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INTRODUCTION

Amnesty International is submitting this briefing to the Human Rights Committee (the Committee) ahead of its examination of the Philippines' fourth periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR). The submission highlights Amnesty International's concerns in the Philippines in relation to a number of questions on the Committee's List of Issues to be taken up in connection with its consideration of the state report.¹

Amnesty International is concerned about the lack of implementation of the Anti-Torture Act of 2009, the continuing practice or complicity in torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) by members and auxiliaries of both the military and the police, as well as the failure of the authorities to investigate such acts, bring those responsible to justice, and ensure reparations for survivors.

State agents also continue to be implicated in extrajudicial executions and enforced disappearances while hundreds of cases of extrajudicial executions and enforced disappearances from the last decade remain unresolved. Furthermore, the organization is concerned that despite commitments to protect women's rights and improve maternal health, abortion remains criminalized without exceptions, including where the pregnancy puts a woman's life at risk.

A second national human rights action plan, promised in 2008, has yet to materialize. This has meant that implementation of many human rights reforms were reactive in nature and lacked inter-agency coordination.

Further details on these concerns can be found in the following Amnesty International publications:

- *Philippines: Impunity for torture, unlawful killings and enforced disappearances - Amnesty International Submission to the UN Universal Periodic Review, May-June 2012*, AI Index: ASA 35/007/2011, 28 November 2011, <http://www.amnesty.org/en/library/info/ASA35/007/2011/en>.
- *Progress, Stagnation, Regression? The state of human rights in the Philippines under Aquino*, AI Index: ASA 35/002/2011, 30 June 2011, <http://www.amnesty.org/en/library/info/ASA35/002/2011>.
- *Philippines: Shattered lives: Beyond the 2008-2009 Mindanao armed conflict*, AI Index 35/003/2009, 25 August 2009, <http://www.amnesty.org/en/library/info/ASA35/003/2009>.

¹ The List of Issues to be taken up in connection with the consideration of the fourth periodic report of the Philippines (CCPR/C/PHL/4) is available at the following link <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.PHL.Q.4.pdf>. The Philippine's fourth periodic report on the implementation of the ICCPR can be accessed at: http://www2.ohchr.org/english/bodies/hrc/docss/CCPR.C.PHL.4_en.doc.

CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ART. 2)

CONCERNING QUESTION 3 IN THE LIST OF ISSUES - ON THE MANDATE FOR THE COMMISSION ON HUMAN RIGHTS IN THE PHILIPPINES

The Commission on Human Rights of the Philippines (CHR) was given additional substantive roles under the newly enacted 2009 Magna Carta of Women, the Anti-Torture Act of 2009 and the Philippine Act on Crimes Against International Humanitarian Law of 2009. The Commission has proposed to lead the National Preventive Mechanism for torture (which has not yet been established), and has been tasked to lead in the National Monitoring Mechanism for human rights violations which will review all pending cases of extrajudicial executions, enforced disappearances and torture, and recommend ways to expedite the resolution of such cases of human rights violations.²

Despite these additional monitoring and investigative roles, the CHR continues to operate without significantly larger resources to match its additional functions³ and without full fiscal autonomy from the government. Its independence as an institution is further weakened by its lack of power to determine its internal organizational structure. A law which would strengthen its protection capacity, including through subpoena powers, clarify its fiscal independence, and mandate it with the power to create or collapse offices in order to meet human rights needs could strengthen the CHR.

The Commission on Human Rights Charter (Senate Bill no. 2818),⁴ which would strengthen the functional and structural organization of the CHR, and provide it with a prosecutorial mandate, is currently pending second reading at the Senate. The House of Representatives is similarly working towards passing a consolidated bill that aims at transforming the CHR into an “independent constitutional office not subject to instructions or orders from the President, Congress, or Judiciary....”⁵ The proposed House of Representatives bill seeks to provide fiscal

² Draft Report of the Working Group on the Universal Periodic Review on the Philippines, A/HRC/WG.6/13/L.10, paragraphs 83 and 84. See: http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_13_l.10_philippines.pdf. Last accessed 8 September 2012.

³ Based on an Amnesty International interview with confidential source, September 2012, and figures from the Department of Budget, the CHR was allocated 266.9 million Philippine pesos (approximately US\$5.93 million) in 2011; Php273.1 million in 2012 (approximately US\$6 million); and has an allocation of Php318.9 million (approximately US\$7 million) in the proposed national budget for 2013. See General Appropriations Act of 2011 at <http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2011/CHR/CHR.pdf>; General Appropriations Act of 2012 at <http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2012/CHR/CHR.pdf>; and proposed 2013 Budget at <http://budgetngbayan.com/summary-of-allocations/#dept>.

⁴ Senate Bill no. 2818, “An Act Strengthening the Functional and Structural Organization of the Commission on Human Rights, and for other Purposes”.

⁵ “House fasttracks CHR autonomy bill”, www.tempo.com, 26 June 2012. <http://www.tempo.com.ph/2012/house-fasttracks-chr-autonomy-bill/>. Last accessed 8 September 2012.

autonomy and prosecutorial powers for the CHR. While the CHR has repeatedly called for their Charter to become a priority bill in Congress, it has opposed some of its proposed components. For example, the CHR is concerned that without corresponding resources, additional functions mandated in the new and proposed laws would spread the Commission thin, overburden it and impair its effectiveness.⁶

Amnesty International is concerned that while the desire of the state to work with the CHR on priority human rights concerns is a positive development, without full fiscal autonomy and adequate human and financial resources commensurate to the CHR's additional roles and functions, the effectiveness and efficiency of the Commission risk being impaired. The Paris Principles state that "the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subjected to financial control which might affect its independence".⁷

CONCERNING QUESTION 3 IN THE LIST OF ISSUES - ON THE ESTABLISHMENT OF A COMMISSION ON HUMAN RIGHTS OFFICE IN THE AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM)

Widespread human rights abuses from both parties to the armed conflict in Mindanao have prompted various non-governmental organizations, including Amnesty International, to repeatedly call for a Commission of Human Rights presence in the conflict-prone areas.⁸

In its 2009 report "Shattered Lives: Beyond the 2008-2009 Mindanao Armed Conflict", Amnesty International identified among the challenges in human rights monitoring in the conflict-affected areas of Mindanao, the absence of a well-resourced CHR office in the Autonomous Region in Muslim Mindanao (ARMM).

⁶ Commission on Human Rights of the Philippines' Submission to the Universal Periodic Review, June 2012. See: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/CHRP_UPR_PHL_S13_2012_CommissiononHumanRightsofthePhilippines_E.pdf. Last accessed 8 September 2012.

⁷ Paris Principles section on Composition and guarantees of independence and pluralism, paragraph 2, See: <http://www2.ohchr.org/english/law/parisprinciples.htm>. Last accessed 8 September 2012.

⁸ Between 2008 and 2009, armed conflict between the Philippine army and the Moro Islamic Liberation Front intensified, leaving as many as 700,000 people displaced. For details of some of the human rights abuses committed by both the Philippine army and the Moro Islamic Liberation Front against villagers in the context of the armed conflict and the desperate conditions of hundreds of thousands of civilians that lived in crowded camps with limited access to food and livelihoods, see the two Amnesty International reports *Shattered Peace in Mindanao: The Human Cost of Conflict in the Philippines*, AI Index: ASA 35/008/2008, 29 October 2008, <http://www.amnesty.org/en/library/info/ASA35/008/2008/en>, and *Shattered Lives: Beyond the 2008-2009 Mindanao Armed Conflict*, AI Index: ASA 35/003/2009, 25 August 2009, <http://www.amnesty.org/en/library/info/ASA35/003/2009>.

In May 2012, the office of the Commission on Human Rights for ARMM was established in Cotabato City, Mindanao—22 years after the creation of the autonomous region. While the newly opened office is considered a field office of the national Commission on Human Rights, officers of the CHR in the autonomous region will work closely with the Office of the Regional Governor and the inter-agency Regional Peace and Order Council,⁹ which is mandated to take the lead in peace and development programs in the ARMM.¹⁰ The new CHR regional office is due to monitor, investigate and report on human rights abuses in Maguindanao, Lanao del Sur, Basilan, Sulu and Tawi-tawi provinces; all of them except the latter, have historically been prone to intermittent armed conflict. With this setup, it is not clear what level of authority, if any, the Office of the Regional Governor of ARMM will have over the Commission on Human Rights in the autonomous region.

Amnesty International reiterates that it is critical that the CHR in the ARMM is able to operate independently and impartially from local chief executives, including from officials from the regional government, or influential non-state actors in the region, such as the Moro Islamic Liberation Front (MILF), particularly as human rights abuses in the region have been reported as perpetrated by MILF combatants, politicians and their private armed groups, members of the military and police and their auxiliaries.

