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Aide-Mémoire

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Philippines

While the Philippines are state party to most of the important UN human rights conventions and treaties, their implementation is not a policy priority. Human rights violations continue to be grave and widespread: The Philippine Government has still not recognised the involvement of state security forces in extrajudicial executions, as presented in the 2007 report by UN Special Rapporteur on Extrajudicial Executions Prof. Philip Alston. While the number of politically motivated executions has significantly decreased in 2008, killings and enforced disappearances perpetrated by alleged security forces personnel are continuing.

Political Situation

Despite numerous political challenges from the opposition and a defeat in the senatorial elections of 2007, President Gloria Macapagal-Arroyo could repel political challenges to her presidency in 2008. One of the main obstacles in the fulfilment of basic rights in the Philippines is corruption. Family members of the President, particularly First Gentlemen Mike Arroyo have allegedly been involved in various corruption scandals, such as the National Broadband Network (NBN) deal in 2007/08. A report by the Integrity Vice President (IVP) unit of the World Bank in January 2009 stated that "money would have to be paid as high up as the president, senior government officials and politicians in order to do any further business in the country."¹ Moreover, on 25 October 2007 President Arroyo pardoned former President Joseph Estrada, who had been previously convicted of plunder and facing a life sentence. This was seen as a political accommodation in the light of widespread opposition against Arroyo due to various corruption scandals.²

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

¹ Newsbreak, "WB witnesses link FG to bid rigging", 3.2.2009

² A list of alleged corruption cases involving the Arroyo administration can be found here:
<http://arroyocorruption.pbwiki.com>

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Harassment charges are widespread and also used as a means of repression against land reform or political activists. Often, the victims lack access and means to justice and are victimized by the law. A general erosion of respect for the law and the failure of the state to identify, bring to trial and sentence human rights violators continues to determine the human rights situation. This climate of impunity has over the past two years been well documented by investigations of local NGOs, such as the Philippine Alliance of Human Rights Advocates (PAHRA), Karapatan, Partnership for Agrarian Reform and Rural Development Services, Inc. (PARRDS), Citizen's Council for Human Rights (CCHR), international organisations such as Amnesty International, Human Rights Watch as well as the UN Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions, Prof. Philip Alston, as well as Prof. Rodolfo Stavenhagen, UN Special Rapporteur on Indigenous Peoples.

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

Universal Periodic Review (UPR)

While the Philippine Government put a lot of effort into a positive presentation of the human rights situation during the UPR at the UN Human Rights Council in March/April 2008, its report remained largely silent on the most pressing issues. While some improvements to the normative environment of human rights legislation have been initiated by the executive department, the real problem – the lack of implementation of existing laws and the climate of impunity – is still rampant. One commitment during the UPR was the ratification of the Optional Protocol on the Convention Against Torture (OPCAT). The ratification process is, however, pending in the Senate's Foreign Relations Committee and there are allegations that it is being blocked by allies of the administration. In September 2008 Executive Secretary Eduardo R. Ermita proposed a deferment of the ratification of 3 to 5 years. Other commitments with regards to the issues of impunity, political killings and enforced disappearances were formulated in vague diplomatic language.

Mindanao

The peace process in Mindanao has broken down after the *Memorandum of Agreement on Ancestral Domain (MOA-AD)* could not be signed following a temporary restraining order and a later ruling of unconstitutionality of the Supreme Court in August 2008. In reaction, fighting between two of 17 regional commands of the Moro Islamic Liberation Front (MILF) and the military had broken out. In the following weeks nearly 400,000 people had to evacuate their homes. It is clear, that the Philippine government does not have the political clout or will to push for a political resolution of the conflict at the moment. A paradigm shift away from the points of agreement within the MOA-AD towards a community-based approach to conflict resolution has moreover alienated the MILF leadership from the peace process and eroded confidence of the civilian population in the affected areas in Mindanao, that the Philippine government is sincere in its peace-building efforts.

Extrajudicial Executions and Enforced Disappearances

The number of extrajudicial executions has gone down in 2008. According to the NGO Karapatan 50 extrajudicial executions have been committed between January and October 2008 and 977 between January 2001 and October 2008. The number of politically motivated killings involving security personnel is, however, highly contested. The Philippine Daily Inquirer documented 306 killings of political activists and 63 journalists between January 2001 and January 2009.³ The police unit Task Force Usig, created in 2006 to investigate political killings, discarded all but 116 "valid" cases of killed political activists and journalists by 30 August 2007.⁴

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

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

Armed opposition groups are also responsible for severe and widespread human rights abuses. The Maoist rebel group New People's Army (NPA) in July 2008 admitted the killing of Junrey Pagaspas and

³ PDI, US envoy urges RP: Punish rights abusers, 27.1.2009

⁴ Task Force Usig Accomplishment Report, 30 August 2007

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

More than 1300 killings allegedly perpetrated by NPA forces has been filed at the Joint-Monitoring Committee documenting human rights violations by the military and the NPA. However, despite numerous requests for substantiating documentation, hardly any was provided: Observers allege a political nature behind the list, since nearly 90% of its cases were filed by the military on a single day in late 2006. It is important to point out, that apart from the military, police and government officials no human rights organisation draws a connection between the upsurge of killings in 2005 and 2006 and a supposed internal purge within the left.

