



THE STATE OF HUMAN RIGHTS IN THE PHILIPPINES - 2008

THE HUMAN COST OF INSECURITY

The situation of human rights in the Philippines in 2008 was marked by renewed conflict and an escalation of violence in some parts of Mindanao. The conflict was aggravated by the aborted signing in August of this year of the Memorandum of Agreement on Ancestral Domain (MOA-AD), an agreement that could have set the framework for peace negotiations between the government and the Moro Islamic Liberation Front (MILF) concerning the decade old conflict. The renewed violence has resulted in dozens of civilians being killed after being caught in fighting, being hit during military air strikes, or dying from illness and diseases at evacuation centres. At least 500,000 persons from different conflict-affected areas have been displaced from their villages, fearing for their lives. The fate of civilians and displaced persons remains unclear given the lack of a breakthrough in peace negotiations.

When the Supreme Court (SC) ruled on October 14, 2008, that the MOA-AD was contradictory to the 1987 Philippine Constitution and that it had violated the right to information due to a lack of public consultation with concerned parties, the negotiations halted. The failure of the government and the rebel group to resolve the conflict has left civilians, including women and children, at risk of dying from being caught in fighting at evacuation centres. The evacuees, who are farmers for the most part, have become dependent on hand outs and food rations while their crops were left to rot.

The renewed conflict also witnessed the re-emergence and strengthening of the government's long-standing policy of arming civilians. Under the pretext of defending civilian communities from rebel attacks, the Philippine National Police (PNP) has replicated the military's Citizens Armed Forces Geographical Unit (CAFGU), calling them the Police Auxiliaries (PAXs). The members of the CAFGU are known to have been responsible for many acts of violence and other abuses since its creation. The police began recruitment and training in August to enable so-called "force multipliers" in defending civilian communities, while the soldiers were pursuing the MILF forces. The MILF was blamed for the murders of innocent civilians in Kulabugan in Lanao del Norte and in Maasim in Sarangani, which resulted to the escalation of violence in August. The violence subsequently spilled over to two other provinces, North Cotabato and Maguindanao. Thousands of shotguns were being given to civilian recruits in conflict affected areas.

Police Auxiliaries' (PAXs) duties are to defend civilian communities from attacks. However, the measures have instead placed the villagers and these communities at serious risk of communal violence and vigilantism, as has been the case in the past under similar situations. When the recruitment of PAXs was



publicly announced, a vigilante group who called themselves the Reformed Ilaga Movement came out in public vowing to fight against the Muslim rebels. The policy to arm civilians has given legitimacy to vigilantism and exposed civilians to greater risk of being caught in the conflict.

In the cities of General Santos and Davao, in Mindanao; and Cebu in Visayas, 2008 was marked by a serious increase in vigilante killings of persons suspected of involvement in criminal activities. These places already have a history of vigilantism in the 1970s and 1980s that has now become resurgent as a result of the authorities' actions.

Cases of targeted extra-judicial killings of activists and enforced disappearance have sharply dropped this year following a concerted campaign by local and international NGOs and other actors at the international level. This is a very welcome development for the Asian Human Rights Commission, which has been one of a number of groups actively campaigning to bring these grave abuses to a halt. However, the killing of ordinary persons with impunity has continued through this upsurge in vigilantism, in which murders have been taking place almost daily without credible measures being taken by the authorities to render justice and halt these crimes. The victims and families of the dead have not obtained any remedies. Not a single perpetrator of vigilante killings was charged and prosecuted in court in 2008.