To strengthen the CHR, Amnesty International recommends that the Philippine authorities:

- **enact within the 15th Congress, which adjourns mid-2013, a law which would strengthen the Commission on Human Rights' protection capacity, including through subpoena powers, clarify its fiscal independence and mandate it with the power to determine its internal organizational structure;**
- **provide adequate resources, and subsequently powers, to the CHR to enable it to carry out its additional substantive roles in the National Monitoring Mechanism, National Preventive Mechanism and under newly promulgated laws such as the Magna Carta of Women, Anti-Torture Act and the Philippine Act on Crimes Against International Humanitarian Law; and**
- **ensure that the Commission of Human Rights office in the ARMM can operate independently and conduct impartial investigations on all reports of human rights abuse committed by both state and non-state actors in the context of the armed conflict as well as other human rights work.**

⁹ "First human rights office in ARMM launched", John Unson, www.philstar.com, 3 May 2012. See <http://www.philstar.com/nation/article.aspx?publicationscategoryid=200&articleid=803226>. Last accessed 8 September 2012.

¹⁰ Executive Order 15 provides for the newly amended mandate for the ARMM Regional Peace and Order Council. See: <http://www.armm.gov.ph/wp-content/uploads/2012/06/Executive-Order-15-Series-of-2012.pdf>. Last accessed 8 September 2012.

NON-DISCRIMINATION, EQUALITY BETWEEN WOMEN AND MEN (ARTS. 2, PARA 1, 3 AND 26)

CONCERNING QUESTION 7 IN THE LIST OF ISSUES - ON THE MAGNA CARTA OF WOMEN

On 14 August 2009, the Republic Act 9710, or the Magna Carta of Women was signed into law. The Magna Carta of Women declares that the state will develop plans, policies, programs, measures and mechanisms that will address discrimination and inequality between men and women in the economic, political, social and cultural spheres.¹¹

Amnesty International welcomes, among other things, the promotion of equitable representation of women, particularly in decision-making and policy-making processes through the Magna Carta of Women. For example, the Magna Carta of women instructs a 50-50 gender balance in “third level” positions in government by 2014 or within five years of enacting the law; and that 40 percent of members of all development councils shall be comprised of women.¹² The Magna Carta of Women prohibits discrimination in education and outlaws expulsion or non-readmission of unmarried female students or women faculty who are or become pregnant.¹³ It also promotes equal representation in sports and prohibits discrimination against women in the military.¹⁴ However, violations of these provisions have no clear sanctions.

The Magna Carta of Women also addresses women’s right to health, stating that “the State shall, at all times, provide for comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman’s life cycle and which addresses the major causes of women’s mortality and morbidity”.¹⁵ It includes a caveat that “in providing for comprehensive health services, due respect shall be accorded to women’s religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood”.¹⁶ Amnesty International is concerned that this provision is phrased in a manner that might be interpreted to give one spouse (usually a male partner) the ability to veto the health decisions of another (usually a female partner). Treaty monitoring bodies have been clear that decisions about health—including reproductive and sexual health—belong to the individual without interference from third parties and without discrimination of any kind including as regards marital status.

The Magna Carta of Women also provides for prevention and management of reproductive tract infections, including sexually transmitted diseases, HIV and AIDS; prevention and

¹¹ For a copy of the text of the law, see: http://www.congress.gov.ph/download/billtext_14/hbt04273.pdf.

¹² Section 11, Magna Carta of Women.

¹³ Section 13, Magna Carta of Women.

¹⁴ Section 14, 16, 15 Magna Carta of Women.

¹⁵ Section 17, Magna Carta of Women.

¹⁶ Ibid.

management of reproductive tract cancers; comprehensive health services for victims and survivors of violence against women and children; and management of pregnancy-related complications and prevention of abortion (see discussion on maternal health and the absolute ban on abortions in more detail below on the Right to Life section, page 22).¹⁷

On 30 March 2010, the government promulgated the Implementing Rules and Regulations (IRR) of the Magna Carta of Women, in order to facilitate compliance with this law and achieve its objectives. Among the more salient provisions is a list of laws that are discriminatory to women which the state must review, amend or repeal within three years from the Act entering into effect,¹⁸ or by August 2012.

Included in the list of laws that are discriminatory to women are provisions in the Family Code of the Philippines: on giving preference to the father's opinion over the mother's with respect to giving consent to the marriage of their son or daughter aged 18 to 21;¹⁹ on the requirement for physical abuse and grossly abusive conduct to be repeated to constitute a ground for legal separation;²⁰ as well as the provisions giving preference, in cases of disagreement, to the husband's decision over his wife's, in relation to the administration and enjoyment of community and conjugal properties,²¹ over their children,²² and on the exercise of legal guardianship over the property of their children under the age of 18.²³ The Magna Carta of Women also identifies four articles from the Revised Penal Code as discriminatory to women which are to be amended or repealed. These include the definition of vagrants and prostitution,²⁴ as well as provisions on adultery²⁵ and concubinage where the wife can be charged with adultery and the husband can be charged with concubinage which is more difficult to prove and has lesser penalties;²⁶ premature marriages where a widow who marries within three hundred and one days from the date of her husband's death may be imprisoned,²⁷ and on death inflicted by a legally married person on his spouse and his

¹⁷ Ibid.

¹⁸ Section 15 of the Implementing Rules and Regulations of the Magna Carta of Women.

¹⁹ Article 14, Family Code of the Philippines.

²⁰ Article 55, Family Code of the Philippines.

²¹ Articles 96 and 124, Family Code of the Philippines.

²² Article 211, Family Code of the Philippines.

²³ Article 225, Family Code of the Philippines.

²⁴ Article 202, Revised Penal Code.

²⁵ Article 333, Revised Penal Code states "Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void. Adultery shall be punished by prison correccional in its medium and maximum periods".

²⁶ Article 334, Revised Penal Code states "Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prison correccional in its minimum and medium periods. The concubine shall suffer the penalty of destierro".

²⁷ Article 351, Revised Penal Code states "Any widow who shall marry within three hundred and one day from the date of the death of her husband, or before having delivered if she shall have been pregnant at

spouse's sexual partner.²⁸ The Magna Carta of Women also directs the state to review Republic Act 8353, which provides that criminal liability of a rapist can be removed if the victim marries him or her.²⁹

Amnesty International welcomed the enactment of the Magna Carta of Women as a positive step towards a comprehensive framework to promote and protect women's human rights. However, as is the case with many laws in the Philippines, the crux is on implementation. None of the abovementioned law provisions which the IRR identifies as being discriminatory to women have been amended or repealed as of September 2012.

On the contrary, in April 2012, Congress enacted Republic Act 10158, a law which de-criminalized almost all forms of "vagrancy" in the Philippines,³⁰ except for prostitution, holding only female sex workers or "prostituted women"³¹ criminally liable, with a penalty of fine and imprisonment of up to 30 days for the first offence and up to six years for repeat offences. The law de-criminalizes all vagrants, including "any idle or dissolute person who lingers in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes",³² but continued to criminalize "prostitutes", which the Penal Code defines as "women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct".³³

Amnesty International shares the concern of women's groups who criticized this law, asserting that the continued criminalization of sex workers contributes to a situation where female sex workers or "prostituted women" are vulnerable to police extortion, abuse, and other human rights violations. As this law has a disproportionate effect on women and non-

the time of his death, shall be punished by *arresto mayor* and a fine not exceeding 500 pesos. The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one day after the legal separation".

²⁸ Article 247, Revised Penal Code states "Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*. If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment...".

²⁹ For a full text of Republic Act 8353, see: <http://www.chanrobles.com/republicactno8353.htm>.

³⁰ Republic Act no. 10158, or An Act Decriminalizing Vagrancy. See: <http://attymanueljasernajr.blogspot.co.uk/2012/04/republic-act-no-10158-amends-art-202.html>.

³¹ In the Philippines, there is a dichotomy among women's rights organizations in between using the terms "sex workers" and "prostituted women" to refer to women engaged in prostitution. According to some of the women interviewed by Amnesty International in the Philippines, the term "prostituted women" is more appropriate in describing them, as they see themselves as victims of abuse and lack of other viable employment options because of poverty.

³² Article 202, paragraph 2, Revised Penal Code. See: http://philippinelaw.info/revised-penal-code/article-202_vagrants-and-prostitutes-penalty.html.

³³ *Ibid.*

gender conforming individuals (who form the bulk of sex workers), they also constitute a form of gender discrimination that runs counter to international human rights law and to the Magna Carta of Women.³⁴ The organization believes that the criminalization of sex workers contravenes the Philippines' obligations under Articles 2(1) and 3 of the Covenant.

Amnesty International recommends that the Philippine authorities:

- ensure that existing laws that are discriminatory to women, as detailed in the **Implementing Rules and Regulations (IRR) of the Magna Carta of Women, are amended or repealed without further delay; and**
- ensure that sex work is no longer criminalized, and that sex workers are duly protected in law and practice, and are not subjected to police extortion, abuse and other human rights violations.

