

# Asian Indigenous & Tribal Peoples Network

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**Embargoed for: 20 November 2007**

## **The Philippines: All promises, No implementation**

[Contribution under the Universal Periodic Review of the Human Rights Council]

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## 1. Executive summary

The Philippines despite having overthrown Ferdinand Marcos' regime over two decades ago still remain military oriented in its law enforcement. The armed conflicts with the Moro National Liberation Front (MNLF), Moro Islamic Liberation Front (MILF), Abu Sayyaf Group (ASG), Communist Party of the Philippines (CPP) and New Peoples' Army (NPA) in the post September 11<sup>th</sup> period give the excuse for politically motivated executions of the human rights defenders including indigenous rights activists and journalists. Even the judges were not spared!

### I. Human Rights Situation on the ground

#### a. Impunity for killing defenders, journalists and judges:

Extrajudicial killings and enforced disappearances remain endemic under President Gloria Macapagal-Arroyo's rule. Since President Gloria Macapagal-Arroyo came to power in 2001, hundreds of people including human rights activists, lawyers, journalists and church workers, leftist political activists and laymen have been killed. Most of the victims were affiliated with cause-oriented groups, including leaders from indigenous communities. According to Karapatan (Alliance for the Advancement of People's Rights), a total of 885 people have been killed extra-judicially and 183 persons have disappeared from January 2001 to June 2007.<sup>1</sup> More than 50 persons have been killed so far in 2007.<sup>2</sup>

Even the judges were not spared. About 10 judges have been killed since Gloria Macapagal-Arroyo became President in 2001. In none of these cases, the perpetrator was brought to justice. Many judges have also been threatened.<sup>3</sup> If the judges are not safe, who else will be safe in this country?

In the wake of severe criticism over systematic extrajudicial killings, on 21 August 2006, President Gloria Macapagal Arroyo issued Administrative Order No. 157 to set up "Independent Commission to Address Media and Activist Killings" (also known as Melo Commission) headed by former Supreme Court Justice Jose Melo to investigate the killings and to submit recommendations to the President on policies and actions, including appropriate prosecution of the guilty and legislative proposals to end such killings. Justice Melo once worked as assistant to Mrs. Arroyo's late father, President Diosdado Macapagal. President Arroyo claimed that the recommendations of the Melo Commission have been followed and 76 criminal cases on political killings were on trial, 33 being prepared for prosecution as of mid-October 2007. While six persons including a

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<sup>1</sup>. Beltran Wants to Probe Witness Protection Program, Slays and Disappearances, By Alexander Martin Remollino, *Bulatlat*, Vol. VII, No. 25, July 29-Aug. 4, 2007

<sup>2</sup>. PHILIPPINES: INDIGENOUS DEFENDERS ON THE LINE OF FIRE, AITPN, IRQ, II/11/06: 29 December 2006

<sup>3</sup>. I-Team report, Judicial reforms seek to end impunity, *Inquirer.Net*, 1 November 2007

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former police sergeant and a former soldier have allegedly been convicted<sup>4</sup>, the detailed information about those accused was not made public. Unless rank and file of the guilty security personnel is disclosed, the claims of the government cannot be taken on its face value.

Earlier on 12 May 2006, President Arroyo's administration formed the Task Force Usig, a Philippine National Police (PNP) body led by Deputy Director General Avelino Razon. The police as expected gave a clean chit to the government. It proclaimed "There is no government policy —official or unofficial, formal or informal, written or covert — to suppress political dissent and fundamental constitutional freedoms, much less torture or murder critical journalists, leftist elements or the political opposition." It further accused 23 of the 111 activists killed of having links to the Communist Party of the Philippines (CPP) and New People's Army (NPA).<sup>5</sup>

### **b. Indigenous peoples: Disproportionate victims of human rights violations**

Indigenous peoples of Philippines have been disproportionate victims of the human rights violations in the so-called war against terror. They have also been the primary targets of evictions from their ancestral domains because of unsustainable development activities like mining and logging in their lands and territories.

The indigenous rights defenders have been systematically eliminated. According to the Indigenous Peoples Human Rights Watch, 123 indigenous persons were killed from 2001 February to 11 January 2007, including 42 deaths in 2006.<sup>6</sup> On 3 October 2007, environmental activist Armin Marin of Sibuyan in Romblon was killed while town residents were staging a protest against Sibuyan Nickel Property Development Corporation.<sup>7</sup> On 8 June 2006, indigenous leader Markus Bangit from Cordillera was killed.<sup>8</sup> There has not been any accountability for these killings.

The adoption of the Mining Act of 1995 and the Supreme Court's decision to uphold its constitutional validity removed all legal obstacles for mining operations in the country.<sup>9</sup> The Cordillera Peoples Alliance stated that 1.2 million hectares of the Cordillera's total land area of 1.8-million hectare were already covered by foreign corporations' mining

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4. Arroyo affirms: We have no tolerance for rights violations, *Inquirer.net*, 15 October 2007

5. PHILIPPINES: INDIGENOUS DEFENDERS ON THE LINE OF FIRE, AITPN, IRQ, II/11/06: 29 December 2006

6. The Pattern of Human Rights Violations of Indigenous Peoples Continues--UN Special Rapporteur Rodolfo Stavenhagen, Cordillera Peoples Alliance, available at:  
[http://www.cpaphils.org/campaigns/unsr%20updates\\_8feb07.htm](http://www.cpaphils.org/campaigns/unsr%20updates_8feb07.htm)

7. London Anti-Mining Confab Blames GMA, TNCs for Killings, Harassment, By Arthur L. Allad-IW, Vol. VII, No. 38, October 28–November 3, 2007

8. Five Years Down the Drain for Indigenous Peoples, By Jhong Dela Cruz, *The Bulatlat*, Vol. VI, No. 24, July 23 – 29, 2006

9. Open-Pit Mining Destroyed Village in Zambales, By Abner Bolos, *The Bulatlat*, Dec. 31, 2006 – Jan. 6, 2007

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applications.<sup>10</sup> According to Federation of Indigenous Peoples of the Philippines (KAMP) more than 16,000 indigenous small scale miners and more than 100,000 indigenous peasant families will lose their livelihood sources if the government approves the mining applications. Two projects, the Teresa Gold Project in Mangkayan and Padcal Sto. Tomas Copper Expansion Project in Tuba, were already under operation.<sup>11</sup>

Indigenous peoples have also been displaced as a result of the conflicts. According to Internal Displacement Monitoring Centre, an estimated 100,000 peoples were displaced from their homes due to armed conflict and human rights abuses in 2006.<sup>12</sup>

### **c. Violations of the rights of women**

Women face serious human rights violations, including sexual violence. According to Senate President Manuel Villar, an average of 20 cases of violence against women is reported everyday in the country.<sup>13</sup> The Philippines National Police recorded 253 rapes in January and February 2007.<sup>14</sup> The provisions in the Code of Muslim Personal Laws which permit the marriage of girls under 18 years and polygamy; and the policy of some schools dismissing an unmarried female student (but not her male partner) if she got pregnant<sup>15</sup> are highly discriminatory against the girls.

