



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES  
TO THE UNITED NATIONS AND OTHER INTERNATIONAL  
ORGANIZATIONS, GENEVA

**NV-EPG-110-2021**

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights-Special Procedures Branch and, with reference to OHCHR's Note Verbale dated 30 November 2020 on the request from the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, has the honor to provide the contribution from the Philippines on the SR's research and analysis on practices and lessons learned in relation to "accountability for gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes".

The information was provided by the Philippines' Bureau of Jail Management and Penology, the Philippine National Police's Human Rights Affairs Office, and the Armed Forces of the Philippines' Human Rights Office.

The Philippines also wishes to invite the SR's attention the Philippine Human Rights Situationer<sup>1</sup> which was circulated on 24 June 2020. Section 3 of said Situationer describes the political and historical context in the country in relation to the longest and most violent insurgency in Asia waged by the terrorist group Communist Party of the Philippines-New Peoples' Army-National Democratic Front (CPP-NPA-NDF). This section narrates the insidious *modi operandi* of this armed non-state actor in exploiting democratic spaces and human rights platforms for criminal ends and for evading accountability for gross violations of human rights and of international humanitarian law. The Philippines requests the SR's assistance in addressing these activities of armed non-state actors in his upcoming report in HRC48 and in providing recommendations on strengthening responses to hold these actors fully accountable.

In addition to the information provided in the attachment, Sections 4.7 and 4.8 of the Situationer also shares practices to address Martial Law cases including the creation of a Board of Claims under the Department of Justice as well as the provision of restitution, compensation and rehabilitation for victims of enforced or involuntary disappearance and their families.

The Philippines consents to having these inputs published in the OHCHR's website. The MS Word version is also provided for ready perusal.

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights-Special Procedures Branch the assurances of its highest consideration.

Geneva, 14 May 2021

**OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS**  
Palais Wilson  
52 Rue des Paquis  
CH-1201 Geneva



*Attention : The Special Procedures Branch*

<sup>1</sup> <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200609-PH-Human-Rights-Situationer.pdf>

**CONTRIBUTION FROM THE REPUBLIC OF THE PHILIPPINES  
TO THE THEMATIC REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION OF  
TRUTH, JUSTICE, REPARATION AND GUARANTEES OF NON-RECURRENCE ON  
“Accountability for Gross Violations of Human Rights and Serious Violations of  
International Humanitarian Law in the Context of Transitional Justice Processes”**

This pertains to the request of Mr. Fabián Salvioli, Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, for sharing of information for his research and analysis on practices and lessons learned in relation to accountability for gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes.

The government of the Philippines is pleased to share the information, as provided by the Bureau of Jail Management and Penology, the Philippine National Police’s Human Rights Affairs Office, and the Armed Forces of the Philippines’ Human Rights Office, as follows:

**1. Please indicate which mechanisms have been established in your country, or country where you work, to hold accountable persons accused of committing gross violations of human rights and serious violations of international humanitarian law and whether there is a prosecutorial prioritization strategy to strengthen accountability for such violations. Please specify whether the accountability mechanism envisages the use of national criminal courts, national military courts, or international or internationalized tribunals. Please provide information on the legal framework and justice model applicable to accountability in the country concerned, and indicate the difficulties and opportunities encountered. If such mechanisms were not adopted, please explain why.**

- The Philippines enacted several domestic laws such as Republic Act 9745 penalizing torture, Republic Act 10353 on enforced disappearances, Republic Act 9851 on crimes against international humanitarian law (IHL), genocide and crimes against humanity, and Republic Act 11188 on crimes against children in situations of armed conflict.
- To further address grave human rights violations and IHL violations, an inter-agency committee was created in 2012<sup>1</sup> to resolve extra-legal killings, cases of torture, enforced disappearances and other grave violations to the right to life, liberty and security of persons (which includes IHL violations). Cases have been filed against malefactors including insurgents and state agents. There have been a number of convictions as well as ongoing cases in the investigation, prosecution and court trial states.
- In the case of arrested suspects and even criminals or those in conflict with the law, their rights are protected as indicated in several laws enacted by the Philippine Congress for the protection of Persons Under Police Custody (PUPCs), RA 7438,<sup>2</sup> Revised Penal Code,<sup>3</sup> and other laws designed for the protection of prisoners/detainees in line with the UN’s Standard Minimum Rules for the Treatment of Prisoners.
- The Philippine National Police (PNP) created the Human Rights Affairs Office (HRAO) in 2007 to serve as a management facility that oversees the implementation of the PNP policies and guidelines on human rights.<sup>4</sup>

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<sup>1</sup> Administrative Order No. 35, s. 2012 Creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and other Grave Violations of the Right to Life, Liberty and Security of Persons

<sup>2</sup> RA 7438- An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation

