



# The State of Human Rights in the Philippines in 2009

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*Another year of violations, impunity and a lack of effective remedies*

## I. Introduction

The following report on the state of human rights in the Philippines in 2009 will focus on the cases and situations that the Asian Human Rights Commission (AHRC) encountered during the year. This overview does not claim to be an exhaustive report on all human rights violations and developments, but focuses on core issues and events that have been documented by the AHRC throughout its work.

The AHRC monitors the conduct of the government of the Philippines to verify the extent to which it is fulfilling its domestic and international obligations concerning human rights laws and standards, as well as living up to its pledges and commitments. The AHRC is not alone in this. During 2009, the United Nations' (UN) relevant Treaty Bodies, conducted reviews of the country's record in implementing the provisions of the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC). These reviews were conducted by the Committee Against Torture and the Committee on the Rights of the Child respectively, and produced Concluding Observations and recommendations concerning the steps that the government needs to take to improve its record. These add to the many recommendations produced by various UN mechanisms concerning a range of human rights issues, notably extra-judicial killings, abductions and enforced disappearances and threats against activists and human rights defenders in the country.

In this introduction, the various aspects that will be developed in the report below are summarised in order to present an overview of the pertinent issues that the AHRC views as being significant in 2009.

The first noteworthy point concerns the well-publicised massacre that occurred in the province of Maguindanao in central Mindanao on November 23, 2009. This massacre, in which 57 people were killed, among them two human rights lawyers and 30 local journalists, has shocked the world. In response, on December 5, 2009, President Macapagal-Arroyo signed Proclamation No. 1959, placing the province under a state of martial law, which the AHRC has denounced as being unconstitutional. This massacre, in which the highest number of journalists have been killed in a single incident anywhere in the world, has focused much attention around the world, but at the time of writing of this report it was too early to see whether some good may come out the



tragedy, with those responsible being brought to account, or whether the tradition of botched investigations and impunity would continue.

The country's legislative branch, comprising the Senate and House of Representatives, took action to produce domestic laws designed to facilitate the protection of human rights. It enacted the Magna Carta of Women, a domestic law which prohibits discrimination against women; ratified a domestic law on the criminalization of torture; and began the process of enacting domestic legislation against enforced and involuntary disappearances. The legislature, however, failed to repeal or amend laws that do not comply with the Philippines' international or Constitutional human rights standards. The Human Security Act (2007) should have been repealed, while amendments remain necessary to the Witness Protection, Security and Benefit Act (RA 6981). In general, 2009 saw an improvement concerning the level of action taken by the legislature concerning human rights, as compared with its past passivity.

The Supreme Court's (SC) rule on writ of amparo, despite its limitations, has been very helpful in providing temporary protection orders (TPOs) to a number of human rights and political activists whose lives, security and liberty were threatened. The writ of habeas data, can be used by any citizen against any manual or automated data register to find out what information is held about his or her person. A court rules to allow correction or destruction of records undermining the safety and security of any person, and this has provided human rights and political activists with the legal remedies needed to counter propaganda and vilification by the authorities, including their being included in the military's black-lists, such as the notorious Order of Battle (OB).

The Philippines continued to be beset by insecurity and armed conflicts in 2009. However, the declaration of ceasefire in July 2009 in southern Mindanao has at least temporarily brought to an end the decades-old conflict between government forces and the Moro Islamic Liberation Front (MILF), hopefully preventing the further loss of many lives, property and massive displacements of civilians. The National Disaster Coordinating Council (NDCC) has announced that about 51,326 families of Internally Displaced Persons (IDPs) were located in evacuation centres or in refuge in houses outside the evacuation centres as of July 2009. It is understood that the cease-fire has allowed many IDPs to return home, with the numbers of those still displaced at the end of 2009 not known to the AHRC with precision at the time of writing of this report in December 2009, due to difficulties to monitor the situation there. Some IDPs, who were victims of human rights violations by the military have also lodged cases in court since the ceasefire began.

The government's intervention into the problems of unresolved vigilante killings in the southern part of Mindanao, particularly in Davao City, has also improved. The AHRC had previously intervened repeatedly concerning the government's inaction in this regard. The country's Commission on Human Rights (CHR) has taken a pro-active role in investigating cases, holding public hearings and issuing resolutions to facilitate the protection of witnesses and complainants. The CHR has affirmed the existence of the



"Davao Death Squad (DDS)" and subsequently created a task force to focus on investigating and prosecuting cases related to the DDS in court.

During 2009, the Philippines also faced significant natural disasters, notably due to two tropical storms, Ondoy and Peping, in September 2009, which flooded some 80 percent of Metro Manila and devastated the northern part of Luzon. These two disasters killed hundreds of people with many others still missing. Such disasters represent significant obstacles to development for an already poor country.

One of the main obstacles to the protection and prevention of human rights abuses has been the lack of effective avenues for victims of abuses to make use of in seeking remedies. This has perpetuated a climate of impunity and enabled large numbers of grave rights abuses to be committed unabated, such as the hundreds of extra-judicial killings that have targeted left-leaning political activists, lawyers, clergymen and human rights defenders since the current government took power in 2001.

2009 has seen an improvement to the avenues available to those seeking remedies, at least in theory. The intervention of the European Union (EU) and international agencies have been important factors in getting the government of the Philippines to take the steps that they have. An International Labour Organization (ILO) High Level Mission conducted in September 2009 highlighted violations of labour rights and the freedom of association.

Despite some steps that could lead to progress in terms of the protection of rights in theory, the reality of the enjoyment of rights and the prevention of further abuses remained problematic in the Philippines in 2009. The lack of accountability of those thought to be responsible for human rights violations in particular, and of the authorities as a whole, remains as the main barrier to the implementation of human rights in the country in practice. The Philippines has many laws on its books and institutions in place, but the AHRC's experience garnered by documenting individual cases of abuse and attempts to seek remedies, indicate that impunity prevails in practice.

In recent years, a major hurdle has been the government's denial of the existence of human rights violations, particularly concerning the phenomenon of extra-judicial killings of human rights and political activists. In 2009, the government has made steps towards acknowledging the problem, which is helpful. Efforts have been made to introduce judicial remedies. Task forces have been created to focus on investigating cases of extra-judicial killings. These moves have gone some way to restore a modicum of trust on the part of victims in the authorities and the possibility of seeking legal remedies by filing judicial remedies and pursuing cases in courts. The recommendations made by international institutions are thought to have been key in framing the need for specific changes required to tackle difficult human rights violations, notably extra-judicial killings, torture and forced disappearances. Despite some measure of progress by the authorities in the Philippines, killings continue to



take place and there continues to be a lack of prosecutions of the alleged perpetrators, while activists remain under threat. Victims are still waiting for justice and reparation.

The assistance provided by the European Union to help improve the country's justice system is welcomed as an approach that tackles areas that must be improved in order to effectively address institutional lacunae that are preventing progress concerning human rights. The EU has provided funding to the government to help resolve the cases of extra-judicial killings. The AHRC welcomes this move and hopes that the government will ensure the transparent and effective use of these resources to effect tangible improvement, justice and the prevention of further killings. Reservations remain as to how the authorities will make use of this assistance, given the country's track record in terms of impunity as well as corruption. The Philippines is notorious for enacting and adopting good laws that it never implements effectively, and making pledges to foreign governments, the United Nations and other international agencies to give it the veneer of a cooperative State at the international level.

In the sections below, the areas mentioned in this introduction will be developed in order to provide insight into the human rights challenges that continue to ensure impunity and deny victims the justice and reparation that they are due.

## II. The massacre in Maguindanao province

The first human rights situation that will be presented in this report actually occurred late in the year, but will be given priority here as it is one of the most noteworthy and terrible single incidents to have occurred in the Philippines during 2009. While numerous extra-judicial killings have been occurring in the country over the years, often without much attention being given, the massacre that took place on November 23, 2009 in Maguindanao province, central Mindanao, has, due to its scale, focused international attention on the Philippines.<sup>1</sup> 57 people were killed, among them two human rights lawyers and 30 local journalists, making this the highest number of journalists killed in a single incident in the world, according to Reporters Without Borders.

The victims were part of a convoy of over 50 people, which included the wife, other relatives and supporters of a local politician, Esmael Mangudadatu. He had asked his wife, Genalyn and his two sisters, Eden and Farida Sabdula, to file a Certificate of Candidacy on his behalf at the provincial office of the Commission on Elections (Comelec) in Shariff Aguak, the provincial capital. In doing so, Esmael Mangudadatu was entering an election race against the Ampatuan family, a powerful political dynasty in the province. Andal Ampatuan Sr., the incumbent governor, was reported

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<sup>1</sup> For more information concerning the Maguindanao massacre, please see the following: <http://www.ahrchk.net/ua/mainfile.php/2009/3328/> and <http://www.ahrchk.net/statements/mainfile.php/2009statements/2318/>



to have been grooming one of his sons, Andal Ampatuan Jr., to succeed him in the May 2010 general elections. The elder Ampatuan is a close ally of President Gloria Macapagal-Arroyo and had served as the Governor of Maguindanao, a province under the Autonomous Region of Muslim Mindanao (ARMM), for three consecutive terms.