RIGHT TO LIFE (ART. 6)

CONCERNING QUESTION 9 IN THE LIST OF ISSUES - ON THE WIDESPREAD PHENOMENON OF EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCE

Amnesty International continues to receive reports of politically motivated killings, enforced disappearances and torture, while hundreds of cases of past human rights violations await effective investigation and prosecution. Some progress has been made in investigating and prosecuting a handful of highly publicized human rights cases, while the majority of past human rights violations from the last decade stagnated due to ineffective investigations, lack of evidence or witness testimonies, and delays in court. The pace of investigations, prosecutions and trials of persons suspected of perpetrating crimes involving human rights violations has either been very slow or has stalled. Many cases of alleged human rights abuses have never been brought to court. Consequently, the perpetrators have not been brought to justice and almost none of the victims' families or the victims themselves have received reparations. The climate of impunity in the Philippines persists.³⁵

Unlawful killings are still being carried out in areas of armed conflict. Political,

³⁴ Statement by Gabriela Women's Party, 10 April 2012. See: <http://tuklasinnatin.com/2012/president-aquino-crucified-women-by-signing-anti-vagrancy-law-amendment-ra-10158-%E2%80%93-gwp-rep-emmi-de-jesus/>. Last accessed 8 September 2012.

³⁵ In his report on the follow-up to the 2007 visit to the Philippines, the Special Rapporteur on extrajudicial, summary or arbitrary executions already expressed concern about widespread impunity for unlawful killings. Many of the recommendations he had made to the government at that time have still not been fully implemented today. See Special Rapporteur on extrajudicial, summary or arbitrary executions, Follow-up to country recommendations – Philippines, UN Doc. A/HRC/11/2/Add.8, 29 April 2009, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.8.pdf>; and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, MISSION TO PHILIPPINES, UN Doc. A/HRC/8/3/Add.2, 16 April 2008, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/8/3/Add.2.

environmental and anti-mining activists, union leaders and local journalists have been at particular risk in many areas throughout the country, and hundreds appear to have been victim of politically motivated killings in the last decade. The modus operandi for such killings largely remains shooting by unidentified gunmen on motorcycles. But unlawful killings of suspected members of armed groups, and suspects in common crimes also involve instances of enforced disappearance, extrajudicial executions and torture.

Amnesty International documented several such cases of possible politically motivated killings, including the following ones:

In June 2010, agents of the National Bureau of Investigation (NBI) in Sarangani province, Mindanao region, arrested **Sumar Abdulwahab**, a former member of the Moro Islamic Liberation Front (MILF). A witness described Sumar being apprehended by NBI agents in four vehicles. They handcuffed him and showed him a warrant of arrest. When Sumar's family tried to visit him two days later, NBI personnel told them that he had escaped. The family did not have any further information on him until they heard a news report on the radio of a man's remains found inside a large industrial drum in Davao del Sur, also in the Mindanao region. His family came to check whether these were Sumar's remains. At a funeral parlour they identified him through clothes which he had worn on the day of his arrest and a picture of his child found in his pocket. Sumar's body, though already in a state of decomposition, was encased in cement, with his hands tied with a nylon wire and his teeth extracted. A post-mortem report showed that he had a 5.2cm wound at the back of his ear, a contusion on his right cheek and a skull fracture.³⁶

In September 2012, Indigenous leader of the Subanen tribe and anti-mining activist **Timuay Lucenio Manda** was bringing his 11-year old son Jordan to school when five to eight unidentified armed men fired at them. Timuay Manda, a member of Amnesty International, suffered injuries, and his son was killed in the ambush. Timuay Manda believes that the attack might be related to his campaign for a moratorium on mining concessions in their ancestral domain. Timuay Manda was among those that had advocated to protect the Pinukis Forest, which was reportedly among the last remaining forested areas in Zamboanga, but was included in the mining claims of a number of mining companies. Four days after the attack and with the help of witnesses, two of the suspects were apprehended by the police.³⁷ Amnesty International has called for an effective investigation to ensure justice for this killing.

The Commission on Human Rights reported a decrease in the number of unlawful killings and enforced disappearance in 2011, comparing it to their figures from 2010. The Commission received 385 complaints of extrajudicial executions in 2011, with 589 victims; 78 complaints of enforced disappearances with 210 victims from 2001 to the first half of 2010.³⁸ The CHR reported in 2011 that it had received 263 complaints in 2010 in which the respondents are either members of the police or the military.³⁹ No other disaggregated

³⁶ *Philippines: Progress, Stagnation, Regression? The state of human rights in the Philippines under Aquino*, AI Index: ASA 35/002/2011, 30 June 2011.

³⁷ "2 suspects arrested for the ambush of Subanen chieftain" by Tito Fiel, *Inquirer.net*, 8 September 2012. See: <http://newsinfo.inquirer.net/266490/2-suspects-arrested-in-ambush-of-subanen-chieftain>. Last accessed 8 September 2012.

³⁸ Commission on Human Rights of the Philippines' Submission to the Universal Periodic Review, June 2012.

³⁹ Commission on Human Rights data from its Information Systems Management Office.

data was available from the national human rights institution, and statistics from national non-governmental organizations (NGOs) are much higher.

Amnesty International obtained summary tabulations of extrajudicial executions “validated” by Task Force *Usig* (TFU), which is under the Philippine Police. Task Force *Usig*'s data includes a limited number of cases compared to reports by non-governmental organizations and the CHR. TFU's statistics only include incidents of killings of political activists and media workers that, after their investigations, have been concluded to be perpetrated for motives other than suppression of political beliefs or freedom of expression. Based on TFU's data, in the six verified cases of extrajudicial executions or killings⁴⁰ that took place in 2007, four were still undergoing investigation and two were under prosecution. TFU has identified one of the cases to have a perpetrator who is a member of the state's security forces. In 2008, TFU verified seven cases, of which three were still under investigation, one was in the preliminary investigation stage, and three were under prosecution, including one case where the suspected perpetrator is a state agent.

In 2009, TFU verified nine cases of extrajudicial executions or killings. Three of these cases were undergoing investigation, one was still undergoing preliminary investigation, and four were under prosecution. A state agent has been identified as the suspected perpetrator in one of the cases undergoing prosecution. One case was marked “resolved”. It is important to note that in the only “resolved” case, the suspected perpetrator died, resulting in the termination of the criminal proceedings. Also, it is worth noting that it was in 2009 when 57 people, including 32 media workers and journalists, were ambushed and killed in Maguindanao province. While the TFU presented both killings of political activists and media workers in its tabulation, it appears that it did not include the Maguindanao massacre.

In 2010, TFU verified five cases, of which one was undergoing investigation, three were under prosecution, and one was marked “resolved” due to the death of the suspected perpetrator. One of the three cases undergoing prosecution identified a state agent/s as its suspected perpetrator/s. TFU verified four cases of extrajudicial executions or killings in 2011, with three undergoing investigation, and one undergoing preliminary investigation. Two of the 2011 cases identified state agents as the suspected perpetrators.

In summary, while the number of suspected extrajudicial executions or killings and enforced disappearances verified by the TFU decreased since 2010, and there were some efforts to investigate and prosecute some of these crimes, impunity persists. Apart from the two cases where the suspected perpetrator has died, based on Task Force *Usig*'s data, Amnesty International is not aware of any perpetrator who has been convicted for crimes which involved extrajudicial execution, political killing including by non-state actors or enforced disappearance between 2007 and 2011.

The CHR stated in its June 2012 submission to the UN Human Rights Council for the Universal Periodic Review (UPR) that “currently there is no focal institution in the executive branch to coordinate/ oversee a strategic approach to reduce or eliminate torture and

⁴⁰ The statistics obtained by Amnesty International refer to “EJK”, Extra-Judicial Killings, which could refer to killings by both state and non state actors.

extrajudicial killings.”⁴¹ The Justice Secretary, formerly the Chairperson of the CHR, established a number of task forces and panels to investigate or re-open high profile cases, including those that involved “political violence” and violations of human rights. During the UPR, the Philippine government has reported that it established a multi-stakeholder National Monitoring Mechanism for extrajudicial executions, enforced disappearances and torture, but NGOs and government officials involved in this mechanism told Amnesty International in May 2012 that the NMM has not been operational and there are no indications as to how it will progress or take shape.

