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**ALTERNATIVE REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)
TO THE UN HUMAN RIGHTS COMMITTEE ON THE FOURTH PERIODIC REPORT OF THE
PHILIPPINES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL
RIGHTS**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ ALTERNATIVE REPORT TO THE HUMAN RIGHTS COMMITTEE ON THE FOURTH PERIODIC REPORT OF THE PHILIPPINES

1. The International Commission of Jurists (ICJ) welcome the opportunity to submit its comments to the UN Human Rights Committee (HRC) in relation to the Committee's consideration of the fourth periodic report of the Philippines, submitted under article 40 of the International Covenant on Civil and Political Rights (ICCPR).

Executive Summary

2. In this submission the ICJ provides alternative replies to some of the questions raised in the List of Issues to be considered during the examination of the fourth periodic report of the Philippines.¹ The ICJ addresses the issues concerning: the constitutional and legal framework within which the Covenant is implemented; the right to life; independence of the judiciary and fair trials; the right to participate in public life; equality and non-discrimination; and rights of persons belonging to minorities. The ICJ concludes with a list of recommendations on what steps the Philippines should undertake to improve its implementation of and adherence to its obligations under the Covenant.

ICJ ALTERNATIVE REPLIES TO THE LIST OF ISSUES

Article 2(2): Legislative and other measures to give effect to the rights in the ICCPR

List of Issues, paragraph 1:

1. What is the status of the Covenant and the Optional Protocol under domestic law in the State Party? Please state whether the provisions of the Covenant are directly applicable by domestic courts and to what extent they are invoked and applied...

3. Although Article II, Section 2 of the 1987 Philippine Constitution (the Constitution) provides that generally accepted principles of international law form part of the law of the land, the Philippines in practice takes a dualist approach to international law. Hence, for international law instruments such as the ICCPR and the Optional Protocol to be made effective and fully observed among the executive and judicial authorities in the Philippines, it is necessary for Congress to pass domestic legislation implementing obligations embodied in these treaties.

4. While the Supreme Court of the Philippines routinely cites the ICCPR in its decisions, it has only done so in the context of treating the provisions of the ICCPR as persuasive authority rather than as binding. For instance, in the case *Ang Ladlad v Commission on Elections*, the Supreme Court expressly recognized the principle of non-discrimination as laid out in Article 26 of the ICCPR, with respect to the right to electoral participation. It ruled that the principle of non-discrimination embodied in Article 26 "requires that laws of general application relating to elections be applied equally to all persons, regardless of sexual orientation".²

List of Issues, paragraph 3:

3. Please explain whether any steps have been taken to strengthen the mandate of the Commission on Human Rights of the Philippines (CHRP) and to provide it with adequate resources, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please provide an update on the status of Senate Bill No. 2818 which, inter alia, seeks to confer prosecutorial powers on the CHRP...

5. The Commission on Human Rights of the Philippines (CHRP) was established under Article XIII, Section 17 of the Constitution, which describes the CHRP as an "independent office". Following adoption of the Constitution, then President Corazon C. Aquino issued Executive Order 163, which up to the present serves as the charter of the CHRP.

¹ Human Rights Committee, *List of issues to be taken up in connection with the consideration of the fourth periodic report of the Philippines*, UN Doc CCPR/C/PHL/Q/4 (2012).

² *Ang Ladlad v Commission on Elections*, GR No 190582, 8 April 2010.

6. The Constitution lays out the powers and functions of the CHRP, which at first glance look compelling, but have been judicially interpreted in a manner that limits the mandate of the institution. An emblematic case is *Cariño v Commission of Human Rights*, where the Supreme Court ruled that the CHRP is not competent to prosecute or adjudicate any case or claim, despite having the authority under Article XIII, Section 18(1) of the Constitution, to investigate violations of civil and political rights.³

7. Recognizing its own limitations, the CHRP has worked with Parliamentarians to draft its own enabling law with a view to strengthening its mandate in the investigation, resolution, and monitoring of human rights violations. Several versions of this proposed law have been presented in Congress, including House Bill Nos. 55 and 1141. A similar Bill is also at the Senate, Senate Bill No. 2818, which is now awaiting a second reading. However, debates on these proposals have been waylaid in both Congress and the Senate. The recent impeachment trial of the Chief Justice of the Supreme Court and a much-publicized Bill on reproductive health are dominating a substantial portion of the time in both Congress and the Senate. It is therefore believed that there would be no further chance for debate in the short term on the proposals for strengthening the CHRP mandate and authority. Senior executives of the CHRP believe that a law strengthening the institution's mandate will not be passed during the 15th Congress, which will end in June 2013.⁴

8. It appears that the CHRP will nevertheless continue to make a priority the passage of a law to effectively strengthen its mandate. In its five-year roadmap for 2011 to 2015, the CHRP states that it will continue to push for the passage of a strong CHRP charter that will enhance its powers and functions, provide it fiscal autonomy, and allow it the capacity to develop skills of their officers and staff so that it may better comply with international standards on human rights investigation and monitoring.⁵

**Article 6(1):
Right to life – the 'Ampatuan Massacre'**

List of Issues, paragraph 9:

9. ...In relation to the so-called 'Ampatuan massacre' that witnessed the killing of 58 people in Maguindanao on 23 November 2009, please provide updated information on the details of the case. Furthermore, please state the measures taken to ensure the safety of investigators and witnesses from harassment, intimidation, and assassination attempts...