Before the massacre happened, some of the involved journalists had received information that should they persist in covering the event they would be killed and buried. However, because they were given assurances by Alfredo Cayton, the General in command of the Army's 6th Infantry Division, that the area is safe, the group decided to proceed.

Despite security precautions having been made, including the sending of Esmael's relatives to file his candidacy rather than him risking to do so himself, the large convoy was stopped by as many as 100 armed men, who blocked the convoy of vehicles in broad daylight, took its members to a remote hilly area, executed them and then buried them in shallow graves.

The alleged leader of the attack, Andal Ampatuan Jr., is reported to have made use of the Civilian Volunteer Organisation (CVO), one of the government's militia forces, to carry out the massacre. The CVO should have been under the control and oversight of the Philippine National Police (PNP), not a political family, but local police forces and militia often function as henchmen for the ruling elites in the Philippines and are used to do their dirty work, as appears to be the case in this extreme and bloody case.

After the massacre, the PNP had to relieve six of its top officials in Maguindanao for their alleged complicity in the attack, including the Chief of Police of Shariff Aguak and of Ampatuan towns. According to the PNP, they are not yet being considered as suspects, but reports indicate that one of them was seen by witnesses at the location where the victims were executed.

The plight of the few persons that witnessed the massacre and survived has further exposed the absence of any protection mechanisms in the country. At least three of the journalists who survived the massacre approached the Department of Justice (DoJ) informing them of the information they had to help the investigation and prosecution of the case, but the DoJ has reportedly ignored them. They have also not been provided with any protection by the State despite the evidently grave danger that they and other eye-witnesses face at present.

One of the survivors had already received death threats believed to have come from the Ampatuans since 2004, when he had written a special newspaper report that exposed details of summary executions in Maguindanao, which were allegedly linked to the Ampatuans, including cases of personal or political rivals of the family being cut into pieces with a chainsaw so that their remains would be harder to identify. The lack of credible investigations into such killings and the impunity that accompanies all such



forms of brutality and human rights violations by state-agents or their allies - which has been documented and denounced in the past by the AHRC and many other NGOs and international human rights experts - has undoubtedly led to the massacre in question here. It is hoped that the authorities will hear this wake-up call and begin to address this issue, not only in relation to the massacre in question here, but concerning the wider problem of impunity that pervades the system and society in the Philippines as a whole.

**Unconstitutional martial law adding fuel to the flames:** In response to the massacre, on December 5, 2009, President Macapagal-Arroyo signed Proclamation No. 1959, placing the Maguindanao province's 36 Municipalities (except the areas previously identified as having been occupied by Moro rebels), under martial law and suspending the privilege of the writ of habeas corpus. The AHRC has denounced this measure as unconstitutional.<sup>2</sup> Article 7, section 18 of the 1987 Constitution only permits such a proclamation in cases where the presence of "lawless violence, invasion or rebellion" can be established. While it is true that the authorities are facing difficulties in getting the Ampatuans' armed henchmen to surrender as part of attempts to arrest and investigate those thought to be responsible, the situation does not justify the use of martial law and the suspension of fundamental rights throughout the entire province.

In justifying the Proclamation, President Arroyo claimed that armed groups have established positions to resist government troops and that peace and order has deteriorated to the extent that the local judicial system is not functioning. However, these two elements are not recognized by the 1987 Constitution as constituting the basis for declaring martial law.

The Proclamation's justification that the local judicial system is no longer functioning also appears to be incorrect. The charges filed against the perpetrators have already made considerable progress in the local courts and the houses of some of those accused of taking part in the massacre have already been the object of searches and arrests. On December 2, 2009, Supreme Court (SC) Chief Justice Reynato Puno appointed Judge Melanio Guerero, a trial judge of the Regional Trial Court (RTC) in Tacurong City, to take over the handling of the murder charges filed against Andal Ampatuan Jr., after judges in a court Cotabato City refused to take up the case.

The DoJ has, in fact, sought the Supreme Court's intervention for the transfer of the hearing of the case from Cotabato City to Manila. The City of Cotabato where the charges of murder have been filed is also not part of Maguindanao and the Autonomous Region in Mindanao (ARMM). The Proclamation's justification that the

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<sup>2</sup> For statements released concerning the unconstitutional martial law proclamation in Maguindanao, please see the following:

<http://www.ahrchk.net/statements/mainfile.php/2009statements/2326/> and  
<http://www.ahrchk.net/statements/mainfile.php/2009statements/2334/>



local judicial system in the province is no longer functioning, even if it were true, would be irrelevant, since the case has been filed outside of the province.

It is feared that martial law will only add to a situation in which the increased powers awarded to law-enforcement will lead to further violations of rights. The AHRC has called upon the members of the Senate and House of Representatives to revoke the Proclamation in order to protect and uphold the fundamental rights of the over one million people in this province.

### **III. The failure to investigate hundreds of political killings attributable to the State - unfulfilled pledges, unfinished business**

Extra-judicial, politically motivated killings attributable to the State have been one of the most important human rights issues in recent years. Estimates by civil society groups vary, but up to 1000 persons may have been subjected to political killings since 2001 in the Philippines, with the Army of the Philippines thought to be responsible for these as part of its counter-insurgency against left-wing armed groups. The military has been targeting and killing anyone it arbitrarily suspects of being part of or supporting such leftist groups.

Following concerted pressure from local, regional and international human rights organisations, including the AHRC, as well as important monitoring and condemnation by international institutions and experts, notably the UN Special Rapporteur on extra-judicial killings, Professor Philip Alston, the number and frequency of these killings reduced significantly. The number of extra-judicial killings began to drop after the Rapporteur conducted a country visit to investigate the phenomenon of targeted attacks and killings of human rights and political activists in February 2007 and released a highly critical report on the matter that received wide attention within the UN Human Rights Council and more widely at the international level.

The government and the military have found that they cannot carry out such large scale killings without being noticed. However, those responsible have remained above the law. Given this, the AHRC is concerned that such killings could resume once international attention has dwindled, as there are no effective legal deterrents in place.

Before the European Union (EU) signed an agreement with the Philippines concerning the EU-Philippines Justice Support Programme in October 2009, the country claimed that it was taking measures to solve cases of extra-judicial killings of human rights and political activists, but no results have been evident. It is hoped that with increased political will on the part of the country's authorities and the EU's assistance, much-needed progress will eventuate in the near future. The AHRC is of the opinion that the



lack of political will has been the main barrier to progress concerning the hundreds of politically-motivated targeted killings in the Philippines and hopes that the EU programme will provide impetus to resolve the stagnation that has beset attempts to resolve this issue.

The government has publicly announced that it is tackling the killings since August 2006, at which time President Gloria Macapagal-Arroyo gave orders to Task Force Usig, a police-led investigation unit created in May 2006, to probe the killings and resolve at least 'ten cases of alleged extra-judicial killings within ten weeks'. Over three years later, there is no evidence to suggest that the task force has been able to meet the target President Macapagal-Arroyo had set. In the task force's official website<sup>3</sup> there are no details concerning this.

Even if the task force had been able to meet its target of resolving one case a week, in mid-2006 there were already some 700 allegations of political killings and this would have taken the task force 14 years to complete the job. While this would have been an improvement as compared with the task force's apparent failure to have made any progress in resolving these cases, it is still not a desirable time-frame in terms of the State's obligation to provide redress concerning such serious abuses. The criticism by the AHRC and others concerning the fact that Philippine National Police (PNP) would claim to have "solved" cases after it had conducted some form of preliminary investigation, rather than considering a case to be solved once the alleged perpetrator had been successfully prosecuted and justice provided, the police and Task Force Usig have not even been able to resolve cases enough to qualify under their insufficient definition.

One and a half years after Task Force Usig's creation, President Macapagal-Arroyo created another task force, Task Force Against Political Violence (TFAPV). President Macapagal-Arroyo issued Administrative Order 211 for its creation in November 2007, leading to it also being known as "Task Force 211". The mandate of Task Force 211, which operates under the Department of Justice (DoJ), was in part a repetition to the PNP's Task Force Usig's. Task Force 211 was to "harness and mobilize government agencies...for the prevention, investigation, prosecution and punishment of political violence." The Department of Interior and Local Government (DILG), which created Task Force Usig, became one of the member agencies of the Task Force 211. The DILG has jurisdiction over the functioning of the PNP.

