

LAWYERS FOR LAWYERS (L4L) SUBMISSION TO THE UPR MAY 2012

1. Lawyers for Lawyers (L4L) is submitting this report on the state of human rights in the Philippines with recommendations to the OHCHR for the 13th session of the UPR in the UN Human Rights Council in May-June 2012.
2. The Philippines was a state under review (SuR) in the first session of the first cycle of the UPR in 2008, being a member of the 47 member-states of the Human Rights Council in 2007.
3. L4L is an independent Dutch foundation with the status of *'institution for the promotion of the public interest'*. L4L stands up for lawyers, who are hindered, threatened or abused.

IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS: ACHIEVEMENTS, BEST PRACTICES AND CHALLENGES

CIVIL AND POLITICAL RIGHTS

4. The adequate protection of human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services. These legal services can only be provided effectively by an independent legal profession. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and from, among several such instruments, the International Covenant on Civil and Political Rights that has been signed and ratified by the Government of the Republic of the Philippines (GRP).
5. The GRP, in its national report (PNR) for the UPR, stated that *'for complaints of human rights violations, effective remedies are available through judicial, administrative and legislative processes, including inquiries in aid of legislation, internal administrative disciplinary procedures in executive agencies, the police, and armed forces'*.ⁱ
6. In its task of promoting and ensuring the proper role of lawyers, the GRP should respect and take into account the UN Basic Principles on the Role of Lawyersⁱⁱ that provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles are considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to legal services.
7. However, reports gathered by L4L demonstrates that the GRP does not uphold the necessary guarantees for the proper functioning of lawyers as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their legal profession and also their personal life are heavily impacted.
8. L4L has closely monitored the position of Filipino lawyers for many years. In November 2008, L4L sent a team of eight independent lawyers and judges from Belgium and the Netherlands to the Philippines to look into the killing and harassment of their Filipino colleagues. The International Verification & Fact Finding Mission (IVFFM) was a continuation of an earlier mission sent to the Philippines by L4L in June 2006. The findings and conclusions of the IVFFM are published in a report called *'The Measures Measured'* that was

released on 4 June 2009 (**see attachment 1**). These findings and conclusions are still applicable as of today.

9. The GPR fails to ensure that Filipino lawyers *'are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference'*.ⁱⁱⁱ
10. Filipino Lawyers are subjected to (death) threats, intimidation, surveillance and other acts of harassment as a result of discharging their functions. Most of them handle cases with respect to human rights violations or land, labour and mining disputes. They often deal with high profile cases where the interests of the (political elite are at stake, such as those of big (mining) companies or large landowners. The lawyers also represent poor farmers, workers, fishermen or civil society groups, such as trade unions.
11. A remarkable number of them also handle rebellion cases where they represent political leaders or ordinary people accused of being member of the NPA or they have filed petitions of the Writ of *Amparo* on behalf of victims (or their relatives) of abductions. The opposite party in those cases is always the military.
12. Lawyers have received anonymous notes, e-mails, phone calls or text messages with threats like *'you are near', 'you are about to die', 'your time is going to come', 'you have only one month to go'* etc. They are either under surveillance, being tailed, subject to intimidation or their offices are monitored or being photographed by military men. The threats refer to specific cases or clients or they coincide with certain developments in high profile cases, such as court hearings or filing documents.
13. Several lawyers have also reason to believe that their phones are being tapped and their computers hacked.^{iv}
14. L4L was informed about intimidation in Court: Military men, either in uniform or wearing civilian clothes, are ostentatiously present in the courtroom, where they reportedly intimidate lawyers, but also their clients or witnesses.
15. Lawyers organizations such as the Pro-Labor Legal Assistance Center (PLACE), the Public Interest Law Center (PILC) and the Union of Peoples' Lawyers in Mindanao (UPLM) are reportedly also under close surveillance.
16. Lawyers are also identified with their clients or their clients' causes as a result of discharging their functions. Some of them are labelled as *'enemy of the state'*, especially lawyers who represent clients who are accused of being a supporter or a member of the New People's Army (NPA).^v
17. Lawyers also fear for being silenced by fabricated charges. It seems that activists are increasingly facing questionable criminal charges which are produced through the subversion of court procedures and rules on evidence. In 2008 allegedly for the first time also a fabricated charge against a human rights lawyer was filed.^{vi}
18. Even today, lawyers experience different forms of harassment, including labeling, (death) threats, surveillance and verbal intimidation by military officers in relation to their legal profession. At least six lawyers are reportedly still included in the order of battle of the AFP

