

SCHONBRUN DESIMONE SEPLow HARRIS HOFFMAN & HARRISON LLP

Benjamin Schonbrun
V. James DeSimone
Michael D. Seplow
Wilmer J. Harris
Paul L. Hoffman
Genie E. Harrison
Supreeta Sampath
Victoria Don
Amanda R. Canning
Courtney Abrams

723 Ocean Front Walk
Venice, CA 90291
(310) 396-0731 (310) 399-7040 (fax)
www.sdshh.com

Of Counsel
Erwin Chemerinsky
*Illinois and Dist. Columbia
Adrienne J. Quarry
John Raphling

Pasadena Office
715 Fremont Avenue
Suite A
Pasadena, CA 91030
(626) 441-4129
(626) 283-5770 (fax)

August 24, 2011

Professor Juan Méndez
U.N. Special Rapporteur on Torture
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

E-mail: urgent-action@ohchr.org

Dear Professor Méndez:

We represent Melissa Roxas, who was abducted in the Philippines in May 2009 and brutally tortured over a period of six days. Substantial evidence collected despite the military's obstruction suggests the Armed Forces of the Philippines (AFP) detained and tortured Ms. Roxas as part of its counterinsurgency campaign, which has been responsible for a staggering number of documented human rights abuses.¹ To date, Ms. Roxas's abductors have not been held accountable.

¹ Ms. Roxas' experience, in which she was kidnapped and tortured by the AFP while performing human rights work, is not isolated. Rather, it typifies the pattern of abductions, forced disappearances, torture, extra-judicial killings, and other human rights violations committed under the presidency of Gloria Macapagal Arroyo. Reports issued by the United Nations Special Rapporteur on Extra-Judicial Killings Philip Alston, Amnesty International, Human Rights Watch, and Karapatan have all concluded that the AFP has systematically carried out politically-motivated executions, abductions, torture and arrests against unarmed civilians and human rights activists like Ms. Roxas as part of its counterinsurgency program, *Oplan Bantay Laya*. Karapatan, "2008 Year-End Report on the Human Rights Situation in the Philippines," (December 10, 2008), 10, available at <http://www.karapatan.org/node/275>; Philip Alston, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to the Philippines" (February, 2007), Annex 7-8, available at http://stopthekillings.org/stknpv2/files/A-HRC8-Philippines_Advance.pdf; Amnesty International, "Philippines: Political Killings, Human Rights,

In July 2009, Ms. Roxas returned to the Philippines to testify before the Court of Appeals and submitted an urgent appeal to then-Special Rapporteur Professor Manfred Nowak, to which the Philippine government has not responded. The Court of Appeals subsequently found that Ms. Roxas was in fact abducted, detained, and tortured,² adding new urgency to Ms. Roxas's efforts to hold her abductors accountable. In addition, President Benigno Aquino took office on June 30, 2010 with promises to end human rights abuses by the military. Although the Aquino administration has undertaken some reforms, the abuses continue.

We respectfully request that you call upon the Philippine Government to fully investigate Ms. Roxas's ordeal in order to identify the perpetrators and bring them to justice. We also request that you solicit an invitation from the government to conduct a country visit in order to investigate the factors behind the government's widespread use of torture and to formulate solutions to help end it. These actions will provide a meaningful step towards ending the impunity surrounding the use of torture and extrajudicial killings that took place under President Gloria Macapagal Arroyo and that continue to this day.

