PHILIPPINES: In a flawed system of justice: The social & systemic implications are irreparable

The situation of human rights this year has seen little or no change in terms of the nature of the violations that are taking place--extrajudicial killings, forced disappearance, torture and displacements due to armed conflict. Here, we observe that promulgation of policies on human rights and the strengthening of the legal framework for the protection of rights are doomed to fail if the institutions of justice responsible for the implementation of rights continue to suffer endemic institutional defects.

The cases documented this year were not exceptional cases. They are rather evident of the ongoing, systematic and widespread violations of human rights that continue to thrive regardless of who sits in power. These repetitions of violations, in addition to the apparent absence of conclusion of the previous cases, are a manifestation of the country's inability to afford even the most elementary form of the protection of rights of its own people.

The dominant presumptions that the change of leadership--from the old political order to the present ones and the latter's exercise of 'political will'--as prerequisite to the effective implementation of rights are nothing more than empty rhetoric. They were doomed to fail because they do not have any semblance to the practical realities of the Filipinos lives. The presently absent, if not non-existent, discourse on the severe negative implications of the flawed system of justice as a core problem on protection of rights has become an obstacle in the promotion and protection of rights.

By failing to examine and critique the ill-functioning of the system of justice, as the main obstacles in the protection of rights because of the nature of how it functions contrary to established normative framework, has further pushed the country whose elementary investigations, prosecutions and adjudication of cases in courts, have already lost their real meaning. The notion of seeking remedies from institutions of justice hardly operates in reality.

In this report, we will examine the character and behavior of the institutions of justice in addressing the human rights problems of this year. We will examine whether the establishment of a new political order, the exercise of 'political will' and the strengthening of the legal framework in the protection of rights is itself sufficient to deal with deeply-rooted and systemic problems within the institutions that ought to protect the rights.

Prosecution of cases & the human rights discourse

The importance of studying and critiquing the character of how the police investigate, the prosecutor prosecutes and the judicial bodies hear cases, is hardly the subject of discourse as having implications on the protection of human rights. This is evident by repetitions of, if not becoming rituals, of criticisms and condemnation on cases of violations, rather than the discussion on how possible these violations persisted. The comment by the Task Force 211 of the Department of Justice (DoJ) in its latest report of the "inability of the government to present supporting evidence to secure a conviction"[1] must be taken seriously.

Here, we observed that unlike in the past, at present there is recognition of the difficulties in prosecution of cases of extrajudicial killings of human rights and political activists; and journalist; however, mere recognition of these problem by the very institutions legally obliged to pursue prosecution of cases had little impact on finding practical solutions to prevent, if not completely stop the phenomenon of extrajudicial killings. What we see is that the very institutions of justice obliged to pursue prosecution to punish perpetrators, particularly members of the security forces, is trapped between their will to find the solution to address the extrajudicial killings and the practical difficulties of doing so.

In their report, one of the problems the task force had cited is difficulties in securing the testimonial and material evidence sufficient enough for the case to stand on trial. This resulted to negligible result of cases that they were handling--for instance of the 200 cases, only four resulted to conviction, 20 are still pending and 16 were dismissed by the court. In their defense, the Task Force 211 argued that "without the active support of society and an entire focused justice system, (its) mandate will proved to be way beyond the capabilities."

Therefore, in the prosecution of cases, the 'will of the prosecution' and the 'political will' of the executive to whom they are accountable to as sources of their action, must also have support of adequate structures of the institutions of justice. In the case of how the justice institutions functions in the country, the will of the prosecution is hardly complemented with an adequate structure to make it work.

For example, in most criminal cases the obstacles in prosecution is the lack of or absence of witnesses. They are too frightened to testify due to continuing threats, fear of reprisal and uncertainties due to endemic delays in trial of cases. The court still heavily depends on oral testimonies to hear cases. Here, to compliment the prosecution's will there must be an adequate means to encourage witnesses to come forward. There must be an adequate protection, security and support of their person and their family sufficient enough for them to last in a perennially lengthy and tedious trial.

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1 Task Force 211: Review of mandate and accomplishments, November 2007 to July 2010

At present, the Witness Protection, Security and Benefit Act (R.A. 6981) is structurally weak. It does not provide for an emergent interim protection for witnesses prior to approval of their application for admission in the program. The murder of Suwaib "Jessie" Upham, a potential witness to the Maguindanao massacre, in June 14, 2010 prior to his admission in the witness protection program is evidence to this. Upham's situation prior to his murder is no different to witnesses and families of victims of extrajudicial killings this year.

Take the case of Gerry Ortega,[2] a broadcast journalist and mining activist, who was murdered in Puerto Princesa City in January 24, 2011. The murder case for his death against the alleged mastermind, Joel T. Reyes, a governor of Palawan province, who was accused by a person whom he allegedly paid P500,000 pesos to murder Ortega, former Marine Sgt. Rodolfo "Bumar" Edrad, has yet to reach in court for trial. Edrad surrendered to the authorities to testify against the mastermind. The prosecutors at the Department of Justice (DoJ) has yet to conclude the reinvestigation, after it was dismissed during the preliminary investigation to determine whether or not Reyes had a case to answer in court.

Therefore, whether the mastermind and the perpetrators of the killings are identified or not in reality this does not matter. It is evident that the prosecution department takes action depending on who the victims are, who are the accused and what political implications it would have on the government. Here, the 'will of the prosecution' to pursue prosecution of cases in court is qualified. The key witness, Edrad, may have had protection after he was admitted in the witness protection program; however, when the prosecution--the institution that protects him given the value of his testimony--in reality does not give them meaning to ensure the possibility of prosecution rendering the protection he had from them ineffective.

This explains why witnesses to the extrajudicial killings, force disappearance, torture and the threats against human rights and political activists; families of the victims who pursues prosecution of cases in court to seek legal remedies to the violation committed on their loved ones, hardly have confidence that the system of justice operates in affording remedies and justice to the victims of violations. Those who decided to pursue the prosecution of cases, like the family members of Ortega and in the case of Maguindanao massacre, had to endure the realities that the system of prosecution hardly operates in their interest.

Apart from providing physical security to witnesses, the program does not provide adequate resources to witnesses and their families in the event of prolonged trials. The endemic delays of cases in courts also rendered the protection program for witness inoperative. Those admitted into the witness protection program would have to endure

2 AHRC Statement No. 012, 2011,'Murder of Gerry Ortega, an anti-mining activist, cannot be passed off as a robbery', 25 January 2011

the restraint of their movement, contact with the outside and waiting until they could testify without other means of personal development.

The legislative body, however, does recognize the need to introduce reforms and amend the existing law governing the protection of witnesses; however, the fundamental requirements in order to ensure the program functions to the point that is needed from it were not included in the proposed amendments to the law. The proposals of the two bodies--the Senate (Senate Bill No. 2368) and the Congress (House Bill No. 15)--were only to 'perpetuate the testimonies' of the witness, to prepare in event that witnesses would be murdered; and to provide psychological and trauma counseling, to ensure that the witnesses are supposedly 'in their state of mind' before they would have to testify or make their testimony. The perpetuation of testimonies and the provision of counseling do not address the core problems as to why witnesses refuse to come forward. These are rather a topical solution to a deeply-systemic problem.