<sup>3</sup> R.A. 3815 – An Act Revising the Penal Code and Other Penal Laws

<sup>4</sup> Human Rights Desk Operations Manual, PNP

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- The Bureau of Jail Management and Penology (BJMP),<sup>5</sup> the agency mandated to direct, supervise and control the administration and operation of all district, city, and municipal jails nationwide with the tasks of safekeeping and development of inmates, created the BJMP Human Rights Office (BJMP-HRO) in 2011 for the formulation, implementation, and monitoring of the BJMP's human rights development programs.
- Human Rights Desks are created in all the regional offices of the BJMP, Jail Provincial Administrators' Offices and in every jail under their respective Welfare and Development offices which are tasked with monitoring the implementation of the BJMP's human rights policies and issuances as well as receive and evaluate PDL's complaints relative to human rights violations.
- The Commission on Human Rights (CHR) is also a specific mechanism that guarantee the non-recurrence of any human rights violation in the country. It is an independent body which ensures the protection of human rights guaranteed under Article III, Bill of Rights of the 1987 Philippine Constitution. The CHR primarily handles the investigations of human rights violations, provides assistance and legal measures for the protection of human rights of all people in the Philippines as well as Filipinos residing abroad, and provides for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection.<sup>6</sup> The CHR, however, has no power to resolve issues as stated in the Supreme Court decision<sup>7</sup> in 1991.
- The establishment of a more strengthened and dignified criminal justice system is also a contributory factor to ensure the speedy prosecution and resolution of the case and will help increase the trust and confidence of the citizens as the Philippines adheres to international laws for the protection of the rights and dignity of every Filipinos.

**2. Please indicate the types of penalties prescribed for crimes such as genocide, torture, enforced disappearance, massacres, ethnic cleansing, mass forced displacement, among others that are qualified as crimes against humanity under Article 7 of the Rome Statute. Please describe the legal framework underpinning these penalties and how it was established (by law, decree, or otherwise). Please indicate the standard followed in the country to determine the penalties for such violations (e.g., Rome Statute and others). Please mention the challenges and opportunities encountered in the qualification of penalties for these crimes, the investigation of the crimes, the determination of penalties/sanctions for the crimes, and the enforcement of the sanctions.**

- The crime of genocide in the Philippines is defined under Republic Act 9851 also known as the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity." Under Section 7 of RA 9851, any person found guilty of committing any of the acts specified in preceding sections under this law, shall suffer the penalty of reclusion temporal in its medium to maximum period and a fine ranging from One hundred thousand pesos (Php 100,000.00) to Five hundred thousand pesos (Php 500,000.00).<sup>8</sup>
- When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury, or constitutes rape, and considering the individual circumstances of the accused, the penalty of reclusion

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<sup>5</sup> <https://www.bjmp.gov.ph/index.php/about-us/mandates-and-functions>

<sup>6</sup> Section 18, Article XIII, 1987 Philippine Constitution

<sup>7</sup> G.R. No. 96681 dated December 2, 1991

<sup>8</sup> USD 1 is around PHP 48.00 in January 2021

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perpetua and a fine ranging from Five hundred thousand pesos (Php 500,000.00) to One million pesos (Php 1,000,000.00) shall be imposed. Similarly, any person found guilty of inciting others to commit genocide referred to in Section 5(b) of this Act shall suffer the penalty of prison mayor in its minimum period and a fine ranging from Ten thousand pesos (Php 10,000.00) to Twenty thousand pesos (Php 20,000.00).<sup>9</sup>

- In addition, the court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from that crime, without prejudice to the rights of bona fide third parties. The court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer.
- In as much as the death penalty was suspended, various terms and periods of imprisonment aside from other penalties are imposed to those convicted by final judgement of the trial court.
- To address challenges related to capacity-building, a joint project between the Philippine Judicial Academy (PhilJA) and the Supreme Court on crafting an IHL manual to be used by judges, prosecutors and investigators was recently completed and is set for publication. This contributes to the further strengthening of IHL in the Philippines.

**3. Please indicate if in your country, or country where you work, limits or obstacles have been imposed on the criminal prosecution and/or sanction of perpetrators of those violations, such as: prior legal immunities or exemptions from legal responsibilities (including amnesties, defense of superior orders), termination of criminal proceedings, statutory limitations, benefits in the enforcement of sentences (including pardons, humanitarian pardons, commutation of sentences, and alternatives to imprisonment), or laws/policies of repentance or of reconciliation in exchange for immunity or commutation of sentences. Explain the reason for their introduction and whether you consider them to be in conformity with international standards in this field. What has been the impact of such mechanisms on perpetrators, victims and their families, and on the other pillars of transitional justice? Please give examples.**

- The Bangsamoro Organic Law (Republic Act 11054) creating the Bangsamoro Autonomous Region in Muslim Mindanao provides for the process of transitional justice, where the Philippine government is now in the process of healing the wounds brought about by the conflict in Muslim Mindanao. With the Office of the Presidential Adviser on the Peace Process (OPAPP) as lead agency, the AFP and other government agencies are now working on integration, restitution and remuneration on the losses wrought by the conflict.

