

# AMNESTY INTERNATIONAL



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## In law and practice: Amnesty International's human rights legislative agenda for the 16<sup>th</sup> Congress of the Philippines

### 1. Legislate and establish a National Preventive Mechanism for Torture

The Philippines acceded to the Optional Protocol to the UN Convention Against Torture (OPCAT) in April 2012. This means that the Philippine government has committed, among others, to set up a National Preventive Mechanism for Torture. Legislation to establish the National Preventive Mechanism has not yet been introduced in Congress, as of March 2013. The House of Representatives and the Senate are urged to work with the Commission on Human Rights (CHR) and civil society groups who have begun the process of drafting a bill for this purpose.

- **Amnesty International recommends that members of the 16<sup>th</sup> Congress enact a law which establishes a National Preventive Mechanism in full compliance with the Optional Protocol to the UN Convention against Torture.**

### 2. Fully engage in the Oversight Committee for the implementation of the Anti-Torture Act

The Implementing Rules and Regulations of the Anti-Torture Act provides for an Oversight Committee, composed of selected members of Congress and headed by a Commissioner of the Commission on Human Rights, to periodically oversee the implementation of the Act and write an annual report to be submitted to the President and be made publicly available. As of March 2013, this Oversight Committee has yet to convene. Amnesty International received information in February 2013 that the CHR was drafting the rules of procedure for the work of the Oversight Committee, and that this then would have to be approved by members of the Oversight Committee before the implementation of the Anti-Torture Act can be reviewed.

The Anti-Torture Act, enacted in 2009, still faces many challenges. Amnesty International found that there is little awareness on the ground on what is torture or what constitutes cruel, inhuman or degrading treatment or punishment even within government agencies mandated to implement this law. This confirms the June 2012 UPR Submission of the Commission of Human Rights which states, "reports from CHR regional offices show that law enforcers (and prosecutors) lack knowledge of the provisions of the Anti-Torture Act and their obligations under it."

Almost three years after the Anti-Torture Act was enacted, no perpetrator has been convicted of torture, although several cases have been filed in court, including one case in which an act of police torture and the identity of the suspected torturers were caught on a mobile-phone video (see the case of Darius Evangelista below). In the last three years since the Act came into force, most complaints filed have been unsuccessful in going beyond the prosecution stage. Further, the specialized rehabilitation program for torture victims and perpetrators, as provided for in the Act, has yet to be established.

In March 2010, **Darius Evangelista** was arrested by police in Manila on suspicion of theft. According to the CHR which investigated the case, three fellow detainees saw him being brought into a police station in Tondo, Manila and detained there. They said that he was taken to the office of the police chief in that police station and then brought back to their cell badly injured, with his face looking like it suffered from blunt trauma and with his eyes swollen and covered with tape. After that, he was taken out of the police station. The former detainees said that they heard one of the police officers say to his subordinates, "Get rid of him." They never saw Darius again.

In August 2010, a video of a naked man, writhing on the floor and crying out in pain while a police officer beat him and repeatedly yanked a string tied to his genitals while uniformed policemen watched, was broadcast on television. The man was Darius Evangelista. The Evangelista family has filed a criminal complaint for torture against the nine policemen who participated in or were complicit to the torture.

The primary suspect, who was seen committing the act of torture in the video, was dismissed by the National Police in January 2011. He later worked as a lecturer for a criminology college, teaching crime detection investigation to trainee policemen and women. In April 2012, the CHR announced that this primary suspect along with five other officers who were implicated in the case were still at large.<sup>1</sup> Two of the other suspects surrendered and faced charges in court.<sup>2</sup> The primary suspect was arrested in April 2013.