While the government's security forces have been engaged in fighting rebels in the south, the actions the authorities are taking for the protection of lives of civilians in the rest of the country, notably those who remain as potential targets of extra-judicial killings and threats, have been ineffective. The writ of amparo that the Supreme Court promulgated in response to the extra-judicial killings also faced challenges concerning its effective implementation. The remedies provided by this writ, which provides protection for persons under threat, were initially seen as being a ray of hope in the fight against the hundreds of extra-judicial killings (numbering over 800 since 2001). However, the usefulness of the writ was undermined after the courts hearing petitions dismissed several applications for writs concerning threatened activists (see details below). The failure by the government to take measures and introduce laws to assist the effective prosecution of cases - for instance, a strengthened witness protection programme, clear policies defining command responsibility, and laws criminalizing enforced disappearances and torture - frustrated attempts to ensure the protection of lives and the security of persons.

The lack of adequate laws criminalizing enforced disappearance and torture also prevented victims from obtaining remedies. The families of disappeared persons have not been able to obtain adequate assistance from the police or other concerned agencies. Given the lack of a legal obligation to take such cases seriously, cases of disappearance have routinely not been thoroughly investigated, and none of these authorities have been held accountable for their failure or negligence. The absence of these key laws has provided impunity to the security forces accused of having been involved in disappearances.

The practices used in arresting persons resemble those that have taken place when persons have been forcibly disappeared, notably because no arrest warrant was produced, and the victims were not allowed



access to legal counsel or to their families, who often initially remain in the dark about the whereabouts of the detained persons. The police have deliberately prevented victims from contacting their relatives, blocked their access to legal counsel and held them incommunicado before being presented before court. Some victims, who are briefly disappeared, are later surfaced in police custody, and are often detained thereafter under false charges.

In previous years, the government and specifically the army carried out a campaign of eradication of left-leaning opponents in a well-documented spate of extra-judicial killings. International pressure initially resulted in numerous forced disappearances taking place instead. More recently, targeted individuals are more likely to be disappeared for a short period and then surfaced in detention under charges that offer no prospect of being released on bail. While the AHRC has been encouraged by the drop in the number of killings, it remains clear that the authorities are still engaged in illegal actions against their political opponents in an unjustifiable campaign of rights violations that seriously undermines the rule of law in the country. In addition, given that there are no legal protections from these kinds of actions and that the perpetrators of grave rights violations have not been made accountable, it is possible to foresee a resumption of killings in the Philippines.

Some legal remedies have been made possible through concerted efforts on the part of civil society, notably concerning a case that concerns the lengthy detention of five persons, known as the Tagaytay Five ¹, three of whom are activists, who were arbitrary arrested and detained for two years on the false pretext that they were involved in rebel activities, before being released in August 2008 (see further information on this case further down in this report). They were released after a court ruled to dismiss the police's complaint against them.

Political and human rights activists continue to be subjected to a pattern of threats. Activists investigating cases of disappearance, labour leaders who are fighting for workers to be provided with adequate compensation and benefits, amongst others, have been targeted in particular. Such threats are also extended to these persons' families. The military is making threats and conducting overt surveillances on the offices and houses of their targets. This surveillance is subsequently followed by activists being killed, disappearing or arbitrarily arrested on the basis of fabricated charges. In some places, the extent of fear and threats has been so severe that discussion about human and labour rights has been curtailed and individuals have become less willing to make complaints concerning violations of their rights.

¹ Please see further information in the AHRC urgent appeal at: <http://www.ahrchk.net/ua/mainfile.php/2008/2989/>



THE AUTHORITIES' INABILITY TO PROTECT LIVES

In April of this year, the Philippines was reviewed under the United Nations Human Rights Council's new Universal Periodic Review (UPR) process. This resulted in a series of recommendations being made by various States which the Philippines should comply. Under the UPR process, the State being reviewed can either accept or not accept the recommendations made. Among the recommendations which the government accepted was that calling on the government to: "intensify its efforts to carry out investigations and prosecutions on extra-judicial killings and punish those responsible; and to strengthen the witness protection programme and address the root causes of this issue." The government was also urged to "provide a follow-up report on efforts and measures to address extra-judicial killings and enforced disappearances," including by taking into account the recommendations of Professor Philip Alston, the United Nation's Special Rapporteur on extra-judicial, summary or arbitrary executions.

