

**Submission by the NGO National Union of Peoples' Lawyers (NUPL)
for the Universal Periodic Review (UPR) on the Philippines
UPR Thirteenth Session, May 2012**

1. The National Union of Peoples' Lawyers (NUPL) of the Philippines is making this submission for the consideration of the Office of the High Commissioner for Human Rights (OHCHR) and the 13th session of the UPR in the UN Human Rights Council in May 2012. The NUPL, founded in 2007, is the largest nationwide voluntary organization of human rights lawyers, law students, and legal workers in the country.
2. The NUPL is united in the protection and promotion of human rights in all its aspects and the assertion of national sovereignty. It is the Philippine affiliate of the International Association of Democratic Lawyers (IADL) which has ECOSOC and UNICEF consultative status.
3. The Philippines was a state under review for the UPR in 2008. In the first review, the government painted a glowing picture of the human rights situation in the country under the previous administration of President Arroyo. Her government made a litany of steps that purportedly promote and protect human rights. But the record on the ground speaks otherwise. Several States of the Council have raised hard questions on the government's failure to abet hundreds of extrajudicial killings, tortures and disappearances and the multifarious violations of the human rights of women, children, migrant workers and indigenous peoples.
4. In the first UPR on the Philippines, member States made several recommendations. It is the purpose of this submission to point out some of the more relevant recommendations and to show how the government has responded, if at all, and how it impacts on the human rights situation in the country and in the context of its obligations to comply with the International Covenant on Civil and Political Rights (ICCPR).
5. The Philippine government accepted the recommendations: "to sign and ratify the Optional Protocol to the Convention against Torture"; "to report regularly to the Committee against Torture"; "to completely eliminate torture and extrajudicial killings"; and "to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible".
6. While current President Aquino had finally signed and endorsed to the Senate the Optional Protocol to the Convention Against Torture, this had not in any significant way contributed to the abatement of human rights violations.
7. Records have shown that the violations continue with impunity, even as there is a continuing lack of accountability for past violations. While the numbers have not been as horrible as before, the rate and frequency are as alarming. Of the 58 cases of extrajudicial killings already recorded under the present government, 8 reportedly belong to a particular Protestant church group (UCCP) which had filed a damages suit in June 2011 against the former President but which remains to move at a snail's pace like a similar suit earlier filed by the Morong 43 health workers in April 2011 who were illegally arrested, tortured, and detained.
8. One of the primary factors which lead into the continued existence of impunity is the lack of an honest-to-goodness police investigation. Many police investigators are not impartial, objective, exhaustive, and/or thorough. In the case for instance of a human rights worker (Benjamin Bayles of Bacolod) who was gunned down by the military in June 2010, the

military have thumbed its nose on the justice system by hiding the identities of the perpetrators in court even after top defense officials have already admitted their connection to the armed forces.

9. This is aggravated by the sloppy handling of the evidence and poor investigation by the police which is emblematic of the States' failure, negligence or even complicity. There is also an apparent lack of cooperation from the military from whose ranks the perpetrators of human rights violations usually belong.

10. A case in court and a complaint in the prosecutor's office are supposed to be adjudicated with the cold neutrality of an impartial judge. But many perpetrators influence the judiciary or apply tactics to circumvent the judicial process. In some cases, the perpetrators cannot be held for trial due to irregularities in the preliminary investigation.

11. The slow process by which the judicial system grinds contributes to perpetuation of impunity. The fact that in many cases of extrajudicial killings and enforced disappearances the perpetrators are not identified, or even if identified were not investigated or prosecuted, are indications that law enforcement agencies, as well as the prosecutorial service are themselves, instruments in the perpetuation of impunity.

12. The government also took the recommendation of States to sign and ratify the International Convention on the Protection of All Persons from Enforced Disappearance. To date, the Aquino government has not yet ratified this Convention. Neither has it enacted an enabling law on enforced disappearances and on the protection of human rights defenders. In the meantime, the heinous disappearances and torture by identified military personnel of activists like the university students (Sherryln Cadapan and Karen Empeno), a Filipino-American artist (Melissa Roxas) and a farmer (Raymond Manalo) remain unresolved after years of tedious legal proceedings.

13. Some recommendations put forward during the 2008 UPR "did not enjoy the support" of the government, including the recommendation "to provide follow-up report on efforts and measures to address extrajudicial killings and enforced disappearances, taking into account the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions." These studied recommendations were intended to stop these violations and to abate impunity. Aside from the killings and disappearances, the labelling of activists, the filing of false or improper charges, the continuation of essentially the same counter-insurgency program under the previous administration identified as the framework for these violations, and other practices that engender the violation of the rights of civilians continue under the present administration.

