taught briefly at the Assumption College Quezon. She worked as a lay missionary in Davao City. She was sexually assaulted, severely tortured and held incommunicado from March 8 to 20.¹¹¹

She was arrested in the afternoon of March 8, 2005 after an attack on her house. No warrant of arrest or any legal document was shown when she asked for it at the time of arrest.

After hours of travelling by van and then by helicopter, she ended up blindfolded in a locked room and was kept incommunicado, in isolation. She began a hunger strike when she was arrested. She was kept in a room with a microphone attached to its wall, and a black chain to handcuff people.

She began to knock on the door of the room as she wanted to use the toilet. She was taken to the toilet by a man, who told her it was her last chance to see that toilet, and that he would make her “rot there” if she did not cooperate. They took a photograph of her while she was in the toilet.

The man began her interrogation with punching the side of her body and striking her head when he was not satisfied with her answers. After leaving her for 45 minutes, he returned with a warning that someone else would come and rape her if she didn't cooperate.

An hour later she was blindfolded by another man, and two or three men entered the room, tied her hands at her back and asked her the same questions. They mauled her left and right shoulders and gave her a punch to the side of her body and struck her in the head. Then they started removing her cloth forcibly, pulled her bra down till her breasts were exposed and began making fun of her breasts. She was shivering with the cold and from fear. They removed her shorts and pulled her panties down, and started touching the private parts of her body while forcing her to admit things that she had not done. She was crying, screaming and begging them for mercy. She told them that she was like their own mother and to treat her with respect.

The other men continued to beat and threat her. She was blindfolded the entire time and was still on hunger strike. She became so weak and tired that she began to vomit dry sticky saliva by the 6th day of the hunger strike.

Because of the severe mental and physical torture she underwent, and the hunger strike, she fainted.

109. Bulatlat: <http://www.bulatlat.com/news/6-44/6-44-couple.htm>

110. Committee defend democratic rights: http://www.defendsison.be/pages_php/0512031.php

111. See Annual Report of the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT) 2006, p. 450.

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When she regained consciousness later, the man returned and repeated the questions, but by then she had no strength to write anything and he started writing on her behalf.

On March 14, 2005 she was asked to take a shower, then given a nice dress. She was told that she would be taken to the Department of Justice, and put in a wheelchair as she could not walk by then, but they took her and presented her to the media.

On March 19, 2005 she was brought to Pagadian City Jail. Still, she was considered missing since the authorities only presented her to her relatives and friends on March 21, when she was visited by a local human rights organization.

Case 3 – Torture techniques and threats used by law enforcement officials

Oting Mariano, a 21-year-old man from Cotabato, Mindanao was arrested on 13 January 2007 and was handcuffed, and blindfolded. They placed a piece of cloth in his mouth and wrapped it with an adhesive tape used for packing boxes. He was interrogated, and during interrogation he was severely tortured. He was electrocuted when he denied being a part of MILF. Electrical wires were placed on the sides of his head and arms. There were instances when his head was wrapped with a plastic bag covering his face and making it difficult for him to breath. There was a time also when he was dipped into water and removed only when he was about to lose consciousness. He was also deprived of proper food. He was threatened that he would be buried alive and was thrown into a shallow grave, but later removed.

The alleged perpetrators include a certain Senior Police Officer Sanchez with four other unidentified men wearing plain clothes, said to be operatives of PRO-ARMM using a white van with a plate number IUH - 168. He was accused of being a member of the Moro Islamic Liberation Front, and responsible for the Makilala blast.



The Holy Bible and the Coran happened to be facing each other in a room where the fact finding mission met Catholic and Muslim victims of torture, in Mindanao.

Case 4 – Enforced disappearance, the involvement of military figures

Jaime D. Fernando, a 30 year old fisherman from the Atlag, Malolos City, Bulacan has been missing for more than six months.

He went to the river between Village Panasahan and Village Talabahan and spread out his fishing net in the river in the evening of November 19, 2006. He finished his fishing work at around 1 am on November 20, 2006 and went back home.

