



## **Commission on Human Rights of the Philippines (CHRP)**

**SAAC Building, Commonwealth Avenue, U.P. Complex Diliman,  
Quezon City, Philippines 1101**

# **Submission to the Universal Periodic Review – Philippines June 2012**

### **Contact Persons**

**LORETTA ANN P. ROSALES**

**Chairperson**

**+6329285655, +6329290102**

**[chair.rosales.chr@gmail.com](mailto:chair.rosales.chr@gmail.com), [loretann@gmail.com](mailto:loretann@gmail.com)**

**Karen S. Gomez Dumpit**

**Director**

**GOVERNMENT LINKAGES OFFICE**

**+6329274033, +6329276254 (telefax)**

**[kgdumpit@yahoo.com](mailto:kgdumpit@yahoo.com)**

## **A. The Commission on Human Rights**

1. The Commission on Human Rights of the Philippines (CHRP) is the national human rights institution in the country with “A” status accreditation. CHRP was created under the 1987 Constitution to investigate human rights violations, monitor government compliance with international human rights obligations, provide human rights education and training, among others. This independent submission is a product of internal deliberations as well as regional and national consultations with Civil Society.<sup>1</sup>

## **B. Institutional and Legal Framework for Human Rights, New Developments**

2. Since the first UPR session on the Philippines,<sup>2</sup> Congress has passed a number of laws on human rights related to the UPR recommendations.<sup>3</sup> Other major human rights laws have yet to be enacted including the Commission on Human Rights Charter, compensation to victims of human rights violations, and laws on protection against extra-judicial killings, enforced disappearance and protections for internally displaced persons.

3. The CHR has been given additional substantive roles under the Magna Carta of Women, Anti-Torture Law, and IHL law. Without corresponding resources, these additional functions and the proposed prosecutorial mandate<sup>4</sup> would overburden the Commission and impair its effectiveness. It still does not have full fiscal autonomy, its budget has been cut twice<sup>5</sup> and it lacks the power to determine its own organizational structure; all of which weaken its independence. The long overdue CHR Charter bill<sup>6</sup> should be a priority as a long-term, institutional measure for human rights protection and promotion. Strengthening the National Human Rights Institution is a long-term measure for human rights protection and promotion.

## **C. Human Rights Protection and Promotion on the Ground**

Related to UPR Recommendations

*Recommendation 1<sup>7</sup> Violence against women, access to justice and rehabilitation and post-conflict care for women and children*

4. The Anti-Violence against Women and their Children Act<sup>8</sup> has been upheld by the Supreme Court as constitutional. Despite training programs for the judiciary, some court decisions seem to reflect the preference of some judges to not apply this law and other laws, including the 1997 special law on rape. A Court of Appeals decision shows gender stereotyping and high requirements for a woman to establish the occurrence of rape and lack of consent.<sup>9</sup>

5. The Magna Carta of Women<sup>10</sup> addresses many of the issues related to discrimination and violence against women.<sup>11</sup> However, though the law provides that “measures to prosecute and reform offenders shall likewise be pursued,” it does not establish how to accomplish this.

6. Three cases have been filed in the CEDAW committee and the government has yet to respond to a request for an invitation from the CEDAW Committee.

7. Addressing special needs for rehabilitation and post-conflict care of women and

children in vulnerable situations and conflict areas remains a challenge. The CHR will adopt a monitoring tool<sup>12</sup> to systematically monitor the situation of vulnerable groups including women and children.

*Recommendation 2<sup>13</sup> Train Security Forces on HR*

8. The high number of complaints received by the CHR makes it necessary to review the efficacy of its human rights education program. In 2010, the CHR received 263<sup>14</sup> complaints in which the respondents are either members of the police or the military.

9. Reports of hazing in academies for the security sector indicate that the culture of violence among security forces begin early and that this is when orientation in human rights should also begin. Reports from CHR regional offices show that law enforcers (and prosecutors) lack knowledge of the provisions of the Anti - Torture Act and their obligations under it.<sup>15</sup>

*Recommendation 4<sup>16</sup> Ratify OPCAT and Recommendation 5<sup>17</sup> Report regularly to Committee against Torture*

10. Immediately after the UPR session on the Philippines, the Government signed the OPCAT. The current administration has endorsed the instrument of ratification to the Senate for concurrence, but may defer implementation. The CHR and civil society continuously call for unconditional ratification.