14. The recommendation "to strengthen the witness protection programme and address the root causes of this issue in the context of the reform of the judiciary and the armed forces" did not also "enjoy the support" of the government. This is lamentable because part of the perpetuation of impunity is the fear or failure of witnesses to come forward because they are not assured of their safety, security and welfare.

15. The government did not support the recommendation "to consider extending a standing invitation to special procedures". This is unfortunate, especially in view of the continuing attacks on members of the legal profession, particularly those involved in human rights litigation and advocacy. The current UN Special Rapporteur on Independence of Judges and Lawyers has officially requested way back in February 2011 for a country visit but the same remains unacted upon just like the previous standing requests of her predecessor.

16. Out of the hundreds of civilians that were extrajudicially killed since January 2001, 27 were lawyers (8 of whom were involved in human rights issues). One of these lawyers is an NUPL member who was murdered in the Maguindanao Massacre of November 2009 where scores of journalists were killed in cold-blood. Not one of their cases has been resolved. During the same period, 42 other lawyers who were involved in human rights issues and cases were subjected to different forms of attacks. Human rights lawyers and their families received death threats and are subjected to constant or periodical surveillance. Some of them are harassed, intimidated, red-tagged and have their offices ransacked. The government has continued to ignore the 2006 and 2008 recommendations of the international fact-finding missions by European lawyers and judges in order to stop such attacks.

17. This submission would also like to point out some special concerns and issues that may be helpful for the UPR consideration. One of these is the continued effectivity of the draconian Human Security Act of 2007 (or the "Anti-Terrorism Law"). Unfortunately, the Supreme Court ruled in favour of its constitutionality on purely technical grounds and did not pass upon the substantive issues on the dangers to basic civil and political rights under the arguable framework of countering "terrorism."

18. As of late, dubious cases have been filed against an indigenous activist who was illegally arrested (Candule of Zambales) and others (Saldy and Calibayan et. Al. of Agusan del Sur). The former case was dismissed by the trial court but it refused to award damages as mandated by the questioned law. Worse, the present government even wants to perpetuate this dangerous law by proposing amendments to lower the penalty for unwarranted detention that will no doubt even open it up to abuses by State agents.

19. Another area of concern is the continued practice of "criminalization of political offenses." Contrary to the well-established doctrine on political offenses, hundreds of cases of individuals who are supposed to be or are suspected to be performing acts in pursuit of their political beliefs are charged with common crimes like murder, kidnapping, illegal possession of firearms or explosives etc. instead of rebellion. A case in point is the illegal arrest and torture of an artist and journalist (Ericson Acosta of Samar) who was then conducting research on the human rights situation.

20. Reports from a rights watchdog show that out of 360 political prisoners as of August 2011, at least 303 (84.17 %) of them have been charged with common crimes while only 15 of them (4.17 %) have been charged with rebellion. A number of these cases include those of the detained consultants of the rebel group National Democratic Front of the Philippines (NDFP) which the Philippine government is obliged to have released on legal and political grounds.

21. This phenomenon continues despite the fact that even the testimonial and documentary bases – spurious or otherwise - submitted to the prosecutors show that the alleged acts are obviously in furtherance of one's political beliefs. This practice is rooted in the time of the martial law era. Aside from it being contrary to sound and almost universally-accepted doctrines on the matter, this anomalous filing of charges for common crimes is simply violative of established jurisprudence. This wrong practice also persecutes political offenders or those alleged to have committed acts in pursuit of one's political beliefs; makes a travesty of the rules of evidence; diminishes the political nature of the acts and reduces the respondents to common criminals.

22. This odious practice is combined with the improvident use of generic "John/Jane Doe" warrants against activist leaders by many prosecutors who file charges against persons who, apart from being merely identified as "John Does," are not otherwise particularly described to

distinguish them or set them apart from other persons. This practice has resulted in instances where the names of persons who are subsequently arrested are substituted in place of “John Does” in indictments even though the evidence extant in the records does not show any substantial identity between the former and the latter.

23. Thus, warrants of arrests are issued on the basis of affidavits of supposed witnesses without particular descriptions of “John Doe” against those who are invariably leaders/members of legal mass organizations, NGO workers, party list groups and even human rights advocates. In many cases, spurious or coached affidavits, if any, have been manufactured to justify the improper amendment of existing indictments to implead mass activists.