Upon arriving to his house in Village Atlag, soldiers from the 69th Infantry Battalion of the army were in his backyard. Men from the village were being interrogated by the military, which suspected their area of being

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part of an armed communist area. The soldiers were there to check on some suspected NPA supporters and organizers. Later all were released and Jaime D. Fernando went back to his work at the river to check the catch in his net.

From that moment Jaime D. Fernando disappeared and could be found nowhere. His boat was seen overturned floating without him.

The Philippine Constitution states that the Armed Forces of the Philippines is the “protector of the people and the State.” Its goal is said to be to “secure the sovereignty of the State and the integrity of the national territory.”

Case 5 – Targeting activists, forced disappearance, lack of legal redress



Activist Jonas Joseph Burgos,¹¹² 38 years old, an agriculture graduate of the University, had been training members of the Peasant Movement of the Philippines since 1998.¹¹³ He is the son of a well-known journalist and civil libertarian and defender of freedom of expression.

On April 30, Jonas’ mother¹¹⁴ called for a press conference. She announced that Jonas had been missing since April 28. As a result of that press conference,¹¹⁵ she received some evidence and information, including a testimony from a security guard at a Mall who had seen Jonas abducted and forced into a vehicle by several people.

The license plate number of the vehicles used by his abductors were later traced to a vehicle impounded at the headquarters of the 56th Infantry Battalion of the Philippine army.

The police and military have alleged that Jonas is a member of NPA and was abducted by his comrades for some dispute that accrued between them, but

those allegations were not supported by any kind of evidence.¹¹⁶

Following pressure by the media and civil society, Armed Forces Chief of Staff, Gen. Hermogenes Esperon reportedly ordered the Army Provost Marshal and the Inspector General to investigate the case.

On May 21, 2007, the mother of Jonas requested Gen. Esperon for a copy of the “report¹¹⁷ of the disappearance.” She also asked President Arroyo to be able to see Gen. Esperon. Her lawyer met two officers in

Gen. Esperon’s office and asked for the same report on June 21; Gen. Esperon turned down her request.

She publicly accused the Army of having forcibly abducted her son Jonas on April 28, 2007 from the Mall in Quezon City and said “I strongly suspect that either or both of the former commanding officers of the 56th IB, Lt. Col. Clement and Lt. Col. Feliciano are participants in that crime, and the Chief of Staff of the Armed Forces of the Philippines, Gen. Hermogenes Esperon, is covering up the crime committed against Jonas.”



112. Free Jonas Burgos: <http://www.desaparecidos.org/bbs/free225.jpg>

113. Stop the Killings in the Philippines: <http://stopthekillings.org/stknpv1/?q=node/264>

114. INQUIRER.net: http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=63398

115. Free Jonas Burgos Movement: <http://freejonasburgosmovement.blogspot.com/>

116. GMA News.TV: <http://www.gmanews.tv/story/59546/Burgos-mom-looks-forward-to-AFP-report-on-Jonas>

117. INQUIRER.net: http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=87289

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In her petition for *habeas corpus*, the mother asked the Court of Appeals to subpoena the report of Provost Marshal General Col. on the loss of a plate number later seen with **Jonas'** alleged abductors. The military leadership said that it would comply with the Court of Appeals order to release the report on a license plate number under military custody that was seen on the vehicle of **Jonas'** abductors.¹¹⁸ **Jonas** had not re-appeared at the moment of writing this report.

Case 6 – Targeting activists, forced disappearance



Two female student activists and their male companion – **Sherlyn Cadapan**,¹¹⁹ 29 years old, **Karen Empeño**, 23, and **Manuel Merino**, 55, were all volunteers with the Alliance of Peasants in Bulacan. They were abducted by elements of the Philippine Army based in the Headquarters of the 56th Infantry Battalion in Hagonoy Bulacan.

Early in the morning of June 26, 2006, **Sherlyn** and **Karen** were forcibly taken by elements of the Philippine Army. A man called William Ramos and his son saw the perpetrators leading the victims to a stainless steel jeep with plate number RTF 597.