The UPR's outcomes reaffirmed the findings of the Melo Commission, an independent body which the president created to conduct an inquiry to "address the media and activist killings" and subsequently those of Professor Alston. In concluding its inquiry, the Melo Commission report released on 22 January 2007, pointed out that its recommendations "mostly fall within the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions" of the United Nation's Economic and Social Council issued on May 24, 1989.

Apart from stressing that there should be "political will" to address the extra-judicial killings, the Commission recommended that: all reports and complaints of extra-judicial killings against the military must be investigated promptly; an adequate forensic laboratory should be made available to enhance investigative capability; the police's collection of evidence must be strong and sufficient for conviction; prosecution of cases is to be handled with efficiency and dispatch; the implementation of Witness Protection Programme must be enhanced - by also including the protection to persons receiving threats; and laws which would maintain a strict chain-of-command responsibility with respect to extra-judicial killings must be enacted.

In March 2007, less than two months after the Commission's report was released, the Supreme Court acted on the report's recommendation calling for the speedy disposition of cases of extra-judicial killings and designated at least 99 special courts to hear these cases. However, they have been rendered meaningless as cases have not been filed with these courts.

In the AHRC's 2007 annual report, both the Melo Commission and Professor Alston's recommendations were described as requiring urgent and effectively implementation. However, one year later, the lack of progress illustrates the government's inability and unwillingness to effectively implement them. While there has been a welcome drop in the number of killings, there have been no effective prosecutions of those



responsible, who continue to enjoy impunity for grave crimes, threatening the enjoyment of human rights at present and in future.

This gives rise to several questions:

- Is the government incapable of implementing recommendations made by local and international expert bodies and mechanisms and the international community? The country's capacity can only be measured by conducting an examination of the functioning, or lack of, of its justice institutions and the reality of the respect for the rule of law.
- If it capable, is it unwilling to implement these recommendations and why is this the case?
- If it is unwilling, what credibility should the international community give to the Philippines, notably as it continues to violate its voluntary pledges made to secure membership in the UN Human Rights Council?

THE LACK OF PROSECUTIONS AND CONVICTIONS

139 cases of extra-judicial killings and 23 cases of forced disappearance have been documented by the AHRC since January 2003 and were communicated to the United Nations in the AHRC's sister-organisation, the Asian Legal Resource Centre's (ALRC), submission under the UPR process in November 2007. Five cases of extra-judicial killings have been documented by the AHRC in 2008. None of the cases documented by the AHRC between 2003 and end 2008 have resulted in successful prosecutions and the conviction of the perpetrators by the authorities. This indicates that there is total impunity for one of the most heinous human rights violations in the country. As previously mentioned, 2008 has also seen a significant increase in vigilante killings, particularly in the central and southern part of the country, which likely stems from the evidence that one can get away with murder in the Philippines.

Those seeking legal remedies or redress have been met with barriers and risks. The ineffectiveness and weakness of the Witness Protection, Security and Benefit Act (RA 6981) has also been exposed. For instance, the qualification for protection does not cover witnesses to cases that have not been filed in court or persons facing death threats, which remain contrary to the Melo Commission's recommendations. This means that many persons that urgently require protection are not getting it.

In April, 2008, the Office of the President (OP) pledged to strengthen the witness protection programme by certifying as urgent the legislation to strengthen the programme. However, a draft of this legislation is not known to exist as of the time of writing (December 2008). The government has pledged to increase the funding for the programme, but there is no information about how the funds would be spent or how this will directly benefit witnesses and the families of the dead.



This is not the first time the OP has made misleading claims. For example, when the OP issued a press release on April 22, it claimed that the government had already ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Actually, President Gloria Macapagal-Arroyo's had signed the instrument, which is an expression of intent, but it is only after the Senate concurs to the ratification of a treaty that it is considered legally ratified. The Senate has not done so as yet.