Irreversible impact of political killings & the murder of 'criminals'

After a decade of widespread and systematic extrajudicial killings targeting political and human rights activists; and the murder of suspected criminals, the irreversible damage that has been left to the Filipino society has been immense. The inability of the government to afford any sort of remedies and carry out lawful punishment, particularly against those perpetrators who are agents of the States, has left the families of the victims and the society without closure. The absence of closure to this phenomenon had evolved into ongoing distrust and lack of confidence to pledges the government has made to eliminate extrajudicial killings.

An already distrustful society, which is a byproduct of the government's inability to ensure the protection of their rights and of making remedies available to them, would be even more difficult to encourage for "active support", as what the Task Force 211 had earlier expressed as limitations to their work, in any quest for remedies. The unresolved killings--whether they are political in nature or not--has resulted in society being apathetic and indifferent; nor because they are not aware of what was happening around them or not wanting to find solutions to the phenomenon of killings ravaging their communities, but the absence of any sort of protection and remedies from what they see has developed this mindset.

In cases of politically motivated killings, the present norm is gradually becoming not a protest against the murder of an individual who was helping others pursue cases in court, expressing their opinion to criticize the ills and corrupt practices of government officials or anybody fighting for a cause, but rather a question on why would the person choose to continue doing his work despite knowing well the risk. In cases involving murder of suspected criminals, the 'innocence or guilt of the victim' no longer matters, but the justification for his murder is rather a presumption of guilt in committing a crime.

While the nature of the targeted and politically motivated extrajudicial killings, which are deliberately planned to silence a person, is grave in itself, particularly when it involves security and often draws controversy forces; however, mostly the prosecution of these cases suffers identical difficulties to cases of murder of suspected criminals. Of course, depending on the background of the victim and his influence, and the ability of his supporters to protest, pushing the government to the wall to do something, some sort of redress can be done. But largely, this phenomenon of extrajudicial killings in reality is part of the way of life.

The society, however, never ceases to be shocked when killings of activists advocating for the rights of the poor and the oppressed are done, priests advocating for the right of the ethnic minorities and opposing mining operations, environmental activists advocating for the preservation and protection of natural resources who are in conflict with local politicians and warlords, the murder of journalists due to their harsh criticism, amongst others. These types of extrajudicial killings that have since been part of the Filipino's way of life that merely repeats itself in the course of time. The documented cases of extrajudicial killings this year are no different in terms of how they were executed, their motivation of killing and the lack of judicial remedies once taken to court for prosecution.

Apart from the irreversible damage to the social mindset and way of life, the decades of extrajudicial killings wherein those targeted are human rights and political activists, the very persons involved in documenting human rights violations, the recording of violations were immensely affected. Where there are person who could document, one has to endure ongoing and real risk to one's life; where documentation has become difficult because, the exposure of the real picture of human rights conditions, is a huge challenge. When there is no ready documentation of cases, this do not necessarily mean that such incidents--extrajudicial killings, forced disappearance, torture, massive displacement due to armed conflict and demolitions--did not happened, but rather those who are trained and supposed to document these cases have themselves becomes victims.

Local politicians, 'warlords' assuming control: With the failure of the institutions of the government to afford remedies and carry out lawful punishments, the people and the society in these places turned to the local politicians, some of whom are 'warlords' in their communities, for protection and remedies as an expedient solution. These warlords then effectively assume control of all aspects of the people's lives. What happened in the cities of Davao, Digos, General Santos and Tagum, in Mindanao; and in Cebu, in the Visayas, are proof on what could happen in communities when the government's institutions become detached from the actual realities of the people in these geographically fragmented societies.

As most of the people in these places are fully aware, the systematic 'vigilante-style' extrajudicial killing of persons, including minors, over suspicions of committing crimes

has been occurring for over two decades before it became the object of investigation by the Commission on Human Rights (CHR) in March 2009.

In Davao city it was concluded that "The killings were mainly attributed to the shadowy Davao Death Squad (DDS), the same group that the CHR investigated for the deaths of more than 1,000 persons, mostly drug suspects from 1998 to 2009."[3] However, two years after the public inquiry was conducted, to our knowledge none of the perpetrators in these vigilante-style killings have been convicted in a court trial. Apart from these symbolic hearings and demonstrations, of late organized by the CHR in Davao itself, purposely to "principally aimed at stirring public vigilance" no conviction of perpetrators have been seen. The progress of the CHR's investigation and status of the recommendations after their conclusion of their public inquiry in March 2009 is also yet to be known by the public.

The arrogance of the local political leader, particularly the Duterte's in Davao city, by its distortion of their core to their obligation to protect the right to life of the people in their community has continue to maintain the status quo. Thus, with the apparent support and consent by the locals, as evidenced by their keeping in power of the same political clans, the acts of commission or omission by the Dutertes in relations of 'vigilante-style killing', is beyond the reach of any sort of accountability to their own people. It means, whether or not there are measures to prevent these killings, investigations results to remedy and conviction and to afford protection to persons facing threats, they no longer matter. The local discourse on human rights protection in these communities is reduced to these politician's own interpretations than discourse on legal obligation. They are in direct control.

However, despite the enormous amount of documentation as to how possibilities of remedies are deprived due to systemic defects in the process of investigation and prosecution of cases involving vigilante-style killings in places identical to what happened in Davao, this practical knowledge is yet to transform into social discourse in order to develop ways how to effectively deal with the phenomenon of, if not the already accepted norm and habit of, killing people without fear of any sort of prosecution.

The social public discourse did not depart from or remain confined to deeply flawed presumption that the institutions of justice, on which the people seek to obtain remedies, function in a manner of being capable of providing justice to victims of extrajudicial killings. This presumption, however, disregard the practical realities as to how, in the daily reality, the investigation, prosecution and the adjudication of cases, actually happens in these public institutions.

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3 Philippine Daily Inquirer, 'CHR holds rally vs summary killings in Davao,' 28 July 2011, see: http://newsinfo.inquirer.net/32377/chr-holds-rally-vs-summary-killings-in-davao

Flawed investigation is obstacle to prosecution

Apart from the new cases documented, this year we also examine how the police and the Office of the Ombudsman, the government body responsible in prosecuting security forces who are accused in violations; conducted its investigation and prosecution of cases.

The role of the policemen, by conducting its investigation; and the Ombudsman, on deciding whether or not those accused have the case to answer is very important. The boundary is very thin between what occasion the policemen's findings of their investigation are credible in the prosecution of security forces who were of their same uniform; and, how the Ombudsman performed its role to investigate, like on evaluating the police and the prosecutor's investigation report, to ensure the possibility of remedies to victims. Here, we analyze how the Ombudsman functions in conducting its investigation over serious allegations of violation against the security forces.

Systemic delays in investigation: The Ombudsman's decision not to pursue charges against court personnel, after almost four years of its investigation, "for deliberately misinforming an NGO staff helping the families of the victims of extrajudicial killings that the arrest order for a military sergeant, Jerry Napoles and his accomplice, accused of murder had not yet been issued" in July 2006, because it has become "moot and academic"[4] is symptomatic of how excessive delays in investigations, as a result of their neglect and incompetence, effectively denies possibilities of remedies.