A truth commission was established by the President as his first executive order in July 2010. However, it was given no mandate to address human rights violations. Instead, the Truth Commission was solely tasked to investigate graft and corruption allegations against associates of former President Arroyo. In December 2010, the Supreme Court declared the Truth Commission unconstitutional as it violated the equal protection clause by singling out certain individuals.⁴²

The 2007 Administrative Order (no. 181) directs the National Prosecution Service of the Department of Justice (DOJ) to work closely with the Police and the National Bureau of Investigation (NBI) “from the beginning of a criminal investigation until the termination of the case in court” and directs the Police and the NBI to cooperate with DOJ’s prosecutors, including “consulting with public prosecutors at all stages of the criminal investigation” for political and media killings.⁴³ Despite this, and the DOJ designating special prosecutors for cases of extrajudicial executions, so far, there has not been any significant improvement in the investigations, prosecutions and trials.

In June 2012, the European Parliament adopted a resolution on impunity in the Philippines, stating that “extrajudicial killings and enforced disappearances have significantly declined since President Benigno Aquino III took office in 2010, however the government’s ability to effectively combat widespread impunity of the perpetrators of such acts has yet to make progress.”⁴⁴ The resolution also “calls on the government to increase its efforts to shed light on the hundreds of unresolved cases of the past and to bring the perpetrators to justice, including members of the security forces.”⁴⁵

⁴¹ Commission on Human Rights of the Philippines’ Submission to the Universal Periodic Review, June 2012.

⁴² *Progress, Stagnation, Regression? The state of human rights in the Philippines under Aquino*, AI Index: ASA 35/002/2011, 30 June 2011.

⁴³ Administrative Order 181 of 2007, Directing the cooperation and coordination between the National Prosecution Service and other Concerned Agencies of Government for the Successful Investigation and Prosecution of Political and Media Killings. See: <http://www.gov.ph/2007/07/03/administrative-order-no-181-s-2007/>. Last accessed 8 September 2012.

⁴⁴ European Parliament resolution on impunity in the Philippines, B7-0331/2012, 14 June 2012. See: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2012-0331&format=XML&language=EN>. Last accessed 8 September 2012.

⁴⁵ *Ibid.*

Amnesty International recommends that the Philippine authorities:

- **commit to a timetable for resolving all credible allegations of extrajudicial executions, politically motivated killings, and enforced disappearances, including the Maguindanao massacre;**
- **ensure prompt, impartial, independent and effective investigations, and where warranted, prosecutions of suspected perpetrators in fair trials which respect international standards; and**
- **provide sustained protection for witnesses, victims and their families, and reparations for victims and their families.**

CONCERNING QUESTION 9 IN THE LIST OF ISSUES - ON THE ANTI-ENFORCED DISAPPEARANCE BILL

At least twelve people have been forcibly disappeared since June 2010,⁴⁶ although very little reporting has been done in cases when those disappeared were suspected terrorists or criminal suspects or if the victim re-appeared in a detention facility after their enforced disappearance.

Amnesty International has documented several cases of enforced disappearance, including the following ones:

On 3 January 2012, after flying in to the Manila domestic airport terminal from Zamboanga City, **Najir Ahung, Rasbi Kasaran and Yusoph Mohammad** were apprehended allegedly by intelligence agents within the airport. The three men, farmers and a teacher at an Islamic school, were in transit in Manila on their way out of the country to pursue Islamic studies. They never made it to their connecting international flight and have not been seen or heard from since. The only traces of their presence in the airport were their checked-in luggage pieces which were claimed by their families a month after they had disappeared. All three men were residents of Al-Barka municipality in Basilan province, southern Philippines where there is a known camp of the Moro Islamic Liberation Front (MILF) and where in October 2011, army Special Forces and the MILF were reported to have “clashed”, leaving 19 soldiers dead and 11 wounded.⁴⁷ As of September 2012, no suspects have been identified for their enforced disappearance, and neither the airport authorities nor the Department of Transportation responded to the request of the victims’ lawyers for a list of members of state security forces who were on duty at the time of the victims’ disappearance.

In March 2011, almost four years after the enforced disappearance of **Jonas Burgos**, the CHR submitted to the Supreme Court its report naming an army official as Burgos’ principal abductor after a witness positively

⁴⁶ Based on cases documented separately by Amnesty International and the Philippine Alliance for Human Rights Advocates.

⁴⁷ For more details see the Amnesty International Urgent Actions *Philippines: Fear of enforced disappearance of three men*, AI Index: ASA 35/001/2012, 18 January 2012, <http://www.amnesty.org/en/library/info/ASA35/001/2012/en>; and *Philippines: Further information: Missing men believed to be in police custody*, AI Index: ASA 35/002/2012, 30 January 2012, <http://www.amnesty.org/en/library/info/ASA35/002/2012/en>.

identified him. The CHR stated in its report that a member of the Armed Forces was responsible for Burgos' enforced disappearance. Jonas Burgos, an activist and farmer, was abducted by four armed men and a woman in civilian clothes in Quezon City in April 2007. The Supreme Court, in July 2011, unanimously upheld the findings of the CHR, ordered the military to produce Jonas Burgos and the Court of Appeals to re-open the Burgos family's petition for a writ of habeas corpus. The Burgos family concluded their presentation of witnesses and evidences for the habeas corpus petition on April 2012.⁴⁸ They await the Court's ruling on their petition.

In July 2011, the Philippine Senate passed Senate Bill no. 2817⁴⁹ after similar laws it had proposed repeatedly failed to get approved in previous Congresses. The House of Representatives approved a similar proposed law in March 2012, House Bill no. 0098,⁵⁰ adopting the definition of enforced disappearance contained in the International Convention for the Protection of All Persons from Enforced Disappearance but expanding its applicability to cover state and non-state actors.

The current versions of the proposed Anti-Enforced Disappearance Bill, which consolidates the proposals of both the Senate and the House of Representatives, recognizes the nature of enforced disappearance as a continuing crime until the disappeared person's whereabouts are determined and the non-derogability of the right not to be subjected to enforced disappearance. It provides for the fast disposition of legal remedies such as the Writ of Habeas Corpus, Writ of Habeas Data and the Writ of Amparo, and the requirement of immediate compliance with any release order resulting from them. It penalizes the crime of enforced disappearance and provides for sanctions ranging from imprisonment of one month and one day up to life imprisonment. The Bill provides sanctions of preventive suspension or summary dismissal for perpetrators and those complicit in enforced disappearances. It also holds liable commanding officers or equivalent senior officials of the perpetrators who failed to prevent, discontinue or uncover an enforced disappearance. The proposed law reiterates the right to information on the whereabouts of those who are detained, and the right of families, lawyers, judges and other persons or official bodies with legitimate interest, to have access to the detained person in the facility where he or she is being detained. The Anti-Enforced Disappearance Bill provides for compensation, restitution and rehabilitation for victims and their families.⁵¹ Finally, it stipulates that an "Order of Battle", issued by the military, police or other law enforcement agencies or government authorities, is unlawful and cannot be invoked by perpetrators as justifying circumstance.⁵²

The Bill recognizes the interrelation between enforced disappearance and other human rights

⁴⁸ For more details and the timeline of the Jonas Burgos case, see: <http://freejonasburgosmovement.blogspot.co.uk/2012/04/blog-post.html>. Last accessed 8 September 2012.

⁴⁹ The full title is "An Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance".

⁵⁰ The full title is "An Act Defining and Penalizing Enforced or Involuntary Disappearance and for other Purposes".

⁵¹ House Bill no. 0098. See: http://www.congress.gov.ph/download/basic_15/HB00098.pdf. Last accessed 8 September 2012.

⁵² Section 17 of House Bill no. 0098 and Section 5 of Senate Bill no. 2817.

violations such as torture and secret or incommunicado detention. It acknowledges that “most victims of enforced or involuntary disappearance who are still missing are presumed to have been extra-legally killed... yet not a single perpetrator... has been convicted and penalized”.⁵³

The consolidated Bill is currently being studied by a bicameral conference committee to negotiate disagreements between the two versions of the law proposed by the Senate and the House of Representatives. An Anti-Enforced Disappearance Bill has been filed every Congress since the 8th Congress in 1986 but so far it has not been adopted.

Amnesty International recommends that the Philippine authorities ensure that a law criminalizing enforced disappearance be enacted within the 15th Congress, with a view of ratifying the International Convention on the Protection of All Persons from Enforced Disappearance by the 16th Congress.

CONCERNING QUESTION 9 IN THE LIST OF ISSUES - ON UPDATES ON THE MAGUINDANAO MASSACRE

Some unlawful killings have been linked to armed groups whose members are reported to have also been members of government-established militias. The full impact of the government's tacit support for the private armed groups of local politicians became starkly clear on 23 November 2009, when 57 people, including 32 journalists, travelling in an election convoy were massacred in Maguindanao in what has been repeatedly described by media groups as ‘the world's largest ever single attack on journalists’. The alleged primary suspects included state officials, including a regional governor and a provincial governor and their private armed groups. It is further alleged that they acted with the complicity of other government officials, military and police officers.⁵⁴ Government prosecutors have identified 197 people as suspects.