People's Alliance for Human Rights-Bulacan,¹²⁰ a local human rights group, immediately launched a quick response team and proceeded to the 56th Infantry Battalion headquarters in Iba, Hagonoy, Bulacan where the team saw the stainless jeep used by the perpetrators.

Sherlyn is an award-winning tri-athlete from the University of the Philippines and was pregnant at the time of the abduction.

Karen Empeño is a graduating student of BA Sociology in University of the Philippines. She was doing research for her undergraduate thesis on the plight of the farmers in Central Luzon.

The two women were seen inside their detention center later by the two escaped brothers Raymond and Reynaldo Manalo (see below), who told the FIDH mission that they met and talked to Karen Empeño.¹²¹ “We were with UP students **Sherlyn** and **Karen** at the detention camp. We were able to talk to them and saw how they were tortured,” they said.

The victims remain missing to this day.¹²²

118. INQUIRER.net: http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=87348

119. Stop the Killings in the Philippines: <http://stopthekillings.org/stknpv1/?q=node/81>

120. KARAPATAN: <http://www.philonline.com.ph/~krptn/index.html>

121. INQUIRER.net: http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=84423

122. Pinoy Press:

<http://pinoypress.net/2007/08/27/save-the-lives-of-sherlyn-cadapan-and-karen-empeno-surface-them-and-other-desaparecidos/>

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Case 7 – Torture in custody, overseen by high ranking officials

Raymond, 24, and his brother Reynaldo Manalo, 38,¹²³ are farmers from Bulacan, and were suspected of being supporters of the New People's Army. For 18 months they were kept in secrecy and tortured on a daily basis. They were beaten up severely, bathed in their urine, whipped with a barbed wire, had water poured in their nostrils, and were made to eat rotten food. They were moved secretly to different military facilities and houses and were threatened that their family would be harmed if they escaped. They were able to escape on August 13, 2007 and are in hiding till this moment. The FIDH mission was able to meet them a few days after their escape.

They had been abducted on February 14, 2006 by armed men of the 7th Infantry Division in Luzon of the Philippine army.



Maj. Gen. Jovito Palparan Jr.

Raymond identified Palparan,¹²⁴ and other officers of the Armed Forces of the Philippines, as well as members of Civilian Armed Forces Geographical Unit, as having been present or actively taken part in their physical and psychological torture during the 18 months of their enforced disappearance.

“While I was detained, General Jovito Palparan was talking to me. I have seen General Palparan on television, that’s how I knew it was him.”

Raymond also said how they met University of the Philippines students Sherlyn and Karen in their detention camp (see above). “We were with University of the Philippines students Sherlyn and Karen at the detention camp. We were able to talk to them and saw how they were tortured.”

Raymond also mentioned Manuel, another farmer who was abducted with the two students. “In detention we saw the killing of Manuel. One night, Manuel was taken out of the prison and was brought to a nearby place. A little later, Manuel was killed and his body was set on fire.”

In a petition filed before the Supreme Court¹²⁵ on August 23, 2007 the brothers Manalo sought the High Court’s intervention to take immediate protective custody of them, and asked that the High Court appoint an independent commissioner to investigate the case. At the time of publication of this report, the court has granted the brothers the petition for the *writ of amparo* except that for the petition to oblige the military to open up their camps and facilities for the search of other victims related to the case.

Case 8 – No warrant of arrest, torture

Derek Cabe, Cesar Villarico, Jose Cunanan, Eduardo Dela Cruz and 23 other members of a group called the Movement for National Democracy, were conducting a seminar in a villa in Tagaytay City during the second week of March 2005. The villa was stormed by approximately 40 members of the composite team of Police and members of Intelligence Service of the Armed Forces.

The military and police announced a raid and ordered everybody not to move. Gunshots were then heard. Some people ran towards the garden veranda and some climbed the villa’s fence but they were caught by uniformed men wearing masks. They were ordered at gunpoint to lay down on the ground. The head of the raiding team claimed that they had a warrant of arrest for Serrano but he refused to allow any seminar participant to see the warrant or read it.