Neither the Department of Justice (DoJ) nor the Philippines National Police (PNP) have taken any serious actions to provide interim arrangements for the protection of witnesses facing threats. Although the Supreme Court has taken the initiative by promulgating the writ of amparo, in response to the lack of an effective witness protection mechanism, the enforcement of this remedy remains poor. The writ is a temporary judicial protection available to any persons whose life and liberty are seriously threatened. However, having this judicial remedy enforced effectively has been difficult in practice, as will be seen below. This is why legislation to strengthen the witness protection programme remains and urgent priority.

The implementation of the writ of amparo has been undermined. Five petitions for writs have been rejected on the premise that the petitioners have failed to produce "clear evidence" of "apparent or visible" threats to their lives in recent times. The National Union of Peoples Lawyers (NUPL), which is involved in representing victims in courts, has raised serious concerns as to how the remedy is being understood in courts. The courts' decisions have run contrary to the writ's intent as they cast the burdens of proof concerning threats on the complainants, while the writ calls for cases to be dealt with in a way that guarantees personal safety urgently, rather than as a case under trial, which would cause inappropriate delays and requirements for persons seeking protection.

THE POLICE IS FAILING IN ITS DUTY TO PROTECT

The police force has the utmost obligation as part of investigations to ensure that witnesses come forward and are encouraged to cooperate by affording them the necessary protection, including being recommended for the witness protection programme. However, the police have been completely failing in this regard. In the case of human rights violations, it can be surmised that this is more often than not in order to protect the authorities and guarantee impunity.

For years, the authorities have been using the lack of witnesses that are willing to come forwards concerning cases such as extra-judicial killings to justify their lack of action, even though the main failing in these cases has been the lack of methodical and effective investigations. In Davao City, the head of the local police has used the lack of witnesses as a convenient excuse to try to exonerate himself and his men from



blame concerning their continuing failure to have those responsible for vigilante killings identified, arrested and effectively prosecuted in court. Despite there being at least 54 such killings between February and July 2008, not a single person has been prosecuted in court.

The protection of lives and properties, and the need for investigation is clearly stipulated as being amongst the police's highest obligations under Republic Act 6975, section 24 (a, b and c). The police are clearly failing in this department, notably by failing to ensure interim arrangements for protection in the absence of a strengthened witness protection programme.

The case of journalist Dennis Cuesta of General Santos City, who died on August 9, 2008, days after unidentified gunmen shot him, illustrates the failure by the police to ensure protection for witnesses and for journalist facing threats. Before Dennis' murder, it is reported that he had been receiving death threats for testifying in a land dispute case against an influential person and for being critical in his radio programme. The police did not affording him protection and security. All they did was offer to issue him with firearms by enlisting him as a "police asset" so that he could protect himself. However, he was killed before even such an evidently flawed arrangement was put into place.

In another case, the wife and children of activist Jose Manegdeg (a.k.a. Pepe), who was murdered on November 28, 2005, have struggled for three years to obtain any reasonable arrangement for long term protection. Jose's wife, Florence, and her two children, have had to move from one place to another for their own safety. The murder charges filed against a soldier who was said to have shot Jose, Captain Joel Castro, formerly of the 50th Infantry Battalion, Philippine Army, have been dismissed for lack of sufficient evidence and witnesses. The lone witness to his case, recanted his statements out of fear, prompting the prosecutor to dismiss the complaint. The police did conduct fresh investigation into the case, but there has not been any substantial progress made.

Florence and her two children have appealed to the Philippine National Police (PNP) but they have not been given any protection. These experiences, that lead to loss of faith in the system, are shared by many other victims who survived attempts on their lives and the families of the dead who are pursuing cases in court. In fact, targeted persons do not tend to seek judicial protection through a writ of amparo or from the authorities, even if they receive serious death threats, as there is little or no faith in these.