MS. ROXAS'S ABDUCTION AND TORTURE

On the afternoon of May 19, 2009, Ms. Roxas was abducted in the Philippines along with two companions, John Edward Jandoc and Juanito Carabeo. Ms. Roxas, a United States citizen of Filipino descent, was part of a team preparing for a medical mission in the community of Tarlac in the Central Luzon area of the Philippines.³ Around 1:30 p.m., 15 men in civilian clothes, armed with high power rifles and clad in ski masks, surrounded the house in which Ms. Roxas was staying. They barged through the doors and ordered Ms. Roxas and her companions to drop face down on the floor.⁴ Ms. Roxas resisted, but was held down by five men, punched repeatedly in the ribcage, and dragged screaming into a van.⁵ Her assailants then blindfolded and handcuffed her.⁶ They were unable to tape her mouth because she was retching and vomiting.⁷ The abductors then drove to a facility that Ms. Roxas strongly believes was the military installation of Fort Magsaysay.⁸

and the Peace Process," 14 August 2006, ASA 35/006/2006, 1, *available at* <http://www.amnesty.org/en/library/info/ASA35/006/2006/en>; Human Rights Watch, "World Report 2011: The Philippines (Events of 2010)," (24 January 2011), *available at* <http://www.unhcr.org/refworld/docid/4d3e80230.html>.

²*Roxas v. Arroyo*, Court of Appeals Decision, p. 17 (August 26, 2009).

³Roxas Aff. at ¶ 2-3.

⁴*Id.* at ¶ 5.

⁵*Id.* at ¶¶ 6, 8.

⁶*Id.* at ¶ 9.

⁷*Id.*

⁸*Id.* at ¶ 11.

Ms. Roxas's abductors took her to a jail cell that had a small bed frame without a mattress. They left her there, blindfolded, handcuffed, and without food or water until the next evening.⁹ Ms. Roxas was blindfolded and handcuffed at all times over the course of her six day ordeal, and was only allowed to remove the blindfold during some baths.¹⁰ She was denied access to a lawyer despite repeated requests.¹¹

On the morning of May 20, 2009 Ms. Roxas's abductors began interrogating and beating her.¹² They asked her questions and accused her of being a member of the Communist Party of the Philippines (CPP) and its armed group, the New People's Army (NPA).¹³ They allowed her to bathe, after which they brought her back to the cell and began to torture her.¹⁴ One man pulled her up by her handcuffs into a sitting position and punched her in the upper sternum. He then pushed his thumb strongly to her throat and choked her. When he released her throat, she gasped for air and he immediately punched her in the jaw. He continued choking and punching her over the next hour while asking her questions, which she refused to answer. One of the men said, "She is strong. Let us just shoot her," and then they left.¹⁵

The men returned late that night, near dawn. They dragged Ms. Roxas out of her cell and resumed interrogating, choking, and punching her.¹⁶ They slammed her head repeatedly against the wall.¹⁷ When she collapsed from the beating, the men forced Ms. Roxas to sit back up so they could continue torturing her.¹⁸ The men then pulled plastic bags over her head and suffocated her until she "was seeing white and thinking I was going to die."¹⁹ They finally removed the bags and carried Ms. Roxas back to her cell.²⁰

Several hours later, on the morning of May 21, 2009, a man returned and resumed interrogating Ms. Roxas. This interrogation continued non-stop by one interrogator after another and included lectures on the evils of communism.²¹

On May 22, 2009, the interrogation intensified. After Ms. Roxas refused to sign a document, her interrogators took her to another room, held a bright, hot light on her face, and pressed her shoulder, which had become dislocated during the torture, causing her severe pain.²²

⁹*Id.* at ¶¶ 16-21.

¹⁰*Id.* at ¶ 17.

¹¹*Id.* at ¶¶ 13-14, 20.

¹²*Id.* at ¶ 20.

¹³*Id.* at ¶ 19.

¹⁴*Id.* at ¶¶ 21-22.

¹⁵*Id.* at ¶ 22.

¹⁶*Id.* at ¶ 24.

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.* at ¶ 25.

²⁰*Id.*

²¹*Id.* at ¶ 27.

²²*Id.* at ¶¶ 29-30; Interview with Melissa Roxas conducted August 18, 2011.

