

# Chapter VIII

# THE PHILIPPINES

*Violations, the Expected Outcome*

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## *Violations, the Expected Outcome*

### *Introduction*

The 2013 report on the Philippines examined the efficacy of rights protection by looking at the strengthening of the legal and normative framework. By examining cases documented in 2013, the report concluded that “impunity is systemic, the strengthening of the legal framework on the protection of rights, has become meaningless” and that perpetrators being indicted in court for violating rights are exceptions and not the norm in the country.

The report made clear that “there is no evidence or precedence that any violations of rights, notably torture, have obtained adequate remedy.” The absence of an effective remedy was clearly established based on empirical evidence. In fact, none of the violations involving state officials and its security apparatus cited in the report have resulted in convictions or punishment for the crimes committed.

This year’s report will again examine individual cases and seek to show how and why these violations are an expected outcome, and why the strengthening of legal and normative frameworks have failed to protect against this outcome. Unlike last year’s report, this year’s report will be thematic, in line with the rights under International Covenant on Civil and Political Rights (ICCPR).

In our 2014 report, we will: first, stipulate the rights in the ICCPR that the Philippine government has agreed to protect; second, examine how these rights are enforced in compliance to its obligation to “have an effective remedy” under article 2 of the ICCPR; in conclusion, we will comment on obstacles in enforcing these rights.

### *ICCPR, Article 1*

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

### *On the Right to Self-determination*

In March 2014, the Government and the Moro Islamic Liberation Front (MILF) signed the Comprehensive Agreement on the Bangsamoro, a final peace agreement, ending four decades of armed conflict in Mindanao. The historic peace agreement was a product of 17 years of protracted negotiations for political settlement in Mindanao.

In his speech, Al Haj Murad Ebrahim, Chairman of the MILF, describes the final peace agreement as having: “finally [brought] with it the restoration of the identity, powers and resources of the Bangsamoro.” The new political entity—the Bangsamoro Juridical Entity (BJE), being proposed under the Bangsamoro Basic Law, contains their aspirations, and upholds their right to self-determination.

The proposed Bangsamoro territory subsumes the existing Autonomous Region in Muslim Mindanao (ARMM), and covers the provinces of Basilan, Sulu, Tawi Tawi and Lanao del Sur. In the provinces of Lanao del Norte, six municipalities have voted for inclusion; in North Cotabato Province, 39 villages in six municipalities also are included. The cities of Marawi, Lamitan, Cotabato, and Isabela, all in Mindanao, are also included.

Looking at the territory of proposed BJE, it is visible that in the vast land that used to be inhabited by the Bangsamoro they are now a minority—in number

and territorial control—due to colonization and occupation. For decades, this had deprived them of the opportunity to take control of their own future. The widespread systematic oppression and discrimination against the Bangsamoro has underpinned their armed struggle, which began in 1969.

The Muslim's struggle demanding their right to self-determination spans 45 years of protracted conflict. In 1969, the Moro National Liberation Front (MNLF), a political party that campaigned for secession through armed struggle, was created. The oppression against the Muslims, notably the killing of Muslims in the Jabidah massacre in 1968, wherein soldier recruits were killed for refusing to fight against fellow Muslims to reclaim Sabah, ignited the emergence of an armed struggle for independence.

After the bloody and violent conflict, in 1976, the MNLF and the Philippine government signed the 1976 Tripoli agreement. While the agreement has convinced the MNLF to reduce its demand for independence to that of creating an autonomous region, the armed conflict persisted due to deep ideological divisions within the MNLF leadership. In 1977, the Moro Islamic Liberation Front (MILF) split from the MNLF to continue the demand for independence of Mindanao from Philippines sovereignty.

For four decades, the Philippine government was engaged in a protracted war with the MNLF that has been demanding an autonomous region and the MILF that has been demanding an independent Islamic state in Mindanao. MNLF and MILF are the biggest armed insurgent groups in Mindanao.

The MNLF's breakthrough, however, was in 1987, after their demands for an autonomous region was incorporated in Article 10, Section 1, of the 1987 Constitution. The Autonomous Region in Muslim Mindanao (ARMM) was established to pursue "genuine and full autonomy in accordance with the 1996 peace agreement," and to "provide affirmative action to the bangsamoro people [...] for peace and self-determination". The creation of the ARMM, however, did not end the conflict in Mindanao.

Thus, the final peace agreement between the MILF and the Philippine government is historical, as it has provided opportunities for the Bangsamoro people, drawing on experiences and flaws in the administration of the ARMM, to have a higher degree of autonomy, representative of the Bangsamoro aspiration.