Take the case of activist Gerardo Cristobal, a labour activist and member of the Solidarity of Cavite Workers (SCW), who was murdered on March 10, 2008. Gerardo first survived an attempt on his life on April 28, 2006, when a police officer and a member of a local security force ambushed the vehicle he was riding in Imus, Cavite. At the time of his murder, Gerardo had been involved in actively organising workers and labour unions in Cavite province for them to assert their rights and welfare. In Gerardo's case, to seek protection from the local police would be impractical, as they were the ones trying to kill him. In February 2007, he was again shot at by a gunman riding on motorcycle, while he was inside a government office in Imus, Cavite. Finally, he was killed in March 2008, without having been able to seek any protection. Actions



by the government to protect persons under threat and investigations into extra-judicial killings would have prevented many such grave abuses.

TO BE AN ACTIVIST IS TO BE THREATENED AND RISK BEING KILLED

Persons who work in favour of human rights or the interests of the poor and marginalized face serious risks in the Philippines. Such persons are branded as being sympathisers or supporters of the armed communist rebels fighting against the State and are then considered as being “legitimate” targets for reprisals by the military and other pro-State groups. Activists have been charged in court in acts of reprisal for their having pursued investigating cases of disappearance or for exposing abuses by the military soldiers deployed in rural villages. Labour activists have also faced threats attempting to force them to refrain from carrying out legitimate union activities on pain of facing reprisals. The military also places labour and other activists under surveillance and has offering reward money for the arrest of a union leader, Dante F. Senillo², on the pretext that he is a communist sympathizer. Details concerning such cases can be found later in this report.

Also the colleagues of activists that have been killed have also become the subjects of death threats due to their work and their association with the other victims. Threats are often sent by SMS (short message service) from phone numbers of unknown persons, warning activists to cease their activities warning on pain of death. Sometimes the threats are made by sending envelop to an activist containing bullets. The activists are told that they are being watched. This phenomenon, which was common during the peak of the extra-judicial killings, continues to date.

The apparent lack of technical capacity by the police to effectively investigate these threats and identify the origin of the threats contributes to their continuing prevalence. Activists often don't report the threats they are receiving to the police as a result of a lack of trust.

When four activists from the Alliance for the Advancement of People's Rights (KARAPATAN) in Cebu City, assisted the family of Calixto Alfante, who had disappeared on June 11, 2008, they began receiving threatening messages on their mobile phones warning them to stop investigating the case. When they exposed the soldiers' involvement into the disappearance of Calixto, the military retaliated by charging the group with criminal offences - kidnapping and illegal detention - accusing them of holding their witness against his will and forcing him to make false statements against the soldiers. The witness has denied being held against his will when the preliminary inquiry was conducted on October 17, 2008. However, the serious allegations concerning the military's involvement in the abduction have yet to be impartially investigated.

² Please see further information in the AHRC urgent appeal at: <http://www.ahrchk.net/ua/mainfile.php/2008/2825/>



Instead of complaining to the police regarding the threats against them, the four activists opted to write protest letters addressed to the headquarters of the Armed Forces of the Philippines (AFP) in Metro Manila, seeking their intervention. Ordinary police investigations are not perceived as being capable of delivering results. Such distrust has become the rule rather than the exception in the Philippines, leading to a dearth of registered complaints. The police urgently need to take steps to regain public trust. The only way to do this is by performing credible investigations and getting real results.

The manner in which the police are investigating cases involving threats sometimes verges on the incredible. In one such case, the police effectively asked the victim to perform the investigation himself. Labour activist Dante Senarillos of Ormoc City had been the subject of continuing threats on his life since April 2004. The police's investigation was clearly failing to get any results. As the result of an intervention by the UN's Special Rapporteur on Human Rights Defenders, the police summoned him and required him to prepare a reply to the police authorities that should have been answered by the local police following an investigation.

In Tarlac City, soldiers have also been threatening several labour leaders, four of whom are union officers of the International Wiring System (IWS), a firm located inside the Special Export Processing Zone (SEpz) in Hacienda Luisita. Dozens of other workers have also been threatened but their cases have not been made public for security reasons. The soldiers reportedly came to their houses and told them to refrain from their union activities, for instance, calling for better compensation and benefits, or there would be reprisals against them and their families. The military attempts to justify such activities by claiming the targets of the threats are supporting the communist insurgents.

