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Universal Periodic Review (UPR) of the Republic of the Philippines

Joint Stakeholders' Submission

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INTRODUCTION

1. This is a joint submission on behalf of the following NGOs: Marist International Solidarity Foundation (Consultative Status with ECOSOC), Franciscans International (Consultative Status with ECOSOC) and Edmund Rice International. The focus of the submission is on three areas: juvenile justice, enforced or involuntary disappearances and extrajudicial executions, and the right to education, including indigenous children.

2. The Republic of the Philippines is an archipelagic country of over 7,100 islands with a total area of 300,000 sq. km. and approximately 101,900,000 people, 14-17 million of these being Indigenous, belonging to 110 ethno-linguistic groups.

The 1st Universal Periodic Review of the Philippines 2008

3. At its first Universal Periodic Review, the Philippine Government undertook the voluntary commitment “to continue to develop domestic legislation for further protection of the rights of the child”¹. The government also accepted the recommendation to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible, as well as to completely eliminate torture and extrajudicial killings.² This submission expresses our concerns over these matters, in particular juvenile justice, enforced disappearances and extrajudicial executions, as well as concerns over the right to education of children, including indigenous children.

A. JUVENILE JUSTICE

4. The information contained in this section of our submission comes directly from a well-respected and experienced practitioner in the field of Juvenile Justice.

5. In 2006, the Philippines welcomed in a new law: Republic Act 9344, otherwise known as the *Juvenile Justice Welfare Act*. This new law significantly raised the *age of criminality* to international standards from 9 years to 15 years of age. However, we are gravely concerned that there is currently a strong call from some members in the House of Congress and the Senate for amendments to the Republic Act 9344 to lower the age of criminal liability from 15 years of age to 12 or even lower. We join with the Committee on the Rights of the Child in expressing grave concern “at these recent initiatives to lower the age of criminal responsibility of children”.³

6. As well, the Juvenile Justice and Welfare Act (RA 9344) sets in place systems by which children in conflict with the law (CICL) are to be treated and processed - using the principles of restorative justice. It directs that each province, municipality and city establish a Youth Home where children in conflict with the law are to be placed and attended to.

¹ A/HRC/8/28; 23 May 2008, Report of the Working Group on the Universal Periodic Review of the Philippines; p. 16, item 60 (b).

² A/HRC/8/28/Add.1; 25 August 2008. Page 2 para 2 (e & (f)

³ CRC/C/PHL/C/3-4. 2009 Review, page 23, para 80.

7. After passing of the Act, local government units (LGUs) were given five (5) years to fulfill this mandate: 2006 - 2011. Unfortunately many provinces, municipalities and cities in the Philippines have not acted on this law and consequently there are insufficient Youth Homes available for the courts to place these children. Because of this lack of Youth Homes the Supreme Court has had no other option but to issue new rules regarding children in conflict with the law which allows them to be sent to jail or detention centers:

*“...In the absence of a youth detention home established by the local government pursuant to Section 8 of the Family Courts Acts, in the city or municipality where the child resides, within the jurisdiction of the court, or the Department of Social Welfare and Development, or other appropriate local rehabilitation center, **the youth shall be placed under the care of a provincial, city or municipal jail** which shall ensure the appearance of the child in court when so required”⁴*

There is a high risk that those children who are placed in provincial or city jails or detention centers will be exposed to negative influences and/or abuse by adult prisoners.

8. The Bureau of Jail Management and Penology (BJMP) reported that, as of February 2011, four hundred forty seven (447) minors are detained in jails throughout the country. Many of these jails have separate cells for the children but contact between the adult prisoners occurs frequently because there are commonly shared facilities where both minors and adults congregate, such as playing fields, cafeteria and houses of worship. This is in contravention of article 37 (c) of the Convention on the Rights of the Child (CRC) which states that

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, **every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so ...***

Clearly it is not in the best interest of the child to come in contact with adult prisoners where there is risk of harm or abuse.

9. What worsens the situation is the lack of social workers assigned to attend to the minors, in spite of the law requiring this. For example, in General Santos City, of the twenty four (24) minors in jail this year, only six (6) have a handling social worker. The other minors went through the juvenile justice processes without one. This is totally unsatisfactory. The law requires the law enforcement officers to contact the local social welfare and development office to inform its personnel about the apprehended minor.

10. As well, the Diversion Proceedings mandated in the Act⁵ have not been followed. Had these processes been followed in accord with the Act, several of the minors now in prison would not be there.