The women do not have proportionate representation in the Parliament. Presently, there are only four women out of 24 members in the Senate and 56 women out of the 236 members in the House of Representatives.<sup>16</sup>

### **d. Violations of the rights of the child**

The implementation of the laws on juveniles is extremely poor. According to the Department of Social Welfare and Development, there were 4,039 children in conflict with the law in the country as of July 2007. Of these, more than 300 were detained at the New Bilibid Prisons, 590 were locked up in city jails, 406 in police detention cells, among others, in violation to the Republic Act No. 9344 also called the Juvenile Justice

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<sup>10</sup>. London Anti-Mining Confab Blames GMA, TNCs for Killings, Harassment, By Arthur L. Allad-IW, Vol. VII, No. 38, October 28–November 3, 2007

<sup>11</sup>. Five Years Down the Drain for Indigenous Peoples, By Jhong Dela Cruz, The Bulatlat, Vol. VI, No. 24, July 23 – 29, 2006

<sup>12</sup>. Children Again are Casualties of War in ARMM, By Mae-Fe Ancheta-Templa, Bulatlat, Vol. VII, No. 30, September 2–8, 2007

<sup>13</sup>. 20 cases of abuses against women happen in RP daily, records show, Sun.Star Manila, 11 March 2007

<sup>14</sup>. Available at: <http://www.pnp.gov.ph/stat/content/stat/2007/crime%20statistics%20jan-may2007.xls>

<sup>15</sup>. Test for women legislators, Inquirer.Net, 13 November 2007, available at: [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=100529](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=100529)

<sup>16</sup>. Test for women legislators, Inquirer.Net, 13 November 2007, available at: [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=100529](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=100529)

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Welfare Act of 2006. More than 1,000 children in conflict with law were languishing in sub human conditions in jails together with adult criminals.<sup>17</sup>

According to the Salinlahi Alliance for Children's Concerns, 60 children or seven percent of the victims of extrajudicial killings recorded by the human rights group from 2001 to 2007 in the Autonomous Region of Muslim Mindanao (ARMM) were children.<sup>18</sup>

### **e. Violations of the rights of the prisoners**

Prison conditions remain deplorable due to overcrowding, sub-standard facilities and lack of basic facilities. This has reportedly been confirmed by International Committee of Red Cross (ICRC) which is allowed to visit prisons.<sup>19</sup> There were about 35,000 inmates who fought for space in jails maintained by the Bureau of Jail Management and Penology in 2001. The number increased to 69,500 as of October 2007. Overcrowding resulted in spread of diseases such as tuberculosis and sanitation problems. As per government estimates, the population in government jails could reach to more than 114,930 by 2010. However, new facilities are being made.<sup>20</sup>

## **II. State's human rights obligations and commitments**

There are several provisions in the 1987 constitution and several national legislations in the Philippines which uphold the rights of the citizens including the indigenous peoples. Yet, these are not implemented in practice.

### **a. Constitution: Political autonomy**

The 1987 Constitution of Philippines recognizes the right of Muslims and indigenous peoples of Cordillera to self-determination in the form of autonomy. But there has not been genuine autonomy for the Cordillera peoples. The indigenous peoples of Cordillera rejected two Organic Acts for Cordillera Regional Autonomy of 1990 and 1998 because of the failure of the Acts to grant self-governance and control over their land and natural resources.<sup>21</sup> The same is being followed with regard to the Moros in Mindanao.

### **b. Draconian anti-terror law: Human Security Act of 2007**

The Human Security Act (HAS) of 2007 is a disingenuous attempt to fool international community. It is actually the latest anti-terror law and empowers the security forces to detain suspects without warrant or charges up to three days which can be extended

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<sup>17</sup>. Proper way to arrest youth offenders explained in primers, Inquirer.Net, 30 October 2007

<sup>18</sup>. Children not spared from human rights violations—activists, Inquirer.Net, 18 September 2007

<sup>19</sup>. ICRC cites deplorable jails conditions, available at:  
[http://www.bjmp.gov.ph/Press%20Releases/08092007\\_icrc.html](http://www.bjmp.gov.ph/Press%20Releases/08092007_icrc.html)

<sup>20</sup>. Justice as circus, Inquirer.Net, 30 October 2007

<sup>21</sup>. Militants Skeptical of New Autonomy Push for Cordi, By Arthur L. Allad-IW, Bulatlat, Vol. VII, No. 25, July 29–Aug 4, 2007

beyond three days by approval from a human rights officer under section 19 of the HSA. A conviction for terror offences could result in a 40-year jail sentence without the benefit of parole.<sup>22</sup> Article III, Section 3 of the 1987 Constitution provides that any evidence obtained through wiretapping or voice recording cannot be used in any court proceeding. But the new law allows the state to use tape recorded evidence to pin down a suspect, in violation of the 1987 Constitution.<sup>23</sup>

### **c. Indigenous Peoples Rights Act, 1997**

In 1997, the government of the Philippines adopted the Indigenous Peoples Rights Act (IPRA). The Act created the National Commission on Indigenous Peoples (NCIP) mandated to formulate and implement policies, plans and programs for the recognition, promotion and protection of the rights and well-being of Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) with due regard to their beliefs, customs, traditions and institutions.

### **d. Land Titling: Long delays**

In the Philippines, there are an estimated five million hectares of ancestral domains exists based on combined pending claims for direct application for CADT and claims for conversion of Certificate of Ancestral Domain Claim (CADC) into Certificate of Ancestral Domain Title (CADT). The figure could be much higher as lack of accurate data on the actual extent and location of ancestral domains and lands nationwide continue to affect the efficient planning, targeting and implementation of ancestral domain and land titling.<sup>24</sup>

Lack of funds and boundary disputes delay the processing of ancestral land titles. According to NCIP Ancestral Domain Bureau director Myrna Cagaoas, NCIP has issued a total of 150 Certificates of Ancestral Land Titles and 56 CADTs comprising an area of 1,114,857.17 hectares as of 4 January 2007. The NCIP could not fund all the processes since the agency's budget for ancestral domain is merely Pesos 31 million a year.<sup>25</sup> In fact, the first CADT comprising ancestral domain of 29,444.34 hectares was issued to the Bago tribe of Bakun, Benguet only on 20 July 2002 and another covering 11,811.6 hectares was issued to the Manobo tribe of Lanuza, Surigao Province on 30 November 2002 after almost five years of IPRA implementation.<sup>26</sup>

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<sup>22</sup>. Philippines approves terror bill, BBC News, 20 February 2007

<sup>23</sup>. Republic Act of 9372 or the Human Security Act of 2007

<sup>24</sup>. NCIP, MTPDP for Indigenous Peoples, 2004–2008

<sup>25</sup>. Agency set to give more domain titles, 15 February 2007, Sun.Star Bagui, available at:

<http://www.sunstar.com.ph/static/bag/2007/02/15/news/agency.set.to.give.more.domain.titles.html>

<sup>26</sup>. 2002 Annual Report of the National Commission on Indigenous People of the Philippines

### **III. Enhancement of State's capacity**

Most of the capacity building programmes are focused on Philippines' National Human Rights Commission. The Human Rights Council should emphasize for capacity building programmes of the National Commission on Indigenous Peoples including for titling of the lands of the indigenous peoples.

### **IV. Cooperation with HRC, Treaty Bodies and OHCHR**

The government of Philippines has failed to extend Open invitation/Standing invitation to the Special Procedures. Since 2003, only Special Rapporteur on extrajudicial, summary or arbitrary executions (12 to 21 February 2007) has been invited to visit.

The government of Philippines has ratified most instruments but seldom implements the same at national level. The government of Philippines also failed to submit periodic reports under International Convention on the Elimination of All Forms of Racial Discrimination since 1998; under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment since 1992; under International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since July 2004, under Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography since June 2004, under the International Covenant on Civil and Political Rights since November 2006, and under Convention on the Rights of the Child since September 2007.

In a nutshell, the government of Philippines neither implements the Treaties nor has anything to report to the Treaty Bodies.

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## 2. Situation of human rights on the ground

The Philippines despite having overthrown Ferdinand Marcos' regime over two decades ago still remain military oriented in its law enforcement. The armed conflicts with the Moro National Liberation Front (MNLF), Moro Islamic Liberation Front (MILF), Abu Sayyaf Group (ASG) and New Peoples' Army (NPA) in the post September 11<sup>th</sup> period give the excuse for politically motivated executions which included human rights defenders including indigenous rights activists and journalists. Even the judges have not been not spared. If the judges are not secure, no one can be secure.