Unlike the PNP's Task Force Usig, the DoJ's Task Force 211 is seen to have been taking steps to address the extra-judicial killings of human rights and political activists. It claims to have investigated, monitored and/or collected evidence in order to create

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<sup>3</sup> Task Force Usig website:

[http://www.pnp.gov.ph/about/content/offices/spl\\_units/tf\\_usigupdates/usig\\_sept/usi\\_greports.html](http://www.pnp.gov.ph/about/content/offices/spl_units/tf_usigupdates/usig_sept/usi_greports.html)



case files in over 200 cases, with three of these cases having resulted in the conviction<sup>4</sup> of the perpetrators as of April 2009. While Task Force 211's efforts are an improvement with regard to Task Force Usig much more is required to address such a large backlog of grave human rights violation cases.

The AHRC hopes that the EU's 3.9 million Euros grant (about USD5.8 million or P270 million) to the Philippine government "to help the government stop extra-judicial killings and disappearances of activists" will lead to improved results in the investigation and prosecution of such cases. By stipulating as a priority the strengthening of the criminal justice system, notably the investigation, prosecution, and judiciary, as the purpose of the funding, it has been recognised, including by the government of the Philippines, that there are significant defects in the country's system of justice and that these are proving to be a major obstacles for victims of violations seeking justice and reparation. According to Agence France Press (AFP) and local media, the EU's Ambassador Alistair MacDonald, also pointed out that "it is regrettable that there have as yet been so few convictions in relation to the killings of political activists."<sup>5</sup>

Another area of concern is the lack of progress concerning the implementation of the PNP's "one-strike policy," under which the police station commander was to be temporarily suspended once a political killing took place, pending the result of an investigation. This policy was announced by former PNP chief Oscar Calderon in November 2006, however, there is no information available concerning any commanders having been suspended, sacked or sanctioned for their failure to prevent such killings. The PNP's Task Force Usig "does not issue public reports and its website is out of date," according to a statement made by UN Special Rapporteur on extra-judicial killings, Philip Alston, to the Human Rights Council.

In a special report in its *Article 2* publication issued in February 2007, entitled "the Criminal Justice System of the Philippines is Rotten"<sup>6</sup>, the Asian Legal Resource Centre (ALRC) provided details and analysis as to how cases are investigated, prosecuted and taken to court. The report revealed that widespread impunity and the lack of convictions and legal remedies are aggravated by systemic defects within the country's institution of justice. The ALRC is the AHRC's sister-organisation.

The creation of a succession of task forces to conduct field investigation, interview the families of the dead and witnesses, and suchlike, would have not been necessary if the police, the prosecutors and judges had performed their rudimentary duties and

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<sup>4</sup> Task Force 211 Accomplishment Report:

[http://www.taskforce211.com.ph/tf211\\_sub/accomplishment/accomrep\\_ops\\_tf211.htm](http://www.taskforce211.com.ph/tf211_sub/accomplishment/accomrep_ops_tf211.htm)

<sup>5</sup> <http://globalnation.inquirer.net/news/breakingnews/view/20091008-229029/EU-to-help-RP-tackle-extra-judicial-killings>

<sup>6</sup> Full text of Article 2: Special Report: The criminal justice system of the Philippines is rotten  
<http://www.article2.org/pdf/vo6noi.pdf>



obligations. The need for such task forces is an indictment of the failure by the other state agents in the administration of justice.

Before Task Force 211 signed a Memorandum of Agreement (MoA) with the Lyceum of the Philippines College of Law for the "active monitoring of some extra-judicial killings cases pending before different Metro Manila courts,"<sup>7</sup> the Supreme Court (SC) had already given guidelines to judges and court staff of the 99 special courts it had designated in March 2007 to deal with the political killings and orders "to include the status of the extra-judicial cases in their monthly report of cases."<sup>8</sup> The SC also warned the judges and court staff that their salaries and allowances would be withheld if they failed to do so.

Despite the SC's guidelines, however, there are no known monthly status reports available. It is not known whether any sanctions were imposed on judges and court staff as a result. Had this guideline been effectively implemented, it would have been unnecessary for Task Force 211 to enter into agreement with the law school to monitor the progress of cases in court.

#### IV. Judges subverting judicial remedies

After the Supreme Court (SC) promulgated the writ of amparo in October 2007 and the writ of habeas data in February 2008, legal remedies were made available in theory for persons whose right to life, liberty and security were threatened. When these remedies came into effect, however, inconsistent interpretations by judges as to how evidence should be dealt with in granting writs has undermined the good intentions of these remedies.

When the writ of amparo was promulgated it was not as a form of criminal action but as a means of protection, resulting in different threshold in terms of the burden of proof. Proof beyond reasonable doubt concerning threats should have not been required as a prerequisite for providing protection to potential victims. However, some judges applied overly stringent requirements in this regard when hearing petitions. 45 of a total of 52 petitions for protection under the writ of amparo as of February 2009<sup>9</sup> were rejected, which is seriously alarming given the number of threats that have resulted in killings in the country in recent months and years.

In explaining these dismissals, the SC mentioned five reasons: "The subjects themselves denied there was enforced disappearance, force, torture, threat or the like on them; the petition was withdrawn as the subject is facing a charge in the lower court; the writ of amparo is not the appropriate remedy; insufficient evidence; or the

<sup>7</sup> Task Force 211 Activities, December 19, 2007

<sup>8</sup> Reuters; Manila forms special courts for political killings; March 4, 2007

<sup>9</sup> GMA News; Writ of amparo: How effective is it?; March 30, 2009



petitioner failed to show up in the hearings."<sup>10</sup> It could not be accurately ascertained how many of these rejected petition were on the basis of 'insufficient evidence', but in most of the rejections this has been cited as the dominant reason.

Three human rights lawyers, Carlos Zarate, Angela Librado-Trinidad and Lilibeth Ladaga, who are members of the Union of Peoples Lawyers in Mindanao (UPLM), sought judicial protection under the writ of amparo, after their names were included in a PowerPoint presentation that was reportedly leaked from within the military and contains the a list of persons targeted by the military's so-called 'Order of Battle.'<sup>11</sup> The three lawyers filed separate petitions for writ of amparo on June 16, 2009, before the Office of the Clerk of Court (OCC) of the Regional Trial Court (RTC) in Davao City.

One of the petitioners, Zarate, argued in the petition that the "mere inclusion of the petitioner's name in the said Order of Battle is not only putting his life in danger, but a clear threat as well to his liberty and security, including that of his family."<sup>12</sup> The PowerPoint presentation also "clearly show that the names listed therein have been branded as enemies of the state." Zarate's concern for his and his family's security and liberty was prompted by the murder of Celso Pojas, a farmer activist, on May 2008. His name also appeared in the list. Other lawyers included in the list (which names 105 people, among them lawyers, journalists, human rights and political activists, physicians, union leaders and religious leaders in Davao City) have also been receiving threats.

However, Judge Jose Manuel Castillo of the Regional Trial Court (RTC), Branch 10, ruled in rejecting Zarate's petition that he had failed to prove "by substantial evidence, that indeed, his perceived threat to his life, liberty and security is attributable to the unlawful act or omission of the respondents. " Judge Castillo also declared that there was not enough evidence to link Celso Pojas' murder with the target list.

Judge Castillo has also argued that even if Satur Ocampo – the member of the House of Representatives who first received the leaked presentation – testified in court, his testimony would be 'empty' if he could not testify alongside his anonymous source. It would be concluded that "he has no direct or personal knowledge about the authenticity of the subject 'OB List', hence, whatever he says about it is hearsay." The petitions of Trinidad and Ladaga were also rejected on the same grounds.

Similar reasoning was used in the criminal trial of the Abadilla Five<sup>13</sup> – innocent men that were handed death sentences for a murder the did not commit – when evidence from a third absent party which could exonerate them was rejected. The court argued that unless the person appeared in court and handed in the evidence himself it could

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<sup>10</sup> Ibid, footnote 6.

<sup>11</sup> Full text of the PowerPoint Presentation: <http://www.urgentappeals.net/pdf/AHRC-UAU-022-2009-04.pdf>

<sup>12</sup> <http://www.urgentappeals.net/pdf/AHRC-UAU-022-2009-01.pdf>

<sup>13</sup> Abadilla Five campaign website: <http://campaigns.ahrchk.net/abadilla5/>



not be admitted. Even in this criminal case it was an impractical demand; the person who had personal knowledge of the Colonel's murder was part of the illegal armed group who had committed the killing. He was later killed.

There are also limitations to the effectiveness of the writ of amparo although it deserves recognition in upholding the right to life, security and liberty of persons who have their petitions approved. There are no guarantees that even if the court grants a petition a person will benefit from its protection. The relatives of James Balao,<sup>14</sup> a human rights activist who disappeared in September 2008 in La Trinidad, Benguet, were successful in a writ of amparo petition on January 19, 2009, under which the government was asked to "disclose where (Balao) is detained or confined (and) release (him)". Balao's whereabouts had still not been located as of the writing of this report in early December 2009.