The court personnel involved, who were responsible for disinformation, which resulted to the delay in the arrest of the soldier to be arrested for murder, were never held to account. The policemen, who also neglected the execution of the arrest resulting to the delays in the trial of the case, have not been held to account. The soldiers' arrest was important because the trial could not proceed unless they are presented in court.

Even when the Ombudsman completes its investigation on a case, after say seven months, it nevertheless excuses itself from any responsibility to investigate. The case of three torture victims, Charity Diño, 29; Billy Batrina, 29; and Sonny Rogelio, 26; Talisay, Batangas on 23 November, 2009[5] are evidence to this. The Ombudsman did not investigate the allegations of torture arguing that it was within the jurisdiction of the Commission on Human Rights (CHR) to investigate torture case.

However, by invoking this argument, the Ombudsman ignored its legal obligation under the Ombudsman Act of 1989 that "requires them to investigate the aspect of "civil and criminal liability (of state agents) in every case where the evidence warrants in order to promote efficient service by the Government to the people" of a complaint. Here, the

4 AHRC Urgent Appeals Case No. 039, 2011,'Ombudsman investigated public officers for years without a case filed,' 9 September 2011
5 AHRC Urgent Appeals Case No. 036-2011, 'No investigation to complaint of torture filed one and a half years ago', 15 July 2011

Ombudsman has indeed completed their investigation but it result to nothing. While the Ombudsman claimed no responsibility to investigate, the institution--the CHR, whom it implored to have the legal obligation to do so, also did nothing.

Even the simple matter of posting their completed investigation report, say from the Philippines to Hong Kong on the case of ongoing threats on Enrico Estarez and his family[6] in January 20, 2006, took them four years to do. This may be considered an administrative matter; however, its impact on the case was irreversible. By failing to ensure the copy of their completed investigation report reached the complaining party, in this case the AHRC, it denied any sort of possibility to question the content of the report. Here, after four years the family involved could hardly be located to be informed of their investigation report; or, for them to comment on their present situation.

The Ombudsman's endemic delay to conclude its investigation, whether or not the accused who are agents of the State have the case to answer, is not exceptional. The Ombudsman's decision to prosecute the policemen involved in the torture of five victims, collectively known as the 'Abadilla Five'[7], 14 years after the incident happened is evidence to this. With the case was finally filed in court for prosecution, two of the accused are already dead. Here, even after the complaints are filed in court, there was no substantial progress to the hearing of the case--which is typical to the status of cases in courts.

Failure to investigate: Similarly, on the case of Enrico Estarez and his family even when Ombudsman knew full well of their power to investigate on its own allegations of wrongdoings committed by the agents of the State they did not do so. In his case, despite having identified the soldiers responsible for threatening him, forcing him to leave from his place for fear of his life; however, the Ombudsman did not inquire on its own but rather depended heavily on the questionable investigation by the CHR, to terminate the case invoking that "CHR has concluded that what transpired was to his own liking and decision."

Similarly in the case of the 'Talisay 3' mentioned earlier, the lack of or absence of adequate investigations into serious complaints of torture, illegal arrest and detention by the police and the soldiers, is a common occurrence. In their case, too, despite repeated appeals and open letters addressed to the CHR asking them to investigate the allegations of torture, to our knowledge none of those appeals were acted upon. Because the CHR and the Ombudsman failed to investigate, the torture victims were effectively deprived any possibilities of remedies of any sort. No charges for violation of Anti-torture Act of 2009 were filed. They had to endure the trial of their case with evidence on them that was questionable, if not taken by way of torture.

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6 AHRC Urgent Appeals Case No. 035-2011, 'Ombudsman did not investigate cases of threat and torture on its own,' 30 June 2011
7 AHRC Campaigns, 'Abadilla Five: Convicted without real review,' see: http://campaigns.ahrchk.net/abadilla5/

In another case, the Ombudsman completed its investigation into the case of torture and disappearance of a farmer, Ambrosio Derejeno[8] in September 13, 2011, in a month. The speed of its investigation in this case, however, did not mean the Ombudsman was in reality prompt in concluding their investigation; however, they are rather quick in getting the case they were investigating out of their responsibility once they find legal justifications in doing so. Here, the Ombudsman, as usual, depended heavily on the report of the CHR without performing their power to review the investigation reports submitted to their office. In concluding their investigation, the Ombudsman ignored concerns to the " exclusion from the prosecution of "Arbitrary Detention", under Article 124 of the Revised Penal Code (RPC) the commanders of the perpetrators, namely Lt. Col. Paloma of the 63rd IB and Lt. Col. Narciso of the 20th IB" in the CHR's report.

Under the legal procedures, the Ombudsman had the power to approve or dismiss the recommendations for prosecution made before them by the CHR and the Department of Justice, whether or not a case should be filed in court; however, their exercise of their power is completely inconsistent in most cases. Here, while they could have reviewed the findings of the CHR or, on its own conduct their investigation rather than depending on the investigation reports that the CHR had produced, but apparently they did not do so.

Police are law breakers, not law enforcers

The nature of how the police functioned, as shown by the cases documented this year, has reaffirmed what we have known long before. The police arrest and detain persons disregarding any requirements of legal procedures, they investigates cases--motivated not by their legal obligation to afford remedies to victims of violations--but rather their expediency, reward or purely convenience depending on which suits them; their use of power to arrest, detain and as an aide to prosecute any lawbreakers is in reality not likely to upheld rule of law in real sense.

The notion that the role of the police force is to 'serve & protect' the people is deeply flawed and unrealistic; nevertheless, the only purpose that serves is to remind the people, who remain subject to its power and control, of its inherent complete contradiction.

'Not to serve and protect': This observation is not merely a simple criticism but rather the conclusion by the parents of John Paul Nerio[9], a 17-year-old student tortured inside the Women and Children's Desk office at the local police in Kidapawan City in December 11, 2011. It took him three months before he disclosed his torture to his parents. Nerio was illegally arrested, detained, he was questioned without counsel, his parents were not informed of his arrest and he was tortured over the false allegation he was among those involved in a fight at a bar. He happened to be at the scene where the fight happened, but was never involved in the fight.

8 AHRC Updated Urgent Appeals Case No.031-2011,'Ombudsman abdicates its power to review,' 10 June 2011
9 AHRC Urgent Appeals Case No. 063, 2011, 'Torture of a 17-year-old boy at the Women and Children Desk at a police station', 18 March 2011

When his parents pleaded to the superior officers of the policemen, their request to have their complaint investigated were ignored. The police instead questioned them as to why their son was still out at late night, they rejected their request to have the policemen involved identified, investigated and imposed with sanctions upon, obviously in defense of their own colleagues. It was only after appeals from the AHRC that their complaint of torture was investigated, not by the local police, but rather by the district Public Attorney's Office (PAO) and the regional office of the Commission on Human Rights (CHR) in Cotabato city.