Of these identified suspects, 96 have been apprehended, and 101 remain free, as of the end of August 2012. The police said that in “places where the authorities are seen as enemies”, police struggle to find the suspects who are being hidden by their families and communities.⁵⁵ Of those arrested, 76 suspects are reported to have been charged as of August 2012.⁵⁶

⁵³ House Bill no. 0098. See: http://www.congress.gov.ph/download/basic_15/HB00098.pdf.

⁵⁴ *Philippines: Impunity for torture, unlawful killings and enforced disappearances - Amnesty International Submission to the UN Universal Periodic Review, May-June 2012*, AI Index: ASA 35/007/2011, 28 November 2011.

⁵⁵ “101 Maguindanao massacre suspects remain at large”, DJ Yap, *Philippine Daily Inquirer*, 30 June 2012. See: <http://newsinfo.inquirer.net/220993/101-maguindanao-massacre-suspects-remain-at-large>. Last accessed 8 September 2012.

⁵⁶ Amnesty International interview with a prosecutor in the Maguindanao massacre case, September 2012.

Families of some victims complained of being offered large sums of money from emissaries of the perpetrators in exchange for dropping the court case.⁵⁷ Amnesty International is also concerned that witnesses, prospective state witnesses and their families are at serious risk of intimidation and reprisal.

Suwaib Upham, who was willing to testify as a state witness was killed before he was able to enrol in the government's witness protection program in 2010.⁵⁸ In February 2012, **P02 Hernanie Decipulo**, a police officer who was one of the accused police officers being considered to become a state witness, allegedly committed suicide while in detention. The National Bureau of Investigation has not yet determined if the prospective state witness' death involved any "foul play".⁵⁹ **Alijol Ampatuan**, who according to the prosecutors was one of their undisclosed witnesses who was willing to identify members of the Civilian Volunteer Organisation involved in the massacre, was reported missing until prosecutors established that he was the same man who was shot at close range in February 2012.⁶⁰ In May 2012, **Esmail Amil Enog**, who had testified in court that he had been the driver for gunmen implicated in the massacre, disappeared. His body was found dismembered and "chainsawed" to pieces, approximately two weeks after he went missing. In Enog's testimony in court, he had identified Alijol Ampatuan (who was shot dead in February 2012) to be his boss.⁶¹ Apart from these witnesses, the police also announced that **three relatives of witnesses**, all of whom have not been enrolled in the witness protection program, have also been killed in connection to the Maguindanao massacre case.⁶²

Some witnesses in the Maguindanao massacre were able to secure protection arrangements with the DOJ. A DOJ official said to Amnesty International, "with regard to the Maguindanao Massacre, witnesses who submitted themselves to the Witness Protection Program are provided with security escort and protection services, secure housing facility and reasonable travel expenses and subsistence allowance while acting as a witness...." The official also said that the public prosecutors and investigators are also given security escorts.⁶³

Amnesty International has been in contact with some of the victims' families several times throughout the last three years. They said they were not covered by the government's Witness Protection Program. Even if the "masterminds" of the crime are currently held in police custody, private gun-for-hire men and members of the private armed group of the suspected

⁵⁷ From a letter of some families of the victims of the Maguindanao massacre addressed to UN General Assembly President Nassir Abdulaziz Al-Nasser, September 2012.

⁵⁸ Confidential interview with Amnesty International, September 2012.

⁵⁹ "NBI to probe into death of Maguindanao massacre suspect" by Tetch Torres, Inquirer.net, 7 February 2012. See: <http://newsinfo.inquirer.net/141169/nbi-to-probe-into-death-of-maguindanao-massacre-suspect>. Last accessed 8 September 2012.

⁶⁰ Ibid.

⁶¹ "Another prospective witness in Maguindanao massacre case confirmed killed" by Mark Maruenas, GMA News, 28 June 2012. See: <http://www.gmanetwork.com/news/story/263428/news/nation/another-prospective-witness-in-maguindanao-massacre-case-confirmed-killed>. Last accessed 8 September 2012.

⁶² "101 Maguindanao massacre suspects remain at large", DJ Yap, Philippine Daily Inquirer, 30 June 2012. See: <http://newsinfo.inquirer.net/220993/101-maguindanao-massacre-suspects-remain-at-large>. Last accessed 8 September 2012.

⁶³ Amnesty International interview, July 2012.

perpetrators continue to roam free. The authorities must ensure the protection of the victims' family members, particularly those who have been receiving threats because of their exposure through media. The most vocal among them, **Myrna Reblando**, a widow of one of the journalists who was killed in the Maguindanao massacre has received some of the most threatening phone calls and messages, although she appears to be not the only one to get such calls.⁶⁴ Myrna Reblando left for Hong Kong in the middle of 2011, fearing for her safety and frustrated at the protracted trial.

The Maguindanao massacre was central in the European Parliament's resolution on impunity in the Philippines, adopted in June 2012, which states, "the Maguindanao massacre..., representing the biggest death toll of journalists ever in one incident anywhere in the world, revealed in a shocking way to what extent local warlords, the corruption of the security forces and impunity for the most ruthless crimes have taken hold of the Philippines."⁶⁵ The resolution goes on to criticize the criminal justice system in the Philippines, stating, "the undue process illustrates that the Philippines' justice system continues to be deeply flawed: the witness protection program providing no security, corruption, dysfunctional court room rules and lack of resources for the prosecution."⁶⁶

Amnesty International recommends that the Philippine authorities ensure the security of witnesses, prospective state witnesses and their families as well as the families of victims. Protection should include regular monitoring and communication with all the families and witnesses, and for those that have received credible threats or are otherwise in danger, security escorts or other means of ensuring their safety must be provided.

CONCERNING QUESTION 10 IN THE LIST OF ISSUES - ON DISBANDING AND DISARMING MILITIAS, PRIVATE ARMED GROUPS

After the 2009 Maguindanao massacre, an Independent Commission Against Private Armies (ICAPA) was established to dismantle private armed groups under the control of politicians. The mandate of ICAPA ended in 2010, and was not renewed by the new administration, nor was its report made public. The Commission went to the "election hotspots" provinces of Masbate, Abra, Lanao del Sur, Davao and Marawi City during the election period in 2010.⁶⁷ According to one of the commissioners, they "did a comprehensive analysis of the situation, the socio-cultural causes that gives way to the creation of private armies, the motivations of patrons or maintainers of private armies, what makes the followers obey as private armies,

⁶⁴ Amnesty International interview with some of the victims' families. See also: "Coming out of the Dark", Hazel Galang, Philippine Daily Inquirer, 29 November 2010. See: <http://opinion.inquirer.net/inquireropinion/columns/view/20101129-306084/Coming-out-from-the-dark>. Last accessed 8 September 2012.

⁶⁵ European Parliament resolution on impunity in the Philippines, B7-0331/2012, 14 June 2012.

⁶⁶ Ibid.

⁶⁷ "Palace reviews report on private armies", Caroline Howard, abs-cbnnews.com, 25 November 2011. See: <http://www.abs-cbnnews.com/anc/11/24/11/palace-reviews-report-private-armies>. Last accessed 8 September 2012.

and we came up with recommendations.”⁶⁸ A news report in November 2011 cites figures given by government officials, stating that the number of private armies has gone down from 208 to 107.⁶⁹

Executive Order no. 546, issued in 2006, directs the police to support the military in counter-insurgency operations, including through the use of militias. Not only are these state-sponsored militias reported to have committed human rights violations, some of them are also used by politicians as their private armed groups. Amnesty International has repeatedly called on the government to ensure that the military and the police exercise full control over all state-sponsored militias under their commands; or otherwise disarm and disband them. Failure to do so risks creating or maintaining an environment conducive to human rights violations.⁷⁰

Three days after the 2009 Maguindanao massacre, President Aquino, then a senator, issued a statement demanding the “immediate revocation of Executive Order no. 546”.⁷¹ Later, in his election agenda, he pledged to revoke E.O. 546, saying “Never again will public funds be used to support and maintain a private security force.”⁷² However, in November 2010, President Aquino announced that he would not revoke E.O. 546. He said he had no plans to disband the paramilitary groups that act as “force multipliers” for the military and police, including the Citizens Armed Forces Geographical Unit (CAFGU), Special Civilian Armed Auxiliary (SCAA), Civilian Volunteer Organization (CVO), police auxiliaries and *barangay* (village) defense forces. He argued that these paramilitary groups were the cheaper alternative to recruiting more soldiers and police as the government could not afford to fund pensions of more military personnel.⁷³ There are reportedly 50,000 members of these state-sponsored paramilitary groups augmenting the estimated 120,000 soldiers in active service.⁷⁴ Many members of such state-sponsored militias, already armed and informally under the leadership of the local chief executive, become members of private armed groups of politicians.