- **Amnesty International recommends that members of the 16<sup>th</sup> Congress ensure that the Oversight Committee on the implementation of the Anti-Torture Act functions as described in the law, and provides sufficient support and resources to the CHR, for it to be able to carry out its duties of visitation, investigation and collection of data on detainees, as prescribed in the Anti-Torture Act. When the Oversight Committee's review of the Anti-Torture Act commences, it must include a review of the progress of the torture cases that were filed in court, with particular focus on whether the application of the law is achieving its intent to deliver justice to victims of torture.**

### **3. Accede to the International Convention for the Protection of All Persons from Enforced Disappearances as a step towards ratification, and strengthen the Anti-Enforced Disappearance Act in line with international law.**

The International Convention for the Protection of All Persons from Enforced Disappearances entered into force in December 2010, but the Philippines has not ratified it even though its government has stated that it does not tolerate the practice of enforced disappearance. In the past 40 years there have been more than 2,000 enforced disappearances reported in the country, including new cases during the Aquino administration. In October 2012, the Philippine Congress approved the 'Act defining and penalizing enforced or involuntary disappearance'. The President signed it into law in December 2012.

The promulgation of an act which makes enforced disappearance criminal under national law was an important step forward in the struggle against enforced disappearance in the Philippines, where hundreds of cases of enforced disappearance remain unresolved. It contains a number of positive provisions, such as: the broad definition of victim, the prohibition of secret detention, the non-applicability of amnesty to those suspected of criminal responsibility, the prohibition of superior orders – which do not relieve one of criminal responsibility - and the non-derogability of the right not to be subjected to enforced disappearance. However, the Act, otherwise known as the Anti-Enforced Disappearance Act, falls short of international law and standards.

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<sup>1</sup> "Aquino hit for failure to bring abusive policemen to justice", Francis Cueto, The Manila Times, 28 June 2012. See: <http://www.manilatimes.net/index.php/news/top-stories/25723-aquino-hit-for-failure-to-bring-abusive-policemen-to-justice>. Last accessed 8 September 2012.

<sup>2</sup> "2 Manila cops caught in torture video yield", Mylah Roque, The Vera Files, 22 April 2012. See: <http://verafiles.org/front/2-manila-cops-caught-in-torture-video-yield/>. Last accessed 8 September 2012.

Amnesty International acknowledges this milestone in the Philippines after over two decades of campaigning against enforced disappearances, however, it also raises concerns about gaps in the new law such as: absence of provision criminalizing enforced disappearance if it is committed by persons acting without the authorization, support or acquiescence of the state; provision regarding 'command responsibility'<sup>3</sup> appears to be limited to the 'immediate commanding officer' or the 'immediate senior official' only; the Act lacks a provision vesting jurisdiction on Philippine courts for enforced disappearance committed abroad; Section 22 permits some forms of statutory limitations – when the victim surfaces alive. Amnesty International is of the view that enforced disappearance, as a crime under international law, in all cases, should not be subjected to statute of limitations; Although the Anti-Enforced Disappearance Act provides for reparation to some extent,<sup>4</sup> other forms of reparation, such as satisfaction and guarantees of non repetition, as provided in the 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, are not encompassed in the Act.

- **Amnesty International calls on the Philippine government to promptly sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance, without making upon adherence any reservation or declaration amounting to a reservation; and strengthen the newly enacted Anti-Disappearance Law.**

#### **4. Amend the Witness Protection Act, with a view of establishing a mechanism for timely and sustainable protection for prospective witnesses, witnesses, their families and victims' families**

Prosecution and criminal convictions in the Philippine criminal justice system rely heavily on witness testimony mainly because capacity has been limited when it comes to effective investigations, including forensic investigation. The Witness Protection Program under the Department of Justice provides protection for witnesses and families of victims of crime, including human rights violations, once these individuals pass a certain criteria. In 2010, a separate witness protection program was created under the Commission on Human Rights for witnesses and families of victims of human rights violations. However, as of 2012, this CHR-led protection program, having no budget allocation, became ad-hoc.

In August 2012, Congress amended the Witness Protection Act,<sup>5</sup> with the Act Strengthening the Witness Protection, Security and Benefit Program, Amending for the Purpose Republic Act 6981, otherwise known as the Witness Protection, Security and Benefit Act.<sup>6</sup> It adds provisions to the existing Witness Protection Act, including: giving both the House of Representatives and the Senate power to have a separate witness protection schemes for witnesses speaking during Congressional investigations, which are done in aid of legislation.