In Tarlac, the legacy of threats, targeted attacks and the extra-judicial killings of several political, human rights and labour activists, has resulted in high levels of fear in the community. Many activists formerly working in this place were forced to migrate elsewhere due to the gravity of the insecurity and the risk of being killed.

ARBITRARY ARREST, FABRICATION OF CHARGES

Arbitrary arrests, notably of activist and human rights defenders, continue to be a problem in the Philippines. The fabrication of charges is also used as a method to keep targeted persons in unjustifiable detention.

Persons have been arrested and detained despite being unaware of the charges against them. This is often the result of prosecutor's failure - either deliberate or otherwise - to ensure that the accused receives summons or notices informing them of the nature of the charges, in accordance with Rule 112, Section 3 of the Revised Rules of the Criminal Procedure, enabling this person to be given the opportunity to reply and



find legal counsel to represent him in court to defend him he AHRC has also documented the misuse and abuses of authority by prosecutors during inquiries and the filing of charges, in particular concerning activists and human rights lawyers. Although the charges against the victims or accused would later be dismissed for lack of evidence, the prosecutors' practice of endorsing the filing of fabricated cases in court have resulted to victims suffering needless detention.

The case of the so-called Tagaytay Five is a point in case. When the police arrested these five persons, three of whom are activists, in April 2006 in Tagaytay City, the arresting officers were acting on unverified intelligence information that they were committing rebellious acts and that they had planned to overthrow the government. Two years later, the Regional Trial Court (RTC), Branch 18 in Tagaytay City ruled on August 20 to dismiss the complaints against them for lack of substantial evidence, releasing the five persons from detention. However, it took over two years before the trial could begin, subjected the victims to prolonged unnecessary and arbitrary detention, which included torture in detention. Even after their release, the police responsible for arbitrarily arresting and detaining them, and for torturing them while in custody, have not been held accountable. The prosecutors who recommended the filing of charges were likewise not held accountable.

These five persons have experienced a blatant violation of their rights under the law on Rights of Persons Arrested, Detained or under Custodial Investigation (Republic Act 7438). The law rightly stipulates that any persons under arrest or under custodial investigation should not be deprived of their right to legal representation, contact with and visits from their relatives and should be treated appropriately while in custody. However, these five persons had been deliberately hidden from their relatives following arrest, held incommunicado and tortured for days while in police custody. The Commission on Human Rights (CHR) on May 14 of this year also affirmed, in concluding the inquiry they conducted into this case, that the victims' rights have been violated as cited above.

In a letter to the AHRC has received dated September 23, Commissioner Leila de Lima, the chairperson of the CHR wrote: "We would like to inform you that the CHR-National Capital Region (NCR) Regional Office has already resolved this in a resolution dated 14 May 2008. It found that respondents—who are members of the Philippine National Police (PNP) and the Naval Intelligence and Security Group (NISG) of the Philippine Navy—are guilty of violating the human rights of the complaints". In the resolution, the CHR also mentioned that the records of the case would be forwarded to the Office of the Ombudsman for the filing of the appropriate criminal and administrative cases against the respondents.

However, three days after the Tagaytay Five were released, on 31 August 2008 in Silang, Cavite, another nine persons, eight of whom are peasant activists and organizers in Cavite, were arbitrarily arrested after the policemen stopped the vehicle the activists were riding en-route to a meeting in Silang, Cavite. All of them were forced to alight from the vehicles and they were subsequently taken to the PNP's Regional Office in Camp Vicente Lim in Calamba City, Laguna. Their hands were tied, their mouths and eyes shut with adhesive tape, and they were taken to a place where they were subjected to questioning and tortured. Each of them was repeatedly beaten.