123. INSIDE PCIJ: <http://www.pcij.org/blog/?p=1913>

124. In the Philippines, Maj. Palparan, one of the nation's top military commanders, and known as “The Executioner,” while leftist groups vilify him as “The Butcher.” <http://www.ahrchk.net/ahrc-in-news/mainfile.php/2006ahrcinnews/852/> His responsibility in extra-judicial killings of journalists and activists has been pointed out by the Melo Commission.

125. <http://www.supremecourt.gov.ph/>

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Some participants were put in a van and the remaining were asked to board on a bus. The bus went to the General headquarters of Western Police District, while the van went to the Intelligence Service of the Armed Forces inside Camp Aguinaldo. Those who were sent to Western Police District were released. Those who were sent to Intelligence Service of the Armed Forces were subjected to different type of torture, including electrocution of their genitalia, and the use of pins, such as on Jack Cunanan's skin, while being interrogated. Their families were not allowed to see them during the two days of arrest and they were not even informed of the charges against them.

Case 9 – Extrajudicial killing of a young girl and manipulation of the truth



On March 27, 2007, the 9 year old **Gretil Galacio** had just finished second grade at Elementary School, with class citations. Three days later, **Gretil**,¹²⁶ and her 6 year old brother Gary went to the nearby river to swim, taking with them a bag containing bathing soap.

At 8:30am, the children heard gunfire. Gary called out to **Gretil**, and ran away in fear, leaving **Gretil** behind. Meanwhile, their parents, who have two other young daughters, left the house looking for **Gretil** as they too had heard the sound of gunshots.

The 9 year old **Gretil** was found dead a few meters away from her house. She was shot on her right elbow, and a fatal bullet had hit the left side of her head, which blew out her brains.

She was allegedly attacked by armed military elements belonging to the 8th Infantry Battalion of the Philippine Army.

Shortly afterwards, a number of newspapers¹²⁷ printed news claiming that the Armed Forces of the Philippines had stated that **Gretil**¹²⁸ was a child soldier, and that she was killed during an encounter between AFP and NPA.

According to military officials, **Gretil**, the nine-year-old girl, was a communist who used her M-16 Armalite rifle against soldiers engaged in a firefight with New People's Army guerrillas on March 31.¹²⁹

The soldiers also showed to the Village Captain a photo of the dead **Gretil** with an M-16 lying beside her. She was almost the same height as the rifle, which when loaded would be too heavy and impossible for nine-year old like **Gretil** to carry.

The neighbors who saw the dead body of **Gretil** said that there was no spent ammunition seen beside when they found her. They also vouched that neither the girl, nor any member of her family, were members of NPA. To date, there has been no investigation on this case.

126. Davao Today: <http://davaotoday.com/2007/06/05/child-advocates-outraged-over-chr-decision-on-gretil/>

127. Davao Today: <http://davaotoday.com/2007/04/09/the-happy-life-and-violent-death-of-gretil-buya/>

128. INQUIRER.net: http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=61778

129. Davao Today: <http://davaotoday.com/2007/04/09/the-happy-life-and-violent-death-of-gretil-buya/>

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“The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.”

Philippines Constitution Section 28

Case 10 – State sponsored murder of human rights workers

Benjaline Hernandez,¹³⁰ at the time of her death, was a human rights worker based in Davao City. She was also the Vice President for the Mindanao College Editors Guild of the Philippines, a progressive alliance of student publications. In April 2002, Benjaline was in Arakan Valley conducting a month-long research.



On 5 April 2002, the group was about to take their lunch when with no warning, six CAFGU men strafed the house. Sinunday attempted to run away but was shot, and died, a few meters away from the house. The three jumped out of the hut for safety.

Outside the hut, the militiamen went near the three and huddled around Hernandez, Amora and Andrade. They were all pushed to the ground. Amora was hit on the stomach before being shot in the neck, followed by Hernandez and Andrade. They were all shot at close range, as evidenced by the presence of tattooing around the entry gunshot wounds.