The amended law emphasizes the security and protection of the witness, extends the right to a secure housing facility and relocation to members of the witness' family within the second civil degree, and emphasizes that a witness who fails to report to work because of witness duty shall be compensated by his or her employer. The amendment adds a provision for assistance in changing a witness' personal identity whether through physiological appearance or his or her name without the need for a separate judicial order, but neither the original law or the amended law provides for sustainable protection after witness duty, including comprehensive assistance for the resettlement of a witness and his or her family to a different region in the country and a realistic start-up assistance for livelihood.

The amendment also provides for punishment for harassment of witnesses, including "attempts to hinder, delay, prevent or dissuade the witness" from testifying and performing other witness duties.<sup>7</sup>

While these amendments could benefit witnesses, they still do not address crucial reforms needed in the Philippines' Witness Protection Program, including but not limited to providing an interim protection mechanism for persons awaiting the decision of the Department of Justice regarding their application to

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<sup>3</sup> Section 14 of the Anti-Enforced Disappearance Act

<sup>4</sup> See Section 26 of the Anti-Enforced Disappearance Act

<sup>5</sup> Republic Act 6981

<sup>6</sup> This was House Bill 5714, and a bill with similar provisions was also tabled in the senate: Senate Bill 2368

<sup>7</sup> Section 17, HB 5714. Penalties include fines from Php3,000-Php20,000 or imprisonment from six months to two years. The HB also states, "Perpetual disqualification from holding public office shall be imposed upon the offender who is a public officer".

be enrolled into the program, and ordering a limit on waiting times for the DOJ to make a decision on a witness application for enrolment to the protection program. The Philippine authorities should extend protection to relatives of massacre victims who risk reprisal, intimidation and bribes. Protection should include regular monitoring and communication with all the families and witnesses. For those who have received credible threats or are otherwise in danger, the authorities must provide security escorts or other means of ensuring their safety.

The Maguindanao massacre case illustrates the failure by Philippine authorities to secure and protect witnesses. Amnesty International is concerned that prospective state witnesses, witnesses and their families are at serious risk of intimidation and reprisal.

**Suwaib Upham**, who was willing to testify as a state witness was killed before he was able to enrol in the government's witness protection program in 2010. In February 2012, **PO2 Hernanie Decipulo**, a police officer who was one of the accused police officers being considered to become a state witness, allegedly committed suicide while in detention. The National Bureau of Investigation has not yet determined if the prospective state witness' death involved any "foul play".<sup>8</sup> **Alijol Ampatuan**, who according to the prosecutors was one of their undisclosed witnesses who was willing to identify members of the Civilian Volunteer Organisation involved in the massacre, was reported missing until prosecutors established that he was the same man who was shot at close range in February 2012.<sup>9</sup> In May 2012, **Esmail Amil Enog**, who had testified in court that he had been the driver for gunmen implicated in the massacre, disappeared. His body was found dismembered and "chainsawed" to pieces, approximately two weeks after he went missing. In Enog's testimony in court, he had identified Alijol Ampatuan (who was shot dead in February 2012) to be his boss.<sup>10</sup> Apart from these witnesses, the police also announced that **three relatives of witnesses**, all of whom have not been enrolled in the witness protection program, have also been killed in connection to the Maguindanao massacre case.<sup>11</sup>

Some witnesses in the Maguindanao massacre secured protection arrangements with or through the Department of Justice. A DOJ official confirmed to Amnesty International in 2012 that Maguindanao Massacre witnesses who submitted themselves to the Witness Protection Program are provided with security escort and protection services, secure housing and travel expenses and subsistence allowance while acting as a witness, and that the public prosecutors and investigators are also given security escorts.

However, Maguindanao Massacre victims' families told Amnesty International that they were not covered by the government's Witness Protection Program, although many of them had concerns about their safety. Even if the "masterminds" of the crime are currently held in police custody, private gun-for-hire men and members of the private armed group of the suspected perpetrators continue to roam free. The authorities must ensure the protection of the victims' family members, particularly those who have been receiving threats because of their exposure through media. The most vocal among them, Myrna Reblando, a widow of one of the journalists who was killed in the Maguindanao massacre has received some of the most threatening phone calls and messages, although she appears to be not the only one to get such calls. Myrna Reblando left for Hong Kong in the middle of 2011, fearing for her safety and frustrated at the protracted trial.