In June 2007, three anonymous generals reported about a top-level military conference in Luzon in 2005, during which extrajudicial executions were openly discussed as a response to the communist insurgency. Press Secretary Ignacio Bunye as well as Secretary Norberto Gonzales dismissed the reports as "unverifiable" and chose not to comment on anonymous an unverifiable information.⁵

Extrajudicial executions of local urban poor alleged criminals have become commonplace in at least two major cities: Cebu and Davao City. Davao is notorious for the Davao Death Squad (DDS) - between 1998 and May 2008 there were 671 extrajudicial executions in Davao. The victims are often petty criminals and urban poor street youths. During the 2004 local elections Mayor Duterte stated that the number of extrajudicial executions in response to crime will double if he is re-elected. He is hence seen as the main culprit behind the DDS. In March 2008 he was seen presenting a suspect on local TV, asking "I think I've seen you before, why is this fellow *still alive?*"⁶ In December 2004 Cebu Mayor Osmena formed the Hunter Team – a special force of 16 snipers who are paid by the number of crimes they allegedly prevented. The Mayors Duterte and Osmena are staunch supporters of President Arroyo and the government has not yet opposed the DDS and the Hunter Team.

Anti-Terrorism Legislation and Human Rights

Security policies and infringements on civil rights in the face of political crisis are often portrayed as a contribution to the global war against terrorism. However, Philippine human rights organisations are convinced that the so called "war against terrorism" is used as a pretext to suppress peaceful opposition or influence the discourse on civil unrest.

The Human Security Act of 2007, an anti-terrorism law that became effective on 15 July 2007, poses a serious threat to existing human rights legislation. According to the NGO Free Legal Assistance Group (FLAG), "the Human Security Act (HSA) is one of the most incoherent, disorganized and disjointed laws our Congress has ever passed. (...) The law has no discernible structure, no headings or subheadings, and no groupings of sections. Provisions follow one another without logical connection (...)." ⁷ In the light of the climate of impunity regarding prosecution of security forces involved in human rights violations, NGOs fear the law will serve as a pretext to justify the criminalization of political dissent.

Enforced disappearances

Leftist activists "disappeared" as a matter of routine under the government of President Marcos, who was overthrown in 1986 and began to decline in the early 1990s. They are still reported in the course of anti-insurgency operations against the armed wing of the legal Communist Party of the Philippines (CPP), the New People's Army (NPA). More than 2,000 people still remain "disappeared". According to Karapatan, the numbers of "disappearances" has increased during the Arroyo administration: from 8 in 2001 to 105 in 2006 and 44 in 2007. Disappearances have contributed to the erosion of the peace process with the NPA over recent years. In August 2007, the farmers Raymond and Reynaldo Manalo surfaced and alleged that they were forcibly abducted by unidentified armed men on February 14, 2007 in San Ildefonso, Bulacan and tortured and subjected to inhuman treatment during their 18-month old captivity. They also alleged, that General Jovito Palparan had questioned them during their captivity.

On 24 October 2007 the Writ of Amparo took effect. This writ was issued by the Supreme Court and it is a remedy available to any person whose right to life, liberty and security is violated or threatened by a public

⁵ Philippine Daily Inquirer, Palace rejects 'unverifiable information' on killings, 25 June 2007

⁶ Asian Human Rights Commission, Philippines: Restoring Law and Order in a Lawless Environment, AHRC-STM-069-2008

⁷ Philippine Daily Inquirer, FQA on the Human Security Act, 15 July 2007.

official. The writ has had several initial successes, in which people were surfaced or protected⁸. However, there have also been reports that the writ has been used against the human rights organisation Karapatan by the military.

Torture

Torture in police custody is often experienced. The human rights NGO Task Force Detainees of the Philippines (TFDP) alone documented 12 cases of torture with 16 victims in 2008. Most of these cases were perpetrated by the Philippine army. Amnesty International reports widespread use of harassments, beatings, sexual abuse and torture in custody in their 2003 report "Philippines: Torture Persists: Appearance and Reality within the Criminal Justice System" (AI Index: ASA 35/001/2003). While formally prohibited by law, torture during interrogation is not prevented, due to a lack of official investigation of allegations and cases of torture and due to weak institutional control mechanisms.