### i. Violations of the rights of indigenous peoples

#### a. Targeting of indigenous rights defenders

The rights of indigenous peoples continued to be violated as the Philippines government renewed its commitment to promote foreign investment in mining. Dispossession of their traditional lands and territories is one of the major problems being faced by indigenous peoples of the Philippines today. They are either denied access to their ancestral lands or evicted from them in order to make way for commercial hunting, environmental conservation or logging operations.

Several indigenous leaders were killed as they espouse causes that undermine the interests of big investors in mineral exploration. According to the Indigenous Peoples Human Rights Watch, a network of indigenous peoples organizations and non-government organizations working on human rights, 123 indigenous persons were killed from 2001 February to 11 January 2007. The highest incidence of alleged state-perpetrated killings of indigenous peoples was reported in 2006 with 42 individuals.<sup>27</sup> On 3 October 2007, environmental activist Armin Marin of Sibuyan in Romblon was killed while town residents were staging a protest against Sibuyan Nickel Property Development Corporation.<sup>28</sup> On 8 June 2006, Cordillera indigenous leader Markus Bangit was killed.<sup>29</sup>

The Cordillera Administrative Region has been identified as highly prone to extra-judicial killings. It recorded human rights abuses affecting 2,312 individuals, 710 families and at least two communities.<sup>30</sup>

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<sup>27</sup>. The Pattern of Human Rights Violations of Indigenous Peoples Continues--UN Special Rapporteur Rodolfo Stavenhagen, Cordillera Peoples Alliance, available at:

[http://www.cpaphils.org/campaigns/unsr%20updates\\_8feb07.htm](http://www.cpaphils.org/campaigns/unsr%20updates_8feb07.htm)

<sup>28</sup>. London Anti-Mining Confab Blames GMA, TNCs for Killings, Harassment, By Arthur L. Allad-IW, Vol. VII, No. 38, October 28–November 3, 2007

<sup>29</sup>. Five Years Down the Drain for Indigenous Peoples, By Jhong Dela Cruz, The Bulatlat, Vol. VI, No. 24, July 23 – 29, 2006

<sup>30</sup>. Five Years Down the Drain for Indigenous Peoples, The Bulatlat, Vol. VI, No. 24, July 23 – 29, 2006



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## **b. Mining and violations of the rights of indigenous peoples**

Foreign corporations are actively involved in mining in the country due to the mining revitalization program of the present administration. A new memorandum of agreement was signed in September 2006 in line with the Arroyo government's aggressive promotion of investments in mining operations. The passage of the Mining Act of 1995 and the Supreme Court's decision removed all legal obstacles for unabated mining in the country.<sup>31</sup>

Earlier, the Cordillera Peoples Alliance (CPA) had noted that 1.2 million hectares of the Cordillera's 1.8-million hectare total land area were covered by foreign corporations' mining applications.<sup>32</sup>

According to KAMP estimates, more than 16,000 indigenous small scale miners and more than 100,000 indigenous peasant families will lose their livelihood sources if government approve the mining applications. Two projects, the Teresa Gold Project in Mangkayan and Padcal Sto. Tomas Copper Expansion Project in Tuba, were already under operation.<sup>33</sup>

The Human Security Act of 2007 (HSA) could also be used to facilitate economic plunder like liberalization of the mining industry especially in indigenous peoples' ancestral domain areas. The HSA would be used as a tool to suppress people's opposition.

## **c. Conflict-induced-displacement and indigenous peoples**

As the fighting escalates between the military and the New People's Army (NPA), thousands of people were forced to flee their homes in the Philippines. According to Internal Displacement Monitoring Centre, an estimated 100,000 peoples were displaced from their homes due to armed conflict and human rights abuses in 2006.

Recent months saw an upsurge of displacement. In October 2007, around 586 families or a total of 2,931 persons were displaced after army troopers launched massive operations against suspected NPA who injured two soldier during an ambush in the northern Negros.<sup>34</sup> Around 24,000 persons from Sulu and Basilan Islands in Autonomous Region of Muslim Mindanao (ARRM) fled their homes from the offensives since August 2007

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<sup>31</sup>. Open-Pit Mining Destroyed Village in Zambales, By Abner Bolos, The Bulatlat, Dec. 31, 2006 – Jan. 6, 2007

<sup>32</sup>. London Anti-Mining Confab Blames GMA, TNCs for Killings, Harassment, By Arthur L. Allad-IW, Vol. VII, No. 38, October 28–November 3, 2007

<sup>33</sup>. Five Years Down the Drain for Indigenous Peoples, By Jhong Dela Cruz, The Bulatlat, Vol. VI, No. 24, July 23 – 29, 2006

<sup>34</sup>. Thousands Flee Homes in Northern Negros, by Karl G. Ombion, Bulatlat, Vol. VII, No. 38, October 28–November 3, 2007

according to government statistics. Most of these evacuees are women and children who are hapless in the situation.<sup>35</sup>

Besides displacement, military operations have caused serious violations of human rights including killings. Several cases of human rights violations have been documented but several others were never reported. These cases remain unresolved and the military or paramilitary troops involved are yet to be punished. As the government justified it as part of the anti-insurgency campaign, more violations continue unabated. These communities are forcibly evacuated or food-blockaded and sometimes subjected to repeated artillery bombing, properties destroyed, leaders shot or tortured, or people arrested arbitrarily.<sup>36</sup>

Several innocent people were killed in the name of anti-insurgency operation.

On 5 May 2007, three innocent peasants identified as Bobby Quilo (20), Richard Sarillo (28) and Benjamin Gelongga (72) were allegedly killed after being picked up from their place at Upper Coayaoyao, Barangay Inulingan, Magallon in Isabela. The army claimed that they were NPA members and were killed in a legitimate encounter. However, a fact finding mission initiated by Karapatan-Negros revealed that they were neither NPA members nor were they killed in an encounter.<sup>37</sup>

### **Fake surrender and forced recruitment**

The army also resorted to fake surrender drives. Villagers were accused of being members of the NPA and forced to surrender. Karapatan documented at least 217 individual victims of fake surrenders in Baggao town. All victims were members of Kaguimungan, (or the Provincial Peasant Alliance of Cagayan), a local farmers group. On 20 July 2007, farmer Rolito Buco was accused of being a NPA member and was forced to surrender at the village meeting in Carupian. On 20 July 2007, the soldiers summoned the residents of Carupian at the Barangay hall and told them to sign an attendance sheet which later turned out to be what the soldiers said was “proof that they have surrendered to the authorities”. Those who denied the accusation were threatened with death.<sup>38</sup>

Villagers were also asked to join the CAFGU (Civilian Armed Forces Geographical Unit) One Emiliano Tamayo (54), Barangay Tanod (village official) of Barangay Carupian in the town of Baggao, Cagayan Valley, was offered to be a member of the CAFGU on 19

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<sup>35</sup>. Children Again are Casualties of War in ARMM, By Mae-Fe Ancheta-Templa, *Bulatlat*, Vol. VII, No. 30, September 2-8, 2007

<sup>36</sup>. Background & Guide On Engaging the UN Special Rapporteur on Indigenous People, By Victoria Tauli-Corpuz, available at: [http://www.tebtebba.org/about\\_us/publications/special/UNSR/UNSRText.pdf](http://www.tebtebba.org/about_us/publications/special/UNSR/UNSRText.pdf)

<sup>37</sup>. Army Massacres Civilians in Isabela, Negros Occidental, By Karl G. Ombion, Vol. VII, No. 14 May 13-19, 2007

<sup>38</sup>. Fake Surrenders and Forced CAFGU Recruitment Grip Baggao, By Dabet Castaneda, *Bulatlat*, Vol. VII, No. 38, October 29-November 3, 2007

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October 2007. Despite his refusal, he was surprised to see his name listed as one of the members of the CAFGU in Carupian.<sup>39</sup>