The interrogators forced Ms. Roxas to drink a soda that was apparently drugged, after which she became groggy and talkative.²³

The interrogations persisted for two more days. Ms. Roxas's torturers released her on May 25, 2009, in Quezon City after giving her several items, including books, and threatening her and her family with harm if she ever reported her ordeal or sought assistance from human rights groups.²⁴

PSYCHOLOGICAL AND PHYSICAL INJURIES

Ms. Roxas sustained numerous psychological and physical injuries over the course of her abduction, all of which were consistent with the abuse she described. She received no medical attention while in captivity.²⁵

Ms. Roxas was examined on May 26, 2009, the day after she resurfaced, by Dr. Geneve E. Rivera-Reyes of the Health Alliance for Democracy, and Dr. Reginaldo L. Pamugas of the Health Action for Human Rights.²⁶ She also received a psychological examination on June 1, 2009 from Ana C. Deutsch, a licensed psychologist.²⁷

The doctors diagnosed Ms. Roxas as suffering from several severe and potentially debilitating psychological disorders resulting from her trauma. Drs. Rivera-Reyes and Pamugas diagnosed Ms. Roxas with Acute Stress Disorder, which usually arises following a traumatic event.²⁸ They noted that this condition causes intense fear, helplessness, or horror, and that these symptoms may impair social and occupational ability.²⁹ Ms. Deutsch found Ms. Roxas to be suffering from severe conditions of Post-Traumatic Stress Disorder and Major Depressive Disorder. Ms. Deutsch classified Ms. Roxas's symptoms as among the most extreme cases, causing significant emotional damage, and greatly disrupting to her level of functioning in major areas of her life.³⁰

Drs. Rivera-Reyes and Pamugas also identified numerous physical injuries consistent with the physical trauma Ms. Roxas described. The doctors identified multiple abrasions on her left knee measuring 5x5 cm that were not more than six to seven days old. These injuries were consistent with being dragged to the van, and with the timing of her abduction.³¹ The doctors

²³ *Id.* at ¶ 31.

²⁴ *Id.* at ¶ 34.

²⁵ Interview with Melissa Roxas, conducted August 17, 2011.

²⁶ Medical Certificate for Melissa C. Roxas by Geneve E. Rivera-Reyes, MD, Health Alliance for Democracy (Lic. No. 101348) and Reginaldo L. Pamugas, MD, Health Action for Human Rights (Lic. No. 93332), submitted May 29, 2009.

²⁷ Commission on Human Rights in the Philippines (*hereinafter* "CHR"), CHR III Case. No. 2009-138 at 8-10.

²⁸ Medical Certificate.

²⁹ CHR at 9.

³⁰ *Id.*

³¹ CHR at 8.

also found abrasions to her wrists, with a deeper and larger abrasion on the left wrist, consistent with being handcuffed and forcefully pulled to her feet during her many beatings.³² In addition, the doctors found that Ms. Roxas suffered from tenderness in her epigastric area, the middle and left side of her stomach, consistent with being punched during the interrogations.³³ Finally, the doctors confirmed Ms. Roxas's complaints of tenderness on the side of her face, consistent with her report of having been slapped and jabbed.³⁴

GOVERNMENT INVOLVEMENT IN MS. ROXAS'S TORTURE

There is significant evidence to suggest that Ms. Roxas's torturers were affiliated with the Armed Forces of the Philippines (AFP), specifically the 7th Infantry (or Kaugnay) Division, and that they tortured her at Fort Magsaysay to force her to confess that she was affiliated with the CPP-NPA. The 7th Infantry is headquartered at Fort Magsaysay,³⁵ a military installation in Laur, Nueva Ecija,³⁶ and specializes in internal security operations aimed at combating anti-government forces and eliminating counterinsurgency threats, particularly from the CPP and the NPA. The AFP has targeted many members of organizations it claims to be front groups for the CPP-NPA. Human rights organizations have documented a substantial number of human rights abuses,³⁷ including, according to national human rights group Karapatan, 991 extrajudicial killings, 201 disappearances, and 1,010 instances of torture during the Arroyo presidency from 2001 to 2008.³⁸

