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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)
FOR THE PREPARATION BY THE HUMAN RIGHTS COMMITTEE OF THE LIST
OF ISSUES TO BE CONSIDERED DURING THE EXAMINATION OF THE FOURTH
PERIODIC REPORT OF THE PHILIPPINES**

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ICJ Submission to the Human Rights Committee on the Preparation of the List of Issues for the Examination of the Philippines

1. During its 106th session, scheduled for 15 October to 2 November 2012, the Human Rights Committee (Committee) is to undertake its examination of the fourth periodic report of the Philippines. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Committee's preparation of the List of Issues for the examination of the report of the Philippines. In this submission, the ICJ brings to the attention of the Human Rights Committee issues related to articles 2, 7 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

ARTICLE 2

2. Article 2(2) of the ICCPR provides that "...each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant". As explained by the Committee in its General Comment 31, this requires States parties to adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfill their legal obligations.¹ Article 2 of the ICCPR is binding on every State as a whole, encompassing all branches of government and other public or governmental authorities, at whatever level – national, regional or local.²

3. Article 2(3) requires States parties to ensure that individuals have prompt, accessible and effective remedies to vindicate and realise their rights under the Covenant. The Human Rights Committee has attached specific importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of human rights violations under domestic law.³

4. Three issues are raised, in this context, pertaining to the forthcoming examination of the Philippines: (i) the need for better investigation of abuses which impair their ICCPR rights; (ii) the need for a more effective and independent national Commission on Human Rights; and (iii) the need for better and more effective access to justice.

(i) Need for better investigation of human rights abuses

5. On 23 November 2009, 58 persons were kidnapped, killed and buried in a mass grave in the town of Amputuan.⁴ The 'Maguindanao massacre' is considered to be the Philippines' worst political massacre⁵ and the single largest massacre of journalists (34 journalists died in the massacre).⁶ The unarmed civilians were targeted for their support of a local politician, Esmael Mangudadatu, in the Maguindanao gubernatorial election. The persons killed included the family of

¹ Human Rights Committee, General Comment 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 7.

² General Comment 31, *ibid*, para 4.

³ General Comment 31, above note 1, para 15.

⁴ Analyn Perez and TJ Dimacali, "The Amputuan Massacre: a map and timeline" GMA NEWS ONLINE, 25 November 2009, accessed at: <http://www.gmanetwork.com/news/story/177821/news/specialreports/the-amputuan-massacre-a-map-and-timeline>.

⁵ Alastair McIndoe, "Behind the Philippines' Maguindanao Massacre" 27 November 2009, TIME, accessed at: <http://www.time.com/time/world/article/0,8599,1943191,00.html>.

⁶ Alcuin Papa, "Maguindanao massacre worst-ever for journalists" 26 November 2009, Inquirer Net, accessed at: <http://newsinfo.inquirer.net/breakingnews/nation/view/20091126-238554/Maguindanao-massacre-worst-ever-for-journalists>.

Esmael Mangudadatu, journalists, lawyers and other by-standers mistaken as supporters.

6. There has been little progress in the investigation and prosecution of the persons involved in the 58 deaths in the Maguindanao massacre on 23 November 2009, mainly due to the resignation of Government prosecutors who claim to have suffered stress while handling the case⁷ and the climate of fear that surrounds the issue. In 2010, witnesses who had surfaced were subjected to harassment and threats and, in some cases, their homes were burned down. A key witness was also killed on June 2010.⁸ The State's failure to ensure the safety of investigators and key witnesses in this case directly relates to its inability to take reasonable and necessary measures to prevent serious crimes like the Maguindanao massacre and to hold those responsible to account. It also means that the State party has failed to ensure effective redress to the victims of the Maguindanao massacre, thereby failing to discharge its obligations under article 2 of the ICCPR.⁹

7. The ICJ recommends that the following questions be included in the List of Issues for the examination of the Philippines:

What steps have been taken by the Philippines to investigate and prosecute the perpetrators of the 58 deaths during the Maguindanao massacre on 23 November 2009?

What steps have been taken by the Philippines to ensure the safety of investigators and key witnesses in the case?

(ii) Need for a more effective and independent Commission on Human Rights

8. The Commission on Human Rights of the Philippines (CHRP), the country's national human rights institution, was established as an independent body under the 1987 Constitution. The mandate of the CHRP is laid out in Executive Order 163, which was promulgated in 1987. The CHRP's primary function is investigative in nature. Either independently, or in response to a complaint, the CHRP can investigate all forms of human rights violations, including civil and political rights. The CHRP, however, does not have prosecutorial powers. There is longstanding concern that the CHRP's restrictive mandate has hindered its ability to effectively protect human rights.

9. Several Bills have been submitted to Congress seeking to strengthen the mandate of the CHRP, including House Bill Nos. 55 and 1141, which are now being examined by a technical working group in the House of Representatives. A similar Bill was filed in the Senate. Among the aims of the Bills is the provision of "standby" prosecutorial powers to the CHRP. The Bills were not approved before the end of the 14th Congress at the end of June 2010, but they were resubmitted at the start of the current 15th Congress. It is unclear, however, whether the present Congress will pass these proposed laws.