#### **d. Lack of basic services**

The indigenous peoples have been largely excluded, discriminated against and marginalized. The mainstream Filipino society ignored its indigenous component and did little to improve the standards of living of its indigenous cultural communities or to overcome the high rates of poverty and low levels of human development (as defined by the United Nations). For instance, the indigenous peoples in San Luis composed of the Manobo, Banwaon and the Tala-andig were reported to be among the poorest in the country. Many of them suffer from the effects of poverty, periods of hunger, high morbidity and infant mortality rates, illiteracy, and a serious lack of basic social and other services.<sup>40</sup> This is the result of continuous displacement and ejection from their Ancestral Domains/Ancestral Lands, low income and economic productivity, poor agricultural production, low educational attainment, lack of infrastructures for transportation and communication and poor delivery of basic services.<sup>41</sup>

As indigenous peoples are displaced from their traditional territories, they often end up as poor urban migrants where they live in dismal conditions, without adequate shelter, jobs, or basic social services. About 65 per cent of the indigenous migrants in Baguio City suffer from extreme poverty due to under-employment and joblessness.<sup>42</sup>

## **II. The phenomenon of enforced disappearances**

Enforced disappearances remain endemic in the Philippines and a hallmark of the Gloria Macapagal-Arroyo regime administration. According to Karapatan (Alliance for the Advancement of People's Rights), 183 persons were forcibly disappeared from January 2001 to June 2007. State forces have been identified as the perpetrators in many of the prominent cases of extra-judicial killings and forced disappearances<sup>43</sup> but impunity prevailed. In some cases which have been resurfaced, victims were reportedly found to be detained in prisons and military camps as alleged members of the New Peoples Army, a left wing armed opposition group.<sup>44</sup>

The practice of disappearances continued during 2007. On 28 April 2007, Jonas Burgos, son of the late press freedom icon Jose "Joe" Burgos, was abducted at the Ever Gotesco Mall on Commonwealth Avenue in Quezon City. In October 2007, the Commission on

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<sup>39</sup>. Fake Surrenders and Forced CAFGU Recruitment Grip Baggao, By Dabet Castaneda, *Bulatlat*, Vol. VII, No. 38, October 29–November 3, 2007

<sup>40</sup>. E/CN.4/2003/90/Add.3 of 5 March 2003

<sup>41</sup>. 2001 Annual Report of the National Commission on Indigenous People of the Philippines

<sup>42</sup>. E/CN.4/2003/90/Add.3 of 5 March 2003

<sup>43</sup>. Beltran Wants to Probe Witness Protection Program, Slays and Disappearances, By Alexander Martin Remollino, *Bulatlat*, Vol. VII, No. 25, July 29–Aug. 4, 2007

<sup>44</sup>. HK rights mission: Killings down but still no justice, *Inquirer.net*, 22 October 2007

Human Rights, inquiring the disappearance, temporarily stopped its public inquiry into the disappearance of activist Jonas Burgos for lack of cooperation from his family.<sup>45</sup> On 11 May 2007, Fernandez, an activist working for a left-wing fisher-folk group, was allegedly abducted by the army in Calbiga town of Samar province.<sup>46</sup>

There is no existing law in the Philippines criminalizing enforced disappearances. While Republic Act No. 7438 guarantees the rights of persons arrested, detained or under custodial investigation, it does not punish perpetrators of enforced disappearances. At present, there are numerous test cases of involuntary disappearance pending before the court. However, since involuntary disappearance is not considered a crime under the Philippine law, the cases presently filed in court are lodged as kidnapping, murder or serious illegal detention, or a combination of the last two crimes.<sup>47</sup>

In the face of increasing international pressure, on 25 September 2007, the Supreme Court issued AM No. 07-9-12 promulgating the Rule on the “Writ of Amparo” to protect the constitutional rights of a person. The rule came into effect from 24 October 2007. The Writ of Amparo also applies to “cases involving extra legal killings and enforced disappearance or threats thereof pending in the trial and appellate courts”.<sup>48</sup> Normally the relatives of victims of enforced disappearances in the Philippines file a petition for habeas corpus to compel the state to produce persons thought to be victims of enforced disappearances. However, the habeas corpus petitions usually end up with state agents simply denying the custody of the missing persons. The Writ of Amparo gives hope to families of the victims of enforced disappearances as it would compel state agents to look for the missing person. The court could hold the state agents liable if it believe that the officials did not exert enough effort in finding the person.

At the end of the day, it is the officials who decide about investigation. Yet, the rule contains provisions that may be abused by the executive branch and make it difficult for victims of human rights violations to avail of its remedies. Besides, it faces a challenge from President Gloria Macapagal-Arroyo’s issuance of Administrative Order No. 197 on 25 September 2007.<sup>49</sup>

### **III. The state-sanctioned extrajudicial killings: Defenders as the target**

Since President Gloria Macapagal-Arroyo assumed power in January 2001 politically-motivated killings increased considerably. The victims include human rights activists, lawyers, journalists and church workers, leftist political activists and laymen. Often, the military label those killed or their organizations as “terrorists”, communists, rebel

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<sup>45</sup>. Rights body stops inquiry into Burgos abduction, *Inquirer.net*, 12 October 2007

<sup>46</sup>. Army told to probe abduction of Samar activist, *Inquirer.net*, 16 October 2007

<sup>47</sup>. <http://www.senate.gov.ph/lisdata/43643764!.pdf>

<sup>48</sup>. Initial Analysis on the Philippine Amparo, By Neri Javier Colmenares, *Bulatlat*, Vol. VII, No. 36, October 14-20, 2007

<sup>49</sup> . [http://www.ops.gov.ph/records/ao\\_no197.htm](http://www.ops.gov.ph/records/ao_no197.htm)

sympathizers or “enemies of the state”. Most of the victims were affiliated with cause-oriented groups, including leaders from indigenous communities.

The *Oplan Bantay Laya* (Operation Freedom Watch), a five-year counter insurgency plan started in 2002 by the Gloria Macapagal-Arroyo regime to “neutralize” the so-called “enemies of the State”, contributed to such large scale extrajudicial killings. The *Oplan Bantay Laya* also resulted in massive dislocation of people in Mindanao where military operations have been intensified. Indigenous peoples, including the Morros have become the disproportionate victims.

According to Karapatan (Alliance for the Advancement of People’s Rights), a total of 885 people have been killed extra-judicially from January 2001 to June 2007.<sup>50</sup> More than 50 persons have been killed so far in 2007. While Karapatan documented 185 extrajudicial killings from January to November 2006 alone.<sup>51</sup>

There have been extraordinary rise in the numbers of extrajudicial killings of human rights defenders in the Philippines. The failure of the government to take any measure is clear. The Government of Philippines even failed to respond to the concluding observations and recommendations made by the Human Rights Committee of the United Nations on 1 December 2003. The Philippines is party to the International Covenant on Civil and Political Rights (ICCPR).

According to reports, at least 290 activists were killed since 2004.<sup>52</sup> Some of the latest killings included Arturo Tolentino (64), farmer and resident of Samal, Bataan, who was killed on 26 October 2007; Antonio Mercado (54), chairperson of NFSW-FGT, who was killed on 13 October 2007; Alano Clerigo (34), member of a local farmer’s organization affiliated with the Kilusang Mambubukid ng Pilipinas (KMP or Peasant Movement of the Philippines), who was killed near his home at Sitio (sub-village) in Lagoc in northern Negros on 10 October 2007; Franklin Cabiguin Labial (59), acting President of Makabayan-Pilipinas, who was killed on 10 August 2007; Rodrigo Siacor (a.k.a. Bador), (39), member of a political party Anakpawis "Toiling Masses", who was killed on 8 August 2007<sup>53</sup> and Mario Auxilio, Bayan Muna (People First) leader, who was killed after being by shot by a gunmen identified as Hilario Mandahao Diola, a member of the anti-communist vigilante group Alimaong which is under the command of the Philippines Army's 15th Infantry Battalion, at Bien Unido town in Bohol on 15 June 2007.<sup>54</sup>

Journalism has been turned into a dangerous profession in the Philippines. Murders, physical attacks, arrests, unwarranted lawsuits and censorship are all commonplace.