The Maguindanao massacre was central in the European Parliament's resolution on impunity in the Philippines, adopted in June 2012, which criticizes the criminal justice system in the Philippines. It states, "the undue process illustrates that the Philippines' justice system continues to be deeply flawed:

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<sup>8</sup> "NBI to probe into death of Maguindanao massacre suspect" by Tetch Torres, Inquirer.net, 7 February 2012. See: <http://newsinfo.inquirer.net/141169/nbi-to-probe-into-death-of-maguindanao-massacre-suspect>. Last accessed 8 September 2012.

<sup>9</sup> Ibid.

<sup>10</sup> "Another prospective witness in Maguindanao massacre case confirmed killed" by Mark Maruenas, GMA News, 28 June 2012. See: <http://www.gmanetwork.com/news/story/263428/news/nation/another-prospective-witness-in-maguindanao-massacre-case-confirmed-killed>. Last accessed 8 September 2012.

<sup>11</sup> "101 Maguindanao massacre suspects remain at large", DJ Yap, Philippine Daily Inquirer, 30 June 2012. See: <http://newsinfo.inquirer.net/220993/101-maguindanao-massacre-suspects-remain-at-large>. Last accessed 8 April 2013.

the witness protection program providing no security, corruption, dysfunctional court room rules and lack of resources for the prosecution.”

In October 2012, the UN Human Rights Committee concluded that the Philippine government should ensure the full protection of witnesses by increasing the effectiveness of the witness protection program and that authorities should “fully investigate cases of killings and suspected intimidation of witnesses to put an end to the climate of fear that plagues investigation and prosecution.”<sup>12</sup>

- **Amnesty International recommends that the 16<sup>th</sup> Congress amend the Witness Protection Act, to include the establishment of a mechanism for timely and sustainable protection for prospective witnesses, witnesses, their families and victims’ families. Protection should include regular monitoring and communication by the Justice Department, and those that have received credible threats should be provided with means of ensuring their safety, including through security escorts.**

#### **5. Review the provisions criminalizing libel of the Revised Penal Code and the Cybercrime Prevention Act, with a view to amend provisions which curtail freedom of expression**

The Philippine Constitution establishes that “no law shall be passed abridging the freedom of speech”.

In January 2011, the UN Human Rights Committee found the Philippines’ criminalization of libel to be “incompatible” with the freedom of expression clause in the International Covenant on Civil and Political Rights. Referring to the case of journalist Alexander Adonis who was imprisoned for two years in 2007 for libel, the Human Rights Committee said that the Philippines was “obligated to take steps to prevent similar violations occurring in the future, including by reviewing the relevant libel legislation”. Instead of bringing its libel legislation in line with UN treaty obligations, however, the Philippines embedded criminal libel in the Cybercrime Prevention Act, setting the stage for violations of the freedom of expression. The Cybercrime Prevention Act also violates due process guarantees, giving the Department of Justice the power to close down websites and monitor online activities without a warrant.

The Cybercrime Prevention Act of 2012 (Republic Act No. 101750), which came into force in September 2012, provides for up to 12 years imprisonment to those found guilty of posting online comments judged to be libellous. It broadly extends criminal libel, defined in the Philippines’ Revised Penal Code as the public and malicious imputation of a discreditable act that tends to discredit or dishonour another person) to apply to acts “committed through a computer system or any other similar means which may be devised in the future”. It also increases the criminal penalties for libel in computer-related cases. In October 2012, and then in again in February 2013, the Supreme Court issued a temporary restraining order against implementation of this new law, as the Court reviews its constitutionality.