The Balao family's petition under the writ of amparo was granted by Judge Benigno Galacgac of the Regional Trial Court (RTC) in Benguet. Despite Judge Galacgac's findings that the police and military had "failed in conducting an effective investigation of (Balao's) abduction,"<sup>15</sup> those responsible have still not been held to account. This case illustrates that even if the court reveals the police and the military's failure in carrying out effective investigation concerning cases of disappearance they would nevertheless not be punished or sanctioned for their negligence.

In cases wherein the petitioner for protection under the writ of amparo is himself the object of prosecution concerning fabricated charges, they are effectively denied this remedy. The writ, when promulgated excludes subjects facing charges in court. One such petitioner is lawyer Remigio Saladero,<sup>16</sup> a labour lawyer who is working for the Pro-Labor Legal Assistance Center (PLACE). Saladero is one of 19 activists who were falsely charged with arson and conspiracy to commit rebellion for the alleged burning of a cell site of a telecommunication company in Lemery, Batangas on August 2, 2008 as well as multiple alleged murders and multiple attempted murders in an ambush of policemen by a rebel group on March 3, 2006 in Puerto Galera, Oriental Mindoro.

On February 5, 2009, Saladero and his 18 co-accused were exonerated for technical reasons from the murder charges. In his decision, RTC judge Manuel C. Luna, Jr., held that the respondents could not be charged for the multiple murder and frustrated murder of six different individuals altogether in one complaint. Also, it ruled that "each act of murder and frustrated murder should have been charged in separate information (complaint)".

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<sup>14</sup> AHRC Urgent Appeals: Human rights activist disappears; subject of overt surveillance

<sup>15</sup> Inquirer.net; 'Amparo' issued for Baguio activist; January 25, 2009

<sup>16</sup> AHRC Urgent Appeals: Arbitrary arrest and detention of a labour lawyer; 18 other activists falsely charged, October 28, 2008



But on February 11, 2009, a few days after they were released from jail, Remigio and his fellow respondents were once again informed of another murder charge laid against them. This time, the case involved the killing of a Ricky Garmino, 37, a member of a government-backed paramilitary group, the Civilian Auxiliary Forces Geographical Unit (CAFGU). The crime concerning which they were charged took place in Rodriquez, Rizal province on July 29, 2008. The case was filed on August 4, 2008. Most of the respondents included in this are the same persons who are also included as respondents in the murder case in Puerto Galera, Oriental Mindoro and the arson in Lemery, Batangas. It is understood that a number of the group have never even been to the locations in question.

When Saldero filed his petition under the writ of amparo asking the court to issue a "temporary restraining order against his arrest" due to the filing of a series of questionable charges against him, the Supreme Court in March 2009 rejected his petition ruling that: "considering that a criminal action had been commenced against the petitioner, the Court resolved to deny the instant petition for non-compliance with the rules on the writ of amparo"<sup>17</sup>. Saladero and his fellow accused had to endure a trial in court after having been denied judicial protection, while those responsible of fabricating false charges against them were free to continue with the unjust prosecution with impunity.

Some of the 19 human rights and political activists accused in the arson case were reportedly forced into hiding, when it became clear that they would not be provided with judicial protection, after Saladero's petition had been rejected by the court.

## V. The notion of guilt by association persists

The observation that Philip Alston, UN special rapporteur on extrajudicial, summary or arbitrary executions, made in his report to the Human Rights Council on 16 April 2008,<sup>18</sup> that human rights and political activists "appear to be (killed) due more to their association with leftist groups than to their particular activities" continues to be a concern. This notion of guilt by association remains deeply entrenched amongst the members of security forces in performing their duties and leads to human rights violations, as the military conducts extra-judicial actions, including killings, as a result. Although this is not openly admitted or a written government policy, the military continues to act with bias against those that it suspects of being in any way sympathetic or connected to leftist groups. Armed leftist groups operate in the Philippines. While it is the responsibility of the State to combat armed groups operating in its territory, the arbitrary targeting of unarmed civilians is unacceptable.

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<sup>17</sup> Inquirer.net; SC junks labor lawyer's writ of amparo bid; March 10, 2009

<sup>18</sup> Full text of Alston's report: <http://www.urgentappeals.net/pdf/AHRC-UAU-022-2009-03.pdf>



The previously-mentioned 'Order of Battle' blacklist allegedly compiled by the military in Davao City, southern Philippines, that lists 105 names of individuals and groups, accuses them of colluding with the communist movement to "takeover of the seat of government". The 67-page PowerPoint presentation was leaked by a member of the military to Satur Ocampo, a lawmaker. Ocampo has claimed that a "conscientious soldier' had leaked the document to him.

Even before a credible investigation could commence to establish whether or not the document had indeed originated in the military establishment, Maj. Gen. Reynaldo Mapagu, the commander of the 10th Infantry Division, Philippine Army, whose unit is accused of authoring the document, made a general denial of its existence. He dismissed the existence of the document and accused Ocampo of spreading "pure propaganda...they (the communists) are just trying to come up with a big propaganda because they are being defeated"<sup>19</sup>.

The said PowerPoint is the second blacklist to have been made in public. In early 2005, a PowerPoint presentation entitled "Knowing the Enemy" reportedly produced by the Intelligence Service of the Armed Forces of the Philippines (ISAFP), which accused several human rights and political activists of colluding with the communist, also surfaced. Over four years after the "Knowing the Enemy" was made known to public, the ISAFP and those individuals who took part in the production of this document have still not been held accountable. Numerous human rights and political activists named in this list became victims of extra-judicial killings. At least one person - Celso Pojas<sup>20</sup> - named in the more recent Order of Battle list has already been killed and there are serious concerns that others may follow.

The rejection by Judge Castillo of the petitions concerning the writ of amparo made by human rights lawyers Carlos Zarate, Angela Librado-Trinidad and Lilibeth Ladaga, are of particular concern as they it fails to provide justifiable protection to persons under threat and protects the military by quashing evidence that they are compiling list of targets for extra-judicial killings. The Supreme Court's (SC) ruling concerning the writ of habeas data<sup>21</sup> has been ignored by the military establishment. This required the military unit allegedly involved in creating the document to produce the list and the documents upon which it was based.

Concerning guilt by association, there have also been cases of harassment and intimidation of human rights and labour rights defenders merely because of their affiliations to the Kilusang Mayo Uno (KMU) and National Federation of Labor Union (NAFLU), groups the military claims "are members of the Communist Party of the Philippines". These are the groups Alston described in his report to have "lost

<sup>19</sup> GMANews.TV: Journalist claims his name is in Army 'order of battle'; May 20, 2009

<sup>20</sup> AHRC Urgent Appeals; Farmer leader object of overt surveillance and threat shot dead, May 19, 2008

<sup>21</sup> Full text of the Rule on writ of habeas data:

<http://sc.judiciary.gov.ph/rulesofcourt/2008/jan/A.M.No.08-1-16-SC.pdf>



numerous members to extra-judicial executions" and who are "commonly cited by Government officials as a CPP front group".

In Compostela Valley, southern Philippines, the military is deliberately engaged in systematically harassing, intimidating and forcing union leaders to disaffiliate from any organization they claim is 'communist'. The military has formed a specific unit, called the Workers for Industrial Peace and Economic Reform (WIPER). The unit is attached to the military and is supposedly tasked with maintaining 'industrial peace' in areas where multi-national corporations are operating, but has instead been involved in harassing and intimidating labour leaders.

Soldiers who are attached to the WIPER demanded that Cerila Anding (President of Nagkahiusang Mamumuo sa Os Miguel - NAMAOS), Roldan Anover (the auditor), and Aurelia Yray (treasurer)<sup>22</sup> cease their affiliation with the KMU-NAFLU. On separate occasions, soldiers went to their houses looking for them, followed them from their houses to their workplaces and deliberately accused the labour groups where their union is affiliated of being communist fronts. The soldiers also offered to pay them off in exchange for ceasing their affiliation with the KMU.

This case illustrates that Alston's recommendation in which he called on the government to "direct all military officers to cease making public statements linking political or other civil society groups to those engaged in armed insurgencies," has not been acted upon. The military has instead created a unit to focus on systematically harassing and intimidating activists under the pretext of upholding 'industrial peace' and represent blatant violations of the workers' right to the freedom of association and organize unions. It is extremely difficult to hold these soldiers to account because their deployment in factories and plantations results from a government policy. It is imperative that the government immediately abandon this practice and ensure that such units are immediately disbanded.

These types of activities are typical of those used by the military throughout their counter-insurgency campaign between 2006 and 2008, in which uniformed and heavily armed soldiers have been deployed in slum and urban areas in Metro Manila; soldiers have been conducting lectures and forums in universities concerning the evils of communism and using these to vilify students groups they claim collude with or are fronts of the communist movement.