11. Republic Act 9344 also requires Local Government Units (LCU) to allot 1% of the Internal Revenue Allotment (IRA) to the *Local Council for the Protection of Children* (LCPC) for its programs on children. Again, this is not done. The excuse given is that the amount of services

⁴ Section 26, Revised Rule on Children in Conflict with the Law, A.M. No 02-1-18-SC on Nov. 24, 2009, Supreme Court, Manila

⁵ Chapter 2, R.A. 9344 Juvenile Justice and Welfare Act of 2006

provided to children is bigger than the 1% allotment. This argument is invalid because the law states that the 1% allotment is over and above whatever other services for children are provided by local government.

12. Republic Act 9344 and its Implementing Rules and Regulations, as well as the Supreme Court Rules of Children in Conflict with the Law, mandate Diversion Proceedings to be carried out at the levels of the Police, the Prosecutor and the Court. However, in many cases this rule is not followed by those responsible. Many children in conflict with the law, as a result, are deprived of their rights and remain in detention for a longer period than is necessary. Once again this contravenes article 37 (d) of the Convention on the Rights of the Child (CRC), which declares:

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

13. The National Police Commission (NAPOLCOM) has published a Manual for the handling of CICL cases. However, a number of local Philippine National Police (PNP) units do not follow the procedures contained therein. Consequently, many children in conflict with the law are deprived of their rights.

Recommendations

14. In light of these concerns regarding juvenile justice and respecting the rights of children in conflict with the law, we recommend Philippines Government to:

- a) Reject any move to lower the age of criminal liability below the age of 15.**
- b) Implement without delay the recommendations on Juvenile Justice in paragraph 81 of the Committee on the Rights of the Child's 2009 'Concluding Observations' report.**
- c) Ensure that children who are detained in jails where there are adult prisoners have completely separate quarters and facilities, preventing any contact with adult prisoners.**
- d) Ensure that the 1% Internal Revenue Allotment for the *Local Councils for the Protection of Children* be implemented to the fullest extent by all local government units and that they establish, without delay, Youth Homes for children in conflict with the law.**
- e) Insist that appropriate government agencies and the Supreme Court issue clear instructions to their members that *Diversion Proceedings* be properly implemented when dealing with children.**
- f) Instruct the Department of Interior and Local Government (DILG) and the National Police Commission (NAPOLCOM) to publicize and distribute the *Manual for the***

handling of Children in Conflict with the Law to all local police units and that all police personnel who deal with CICL cases are properly trained.

B. ENFORCED OR INVOLUNTARY DISAPPEARANCES AND EXTRAJUDICIAL EXECUTIONS

15. We are gravely concerned about the increasing⁶ and unabated phenomenon of enforced disappearances in the Philippines where hardly any case is brought to justice resulting to a culture of impunity. During the UPR of the Philippines in 2008, enforced or involuntary disappearance, along with extrajudicial executions, was one of the key human rights issues that were highlighted by various stakeholders.⁷ At the 2008 UPR, the Government of the Philippines accepted the recommendation to intensify its efforts to carry out investigation and prosecution on extrajudicial killings and punish those who are responsible. However, the Government of Philippines did not give a commitment to adopt the UN Convention on the Protection of All Persons from Enforced Disappearances.

16. The targets of such violations are predominantly political (left-wing) and community activists who are critical of government's policies and programmes. Reports from various sources⁸ show that there are common features to these violations and they indicate that these are not indiscriminate criminal acts or incidences but rather systematic and follow a certain pattern. Most cases of enforced disappearances and abductions in the Philippines are connected to counter-insurgency operations⁹ carried out by members of the security forces whereby thorough and proper investigation, prosecution and punishment of those responsible rarely happen, despite witnesses' accounts.

17. The abduction and subsequent disappearances of Karen Empeno and Sherlyn Cadapan (2006), both students of the University of the Philippines and Jonas Burgos (2007), member of Peasant Movement of the Philippines, highlighted the incidents of disappearance in the country and subsequently drew national and international public attention to this heinous human rights violation. The Head of Delegation of the European Union in Manila, Ambassador Alistair Macdonald, strongly condemned the disappearance of Jonas Burgos and the subsequent "culture of impunity"¹⁰ characterizing this specific crime in the country. Other recent cases of disappearances and abductions were Berlin Guerrero, pastor of the United Church of the Philippines; Luisa Dominador, spokesperson of the Samahan ng mga Ex-Detainee Laban sa Detensyon at Para sa Amnestiya (Selda –Panay); Nilo Arado, Chairperson of Bagong Alyansang Makabayan- Panay (Bayan); Philipp Limjoco, Leopoldo Ancheta, Rogelio Calubad