**4. Please indicate good practices and challenges in implementing accountability mechanisms, and their impact on other areas of transitional justice (truth, reparation, historical memory, guarantees of non-repetition and reconciliation).**

- With reference to good practices, on the part of the AFP, it has done the following:
  - Participated actively in the AO 35 inter-agency committee on EJKs, enforced disappearance, torture and other grave violations, thereby contributing to the effective implementation of the mechanism;
  - The AFP is also an active participant in the inter-agency committee on children in situations of armed conflict (IAC-CSAC) created under the recently enacted RA 11188,

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<sup>9</sup> Section 7, R.A. 9851

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especially in the crafting of the implementing rules and regulations (IRR), the CSAC Handling Protocol, and in the conduct of the advocacy campaign;

- Continuing collaboration with the Commission on Human Rights (CHR) with regard to referral and monitoring of cases, education and training, etc.;
- Coordinates with the International Committee on the Red Cross (ICRC) and United Nations (UN) resident agencies in the Philippines particularly on capacity building and IHL development in the country, including submission of reports to the UN Resident Coordinator (UNRC) in the Philippines and the Office of the High Commissioner for Human Rights (OHCHR) of violations by armed groups such as the New People's Army (NPA), and on technical cooperation between the UN and the Philippine government;
- Heightened cooperation/collaboration between the AFP and the CHR, particularly on submission of the AFP to the CHR of reports of NPA human rights and IHL violations, as well as monitoring of incidents and cases; and
- Coordination with the AFP Peace and Development Office which is the focal office of the AFP to the Office of the Presidential Adviser on the Peace Process (OPAPP), the office tasked to conduct projects, programs and activities to fully implement transitional justice and reconciliation in the Bangsamoro.

**5. Please indicate if the design and implementation of the accountability mechanism was grounded on effective consultation with victims (including women and victims in vulnerable situations). Please indicate examples of good practice in this regard and the impact of consultation on the accountability process. Please indicate whether there were procedural barriers, difficulties in legal representation, threats, or other obstacles to the participation of victims (including women and victims in vulnerable situations) in the accountability mechanisms and what measures were taken to ensure their effective and safe participation.**

- Considering that Philippine domestic laws on the matter underwent the legislative process of consultation, interpellation and deliberation, it is presumed that nationwide consultations were held to get inputs and opinions from all stakeholders. According to the AFP, the government inter-agency committees under AO 35 and RA 11188 sought comments and advice from partner civil society organizations (CSOs), in order to achieve a working system of accountability from perpetrators.
- With reference to procedural barriers, the PNP cited the lack of cooperation from the complaining party when it comes to the prosecution of cases involving alleged human rights-related abuses and violations. This cooperation for the prosecution of the case is vital especially when Philippine judicial law is concerned. However, procedural remedies are still in place to help the complaining party in pursuing the case and attain justice.

**6. Please indicate the impact that the political context in your country, or country where you work (internal stability, security, democratic governance, etc.) has had on the mechanisms of accountability or impunity adopted in response to gross violations of human rights or serious violations of international humanitarian law. What is the relationship between peace, justice and reconciliation in the model of justice adopted in your country, or country where you work? Explain if you think this model meets international standards and why?**

- The Philippine model is in tune and aligns with international standards because the laws were patterned after the Rome Statute of the International Criminal Court, the Convention Against Torture, the International Covenant on Enforced and Involuntary Disappearance. The Monitoring, Reporting and Response System (MRRS) under RA 11188 is similar to the Monitoring and Reporting Mechanism (MRM) prescribed by UNSC Resolution. The AO 35 mechanism complies with human rights international norms and standards, and the said

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mechanism even counts the CHR as an observer, proving the system's transparency and efforts to stop impunity and hold accountable violators.

- The Philippine government holds accountable violators of human rights and IHL, whether the malefactor is from government or from non-state armed groups and non-state actors. Accountability mechanisms are well in place to hold military personnel involved in human rights violations.
- Section 3 of the Philippine Human Rights Situationer<sup>10</sup> describes the political and historical context in the country in relation to the longest and most violent insurgency in Asia waged by the terrorist group Communist Party of the Philippines-New Peoples' Army-National Democratic Front (CPP-NPA-NDF). This section narrates the insidious *modi operandi* of this non-state actor in exploiting democratic spaces and human rights platforms for criminal ends and for evading accountability. Section 4 of the Situationer provides detailed information on the robust accountability mechanisms in place as well as on the government's continued efforts to further strengthen these. **END.**

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<sup>10</sup> <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200609-PH-Human-Rights-Situationer.pdf>