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<sup>50</sup>. Beltran Wants to Probe Witness Protection Program, Slays and Disappearances, By Alexander Martin Remollino, *Bulatlat*, Vol. VII, No. 25, July 29–Aug. 4, 2007

<sup>51</sup>. PHILIPPINES: INDIGENOUS DEFENDERS ON THE LINE OF FIRE, AITPN, IRQ, II/11/06: 29 December 2006

<sup>52</sup>. Available at: <http://www.pinoyhr.net/>

<sup>53</sup>. Available at: <http://www.pinoyhr.net/>

<sup>54</sup>. UPDATE: Bayan Muna Leader Shot in Bohol, Dies, *Bulatlat*, 17 June 2007, available at: <http://www.bulatlat.com/2007/06/update-bayan-muna-leader-shot-bohol-dies>

According to the National Union of Journalists of the Philippines, 50 journalists were killed since Gloria Macapagal-Arroyo assumed presidency. On 19 February 2007, newspaper editor Hernani Pastolero Sr. was shot dead by an unidentified gunman outside his home in Barangay Bulalo.<sup>55</sup>

On 10 October 2007, seven labour activists identified as Pete Pinlac, President of Manggagawa sa Komunikasyon ng Pilipinas, MKP (The Telecommunications Workers of the Philippines); Arturo Castillo and John Beato, First and Second Vice-Presidents of MKP respectively; Aurelio Veloso, of Manggagawa para sa Kalayaan ng Bayan, MAKABAYAN (Workers for People's Liberation); Atty. Virgie Suarez Pinlac, Vice-Chairperson of Kaisa Ka and member of Board of Directors of Legal Alliance for Workers' Struggles (LAWS); Mitzi Chan, Chairperson of the People's Struggle Commission of Kilusan para sa Pambansang Demokrasya (KPD); and Roy Fernandez, MKP Representative were reportedly arrested and detained by police during a peaceful protest outside the Department of Labour and Employment in Manila. The activists were reportedly injured while being arrested. Mitzi Chan had her nose broken when she was allegedly hit by a member of the police.<sup>56</sup>

The unabated killings and attacks against human rights defenders reflect government's unwillingness to stop further deaths. The sham police investigations need no explanation.

As the cycle of political killings with impunity continues, the seriousness of the government of Philippines is amply clear.

#### **IV. Judges are not safe either**

Judges remained the next favorite targets of extrajudicial executions after leftist activists, clerics and journalists. Judges were often threatened with deaths. About 10 judges were killed since Gloria Macapagal-Arroyo became President in 2001. None of the killings of the judges has been solved. Moreover, pay is low while the risk of life is high.<sup>57</sup>

President Gloria Macapagal Arroyo government and the Armed Forces of the Philippines have total disregard of court decisions, refusing to comply with court orders or blaming the New People's Army (NPA) for the killings and disappearances.<sup>58</sup> Nothing could be more damaging for any country seeking to promote the rule of law.

Judicial delay continues to plague the Philippines. Many accused were spending time in crammed jails awaiting final adjudication. There was high rate of vacancy among personnel, including judges, prosecutors and public attorneys which hinder the efficient

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<sup>55</sup>. Journalist death toll under President Arroyo now at 50, NUJP, available at: <http://www.nujp.org/pr/pr07/prfeb20-ifj.htm>

<sup>56</sup>. Available at: <http://www.frontlinedefenders.org/node/1185>

<sup>57</sup>. I-Team report, Judicial reforms seek to end impunity, Inquirer.Net, 1 November 2007

<sup>58</sup>. Initial Analysis on the Philippine Amparo, By Neri Javier Colmenares, *Bulatlat*, Vol. VII, No. 36, October 14-20, 2007

administration of justice. This had reached more than 35 percent. There were about 2,300 judges in the Philippines. The number of cases was increasing while number of judges was limited. Due to vacancies, prosecutors or public attorneys have to rush from one courtroom to another across town, resulting in delays and postponements of hearings.<sup>59</sup>

The criminal justice system failed under President Gloria Macapagal-Arroyo. It failed to protect victims of human rights violations. As the justice system failed, victim's families and human rights groups were forced to ask the international community for support. Many prosecutors and judges have poor competence in the field of human rights and humanitarian law.

On the brighter side, the government of Philippines has undertaken the Judicial Reform Program with assistance from the United Nations Development Programme (UNDP) and other funding institutions, among others, for strengthening of the Criminal Justice System (CJS). Besides, Chief Justice Reynato Puno set the tone of the emerging activism of the Supreme Court. The Supreme Court introduced the Writ of Amparo which took effect on 24 October 2007. It seeks to protect the victims of human rights violations including the extrajudicial killings and disappearances. Under the Writ of Amparo, government agents are not allowed to simply deny the allegations against them. They must take action to resolve the problem. The Philippine Justice Academy run by the Supreme Court has been training mediators to try and settle disputes so that cases did not have to go to formal trial. Mediation centers were being established in the provinces.<sup>60</sup> Besides, a "justice on wheels" program was launched in 2004. It hears cases in detention centers or municipal halls. The "justice on wheels" program had reduced the backlog of some lower courts. For instance, the backlog of cases in the Taytay Municipal Trial Court had been reduced from 3,600 to 2,400.<sup>61</sup>

## **V. Witnesses as the soft targets**

The Witness Protection Security and Benefit Act aims to protect witnesses and grant them certain rights and benefits to ensure their appearance in investigative bodies/court. However, the Witness Protection Program remained weak. There are certain provisions which give witnesses no assurance that they will be safe from retaliatory actions that may probably result from their testimonies. Despite President Arroyo pledge of increased support for the Witness Protection Program, there is no Witness Protection Program in reality. As those tasked with taking care of the witnesses are the military and police who are themselves involved in the killings and disappearances.<sup>62</sup>

The authorities often blame the refusal of witnesses to come forward for their failure to

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<sup>59</sup>. I-Team report, Judicial reforms seek to end impunity, Inquirer.Net, 1 November 2007

<sup>60</sup>. I-Team report, Judicial reforms seek to end impunity, Inquirer.Net, 1 November 2007

<sup>61</sup>. On the right track, Inquirer.Net, 6 November 2007

<sup>62</sup>. Beltran Wants to Probe Witness Protection Program, Slays and Disappearances, By Alexander Martin Remollino, *Bulatlat*, Vol. VII, No. 25, July 29-Aug. 4, 2007

solve the killings. On the other hand the authorities acknowledge that the failure to come forward is primarily due to fear. Moreover, the killings were often dismissed as ordinary crimes or attributed to a supposed purge within the communist rebel movement.<sup>63</sup>

On 30 March 2007, Ilocos Sur provincial prosecutor dismissed a murder case filed against Captain Joel Castro of the 50th Infantry Battalion of the Philippine Army who was identified as the killer of Jose "Pepe" Manegdeg after the witness retracted his sworn statement. Capt. Castro was charged with killing Manegdeg, the Ilocos regional coordinator of the Rural Missionaries of the Philippines, in San Esteban, Ilocos Sur in 2005. The witness was not offered a concrete protection program. Earlier, the witness had expressed fear for his life.<sup>64</sup>

## **VI. Violence against women**

The government of Philippines enacted a number of laws to protect the rights of women. These included Republic Act No. 9262 or the Anti-Violence Act Against Women and Their Children of 2004, Republic Act No. 9208 or the Anti-Trafficking of Persons of 2003, Republic Act No. 8505 or the Rape Victim Assistance and Protection Act of 1998, Republic Act No. 8353 or the Anti-Rape Law of 1997 and Republic Act No. 7877 or the Anti-Sexual Harassment Act of 1995.

The National Commission on the Role of Filipino Women acts as an oversight body to press for effective implementation of programs which benefit women.