They all were massacred by joint elements of 7th Airborne/12th Special Forces Company of the Philippine Army and Civilian Auxilliary Forces Geographical Unit members.

Criminal charges against the identified perpetrators were filed at the Department of Justice in 2002. The cases are still pending after more than four years. The accused have filed a Motion to Dismiss for Insufficiency of Evidence or a Demurrer to Evidence.

According to a list released by the Armed Forces of the Philippine human rights office in July 2007,¹³¹ about the status of the case, “The case against MSg Antonio Torilla PA, SFR (A) SOCOM, PA is still pending before MCTC, Davao City and the Accused was released on bail and placed a/u with HHSO, PA, eff 01 Apr 07, pur to para. 4, SO nr 59, HPA dated 23 March 2007. His Administrative Case was dropped and closed.”

130. Reporters Without Borders: http://www.rsf.org/article.php3?id_article=6482

131. AFP human rights office: <http://www.newsbreak.com.ph/democracyandgovernance/hrviolations/afplist/afp.htm>

Part IV. Conclusion and recommendations

Conclusion

The Armed Forces of the Philippines (AFP) and armed groups have been fighting for decades. Those armed groups include a variety of movements: the so-called “leftist” groups advocating for national democracy and economic and social rights (the New People’s Army – NPA, the armed wing of the Communist Party of the Philippines); secessionist groups calling for the independence of Mindanao – the Southern island of the country (the Moro National Liberation Front – MNLF, and the Moro Islamic Liberation Front – MILF); and groups with unclear objectives which appeared more recently (Abu Sayyaf, Jemaah Islamiyah, Rajah Solaiman Movement). Some of these groups are considered as terrorist organizations.

Tensions between armed groups and the Philippine government are not a new phenomenon; but the international context in the aftermath of September 9/11 combined with the close relation between the USA and the Government of the Republic of the Philippines has encouraged the latter to take additional measures to fight against terrorism.

Testimonies collected by the FIDH mission confirm that torture occurs in most cases when the Armed Forces of the Philippines (AFP) and the law enforcement agencies arrest an individual suspected of rebellion or of being an “enemy of the State.” Some persons met by the mission spoke about a “culture of torture” within the AFP. Victims met by the mission unanimously pointed out to the responsibility of AFP or the Philippine National Police (PNP). Civilian auxiliaries under the control of AFP are also accused of practicing torture.

In such a context, the lack of a law punishing superior officers for the acts of their subordinates or other persons subject to their control under the principle of “command responsibility” is particularly problematic, and contrary to Article 2 of the CAT.

At national level, the main legislation aimed at combating terrorism is the Human Security Act, entered into force on July 15, 2007. The definition of crimes such as terrorism and conspiracy to commit terrorism enshrined in this legislation is very broad, and not compatible with Article 15 of the ICCPR and the principle of legality it embodies, which requires that criminal liability and punishment be defined by *clear and precise* provisions in the law.

The HSA further expands powers of arrest and detention and allows for large powers of surveillance and investigation particularly on searches and seizures. Moreover, it establishes an Anti-Terrorism Council, composed of high-level government officials, with far-reaching powers. The accountability of such body for human rights violations in the fight against terrorism is not addressed at all in the Act. The HSA blurs the line between the roles of the Judiciary and the Executive.

Section 18 and 19 of the HSA regulate a period during which the risk of torture is very high. Those sections raise concerns related to respect of Article 9 (right not to be arrested arbitrarily) and 7 (prohibition of torture) of the ICCPR. Section 18 provides for a period of detention without judicial warrant of arrest. Section 19 authorizes law enforcement agencies, in the event of an actual or imminent terrorist attack, to detain suspects up to three days “with the written approval” of officers of a “Human Rights Commission.” This wording may designate the national human rights institution (the Commission on Human Rights of the Philippines – CHRP), although there is uncertainty in that regard; since they can be assimilated to members of the executive branch of the Government, the CHRP officers should not be equated with judicial bodies in charge of reviewing the legality of detention. Section 19 contravenes the right to have the legality of one’s detention reviewed and can be considered as condoning the use of torture.