as part of the crackdown on communist insurgency. As of today, the GRP has failed to implement important recommendations of UN Special Rapporteur Philip Alston, including the abolishment of IALAG and transparency of the military's order of battle.

19. In 2008, representatives of the Philippine authorities recognized that attacks against lawyers and judges are a serious problem in the Philippines. Although the GRP has taken a range of initiatives to protect lawyers and judges, the GRP failed to adequately safeguard lawyers and judges.^{vii} In fact, most government initiatives were actually initiated and (partly) financed by the Supreme Court or the Committee on the Security of Judges and focus mainly on the security of Judges. Reports gathered by L4L show that the police and the NBI hardly acted upon reported threats or requests for protection by lawyers.
20. Up to June 2006, at least 15 lawyers and 10 judges were killed since President Arroyo came to power in 2001.
21. It has mainly been the Supreme Court that has played an active role in addressing the issue of extrajudicial killings and enforced disappearances. The most important initiative of the Supreme Court was the introduction of the Writ of *Amparo*, which took effect on October 24, 2007. The Writ allows courts to order the temporary protection, inspection and production of documents in cases where an individual's life, liberty or security has been violated or is under threat.
22. A further development in terms of implementation and enforcement is needed to make the Writ of Amparo more effective. After the initial successes, the courts are more inclined to dismiss petitions filed under the Writ of Amparo. In various cases petitions were dismissed due to a lack of jurisdictions, while in fact, the courts had jurisdiction or the courts would have applied an unreasonable standard of asking the victims for 'clear evidence' of 'apparent or visible' threats. The execution of court orders that were favourable to the victims would also be hampered or ignored: All too often, the military would refuse or delay inspections of their camps, giving them the opportunity to move persons allegedly in their custody to another place.
23. The GRP, in its PNR for the UPR, stated that it had taken '*firm measures to address the problem of extrajudicial killings and enforced disappearances*' and '*that the incidence of killings of activists and media dramatically declined from 2006 to 2007*'. However, the number of and the reasons for this decline are disputed.^{viii}
24. Although the number of killings has declined indeed, they still occur; It is undisputed that in the period 2007/2008 at least ten (10) lawyers and three (3) judges were killed. In 2009, at least two (2) lawyers were killed and in 2010 another judge was killed. It must be emphasized that every killing is one too much.
25. It has also remained unclear to what extent the GRP's measures contributed to this decline. Information gathered by L4L demonstrates that there is a gap between what the GRP has said what has been done to address the extrajudicial killings, and the actual results of its initiatives. The prerequisites for solving a problem of this magnitude are lacking as well. What is needed is a change of mind, especially within the police and the military. Although the GRP has ordered indeed a range of initiatives to various departments and offices to follow up national and international recommendations, it has not sufficiently implemented

substantive and preventive measures necessary to materialize the recommendations. This is what happened, for example, with most of the Melo Commission's recommendations.