But even the PAO and the CHR's investigation reports were problematic. Instead of prosecuting the policemen mainly for the violation of the Anti-torture Act of 2009, the public lawyers sued them for violation of Special Protection of Children Against Abuse, Exploitation and Discrimination Act (R.A. 7610). The AHRC had to appeal from them to consider including their complaint charges for violation of the Anti-torture Act against the accused. Another complaint was also filed for abuse of authority at the People's Law Enforcement Board (PLEB), a citizen's complaint mechanism against members of the police force. The result of these, however, was no longer known. When the administrative complaint was heard, the accused policemen also intensified its threats, intimidation and bribery offer to the witnesses and the families of the victim. The victim's family was forced to withdraw the complaint against policemen in exchange of monetary settlement due to threats.

In two other cases, the continued detention of two persons who were arrested in place of the real accused, namely Ramon Dadulo[10], whom police illegally arrested in Glan, Sarangani, in place of the real accused in the Maguindanao massacre in November 10, 2010; and Daud Ali Manampan Rahim who was arrested in September 22, 2011 in Pikit, North Cotabato, demonstrates the outright disregard to due process in making arrest, detention and prosecution of persons in their custody.

Dadulo is still in prison despite strong evidence that he was not the same person the policemen were to arrest. His identity is different from the real accused in a photograph that the police had, his defense of alibi that he was not in the massacre when it happened and testimonies by the persons known to him are too strong to be ignored to logically justify that the real accused and him are the same person. Nevertheless, he has not been released and remains in jail, supposedly to wait for the trial of his case.

In Rahim's case, the police did not question the legality of his arrest by the soldiers. Under the law, only the police have the power to legally arrest, unless the offender was in the act of or escaping from the crime he had just committed; however, in arresting Rahim this condition did not exist but the soldiers arrested him ignoring any notions of legality and due process. The soldiers explained that they arrested Rahim as he has had

10 AHRC Urgent Appeals Case No. 195, 2011,'A man is detained for Maguindanao massacre in place of the real accuse,' 7 October 2011

existing arrest order in connection with a bombing incident. Here, nothing in the Revised Rules of Criminal Procedure justifying conditions for 'warrantless arrest' could apply, thus, Rahim could have been released when turned over to the police for custody but they did not do so.

There is also a gap between what is stated as a policy of the police establishment, like the statement of Director General Nicanor Bartolome, chief of the Philippine National Police (PNP), that "the (PNP) are strictly maintaining a rights-based policing system with all police personnel"[11] to the actual practice of the policemen the country. Thus, PNP chief Bartolome claims that "promotion of rights-based policing is a norm in the service" are likely to stagnate as a 'norm' unless there are substantial proofs that those policemen responsible for violations are punished.

In this same interview, while the PNP chief Bartolome claimed that the police establishment adheres to "maintaining a rights-based policing system" but apart from the usual orders that "police personnel under instruction to fully observe police operational procedures" Bartolome did not elaborate on how accountability is upheld and the legal application of the doctrine of command responsibility within the police establishment are enforced. This rhetoric of police adhering to norms and standards in the protection of human rights is typical, but their application in reality, as explained this report, is far from reality.

Police functions subordinate to military: Soldiers implementing arrest order sor usurping the rudimentary police power, like investigation of crimes, has been a common practice not only in conflict areas but also in heavily militarized communities, where the police basically lost its control. In these places, there is no real police force civilian in nature that is functioning in its real sense. In communities ravaged by war, decades-old insurgencies, military presence on pretext of restoring 'law and order' and pretext of fight against terrorism, the role of the military have found its legal justifications.

The legal justifications on how the soldiers should be allowed to perform within the legal framework of the policing that is civilian in nature is done, for example by the local executives who has influence, control and the authority in part on the local police and military should function, signing memorandum of agreements to create join task forces between the units of the military and the police forces. This merging of military and the police has since, for decades blurred the limitations and role of the military and police should be. The existence and operation of joint forces is the prevailing standards in Mindanao.

In heavily militarized communities, there is no police that is civilian in nature--whether they do function according to their legal obligations or not--that exist to operate, but has become subordinate to the military. The police had virtually yielded its authority to

11 Journal Online,'PNP maintains rights-based policy system', 14 November 2011, see at: http://www.journal.com.ph/index.php/news/national/17440-pnp-maintains-rights-based-policy-system

soldier to enforce laws in communities, supposedly legally within their area of jurisdiction, but are in reality controlled by the military because of their heavy presence. Here, the discourse as to whether the soldiers are subordinate to the police is pointless.

The illegal arrest, detention and torture of Abdul-Khan Balinting Ajid[12], who was arrested by soldiers in Sumisip, Basilan on July 23, 2011 is evident to this. When he was arrested, the soldiers did not have arrest orders with them, did not explain to him the reason for his arrest and tortured him by pouring gasoline in his body to set him on fire. To justify his arrest and his continued detention, the soldiers invoked that the person mentioned in a warrant of arrest, which was different to Ajid, was him. In the military's custody, he was paddled using a piece of wood on his back, stomach and shoulders; he was kicked about the head, not given any food, blindfolded, repeatedly punched and kicked, the neck of a bottle was inserted into his anus four times before he was set on fire on three occasions after his torturers poured gasoline on his head down to his lower abdomen.

In Ajid's case, his continued detention at the provincial jail in Basilan, despite his identity being different from the real accused, Kanneh Malikil; is devoid of legal procedure. He was remanded to jail for 'safekeeping purposes' without any charges filed in court in his name, his conclusion of his supposedly urgent petition for habeas corpus was deliberately delayed and none of his perpetrators have so far been charged in court for violation of the Anti-torture Act of 2009. The military establishment, apart from disclosing some of the names of the soldiers who were involved in torturing him, routinely refused to divulge the 'task organisation', the list of names of soldiers who took part in the operation, from scrutiny on pretext of 'confidentiality' but in effect was to cover-up their men.

Despite knowing this full well, too, the police establishment who has territorial jurisdiction where the torture of Ajid took place did nothing. The police, instead of investigating on its own the crime of torture that the soldiers had committed, did nothing. The investigation and identification of the soldiers involved in torture of Ajid was firstly left to his legal counsel; or, to the victim and his witnesses himself in proving that he was tortured. The CHR, who also investigated the case, strangely though put the burden in identifying the torturers on the victim and his witnesses when one of their investigators argued that:" Ajid's camp failed to produce other witnesses that could corroborate and pinpoint the three military personnel as responsible for torturing him."[13]

In another case, when torture victim Asraf Jamiri Musa, a 17-year-old Education student, his illegal arrest and detention in Lamitan City, Basilan on June 23, 2011, was a result of a joint police and military operations. The military and police accused him of being a

12 AHRC Urgent Appeals Case No. 157, 2011,'Soldiers torture a man and set him on fire,' 8 September 2011
13 Philippine Daily Inquirer, 'CHR report: Torture and disappearances attributed to security forces continue in Mindanao,' 12 November 2011, see at: http://newsinfo.inquirer.net/92859/chr-report-torture-and-disappearances-attributed-to-security-forces-continue-in-mindanao

member of Abu Sayayaf, an illegal armed group involved in kidnap-for-ransom. They also planted evidence of explosives on him and forced him to admit his membership to the group.[14] His wrists were cuffed behind his back and he was blindfolded with a handkerchief; his ankles were bound with rope and his head wrapped with cellophane. He was then repeatedly punched in the stomach and left side of his body. On three occasions he was submerged in a water-filled drum. The soldiers repeatedly threatened to kill him if he did not admit his membership with the group.