Although these types of activities have declined in Metro Manila in 2009, the deployment of soldiers in factories and plantations in remote areas in order to subject workers and activists to surveillance has increased. Factory and plantation owners allow the military to deploy and set up detachments in their premises and allow soldiers to be present during meetings concerning matters that should remain between

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<sup>22</sup> AHRC Urgent Appeals; Soldiers threaten, intimidates three labour rights defenders; June 29, 2009



the employee and employer. Soldiers take these opportunities to vilify and discredit labour groups and accuse them of being communist fronts. Given that the military is engaged in armed combat with communist armed groups, such accusations can amount to death threats.

## VI. Increase in the use of legal persecution

As mentioned in the section above concerning extra-judicial killings, the number of such killings reduced in the country in 2008 and 2009 as a result of international pressure and condemnation. After the number of extra-judicial killings sharply dropped, the AHRC observed a different phenomenon starting in 2008 the use of legal measures to persecute the same groups of human rights and political activists that had also been the targets of killings. As was mentioned in the Philippines chapter<sup>23</sup> of the AHRC's annual report on the State of Human Rights in Eleven Asian Human Nations in 2008, there has been an increasing number of prosecutions of human rights defenders and political activists based on fabricated charges. The authorities have settled for keeping such persons in detention rather than killing them outright, due to international pressure, which is something of an improvement, but still represents a pattern of grave human rights abuse that must be halted.

Although President Macapagal-Arroyo, appears to have complied with on of Alston's recommendations by abolishing the Interagency Legal Affairs Group (IALAG) on May 15, 2009, those who were falsely charged and detained in jail as a result of its work, have had to endure lengthy and expensive court proceedings suffer. The AHRC is aware of six different cases of this type, based on fabricated charges, affecting 205 individuals, many of which face charges in one or more of the six cases. President Macapagal-Arroyo signed Executive Order (EO) 808 revoking the IALAG that had been created in 2007, saying that it "already accomplished its mandate." It has mainly accomplished the further perversion of justice and degradations of the rule of law in the country, according to the AHRC. Despite the IALAG's abolition, none of those government agencies or public officials responsible for orchestrating the fabricated charges have been held accountable.

The said agency was supposedly tasked "to provide effective and efficient handling and coordination of the investigative and prosecutorial aspects of the fight against threats to national security" but actually distorted "the priorities of the criminal justice system" as it has "increasingly focused on prosecuting civil society leaders rather than their killers."<sup>24</sup> The agency has also been blamed for the filing of fabricated charges, arbitrary arrests and detentions and otherwise threatening human rights and political activists the government claimed had colluded with or were sympathetic to the left.

<sup>23</sup> The State of Human Rights in Eleven Asian Nations; Philippines: The Human Cost of Insecurity, pp. 264, December 2008

<sup>24</sup> AHRC-UAC-239-2008: Arbitrary arrest and detention of a labour lawyer; 18 other activists falsely charged, October 28, 2008



Separately, 18 falsely-charged labour rights activists remain in detention in Karangalan Police Station, Cainta, Rizal. Two of their colleagues have already died in detention.<sup>25</sup> As a result of their participation in a strike, they were arbitrarily charged with Serious Illegal Detention at the Regional Trial Court (RTC), Branch 80, in Morong, Rizal. The court hearing their case should have had no jurisdiction to try their case because the case arose from a labour dispute. However, the court resolved that there was no employee-employer relationship between the complainants and the accused to justify its taking over the case, effectively giving it legal authority to try the case under labour laws.

Their case illustrates the lack of remedy for victims facing false charges. The victims are forced to endure unjust and arbitrary detention as they continue to wait for the conclusion of their case in court. Apart from enduring the an unfair trial based on fabricated charges, the detainees are also exposed to the risk of contracting illnesses and even dying in detention due to poor prison conditions. Two of these detainees, who were physically fit and healthy prior to their detention, have died after contracting tuberculosis in jail.

## VII. Death Squad exists and is no laughing matter

In its 2008 Human Rights report,<sup>26</sup> the AHRC pointed out the police's inability to prevent incidents of vigilante killings in Davao City and other areas in the southern part of the Philippines. The police claim that a lack of witnesses is hampering their attempts to address the vigilante-style killings, but have done little to provide effective protection to potential witnesses. This failure has been tolerated by local officials in Davao City for many years, who, according to Commissioner Leila de Lima, the chairperson of the Commission on Human Rights (CHR), "are still in a state of denial about what's really happening."<sup>27</sup>

In June 2009, in concluding a field investigation and series of public hearings, the CHR claimed to have discovered convincing evidence that proves the existence of the 'Davao Death Squad'. In July 2009, the CHR was able to exhume skeletal remains of persons believed to have been victims of vigilante killings. It claimed that a self-confessed member of the death squad had helped the CHR and other government agencies to locate the victims' remains, which had been dumped in Barangay (village) Maa in Davao City.

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<sup>25</sup> AHRC Urgent Appeals; Another detainee dies in jail; 18 others at risk for lack of medical attention, September 29, 2009

<sup>26</sup> Ibid, footnote 19

<sup>27</sup> Statement of Leila M. De Lima, chairperson of the Commission on Human Rights (CHR), June 26, 2009



The CHR's investigation was unfortunately damaged by problems in following legal protocols. The procedures used to obtain search warrants when they excavated the site on July 6, 2009, proved problematic. The CHR chooses to secure search warrants from two Regional Trial Courts (RTCs) in Metro Manila, which according to legal experts should have been secured from local courts in Davao City that have jurisdiction into the area. The CHR has argued that the investigators "felt unwelcome in Davao...and there was a possibility of a leak."<sup>28</sup> A court in Manila, "quashed the warrant, rendering the retrieved remains inadmissible in any court proceedings."<sup>29</sup>

Also, the detainees whom the CHR earlier claimed as a "self-confessed Davao Death Squad member", Jonathan Balo, reportedly turned hostile and filed charges against the De Lima and others for allegedly illegally getting him out from a detention centre in Panabo City to point out the location of the grave site.

The CHR's finding that a death squad was operating in Davao City supports such claims made in the AHRC's human rights report in 2008. De Lima concluded that "DDS is no laughing matter and we maintain that it exists."<sup>30</sup> The CHR was looking into the killing of at least 538 persons, including women and children, since 1998. The cases include a number that the AHRC documented and concerning which it sought the intervention of the CHR, which prompted the Commission to launch its investigations into the vigilante killings.<sup>31</sup> The AHRC has documented cases in General Santos City, Tagum, Digos and Cagayan de Oro.

The CHR's active role has provided encouragement to the families of the dead and those targeted by vigilante action that there are increased avenues to seek protection and remedies. The CHR promulgated Resolution No. CHR (IV) A2009-064<sup>32</sup> creating Task Force DDS, which seeks to help the CHR to "broaden not just the investigative aspect but other areas of coordination and assistance as well, for a more expeditious and effective investigation of...extra-legal killings". It also issued numerous public statements categorically condemning the continuing vigilante killings, the failure on part of the police and negligence by officials of the local administration to address the killing.

The CHR's difficulty in pursuing this investigation has also been aggravated by the lack of a legal basis to invoke the principle of "command responsibility" in instances where

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<sup>28</sup> Inquirer.net; Legal woes stump Davao killings probe, August 16, 2009

<sup>29</sup> Ibid, footnote 19

<sup>30</sup> Ibid, footnote 22.

<sup>31</sup> Mindanews; CHR to probe vigilante killings in Davao City; Duterte vows support to CHR probe; February 15, 2009

<sup>32</sup> Full text of Resolution CHR (IV) A2009-064:

[http://www.chr.gov.ph/MAIN%20PAGES/about%20ohr/advisories/adv\\_17june09\\_CHR4\\_A2009\\_064.htm](http://www.chr.gov.ph/MAIN%20PAGES/about%20ohr/advisories/adv_17june09_CHR4_A2009_064.htm)



the local police and public officials have failed to prevent abuses or been negligent in the performance of their duties. The Melo Commission – a body set up in 2006 to investigate allegations of political killings – concluded in a report issued on January 22, 2007, that legislation was needed to "require police and military forces and other government officials to maintain strict chain-of-command responsibility with respect to extra-judicial killings and other offences committed by personnel under their command, control or authority."<sup>33</sup> The notion of command responsibility exists in theory, but there is no implementing law and therefore no high officials are being held accountable for the numerous killings in practice.

For example, police and local officials in Davao City have been protected from prosecutions by the absence of such a law, even though the Melo Commission has stated that: "anyone with higher authority, who authorized, tolerated or ignored these acts are liable for them". There is no substantial progress to a proposed law, the Command Responsibility Act, which was introduced in 2007 in response to the Melo Commission's recommendations but remains pending in the Senate.