9. On 23 November 2009, a convoy of 57 people, including 31 journalists, was attacked by at least 100 armed men in the province of Maguindanao. The convoy included members of the Mangudadatu clan who were on their way to file candidacy papers for a provincial election. Witness accounts allege that the victims were either gunned down or hacked to death by men, allegedly upon the orders of the Ampatuan clan, the political rivals of the Mangudadatus.⁶

10. At least 196 people were charged with murder, including Andal Ampatuan Jr., his father, uncle, and three brothers. The case is still ongoing at the Quezon City Regional Trial Court. The court is currently receiving testimonies from witnesses for the prosecution.⁷ Since 2010, however, at least three witnesses and three relatives of other witnesses have been killed, implying that there is intense harassment and intimidation on prosecution witnesses in this case. The three witnesses who have been reported killed are Suwaib Upham, Esmael Amil Enog, and Alijol Ampatuan.

11. Suwaib Upham was gunned down in June 2010 in Parang town, Maguindanao province.⁸ According to his lawyer, Suwaib Upham had requested the Department of Justice in April 2010 to

³ *Cariño v. Commission on Human Rights*, G.R. No. 96681, 2 December 1991.

⁴ Telephone interview with Attorney Jacqueline Mejia, Executive Director of the Commission on Human Rights of the Philippines, 3 September 2012.

⁵ *Lawyers League for Liberty (LIBERTAS)*, "Philippines: A Time of Vigilance and Hope", *2011 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia (2011)*, Bangkok, Thailand, p. 219.

⁶ *DOJ creates panel on Maguindanao massacre*, ABS.com, 24 November 2009, available at URL <<http://www.abs-cbnnews.com/business/11/24/09/doj-creates-panel-maguindanao-massacre>>.

⁷ *Interview with Attorney Gilbert Andres, Private Prosecutor in the case People v Ampatuan, et Al*, 6 September 2012.

⁸ Jerome Aning, *Massacre Witness Killed*, Philippine Daily Inquirer, 25 June 2010, available at URL <<http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100625-277396/Massacre-witness-killed>>.

be accorded the status of State witness and given protection under the Witness Protection Act. There was no response from the Department of Justice until Suwaib Upham's death.⁹

12. Esmael Amil Enog testified in July 2011 that he was ordered by Alijol Ampatuan to send 36 armed men to the massacre site on the day itself. He was found dead in May 2012, his body cut into pieces and placed in a sack. On the day Esmael Amil Enog was found dead, Alijol Ampatuan was also reported missing.¹⁰

13. Alijol Ampatuan, one of the slain witnesses, is related to the main accused person in this case. As mentioned, he was known to have sent armed men to the site on the day of the massacre. The prosecutors had planned to make him a State witness in this case. News of his death became public in June 2012.¹¹ He was allegedly killed in February 2012 in a drive-by shooting in Shariff Azuak, Maguindanao.

Article 14(1) and (3)(c): Right to a fair trial, including trial without delay

List of Issues, paragraph 18:

18. ...please respond to reports that, although the law prescribes time limits for the disposition of cases by courts, it takes, for instance, an average of 5 to 10 years to obtain a conviction which partly affects the length of the pretrial detention.

14. All persons have the right to a speedy, impartial, and public trial under Article III, Section 14(2) of the Constitution. The Republic Act No. 8493 (Speedy Trial Act of 1998) also imposes a time limit for trial. As a general rule, the entire trial period must not exceed 180 days from the first day of trial. Under the law, the trial judge is mandated to set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time.¹²

15. In practice, however, criminal and civil cases usually last in excess of five years until they reach the Supreme Court where cases may await final resolution for several more years. Trial is usually not continuous, with hearing dates usually several months apart. It is also a practice for most lawyers to challenge interlocutory orders before higher courts and simultaneously seek a suspension of the proceedings at the lower courts while the challenge is pending.¹³

16. The Speedy Trial Act also does not cover delays during police investigations, preliminary investigations, and the enforcement of judgements.