*Recommendation 6 Eliminate torture and extrajudicial killings,<sup>18</sup> Intensify efforts to investigate and prosecute,<sup>19</sup> Follow up report, taking into account recommendations of SR on EJK<sup>20</sup>*

11. The CHR has recorded complaints involving 385 incidents of extra-judicial killings with a total of 589 victims; 78 incidents of enforced disappearance with 210 victims; and 112 incidents of torture with 211 victims for the period 2001 – mid-2010<sup>21</sup>. With 2011 showing reduced HRVs<sup>22</sup>, the conclusions of the U.N. Special Rapporteur on EJKs remain apt: “. . . the Government has failed to make sufficient substantive progress . . . far too little accountability has been achieved for the perpetrators.”<sup>23</sup> While Government has underscored a political solution to ending armed conflict, there remains a disjoint between policy and operation.

12. Currently, there is no focal institution in the executive branch to coordinate/oversee a strategic approach to reduce or eliminate torture and extrajudicial killings.

13. The recent case of police torture recorded on video by cell phone then aired on television<sup>24</sup> demonstrates that torture is indeed practiced and legal measures are still slow. It took over a year for a criminal case to be filed against the police officer identified from the video. He has yet to be arraigned. The PNP dismissed him from service but only three months later he was hired as a lecturer at a police academy. It is difficult to see how this would prevent impunity.

14. The Ampatuan Massacre in Maguindanao province is moving very slowly because of inefficient evidence - gathering. A recent Court ruling to present as many as 5-6 witnesses a

day, was cited by the prosecution as an added burden to them.<sup>25</sup> To date, only 64 of the 196 accused have been arraigned.<sup>26</sup>

15. The security sector has implemented some responses on these issues<sup>27</sup> but they have also administratively dismissed cases of erring members of the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP).

16. The team of Special Prosecutors for cases of extralegal killings, and the Special Courts designated by the judiciary<sup>28</sup> have not resulted in any significant improvement in the speed of prosecutions and trials. Many prosecutors do not prosecute under the Anti - Torture Law, but instead, for “physical injuries,” which carries a much lower penalty and fails to underline the human rights aspect.

17. To address impunity, a multi-sectoral body, the National Monitoring Mechanism (NMM)<sup>29</sup> has been established. It is composed of government, civil society and the CHR to monitor progress in resolving cases of extra-judicial killings, enforced disappearances and torture.

18. The CHR welcomes the ratification<sup>30</sup> of the International Court Statute. It is hoped that this, together with the IHL Law, will prove to be instruments in combating abuses and impunity in the armed forces.

*Recommendation 8<sup>31</sup> Legal framework for eliminating gender-based discrimination and promoting gender equality*

19. It remains to be seen how effective the Magna Carta of Women is in eliminating gender-based discrimination and promoting equality. This law mandates, “The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman's life cycle and which addresses the major causes of women's mortality and morbidity.”<sup>32</sup> However, efforts to turn this into action through the Reproductive Health Bill, has failed to be enacted for several years. The bill under debate in the Senate maintains the current prohibition against abortion.

20. Congress needs to address existing gaps in law that have very real impact on the lives of women including the Family Code which gives preference to the decision of the husband in a number of issues.

21. Even the Magna Carta will not help unearth and stop discriminatory practices in places of employment. It took complaints from an employees’ group for CHR and the Department of Labor to discover that provisions in the collective bargaining agreement between carrier Philippine Airlines and the Flight Attendants and Stewards Association of the Philippines (FASAP) were gender discriminatory regarding retirement age, and maternity benefits.<sup>33</sup>

*Recommendation 9<sup>34</sup> Legislative gaps for children*

22. The CHRP is very concerned by attempts in Congress to suspend the implementation of the Juvenile Justice and Welfare Act (JJWA) and to enact a law to reduce the age of criminal responsibility from 15 to as low as 9 years old. The weakness is not in the law but in the implementation. Many local governments across the nation have failed to implement a

comprehensive program on juvenile justice which include facilities for juveniles in conflict with the law, despite budgetary provisions in the law.

*Recommendation 11<sup>35</sup> Strengthen witness protection and address root causes of this issue (killings) in context of reform of judiciary and armed forces*

23. The CHRP calls on the government to strengthen witness protection mechanisms. A witness in the massacre of journalists in Mindanao was killed – affecting the prosecution of the case. This is one example of how violence and intimidation of witnesses hampers investigation and successful prosecution. The CHRP itself has been hampered in its investigations because witnesses are afraid to give information. Despite the lack of resources, some witnesses continue to seek protection from the Commission.