## VIII. The role of the legislature in providing protection for human rights

In July 2007, Justice Reynato Puno, the chief justice of the Supreme Court, described the Philippines' legislature as having "betrayed the human rights of the people by defaulting to enact appropriate law" and for "exercise(ing) its power to be powerless." The legislature has since made some progress concerning long-overdue legislation for the protection and promotion of human rights.

The final version of the domestic law on torture, the Anti-Torture Bill, was ratified by the two chambers of Congress, the Senate and the House of Representative, in August 2009. It was submitted to President Gloria Macapagal-Arroyo for her signature on October 14, 2009 and was signed into law on November 12. This law is particularly welcomed by the AHRC, as the Philippines has been struggling to pass this law for two decades. The implementation of this law, if achieved in practice, will represent a significant positive development, although this will likely face many obstacles.

Also, a proposed law against forced or involuntary disappearance also made progress in the legislature. As of June 2009, the proposed bill had passed its third and final reading in the House of Representatives. Under the Philippines' legislation procedures, after the bill has passed the final reading, a bicameral conference would be held, in which the Senate and House of Representatives simultaneously deliberate on the substance and merits of the bill in order to ratify an agreed version. This had not been held as of December 2009, and the AHRC urges the government to ensure that this is held without delay in 2010.

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<sup>33</sup> Melo Commission Report; January 22, 2007; pp 76



The Republic Act 9710 - also known as the Magna Carta of Women - a domestic law which prohibits discrimination against women, was signed into law on August 14, 2009. Myrna T. Yao, the chairman of the National Commission on the Role of Filipino Women, described the newly-passed law as seeking to "eliminate all forms of discrimination against women by recognizing, protecting, fulfilling and promoting all human rights and fundamental freedoms of Filipino women, particularly those in the marginalized sector."<sup>34</sup>

The Senate and the House of Representatives deserves recognition for the landmark legislation that was passed in 2009. However, Congress failed to repeal provisions of the Human Security Act of 2007<sup>35</sup> that has been declared by Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as "not (being) in accordance with international human rights standards" on November 28, 2007.

There is no substantial progress in repealing the arbitrary provisions of the law, particularly Sections 18 and 19, which allow police or law enforcement to detain persons who are suspected of committing terrorism for 72 hours, perpetuating arbitrary arrest and torture, "without incurring any criminal liability"; and the punishment of 40 years jail terms to persons found guilty of committing the crime of terrorism without the benefit of parole. These are some of the provisions that Martin Scheinin found contrary to human rights standards.

The government announced on several occasions to the media that it would strengthen the Witness Protection, Security and Benefit (Republic Act 6981), a law which is to provide protection to witnesses. Despite promises having been made by the office of the President and the Department of Justice, when it was headed Secretary Raul Gonzales, these have remained unfulfilled. The recommendation to introduce a provision to provide interim protection for witnesses pending the approval of their applications to the program has not yet been implemented. Under the current law, witnesses can only be admitted to the program and given protection once the case they are to testify in has been filed in court. However, most witnesses require protection before this, as most extra-judicial killings cases do not even reach the courts. This failure to protect witnesses when required damages the prospects for conducting effective investigations and prosecution of cases in courts, as the police depend heavily on testimonial evidence from witnesses in investigations. The perceived complicity of the police in the killings also breeds distrust for witnesses.

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<sup>34</sup> BusinessWorld; Magna Carta of Women signed into law; August 15, 2009

<sup>35</sup> Full text of the Human Security Act of 2007:

<http://material.ahrchk.net/docs/Philippines-HumanSecurityAct.pdf>



Also, since the government publicly announced in April 2008 that it would ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),<sup>36</sup> this remains unfulfilled. The Presidential Human Rights Committee (PHRC) made this pledge during the United Nations' Human Rights Council's Universal Periodic Review (UPR) of the Philippines in Geneva. As of the end of 2009, a public hearing had been held in the Senate. Although the government has agreed to ratify the OPCAT, it has sought to defer the implementation of the creation of the National Preventive Mechanisms for three years after its ratification. The NPM is required under Part IV of the OPCAT, but the delays to their creation represent a protection gap that the government should work with all speed to eradicate.

Furthermore, eleven years after the government adopted the United Nations Guiding Principles on Internal Displacement (UNGPID), there are no legal remedies or domestic mechanisms to deal with violations of these principles. The lack of domestic law on this has deprived internally displaced persons (IDPs), particularly the IDPs arising from the four decades-old conflict in Mindanao, of any possibility of seeking legal remedies and redress. The conflict in Mindanao entered into a ceasefire during 2009, but may again ignite in future, if patterns seen in the past continue. IDPs continue to face resettlement problems and a lack of reparation there at present. The Philippines is amongst the countries in the world with the highest numbers of IDPs, According to the International Committee of the Red Cross (ICRC), as the result of the government's counter-insurgency operations and internal conflicts.

## IX. Lawlessness in Sulu's 'State of Emergency'

After Abdusakur M. Tan, the governor of Sulu province, southern Mindanao, issued Proclamation No. 1 Series of 2009<sup>37</sup> on March 31, 2009, the province has been under a 'State of Emergency'. In issuing the Proclamation, Governor Tan invoked powers under Section 465 of the Local Government Code of 1991 (RA 7160), granting the local chief of the executive the power "to carry out such emergency measures as may be necessary during and in the aftermath of man-made and natural disaster and calamities." The kidnapping of three ICRC workers - a Swiss national, an Italian and a Filipina - on January 15, was invoked as the justification for the declaration. All of the kidnap victims were released separately in April and June. However, the kidnapping of three ICRC workers, while deeply regrettable, is not sufficient justification to amount to a disaster or calamity and the emergency is therefore illegal. This incident is not the first occasion in which local and/or foreign nationals have been kidnapped in order to secure ransoms. This cannot be used to justify to place the entire province under a state of emergency is not justifiable.

<sup>36</sup> Philippine Daily Inquirer; Philippines set to join UN protocol vs torture--Ermita, April 15, 2008

<sup>37</sup> Full text of Proclamation No. 1, Series of 2009:

<http://material.ahrchk.net/philippines/AHRC-STM-082-2009-01.pdf>



Governor Tan issued Proclamation No. 1 and its Implementing Rules and Regulations<sup>38</sup> (IRR) simultaneously, without properly consulting the members of the Provincial Council or holding public consultations. Under the Guidelines on the Implementation of the Proclamation, the Governor abdicated any notion of civilian authority by allowing a police and a military colonel respectively, to act as signatories needed for the its approval.

Only the President of the Philippines can declare a State of Emergency. The Local Government Code (LGC) of 1991 gives the local chief executive permission to carry out "emergency measures". It is only the sitting President of the country, who has the power of the chief executive and commander-in-chief, who could declare a man-made or natural disaster or calamities and states of emergency. The unilateral declaration by Governor Tan is devoid of any legal basis and fails to meet fundamental conditions under which emergency declaration could be invoked: threats to the life of the nation.

The declaration has instead provided blanket impunity to the security forces who are engaged in human rights violations, in particular concerning the conduct of arrest, searches and detention of persons. In its General Comment No. 29, the Committee of the International Covenant on Civil and Political Rights (ICCPR), to which the government of the Philippines is a State party, laid out conditions for governments declaring states of emergency. Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature.

Under Article 4 of the ICCPR:

*1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.*

When Governor Tan issued Proclamation No. 1, the purpose of placing the province under a state of emergency was to respond to the kidnapping of three ICRC volunteers. However, despite their release, instead of lifting the declaration, Governor Tan had it "indefinitely (extended) to support a new offensive to finish off al-Qaeda-linked militants."<sup>39</sup> Despite irregularities and questions of legality concerning this emergency, the Governor has enjoyed a certain level of approval and tolerance, even from the

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<sup>38</sup> Full text of the Implementing Rules and Regulations of Proclamation No. 1:

<http://material.ahrchk.net/philippines/AHRC-STM-082-2009-02.pdf>

<sup>39</sup> GMANews.TV; Sulu emergency prolonged to rout Abu Sayyaf; July 20, 2009



Department of Justice (DoJ) and the regional Commission on Human Rights, as seen by their failure to condemn his actions.

Then-Secretary of the Department of Justice (DoJ), Raul Gonzalez, knew that Governor Tan's actions were illegal, and was quoted as saying: "Sulu Governor Abdusakur Tan was not authorized to declare a state of emergency in the province since only the President of the Philippines is allowed to do so."<sup>40</sup> However he nevertheless applauded him for "showing counter-defiance to the Abu Sayyaf Group," saying that Tan's stance "may have prevented the beheading of the three International Committee of the Red Cross (ICRC) hostages". No actions have been taken by the President or the DoJ concerning this illegal emergency.

Lawyer Faith delos Reyes Kong, a senior legal officer of CHR in Region 9, was quoted to have said: "it is the local chief executive's right to declare a state of emergency, should the official see the need to uphold law and order for the benefit of the general public."<sup>41</sup> The CHR's legal opinion also contradicts the opinion laid down by Justice Secretary Gonzalez and the ICCPR's provisions in relation to the declaration of a state of emergency.