On 16 September 2008 a composite team from the Commission on Human Rights (CHR) of the Philippines was denied its constitutional visiting rights at Fort Bonifacio. Apparently there had been a written order preventing the CHR to enforce its visiting powers. This incident is clearly incompatible with the military's assertion to cooperate with the CHR.

Also, the Philippine government committed to the ratification of the Optional Protocol on the Convention Against Torture during the UPR in April 2008. The document has been signed by the president but its ratification is delayed in the Senate Committee on Foreign Affairs. There are allegations by TFDP, that the foreign ministry is pressuring the committee to stall the ratification.

Violence against women

In January 2004, the Philippine Congress enacted legislation criminalizing acts of violence against women and their children within intimate relationships (Anti-Domestic Violence against Women and their Children Act, 2004). Despite this achievement, incidents of domestic violence remain endemic. On average, six out of ten women from poor communities experience domestic violence. Women's groups in the Philippines continue to campaign for the effective implementation of anti-domestic-violence legislation through adequately financed government monitoring programmes and training. One of these groups is the "Legal Alternatives for Women Center, Inc.", based in Cebu City. Doing this work, Law Inc. members risk their life. One of their woman lawyers, Atty. Arbeit Sta. Ana-Yongco, was killed in the morning of 11 October 2004 inside her law office, situated in her own residence. She was shot at close range by a gunman: two shots into the neck, two shots into her right cheek. The killing looked like an execution. The perpetrator went unpunished. The case was never fully investigated.

From January to October 2007, the Philippine National Police (PNP) documented a total of 4,687 cases of violence against women. Physical injuries and/or wife battering prevail to be the most common form of violence committed against women with 1,498 reported cases. Violation of RA 9262 registered as the highest 1,443 cases, accounting for 30.8% of the total VAW cases. Rape accounts for 14.7% of all registered cases of violence against women.

Prostitution and human trafficking have also increased. Police, instead of protecting the victims, respond with raids, where they primarily arrest the prostitutes - not the traffickers and other criminals. Once in custody, the women are in danger of being victimised again by being raped and tortured. The lower their social status, the more likely the women are to suffer from such human rights violations. (for details see, for example: Amnesty International report "Philippines: Fear, shame and Impunity: Rape and Sexual Abuse of Women in Custody" (AI Index: ASA 35/001/2001). There are reports of widespread use of harassments, beatings, sexual abuse and rape of prisoners, in particular women, in custody. While formally protected by the law, a lack of official investigation and weak institutional control mechanisms fail to prevent torture during interrogation.

Investment Policies

Human rights violations are also connected to foreign direct investments and private national investments. Workers rights within export-processing or special industrial zones are often violated and local small-scale farmers get expelled from the territory of such zones without compensation. Agricultural lands owned by the land-owning elite are often considered fenced-in patches of impunity: On entering the hacienda, national law becomes secondary to the landowner's hacienda law.

The implementation of the Comprehensive Agrarian Reform Programme (CARP) has hence met with the violent resistance of large-scale landowners. Human rights abuses in the land reform area particularly Negros island, but also in other parts of the Philippines, such as Bondoc Peninsula, include harassments,

⁸ As examples serve here the cases of Ruel Munasque or the Manalo Brothers.

murder and deceptive legal cases filed against harvesting peasants by goons of large-scale landowners, as documented by NGOs such as the PEACE Foundation, PARRDS or Katarungan. On December 17 Congress voted for an extension of CARP but with the exclusion of compulsory acquisition. Observers from the land reform movements have criticised, that without compulsory acquisition CARP is practically dead.

Particularly regarding the mining sector there is great cause for concern regarding the effects of foreign direct investments into mining projects in culturally or environmentally volatile areas. Since the presidency of Arroyo, progressive human rights legislation such as the Indigenous People's Rights Act (IPRA) or CARL has been overruled in favour of foreign direct investments and individual interests. Multiple human rights abuses have for example been documented connected to the operations of the Canadian mining company TVI Pacific in Canatuan, Zamboanga del Norte. Whereas IPRA gives indigenous peoples a certain degree of autonomy for their lands, and asks for their prior and informed consent, e.g. to mining operations there, a Supreme Court Ruling of 1 December 2004 contravenes this progressive legislation. It gives business interests priority over indigenous rights, if such business interests are declared to be "in the national interest". Together with an executive order (EO 270) that promotes mining all over the Philippines, the consequences for the human rights of indigenous peoples – on whose land the majority of mining operations are – are disastrous. Moreover, on 8 February 2008 President Arroyo unveiled the creation of an Investment Defense Force (IDF) acting as "protective shield" to power and mineral assets such as transmission lines and mining companies.

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

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

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

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