- **Amnesty International recommends that the 16<sup>th</sup> Congress examine and amend the Revised Penal Code provisions criminalizing libel to ensure that the freedom of speech is not curtailed. Congress should also review and amend provisions of the Cybercrime Prevention Act which contravene the people’s right to freedom of expression, should the law be declared constitutional by the Supreme Court.**

#### **6. Repeal legislations that are discriminatory to women, as mandated in the Implementing Rules and Regulations of the Magna Carta of Women**

On 30 March 2010, the government promulgated the Implementing Rules and Regulations (IRR) of the Magna Carta of Women, in order to facilitate compliance with this law and achieve its objectives. Among the more salient provisions is a list of laws that are discriminatory to women which the state must review, amend or repeal within three years from the Act entering into effect<sup>13</sup> or by August 2012. Included in the list of laws that are discriminatory to women are provisions in the Family Code of the Philippines:

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<sup>12</sup> Concluding observations on the fourth periodic report of the Philippines, adopted by the Committee at its 106<sup>th</sup> session, 15 October to 2 November, Human Rights Committee.

<sup>13</sup> Section 15 of the Implementing Rules and Regulations of the Magna Carta of Women.

1. on giving preference to the father's opinion over the mother's with respect to giving consent to the marriage of their son or daughter aged 18 to 21;<sup>14</sup>
2. on the requirement for physical abuse and grossly abusive conduct to be repeated to constitute a ground for legal separation;<sup>15</sup>
3. provisions giving preference to the husband's decision over his wife's, in cases of disagreement, in relation to the administration and enjoyment of community and conjugal properties,<sup>16</sup> over their children,<sup>17</sup>
4. on the exercise of legal guardianship over the property of their children under the age of 18.<sup>18</sup>

The Magna Carta of Women also identifies four articles from the Revised Penal Code as discriminatory to women which are to be amended or repealed, including:

1. the definition of vagrants and prostitution,<sup>19</sup>
2. provisions on adultery<sup>20</sup> and concubinage where the wife can be charged with adultery and the husband can be charged with concubinage which is more difficult to prove and has lesser penalties;<sup>21</sup>
3. premature marriages where a widow who marries within three hundred and one days from the date of her husband's death may be imprisoned,<sup>22</sup> and
4. on death inflicted by a legally married person on his spouse and his spouse's sexual partner.<sup>23</sup>

The Magna Carta of Women also directs the state to review Republic Act 8353, which provides that criminal liability of a rapist can be removed if the victim marries him or her.<sup>24</sup>

None of the abovementioned law provisions which the IRR identifies as being discriminatory to women have been amended or repealed as of March 2013. On the contrary, in April 2012, Congress enacted Republic Act 10158, a law which de-criminalized almost all forms of "vagrancy" in the Philippines,<sup>25</sup> except for prostitution, holding only female sex workers or "prostituted women"<sup>26</sup> criminally liable, with a

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<sup>14</sup> Article 14, Family Code of the Philippines.

<sup>15</sup> Article 55, Family Code of the Philippines.

<sup>16</sup> Articles 96 and 124, Family Code of the Philippines.

<sup>17</sup> Article 211, Family Code of the Philippines.

<sup>18</sup> Article 225, Family Code of the Philippines.

<sup>19</sup> Article 202, Revised Penal Code.

<sup>20</sup> Article 333, Revised Penal Code states "Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void. Adultery shall be punished by prison correccional in its medium and maximum periods".

<sup>21</sup> Article 334, Revised Penal Code states "Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prison correccional in its minimum and medium periods. The concubine shall suffer the penalty of destierro".

<sup>22</sup> Article 351, Revised Penal Code states "Any widow who shall marry within three hundred and one day from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death, shall be punished by arresto mayor and a fine not exceeding 500 pesos. The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one day after the legal separation".

<sup>23</sup> Article 247, Revised Penal Code states "Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro. If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment..."

<sup>24</sup> For a full text of Republic Act 8353, see: <http://www.chanrobles.com/republicactno8353.htm>.

<sup>25</sup> Republic Act no. 10158, or An Act Decriminalizing Vagrancy. See: <http://attymanuelilasernajr.blogspot.co.uk/2012/04/republic-act-no-10158-amends-art-202.html>.