26. The GRP voluntarily committed to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and to punish those responsible.
27. However, impunity for incidents of extrajudicial killings remains pervasive, also under President Aquino's administration. Apparently only 1 (one) person has been convicted for the killings of lawyers and judges and this occurred in 2006. So impunity still seems to be the rule rather than the exception.
28. In the cases of Pasay City Judge Henrick Gingoyon and lawyers Norman Bocar, Felidito Dacut, Gil Gojol, Arbet Yongco and Juvy Magsino little or no progress has been made so far. In many other cases – also in cases on trial - the accused are still at large or not yet identified (John Does) or cases are cold cases, which means that there has been no development or progress for more than a year.
29. The GRP has also been urged to create an independent, credible and impartial investigative body to investigate the extrajudicial killings. Although the Arroyo administration ordered the creation of various task forces with different mandates, including Task Force USIG, Task Force for the security of Judges, Prosecutors and IBP Lawyers, Task Force 211 and a Joint Fact Finding Committee, to name just a few, none of them is considered to meet the threshold of being truly 'independent, credible and impartial'.
30. The current President of the Philippines, Mr. Aquino, also announced to form a "truth commission" that would pursue "any and all issues, including extrajudicial killings" and "prosecute cases to make sure those who committed crimes against the people will be made to pay." So far, however, such truth commission has not been established.
31. While the above mentioned Task Forces are all dealing with extrajudicial killings there seems to be little or no coordination between their activities, nor with the regular law enforcing agencies.
32. So far, the authorities have failed to analyze the killings of lawyers and judges in the context of other killings that have occurred in the Philippines since 2001, including the killings of members of leftist groups. As a result, there is still no systematic cross-reference of cases with similarities in modus operandi or forensic findings.
33. In addition, it has remained unclear how the establishment of the various Task Forces has contributed to address other identified reasons for the failure to investigate and prosecute extrajudicial killings effectively. These reasons include the lack of witnesses and resources, sloppy police investigations, the unwillingness of the police to investigate the military, the inadequate implementation of the legal framework, the ineffective accountability mechanisms and the passive and politicized criminal justice system.
34. It is generally acknowledged that the extrajudicial killings can only be stopped when the underlying causes are addressed effectively. However, the GRP rejected the recommendation to address the root causes of the issue of extrajudicial killings in the context of the appropriate reform of the judiciary and the security forces.

35. The reports of the IVFFM, the Melo Commission, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, and a delegation of the European Union, as well as the reports of various other national and international governmental and civil society organizations, provide a coherent picture of the pattern of extrajudicial killings and their underlying causes. Also, the link between the military and other state agents and the extrajudicial killings was further established.
36. Most reports identified the Arroyo administration's counter-insurgency strategies that increasingly labelled civil society groups as fronts for communist insurgents, the culture of impunity and the military involvement in politics as the main root causes for the recent spate of killings.
37. As of today, these root causes still exist. The new security strategy of the current GRP is very similar to the former counter-insurgency strategies. so far, the GRP has failed to investigate serious allegations that its own military and security forces are involved in the killings. The GRP also failed to take measures needed to end the culture of impunity and to restore the people's faith in the functioning of the constitutional state and the rule of law.
38. In this regard reference should be made to the Melo Commission's finding that under the principle of command responsibility, some senior military officers may be held responsible for their failure to prevent, punish or condemn the killings. According to the ruling opinion in the Philippines the principle of command responsibility cannot be used in criminal cases. However, the GRP has not followed the Melo Commission's recommendation to propose legislation in this regard.
39. Judiciary reforms are also needed. It should not be possible anymore that judges were appointed by political bodies.
40. The harassment and killings of members of the legal profession in the Philippines and the culture of impunity surrounding these acts of harassment and killings undermine the independence of lawyers and judges and, consequently, also the proper functioning of the judiciary system and the adequate protection of human rights and fundamental freedoms.
41. Although the UN Special Rapporteur for the independence of Judges and Lawyers have requested to visit the Philippines, the GRP has failed so far to determine a date for such visit.
42. In the light of government inaction on the past recommendations of L4L, we would like to reiterate the following recommendations also for the consideration by this Council (Please see **attachment 2** for recommendations).

END NOTES

ⁱ Paragraph 99 of the PNR for the UPR.

ⁱⁱ Basis Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

ⁱⁱⁱ Basic Principle 16 sub (a).

^{iv} This is a violation of Basic Principle 22 stipulating that “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.

^v This is a violation of Basic Principle 18 stipulating that ‘Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.’

^{vi} This is a violation of Basic Principle 16 sub (c) stipulating that ‘Governments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics’.

^{vii} This is a violation of Basic Principle 17 stipulating that “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.’

^{viii} Paragraph 105 of the PNR for the UPR.