17. A clear illustration is the case of the "Abadilla 5":

- In 1996, Rolando Abadilla, the former intelligence chief of the now defunct Philippine Constabulary, was killed as he was driving along Katipunan Avenue in Quezon City. It is alleged that the Alex Boncayao Brigade (ABB), a group known as the communist hit squad, claimed responsibility for the killing.¹⁴
- Days after the death of Rolando Abadilla, police arrested five men who were not connected with the ABB for allegedly committing the crime. These five men, now known as the "Abadilla 5", are Lenido Lumanog, Cesar Fortuna, Joel de Jesus, Rameses de Jesus, and Augusto Santos.
- The accused persons, later alleged that they were tortured into "confessing" that they committed the crime. They claim to have been beaten up electrocuted, suffocated, and

⁹ Interview with Attorney Rommel Bagares, Lawyer of Suwaib Upham, 6 September 2012.

¹⁰ *In the Know: Esmael Amil Enog*, PHILIPPINE DAILY INQUIRER, 25 June 2012, available at <http://newsinfo.inquirer.net/218075/in-the-know-esmael-amil-enog>.

¹¹ *Sixth Philippine Massacre Witness Killed*, BBC WORLD NEWS ASIA, 28 June 2012, available at <http://www.bbc.co.uk/news/world-asia-18621705>.

¹² Republic Act 8493 (Speedy Trial Act of 1998), Section 6.

¹³ International Commission of Jurists, *Access to Justice: Human Rights Abuses Involving Corporations-Philippines*, 2010 at page 40.

¹⁴ Sophia M. Dedace, *Appeal of "Abadilla 5" denied with finality by the SC*, GMA News, 8 February 2011, available at URL <<http://www.gmanetwork.com/news/story/212485/news/nation/appeal-of-abadilla-5-denied-with-finality-by-sc>>.

given the “water treatment”.¹⁵ Following an independent investigation, the CHRP concluded that the five men had indeed been tortured and recommended the initiation of criminal prosecution against the perpetrators of those human rights violations. The report of the CHRP and their recommendations were issued in June 1996.¹⁶

- In August 1999, the Quezon City Regional Trial Court convicted the “Abadilla 5” despite the allegations of torture and the alleged claim of responsibility by the ABB.
- The sentence imposed was death and the case was therefore brought to the Supreme Court on automatic review. In 2005, the Supreme Court transferred the review of the case to the Court of Appeals, which in turned affirmed the sentence of death on 1 April 2008.¹⁷ The accused further appealed the case to the Supreme Court, which denied the appeal and confirmed the Court of Appeals’ decision.¹⁸
- On 10 January 2011, the Office of the Ombudsman recommended the filing of criminal charges against the policemen who allegedly violated the rights of the “Abadilla 5”, including by subjecting them to torture.¹⁹

Articles 25 and 26:

Public and political participation; and non-discrimination based on sexual orientation and gender identity

List of Issues, paragraph 28:

28. According to information before the Committee, the Commission on Elections (COMELEC) rejected an application for accreditation by an LGBT group LADLAD to participate in the 2010 elections on grounds of morality arguing that homosexuals are a threat to young persons. Please explain what measures are being taken to provide an environment in which all political parties and their members have equal rights and legal status to participate freely in the State party’s periodic elections.

18. When the Committee on Elections (COMELEC) refused to register the Ang Ladlad LGBT Party for religious and moral reasons, Ang Ladlad filed a petition for review on *certiorari* before the Supreme Court. The Supreme Court rejected all of COMELEC’s reasons for denying registration, concluding that COMELEC’s reliance on religious grounds was a violation of government neutrality in religious matters, and that its public morality argument amounted to “moral disapproval” rather than a legitimate government interest. The Court stated that Philippine democracy “precludes using the religious or moral views of part of the community to exclude from consideration the values of other members of the community”. It concluded that both constitutional law and international human rights law, including the ICCPR and the Universal Declaration of Human Rights, protected Ang Ladlad’s right to participate in the political process.²⁰

19. The Supreme Court decision appears to have had a positive impact on public and political participation by lesbian, gay, bisexual and transgender (LGBT) persons and organisations. Following the *Ang Ladlad* decision, LGBT organizations in some provinces have become more active in local politics and this appears to have influenced legislative leaders. In Davao City, for example, the chairperson of the City Council expressed support for giving more representation to the LGBT sector. At Ang Ladlad’s most recent appearance before COMELEC, concerning its partylist nominees for the 2012 national elections, questioning by Committee members appeared fair and objective.

20. Although the outcome and impact of the *Ang Ladlad* case appear to be positive so far, the circumstances surrounding the case reflect challenges in the Philippines concerning discrimination

¹⁵ *What went before: “Abadilla 5”*, Philippine Daily Inquirer, 3 December 2011, available at URL <<http://newsinfo.inquirer.net/104589/what-went-before-abadilla-5>>.

¹⁶ *PHILIPPINES: Abadilla Five’s nearly 13-year-old complaint over rights abuses must be filed in court at once*, Asian Human Rights Commission (AHRC), 9 January 2009, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-001-2009>

¹⁷ Above note 9.