Ms. Roxas recounts numerous statements by her interrogators that suggest they were members of the AFP. Ms. Roxas's interrogators insisted that she was a member of the CPP-NPA, and that she should "return to the fold."³⁹ One interrogator, "RC," told Ms. Roxas that the people torturing her were from the "Special Operations Group" (SOG) of the military.⁴⁰ Ms. Roxas believes this refers to the 7th Infantry Division of the AFP, which is headquartered at Fort Magsaysay.⁴¹ One interrogator addressed another as "Boss" and "Sir."⁴² Ms. Roxas's interrogators told her that her name was in the "Order of the Battle,"⁴³ a list used by the AFP to single out individuals and civil groups it claims are associated with the communist insurgency.⁴⁴ On several occasions, Ms. Roxas was able to peek through her blindfold and saw men wearing fatigue pants.⁴⁵

³²*Id.*

³³*Id.*

³⁴*Id.*

³⁵*Roxas v. Arroyo* at 27.

³⁶*Roxas v. Arroyo* at 5, 27.

³⁷*See supra*, n.1.

³⁸Karapatan, "2008 Year-End Report on the Human Rights Situation in the Philippines," at 10.

³⁹CHR at 6.

⁴⁰*Roxas Aff.* at ¶ 32; *Roxas Manifestation*, CHR-III Case No. 2009-0139, ¶ 6-e.

⁴¹*Roxas v. Arroyo* at 7.

⁴²*Roxas Aff.* at ¶ 33.

⁴³*Id.* at ¶ 31.

⁴⁴Amnesty International at 1.

⁴⁵CHR at 6.

Additional evidence strongly suggests that Ms. Roxas was detained at Fort Magsaysay. First, available evidence indicates that Ms. Roxas was held in the area where the base is located, and in facilities matching its description. The base at Fort Magsaysay can be reached by road from La Paz, Tarlac, where Ms. Roxas was abducted, within the time that Ms. Roxas recalls being driven.⁴⁶ In addition, investigators from the Commission on Human Rights (CHR) found that two books Ms. Roxas's captors gave her were likely purchased at a bookstore in Cantanabuy City, near to Fort Magsaysay, providing additional evidence that she was held in this general area.⁴⁷

Second, during her detention, Ms. Roxas was held in what she believed to be a jail cell with a door with iron bars.⁴⁸ When the CHR visited Fort Magsaysay to investigate Ms. Roxas's allegations, CHR Chair Leila de Lima identified structures matching this description.⁴⁹

Third, during her detention, Ms. Roxas heard construction activities, guns firing as though from a firing range, the sounds of aircraft taking off and landing, and the sounds of goats.⁵⁰ At Fort Magsaysay, CHR Chair De Lima also observed a firing range, an airstrip, and ongoing construction within the perimeter of the base, noting that, "it all fits."⁵¹ De Lima recorded these observations despite the military's efforts to limit her group's access to the base.⁵²

Even though the Court of Appeals found that Ms. Roxas did not produce sufficient evidence to prove that she was held at this location,⁵³ Ms. Roxas faced several severe impediments that limited her ability to produce detailed evidentiary support. First, Ms. Roxas was blindfolded throughout her entire abduction and detention. Second, when the CHR attempted to investigate Fort Magsaysay to verify Ms. Roxas's allegation, its access to the facilities was severely restricted. Third, though Ms. Roxas petitioned the Court of Appeals for the right to perform an adequate inspection of the grounds at Fort Magsaysay, the court denied access.⁵⁴

Despite these limitations, both Ms. Roxas and the CHR were able to gather evidence suggesting that Ms. Roxas was held at this base.⁵⁵ It is precisely for these reasons that the

⁴⁶*Id.* at 26.

⁴⁷ CHR at 10.