Amnesty International is concerned at reports, including by the Commission on Human Rights, that members of the CAFGU have been responsible for arbitrary detention, torture, and unlawful killings of local, including Indigenous, community leaders. Trained and armed by the military, the CAFGU, along with other militias such as Civilian Volunteer Organizations (CVO), police auxiliaries, and *barangay* defense forces, are sometimes hired out to private

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ *Philippines: Impunity for torture, unlawful killings and enforced disappearances - Amnesty International Submission to the UN Universal Periodic Review, May-June 2012*, AI Index: ASA 35/007/2011, 28 November 2011.

⁷¹ *Progress, Stagnation, Regression? The state of human rights in the Philippines under Aquino*, AI Index: ASA 35/002/2011, 30 June 2011.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

companies, including mining firms. The deployment of such militias in remote mining areas may put Indigenous people and activists at risk.⁷⁵

In September 2010, **Reynaldo Labrador**, a 39-year-old peasant activist, was shot dead inside his home in Davao City, Mindanao region, in front of his wife and three young children. Two men, including one who was identified by Reynaldo's wife as a member of the CAFGU, came to the house looking for Reynaldo. Once they found him, they shot him at point blank range.⁷⁶

In October 2011, the Philippine President approved the military's proposal to deploy state-sponsored militias to augment security in private mining companies in northern Mindanao. Amnesty International called for this plan to be rescinded, stating that if the military cannot ensure discipline and accountability for the militias and paramilitary groups, their deployment would only create an environment conducive to more human rights violations.⁷⁷

Amnesty International recommends that the Philippine authorities:

- **make immediately public the report of the Independent Commission Against Private Armies (ICAPA), which was established to dismantle private armed groups;**
- **revoke Executive Order 546, which directs the Police to support the military in its counter-insurgency work, including through the use of militias; and**
- **ensure that the military exercises full control over all state-sponsored militias, that the Department of National Defense clearly defines and differentiates their purposes, chain of command and accountability mechanisms, or otherwise, disarm and disband them along with private armed groups.**

CONCERNING QUESTION 11 IN THE LIST OF ISSUES - ON MATERNAL MORTALITY, CLANDESTINE ABORTIONS AND THE STATUS OF THE REPRODUCTIVE HEALTH BILL

According to the World Health Organization's Trends in Maternal Mortality, the maternal mortality ratio in the Philippines is 94 per 100,000 live births,⁷⁸ although for some regions in the Philippines the figures are much higher. Also, in June 2012 the Philippine National Statistics Office released the results of its 2011 Family Health Survey and found that "maternal deaths" in the Philippines increased from 162 deaths per 100,000 live births in 2006, to 221 deaths per 100,000 live births in 2010. The survey covered a five year period from 2006-2010. Based on this data, it is estimated that 11 women die each day from easily

⁷⁵ *Philippines: Impunity for torture, unlawful killings and enforced disappearances - Amnesty International Submission to the UN Universal Periodic Review, May-June 2012*, AI Index: ASA 35/007/2011, 28 November 2011.

⁷⁶ *Ibid.*

⁷⁷ "Philippines: Aquino should rescind plan to deploy militias in mining areas", Amnesty International public statement, 14 October 2011, <http://www.amnesty.org/en/library/info/ASA35/006/2011/en>.

⁷⁸ Trends in maternal Mortality 1990-2008, WHO, UNICEF, UNFPA, World Bank.

preventable complications that arise from pregnancy and childbirth.⁷⁹ Moreover, fourteen percent of all deaths of Filipino girls and women aged 15-49 are maternal deaths.⁸⁰ The Philippines is unlikely to meet its MDG 5 target of reducing its maternal mortality ratio to 52 per 100,000 live births by 2015.⁸¹

Women and girls have the right to the highest attainable standard of health, but often, including in the Philippines, they face legal, economic and social obstacles in access to health information and care, despite having a law that provides for these rights like the Magna Carta of Women. In the Philippines, the government's policies on sexual and reproductive health services restrict the ability of women to have control over whether and when to become pregnant, and effectively deny them enjoyment of their sexual and reproductive rights. Women living in poverty are often the most affected by these policies, which fail to support them in preventing mistimed, unintended or unwanted pregnancies, and harm their health and wellbeing.⁸²

In June 2012, the Philippine Health Secretary said that maternal deaths and complications can be prevented, in part, if the state provides every pregnant woman with access to modern family planning services to prevent unwanted pregnancies.⁸³ However, a number of laws at the local level continue to restrict the ability of women and girls to access reproductive health information and services. In February 2011, the local council of Ayala Alabang passed an ordinance which bans sexuality education, condoms, contraceptive pills and other contraception devices. The local ordinance required people buying condoms to present a doctor's prescription. It penalizes by fine or imprisonment anyone who advertised birth control plans or sold contraception without a prescription. The council cited section 37 of Republic Act 5921, which provides that "no drug or chemical product or device capable of provoking abortion or preventing conception... shall be... sold to any person without a proper prescription by a duly licensed physician".⁸⁴ The next month, seven *barangays* in Bataan

⁷⁹ Speech of Health Secretary Enrique T. Ona during the launch of the National Statistics Office 2011 Family Health Survey, 19 June 2012. See: <http://www.doh.gov.ph/content/speech-health-secretary-enrique-t-ona-md-message-be-delivered-during-launch-national>. Last accessed 8 September 2012.

⁸⁰ Statement by Esperanza Cabral, Health Secretary, at the 43rd Session of the Commission on Population and Development, United Nations, New York, 13 April 2010. See: http://www.un.org/esa/population/cpd/cpd2010/Country_Statements/AgendaItem4/PHILIPPINES.pdf. Last accessed 8 September 2012.

⁸¹ Philippines National Statistics Office, Maternal Mortality Slightly Declined, MDG Target May Not Be Achievable (Preliminary Results from the 2006 Family Planning Survey), <http://www.census.gov.ph/data/pressrelease/2007/pr0718tx.html>. Last accessed 6 October 2011.

⁸² *Making the Fair Choice: Key Steps to Improve Maternal Health in ASEAN*, AI Index: ASA 03/001/2011, October 2011, <http://www.amnesty.org/en/library/info/ASA03/001/2011>.

⁸³ According to the Health Secretary, other reasons range from prenatal care to improve maternal nutrition and promote early detection of complications; facilities capable of safe delivery and handling of maternal emergencies, and postpartum care to prevent and address complications after delivery. See Speech of Health Secretary Enrique T. Ona during the launch of the National Statistics Office 2011 Family Health Survey, 19 June 2012.

⁸⁴ "Barangay Ayala Alabang requires prescription to buy condoms", Gma News, 24 February 2011. See:

followed suit.⁸⁵ Such sweeping prohibitions of contraception and other needed health care run counter to the state's obligations under the ICCPR's Article 3, as detailed in the Committee's General Comment No. 28 on equality between men and women.⁸⁶

Unsafe abortions account for 20 per cent of maternal deaths in the Philippines.⁸⁷ In 2008, 90,000 women were estimated to have sought treatment for complications from unsafe abortion, and around 1,000 of them died.⁸⁸ In March 2011, the Philippine President estimated that there were around 500,000 "induced miscarriages" every year in the country.⁸⁹ The World Health Organization has noted that "the more restrictive legislation on abortion, the more likely abortion [is] to be unsafe and to result in death."⁹⁰ However, the law continues to ban abortion without exception. There is no law authorising abortion in order to remedy the situation in circumstances when the pregnant woman's life is in danger, or where the woman has been raped. This means that rape survivors who become pregnant as a result of rape may be forced to carry the pregnancy to term or seek an unsafe, illegal abortion and risk imprisonment if they are discovered.

The Revised Penal Code, enacted in 1930, includes four articles criminalizing abortion: Article 256 on intentional abortion, Article 257 on unintentional abortion, Article 258 on abortion practiced by the woman or by her parents, and Article 259 on abortion practiced by a physician or midwife and dispensing of abortives. Article 256 provides for up to six years imprisonment for intentional abortion if the pregnant woman consents. Article 258 states that should a woman, girl or her parents practice abortion, they can be imprisoned for up to six years. Article 259 provides for the same penalties as Article 256 to doctors or midwives found to have carried out an abortion, and states that pharmacists who dispense of abortive

<http://www.gmanews.tv/story/213863/barangay-ayala-alabang-requires-prescription-to-buy-condoms>. Last accessed 10 October 2011.

⁸⁵ "After Ayala Alabang, 7 Bataan barangays require prescription for condoms", [abs-cbnnews.com](http://www.abs-cbnnews.com), 28 March 2011. See <http://www.abs-cbnnews.com/nation/regions/03/28/11/after-ayala-alabang-7-bataan-barangays-require-prescription-condoms>. Last accessed 10 October 2011.

⁸⁶ Paragraphs 10 and 20, General Comment no. 28: Equality of rights between men and women, CCPR/C/21/Rev.1/Add.10.

