

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

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## ASIAN LEGAL RESOURCE CENTRE

*NGO in General Consultative Status with the Economic and Social Council of the United Nations*

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**Philippines:** Human rights groups denounce Massacre of lawyers Concepcion Brizuela and Cynthia Oquendo and 55 others on November 23, 2009 in Maguindanao Province.

**Wednesday, November 25, 2009**

### **Lawyers Rights Watch Canada (LRWC) and the Asian Legal Resource Centre (ALRC)**

- condemn the execution of two human rights lawyers, Concepcion Brizuela and Cynthia Oquendo, along with 55 others in the November 23, 2009 massacre in Maguindanao province of the Philippines.
- condemn government failure to investigate the murders of more than 37 jurists and over 800 other members of Philippine society since 2001,
- calls for the creation of an international body equipped and mandated to conduct a thorough and timely investigation of the November 23, 2009 massacre and to recommend prosecutions and such further actions required by law.

On November 23, 2009, 57 people were abducted and executed by approximately 100 gunmen while en route to file election papers for Ismael Mangudadatu as a candidate for governor of Maguindanao in the May 2010 election. The candidate was not with the entourage as he has received death threats. Reports indicate that many of the 57 people murdered were subjected to terrible acts prior to their deaths. Twenty-four of the victims were women including the candidate's wife and sisters and two lawyers Concepcion Brizuela and Cynthia Oquendo. According to Reporters without Borders, at least 22 journalists were killed in the attack, the largest killing of journalists in a single day.

Police have named as the chief suspect, Andal Amputuan, son of the three-term governor of Maguindanao province and a powerful supporter of the Lakas Kampi coalition led by Philippine President Gloria Arroyo. This raises the spectre of possible complicity by government agents. The past reveals a record of failing to take effective measure to prevent such atrocities.

Since 2001 over 800 people have been killed in the Philippines, all of them in some way seen as opponents or critics of the regime led by President Gloria Arroyo. The dead include peasants, lawyers (22), judges (15), opposition politicians, journalists and other members of civil society. These extra-judicial killings were thought to be a result of the U.S. initiated counter-insurgency plan to eliminate the New People's Army—Operation Plan Freedom Watch (Oplan Bantay Laya - OBL). The OBL was first created by the Arroyo regime in 2002 as a 5-year plan and extended in 2007. There have been no proper investigations of these extrajudicial killings and only one prosecution and conviction.

In 2007, Philip Alston, United Nations Special Rapporteur for extra-judicial, summary or arbitrary executions, made a number of recommendations to prevent further and punish past extrajudicial killings. His recommendation that, “Convictions in a significant number of extrajudicial execution must be achieved” has not been implemented. His recommendation that, “IALAG [Inter-active Legal Agency Group] should be abolished, and the criminal justice system should refocus on investigating and prosecuting those committing extrajudicial executions and other serious crimes” has not been implemented. His recommendation that, “Human rights should be safeguarded within the peace movement has not been implemented.”<sup>1</sup> has not been implemented.

The Philippine government failed to take effective steps to prevent or punish those extrajudicial killings, in spite of the careful recommendations of Professor Alston. That failure violated the Philippine government’s primary legal duty to protect the right to life and to ensure adequate criminal and civil remedies when that right is violated. It also created the climate of impunity that encouraged and allowed the November 23 2009 massacre.

For a period of over 8 years, the Philippine government has on the one hand refused, and on the other, demonstrated a lack of capacity, to carry out the investigations required by both international law (binding on the Philippines) and domestic law.

A state’s duty to protect the right to life, in part by punishing violations has been articulated by the European Court of Human Rights,

“The obligation to protect the right to life... requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. ...The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility..”<sup>2</sup>

The articles of the European Convention on Human Rights considered above are the same as Articles 2 and 6 of the International Covenant on Civil and Political Rights (ICCPR), to which the Philippines became a party on 23 January 1987.

The UN Human Rights Committee has also determined that the failure to properly protect the right to life by punishing those who violate that right is itself a violation of the right to life.

“...the positive obligations on States Parties to ensure Covenant [ICCPR] rights will only be fully discharged if individuals are protected by the State...There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 [rights to a remedy] would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”<sup>3</sup>

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<sup>1</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Follow-up to country recommendations – Philippines, A/HRC/11/2/Add.8, 29 April 2009, Appendix, analyzing compliance with the recommendations made in his 2007 report, A/HRC/8/3/Add.2.

<sup>2</sup> *Finucane v. The United Kingdom* (Application no. 29178/95) Judgment, Strasbourg, 1 July 2003, at para. 67.

<sup>3</sup> Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

The UN General Assembly has likewise affirmed the duty of states to provide victims of extrajudicial killings and other gross human rights violations with ‘full and effective reparation ...which includes ...[v]erification of the facts and full and public disclosure of the truth’<sup>4</sup>

The *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (UN Investigation Principles)<sup>5</sup> and the *Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions* (Minnesota Protocol)<sup>6</sup> reflect a global consensus on the appropriate standards for such investigations. The initial remedy for the loss of life by violence is an investigation, which is capable of effectively determining if the death occurred by an illegal use of force. If the loss of life was the result of illegal violence, the state has a duty to prosecute and try the perpetrator(s), to punish those convicted and to afford access to civil remedies.

LRWC and ALRC call upon the international community to condemn the massacre of 57 people that has left members the human rights community around the world in shock. LRWC and ALRC also call upon the international community to insist on and to take all measure to ensure:

1. The appointment of a team of professional investigators from outside the Philippines;
  - a) qualified in the various necessary aspects of criminal investigations,
  - b) absolutely independent of the Arroyo regime; and
  - c) authorized to compel production of evidence and examine witnesses; and,
  - d) mandated to conduct a thorough, transparent and accountable inquiry into the 57 murders that occurred on November 23, 2009; and.
  - e) mandated to make recommendations for the prosecution of the suspected perpetrators identified by the inquiry and to make recommendations of alternatives in the event that the Philippine courts are unable or unwilling to proceed with the prosecutions recommended.
2. Monitor the safety of others likely to be under attack.

*Lawyers Rights Watch Canada (LRWC)* is a committee of Canadian lawyers who promote human rights and the rule of law internationally by engaging in education and research and providing support to lawyers and other human rights defenders in danger because of their advocacy. LRWC is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC/UN).

**Asian Legal Resource Centre (ALRC)** is a Hong Kong-based NGO with General Consultative status with ECOSOC/UN. Founded in 1986 by a prominent group of jurists and human rights activists in Asia, ALRC promotes respect for human rights in the region through the strengthening of institutions of the rule of law, notably the police, prosecution and judiciary. It also seeks to strengthen and encourage positive action on legal and human rights issues by the bar and other legal bodies and personnel, at the local and national levels and to promote rights in the region through advocacy, research and publications, such as Article 2.

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<sup>4</sup> GA Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, Articles 18 and 22. See *Duty of States to Investigate Extra-Judicial Killings*, Lawyers Rights Watch Canada, November 2009.  
<http://www.lrwc.org/documents/Duty%20of%20States%20to%20Investigate.Extra-Judicial%20Killings.Nov.09.pdf>

<sup>5</sup> Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.

<sup>6</sup> Part III of the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/ 12 (1991)