Ms. Janice Javier (23) was hung upside down and was tortured to force her to admit that she is a member of the New People's Army (NPA) guerilla. Mr. Franco Romero's (27) nipples and testicles were squeezed when he would not answer questions. Bernardo Derain was electrocuted on the head and on his sexual organs, a hard object was inserted in his penis and a plastic bag was placed over his head. Felix Nardo (24) was also electrocuted and his head was immersed in a drum full of water. Two days later, however, they were released from police custody for lack of evidence.

In this case, the police violated Rule 113 on Arrests, as they should have been able to prove that the accused: had committed, were actually committing or were about to commit a crime; or that there was probable cause to believe they had committed a crime. None of these requirements of a lawful arrest in absence of an arrest order were met when the police arbitrarily arrested and detained these nine persons. This was seriously aggravated by the subsequent incommunicado detention and torture to which the victims were subjected.

Seeking legal remedies or compensation for torture is blocked due to the absence of a domestic law on torture. Although there is a law that provides compensation for victims of violence and illegal detention - the Board of claims for victims of unjust imprisonment or detention and victims of violent crimes (Republic Act 7309) - its implementation has not been effective and it does not take into consideration the gravity of torture. Compensation can only amount up to a maximum of Php10,000 (USD 203) and the application should be made within six months of the incident taking place. This is obviously not effective or appropriate for victims of torture or those illegally detained for many years.

The National Prosecution Service (NPS), whose prosecutors are responsible for prosecuting cases in courts, are under the direct control and supervision of the Department of Justice (DoJ), the agency that is also responsible for implementing this compensation Act. The DoJ operates under the executive branch. There is a public lack of the trust in the DoJ as concerns the implementation of the compensation act, resulting in victims largely not seeking compensation under this system. For example, in the case of the Tagaytay Five, the DoJ prosecuted the charges against them in court, rendering absurd any attempts to then attempt to apply for compensation from the same agency that persecuted them.

LEGAL PERSECUTION OF ACTIVISTS

The arbitrary arrest and continued detention of Remigio Saladero Jr., a labour lawyer, after being issued arrest orders over fabricated charges of murder in Calapan City Mindoro Oriental, was also a result of the prosecutors deliberately abusing their authority. Saladero was forcibly taken from his house on October 23 in Antipolo City making use of an arrest warrant concerning murder charges. Saladero was not aware of any charges filed against him. The name of the person and the address in the arrest order was different



from his but the policemen took him anyway. He first briefly disappeared and was unable to have contact with his relatives to inform them of his whereabouts while in custody. By having not having been aware of the charges against him, he was not able to make a defence in court. He was later taken to a provincial jail in Calapan City, Mindoro Oriental where he is presently detained.

It is thought that the prosecutor deliberately notified the murder charges against Saladero to the wrong address in order to deprive him of any opportunity to respond to the murder charges. A correct address would have enabled him to receive the prosecutor's summons or notice and prepare a defence. Also, the refusal by the court clerk to provide the court documents to the persons helping Saladero's case ran contrary to the victim's right to be properly informed of the nature of charges being filed against him.

Furthermore, he was also falsely charged by the prosecutor's office in Lemery, Batangas, together with 18 other political and human rights activists for allegedly being responsible for burning the cell site of a telecommunications company on August 2. The prosecution service in such cases is being used to persecute activists as could be seen in the case of the Tagaytay Five above.

The charges were a physical improbability as one of the accused, Romeo Aguilar, Aguilar was confined in a hospital when the incident took place – he was in a wheelchair due to diabetes. The burning of the cell site was also claimed by a rebel group, the New People's Army (NPA). In the complaint before the prosecutor's office, Saladero and the 18 other activists were charged with "arson and conspiracy to commit rebellion".

In Cebu, activist Vimarie Arcilla who had been receiving threatening messages was also charged with kidnapping and serious illegal detention by the Provincial Prosecutor's Office (PPO) in Oriental Negros. The charges were posted in a press release in July 29, 2008, on the Philippine Army's (PA) official website, based on a complaint filed by the family of Catalino Ortega of Barangay Dodbob, Valencia.