Yet, there are many laws, policies and social and cultural practices which discriminate and disadvantage the women. In fact, there is no legal, official definition of "discrimination" in the laws. Among the examples of discriminatory laws are the distinction between "adultery" for women and "concubinage" for men as grounds for legal separation; the treatment of sex workers as petty criminals under the anti-vagrancy provision in the penal code (in fact, the very definition of prostitution itself); and provisions in the Code of Muslim Personal Laws which permit the marriage of girls under 18 years, polygamy and arranged marriages; and the policy of some schools dismissing female students (but not their partners) who get pregnant while still single.<sup>65</sup>

Presently, there are four women in the Senate and 56 women out of the 236 members of the House in the Philippines. Yet, it is far away from the "magic number" of 30 percent, which the United Nations says is the minimum proportion needed to bring women out of a "token" status in governance.<sup>66</sup>

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<sup>63</sup>. HK rights mission: Killings down but still no justice, Inquirer.net, 22 October 2007

<sup>64</sup>. Murder Case vs. Army Captain Dismissed; Cordi Rights Group Hits Witness Protection Program, By Kim Quitasol and Arthur L. Allad-I W, Bulatlat, Vol. VII, No. 14 May 13-19, 2007

<sup>65</sup>. Test for women legislators, Inquirer.Net, 13 November 2007, available at: [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=100529](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=100529)

<sup>66</sup>. Test for women legislators, Inquirer.Net, 13 November 2007, available at: [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=100529](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=100529)



Sexual violence is commonplace. According to Senate President Manuel Villar, an average of 20 cases of violence against women is reported everyday in the country. At least one in every five women will become a victim of rape and one out of three will be subjected to violence and sexual abuse in her life span in the country. Besides, violence kills many women between the ages of 15 and 44. The figures are based on a UN Population Fund (UNFPA).<sup>67</sup> The Philippines National Police (PNP) recorded 253 rapes in January and February 2007.<sup>68</sup>

Indigenous women who were dominant in the subsistence agricultural sector suffer particularly with the introduction of mining. Family breakdowns and domestic violence were increasing in mining camps, according to a Cordillera Women's Education and Resource Center Study. Families live in one room. There is little or no chance for privacy.<sup>69</sup> Besides, a large number of indigenous peoples, mostly women, were going overseas for contract work due to worsening poverty and lack of livelihoods. Presently, there were more than 50,000 indigenous women working abroad.<sup>70</sup>

## **VII. Violations of the rights of the child**

In 2006, the Philippines enacted the RA No. 9344 or the Juvenile Justice Welfare Act. The law seeks to protect the rights of youth offenders under the age of 18 and keep them out of jail while undergoing rehabilitation in a government social welfare center. In Executive Order 633, President Gloria Macapagal-Arroyo insisted on fast-tracking implementation.

The Department of Social Welfare and Development (DSWD) has allotted P50 million to aid the implementation of the Juvenile Justice Welfare Act. Of this amount, P22 million would be used for building transition homes for young offenders nationwide.<sup>71</sup>

According to records from the Department of Social Welfare and Development, there were 4,039 children in conflict with law in the Philippines as of July 2007. Of these, more than 300 were detained at the New Bilibid Prisons, 590 were locked up in city jails, 406 in police detention cells and 367 were under the custody of local governments or non-government agencies. Notwithstanding the existence of the law, there were more than 1,000 children in conflict with law who are still languishing in sub-human jails together with adult criminals.<sup>72</sup>

Children remained more vulnerable due to government's all-out war campaign in the Autonomous Region of Muslim Mindanao (ARMM). According to the Salinlahi Alliance

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<sup>67</sup>. 20 cases of abuses against women happen in RP daily, records show, Sun.Star Manila, 11 March 2007

<sup>68</sup>. Available at: <http://www.pnp.gov.ph/stat/content/stat/2007/crime%20statistics%20jan-may2007.xls>

<sup>69</sup>. E/CN.4/2003/90/Add.3 of 5 March 2003

<sup>70</sup>. IWGIA, Philippines, available at: <http://www.iwgia.org/sw16706.asp>

<sup>71</sup>. Proper way to arrest youth offenders explained in primers, Inquirer.Net, 30 October 2007

<sup>72</sup>. Proper way to arrest youth offenders explained in primers, Inquirer.Net, 30 October 2007

for Children's Concerns, 60 or seven percent of the victims of extrajudicial killings recorded by the human rights group from 2001 to 2007 were children. The groups further revealed that five children were killed in 2007 alone. They were branded child combatants only to turn out to be school children caught in the crossfire.<sup>73</sup>

According to Department of Social Welfare and Development (DSWD) reports, eight children aged 4 to 16 years old from Indanan, Sulu were arrested and tortured along with their parents by the military's Joint Special Operations Force on 19 August 2007. This is a continuation of the many violations perpetrated by soldiers on children. On 18 January 2007, Marines shot nine people in Sulu, which included 12-year-old Rodimar Julali. Thousands of children in ARMM are not in schools and are staying in evacuation centers. But, millions of pesos are poured to the 17 battalions in the two islands.<sup>74</sup>

Children have also become victims of sexual abuse and exploitation. Anti-Trafficking of Women and Children Act (R.A. 9208) and the Anti-Violence against Women and Children Act (R.A. 9262) are in place. But the issue remains its strict implementation.<sup>75</sup>

Child labour has been on the rise in the Philippines. According to the National Statistics Office 2001 survey, four million children out of the 25 million children between the age of five and 17 were engaged in child labour nationwide. Of these four million, only 2.6 million attended school. More than 50 percent of these children were in agriculture and 2.4 million of them were exposed to physical, biological and chemical hazards. An estimated 342,000 children were working in the largely agricultural region of Southern Mindanao. Due to poverty children as young as five to six years were forced to work. While they were paid only 40 pesos to 50 pesos per day. Child advocates blamed the failure of the Comprehensive Agrarian Reform Program (CARP) for the worsening poverty in the countryside.<sup>76</sup>

### **VIII. Prisoners have no rights**

The Bureau of Jail Management and Penology (BJMP) exercises supervision and control over all district, city and municipal jails in the Philippines.

Prison conditions were deplorable due to overcrowding, sub-standard facilities and lack of basic facilities. According to a United Nations Optional Protocol on Torture study, there were about 35,000 inmates who fought for space in jails maintained by the BJMP in 2001. While the number jumped to 69,500 as on October 2007. Metro Manila jails alone hold 400 times more prisoners than their official capacity. Bagong Buhay Rehabilitation Center in Cebu was crammed with 2,600 detainees as against its sanctioned capacity of 400 until it was moved. Overcrowding results in spread of diseases such as Tuberculosis

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<sup>73</sup>. Children not spared from human rights violations—activists, *Inquirer.Net*, 18 September 2007

<sup>74</sup>. Children Again are Casualties of War in ARMM, By Mae-Fe Ancheta-Templa, *Bulatlat*, Vol. VII, No. 30, September 2-8, 2007

<sup>75</sup>. Children hurt by Boracay tourism: study, *SunStar.com*, 21 February 2007

<sup>76</sup>. Rise in Child Labor Tied to CARP's Failure, By Germelina A. Lacorte, *Bulatlat*, Vol. VII, No. 21, July 1-7, 2007

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and sanitation problems. As per government estimates, the population in government jails could reach more than 114,930 by 2010.<sup>77</sup>

International Committee of Red Cross (ICRC) is allowed to visit prisons. According to the ICRC, prisoners were confined in sub-standard facilities and were not given basic facilities.<sup>78</sup>

According to BJMP, the main reasons for the increase of jail population are slow disposition of cases in court; implementation of comprehensive dangerous drug Act of 2002; reduction in the quantity of illegal drugs bailable under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002); inability to pay bail; recidivism; poverty and unemployment; increase in the amount of bail bond required by courts; some courts do not accept surety bond instead they want cash bail; some Bonding companies refuses to accept Muslim inmates; increase in the number of arrested person by the PNP brought about by their intensive campaign against criminality.<sup>79</sup>

## **IX. Impunity**

Impunity is the single largest factor contributing to increased human rights violations. In the wake of severe criticism over unexplained killings, on 21 August 2006, President Gloria Macapagal-Arroyo issued Administrative Order No. 157 to set up “Independent Commission to Address Media and Activist Killings” (also known as Melo Commission) headed by former Supreme Court Justice Jose Melo to investigate the killings and to submit recommendations to the President on policies and actions, including appropriate prosecution of the guilty and legislative proposals to end such killings. However, the Melo Commission lacked independence and confidence of the victims' families, as at least three of its members including Justice Melo once worked as assistant to Mrs. Arroyo's late father, President Diosdado Macapagal.