⁸⁷ World Health Organization, Women's Health Western Pacific Region 5 (2001), as cited in *Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban*, Centre for Reproductive Rights, 2010.

⁸⁸ *Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban*, Center for Reproductive Rights, 2010, as cited in *Making the Fair Choice: Key Steps to Improve Maternal Health in ASEAN*, Amnesty International, AI Index: ASA 03/001/2011, October 2011.

⁸⁹ President Aquino's Response to the issues raised during the consultation forum with civil society organizations in Cagayan de Oro City, 23 March 2011, as cited in *Making the Fair Choice: Key Steps to Improve Maternal Health in ASEAN*, Amnesty International AI Index: ASA 03/001/2011, October 2011.

⁹⁰ UN Committee on Economic, Social and Cultural Rights, Day of General Discussion on the Right to Sexual and Reproductive Health, 26 November 2010, comments by WHO, para 55.

without a doctor's prescription can be imprisoned for up to six months.⁹¹

There are currently no measures being taken to revise these provisions in order to identify any circumstances under which abortion would not be punished, including for protecting the woman's life or health or where the pregnancy is the result of rape. On the contrary, a proposal is in Congress to amend the abovementioned provisions of the Revised Penal Code by "adding provisions for a clear and workable definition of abortion and abortifacients, and classify certain medical formulations of abortifacients as dangerous drugs thus making them illegal...".⁹² This proposed law, House Bill no. 3667,⁹³ which also seeks to impose heavier penalties for abortion,⁹⁴ is at the committee level stage in Congress.

Legislation in support of maternal health has been proposed in Congress several times in the last three decades. House Bill no. 4244,⁹⁵ and Senate Bill no. 2685, both versions of the Reproductive Health Bill (RH Bill), as of September 2012, are being vigorously debated within the Senate and House of Representatives and are officially on the period of amendments, before being consolidated by a bicameral conference committee into one Bill. Three of the most debated provisions of the RH Bill are on post-abortion medical care for women, the proactive funding of artificial contraceptive methods by the government and the mandatory health and sexuality education. Catholic priests in the Philippines campaign against the passage of the bill, while the President has vocally supported efforts towards promulgating such a law. The RH Bill affirms the state's responsibility to guarantee universal access to safe, affordable and effective reproductive health care services, information and supplies that are essential in the promotion of people's right to health, especially of the poor and marginalized.

The House of Representatives version of the RH Bill (H.B. 4244), as of August 2012 declared that "The State recognizes and guarantees the exercise of the universal basic human right to reproductive health by all persons.... there shall be no discrimination against any person on grounds of sex age, religion, sexual orientation, disabilities, political affiliation or ethnicity".⁹⁶ However, during the period of amendments in September 2012, the authors deleted "sexual orientation" from this non-discrimination provision. International human rights law prohibits discrimination on the basis of sexual orientation and gender identity.

Both versions of the RH Bill recognize that in the Philippines abortion is illegal, based on

⁹¹ Book 2 of the Revised Penal Code of 1930.

⁹² House Bill 3667, Explanatory note. See: http://www.congress.gov.ph/download/basic_15/HB03667.pdf.

⁹³ The full title of the bill is "An Act Increasing the Penalties Against Abortion, Amending for the Purpose Articles 256, 257, 258 and 259 of the Revised Penal Code, and for other Purposes".

⁹⁴ House Bill 03667. See: http://www.congress.gov.ph/download/basic_15/HB03667.pdf. Last accessed 8 September 2012.

⁹⁵ Full title is "An Act Providing for a Comprehensive Policy on Responsible Parenthood, Reproductive Health and Population and Development Bill and for other Purposes".

⁹⁶ Section 2 of House Bill no. 4244. See: http://www.congress.gov.ph/download/basic_15/HB04244.pdf. Last accessed 8 September 2012.

existing domestic laws. As of September 2012, H.B. 4244 provided that the government must ensure that all women needing post-abortion care for complications shall be treated in a humane and non-judgmental manner and be given counselling,⁹⁷ however the Senate version deleted the provision for post-abortion care for women and girls during its period of amendments in September 2012.⁹⁸ International human rights standards require the state to decriminalize abortion in all circumstances, to protect women's rights to life, health, non-discrimination, privacy, physical integrity, and other human rights.

The proposed law will prohibit the refusal to "perform legal and medically safe reproductive health procedures"⁹⁹ on persons of legal age on grounds of lack of third party consent, whereby in cases of disagreement among married couples, the decision of the party undergoing the procedure shall prevail. The bill allows for the possibility of conscientious objection, provided that the health worker who conscientiously objects immediately refer the person seeking such care to another health worker willing to provide the information and services.¹⁰⁰

Amnesty International considers that while current versions of the RH Bill still contain shortcomings, such as the lack of provision for post abortion care, the RH Bill has the potential to make a strong contribution to the realization of sexual, reproductive and maternal health rights in the Philippines, and could contribute to improve the maternal health of women and girls in the country. Philippine law and practice require a number of changes to be in line with the country's international human rights obligations. Some of these issues could be partially solved through the adoption of the RH Bill, whilst others remain. These include the criminalization of abortion, barriers to adolescent access to health care, barriers to complete and scientifically accurate information on contraception, and discrimination on the basis of marital status and sexual orientation in access to sexual and reproductive health care.

Amnesty International recommends that the Philippine authorities:

- **review all laws and policies, which restrict the sexual and reproductive rights of women and girls;**
- **guarantee that women and girls can access the reproductive health services and information they need free from the threat of criminalization; and**
- **review and enact reproductive health legislation within the 15th Congress, and ensure that all provisions are in line with international human rights law and standards.**

⁹⁷ Section 3 of House Bill no. 4244.

⁹⁸ Section 3 of Senate Bill 2865. Paragraph (i) originally reads "While this Act does not amend the penal law on abortion, the government shall ensure that all women needing care for post-abortion complications shall be treated and counselled in a humane, non-judgmental and compassionate manner". It has been amended on 14 September as (j) "Abortion is a criminal act in accordance with existing laws" and "(l) all complications arising from pregnancy, labor and delivery shall be treated in a humane and compassionate manner".

⁹⁹ Section 28 of House Bill no. 4244.

¹⁰⁰ Ibid.

PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT (ART. 7)

CONCERNING QUESTION 13 IN THE LIST OF ISSUES - ON THE ANTI-TORTURE ACT AND ITS IMPLEMENTATION

In November 2009, the Philippines criminalized torture by enacting Republic Act 9745,¹⁰¹ or the Anti-Torture Act (ATA). The law's definition of torture is in line with the definition contained in the UN Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the Philippines in 1986. It defines torture as "an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority".¹⁰² The ATA also provides comprehensive definitions of various types of physical¹⁰³ and psychological acts which constitute torture.¹⁰⁴

¹⁰¹ Full title: "An Act Penalizing Torture and other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefore".

¹⁰² Section 3, R.A. 9745.

¹⁰³ Section 4 of the ATA enumerates acts of physical torture, such as: systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, jumping on the stomach; food deprivation or forcible feeding with spoiled food, animal or human excreta and other substances not normally eaten; electric shock; cigarette burning, burning by electrically heated rods, hot oil, acid, by rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s); submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation; being tied or forced to assume fixed and stressful bodily position; rape and sexual abuse, including insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals; mutilation or amputation of essential parts of the body, such as genitalia, ear, tongue; dental torture or the forced extraction of the teeth; pulling out of fingernails; harmful exposure to the sunlight and extreme cold; use of plastic bag and other materials placed over the head to the point of asphyxiation; use of psychoactive drugs to change the perception, memory, alertness or will of a person; and other analogous acts of physical torture.

