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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Philippines: Ongoing impunity concerning hundreds of extra-judicial killings

The Asian Legal Resource Centre (ALRC) and its sister-organisation, the Asian Human Rights Commission (AHRC), have been engaged in documenting cases of extra-judicial killings in the Philippines over recent years, and have repeatedly submitted information to the Special Procedures and Human Rights Council in this regard.

According to the information received from local sources and collected during fact-finding missions, the military of the Philippines has been engaged in the targeted killing of persons suspected of being sympathetic with or members of armed leftist groups. As a result, hundreds of persons have been arbitrarily targeted, many of whom were human rights defenders and political activists advocating for the rights and interests of the poor in the Philippines.

At the height of the spate of extra-judicial killings in 2005 and 2006, the ALRC was receiving information and issuing urgent appeals concerning an average of eight to ten extra-judicial killings a month. These only represent the cases that the ALRC and AHRC were documenting first hand, although the total number of killings reported by local groups was higher still. It is estimated by local sources that the number of such killings has now passed the 1000 mark under the government of Gloria Macapagal Arroyo. The ALRC and AHRC have documented several hundred cases themselves.

Given that Professor Philip Alston is coming to the end of his tenure of the mandate of Special Rapporteur on extra-judicial, summary or arbitrary executions, it is important to note at this juncture the significant impact his interventions, country visit and subsequent reporting to the Human Rights Council has had on the phenomenon of extra-judicial killings in the Philippines. Following a country visit to the Philippines by the Special Rapporteur in February 2007, the situation gained significant international visibility. In clearly identifying that the Army of the Philippines was responsible for numerous killings and by making a series of constructive, relevant and necessary recommendations, the Special Rapporteur put the onus firmly on the government of the Philippines to put a halt to the killings.

As a result of the work of the Special Rapporteur, alongside that of local and international NGOs and other institutions, including the intervention of certain foreign governments, the ALRC has witnessed a reduction in the number of extra-judicial killings in the Philippines since that time. For example, in the whole of 2009, the Center for Trade Union and Human Rights (CTUHR) reported four cases of such politically motivated killings. The important interventions by the Special Rapporteur concerning this situation must be seen as a key factor in this improvement, which equates directly with the saving of many lives. Those States that have sought to undermine the work of the Special Rapporteur and the Special Procedures more widely should bear this in mind.

While the reduction in the frequency of such killings in the Philippines is a very welcome development, it must be noted that this is only one step in the process towards full accountability and the effective delivery of justice. While new cases have been reduced, impunity prevails concerning those killings that have already taken place in the Philippines, with credible interventions seriously lacking, leading to the absence of successful prosecutions of those responsible. Task Force 211, a government body ostensibly created to investigate and prosecute cases of political killings, has reported only three convictions since it began operating in November 2007. Previous bodies established by the government to investigate the killings, such as the police's Task Force Usig, have also failed miserably

and have clearly been face-saving operations rather than credible efforts by the authorities to tackle impunity.

As a result, the perpetrators of hundreds of killings remain beyond the reach of justice and able to resume such acts in future. The victims and their relatives have also not been afforded any protection from further intimidation or any reparation. The effect that impunity for such a large number of killings has in engendering a climate of fear in society and distrust felt by citizens concerning their country's institutions and authorities is evident.

The confidence that State-agents have in perpetrating extra-judicial killings with impunity can be seen in particular in the case of the killing of Ms. Siche Bustamante-Gandinao, who gave testimony to Professor Alston in Davao City during his country visit. She was a witness concerning the killing of her father-in-law, Tatay Daki Gandinao, who was killed on February 8, 2007. She was then killed, allegedly by State-agents, on March 10, 2007, just weeks after submitting written testimony to the Special Rapporteur containing the names of persons who were believed by her late father-in-law to be conducting surveillance at his house days before he was murdered, in what the ALRC considers as being an act of reprisal by the authorities. Although the authorities, under international pressure, have investigated a military officer and four members of the CAFGU paramilitary force for "Neglect of Duty and the Presumption of Knowledge" under the principle of command responsibility, no-one has been prosecuted for this grave reprisal killing. Even for such a high-profile case, impunity is complete. The ALRC urges Special Rapporteur Philip Alston to pay particular attention to pursuing justice concerning this case before the end of his tenure of the mandate, and for him to request that his successor continue such efforts if still required.

The continuing failure by the authorities, notably the police and prosecution, to effectively implement the recommendations of the Special Rapporteur to ensure the protection of witnesses and complainants, has resulted in cases not progressing through the investigation and prosecution stages, due to these persons fearing reprisals.

Edwin Bargamento was killed on April 13, 2005 in Manapla town, Negros Occidental. He suffered 21 gunshot wounds. On September 1, 2006, his elder brother, Susanito, was also killed after giving testimony to foreign NGOs about this case. The key witness to Edwin's murder, Sandro, who had survived the attack, hasn't been able to obtain protection.