⁴⁸*Roxas v. Arroyo* at 26.

⁴⁹ Philippine Daily Inquirer, "Come Back, Testify, CHR Chair tells Fil-Am Activist," June 30, 2009.

⁵⁰*Roxas v. Arroyo* at 26-7.

⁵¹ Philippine Daily Inquirer, "Come Back, Testify, CHR Chair tells Fil-Am Activist," June 30, 2009.

⁵²*Id.*

⁵³*Id.* at 24.

⁵⁴ *Roxas v. Arroyo*, Court of Appeals Decision, p. 27 (August 26, 2009).

⁵⁵ It bears noting that after Chairperson De Lima stepped down from the CHR, the body concluded that it could not determine the identity of Ms. Roxas's captors even as it re-affirmed that she had indeed been abducted and abused. The Commission also suggested, on the basis of

Special Rapporteur should call upon the Philippine Government to fully cooperate in an investigation so all the evidence may be brought to light and the allegations resolved.

MS. ROXAS'S PURSUIT OF DOMESTIC REMEDIES

Ms. Roxas pursued her claim through several domestic avenues. Multiple Philippine institutions have confirmed she was kidnapped and tortured, and yet to date those responsible for her abuse have not been held to account.

On May 28, 2009, immediately following her release and before returning to the United States, Ms. Roxas filed a Petition for a Writ of Amparo⁵⁶ and a Writ of Habeas Data⁵⁷ with prayers for protection orders, an order of inspection of place, and production of documents before the Supreme Court in the Philippines.⁵⁸ Through a Supreme Court Resolution, the petition was sent to the Court of Appeals, which reached a decision on August 26, 2009. The court granted Ms. Roxas's Writ of Amparo and her Writ of Habeas Data, and found that Ms. Roxas's "claims of abduction, detention, and torture are factual and true."⁵⁹ However, the court found that there was insufficient evidence available to determine the identity of the perpetrators.⁶⁰

The case also went to the Commission on Human Rights of the Philippines for investigation. The Commission on Human Rights provided a police sketch artist from the Philippine National Police, with whom Ms. Roxas collaborated to produce sketches of

unnamed informants, that the NPA could have been behind her abduction. The public portions of the Commission's final findings were released shortly following the appointment of a new chair, Loretta Ann Rosales. Ms. Rosales was a representative of the Akbayan political party, which endorsed President Aquino in his successful 2010 election. Her appointment to chair the CHR was opposed by the human rights group Karapatan, which argued Ms. Rosales would lack objectivity, and alleged she had demonstrated prejudice against human rights victims associated with Karapatan and its network while serving as Chairperson of the Committee for Human Rights at the House of Representatives. In a statement defending the findings in the Roxas case, Ms. Rosales asserted the CHR was "fully supportive of genuine efforts to render justice to those whose human rights have been violated by uncovering the truth regardless of ideology or interests." "Statement on Melissa Roxas Case," Commission on Human Rights of the Philippines, April 26, 2011, *available at* http://www.chr.gov.ph/MAIN%20PAGES/news/PS_26April2011_MRoxas.htm.

⁵⁶ The Writ of Amparo is the "right to security," which makes any threats against Ms. Roxas in the Philippines actionable wrongs in order to protect her "freedom from fear."

⁵⁷ The Writ of Habeas Data is the right for people "to access information about themselves, especially if it is in the possession of the government, "with a remedy in the courts to correct misinformation." In Ms. Roxas's case, this Writ would mandate the expunging of government intelligence reports and investigations on Ms. Roxas in order to prevent their continued public distribution, which would be a violation of Ms. Roxas's "security and privacy."

⁵⁸ Petition for Writ of Amparo and Writ of Habeas Data (May 28, 2009).

⁵⁹ *Roxas v. Arroyo*, Court of Appeals Decision, p. 17 (August 26, 2009).