¹⁰⁴ Section 4 of the ATA details mental or psychological torture acts are enumerated as, but not limited to: blindfolding; threatening a person or his/her relatives with bodily harm, execution or other wrongful acts; confinement in solitary cells or secret detention places; prolonged interrogation; preparing a prisoner for a 'show trial', public display or public humiliation of a detainee; causing an unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed; maltreating a member/s of a person's family; causing the torture sessions to be witnessed by the person's family, relatives or any third party; denial of sleep/rest; shame infliction such

The law prescribes criminal penalties for torture and other ill-treatment, including life imprisonment.¹⁰⁵ Under the doctrine of command responsibility, it also establishes individual criminal liability for military and police commanders who order their subordinates to commit acts of torture or ill-treatment, or who knowingly fail to prevent or investigate such acts by their subordinates.¹⁰⁶

The Anti-Torture Act also mandates action to prevent torture by prohibiting secret or incommunicado detention. It obligates the police, the military and other law enforcement agencies to compile a monthly, updated list of all detention centres and facilities under their jurisdiction with corresponding details on the prisoners or detainees, including their names, date of arrest and incarceration, and the crime or offense committed. Such lists are to be made public.¹⁰⁷ Moreover, the law excludes the use of any confession or admission obtained as a result of torture in any proceedings, except if it is used as evidence against those accused of committing torture.¹⁰⁸

In December 2010, the Philippines enacted the Implementing Rules and Regulations (IRR) of the Anti-Torture Act.¹⁰⁹ The IRR affirms the right of the alleged torture victim to a prompt investigation within 60 days by the Commission on Human Rights, police, National Bureau of Investigation, Department of Justice, military or other government agencies where the victim lodged his or her complaint.¹¹⁰ It also affirms the right of the alleged victim to demand a physical examination and treatment by a physician of his or her own choice¹¹¹ and provides a detailed list of information that needs to be included by the physician in a medical report.¹¹²

The IRR provides for the use of closed-circuit television testimony and one-way mirrors and other devices in the taking of testimony of victims of torture to prevent direct interaction between the victim and the accused.¹¹³

The IRR also affirms the mandate of the Commission of Human Rights (CHR) to exercise visitation powers at any time over jails, prisons and detention facilities, and have unrestricted access to any detention facility inside military camps, police lock-up cells, jails, prisons,

as stripping the person naked, parading him/her in public places, shaving his/her head or putting marks on his/her body against his/her will; deliberately prohibiting him/her to communicate with any member of his/her family.

¹⁰⁵ Section 14, R.A. 9745.

¹⁰⁶ Section 13, R.A. 9745.

¹⁰⁷ Section 7, R.A. 9745.

¹⁰⁸ Section 8, R.A. 9745.

¹⁰⁹ For a full copy, see: www.chr.gov.ph/MAIN_PAGES/about_hr/IRR/IRR_Anti-Torture.pdf. Last accessed 8 September 2012.

¹¹⁰ Section 15, Implementing Rules and Regulations of the Anti-Torture Act of 2009.

¹¹¹ Section 19, Implementing Rules and Regulations of the Anti-Torture Act of 2009.

¹¹² Section 24, Implementing Rules and Regulations of the Anti-Torture Act of 2009.

¹¹³ Section 17, Implementing Rules and Regulations of the Anti-Torture Act of 2009.

youth homes, and any detention, rehabilitation, confinement and other similar facilities.¹¹⁴ The IRR provides for an Oversight Committee, headed by a Commissioner of the CHR, with selected members of Congress to periodically oversee the implementation of the Act and write an annual report to be submitted to the President and be made publicly available. As of September 2012, this Oversight Committee has yet to meet, with its rules of procedure still being drafted by the CHR.¹¹⁵

The Anti-Torture Act still faces challenges until it is fully implemented. In consultation with national NGOs working on torture in the Philippines and exchanges with Police and DOJ officials in September 2012, Amnesty International found that currently, there is little awareness on the ground on what is torture or what constitutes cruel, inhuman or degrading treatment or punishment, even within government agencies mandated to implement this law.¹¹⁶ In its June 2012 UPR Submission, the Commission of Human Rights confirmed, “reports from CHR regional offices show that law enforcers (and prosecutors) lack knowledge of the provisions of the Anti-Torture Act and their obligations under it.”¹¹⁷

Further, victims remain reluctant to come forward and file a complaint due to fear of reprisals.¹¹⁸ Those who initially are willing to file a complaint lose interest after incomplete investigations and a lengthy prosecution. Parallel to this is the lack of forensic capacity in the Philippines to examine remains of torture victims.¹¹⁹

Almost three years after the Anti-Torture Act was enacted, no perpetrator has been convicted of torture, although several cases have been filed in court, including one case in which an act of police torture and the identity of the suspected torturers were caught on a mobile-phone video (see the case of Darius Evangelista below). Further, the specialized rehabilitation program for torture victims and perpetrators, as provided for in the Act, has yet to be established.

In March 2010, **Darius Evangelista** was arrested by police in Manila on suspicion of theft. According to the CHR which investigated the case, three fellow detainees saw him being brought into a police station in Tondo, Manila and detained there. They said that he was taken to the office of the police chief in that police station and then brought back to their cell badly injured, with his face looking like it suffered from blunt trauma and with his eyes swollen and covered with tape. After that, he was taken out of the police station. The former detainees said that they heard one of the police officers say to his subordinates, “Get rid of him.” They never saw Darius again.

¹¹⁴ Section 11, Implementing Rules and Regulations of the Anti-Torture Act of 2009.

¹¹⁵ Amnesty International interview with a CHR official, September 2012.

¹¹⁶ Amnesty International confidential interviews, September 2012.

¹¹⁷ Commission on Human Rights of the Philippines’ Submission to the Universal Periodic Review, June 2012.

¹¹⁸ Amnesty International interview with victims of torture and ill-treatment, September 2012.

¹¹⁹ Amnesty International interview with Philippine NGOs working on torture cases.

In August 2010, a video of a naked man, writhing on the floor and crying out in pain while a police officer beat him and repeatedly yanked a string tied to his genitals while uniformed policemen watched, was broadcast on television. The man was Darius Evangelista. The Evangelista family has filed a criminal complaint for torture against the nine policemen who participated in or were complicit to the torture.

The primary suspect, who was seen committing the act of torture in the video, was dismissed by the National Police in January 2011. He later worked as a lecturer for a criminology college, teaching crime detection investigation to trainee policemen and women. In April 2012, the CHR announced that this primary suspect went missing, along with five other officers who were implicated in the case.¹²⁰ Two of the other suspects surrendered and faced charges in court.¹²¹ Currently, the Evangelista family is waiting for results of forensic examinations on the skull and bones of a man they believe to be Darius Evangelista.

The government is due to set up a National Preventive Mechanism, in accordance with the Optional Protocol to the UN Convention Against Torture, which the Philippines acceded to in April 2012. Legislation to establish the National Preventive Mechanism has not yet been introduced in Congress. However, civil society groups and the CHR have begun the process of drafting a bill for this purpose, and the CHR has proposed to lead the National Preventive Mechanism once it is established.¹²²

In June 2011, the CHR stated that based on data from its regional offices, “most” reported cases of torture and ill-treatment between 2001 and 2011 were allegedly committed by the police.¹²³ In many cases, however, torture and other ill-treatment by the police are not reported to the authorities. Victims fear reprisal from the police but do not have confidence that their perpetrators will be sanctioned in the end.¹²⁴

Following its review of the Philippines in April 2009, the Committee against Torture had expressed deep concern about the numerous, ongoing, credible and consistent allegations of “routine and widespread use of torture and ill-treatment of suspects in police custody”.¹²⁵ These included the use of torture to extract confessions or other information to be used in criminal proceedings. The Committee against Torture also expressed its deep concern that “credible allegations of torture and/or ill-treatment committed by law enforcement and military services personnel are seldom investigated and prosecuted and that perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the

¹²⁰ “Aquino hit for failure to bring abusive policemen to justice”, Francis Cueto, The Manila Times, 28 June 2012. See: <http://www.manilatimes.net/index.php/news/top-stories/25723-aquino-hit-for-failure-to-bring-abusive-policemen-to-justice>. Last accessed 8 September 2012.

¹²¹ “2 Manila cops caught in torture video yield”, Mylah Roque, The Vera Files, 22 April 2012. See: <http://verafiles.org/front/2-manila-cops-caught-in-torture-video-yield/>. Last accessed 8 September 2012.

¹²² Amnesty International interview with CHR officials, September 2012.

¹²³ CHR’s presentation regarding the human rights situation in the Philippines, Berlin, June 2011.

¹²⁴ Amnesty International’s interviews with Philippine NGOs working on torture cases.

¹²⁵ Concluding observations of the Committee against Torture on the Philippines, UN Doc. CAT/C/PHL/CO/2, paragraph 7, 29 May 2009. See: http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/PHL/CO/2. Last accessed 8 September 2012.

grave nature of their crimes".¹²⁶ Despite the adoption of the ATA and its implementing rules and regulations, many of the problems identified by the Committee against Torture remain acute.

Amnesty International recommends that the Philippine government:

- **fully implement the recommendations by the Committee against Torture adopted in 2009, including by taking immediate steps to prevent acts of torture and other ill-treatment;**
- **commit to a policy of total elimination of torture and other ill-treatment by state officials; and ensure that all allegations of torture and other ill-treatment are investigated promptly, effectively and impartially, and the perpetrators brought to justice.**
- **ensure that the Oversight Committee on the implementation of the Anti-Torture Act functions as described in the law, and provide sufficient support and resources to the CHR in order for the institution to be able to carry out its duties of visitation, investigation and collection of data on detainees, as prescribed in the Anti-Torture Act.**
- **establish a National Preventive Mechanism in full accordance with the Optional Protocol to the UN Convention against Torture.**

¹²⁶ Ibid., paragraph 9.

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