In another case, the local policemen also did not question the soldiers when they turned over to them a visibly injured Jedil Esmael Mestiri, a 27-year-old torture victim, whom they also illegally arrested in Lamitan City, Basilan June 26, 2011 on allegations he was involved in the bombing incident in Lamitan City in 2010.[15] He was also questioned about the incident of kidnapping of an engineer, while they repeatedly punched his chest. In custody, he was not given food to eat for breakfast, only water to drink.

Irreparable damage of military intervention: The systematic, widespread and routine intrusion by the military on rudimentary police functions did not only undermine the supposedly civilian nature of the policing system but rather have severe implications in terms of law, criminal procedures and notion of supremacy of the civilian over the military. This practice has been for years tolerated and consented by variety of legal agreements and memorandums between the military establishment, the police and the civilian government, have already become an acceptable norm. At present, in communities where military presence is heavy, it is meaningless to argue that the police should be law enforcers and the military is subordinate to it because in reality it is otherwise.

Of late, the renewed hostilities between the Philippine Army (PA) and the Moro Islamic Liberation Front (MILF), a rebel group in Mindanao, in October 18, 2011 in Al-Barka, Basilan province, was prompted by soldiers usurping what should have been the role of policemen. It was reported that the "nineteen soldiers on a mission to arrest those behind the 2007 ambush of government troops in Basilan"[16], particularly Dan Laksaw Asnawi, who "the MILF confirmed was an MILF commander under the 114th Base Command." In this renewed fighting, 19 soldiers were killed.

Apart from the illegal role military took in conflict areas, it has also become their habit to exercise control by means of military authority in communities, be they in urban or remote areas, they consider as their target areas for their counter-insurgency operations. In these areas, for example in pineapple plantations operated by Dole Philippines Inc., also known as Dolefil, in Polomolok, South Cotabato, the military are used virtually as

14 AHRC Forwarded Urgent Appeal Case No. 015-2011,'Torture of a 17-year-old boy falsely accused of being a member of a kidnap-for-ransom group,' 7 September 2011
15 AHRC Urgent Appeals Case No. 174-2011,'Investigate two separate incidents of torture in Basilan,' 23 September 2011
16 Philippine Daily Inquirer, '10,000 can't go home yet in Al-Barka,' 14 November 2011, see at: http://newsinfo.inquirer.net/93895/10000-can%E2%80%99t-go-home-yet-in-al-barka

'private armies' of these private firms to protect their interests on their pretext of ensuring the security. Here, soldiers summons and questions plantation workers over allegations they are engaged in illegal activists of the communist rebels, but in reality designed to suppress legitimate union activities that threatens the firm the soldiers were to protect.

The use of soldiers, like their routine, widespread and illegal practice of summoning plantation workers and union leaders, in remote villages effectively harasses and intimidates them in carrying out their legitimate union activities, has had severe damage in communities and work places where soldiers had heavy presence. In some plantations areas, factories and mining activities with support from the government, soldiers are deliberately embedded to spy on and monitor the activities of workers and the villagers to ensure that they do not threaten the operation of these private firms. The military's intervention and role in these types of activities had found their legal justification on 'counter-insurgency operations'.

This may happen in urban, remote, conflict area and even in places--in which presence of the military should have been very unlikely--like inside shopping malls, the military establishment had found its justification to justify their presence and operations. In the countryside, it is a common scenario in which passengers of public transport, like buses, had to get off, including those carrying children, for routine inspection in every checkpoint and military detachments along national highways as possible. Often, one would notice that soldiers who conducts the inspections inside these buses are visibly confused as to what he was looking for or inspecting about from the passenger; however, it is presumed that he was looking for explosives and person carrying firearms who possibly potential of carrying out attacks.

Not only along the highways and in communities, military presence are also seen in bus terminals where passengers would have to open their luggage for them to inspect, before they are allowed entry in these terminals. This role should have been performed by police personnel; however, in a country with long history of military intervention and usurpation of authority over the police and the civilian government, the stark contradiction is very evident. The people are presumed to comply with this practice without question.

Anti-torture law: of its limitations, inadequate remedy

Two years after the Anti-torture Act of 2009 took effect, only the case of Darius Evangelista, the man in the widely publicized police torture video in August 2010, was known to have reached the court for trial. The DoJ concluded in its August 22, 2011 resolution, a year after the complaint was filed, that the policemen involved are liable for

"charges for Torture Resulting in the Death of any Person, as defined and penalized under Republic Act No. 9745(Anti-torture Act of 2009)."[17]

The accused policemen were: Senior Inspector Joselito Binayug, who was seen in the video severely beating and torturing his genitals pulling it by a string, and his accomplices attached to the Manila Police District's Police Station 2. In this case, Evangelista's body has not been found, but nevertheless the DoJ other supporting evidence sufficient enough to established the court's requirement of 'probable cause' as the cause for action against the policemen. There are concerns as to the limitations on which the accused would be successfully convicted, however.

Apart from Evangelista's case, the complaints of the torture of Misuari Kamid of General Santos City in April 30, 2010, a man whom the Special Unit of Illegal Drugs had illegally arrested, detained and tortured after planting evidence on him; the torture of Lenin Salas 29; Rodwin Mando Tala, 26; Jose Llones Gomez, 44; Daniel Kalayaan Navarro, 26; Jerry Pamandanan Simbulan, 32 of Pampanga province; and, the torture victims Allamin Samal, 42; and his companion Ibrahim Alimanan, 37, who were accused for allegedly bombing a bust in Matalam, Cotabato on October 21, 2010; did not reached the court for prosecution after they were dismissed by the prosecutors during the preliminary investigations of these complaints.

In Misuari's case, the charge was reduced to physical injury from a far serious criminal charge of torture. In the complaint of Salas and four other victims, the "provincial prosecutor's office junked the case claiming the victims were either lying with their faces down or blindfolded when they were allegedly tortured and could not have seen the person torturing them"[18]. The torture complaint of Samal and Alimanan were also "dismissed due to insufficient evidence"[19] by the city prosecutor in Kidapawan City were purely based on conjectures and presumptions regarding the absence of the existence of torture.