President Arroyo claimed that that the recommendations of the Melo Commission have been followed and 76 criminal cases on political killings were on trial, 33 being prepared for prosecution as of mid-October 2007. While six persons including a former police sergeant and a former soldier<sup>80</sup> have allegedly been convicted, the detailed information on the cases was not made public.

Earlier on 12 May 2006, President Arroyo administration formed the Task Force Usig, a Philippine National Police (PNP) body led by Police Deputy Director General Avelino Razon to investigate the extrajudicial killings in 10 weeks time. However, the Task Force Usig gave a clean chit to the government by asserting that “There is no government

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<sup>77</sup>. Justice as circus, Inquirer.Net, 30 October 2007

<sup>78</sup>. ICRC cites deplorable jails conditions, available at:  
[http://www.bjmp.gov.ph/Press%20Releases/08092007\\_icrc.html](http://www.bjmp.gov.ph/Press%20Releases/08092007_icrc.html)

<sup>79</sup>. Bureau of Jail Management and Penology Data, available at:  
[http://www.bjmp.gov.ph/Data\\_Stat/July\\_2007/July\\_QandA\\_2007.pdf](http://www.bjmp.gov.ph/Data_Stat/July_2007/July_QandA_2007.pdf)

<sup>80</sup>. Arroyo affirms: We have no tolerance for rights violations, Inquirer.net, 15 October 2007

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policy —official or unofficial, formal or informal, written or covert — to suppress political dissent and fundamental constitutional freedoms, much less torture or murder critical journalists, leftist elements or the political opposition.” The Task Force's report held that 23 of the 111 activists killed were linked to the Communist Party of the Philippines (CPP) and New People's Army (NPA).

In a rare case, on 22 November 2006, the Regional Trial Court (Branch 31) reportedly issued order for the arrest of Sergeant Serafin Jerry Napoles and his six accomplices, all Officers of the 404th Infantry Battalion of the Philippine Army (PA) for the murder of Mr. Bacar Japalali and his wife, Mrs. Carmen Japalali in September 2004.

### **3. National legal obligations**

There are several provisions in the 1987 constitution and several national legislations in the Philippines which uphold the rights of the citizens including the indigenous peoples. Yet, these are not implemented in practice.

#### **I. Constitution: Political autonomy**

The 1987 Constitution of Philippines recognizes the right of Muslim and Cordillera peoples to self-determination in the form of autonomy. But there has not been genuine autonomy for the Cordillera peoples.

Indigenous peoples of the Cordillera rejected two Organic Acts for Cordillera Regional Autonomy. These Acts failed to provide substantive self-governance and control over land and natural resources. Consequently, the first Organic Act was rejected in a plebiscite on 30 January 1990 by all the Cordillera provinces except Apayao, while the second Organic Act was rejected on 7 March 1998. Recently, there has been report of another Organic Act for Cordillera Autonomous Region being initiated by the Regional Development Council (RDC). Obviously, the government of Philippines is fond of drafting laws without giving any rights.<sup>81</sup>

The same practice is being followed with the Moros of Mindanao.

#### **II. Draconian anti-terror law: Human Security Act of 2007**

The nomenclature *Human Security Act of 2007* could possibly only originate from the government of Philippines. At a time when National Security Laws and ant-terror laws were condemned for failing to ensure ‘human security’, the government euphemistically termed its latest anti-terror law, the Human Security Act of 2007 (HSA).

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<sup>81</sup>. Militants Skeptical of New Autonomy Push for Cordi, By Arthur L. Allad-IW, *Bulatlat*, Vol. VII, No. 25, July 29–Aug 4, 2007

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The HSA of 2007 give the security forces the power to detain suspects without warrant or charge up to three days. Section 19 stipulates that in the event of actual or imminent terrorist attack, suspects may be detained beyond three days without warrant. The provision merely requires a police officer to obtain a written approval from a human rights officer within a period of five days. A conviction for terror offences could result in a 40-year jail sentence without the benefit of parole.<sup>82</sup>

The HSA lists 11 crimes punishable with terrorism: piracy, rebellion or insurrection, coup d'etat, murder, kidnapping and serious illegal detention, arson, hijacking, highway robbery, illegal possession of firearms, violations of the Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990 and Atomic Energy Regulatory and Liability Act of 1968. These acts are already punishable under the Revised Penal Code.<sup>83</sup>

Article III, Section 3 of the 1987 Constitution states that any evidence obtained through wiretapping or voice recording cannot be used in any court proceeding. But the new law allows the state to use tape recorded evidence to pin down a suspect, in violation of the 1987 Constitution.<sup>84</sup>

### **III. Indigenous Peoples Rights Act of 1997: No implementation**

The 1987 Philippines Constitution has several provisions of relevance to indigenous peoples, which it calls "indigenous cultural communities" (ICC) and promotes the rights of ICC "within the framework of national unity and development" (Art. II Sec. 22).

Further in 1997, the government of the Philippines adopted the Indigenous Peoples Rights Act (IPRA). The Act created the National Commission on Indigenous Peoples (NCIP) mandated to formulate and implements policies, plans and programs for the recognition, promotion and protection of the rights and well-being of Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) with due regard to their beliefs, customs, traditions and institutions.

However, the IPRA failed to protect the rights of the indigenous peoples. The law lacks the necessary provisions to punish land grabbers and business corporations that encroach upon ancestral lands. There are several features which go against the interest of the indigenous peoples. For example, IPRA requires that indigenous peoples must first obtain a Certificate of Ancestral Domain Title (CADT) before they can claim their ancestral lands. However, the Balatik states that this feature of the law violates their inherent rights by destroying their traditional communal practice of land ownership and forcing them to name their lands under a single private entity. Besides, the CADT makes it easier for

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<sup>82</sup>. Philippines approves terror bill, BBC News, 20 February 2007

<sup>83</sup>. The Anti-Terror Law and State Terrorism: Two Faces of the Same Coin? By Dabet Castaneda, *Bulatlat*, Vol. VII, No. 20, June 24-30, 2007

<sup>84</sup>. Republic Act of 9372 or the Human Security Act of 2007

mining and business organizations to employ “divide-and-conquer” strategies by singling out targets that can be coerced to sell the land.<sup>85</sup>

### **National Commission on Indigenous Peoples**

The Indigenous Peoples Rights Act created the National Commission on Indigenous Peoples (NCIP), following a constitutional mandate (Art. 16, Sec. 12), replacing two earlier bodies concerned with “cultural minorities namely the Office for Northern Cultural Communities (ONCC) and the Office for Southern Cultural Communities (OSCC).” The NCIP is the primary government agency mandated to formulate and implements policies, plans and programs for the recognition, promotion and protection of the rights and well-being of Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) with due regard to their beliefs, customs, traditions and institutions.<sup>86</sup>

The National Commission on Indigenous Peoples, through its regional offices, have jurisdiction over all claims and disputes involving rights of the ICCs/IPs. But, priority has been given to their customary laws in solving disputes before being brought to the NCIP. In cases appealed before the Commission, majority vote of all the Commissioners is required for the pronouncement of judgment or final order. The decisions of the Commission are reviewable only by the Court of Appeals and the Supreme Court.<sup>87</sup>

