



International Peoples' Tribunal Testimony

By Marjorie Cohn

After the terrorist attacks on Sept. 11, 2001, the George W. Bush administration launched a "Global War on Terror," which it used as an excuse to decimate human rights and civil liberties.

Bush illegally invaded Afghanistan and Iraq, killed upwards of one million people, sent 800 men and boys to be held indefinitely at Guantanamo without charge, mounted a widespread program of torture and cruel treatment, and conducted massive surveillance on people in the United States and abroad.

The US Congress passed the Patriot Act shortly after 9/11, which facilitated surveillance on dissidents. At the instigation of the US, and the complicity of the Gloria Macapagal Arroyo regime, the Philippine Human Security Act was passed in 2007. It violates Article 15 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits ex post facto laws. Both the Philippines and the US are parties to the ICCPR.

After 9/11, Bush misrepresented the Philippines as a second front of the war on terror ("Operation Enduring Freedom-Philippines"). The Philippine government used this war on terror as an opportunity to escalate its generations-long war against Muslim separatists in the southern Philippines, and other individuals and organizations who oppose the policies of the Philippine government.

People and groups have been labeled “terrorists” by the Philippine government, the US government, and other countries at the behest of the US government. The Philippine government engages in ‘Red tagging’ (political vilification). Targets are frequently activists, organizers, political dissidents, or separatists fighting for national liberation.

Prof. Jose Maria Sison, Chief Political Consultant for the National Democratic Front of the Philippines (NDFP), has been singled out for severe repression by the US. Since August 2002, he has been classified as a "person supporting terrorism" by the United States. The US has also designated Communist Party of Philippines and New Peoples’ Army (NPA) as terrorist organizations.

Sison’s assets have been frozen and he is forbidden to travel, in violation of article 12 of the ICCPR. The European Union’s second highest court ruled to delist him as a "person supporting terrorism" and reversed a decision by member governments to freeze assets.

The treatment of Sison violates the mutually acceptable principle of national sovereignty as set forth in the Hague Joint Declaration between the Philippine government and the NDFP. It also violates the safety and immunity guarantees to panelists, consultants, staffers and other duly authorized participants in the peace negotiations in accordance with the Joint Agreement on Safety and Immunity Guarantees. JASIG is a key agreement in the peace negotiations between the Government of the Philippines and the NDFP.

The treatment of Sison also violates his rights under the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the Philippine government and the NDFP; as well as the political offense doctrine enunciated in the *Amado V. Hernandez* case pursuant to Article 6, Part III of the CARHRIHL.

As part of the US war on terror, in 2002, the Arroyo government created the Oplan Bantay Laya, a counter-insurgency program modeled on US counter-insurgency, ostensibly to fight communist guerrilla fighters. The Aquino government continued the program in 2011 under the name of Oplan Bayanihan. It does not distinguish between civilians and combatants, which is considered a war crime under the Geneva Conventions.

Oplan Bayanihan has also led to tremendous repression, including large numbers of extrajudicial killings, forced disappearances, torture, and cruel treatment. Civilians, including children, have been targeted and killed. Some bodies have been desecrated, which violates the Fourth Geneva Convention as well as Additional Protocol I to the Geneva Conventions; the Philippines is a party to Protocol I.

Hundreds of activists who belonged to progressive organizations were murdered by the Philippine military and paramilitary death squads. In 2012, a US drone strike targeted Abu Sayyaf and Jemaah Islamiyah and killed 15 people in Jolo.

These actions violate Common Article 3 of Geneva and constitute war crimes under the International Criminal Court (ICC), which forbid violence to life and person, in particular murder of all kinds, cruel treatment and torture, as well as committing outrages upon personal dignity, in particular humiliating & degrading treatment.

Philippine military and/or paramilitary forces have committed rape and sexual violence, which is a violation of customary international law.

The Philippines is a party to the Rome Statute for the ICC; the US has refused to sign and ratify the Rome Statute. The Philippines and the US are parties to the Geneva Conventions. Article 7 of the ICCPR forbids torture and other cruel, inhuman or degrading treatment or punishment. Article 9 of the ICCPR guarantees liberty and security of person, forbids arbitrary detention, which is an all too common practice of the Philippine military/paramilitary.

Torture and cruel, inhuman or degrading treatment is prohibited by Article 7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Philippine military and paramilitary forces apparently rationalize their harsh treatment as necessary to maintain national security against organizations that seek to challenge, and even overthrow the government. However, Article 2 of CAT says, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for torture.” Both the Philippines and the US are parties to the CAT.

As a party to the CAT, the Philippine government has a duty to prosecute or extradite those who commit, or are complicit in the commission, of torture. The Geneva Conventions also mandate that the Philippine government prosecute or extradite those who commit, or are complicit in the commission of, torture.

Yet we have heard repeated testimony of the refusal of the Philippine government to investigate well-documented cases of human rights violations. And even though Wikileaks demonstrated that the US government knew about the abduction and detention of US citizen Melissa Roxas, it did nothing to secure her release.

The right to an effective remedy for violations of human rights law is enshrined in many international instruments. These include Article 2 of the ICCPR, Article 8 of the Universal Declaration of Human Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture, Article 39 of the Convention on the Rights of the Child, Article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, Article 91 of the Protocol I Additional to Geneva, and Article 75 of the Rome Statute. The Philippines is a party to all of these instruments.

In December 2005, the UN General Assembly passed a resolution titled: *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*. This resolution reaffirms the rights in the instruments mentioned above and in Principle VII explains: Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparations mechanisms.