24. As a response to the default of the Executive branch on the issue of extrajudicial killings and disappearances especially of social activists, the Judiciary enacted the remedy of the writ of *amparo*. After offering a promise to provide an effective remedy for those whose life, liberty and security are threatened and to address these violations, experiences on the ground are frustrating, with most of the cases dismissed or remaining “cold”.

25. The military, (and using or sometimes in cahoots even with the Department of Social Welfare and Development (DSWD) with respect to children), have taken advantage of the infirmities in the legal procedure to foist dirty tactics and abuse it, e.g. refusing to heed the process, making a general denial, manufacturing fake “voluntary surrender” testimonies of victims or coercing them into making one, filing of the remedy against the victims or their family or the human rights organizations that are helping them.

26. An international rights watchdog (Human Rights Watch) has also established that the military has manufactured claims of so-called “child soldiers” within the ranks of rebel groups and have violated their basic rights. On top of these and in another front, there are strong knee-jerk legislative and executive moves to lower the age of discernment of “children in conflict with the law” for purposes of criminal liability, thereby emphasizing the punitive rather than the rehabilitative aspect of the criminal justice system.

27. In addition to all these, there remains repressive laws and jurisprudence that have not yet been repealed or reversed. This has wrought havoc on civil liberties, particularly of those regarded by the State as its enemies. Their repeal or reversal was committed by the Philippine government way back 1998 when it entered with the NDFP a bilateral agreement called the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).

28. The Marcosian Public Assembly Act (Batas Pambansa Blg. 880) remains in full effect. To date, there is no telling that the designation of “freedom parks: for mass assemblies have been obeyed assiduously by the local government units. In the massive rally during the last State of the Nation address of the current President last July 2011, civil society and mass organizations had to go to court in vain to assert their rights even under this assailed law despite the fact that previous jurisprudence have recognized the basic right to assemble upon the inaction by the local government on a permit filed by the organizers.

29. Perhaps the most draconian of all jurisprudence that continues to haunt political activists and human rights defenders is the Marcosian 1985 jurisprudence known as the *Ilagan vs. Ponce-Enrile* doctrine. This basically says that a petition for *habeas corpus* to question the legality of one’s arrest is rendered moot and unavailable by the subsequent filing of charges, even if the arrest was illegal at the start and even if there were violations of basic constitutional rights that attended it. This objectionable situation was highlighted in the case of the Morong 43 health workers.

30. Finally, an ominous development that would pose even greater danger to basic rights and to due process is the proposed amendments to the rules on legal procedure particularly on the rules for hearing and adjudicating disputes. The part on criminal procedure is seen as especially dangerous and even contrary to the constitutional rights of the accused.

31. The government committed in the 2008 UPR to “completely eliminate torture and extrajudicial killings” and intensify its efforts for “prosecutions on extrajudicial killings and punish those responsible.” Yet, the Aquino administration failed to render justice to victims and families of victims of human rights violations under the Arroyo government. In its more than one year in office, the government did not initiate filing of cases for human rights violations against known perpetrators, including the former President. The present government has also failed in preventing or stopping the almost daily violent demolitions of urban poor communities in the national capital region despite a supposed moratorium.

32. Under the new government, the climate of impunity continues. Merely four suspects, mostly low-ranking military or police personnel, of the more than a thousand cases of extrajudicial killings since 2001 have been convicted. Except for the rare few that have escaped from their military or police captors, no one that has been forcibly disappeared has surfaced, despite the recently made available extraordinary legal remedies like the writ of *amparo* that was supposed to partially address this phenomenon. High-profile cases against the perpetrators remain outstanding and have not yet been satisfactorily resolved, much less reached the courts.

33. Worse, it is of public knowledge that cases in the Philippines drag on for several years and suffer inordinate delay before they are resolved, let alone consistently resolved with substantial justice. And most arrested persons, especially political activists, if they are fortunate enough not to be disappeared, are routinely tortured, denied their rights to counsel at the crucial initial stages, forced to incriminate themselves, face legal short-cuts in procedural due process, and even face false, fabricated or improper charges.

34. All told, the government’s current pledges and commitments state that it has “a tradition of human rights protection and promotion at the national and international levels” is not translated on the ground. We hope that the UPR will see through the rhetoric and formulaic declarations of adherence to the good practices and principles as well as pledges for human rights. Beyond elegant words and the formal ratification of international instruments, basic human rights must be a primordial priority and obligation and that impunity must be stopped and that justice be done. #