However, the NCIP has failed to properly address majority of the human rights cases filed or in behalf of the indigenous peoples. There is little information about the numbers of human rights cases involving the security forces handled by the NCIP. In a rare case, concerning four IP minors who were killed allegedly by members of the security force of the Siraway Plywood and Lumber Company in Tungawan, Zamboanga Sibugay on 16 July 2003. The former DILG Secretary Joey Lina ordered the arrest of the alleged perpetrators through a memorandum after the case was endorsed to the office of the DILG.<sup>88</sup>

### **Failure to title ancestral domains:**

In the Philippines, there are an estimated five million hectares of ancestral domains exists based on combined pending claims for direct application for Certificate of Ancestral Domain Title (CADT) and claims for conversion of Certificate of Ancestral Domain Claim (CADC) into CADT. The figure could be much higher as lack of accurate data on the actual extent and location of ancestral domains and lands nationwide continue to affect the efficient planning, targeting and implementation of ancestral domain and land titling.<sup>89</sup>

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<sup>85</sup>. The Native Clearing: Deceiving Indigenous Peoples through IPRA, By John Raphael Fulgar, *Bulatlat*, Vol. VII, No. 33, September 23–29, 2007

<sup>86</sup>. Republic Act No 8371

<sup>87</sup>. 2004 Annual Report of the National Commission on Indigenous People

<sup>88</sup>. 2004 Annual Report of the National Commission on Indigenous People

<sup>89</sup>. NCIP, MTPDP for Indigenous Peoples, 2004–2008

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Lack of funds and boundary disputes delay the processing of ancestral land titles. According to NCIP Ancestral Domain Bureau director Myrna Cagaoas, NCIP has issued a total of 150 Certificates of Ancestral Land Titles and 56 CADTs comprising an area of 1,114,857.17 hectares as of 4 January 2007. The NCIP could not fund all the processes since the agency's budget for ancestral domain is merely P31 million a year according to Myrna Cagaoas.<sup>90</sup> In fact, the first CADT comprising ancestral domain of 29,444.34 hectares was issued to the Bago tribe of Bakun, Benguet only on 20 July 2002 and another covering 11,811.6 hectares was issued to the Manobo tribe of Lanuza, Surigao Province on 30 November 2002 after almost five years of IPRA implementation.<sup>91</sup>

As the NCIP failed to implement its mandate the indigenous peoples have lost faith in the Commission and believed that it has been used as a tool to flout their rights.

### **Failure to provide access to justice to indigenous peoples:**

Section 46(g) of the Indigenous Peoples Rights Act provides for a Legal Affairs Office to advise the NCIP on all legal matters concerning indigenous peoples and to provide them with legal assistance in litigation involving community interest.

The indigenous peoples are plagued with numerous problems, as such they could not afford the services of lawyers due to lack of money and costs of access to justice. According to its 2004 Annual Report, the NCIP has provided legal services to the indigenous peoples which included seven criminal cases, 10 civil cases, three labor cases, 5 administrative cases, among others.<sup>92</sup> Surprisingly, the NCIP website still shows vacancies for the post of legal officers.<sup>93</sup>

### **NCIP Manufacturing Consent:**

Both IPRA and the Mining Act of 1995 recognize the free prior and informed consent (FPIC) of indigenous peoples with regard to mining operation on their lands. However, the required FPIC can be cheated, bypassed, or ignored by interested mining companies.

Further, the government, with the approval of the NCIP, has been Implementing Rule and Regulations (IRR) in order to speed up mining applications. As was reflected in the "Free and Prior Informed Consent Guidelines of 2006" approved by the NCIP in July 2006. The new guidelines were opposed by various indigenous communities as it make easy for companies, especially mining companies to enter into ancestral domains.<sup>94</sup> The new

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<sup>90</sup>. Agency set to give more domain titles, 15 February 2007, Sun.Star Bagui, available at: <http://www.sunstar.com.ph/static/bag/2007/02/15/news/agency.set.to.give.more.domain.titles.html>

<sup>91</sup>. 2002 Annual Report of the National Commission on Indigenous People of the Philippines

<sup>92</sup>. 2004 Annual Report of the National Commission on Indigenous People

<sup>93</sup>. <http://www.ncip.gov.ph/news/newsdisplay.php?articleid=112>

<sup>94</sup>. Indigenous folk see govt as pro-mining, By Ellen Red, *InsideMindanao.com*, available at: <http://www.manilatimes.net/national/2006/dec/25/yehey/prov/20061225pro4.html>

guidelines also reportedly shorten the period for undertaking the FPIC from 180 days to 90 days.<sup>95</sup> This is contrary to the customary and traditional practices of indigenous peoples in terms of consensual decision-making as most of them are very isolated and remote.

A case in example being Toronto Ventures Inc. (TVI), a Canadian-Filipino owned mining company, which started operations in Mt. Canatuan in 2004 without the consent of the Subanen people. TVI has also recruited a Special Civilian Armed Auxiliary (SCAA) reportedly used to quell the Subanen opposition through intimidation. More than 500 of the 6,500 hectares covered by the CADT for the Canatuan Subanens have been freely taken and operated on by TVI till date. IPRA has consistently failed to protect the rights of indigenous peoples, such as the Aetas, Subanens, the Southern Tagalog tribes, and countless others. In reality, IPRA is a tool to give business entities the power to grab lands.<sup>96</sup>

In August 2007, the United Nations Committee on the Elimination of all forms of Racial Discrimination asked the Government of the Philippines to respond by December 2007 to accusations of failure to uphold and protect the rights of the Subanon and other indigenous peoples due to its support for mining developments.<sup>97</sup>

#### **IV. Philippines Commission on Human Rights: All bark, no bite**

The 1987 Constitution created an independent Commission on Human Rights with the mandate to ensure that the state indeed “values the dignity of every human person and guarantees full respect of human rights.” (Article XIII, Section 17). The Philippines Commission on Human Rights (PCHR) has the power to initiate an investigation and make recommendations based on its findings. However, the PCHR is a weak body which lacks power to effect its decisions. The Commissioners are not independent of the authorities. They are appointed by the President and as such are subservient to the President. This hampers in formulating plans and policies independently. Its findings and recommendations were subjected to serious scrutiny by the authorities. Consequently, resulting in non-implementation of the recommendations it made.

Under its present mandate, the PCHR is neither a judicial nor a quasi-judicial body; its jurisdiction limited only to civil and political rights. It can investigate rights violations but has no prosecutorial power.

#### **4. Enhancement of State’s capacity**

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<sup>95</sup>. Mining Firms Scramble for Lands in Central Luzon, by Jhong Dela Cruz, *The Bulatlat*, Vol. VI, No. 27, August 13 – 19, 2006

<sup>96</sup>. The Native Clearing: Deceiving Indigenous Peoples through IPRA, By John Raphael Fulgar, *Bulatlat*, Vol. VII, No. 33, September 23–29, 2007

<sup>97</sup>. Available at: [http://www.ohchr.org/english/bodies/cerd/docs/philippines\\_letter.pdf](http://www.ohchr.org/english/bodies/cerd/docs/philippines_letter.pdf)



Most of the capacity building programmes in the Philippines are focused on the National Human Rights Commission. The Human Rights Council should emphasize for capacity building of the National Commission on Indigenous Peoples.

### **5. Cooperation with HRC, Treaty Bodies and OHCHR**

The government of Philippines has failed to extend Open invitation/Standing invitation to the Special Procedures. Since 2003, only Special Rapporteur on Extrajudicial, summary or arbitrary executions (12 to 21 February 2007) has been invited to visit.

The government of Philippines has ratified most instruments but seldom implements the same at national level. The government of Philippines also failed to submit periodic reports under International Convention on the Elimination of All Forms of Racial Discrimination since 1998; under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment since 1992; under International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since July 2004, under Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography since June 2004, under the International Covenant on Civil and Political Rights since November 2006, and under Convention on the Rights of the Child since September 2007.

In a nutshell, the government of Philippines neither implements the Treaties nor has anything to report to the Treaty Bodies.