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The HSA's protective provisions appear ineffective and could have an adverse effect: members of the law enforcement agencies could prefer to kill the suspect instead of taking the risk of having to face the financial cost of an acquittal. Alternatively, the army and the police might rely upon the HSA when inquiring (for taking advantage of its "facilities") but nevertheless charge the suspect on another legal basis (like illegal possession of ammunition) in order to avoid penalties and fines.

FIDH seriously doubts that the mechanisms and initiatives reportedly put in place by AFP to ensure respect for human rights such mechanisms are being effectively implemented, as very few perpetrators of extrajudicial killings (and no high-ranking officials) have been prosecuted so far, whereas the estimates vary from 100 to 800 or more extrajudicial killings in the Philippines since 2001. This raises the question of the efficiency of the judiciary on the one hand, and of the political will to prosecute the perpetrators on the other. The inefficiency of the Government "Witness Protection Programme" is one of the main reason why victims and witnesses are reluctant to show up.

There is currently no law specifically penalizing acts of torture: criminal cases have to be filed against perpetrators of torture for crimes such as maltreatment; rape; murder if torture results in the death of the victim, etc. This situation is contrary to the international commitments of the Republic of the Philippines under Article 7 of the ICCPR and the CAT. There is no domestic law criminalizing enforced disappearances either.

Section 25 of the 2007 HSA prohibits the admissibility of evidence obtained through torture or duress. However, the actual case law of the Supreme Court in this domain threatens the effectiveness of this principle. Indeed, the Supreme Court considers that "the confessant bears the burden of proof that his confession is tainted with duress, compulsion or coercion by substantiating his claim with independent evidence other than his own self-serving claims that the admissions in his *affidavit* are untrue and unwillingly executed."

Recently, the Supreme Court improved the domestic legal framework by adopting the Rule on the *writ of amparo*. The *writ of amparo* is a remedy available to any person whose right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission. The Rule on the *writ of amparo* took effect on October 24, 2007, creating hope for decreasing occurrence of enforced disappearances and the practice of torture against disappeared persons. FIDH is aware of the very encouraging potential of the *writ of amparo*. However, Administrative Order No. 197 issued in October 2007 and which calls for "legislation (...) for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security" threatens its effectiveness.

Arrest without a warrant is allowed under domestic legislation in certain circumstances. In addition, an extensive jurisprudence interprets certain crimes as "continuing offences" – this is the case of the crime of rebellion, e.g. – and allows for arrest and detention without a warrant. FIDH recalls that arrests without a warrant and the lack of judicial oversight on the legality of detention condone torture.

Recommendations

Based on the mission's findings, FIDH, PAHRA and IRCT make the following recommendations:

A – To the Philippine authorities

- to free immediately all persons arbitrarily detained in the framework of the fight against terrorism, or to bring charges against them and produce them before a court of law;
- to stop using civilian auxiliaries of the AFP in the fight against so-called "terrorism" and, as a minimum and immediate step, to ensure that they are properly trained in the field of human rights and prevention of torture;