In justifying the dismissal of Samal and Alimanan's complaint, the prosecutor's resolution was quoted in this report that the injuries the victims had suffered "could be that owing to the fact that the arresting officers were in civilian attire, complaining witnesses have offered some resistance at the initial stage of the arrest. It could be also that in order to subdue them, the arresting officers employed some degree of force upon complaining witnesses which was reasonably necessary in order to effectively enforce arrest. This could be the reason why upon examination, a hematoma was noted on the left lower quadrant of Ebrahim Macasulay Alimanan,"[20] Furthermore, the prosecutor in this case,

17 ABS-CBN, 'DOJ OKs filing of torture raps vs Binayug et al,' 13 September 2011, see at: http://www.abs-cbnnews.com/nation/metro-manila/09/13/11/doj-oks-filing-torture-raps-vs-binayug-et-al
18 Philippine Star, 'Rally held vs anti-torture law,' 9 November 2011, see at: http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=67&articleid=746023
19 Mindanews, 'Torture complaint vs NorthCot cops dismissed,' 17 October 2011, see at: http://www.mindanews.com/top-stories/2011/10/17/torture-complaint-vs-northcot-cops-dismissed
20 See footnote No. 19

whose role is supposedly to determine whether or not there is probable cause to the commission of torture by the police, rather deliberately assumed as both a medical practitioner, by giving his own interpretation of the doctor's findings; and as a trial judge, but exonerating the police by concluding that "there is much reason to believe (the policemen's) claim of innocence."

The filing of torture case in court on Evangelista's case and the dismissal of the others demonstrates the stark contradiction as to how prosecutors functions in evaluating torture case in determining 'probable cause'. The determination of probable cause is not a determination of innocence or guilt of the accused; however, as invoked by the prosecutor in the case of Samal and Alimanan, that the "reason to believe (the policemen's) claim of innocence" effectively the purpose as to what the role of the prosecutor should have been is itself contrary to its own established rules of procedures.

Remedy by publicity, not by trial

Due to absence of effective remedy in the criminal justice system, there has been an ongoing practice of victims, their families and those who supports them, to obtain some sort of remedy by way of publicity, not in the trial process. Meaning, it is not enough to file a complaint against security forces accused of human rights violations, but complainants would have to muster support within and outside the country in order to draw attention to their case with expectations that some sort of remedy can be obtain in that way. This 'mustering of support', for example protest and demonstration, has been a common scenario in most cases where victims and there are seeking legal remedies. There is a dominant assumption without the victims and complainant's presence in public to demand for redress and remedies being vigilant of the case involved, it is very unlikely that the system takes the case seriously.

This practice has made evident that those involved in the court system on which victims seek remedies from--the prosecution and the court--have already lost their credibility or that victims themselves had no confidence in them that they function in their own course. There is an assumption of a corrupt, incompetent and a system of justice vulnerable to political control justifying the importance of publicity to be able to obtain some sort of redress and remedies from them.

This notion explains the common practice of witnesses, the victims and the complainants exposing to the journalists for them to report publicly about the threats in their lives before going to police stations to register a complaint or request for protection. In most cases, those experiencing threats or at imminent risk of their life, are not often keen on making a complaint or requesting the police to protect them. To have the threats on them exposed by the media and identities of those involved are disclosed in public, by mere publicity and exposure in it there is some sort assumption that the victim will have the remedy for protection. Here, the remedy for victims seeking protection is longer within the policing system or any other protection mechanism under the country's

system of protection. The remedy for protection has become 'self-help' in which remedy for protection depends on how the victim facing threats is capable of publicizing his case.

However, even if on occasions wherein witnesses, victims and their complainants do take this strategy of 'remedy by publicity' in itself it is problematic in reality. Often, what was presumably expected as the result that there is a possibility of some sort of remedy in this strategy does not happen. Because this is a by-product of the victims having to find alternative methods of protection to ensure survival, not only of their own person, but also of the case they are pursuing in court, there is no involvement of the State. Here, everything is very unpredictable, not organized and dependent on how much victims or complainants facing threats could endure the threats in their life while their case is in progress.

The Maguindanao massacre

What happened to Myrna Reblando, the wife of Alejandro "Bong" Reblando and one of the complainants in the massacre case, illustrates the stark reality as to how witnesses, victims and the complainants had to endure risks to their life as they engaged in the process of seeking remedies and redress from the system of justice. Myrna is the vice-chair and spokesperson for the Justice Now! The group is composed of family members and relatives of the victims of the Maguindanao Massacre, particularly the 32 journalists who were murdered.

Myrna's public criticisms of the Ampatuans, an influential and powerful political clan in the southern province has put her life at risk. The Ampatuans, whose patriarch, Andal Ampatuan Sr., former governor of the province; his son, Andal Jr., a town mayor in the province whom he wanted to succeed as his post; and the latter's brother, Zaldy, former governor of the Autonomous Region in Muslim Mindanao (Armm) and many others, have been accused of being either responsible for giving orders to carry out the massacre or accomplices to it.

Myrna, who speaks on behalf of some of the families of the dead, is not only a complainant in the case but she has also been helping their private prosecutors and fellow complainants in locating for possible witnesses. She continuously monitors the trial of the case, by being present in every court hearing possible. The fear of reprisals of the witnesses from the Ampatuans was so intense that it was difficult for the complaints, like Myrna, to be able to convince any witnesses to testify in court. The murder of one of the potential witnesses, Suwaib Upham (nicknamed Jessie), in June 14, 2010 was evident to this. Upham was one of those hundreds of armed militia men who executed the victims on the orders of the Ampatuans.

At the early stage, Upham had gone into hiding for fear of reprisal from the Ampatuans and for lack of trust in the former Arroyo government. He, too, took the strategy of publicizing the threats in his life, his initial confessions as to what he knew of what

happened being one of those who executed the victims and his request to be considered for protection under the Witness Protection, Security and Benefit Act (RA 6981) were widely reported by the local and international media. However, before he could even be admitted for witness protection and to testify in court trial of what his personal knowledge were, he was murdered. Here, we see that even in cases where the victim's threats are widely publicized, there is no assurance or guarantees at all they would be effective.

Upham's murder illustrates the gross failure by the Department of Justice (DoJ) in promptly responding to applications for witness protection requiring urgent response. At the time of his murder, Suwaib Upham was not officially yet under the program. He had been waiting for the DoJ's decision for inclusion in the program since March after submitting the necessary application papers, but the DoJ rejected his application in April 2010, after a long delay, without giving an adequate explanation.

While private prosecutor Harry Roque considered Suwaib Upham, who took part in the killing of 57 people in the November 23 massacre, as being a "strong witness," former DoJ acting secretary Alberto Agra, referred to him as a "killer." Roque reportedly said that Agra "did not give a reason for not taking" him under the programme. Suwaib was killed the day before he was to fly to Metro Manila to re-apply for inclusion in the program after learning about the change of leadership in the DoJ.

Under the law a person who is "testifying or about to testify before any judicial or quasi-judicial body" can be admitted to the programme. However, under the existing practice, witnesses are only admitted when the case they are testifying in has been filed in court. There is no interim protection mechanism available for persons who are waiting for a decision by the DoJ, which screens witnesses for the program to determine if the person is qualified to act as a witness. There is also no time limitation for the DoJ to resolve applications for protection under the program.

Since the charges on the Ampatuans were filed, the families of the deceased had been approached through backdoor negotiations to settle the case out of court. There were offers of allegedly paying for Php 3 million (USD70,000) to the families of the dead in exchange for their withdrawal from the prosecution of the case in court. Myrna and her family was one of those families of the dead offered this amount. She and her children were also one of those who have been exposing in public continuous attempts to bribe them, the offer of 'blood money' and for out of court settlement by the accused in the murder charges.