In the case of land reform activist Carlito Dacudao who was killed in August 21, 2009 in Victorias City, Negros Occidental, after the killing, the police arrested and detained Anastacio de Dios, after witnesses had identified him as being one of the accomplices of the gunmen. However, the police later released him without charge, claiming that the family of the victim could not produce witnesses identifying him. Despite also having been informed that Anactacio's son and his companions in a paramilitary group were allegedly responsible for the killing, the police has done nothing.

The ALRC welcomes improvements to the legal instruments available to address cases of extra-judicial killings in the Philippines, notably the promulgation of two judicial remedies enabling improved protection for persons facing threats to their lives and security. These are the Writ of Amparo, promulgated in July 2007, and the Writ of Habeas Data, which followed in January 2008. However, many of the key recommendations made by Professor Alston, notably those concerning the urgent need to strengthen the Witness Protection, Security and Benefit Act (RA 6981) by introducing amendments to it to ensure the effective prosecution of cases, have fallen on deaf ears. The ALRC urges the mandate to continue pressing the government of the Philippines concerning this issue in the coming months, until such time as credible action has been taken.

The lack of effective prosecution of cases and the very poor conviction rate concerning the hundreds of alleged extra-judicial killings is in great part the result of the failure on part of

the government to ensure that adequate protection and means of support are provided to witnesses and their families. Given that the Philippines relies on testimonies and is very weak on gathering forensic evidence, effective witness protection is vital in ensuring prosecutions and justice. Failure by the government to address this issue is clearly aimed at ensuring impunity. The delays on part of the prosecutors to resolve whether or not a case can be filed in court and endemic delays in the hearing of cases in court further obstructs the timely and effective delivery of justice and must be addressed by the government.

The military have been clearly implicated in the killings of activists Jose Manegdeg on November 28, 2005 in San Esteban Ilocos Sur and Pastor Isaias Sta. Rosa on August 3, 2006 in Daraga, Albay, yet successful prosecutions have not been carried out.

In Manegdeg's case, the prosecutor dismissed the charges against the alleged gunman, identified as Captain Joel Castro of the 50th Infantry Battalion (IB), Philippine Army, after the key witness who could allegedly have identified the perpetrator, withdrew his testimony out of fear for his life, during the much-delayed prosecution.

The Sta. Rosa case includes the ultimate "smoking gun" scenario, yet even here the authorities have managed to fail in prosecuting the case. Pastor Isaias Sta. Rosa was taken from his home and executed. Corporal Lordger Pastrana's dead body was found next to his, apparently after having died in the struggle. Recovered from Corporal Pastrana's body were a .45 calibre pistol and a Mission Order concerning the killing Pastor Isaias signed by Major Rosal. Although charges were filed against Major Marc Ernest Rosal of Camp Matillana, Pili, Camarines Sur and ten others, the case was dismissed in November 2007.

One repercussion of the culture of impunity concerning the extra-judicial killings by the state is that vigilante killings have increased dramatically, notably in Davao City and nearby cities in the southern Philippines. Philip Alston has described these killings as resembling those perpetrated by a "death squad." None of the Special Rapporteur's recommendations to the authorities to address this problem have been implemented. The killings have continued and none have resulted in investigations to identify those responsible or convictions in court.

In June 2009, in concluding a field investigation and a series of public hearings, the National Commission on Human Rights claimed to have discovered convincing evidence proving the existence of the 'Davao Death Squad'. In July 2009, the CHR was able to exhume skeletal remains of persons believed to have been victims of vigilante killings. A self-confessed member of the death squad reportedly helped the CHR and other government agencies to locate the victims' remains, which had been dumped in Barangay (village) Maa in Davao City.

The police have blamed their failure to effectively investigate and prosecute the perpetrators in these cases on a lack of witnesses, without having exhausted all means to ensure witnesses come forward.

The ALRC would finally like to recall the widely-reported massacre of 57 persons, including 30 journalists, that took place in Ampatuan, Maguindanao province, Mindanao, on November 23, 2009. This is the single incident in which the largest number of journalists has ever been killed. The ALRC submitted a written submission concerning this to the 13th session of the HRC.¹ Since then the prosecution of those identified as being involved in the massacre has not progressed, and there are even indications that some of the names are being removed from the list of suspects in a non-transparent manner that gives rise to serious concerns about impunity gaining ground in this case. Secretary of Justice

¹ Please see here: http://www.alrc.net/doc/mainfile.php/alrc_st2010/600/

Alberto Agra reportedly granted the petition of two of the accused, Governor Zaldy Ampatuan and Datu Akmad “Tato” Ampatuan, on April 16, 2010 to have their names removed from the list of 197 respondents.

The Asian Legal Resource Centre urges the members of the Council and the Special Rapporteur to take all necessary steps to ensure that the Philippines dismantles the system of impunity that continues to prevent the delivery of justice concerning the numerous extra-judicial killings in the country. The Special Rapporteur has already produced key recommendations that would enable this to take place, but the government continues to block the implementation of these measures. The new government in the Philippines is called upon to correct this grave situation and bring those responsible to justice.