*Recommendation 13<sup>36</sup> Continue successful policy in combating trafficking*

24. The government has instituted further measures to combat trafficking including strict immigration controls. However, this raises risk of discrimination against women, and profiling based on racial features. Legitimate travellers including Migrant Workers have been wrongfully prevented from travelling as a result.

25. Even as recently as 2008, prosecutors had preferred to file charges of kidnapping rather than apply the Anti-Trafficking Act. Convictions under the Anti-Trafficking Act significantly increased from 15 in 2006 - 2008 to 51 in 2009 to present<sup>37</sup>. This is attributed to the familiarity in and greater acceptance of the law as well as the designation of Special Prosecutors. Government could use this approach to investigate and prosecute other rights violations.

*Recommendation 14<sup>38</sup> Step up efforts to meet basic needs of poor and other vulnerable groups*

26. Some policies and laws intended to help vulnerable groups in terms of their basic needs are poorly implemented or not enforced. For example, pharmacies refuse to comply with the law granting discounts for medicines for persons with disabilities<sup>39</sup>. There is a better rate of compliance for the senior citizen's discounts for medicines and groceries.

27. In response the continuing policy and necessity to evict informal settlers (sometimes for flood control), the Commission issued guidelines on how to conduct these while mitigating rights violations.

28. It is necessary to conduct a household survey of indigenous communities to determine the performance in supply of basic needs and services. These communities, partly because of remote locations, continue to be among the most underserved in utilities, health services, education, etc.

## Other Important Human Rights Issues

### *Violations by Non-State Actors*

29. Non-state actors also must respect human rights. When the suspected perpetrator is not a state actor, whether from an armed group or the corporate sector, the State nonetheless has the duty to provide adequate and effective remedies.

#### Armed groups

31. There has been a rise in human rights violations committed by non-state actors, including armed groups and private armies. These include beheadings, use of landmines which have killed police in various locales, and kidnappings. Leftist insurgents threatened the right of suffrage during the 2010 elections by collecting fees to allow candidates to campaign in areas they control.

#### Business and human rights

32. Among the “business and human rights issues” in the Philippines: Airlines have policies allowing them to refuse passage to persons with disabilities. The abovementioned Philippine Airlines (PAL) policies on retirement and maternity discriminate against women.

33. Now that the government has expanded the granting of concessions for mining, vigilance must be exercised against more frequent violations, including displacement, violence against opponents of mining presence, and negative impact on the economic and cultural rights of indigenous peoples.

#### LGBT

34. Killings of lesbians, gays, bisexuals and transgenders (LGBT) have been reported by civil society.<sup>40</sup>

35. Attitudes against LGBTs even among government officials was exposed when the Commission on Elections disapproved the application for registration of a sectoral representative political party, “*Ang Ladlad*,” to stand for sectoral representation seats in the 2010 elections. The application was disapproved on “moral grounds”.<sup>41</sup> The CHR filed an *Amicus Curiae* brief that pointed out the right to against discrimination and State obligations to protect that right. The Supreme Court ruled in favour of “*Ang Ladlad*”.

#### *Compensation for Victims of Human Rights Violations During Martial Law*

36. Because human rights protection involves not only prosecuting but also affording justice and reparation to victims and their families, the distribution of compensation checks to victims who had filed and won a civil case against Marcos in Hawaii, USA marks a milestone in human rights. The CHR, on request of the lawyers representing the victims, allowed to base the distribution in the CHR regional offices.

#### *Political participation for persons deprived of liberty*

37. The 2010 National Elections, for the first time in Philippine electoral history, persons deprived of liberty<sup>42</sup> were able to vote *en masse* through facilities set up by the Commission on Elections. This was the result of advocacy by the CHR and civil society. It addressed a large scale problem wherein hundreds of thousands of PDLs had been deprived of their right to vote, most of whom were still going through the investigation or trial process.

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<sup>1</sup> All CHRP Regional Offices conducted CHRP – NGO Consultations on the UPR (14 Regions convened the consultations in July 2011). A National Consultation with Civil Society was conducted on 8 November 2011. Recommendations of the Universal Periodic Review have been mainstreamed in the treaty monitoring and advocacy activities of the Commission as early as 2008. The most recent is the conduct of a Multi-Stakeholders’ Forum conducted in October of 2010 wherein UPR Recommendations became a basis, alongside treaty body recommendations, to present a Human Rights Agenda for the newly elected government. Representatives of Government were invited to these events (except for the 8 November National Consultations) As of this writing, the Commission has offered another forum where they can present their progress on the implementation of UPR Recommendations in another Multi-stakeholders’ Forum scheduled for 6 December 2010.