### *Article 6*

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*
3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

### ***On the Right to Life***

The 2013 report points out that the “police, soldiers and the public officials [commit] criminal acts without repercussion.” The lack of accountability amongst public officials accused of committing crimes are reasons why the phenomenon of torture, extrajudicial killings, and enforced disappearances continues unabated. None of the security officers and public officials have been convicted, let alone punished, for their crimes.

This lack of accountability has had an effect of giving government agents de facto license to torture, extrajudicially kill, and forcibly disappear, victims. This pattern continued this year—the perpetrators targeted not only human rights and political activists, but also ordinary people, including those not involved in any political activities. This phenomenon shows how the lack of accountability and the failure to punish perpetrators affects the entire society.

In a report submitted to the Human Rights Council in February, deep concern has been expressed over the failure of the Philippine government to investigate, prosecute, and convict state agents and their accomplices for violating the Anti-Torture Act of 2009. The law has been in operation for five years now; however, none of the perpetrators involved in the dozens of cases documented have been convicted for their crimes.

The lack of conviction is rooted in the government's failure to promptly investigate and prosecute all acts of torture, and protect victims and complainants.

In investigating cases, the five government agencies—the Commission on Human Rights (CHR), the Public Attorney's Office (PAO), the Philippine National Police (PNP), the National Bureau of Investigation (NBI), and Armed Forces of the Philippines (AFP) all have the legal obligation to investigate torture complaints; all of them have failed to comply with this provision in a routine, systematic, and widespread manner.

The failure to “promptly investigate” claims of torture occurs first, by the agencies either not conducting investigations or choosing to ignore complaints of torture submitted to it; second, even if they investigate, the result of their investigation and findings take months or years or do not appear at all. The government's failure to “investigate promptly” violates the absolute and non-derogable nature of the prohibition of torture in the Convention against Torture (CAT).

In terms of prosecution of cases, take the case of a 16-year-old boy caught in the crossfire of the fighting between the rebels and soldiers in Zamboanga City on 20 September 2013. One year after his arrest, no investigation has been conducted. He was interrogated in absence of legal counsel, deprived food, and forced to admit that he is a rebel. His case is akin to that of hundreds of alleged rebels, including ordinary villagers, arrested amidst and in the aftermath of armed conflict. They are presently detained in Camp Bagong Diwa, Taguig City.

A year after the incident, the AHRC is not aware of any investigation having been conducted concerning the boy's allegations of torture or on the conduct meted to the rest of the detainees. Given this failure to prosecute perpetrators of systematic and widespread torture that masquerades as part of daily investigation, torture arising from armed conflict would certainly have little room to be investigated, let alone prosecuted.

On matters of protecting victims and complainants, the government has failed to provide and ensure adequate protection. The witness protection law guarantees victims and complainants “may avail of benefits”. In reality, neither the victim nor the complainants have received adequate protection. The absence of protection obstructs investigation and prosecution of cases. The witness protection law is itself not clear about whether the government is obliged to provide protection to all torture victims, such as those still in detention or those being prosecuted based on evidence of torture. The provision of protection fails due to an entrenched mindset amongst some of the police, prosecutors, and judges. They do not make distinction between a torture victim exercising her/his right to remedy by complaining; and a torture victim who complains as a strategy of defence to get away with their crimes. There is a deeply held bias and stereotype that criminals often claim to have been tortured once they are arrested, resulting in law enforcement taking complaints of torture lightly.

### *ICCPR, Article 9*

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

## *On the Right to Liberty & Security*

*On arbitrary arrest and detention*, the mandate of Working Group on Arbitrary Detention (UN Doc, E/CN.4/1998/44, para 8 (a), (b) (c)), defines arbitrary deprivation of liberty, wherein: invoking legal basis is impossible; a result of one's exercise of rights or freedoms, and a total or partial non-observance of fair trial norms.

In the Philippines, there is a clear pattern of routine, systematic, and widespread practice of the police and prosecutors targeting human rights and political activists, filing fabricated charges, and using evidence gathered by torture, resulting in arbitrary arrest and detention.

Legally, Rule 113, Section 1 and 2 of the Revised Rules of Criminal Procedure, defines the purpose of arrest and its legal basis. It stipulates that arrest can be made when persons are to “answer for the commission of an offence” and “violence or unnecessary force” must not be used by arresting officers. Additionally, Republic Act No. 7438 or the Rights of persons under arrest, detention, or custodial investigation, also stipulates the rights of arrested persons and obligations of officers in arresting and detaining persons.

Although the country's legal framework on lawful arrest and detention is robust, this legality has not prevented the occurrence of arbitrary arrest and detention. The AHRC continues to document numerous cases of persons being arrested, detained incommunicado, and tortured, despite not committing any offence and not being liable to answer for any criminal offences.