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- to put an end to the practice of arbitrary labelling individuals or groups as terrorists without offering them the possibility to challenge such assertions before a court of law;
- to investigate seriously and systematically all allegations of involvement of members of law enforcement agencies in extrajudicial killings, acts of torture or enforced disappearances. As a first and immediate step, and pursuant to the Melo Commission recommendations, investigations should be launched on allegations of human rights violations by General Palparan;
- to ensure that the principle of command responsibility is respected and duly enshrined in domestic legislation;
- to criminalize torture in domestic legislation in accordance with Article 4 of CAT;
- to amend the HSA in order to bring it in conformity with the Philippines' international human rights commitments, in particular the principle of legality (broad definition of the terrorist offences), the right not to be detained arbitrarily (possibility to arrest without a warrant), and the right to see the legality of one's detention reviewed by a judicial authority. The overwhelming and unchecked powers of the Anti-Terrorist Council should be reviewed as well since they contradict the principle of separation of powers. Such amendments would contribute to protect persons arrested under this law from torture;
- to ensure inadmissibility in court of confessions obtained under duress in all cases – and not only in the framework of the HSA – in conformity with Article 15 of the CAT;
- to establish appropriate criminal, civil and administrative sanctions for violations of the legality of the procedure (arrest, interrogation, treatment of detainees, etc);
- to adequately compensate victims of acts of torture and their family, in conformity with Article 14 of the CAT and establish programmes for the reparation and rehabilitation of victims of torture;
- to ensure the effectiveness of the Witness protection programme of the Department of Justice, and adequate financial means in that regard;
- to take the recommendations of the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances of July 2007 into account in order to strengthen the capacity of the judiciary, and to fully implement the recommendations of the UN Special Rapporteur on Extrajudicial killings;
- to ensure fair conditions of detention of suspected terrorists in jail, and more generally all prisoners, by increasing the budget allocated to prisons;
- to ensure that suspected terrorists are judged in a reasonable timeframe;
- to ensure that members of the armed forces and of the police benefit from full-fledged human rights trainings;
- to submit the periodic state report to the UN Committee against Torture;
- to include a description of the mechanisms established to guarantee the respect for human rights in the framework of the fight against terrorism in its reports to the UN Security Council Committee against terrorism;
- to ratify the International Convention for the protection of all persons from enforced disappearances, and implement it in domestic legislation, including by criminalizing enforced disappearances as required by Article 4;
- to extend a permanent invitation to the UN special procedures, and invite in particular the UN Special Rapporteur on Torture, the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the UN Working Group on Enforced and Involuntary Disappearances, as well as the UN Working Group on Arbitrary Detention.

B – To non-state actors

FIDH, PAHRA and IRCT unreservedly condemn human rights violations perpetrated by **non-State actors** and call upon them to strictly abide by international human rights and humanitarian law. The authorities should ensure that human rights violations perpetrated by non-state actors are investigated and prosecuted in full respect of the fair trial guarantees.

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C – To the international community

FIDH, PAHRA and IRCT ask the **US government and other members of the international community** to support the Philippines in its efforts towards ensuring compatibility between human rights and the fight against terrorism and therefore to condition its military support to concrete progress in the field of the fight against impunity for extrajudicial killings, torture and enforced disappearances.

Bearing in mind that the fight against torture is a priority of the **European Union** under the EU Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, FIDH, PAHRA and IRCT ask the EU to address the issue of the human rights violations perpetrated in the name of the fight against terrorism in the framework of its bilateral dialogue with the Filipino authorities.

States Parties to the United Nations Committee against Terrorism should address the issue of human rights violations in framework of the fight against terrorism on the occasion of the next examination of Philippine's state report, and make public the Committee's conclusions.

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Annexes

Annex I: Interviews in the Philippines made by the FIDH mission (August 13-23, 2007)