<sup>26</sup> In the Philippines, there is a dichotomy among women's rights organizations in between using the terms "sex workers" and "prostituted women" to refer to women engaged in prostitution. According to some of the women interviewed by Amnesty International in the Philippines, the term "prostituted women" is more appropriate in describing them, as they see themselves as victims of abuse and lack of other viable employment options because of poverty.

penalty of fine and imprisonment of up to six years for repeat offences. The law de-criminalizes all vagrants, including “any idle or dissolute person who lingers in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes”,<sup>27</sup> but continued to criminalize “prostitutes”, which the Penal Code defines as “women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct”.<sup>28</sup>

Amnesty International shares the concern of women’s groups who criticized this law, asserting that the continued criminalization of prostituted women contributes to a situation where they are vulnerable to police extortion, abuse, and other human rights violations. As this law has a disproportionate effect on women who comprise most of those involved in prostitution, they also constitute a form of gender discrimination that runs counter to international human rights law and to the Magna Carta of Women.<sup>29</sup> The organization believes that the criminalization of prostituted women contravenes the Philippines’ obligations under Articles 2(1) and 3 of the International Covenant on Civil and Political Rights.

- **Amnesty International recommends that the 16<sup>th</sup> Congress ensure that existing laws that are discriminatory to women are amended or repealed without further delay. The Congress must also ensure that prostituted women are not criminalized, and that they are duly protected in law and practice, and are not subjected to police extortion, abuse and other human rights violations.**

## **7. Enact a Charter of the Commission on Human Rights that strengthens its mandate and capacity**

The Commission on Human Rights of the Philippines (CHR) was given additional substantive roles under the newly enacted 2009 Magna Carta of Women, the Anti-Torture Act of 2009 and the Philippine Act on Crimes Against International Humanitarian Law of 2009. The Commission has proposed to lead the National Preventive Mechanism for torture (which has not yet been established), and has been tasked to lead in the National Monitoring Mechanism for human rights violations which will review all pending cases of extrajudicial executions, enforced disappearances and torture, and recommend ways to expedite the resolution of such cases of human rights violations.<sup>30</sup>

Despite these additional monitoring and investigative roles, the CHR continues to operate without significantly larger resources to match its additional functions<sup>31</sup> and without full fiscal autonomy from the government. Its independence as an institution is further weakened by its lack of power to determine its internal organizational structure. A law which would strengthen its protection capacity, including through subpoena powers, clarify its fiscal independence, and mandate it with the power to create or collapse offices in order to meet human rights needs could strengthen the CHR.

The Commission on Human Rights Charter,<sup>32</sup> which would strengthen the functional and structural organization of the CHR and provide it with a prosecutorial mandate, reached plenary deliberations at the

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<sup>27</sup> Article 202, paragraph 2, Revised Penal Code. See: [http://philippinelaw.info/revised-penal-code/article-202\\_vagrants-and-prostitutes-penalty.html](http://philippinelaw.info/revised-penal-code/article-202_vagrants-and-prostitutes-penalty.html).

<sup>28</sup> Ibid.

<sup>29</sup> Statement by Gabriela Women’s Party, 10 April 2012. See: <http://tuklasinnatin.com/2012/president-aguino-crucified-women-by-signing-anti-vagrancy-law-amendment-ra-10158-%E2%80%93-gwp-rep-emmi-de-jesus/>. Last accessed 8 April 2013.

<sup>30</sup> Draft Report of the Working Group on the Universal Periodic Review on the Philippines, A/HRC/WG.6/13/L.10, paragraphs 83 and 84. See: [http://www.upr-info.org/IMG/pdf/a\\_hrc\\_wg.6\\_13\\_l.10\\_philippines.pdf](http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_13_l.10_philippines.pdf). Last accessed 8 April 2013.

<sup>31</sup> Based on an Amnesty International interview with confidential source, September 2012, and figures from the Department of Budget, the CHR was allocated 266.9 million Philippine pesos (approximately US\$5.93 million) in 2011; Php273.1 million in 2012 (approximately US\$6 million); and has an allocation of Php318.9 million (approximately US\$7 million) in the proposed national budget for 2013. See General Appropriations Act of 2011 at <http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2011/CHR/CHR.pdf>; General Appropriations Act of 2012 at <http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2012/CHR/CHR.pdf>; and proposed 2013 Budget at <http://budgetngbayan.com/summary-of-allocations/#dept>.