In Myrna's situation, despite the confirmation by the regional office of the Commission on Human Rights (CHR) in Mindanao, of the real threats to her life and her family, she and her family were not given an effective and adequate state-sponsored protection. Myrna has a bounty of P3million pesos reward for her murder. Like other witnesses and complainants had done, the absence of protection and security forced her into enduring the threats on her life, her family and to live a life on the run.

In the Manila bus hostage incident

In their effort to obtain some sort of remedy and redress to the death of their relatives, some of the families of eight Hong Kong residents who were killed in the August 2010 Manila bus hostage incident also drew the government's and the public's attention through the media. As they commemorate the first year of the incident, they expressed their disappointment in the journalists in Manila hoping that the government takes their concern seriously.

One of them, *Ban*, remarked in an interview that: "*we are still angry now a year after the incident, because we never received any note, any word of apology from the government of the Philippines.*"[21] But, despite this case having been widely publicized and drawing so much attention internationally, their request for "formal apology from the government of the Philippines for mishandling the case and causing deaths and injuries" has not been taken into consideration; and the "reasonable compensation which can properly reflect the respect for the value of human lives" in their terms has not been met.

However, none of the two demands were adequately met on the terms of the survivors and families of the victims.

But apart from their group's request for formal apology and adequate compensation from the government, they too want to contribute in improving the plight of the Filipino people and foreigners in its territory who are vulnerable to risk. They were shocked about how the policing system functions in the country. Their incompetence and their own violations to their rudimentary rules in handling hostage incidents. Here, the group desires to also contribute to:

> "…more importantly, we do hope that in the process of the legal prosecution, we can make use of this opportunity to:
>
> …contribute to the domestic efforts of the civil society in the Philippines to push for better governance and a more responsible government through arousing more public discussion and demanding accountability
>
> …support the movement in the Philippines to demand justice and respect for human lives (we have heard about the cases of extra-judicial killings in the Philippines, that many human rights activists were killed without even a proper investigation, we are appalled and indignant about this. Also the low level of compensation level for loss of lives in the Philippines is outrageously shameful and does not reflect the respect and value of human lives at all; there should be a review on this too)."

21 MediaCorp, "Relatives of HK bus hostage victims demand direct apology from Philippines President," 22 August 2011, see at: http://www.youtube.com/watch?v=iTJquLx1dAI

In response to the group's request for apology, President Benigno Aquino III has "rejected calls from the families of the victims for a formal apology"[22] by justifying that the "the tragedy was the "act of one man (Rolando Mendoza, a police officer who was dismissed on corruption charges)" who should be blamed and not the government." Aquino, however, "expressed deep regrets for the deaths of eight Hong Kong tourists."

President Aquino, nevertheless, said the government has complied with the request for "reasonable compensation" but he did not mention the actual amount that was given. But under section 2 (d) of the Republic Act 7309, the maximum amount of compensation the Board of Claims under the Department of Justice (DoJ) could provide for "any person who is a victim of violent crimes" is P10,000 pesos (HKD1,800). The level of financial compensation that is mandated by the law, according to the family of the victims, was "outrageously shameful and (it) does not reflect the respect and value of human lives."

The group also supports demands for thorough review as to the applicability of this law, which was first enacted 19 years earlier (in March 30, 1992) of the present condition following the incident. The government, particularly the Department of Justice (DoJ) who is responsible in the implementation of this law, made no mention about lobbying to amend this law. Also, the absence of adequate legal aid for foreign nationals wanting to pursue administrative and criminal charges against members of the security forces in the Philippines have deprived them possibilities of remedies. Here, the group suffered obstacles in pursuing the charges in courts because they could not afford to pay for the private legal counsel.

Also, President Aquino has interfered in the process of criminal prosecution when he instructed the justice department in October 2010 "not to file criminal charges against an official and the policemen involved in the Manila bus hostage incident"[23] that resulted to the death of the eight tourists in the course of the 'rescue mission'. Aquino rejected to implement in full the recommendations of the "Incident Investigation and Review Committee", a Committee he also created to inquire in the hostage incident, contained in the September 17, 2010 report. The Committee of inquiry was jointly conducted by the DoJ and the Department of Interior and Local Government.

Therefore, on cases that are high profile in nature, meaning there are interests from local and international audiences, the possibility of obtaining some sort of remedy is there. In it they are not adequate and effective because they are subject to how the media and public would show interests in the case; however, it also shows that even on a high profile cases, hardly any sort of remedies and redress are possible. The political interference, notably of President Aquino's rejection to implement in full the

22 Philippine Daily Inquirer, "President Aquino: Regrets, but no apology," 24 August 2011, see at: http://newsinfo.inquirer.net/46737/president-aquino-regrets-but-no-apology
23 AHRC Statement No. 207-2010,"PHILIPPINES: A politicised, underdog system of justice," October 15, 2010, available at: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-207-2010/?searchterm=manila%20bus

recommendations of the investigation Committee he himself created, illustrates a system of prosecution subject to political control.

This explains the difficulties of some lawyer's group in taking up the case of the families of the victims, unless they would also be able to sufficiently fund the prosecution in domestic courts. It is because once local law group represents them in local courts, they could "antagonize many powerful people in the Philippines." Here, we see that even when a case involved is publicized widely and that the government of the foreign nationals supports the victims' prosecution of the case in court; however, the lack of a rudimentary form of legal aid in the country denies complainants possibilities of remedy.

Political interference by the executive branch into how the Department of Justice (DoJ) should function was obvious, not only when President Aquino decided to reject the recommendations to pursue criminal prosecution of those involve in the Manila bus hostage incident, but also in cases that are highly political in nature. Here, we observed that the executive and the government's offices under its control operate only to gain public support; this is most typical when they can benefit from its publicity.

Structurally, the DoJ operates and functions under the executive branch; and its direct control over the government's prosecution arm, the National Prosecution Service (NPS), interference by the executive branch depending on the extent of pressure on them and nature of cases, has become a common practice. This has become a norm and standards and the benchmark on how the regime in the country should operate.

In the Morong 43 case

On situations wherein the victims, their families and the groups who support them had the capacity to campaign to put pressure on the government, the possibility of some sort of remedies and redress, as shown in the case of Morong 43, is there. In this case, the victims were illegally arrested, detained, tortured and falsely charged. If we take the ordinary criminal procedures, the victims should have been released from detention in no time; however, given the nature of their case being highly political, the security forces of the government, who had accused the victims of having involvement in armed insurgencies, had their interest of putting them in jail stronger than observing their rights to due process.

In these types of cases, the established rules of criminal procedures hardly operate in its own course.

Therefore, when President Aquino ordered on December 10, 2010 to the DoJ to withdraw the charges against the Morong 43, his actions could be viewed as either "necessary to stop the wrongful prosecution of these victims" or the "DoJ and the NPS are exposing themselves to political control by the executive branch". But these hardly become a matter that requires serious attention from the public probably because the executive has since and has this habit of politically intervening for many years anyway.

Here, publicity, popular support and expediency rather than due process of law have become the considerations.