- PAHRA
- KARAPATAN
- Father Bert Layson of Mindanao People's Caucus, Mr. Al Senturias of Mindanao People's Peace Movement, Bantay Ceasefire and members of other human rights and peace organizations from Cotabato City
- Mr. Mahmud Mala L. Adilao, Regional Chairman of the Ulama League of the Philippines
- Rep. Satur Ocampo (Bayan Muna Party List) – House of Representatives
- Rep. Crispin "Ka Bel" Beltran (Anakpawis Party List) – House of Representatives
- Assistant of Sen. Aquilino Pimentel, at the Senate
- Senator Madrigal, at the Senate
- Three separate groups of victims
- Prof. Miriam Coronel Ferrer, University of the Philippines
- Prof. Nur Misuari, leader of MNLF, under house arrest
- Mr. Eid Kabalu, MILF spokesperson, Dr. Abdul Pagayao from the Institute of Bangsamoro Studies and Mrs Kabalu
- Mr. Geronimo L. Sy, State Prosecutor
- Rep. Ana Theresia Hontiveros-Baraquel (Akbayan Party List)
- Mr. Celso L. Lobregat, Mayor of Zamboanga City
- Lieutenant General Antonio L. Romero II, Vice-Chief of Staff of the Armed Forces of Philippines and several other officers including:
 - General Cadungog
 - Major Fevidal, AFP Human Rights Officer
 - Nestor R. Sadiarin from the civil relations service
- Mrs Mary Aileen Bacalso
- Lanelyn R. Carillo
- Members of the National Democratic Front of the Philippines – Monitoring Committee (NDFP-nominated section)) of the Joint Monitoring Committee of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between GRP and NDF including *inter alia*:
 - Attorney Edre U. Olalia
 - Marissa P. Dumanjug-Palo
 - Levie C. Ebio
 - Rosie M. Tumbagahon
- KDP Mindanao (Movement for Naturalism and Democracy)
- M. Renato M. Reyes, Jr., Secretary General of BAYAN – New Patriotic List
- Father Angel Calvo, members of the Mindanao Peace Weavers and of the Consortium of Bangsamoro Civil Society and Mr. Mamaug, regional director of the Commission on Human Rights
- Victims of torture introduced by members of KARAPATAN-Southern Mindanao Region, Kawagib Moro Human Rights Organization and Initiative for Peace in Mindanao. Were present:
 - Rev. Ryan Magpayo
 - Attorney Connie Jaime-Brizuela
 - Attorney Carlos Isagani Zarate, Secretary General of the Union of People's Lawyers in Mindanao
- Members of the Government of the Republic of Philippines – Monitoring Committee (GRP-nominated section) of the Joint Monitoring Committee of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the GRP and the NDF including *inter alia*:
 - Prisons and detention centers visited by the FIDH mission:
 - Visit of the Bilibid Prison in Muntinglupa, Metro Manila
 - Visit of the Metro Manila District Prison
 - Visit of the Davao City Jail
 - Visit of ComVal (Compostela Valley Provincial Jail)

Annex II: Acronyms and abbreviations

AFP	Armed Forces of the Philippines
ASG	Abu Sayyaf Group
ATC	Anti-Terrorism Council
CAFGU	Civilian Armed Forces Geographic Unit
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHRP	Commission on Human Rights of the Philippines
GRP	Government of the Republic of the Philippines
HSA	Human Security Act
JI	Jemaah Islamiyah
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
NDFP	National Democratic Front of the Philippines
NPA	New People's Army
OIC	Organization of the Islamic Conference
PNP	Philippine National Police
SICA	Special Intensive Care Area
TFU	Task Force Usig

The International Federation for Human Rights (FIDH) is an international non-governmental organisation for the defence of human rights as enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, the FIDH brings together 141 human rights organisations from 100 countries. FIDH has undertaken over a thousand missions of investigation, trial observations and trainings in more than one hundred countries. It provides its members with an unparalleled network of expertise and solidarity, as well as guidance to the procedures of international organisations.

The FIDH works to:

- mobilise the international community,
- prevent violations and support civil society,
- observe and alert,
- inform, denounce and protect.

The FIDH is historically the first international human rights organisation with a universal mandate to defend all human rights. FIDH enjoys observer status with the United Nations Economic and Social Council (UNESCO), the Council of Europe's Permanent Committee, the International Labour Organisation (ILO), and consultative status with the African Commission on Human and Peoples' Rights. FIDH is represented at the United Nations and the European Union through its permanent delegations in Geneva and Brussels.



The International Rehabilitation Council for Torture Victims (IRCT) is an independent, international health professional organisation that promotes and supports the rehabilitation of torture survivors and works for the prevention of torture worldwide. Based in Denmark, the IRCT works in collaboration with a global network of 200 torture rehabilitation centres and programmes.

For further information: www.irct.org



The Philippine Alliance of Human Rights Advocates (PAHRA) is a non-stock, non-profit alliance duly registered under the laws of the Philippines, with SEC No. ANO92-03505. It was established on August 9, 1986 in a Congress that was participated in by more than a hundred organizations from all over the Philippines. It was formed as an alliance of individuals, institutions and organizations committed to the promotion, protection and realization of human rights in the Philippines.

For further information: www.philippinehumanrights.org

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