⁶ See *Enforced disappearance: The worst form of crime is a State policy* by Ibon Foundation, 31 August 2007 at <http://edm.iboninternational.org/component/content/article/47-cover-story/69-enforced-disappearances-the-worst-form-of-crime-is-a-state-policy>. See also *Stop enforced disappearance in the Philippines. Hold the US-Arroyo regime accountable for human rights atrocities* by the Bagong Alyansang Makabayan at <http://www.bayan.ph/downloads/Bayan's%20paper%20on%20Desap%20August%202007.htm>

⁷ A/HRC/WG.6/1/PHL/3

⁸ Over 60 local and international human rights and civil society organizations raised the issues of disappearances and extrajudicial killings in the Philippines in their stakeholders reports submitted to the OHCHR on the occasion of Philippines UPR in 2008. Several of them conducted fact finding missions in the country.

⁹ See *Torture, enforced disappearances and extrajudicial killings are common practice in the context of the "war on terror"*, Preliminary Conclusions of the international fact finding mission conducted in the Philippines by the International Federation of Human Rights from 13-23 August 2007

¹⁰ See http://services.inquirer.net/print/print.php?article_id=64193

and Prudencio Calubid, all consultants of the National Democratic Front of the Philippines and James Balao, an indigenous leader from the Cordillera Region of the Philippines.¹¹ These individuals belong to legitimate civil society organizations, human rights groups, farmer's organizations, labour organizations, religious organizations and indigenous organizations as their organizations rightly identified them.

18. Although the Philippine government claims to be party to international rights instruments, enforced or involuntary disappearances are yet to be criminalized and punished under Philippine laws. The Philippine government is yet to ratify the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, a commitment it has publicly announced to the international community during its candidacy and re-election of becoming a member of the UN Human Rights Council.

19. The Philippines have ratified the International Covenant on Civil and Political Rights (ICCPR) and Convention against Torture (CAT). The principle of the inviolability of human dignity is enshrined in the preamble to article 10 of the International Covenant on Civil and Political Rights and underlies every other fundamental right guaranteed by international human rights instruments. In particular, enforced and involuntary disappearances involve a series of human rights violations, including the right to life, freedom from torture, the right to liberty and security of a person, the right to an effective remedy and to a fair trial.

Recommendations

20. We recommend the Government of the Philippines to

- a) Invite the UN Working Group on Disappearances to undertake a mission to the Philippines at the earliest possible time.**
- b) Enact legislation that penalizes enforced or involuntary disappearances as a special crime, distinct from kidnapping and serious illegal detention and /or murder.**
- c) Immediately sign, ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol on the Convention against Torture (OPCAT) and the Rome Statute of the International Criminal Court.**
- d) Implement the recommendations from the UN Special Rapporteurs visits in the Philippines: Rodolfo Stavenhagen, UN SR on Indigenous Peoples (2002) and Prof. Philip Alston, UN Special Rapporteur on Extrajudicial Killings (2007)**
- e) Urgently revise the Human Security Act of 2007 in the light of the principle of rule of law and ensure that the principle of the Human Security Act complies with international human rights law.**

¹¹ See *Stop enforced disappearance in the Philippines. Hold the US-Arroyo regime accountable for human rights atrocities* by the Bagong Alyansang Makabayan

See more on Amnesty International's Campaign to End Disappearances in the Philippine at <http://www.amnesty.org/en/appeals-for-action/end-enforced-disappearances-torture-and-political-killings-philippines>

- f) **Revise Executive Order 197 so as to remove the article which prohibits top ranking military officials from attending Senate and Judicial inquiries on grounds of National Security.**
- g) **Undertake a thorough investigation and prosecution of all cases of disappearances and develop a witness protection program that is independent from the police and military in order for victims to feel confident and safe in the process.**

C. THE RIGHT TO EDUCATION FOR ALL PHILIPPINE CHILDREN, INCLUDING INDIGENOUS CHILDREN

21. The Philippines has two education departments, the Department of Education (DepEd) which manages primary and secondary education in the country. The Commission on Higher Education (CHED) is responsible for post-secondary education. The Indigenous people's Rights Act (IPRA), RA 8371, also serves as the basis for establishing Indigenous schools. Section 28 of the IPRA law states: "The State shall, through the National Commission on Indigenous People (NCIP), provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs¹²"

22. In the National Report submitted for its first UPR, the Philippine Government (GRP) made the following commitment:

To provide universal access to primary education, GRP will continue to accord the highest priority to education in its national budget and will scale up effective learning strategies including alternative learning systems (ALS) to reach out-of-school youths, children in armed conflict and IP children¹³.