This could probably explain the people's practice and habit of holding protests and demonstrations routinely in front of the Presidential Palace in Manila, even on petty issues that do not require Presidential intervention. The gradual subsuming by the executive in the functioning and the role of its subordinate branches demonstrates its disregard for the independent but credible functioning of these offices. The role of the executive have by the day being obscured as not only the head of State implementing laws, but rather as an entity or person who could give swift justice. This type of habit demonstrates that the people have shown a lack of confidence and trust that the system of justice operates in its own course.

This also illustrates that for one to obtain some sort of remedies or redress, it has become a precondition that they should also have the ability to publicize their case, muster wide support and to put pressure on the government to intervene. Here, it shows the extent of the chronic deprivation of the possibilities of remedies and redress, particularly for victims and groups who have no capacity to put pressure on the government. They are more vulnerable to chronic corruption, incompetence, abused and manipulation by the public officials who often disregards their grievances because they have no 'influence' anyway.

Failure in complying with human rights obligations

On November 28, the Asian Legal Resource Centre, the sister organization of the Asian Human Rights Commission (AHRC) submitted its stakeholders submission[24] for the Universal Periodic Review (UPR) of the Philippines. It observed that three years after the Philippines was reviewed there have been improvement in the legal framework for the protection of human rights, particularly the enactment of the Anti-Torture Act of 2009 (Republic Act No. 9745); however, due to defects in the system responsible in ensuring this rights are implemented, these domestic laws had a negligible contribution for the protection of rights.

In its special report published in *Article 2* in March 2011 titled "Torture in the Philippines & the unfulfilled promise of the 1987 Constitution,"[25] it observes that the failure in the actual implementation of this law was due to:

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24 Asian Legal Resource Center, " Stakeholders Submission concerning the Universal Periodic Review of the Republic of the Philippines," 28 November 2011, full text available at: http://www.alrc.net/PDF/ALRC-UPR-13-002-2011-Philippines.pdf

25 Article 2,"Torture in the Philippines & the unfulfilled promise of the 1987 Constitution," March 2011, full text at: Vol. 10 - No. 01 March 2011 --Special Report: http://www.article2.org/pdf/v10n01.pdf

The ineffective and prolonged investigations by the Commission on Human Rights, breaching the 60-day period limit to complete their investigation required by the law; the prosecutors and the court judges depends heavily on oral testimonies ignoring the importance of forensic evidence, particularly on cases where eye witnesses could not be produced due to threats; and the investigation conducted by the CHR, police and medical doctor does not conform to the internationally acceptable guidelines of the Istanbul Protocol in investigating torture cases.

The PNP and the Armed Forces of the Philippines (AFP), on cases wherein their men are accused of or subjected to an investigation for torture, extrajudicial killings or forced disappearance, are routinely failing in imposing summary disciplinary sanction required by their own internal disciplining mechanism--like suspending, disarming or not giving them any assignment to ensure that they could not use their authority to oppress or threaten the complainants and victims;

Also, the prosecutors and the courts are failing to comply with the Speedy Trial Act of 1998 to ensure speedy trials and speedy disposition of cases in courts. This law has become inoperative because of their failure to examine whether or not the "motions" or "petitions" by the perpetrators accused in torture, particularly at the early stage of determining the 'probable cause' were done in "good faith" or were deliberately part of the accused "dilatory tactics"; thus, remedial rights have been abused and manipulated by the perpetrators to escape any responsibility from prosecution emboldening impunity.

One case mentioned in that report, the torture of Lenin Salas et. al, the prosecutors have already dismissed the torture complaint for reasons that the victims, who were blindfolded when they were tortured could not 'positively identify' who had tortured them. The investigating prosecutor argued that due to the victims' failure to identify the perpetrators the evidence against those charged were insufficient.

We have observed that there are chronic and systemic problems. Thus, improvement in terms of the legal framework for the protection of rights, unless the problem within the system that is responsible for the protection of rights are address, they would have little contribution in ensuring freedom from torture or other rights are protected. The discourse should not only focus on whether the government's actions of enacting domestic laws or makes superficial criticisms; but rather questions as to why, despite the Philippines' now 'well-developed' legal framework in terms of human rights, the rudimentary forms of implementation in the domestic level have been ineffective in that their failure or inability to comply with the international legal obligations requires a thorough scrutiny. However, within and outside the country this discourse has yet to substantially develop.

Reading from some of the views and opinions of UN HR Committee's on individual communications on the Philippines, it also failed in implementation of the views and recommendations not only on cases of torture, but also on cases of extrajudicial killings, on which the AHRC's previous reports on extrajudicial killings in the Philippines have

also been referred to as the complainants supporting documents. In these cases, the Committee has already ruled the Philippines to have committed violations to its international legal obligations, particularly of the Article 2 of the ICCPR. Here, the lack of implementation of the HR Committee's views, opinions and recommendations, were not only a generic problem on cases of torture, but also in extrajudicial killings.

The lack of clear, established, effective and adequate implementing mechanism within the domestic level, the HR Committee's views would have less importance in the practical realities of the lives of the victims and complainants involved. Here, we see the Philippine government violated the ICCPR and other treaties; however, due to the absence of an effective implementing mechanism in the domestic level, virtually it is immune from this violation. Therefore, the importance of the Committee's decision are more on affirming the State had committed violations, that the norm and standards are further developed and that 'exhaustion of domestic' remedies does not include when domestic remedies are 'ineffective and prolonged'.

Conclusion

In the Philippines today, there is some sort of strength in terms of the recognition of human rights, as they are well established in the legal framework and the relatively, at least judging on how the regime advocates to protect the rights of the Filipino people. This is probably because of the active role of the present government to ensure for the protection of human rights. The discourse on human rights has been the benchmark on how the government would be assessed of its performance in governing the country.

Among the Filipino people, there is common and shared perception of democratic space presently being enjoyed; however, the confusion and obscurity shown by some Filipinos and the public officials illustrates that perhaps, the understanding of how human rights should be protected by the State--and not by way of victims and families finding their own alternatives and expedient means to get remedy from as the common practice, could probably tells us of the difficulties of articulated human rights problem; or, the unarticulated human rights problem is the byproduct a system of justice that is chronically and systemically dysfunctional making it difficult to comprehend how human rights should be protected.

In this report, we put emphasis on illustrating how, in reality; rights are protected or not protected within the framework of the domestic mechanism that is legally obliged to implement them--the criminal justice system. Here, we conclude that the chronic defects in the country's system of justice had tremendous implications for the protection of on human rights. The discourse, we challenge here, should not only be about describing the violations of rights and to refer to norms and standards on which they have been violated; but rather to be able to thoroughly examine whether the system itself is capable of dispensing justice.

The ongoing violations of rights, from torture, illegal arrest and detention, targeted killings of activists, abduction and forced disappearance of activists and killings of ordinary people, amongst others, taking place in the country, are no longer exceptional in nature. They are rather inevitable where the system of justice operates and functions contrary to how they should have been functioning. However, it is unfortunate that the ongoing discourse on the protection of rights within the country today has yet to develop towards this.