<sup>2</sup> April 2008

<sup>3</sup> Magna Carta of Women; Anti-Torture Law;<sup>3</sup>Law Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity; amendments to the Magna Carta for Migrant Workers; the Anti-Child Pornography Act.

<sup>4</sup> The Commission en banc does not agree that prosecutorial powers are appropriate or desirable for lack of capacity and resources. It has been consistent on this position.

<sup>5</sup> General Appropriations Act of 2011 and the General Appropriations bills for 2012

<sup>6</sup> The bill would clarify the CHR’s fiscal independence, power to create/collapse offices to meet human rights trends, and strengthen its protection capacity with subpoena powers, a.il.

<sup>7</sup> Accepted

<sup>8</sup> Enacted 2004, related only to violence within households and personal relationships

<sup>9</sup> *People v. Carpentier, Duplantis, Silkwood and Smith* [Subic Rape Case]). CA’s decision which stated that, viz.:

*“[r]esistance by word of mouth does not suffice to establish that she indeed did not give her consent to sexual intercourse, but it must be an act done in good faith and not through a mere pretense or token resistance under the circumstance. A woman has means to protect herself: she is equipped to interpose effective obstacles by means of her hands and nails, her limbs or even her pelvic muscles.”*

<sup>10</sup> Enacted in 2009

<sup>11</sup> including physical, sexual, psychological, and economic violence in the household, the general community and even acts perpetrated or condoned by the State. The right to protection against violence is recognized even in situations of armed conflict and militarization.

<sup>12</sup> in partnership with an NGO, Balay Rehabilitation Center, with the support of the United Nations High Commissioner for Refugees

<sup>13</sup> Accepted

<sup>14</sup> CHRP Data from Information Systems Management Office

<sup>15</sup> Enacted in 2010

<sup>16</sup> Accepted

<sup>17</sup> Accepted

<sup>18</sup> Accepted

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<sup>19</sup> Accepted

<sup>20</sup> Not supported

<sup>21</sup> From Case Reports Analysis of CHRP Legal and Investigation Office

<sup>22</sup> Ibid.

<sup>23</sup> A/HRC/112/Add.8 “Follow up to country recommendations-Philippines”

<sup>24</sup> Brought to the attention of the CHRP and aired on television in July 2010

<sup>25</sup> With a recent directive from the Judge in the case, the prosecutor must present five or six witnesses per trial day in the Maguindanao multiple-murder case. This was cited as an added burden on the part of the prosecution. Available online at <http://ph.news.yahoo.com/prosecutors-maguindanao-massacre-case-cite-change-rule-witnesses-021418297.html>

<sup>26</sup> From the court monitoring report of the CHRP Legal and Investigation Office

<sup>27</sup> For example, designating human rights officers, establishing human rights offices down to regional and battalion/command levels, Human Rights-Based Intelligence Handbooks by the Philippine National Police (PNP) and Armed Forces of the Philippines (AFP), and the filing of cases against members of their ranks in coordination with the CHRP.

<sup>28</sup> Both established in 2007

<sup>29</sup> with the assistance of the European Union established through a bilateral agreement forged through the Europe – Philippines Justice (EPJust) program

<sup>30</sup> Senate concurrence on August 25, 2011 completed the Constitutionally required process for ratification of treaties

<sup>31</sup> Accepted

<sup>32</sup> Section 17

<sup>33</sup> The Collective Bargaining Agreement (CBA) executed by the FASAP and PAL, Section 144, Article XXIX sets the compulsory retirement age of cabin attendants at fifty-five (55) for females and sixty (60) for males for those hired before the signing of the Agreement, and at forty-five (45) and forty (40) for all cabin attendants hired after its signing and after 22 November 2000, respectively. *Flight attendants are also placed on prolonged leaves-without-pay and benefits are suspended during their pregnancy and maternity leaves.* 22 November 1996.

FASAP also filed before the courts a petition for reinstatement of the forced retirees. The handling of this case by the Supreme Court, though controversial, has no bearing on gender discrimination as such was not raised by the parties nor considered an issue in the decision, which has now been reversed.

<sup>34</sup> Accepted

<sup>35</sup> Not supported

<sup>36</sup> Accepted

<sup>37</sup> Figures from the Interagency Committee Against Trafficking (IACAT).

<sup>38</sup> Accepted

<sup>39</sup> Reports from CHR partner NGOs representing PWDs

<sup>40</sup> as documented by Rainbow Rights

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<sup>41</sup> Section 6, Republic Act 7941 or the Party-List System Act

<sup>42</sup> except those who have lost political participation rights by way of criminal conviction, as provided by law