Access to universal, quality education

23. This section of our submission, based on reports from educators working in rural areas of the Philippines, challenges the Philippine Government to maintain this priority until the second Millennium Development Goal (universal primary education) is realized in practice as well as in rhetoric.

24. The Committee on the Rights of the Child (CRC) considered the third and fourth combined reports of the Philippines, on September 15, 2009, and adopted its Concluding Observations on October 2, 2009. These observations include a recommendation that the Philippine Government allocate necessary resources to seven areas of education: reducing drop-out rates, increasing access to primary education (particularly to vulnerable groups, including indigenous children), enhancing the quality of education, upgrading infrastructure, promoting early childhood education, developing vocational education, and seeking technical assistance¹⁴. This submission makes recommendations on ways to achieve the first three of these goals.

¹²http://indigenouspeoplesissues.com/attachments/article/12023/DepED%20Order_National%20IP%20Education%20Policy%20Framework.pdf

¹³ Human Rights Council 2008 national report submitted in accordance with paragraph 158a) of the Annex to Human Rights Council Resolution 5/1: Philippines A/HRC/WG.6/1/PHL/1, p 20 (no. 157).

¹⁴ CRC/C/PHL/CO/3-4; 2 October 2009; pp.18-19. Para 66.

25. In some ways the education system in the Philippines is very well established. The current government has committed to universal Kindergarten education and will introduce Grades 11 and 12 into all secondary schools in 2016. Preparatory steps have begun. For the year 2012, the government's proposed budget allocates 14.4 percent of the national budget, amounting to PhP237 billion. From this it would seem that the state is making efforts to improve the education system in the Philippines.

26. However, the reality at present is different. There is a 3:1 student-book ratio, over-crowded classrooms, poor sanitary conditions and underpaid teachers.¹⁵ Although there are some schools located in indigenous communities, most of the facilities are highly impoverished compared to other government public schools.

27. A major concern is that despite good intentions there are many children who do not go to school and the drop-out rate is very high, especially in rural areas and urban areas with high rates of poverty. The highest drop-out rate is from Grade 1 to Grade 2. Up to 50% of elementary pupils drop out without reaching high school, in one rural area. This is much higher than the national average of 33% who do not finish elementary school¹⁶.

28. The Department of Education has very good regulations which state that students in government schools may not be forced to pay for the many things they are in fact asked to pay for – they can only be asked for voluntary payments. There are many reasons why the teachers put pressure on the children and their parents to pay for these. If the teachers cannot get money from the students they simply cannot do a lot of the things they need to.

29. Like all bureaucracies, the Department of Education has structured positions. A school has a certain number of positions and cannot expand until more positions are created. But, as enrolments increase, that means more money is needed than the budget allows. So the school principals, under the pressure of student numbers, hire teachers above their 'establishment' and ask the local Municipal authorities to contribute. They do, but at a much reduced rate.

30. These teachers, called para-teachers might get a quarter of a salary or less. They take it in the hope of getting the next available salaried position. There are thousands of teachers in this situation and some of them stay on low salaries for years, as for a variety of reasons, not all of them seemingly ethical, they are passed over in favour of someone else. This has negative outcomes on teaching and student achievement.

31. The inequalities between government and private systems of education mean that teachers in some private secondary schools, in rural areas, may be paid only a third of a government teacher salary. This creates instability and high turnover in staff in these private secondary schools. Nearly half the staff in an elementary school may move on, in one year, seeking fairer salaries. This instability impacts negatively on the students' progress.

32. The national government provides funds for private high schools through a scholarship scheme. This fund caters for over 80% of the students in some private schools, situated in areas of high poverty. The money is not large but, especially for the poorer schools, provides as much as 75% of the annual income. The funding comes in a lump sum once a year. The school

¹⁵ <http://www.gmanews.tv/story/192849/woeful-average-class-size-is-65-pupils-per-teacher>

¹⁶ Human Rights Council 2008. Summary prepared by the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Philippines A/HRC/8/28, pp 8 – 9 par.35.

year begins in June. In a good year the funding reaches the schools in October, by which time the schools are borrowing to pay their teachers. In 2010, fifteen private schools received the funding on the 18th of May, eleven months late and nearly two months after the schools had closed for the long holiday of the year. It was a desperate period for them.