<sup>32</sup> Senate Bill no. 2818, “An Act Strengthening the Functional and Structural Organization of the Commission on Human Rights, and for other Purposes”.

Senate. The House of Representatives is similarly working towards passing a consolidated bill that aims at transforming the CHR into an “independent constitutional office not subject to instructions or orders from the President, Congress, or Judiciary...”<sup>33</sup> The proposed House bill seeks to provide fiscal autonomy and prosecutorial powers for the CHR. While the CHR has repeatedly called for their Charter to become a priority bill in Congress, it has expressed concern that without corresponding resources, additional functions mandated in the new and proposed laws would spread the Commission thin, overburden it and impair its effectiveness.<sup>34</sup>

Amnesty International is concerned that without full fiscal autonomy and adequate human and financial resources commensurate to the CHR’s additional roles and functions, the effectiveness and efficiency of the Commission risk being impaired. The Paris Principles state that “the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subjected to financial control which might affect its independence”.<sup>35</sup>

- **Amnesty International recommends that the 16<sup>th</sup> Congress enact a law which would strengthen the Commission on Human Rights’ protection capacity, including through subpoena powers, clarify its fiscal independence and mandate it with the power to determine its internal organizational structure. The Commission should be provided with adequate resources, and subsequent powers for it to carry out its additional substantive roles in the National Monitoring Mechanism, National Preventive Mechanism and under newly promulgated laws such as the Magna Carta of Women, Anti-Torture Act and the IHL Law.**

#### **8. Enact a law against discrimination based on ethnicity, sexual orientation and gender identity.**

The Philippine Constitution declares that the State values the dignity of every human person and it has the duty to ensure the fundamental equality before the law of everyone. The Philippines is also signatory to various international human rights conventions that promote respect for the human rights of all persons regardless of any status.

Article 26 of the International Covenant on Civil and Political Rights “to guarantee all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” was interpreted by the UN Human Rights Committee as obliging all States to include a protection against discrimination on the basis of sexual orientation.

Unfortunately the respect for lesbian, gay, bisexual and transgender rights are low, oftentimes these rights are violated in the family, workplace, schools and various spaces. The level of enjoyment of LGBTs of equal rights free from discrimination is also reflected in the various and vicious attacks made by individuals and groups on the anti-discrimination bills in Congress.

Indigenous peoples are still discriminated upon with their rights violated, despite the existence in the country of an Indigenous Peoples Rights Act (IPRA) for several years now.

There is need to define and penalize discriminatory acts and violations of rights of indigenous peoples and those with different sexual orientation and gender identity in order that their rights are enjoyed and protected from continuing attacks.

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<sup>33</sup> “House fast tracks CHR autonomy bill”, [www.tempocom.com](http://www.tempocom.com), 26 June 2012. <http://www.tempocom.com.ph/2012/house-fasttracks-chr-autonomy-bill/>. Last accessed 8 April 2013.

<sup>34</sup> Commission on Human Rights of the Philippines’ Submission to the Universal Periodic Review, June 2012. See: [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/CHRP\\_UPR\\_PHL\\_S13\\_2012\\_CommissiononHumanRightsofthePhilippines\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/CHRP_UPR_PHL_S13_2012_CommissiononHumanRightsofthePhilippines_E.pdf). Last accessed 8 April 2013.

<sup>35</sup> Paris Principles section on Composition and guarantees of independence and pluralism, paragraph 2, See: <http://www2.ohchr.org/english/law/parisprinciples.htm>. Last accessed 8 April 2013.



- **Amnesty International recommends that the 16<sup>th</sup> Congress enact an Anti-Discrimination law that defines discriminatory acts, penalizes such actions and ensures that indigenous peoples, lesbians, gays, bisexual, transgender and others are protected from discrimination.**