Take the case of Rolly Panesa, a security guard who was arrested, detained, and tortured in 5 October 2012. Panesa was forced to admit that he and “Benjamin Mendoza”, a fugitive communist leader, are the same person. Panesa endured nearly a year of arbitrary detention as he was pursuing legal remedy to prove he is Panesa, not Mendoza. On August 2013, he was released after the court granted his petition for writ of habeas corpus. The Military, the police, and the prosecutors were never held accountable for their unlawful actions.

In granting Panesa's petition for writ of habeas corpus, the court held that he could not be Benjamin Mendoza, a communist leader, rejecting the claim of the police and soldiers that had stood as the basis for his arrest. Though Panesa has regained his liberty through the legal processes of challenging the lawfulness of his detention, it was always clear that, legally, he should not have been arrested, detained, and prosecuted in the first place.

This practice by the police to arrest, detain, and prosecute persons—whether or not they are a real suspects—is routine, widespread, and systematic in the Philippines. The police do so not to pursue perpetrators of criminal offenses, but to collect reward money for an arrest or for consideration for promotion.

The case of Mohjeennar Dagam Cabalo is illustrative. He was arrested while being treated for a heart ailment in a hospital on 5 March 2013. The police claimed he is Aman Kabalu, a person wanted for bombing a public terminal in Kidapawan City on 5 October 2007. But, on 10 December 2013, the court ordered Cabalo's release, because he is not Kabalu, the real accused suspect. Cabalo was arbitrarily detained for nine months. Kabalu has a USD 32,000 bounty for his arrest.

Under Rule 110, Section 5 of the Revised Rules of Criminal Procedure, the prosecutor has power to prosecute “under its direction and control” all criminal actions. The role of the court is not only to accept complaints and evidence from prosecutors; it should also ensure that the evidence is sufficient to begin the adjudication processes. This means the probability that the person has committed an offence must have a clear legal basis. This is established in the case of *Santos v Oda* wherein the Judiciary is given power “on what to do with the case”, and that it has “exclusive jurisdiction” in determining the merit.

The AHRC, however, has documented numerous cases wherein the arrest, detention, and prosecution of persons was allowed by courts, abdicating their exercise of judicial oversight in ensuring a prima facie case and probable cause existed in criminal prosecutions. These cases not only lack sufficient evidence, they also use testimonial evidence from false witnesses and witnesses that are not credible, and include testimony under duress or torture. The police and prosecutors have also arbitrarily added names in their list of accused without the accused knowing about this fact.

Take the case of labour leaders Roy Velez and Amelita Gamara who had fabricated murder charges in connection with the killing of four soldiers in Labo, Camarines Norte, on 29 April 2012. In addition to this case of Velez and Gamara, other activists, namely Randy Vargas, Raul Camposano, and Rene Abiva, were also charged with murder for supposedly attacking a convoy of soldiers on 25 April 2012, killing ten soldiers and a civilian in Tinoc, Ifugao.

In cancelling the arrest order on Velez and Gamara, the court granted their petition for dismissal. They argued that they were never informed about the charges and that they did not receive subpoenas. On 26 July 2013, the court cancelled the order for the arrest of Velez and Gamara, but it did not dismiss the entire case filed by the prosecution. This case exposed over a dozen human

rights and political activists, who were falsely charged together with Velez and Gamara, to the risk of arbitrary arrest. The witness in the case against Velez, Gamara, and others, is a former rebel turned military asset, under the control and influence of the Military.

In the “robbery in band” case against Zara Alvarez, a human rights defender, and Ronald Ian Evidente, a labour leader, the witness in the criminal complaint is, likewise, a former rebel turned military asset. Alvarez and Evidente were charged in connection with a robbery incident in Sagay City, on 16 July 2011. Evidente was able to post bail for robbery, but Alvarez remains in jail as she is facing another murder case, where the witness against her is also a military asset.

The AHRC has also raised concerns regarding the case of indigenous human rights activist Temogen “Cocoy” Tulawie, and four other people. They were charged with murder in connection with a bomb blast in Patikul, Sulu on 13 May 2009. The court proceeded in trying the accused for murder despite the prosecutor admitting that the witness had recanted the testimonial evidence obtained. The prosecutor justified the admissibility of his testimonial evidence as credible.

The AHRC argues that the failure of the court to prevent occurrence of arbitrary detention and false prosecutions result in the arrested persons and detainees that remain in detention being denied their fundamental right to fair trial. The use of torture by police to extract confession from the accused; the use of fake witnesses and witnesses under heavy influence of the police and military; the arrest of persons in lieu of legitimate suspects to get the reward money, are all clear denial of the right to fair trial.

Furthermore, needless delay in the trial of cases and the absence of adequate legal representation not only denies the detainees the fundamental right to fair trial, but also aggravates and prolongs this needless denial of the fundamental right to fair trial.