33. 57% of children leave secondary education before completing their secondary qualifications, and cohort survival and completion rates have been declining since 2001¹⁷. While there are many factors contributing to these statistics, centres set up to cater for such children ('alternative learning systems') have established that a holistic education for them can improve their educational outcomes, and chances of future employment¹⁸. As these children who leave school too early often end up in poverty and/or conflict with the law¹⁹, such centres save the government the costs of dealing with them through the justice and welfare systems, and complement the education system that has in some sense failed them. As noted above (footnote 3), the Philippine Government is already committed to 'scaling up' such alternative learning systems.

Access to quality education for indigenous children

34. The Philippines Constitution of 1987 declares that the state shall protect and promote the right of all the citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all²⁰. Furthermore, the State has a mandate to encourage indigenous learning systems²¹ and to recognize, respect and protect the right of the indigenous cultural communities to preserve and develop their cultures, traditions and institutions²².

35. The Department of Education (DepED) has formulated a policy framework for indigenous people that aims to make the Philippines educational system truly inclusive and respectful of the diversity of its learners, including those children belonging to minority groups. The Department of Education has committed to work with the National Commission on Indigenous People (NCIP), the National Commission for Culture and Arts (NCCA) and Local Government Units (LGU's)²³. The Indigenous People's Rights Act (IPRA) of 1997 (RA No. 8371), mandates the State to provide equal access to various cultural opportunities to the Indigenous Peoples through the educational system, public or cultural entities, scholarships, grants and other incentives. It gives them right to have their education delivered in their own language in manner appropriate to their cultural methods of teaching and learning.

¹⁷ Human Rights Council 2008 Summary prepared by the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Philippines A/HRC/8/28, pp 8 – 9 par.35.

¹⁸ Economic and Social Research Institute (ESRI) 2010 *No Way Back? Dynamics of Early School Leaving*, ESRI, Dublin. Irish Department of Education and Skills 2009 *Evaluation of Education Support Project: Report - Opening Closed Doors: a review of the Sunday's Well Life Centre*, 2009, Government of Ireland, Dublin.

¹⁹ Economic and Social Research Institute (ESRI) 2010 *No Way Back? Dynamics of Early School Leaving*, ESRI, Dublin.

²⁰ Philippines Constitution of 1987, Art. XIV Sec. 1. Retrieved 20 November 2011 from <http://www.chanrobles.com/article14.htm>

²¹ Philippines Constitution of 1987, Art. XIV Sec. 2.4

²² Philippines Constitution of 1987, Art. XIV Sec. 17

²³ http://indigenouspeoplesissues.com/attachments/article/12023/Media%20Release_National%20IP%20Education%20Policy%20Framework.pdf

36. Indigenous children have the right to all levels and forms of education of the State²⁴. Yet, indigenous children remain the most vulnerable and marginalized of citizens and lack equal access education.

37. The general situation of the Philippines public education remains dismal; with an average teacher-student ration of 1:65²⁵. Given that the basic service of education is underdeveloped, it is even more so for indigenous children since most live in far-flung regions which can only be reach on foot. In such situations, most teachers are reluctant to be employed in those regions. Although there are volunteers, most of them are not qualified teachers. As well, the curriculum offered in schools that indigenous children attend, is not always culturally responsive and appropriate for them.

Recommendations

38. In light of the above, we urge the Philippine government to:

- a) **review the factors that block children's access to primary education, especially for children living in poverty and minority groups, and implement policies that ensure equal access for all.**
- b) **take steps to eliminate teacher shortages and underpayment of teachers.**
- c) **review its partnership arrangements with private suppliers of education, to ensure that children living in poverty and minority groups are not disadvantaged or discriminated against in their choice of private education for religious or cultural reasons.**
- d) **investigate the role of alternative learning systems with a view to improving education and employment outcomes for children who leave school too early, and support such centres where they prove effective.**
- e) **Build more schools for indigenous children to provide a greater access and ensure that they are properly staffed and equipped to provide a quality education;**
- f) **Provide a curriculum that is culturally responsive and appropriate for indigenous children.**

²⁴http://indigenoupeoplesissues.com/attachments/article/12023/Media%20Release_National%20IP%20Education%20Policy%20Framework.pdf

²⁵ <http://www.gmanews.tv/story/192849/woeful-average-class-size-is-65-pupils-per-teacher>