¹⁸ Above note 14.

¹⁹ *Ombudsman files torture charges v. cops in Abadilla 5 case*, Global Balita, 22 January 2011, available at URL <<http://globalbalita.com/2011/01/22/ombudsman-files-torture-charges-vs-cops-in-abadilla-5-case>>.

²⁰ Supra note 1.

against and stereotyping of LGBT persons, who have for a long time sought enactment of a broad anti-discrimination law.

**Article 27:
Vigilante groups acting against persons belonging to minorities**

List of Issues, paragraph 29:

29. ...Please respond to allegations that the AFP revived the vigilante group *Alsa Lumad* (Rise, Indigenous Peoples) and is arming indigenous groups as part of the AFP's counter-insurgency strategy against the New People's Army (NPA)...

21. On 14 July 2006, President Gloria Macapagal-Arroyo issued Executive Order No. 546, which authorizes the Philippine National Police (PNP) to deputize civilians as force multipliers to aid in the maintenance of peace and order.²¹ This directive has legitimized the formation of several paramilitary groups supported by the Armed Forces of the Philippines (AFP) and the PNP, and have been known for flagrant abuses of human rights.²²

22. On 3 September 2012, at least eight masked men riding motorcycles attacked a group of indigenous people from the Tigwahanon tribe who were peacefully protesting in front of the Bukidnon provincial capitol. The protest concerned the Tigwahanon's having to leave their village in Sitio Kirangol, Dao, San Fernando, allegedly because they were continuously harassed by the New Indigenous People's Army (NIPAR), a paramilitary group allegedly supported by the AFP. During the attack against the protesters, the masked men destroyed the protesters' amplifier and took their streamers and tarpaulins. The masked men also directed an electric shock device at random individuals in the group.²³

23. According to reports, the security personnel guarding the provincial capitol, as well as members of the military and police, were present during the attack but did not attempt to stop or arrest the masked men as they were attacking the protesters.²⁴

RECOMMENDATIONS

Against the background of the information provided within this submission, and in the context of the thematic areas considered in this submission, the ICJ suggests that the Committee make the following recommendations to the Philippine authorities:

Article 2

1. Implement into domestic legislation all provisions of Parts I and II the ICCPR so that those provisions are directly applicable by domestic courts, rather than merely persuasive.
2. Adopt at the earliest opportunity a law to effectively strengthen the mandate of the Commission on Human Rights of the Philippines (CHRP) so as to enhance the CHRP's powers, functions, and mandates in the investigation, resolution and monitoring of human rights violations. Such a law should also afford the CHRP fiscal autonomy and wider access to financial resources.

²¹ Note: Section 2 of Executive Order No. 546 specifically states: "*the PNP is hereby authorized to deputize the barangay tanods as force multipliers in the implementation of the peace and order plan in the area.*" The "barangay" is the smallest administrative unit in the Philippines. "Barangay tanods" are essentially civilian watchmen who are tasked to maintain peace and order within this unit.

²² Germelina Lacorte, *Mindanao NGOs ask Aquino to rescind order on community watches*, PHILIPPINE DAILY INQUIRER, 12 June 2012, available at URL <<http://newsinfo.inquirer.net/211079/mindanao-ngos-ask-aquino-to-rescind-order-on-community-watches>>.

²³ *Students photograph masked men threatening lumad, youth activists*, Interaksyon.com, 4 September 2012, available at <http://www.interaksyon.com/article/42255/photo--students-photograph-masked-men-threatening-lumad-youth-activists>.

²⁴ *Masked men attack protesters with tasers*, UCANews.com, 4 September 2012, available at <http://www.ucanews.com/2012/09/04/masked-men-attack-protesters-with-tasers/>

Article 6

3. Ensure a speedy and effective resolution to the case relating to the "Ampatuan Massacre" and take effective measures to provide protection for witnesses who have been identified by prosecutors as essential to the case.

Article 14

4. Ensure the strict implementation of the Speedy Trial Act of 1998, particularly those provisions that require continuous trial and that the entire period of trial shall not exceed 180 days.
5. Adopt policies and measures to avoid delays in police investigations, preliminary investigations, and the enforcement of judgements.

Article 26

6. Provide effective protection against discrimination based on sexual orientation and gender identity, including by adopting comprehensive anti-discrimination legislation that includes the prohibition of discrimination on the ground of sexual orientation and gender identity.

Article 27

7. Abolish Executive Order No. 546 in order to prevent the employment of civilians as "force multipliers" for the AFP and PNP in combating insurgency.
8. Investigate allegations of human rights violations committed by members of paramilitary groups such as the New Indigenous Peoples' Army (NIPAR), and ensure the prosecution of perpetrators of violations. Provide access to effective remedies and reparations, including compensation, to victims of such violations.