At first, the emergency was justified as being: "very good (for) the public since this will result in pressuring the kidnappers to release the two remaining kidnap victims."<sup>42</sup> However, even the government agency responsible for monitoring disasters and calamities, the National Disaster Coordinating Body (NDCC), reported that the placing of the entire province under an emergency had displaced at least 1,586 families or 7,658 persons<sup>43</sup> from eight villages in Indanan town, Sulu. The displaced fled their homes to avoid being accused of abetting the kidnappers and out of fear of being subjected to arbitrary arrest and detention, as has been the case as part of the search for the ICRC staffers.

SALIGAN Mindanaw, a group of lawyers in Mindanao, reported that: "the arrests, searches and seizures are done away from checkpoints. One of the detainees is a jeepney (passenger utility vehicle) driver, who was arrested while waiting for passengers inside his jeepney and another was selling his wares at the market. Most were taken from their homes."

The group also added that those "who were 'invited' and who went (voluntarily) to the municipal halls to clear their names were instead arrested there". Furthermore, a few persons who voluntarily handed themselves over to the authorities after hearing that they were accused of being involved, in order to clear their names, have been instead allegedly been falsely implicated in the kidnappings. At least 43 persons, including

<sup>40</sup> ABS CBN News; Emergency rule in Sulu 'illegal'; crackdown starts; April 2, 2009

<sup>41</sup> Ibid, footnote 40

<sup>42</sup> GMANews.TV; State of emergency in Sulu intended for public safety - AFP; April 16, 2009

<sup>43</sup> GMANews.TV; NDCC: Nearly 7,700 affected by state of emergency in Sulu; April 11, 2009



three police officers and a village chairman, were reportedly arrested in relation to the kidnappings, with 35 of them being released later on.

Three of those who were arrested and briefly held, including Hadji Mohammad Ismi, Ahajan Awadi (the former Punong Barangay (village chief) of Sawaki, Municipality of Indanan, Sulu), and Senior Police Officer 1 (SPO1) Sattal Jadjuli, have sought the intervention of the Supreme Court (SC) in Manila, asking it to declare as unconstitutional Proclamation No. 1 in a Petition for Certiorari and Prohibition<sup>44</sup> they filed on April 8, 2009. They also asked the SC to issue a Temporary Restraining Order (TRO) against the respondents to restrain them from enforcing and/or executing the Proclamation No. 1 and its implementing Guidelines. They asked the SC to revoke the declaration, to declare it as unconstitutional and to provide them with compensation. The SC has yet to decide on their victims' petition.

## **X. Absence of remedy for civilians affected by conflict and displacement in Mindanao**

The renewed fighting in August 2008 between the government's security forces and the Moro rebels, following a ceasefire agreement signed in 2004, have added to the mounting cases of human rights violations. Those who have perpetrated extra-judicial killings, illegal arrests and detention, abductions and attacks on civilians triggering massive displacements have not been held to account in the long-standing cycle of conflict in the region.

The Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) signed an agreement for the Suspension of Military Operations (SOMO) for the Armed Forces of the Philippines (AFP) and for the Suspension of Military Activities (SOMA) for the MILF. A suspension of offensive military operations (SOMO) was declared on July 23, 2009, since which time incidents of armed encounters have declined sharply, although there are still reports of fighting in some areas of Mindanao. There are also prospects for the resumption of formal peace talks with the MILF, after the signing of an agreement on the protection of civilians in armed conflict<sup>45</sup> on October 27, 2009.

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<sup>44</sup> Full Text of the Petition for Certiorari and Prohibition on the State of Emergency in Sulu; <http://material.ahrchk.net/philippines/PetitionForCertiorariProhibitionOnStateOfEmergencyInSulu.pdf>

<sup>45</sup> The Philippine Star: Gov't, MILF ready to open peace talks: senior official, October 29, 2009



The AHRC's sister organization, the Asian Legal Resource Center (ALRC), in a written submission<sup>46</sup> to the U.N. Human Rights Council in September 2009, expressed concern about the failure of the government to investigate cases of house demolitions, torture, enforced disappearances and the killing of civilians as a result of the conflict. The police, who are under obligations to investigate crimes, have failed to perform their duties and have become subservient to the military in areas where the latter are operating. One example is the failure by the police of a Municipal Police Station in Datu Odin Sinsuat to promptly investigate and record in their daily log the extra-judicial killing of a farmer, Katog Sapalon<sup>47</sup>, on June 3, 2009. The soldiers were conducting military offensives in Barangay Makir, Datu Odin Sinsuat, Maguindanao province when the incident took place.

In another case, the local police have refused to take responsibility into the continued disappearance of a fisherman who was last reported to have been in police custody on May 18, 2009. Soldiers arrested and illegally detained 37 year-old Dag Sandag Guiamalon and two other men on mere suspicions that they were Moro rebels in Barangay (village) Nabalawag, Midsayap, North Cotabato. Chief Inspector Emeliana Piang Mangansakan, the chief of police of the Datu Piang Municipal Police Station, denied that the victim was ever held in their custody despite having signed document that confirms and acknowledges his being turned over to them by the military. She has denied it without giving sufficient reasons. But, when showed the document with her name and signature on it, she claimed the victim was turned over to her deputy and not to her.

The continued disappearance of Guimalon, and the killing Sapalon, are two of the numerous cases of unsolved human rights violations. The notion of accountability and command responsibility amongst the police and security forces in this protracted conflict, spanning 41 years since the of Moro rebellion in Mindanao, hardly exists and impunity prevails.

The International Committee of the Red Cross (ICRC), which has been stationed in the country since 1982, listed the Philippines as one of eight of the countries in the world they have described as the "most troubled places in the world...which are either experiencing situations of armed conflict or armed violence or suffering their aftermath"<sup>48</sup> in a survey report in August 2009.

In the Philippines, there is no complaint mechanism through which civilians can send complaints to court for violation of the International Humanitarian Law (IHL). The ICRC, however, is promoting the "inclusion of international humanitarian law (IHL)

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<sup>46</sup> ALRC written submission; Authorities failing to investigate house demolitions, torture, disappearance and killing of civilians resulting from the conflict in Mindanao; September 4, 2009

<sup>47</sup> AHRC Urgent Appeals: Soldiers torture and shoot a farmer dead in front of his family; July 9, 2009

<sup>48</sup> ICRC; Our World, Views from the field; The Philippines; Opinion Survey, 2009



in military training and raised awareness of international policing standards within police forces".<sup>49</sup> Despite the government's adoption to the principles of UNGPID, there is no mechanism allowing civilians and IDPs to file complaints invoking the principles contained therein. IDPs are not able to complain when when they are accused of being a reserve force for the rebels, when their property is destroyed or when food rations to them are blockaded by the authorities, as has been witnessed recently. Food aid to IDPs were blockaded on the pretext that there were security concerns for relief groups distributing the relief and food rations. This pretext is considered dubious.

The government's National Disaster Coordination Council (NDCC) has set-up an internal mechanism to which "complaints, reports of injustice or wrongdoings (from disaster victims and IDPs), accusations, criticisms or gripes about the on-going humanitarian efforts" could be filed on matters regarding the delivery of services. In Joint Memorandum Circular No. 17, Series of 2008, the NDCC required all the regional Disaster Response Coordination Desks to act on grievances "within three (3) days receipt of the complaint".

In June 2009, when the AHRC reported the afore-mentioned incident of a food blockade<sup>50</sup> that the military had imposed in Maguindanao, depriving over 34,000 IDP families, no sanctions or actions were taken against the soldiers involved. The military authorities have also begun publicly labelling the IDPs as being an "enemy reserve force." On June 30, 2009, Lt. Col. Jonathan Ponce, spokesperson of the 6th Infantry Division, openly labelled the IDPs as being an "enemy reserve force" during a media forum comprising military and civilian officials at the Estosan Garden Hotel in Cotabato.

The signing by the GRP and the MILF of the "Agreement on the Protection of Civilian Component" is also meaningless as it lacks an effective complaint mechanisms. This component is merely "delegated as an added function of the International Monitoring Team (IMT)"<sup>51</sup>. This team is composed of four countries - Malaysia, Brunei Darrusalam, Libya and Japan - that are tasked with monitoring the implementation the ceasefire agreement. The IMT's mandate ended on November 30, 2008 and has not resumed its activities, leading to a gap in monitoring, notably under the new cease-fire. The GRP and MILF are urged to agree to such monitoring and ensure an effective complaint mechanism this time.