⁶⁰ *Roxas v. Arroyo*, Court of Appeals Decision, p. 32 (August 26, 2009).

perpetrators and the location.⁶¹ On February 14, 2011, the Commission concluded that atrocities occurred and that the Philippine National Police and National Bureau of Investigation (NBI) should conduct further investigations to identify the perpetrators.⁶² A thorough investigation is particularly important because the Commission's own investigation was obstructed by the military. However, the NBI's willingness to conduct a probing investigation is uncertain in light of allegations the NBI has demanded bribes to initiate investigations⁶³ and has itself been recently implicated in an extrajudicial killing.⁶⁴

Ms. Roxas submitted an urgent appeal and allegation to Manfred Nowak, the former Special Rapporteur on Torture, on July 22, 2009. She has not received a response from the Philippine government⁶⁵ and her abductors have not been held to account.

In light of these prior efforts, we respectfully request that you call upon the Aquino administration to:

1. Provide your office with copies of all records and other information pertaining to the investigation conducted by all government entities, including the AFP, CHR, the Philippine National Police and Bureau of Investigation, of Ms. Roxas's abduction, detention, and torture;
2. Fully cooperate and ensure the full cooperation of the AFP in an investigation to determine the identity of Ms. Roxas's torturers, including by allowing full access to Fort Magsaysay and providing copies of all relevant documents, including but not limited to entry and exit records and rosters of all AFP personnel and other persons and vehicles who entered, exited, or were present at the fort during Ms. Roxas's abduction and in the seven days immediately preceding and following her captivity;
3. Investigate and prosecute all those responsible for Ms. Roxas's ordeal, including any members of paramilitary groups, soldiers, military officers, and elected officials all the way up the chain of command; and,
4. Provide you an invitation to undertake a country visit to assist the government in identifying the causes of torture in cases such as Ms. Roxas's, and to offer practical

⁶¹ Interview with Melissa Roxas, conducted August 22, 2011

⁶² CHR at 24-25.

⁶³ Human Rights Watch, World Report 2011 at 47.

⁶⁴ On June 2010, NBI agents in Saranggani province, Mindanao region, arrested Sumar Abdulwahab, a former member of the Moro Islamic Liberation Front. Two days later, NBI personnel told Sumar's family he had escaped. Sumar was later discovered dead, his hands tied with a nylon wire, his teeth extracted, his head bearing multiple head, and his remains encased in cement and left inside a large industrial drum. Amnesty International, "*Progress, Stagnation, Regression? The State of Human Rights in the Philippines under Aquino*," 2011, ASA 35/002/2011, 2.

⁶⁵ United Nations Human Rights Council, *supra*, at n. 2.

solutions to end the use of torture and other human rights abuses and ensure that the behavior of the AFP and other forces comply with international standards.

If you have any additional questions please do not hesitate to contact us.

Sincerely,



Paul Hoffman⁶⁶

Victoria Don
Schonbrun DeSimone Seplow Harris
Hoffman & Harrison, LLP
723 Ocean Front Walk
Venice, CA 90291
310-396-0731
hoffpaul@aol.com
victoria.don.law@gmail.com

Susan Farbstein
Fernando Delgado
International Human Rights Clinic
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
617-495-9362
sfarbstein@law.harvard.edu
fdelgado@law.harvard.edu

⁶⁶ The attorneys would like to thank the following law students for their work on this submission:

Yonina Alexander (Harvard Law School)
Ali Al-Sarraf (University of Southern California School of Law)
Amanda Boozer (Harvard Law School)
Jessica Hodgkins (University of California, Irvine School of Law)
Gabriel Hopkins (New York University School of Law)
Meghan Ingrisane (Harvard Law School)
Brian Olney (University of California, Irvine School of Law)
Christine Ro (Loyola Law School, Traber & Voorhees)
Emma Rosenberg (University of Irvine, California School of Law)
Kendra Sena (Harvard Law School)