10. The ICJ recommends that the following question be included in the List of Issues for the examination of the Philippines:

What steps are being undertaken to strengthen the effectiveness of the National Commission on Human Rights in its ability to address violations of human rights under the ICCPR?

⁷ For more information, see: Inquirer.net, 'Another prosecutor in the Maguindanao massacre resigns', at URL <http://newsinfo.inquirer.net/breakingnews/nation/view/20110330-328402/Another-prosecutor-in-Maguindanao-massacre-trial-resigns>.

⁸ See: http://www.ifex.org/philippines/2010/06/24/witness_shot/.

⁹ General Comment 31, para. 8.

(iii) Need for better and more effective access to justice

11. Section 11 of the Anti-Torture Act 2009 allows any interested person (a complainant or third party) to bring a complaint of torture. It also allows “any interested party thereto” to assist in the process of “investigation and monitoring and/or filing of the complaint”. Despite this, complainants are in reality reluctant to come forward for multiple reasons, including: a lack of confidence and trust in the legal process; long institutional delays in the justice system; high legal costs incurred throughout the justice process; fear of intimidation or harassment from authorities; and the perception that State authorities will not investigate or prosecute the complaints of torture.¹⁰

12. The ICJ recommends that the following questions be included in the List of Issues for the examination of the Philippines:

What mechanisms has the Government of the Philippines undertaken to improve victims’ access to justice? Specifically, are there mechanisms to:

(a) Provide financial assistance and legal services to complainants or the families of victims seeking truth, justice and reparations for violations of the ICCPR?

(b) Decrease institutional delays, especially in cases of torture, ill-treatment or enforced disappearances?

(c) Ensure that complainants and witnesses are shielded or protected from harassment, intimidation or violence from authorities?

ARTICLE 7

13. The Optional Protocol to the Convention against Torture (OPCAT) has been noted as an effective mechanism to prevent acts of torture and cruel, inhuman and degrading treatment. The UN General Assembly, in a series of resolutions adopted by consensus, has strongly urged States to ratify the OPCAT.¹¹ The Philippines has in this regard shown a commitment in ratifying the OPCAT. On 16 February 2011, the Senate Committee on Foreign Relations held a public hearing on the OPCAT that received wide public support. The Senate Committee on Foreign Relations has yet to approve the ratification of the OPCAT.

14. If the Philippines ratifies the OPCAT, it will establish an independent and effective National Preventive Mechanism (NPM) with the mandate to conduct regular visits to all places of deprivation of liberty; and to publish the NPM’s annual reports. The Philippines could designate new or existing bodies as the NPM. Also, the Philippines will be in a position to accept visits by the UN Subcommittee on Prevention of Torture (SPT) to all places of detention. The Philippines will further enter into constructive dialogue with the SPT, examining their recommendations with the objective of improving mechanisms to prevent torture and ill treatment.¹²

15. The ICJ recommends that the following questions be included in the List of Issues for the examination of the Philippines:

What steps have been taken by the Government of the Philippines to finalise its ratification of the OPCAT?

¹⁰ Ibid.

¹¹ General Assembly Resolution 65/205, UN Doc A/Res/65/205 (2011), para 24; General Assembly Resolution 64/153, UN Doc A/Res/64/153 (2010), para 23; General Assembly Resolution 63/166, UN Doc A/Res/63/166 (2009), para 23; General Assembly Resolution 62/148, UN Doc A/Res/62/148 (2008), para 20.

¹² APT and RCT position paper: Why the Philippines should ratify the OPCAT For the Senate Committee on Foreign Relations Public Hearing on the OPCAT, February 2011.

ARTICLE 14

16. Article 14 of the ICCPR protects the fair trial rights of individuals, including those suspected or accused of a crime. In the Philippines, there continue to be cases of illegal arrest and incidents where detained persons are denied their article 14 rights. A notable example was the illegal arrest of 43 health workers on 6 February 2010 in Morong town Rizal. The military and police personnel who effected the arrests claimed that the health workers were communist rebels carrying firearms. The health workers were detained for ten months in Camp Bagong Diwa before the case was withdrawn by President Benigno Aquino III and workers were released on 11 December 2010.¹³

17. The ICJ recommends that the following questions be included in the List of Issues for the examination of the Philippines:

What mechanisms have been put in place to ensure that all persons deprived of their liberty or suspected of a criminal offence are ensured their full rights under article 14 of the ICCPR? What mechanisms are in place to ensure that persons who are denied their article 14 rights are given effective and adequate remedy?

What steps have been taken by the Philippines to investigate the circumstances surrounding the arrest of 43 health workers in Morong town Rizal on 6 February 2010, and their continued detention until 11 December 2010, including the holding to account of persons responsible for any corresponding violations of ICCPR rights and the provision of effective remedies and reparation to victims of any such violations?

¹³ Dennis Carcamo, "'Morong 43' ask Judge to speed up the case vs CGMA', The Philippine Star, at: <http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=200&articleid=752899> (accessed on 13 December 2011).