Yet we have repeatedly heard testimony that victims have been denied just remedies for their suffering.

Many of President Barack Obama's policies are identical or similar to those of the Bush administration. In fact, Obama has refused to hold the war criminals George W. Bush, Dick Cheney, Donald Rumsfeld, Condoleezza Rice and others accountable for their war crimes.

Continuing the Bush policy of the Pivot to Asia-Pacific, as a counterweight to China, Obama enlisted the Aquino government last year to negotiate the Enhanced Defense Cooperation Agreement. Although it gives lip service to the Philippines maintaining sovereignty over the military bases on Mindanao Island and civilian airstrips on Luzon, it actually grants tremendous powers to the US. The US also seeks to return to its 2 former military bases in Subic and Clark, which they left in 1992. These bases were critical to the US imperial war in Vietnam. This violates the well-established right of peoples to self-determination in Article 1 of the ICCPR.

The Rome Statute for the ICC provides for aiding & abetting liability for war crimes.

An individual can be convicted of a war crime in the ICC if he or she "aids, abets or otherwise assists" in the commission or attempted commission of the crime. This includes "providing the means for its commission."

Between 2001 and 2010, the US has given more than \$507 million in military aid to the Philippine government, which has enabled it to commit war crimes. US political and military leaders could be liable for war crimes as aiders and abettors in the ICC.

US leaders could also be liable for war crimes as aiders and abettors to state terrorism, including the Mamasapano Massacre. The US really planned this operation. The US had put a \$5 million bounty on Marwan's head. US drones pinpointed Marwan's hiding place, guided the commandos to it, and provided the capability for real-time management by the Philippine commanders away from the battlefield. At least six US military personnel were at a Philippine command post and fed Philippine commandos intelligence collected by US aircraft. After the massacre, Marwan's finger disappeared. It then appeared at an FBI lab in the US a few days later.

The US government offered the Philippine government \$30 million in additional military aid in exchange for an agreement that would exempt US soldiers operating in the Philippines in the ICC.

The Geneva Conventions and the Rome Statute list as a war crime the passing of sentences & carrying out executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Guantanamo detainees have been denied their unfettered right to counsel as guaranteed by the ICCPR and the Geneva Conventions.

Although Obama has not continued Bush's program of torture, Guantanamo detainees continue to be violently force-fed, a practice the UN Human Rights Council has labeled torture. It violates the CAT, the ICCPR, and the Geneva Conventions.

Although Obama has reduced the number of US troops in Afghanistan, they remain in that country, critical to Obama's drone war in the region.

Obama has continued the war on terror without calling it a war on terror. He said, "Beyond Afghanistan, we must define our effort not as a boundless 'global war on terror' - but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America."

Obama stated in 2013, "Under domestic law and international law, the United States is at war with al Qaeda, the Taliban and their associated forces." Terrorism is a tactic, not an enemy. You can't declare war on a tactic.

The UN Charter requires that States settle their disputes peacefully and forbids the use of military force except in self-defense.

Although Obama "ended the war in Iraq," he has started a war in Iraq and Syria against ISIS (a group that never existed before Bush invaded Iraq and destabilized that country). This violates the UN Charter.

In Obama's six and one-half years as President, he has killed more people with drones than died on 9/11. Drones are Obama's weapon of choice because they do not endanger the lives of US pilots. But drones are deadly to the Pakistanis, Iraqis, Afghans, Somalis, Yemenis, and Syrians who happen to be in the vicinity when the unmanned aircraft unleashes its lethal payload. US drones fly from bases in the Philippines.

On “Terror Tuesdays,” President Obama and CIA director John Brennan go through the “kill list” to decide who shall be assassinated that week. Drones are used in two different types of attacks. “Personality strikes” target suspected terrorists.

“Signature strikes” do not target individuals, but rather, aim to kill all those present in an area of suspicious activity. When the CIA mounts a signature strike, it doesn’t even know whom it is killing. The Obama administration defines combatants (non-civilians) as all men of military age present in a strike zone, “unless there is explicit intelligence posthumously proving them innocent.”

Contrary to popular belief, drones do not result in fewer civilian casualties than manned bombers. A study based on classified military data concluded that the use of drones in Afghanistan caused ten times more civilian deaths than manned fighter aircraft.

The CIA often launches a “double tap,” in which a drone kills those trying to rescue the wounded from the first strike. But there is frequently a third strike, hitting mourners at the funerals for the fallen.

Edward Snowden revealed a massive spying program by the US National Security Act (NSA).

Although earlier this year the US Congress modified the metadata collection program, the NSA continues PRISM – an Internet surveillance system that collects data from Google, Yahoo, Microsoft, Facebook, PalTalk, AOL, Skype, YouTube and Apple. Established pursuant to Section 702 of the Foreign Intelligence Surveillance Act and the 2008 FISA Amendments Act, PRISM allows national security officials to collect material including search history, the content of emails, file transfers and live chats, if targeted at foreigners "reasonably believed" to be abroad, even if the surveillance takes place on US soil. "The law allows for the targeting of any customers of participating firms who live outside the US, or those Americans whose communications include people outside the US."

"NSA reporting increasingly relies on PRISM" as its primary source of raw material, and accounts for one in seven intelligence reports.

Snowden also revealed NSA spying on the Philippines with the Mystic program, as a source for intelligence for so-called "terrorist" activities in Mindanao.

The leaders of the Aquino and Obama governments continue to enjoy impunity for their violations and aiding and abetting of politically-motivated human rights violations that target Filipino people and groups that struggle against governmental repression. That impunity violates their well-established international law obligations.