Previous agreements and monitoring Committees that the Government and rebel groups have created have failed because they are heavily dependent on progress in peace talks. For example, in armed conflicts elsewhere in the country, the Government

<sup>49</sup> ICRC; Philippines: tens of thousands of people are still displaced in Central Mindanao, August 25, 2009

<sup>50</sup> AHRC Urgent Appeals; Soldiers burn houses, blocks food supply for over 34,000 displaced families in Maguindanao; June 4, 2009

<sup>51</sup> Mindanao Peoples Caucus (MPC); Media Statement; October 28, 2009



and the National Democratic Front of the Philippines (NDF) set-up a Joint Secretariat of the Joint Monitoring Committee (JMC) but it failed to carry out its mandate after peace talks collapsed in August 2005. The Committee was established on February 14, 2004, as part of the implementation of the Comprehensive Agreement on the Respect on Human Rights and International Humanitarian Law (CAHRIHL). The Committee was to receive complaints concerning human rights violations committed by government soldiers and the New People's Army (NPA) rebels.

Marissa Dumanjug-Palo,<sup>52</sup> the head of the NDFP-Nominated Section of the Joint Secretariat of the Joint Monitoring Committee, became the subject of threats and intimidation by unidentified persons. On May 31, 2006, Dumanjug-Palo was followed by unidentified men riding on two motorcycles on her way to her office in a taxi. The Committee has failed to act and resolve the numerous complaints of the violations of the CAHRIHL by the government and the rebels. It is reported, however, that the JMC has been has not been able to meet or function since April 2004.

Despite difficulties, some IDPs in Mindanao have filed criminal charges against soldiers with the regional office 12 of the Commission on Human Rights (CHR) and the Office of the Ombudsman for Military and Other Law Enforcement Offices (MOLEO).

In May 2009, civilians whose houses were allegedly burned by the military, filed criminal charges of arson with the CHR. The complainants were villagers who owned some of the over one hundred houses burned in the provinces Maguindanao and North Cotabato, in Central Mindanao<sup>53</sup> following the resumption of conflict in 2008. In September, the Ombudsman started preliminary investigations into the complaint and required the military to submit counter-affidavits. This complaint is landmark as it is "the first time IDPs filed cases against the military in the midst of a war."<sup>54</sup>

While this attempt to make a complaint is laudable, there are serious concerns as to the MOLEO's record, as it has typically failed to promptly conclude investigations in the past. Emilio Gonzalez, Deputy Ombudsman, Office of the Deputy Ombudsman for the Military, who required the military to submit their affidavits, is the head of the same office that failed to conclude its actions concerning the complaint of torture relating to the case known as the Abadilla Five<sup>55</sup> (five detainees who filed complaints of torture that have been pending with the MOLEO for 13 years). This is despite the CHR's findings that there is sufficient evidence to proceed with the prosecution of the perpetrators in court.

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<sup>52</sup> AHRC Urgent Appeals; Threat and intimidation of human rights lawyer and activist, June 5, 2006

<sup>53</sup> AHRC Urgent Appeals; Soldiers burn houses, blocks food supply for over 34,000 displaced families in Maguindanao; June 4, 2009

<sup>54</sup> MindaNews: Ombudsman for Military probes arson, misconduct complaint filed by IDPs vs 6th ID officials; September 19, 2009

<sup>55</sup> Abadilla Five: Jailed for a decade without justice: <http://campaigns.ahrchk.net/abadilla5/>



Also, even before the IDPs complaints could be filed in court, they were subjected to harassment and intimidation. "Some people we do not know have been looking for us," said Akmad Kanacan, one of the seven complainants.<sup>56</sup> There are serious concerns that the complainants may be forced to abandon the case as a result of intimidation. The Mindanao People's Caucus (MPC), a local group that is providing legal assistance to the complainants, has expressed concern that the progress in the landmark complaint that they help facilitate could be undermined due to a lack of adequate security and protection provided to the already vulnerable complainants.

As mentioned earlier, the legislature's failure to introduce amendments to the provision of the Witness Protection, Security and Benefit Act (RA 6981), including interim protection for complaints and witnesses prior to the filing of their cases in court, has deprived witnesses and complainants in this case from being afforded protection. They cannot avail themselves of the Witness Protection Program (WPP), because their case has not been yet filed in court.

## XI. Conclusions and Recommendations

The government of the Philippines has been making certain efforts to introduce legal reforms and policies that would help improve the protection of human rights in the country in 2009. However, the lack of complaints mechanisms and implementation of laws mean that such efforts risk remaining on paper and not in practice.

The AHRC has in the past repeatedly argued that improving the country's system of justice - notably policing, the prosecution and the judiciary - in conformity with international laws and accepted norms and standards, is fundamental if the Philippines is to attain the possibility of sustainable long-term improvements regarding the protection of human rights. The passing of a law criminalizing torture, the use of the writs of amparo and of habeas data, that has led to the conviction of perpetrators in three cases are all good signs, but a great deal must be done to make such implementation of laws and rights commonplace rather than exceptional.

To regain the trust and confidence of victims of human rights violations and the wider public concerning the predictability of governance and the system of justice is a lengthy process. It requires the government to begin exhibiting good faith and a willingness to apply command responsibility and to credibly tackle impunity. The government must show through verifiable actions rather than further words that it is complying with its pledges, commitments. It must issue public statements denouncing abuses and ensure that a culture of accountability and responsibility is instilled amongst public officials and the military.

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<sup>56</sup> MindaNews; "Bakwits" who filed arson complaint seek security assistance; October 17, 2009



### On extra-judicial killings, enforced disappearances and torture:

The government should ensure that they have implemented all recommendations made in:

1. The Melo Commission report in January 2007
2. The follow-up report by U.N. Special Rapporteur Philip Alston to the U.N. Human Rights Council in April 2009
3. The observations and comments by Commissioner Leila de Lima, chairperson of the Commission on Human Rights (CHR) on the follow up report of the Special Rapporteur on extra-judicial, summary or arbitrary executions, April 2009
4. The Report of the Working Group on the Universal Periodic Review (UPR) in 23 May 2008, and;
5. The Committee Against Torture in the conclusion of its periodic review in May 2009.

In addition to the general recommendations mentioned in these documents, there the immediate amendments to the Witness Protection, Security and Benefit Act (RA 6981), the repeal of the Human Security Act of 2007 and the legislation of the Command Responsibility Act introduced in 2007 should be given utmost priority.

The Philippine National Police (PNP) should implement section 1 of the Memorandum Circular No. 2000-008 of the National Police Commission (NAPOLCOM), which requires the police, in particular the heads of the police stations, to decide for themselves and to make available protection to persons who are "under actual threat/s of deaths" should they be requested. Pending the amendments to RA6981, this could be used as an interim protection mechanism for individuals who are experiencing threats.

The concerned government agencies should effectively implement existing policies designed to address the issues of extra-judicial killings, in particular the Philippine National Police (PNP) 'one-strike policy,' guidelines laid out for the PNP's Task Force Usig for them to promptly conclude the cases of extra-judicial killings and the Supreme Court's (SC) guidelines requiring judges and court staff to submit monthly progress reports extra-judicial killing cases and progress in the performance of the 100 Special Courts or all courts currently mandated to handle such cases.

The result of this evaluation report, for example, who had been punished, what sanctions and punishments have been laid down to the officials involved for failing to comply and whether the policy had been implemented, should also be made public. This is necessary to ensure transparency in the implementation and the accountability into the pledges and commitments the governments has already made.



### On legislation of human rights laws; emergency declarations:

The members of the Senate and the House of Representatives should prioritise the enactment of the domestic law on enforced and involuntary disappearances and the creation of a mechanism that provides for the domestic implementation of International Humanitarian Laws (IHL).

The domestic legislation and implementing mechanism concerning the United Nations Guiding Principles on Internal Displacement (UNGPID), which the government adopted eleven years ago, should also be introduced in Congress. This would address the gross and ongoing violations committed against civilians and IDPs in conflict-affected areas, who are deprived of legal remedies and redress.

The state of emergency in Sulu, which is illegal, must be lifted without any delay. If the President confirms this state of emergency, the Department of Foreign Affairs (DFA) must inform the Committee of the International Covenant on Civil and Political Rights (ICCPR) to comply with its obligation to acknowledge any declaration of a state of emergencies within its territory in order to enable the Committee to monitor its implementation of the ICCPR in this regard.

### On the use of legal persecution of activists:

The authorities, in particular the Department of Justice (DoJ) and the Court Administrator of the Supreme Court (SC) of the Philippines, should prioritise the prompt adjudication of questionable charges laid against human rights and political activists. Although the Interagency Legal Affairs Group (IALAG), which was accused of being responsible for orchestrating fabricated charges, was dissolved on May 15, 2009, those falsely charged as a result continue to have their rights abused through lengthy trials and arbitrary detention. Those who took part in the implementation and the operation of the IALAG must be held to account.

The Supreme Court must reviewing the use and application of the writ of amparo, particularly judges ruling to reject applications made by petitioners who have been charged or are facing charges in court. The authorities are using false charges to deprive persons of needed and justifiable protection under the writ.