EXCESSIVE DELAYS ARE DEPRIVING TORTURE VICTIMS OF REMEDIES

Excessive delays in the prosecution system and the courts are depriving victims, particularly those alleging torture, from obtaining redress and remedies. As an example, take the case of the Abadilla Five, who are five persons who were illegally arrested, falsely charged and tortured while in police custody.

In this case, the Abadilla Five were arrested in separate incidents on June 1996 by several persons attached to a special police unit, "Task Force Rolly", in Fairview, Quezon City, in connection with the murder of Rolando Abadilla, an influential police colonel during the regime of President Ferdinand Marcos. The police



arrested them without any arrest warrants and they were detained incommunicado for days in a police "safe house."

There they were brutally tortured forcing them to confess involvement in Abadilla's murder. The policemen used electric shocks, suffocate them with plastic bags, severely beat and assaulted them, amongst other things. They were eventually sentenced to death in August 2000 based on evidence extracted under torture.

Before they were convicted for the murder of Rolando Abadilla, the CHR conducted its investigation into the allegations of torture, maltreatment and violations of their rights under Republic Act 7438. On 26 July 2007, the Commission concluded its investigation finding prima facie evidence to charge the 21 respondents, 15 of them policemen—six of whom were already reported to have died. One of the respondents was Senior Superintendent Bartolome Baluyot whose men were involved in allegedly planting evidence and the torture of three men. Their recommendation was submitted to the Office of the Chief State Prosecutor (OCSP) which is under the DoJ for their appropriate action.

The CHR has the authority under the Constitution to investigate complaints of violations of rights and submit its findings to the prosecutor's office, in this case with the OCSP of the DoJ. The CHR, as a public complainant, has concluded that "it [has] found a prima facie evidence" in indicting the policemen and their accomplices. Similar to Tagaytay Five's case of this year, the Commission also concluded the victims' rights were violated. The complaint was then taken over by State Prosecutor Marilyn Ro. Campomanes for preliminary investigation, in order to resolve whether or not there was probable cause to file a case.

However, for five years, Prosecutor Campomanes failed to conclude the preliminary investigation and to act on the recommendations by the Commission. Despite repeated appeals by the victim's legal counsel for the immediate resolution of the complaint and endorsements by Prosecutor Campomanes' head, the Chief State Prosecutor, the complaint dragged on for many years without resolution. Some of the documents have gone missing following Prosecutor Campomanes' reassignment from the OCSP to the City Prosecutor's Office (CPO) in Muntinlupa City. Despite having been reassigned and years of delay though, the OCSP continued to handle the complaint.

In explaining the loss of some documents and years of delay, Prosecutor Campomanes stated in her affidavit in replying to administrative charges filed against her with the DoJ that she had decided to take the documents home, and some were lost as a result. She was charged with neglect of duty, loss of case documents, and failure to resolve the complaint promptly. She, however, claimed the victim's legal counsel had sought to defer the conclusion of the resolution, which the latter denied. The administrative charges against her are yet to be resolved. Under the procedure, the prosecutors are required to resolve complaints promptly.



Only after the administrative charges were filed with the NPS against Prosecutor Campomanes was the case transferred to other prosecutors for their resolution. On 21 August 2001, the three special prosecutors assigned to resolve the case decided to dismiss the Commission's recommendation on the basis on subjudice rule. While Prosecutor Campomanes failed to conclude the case in five years, the panel concluded it in one month. The panel argued that to proceed with the investigation and prosecution of the case would "unduly influence or bend the mind of the Supreme Court (SC)" which at that time was reviewing the death sentence handed the five men by a local court in August 1999.

After the panel dismissed the complaints, several appeals were made to the DoJ by the complainant's legal counsel for the prosecutor's office to reconsider its decision. Under DoJ Department Circular No. 70, section 3, the DoJ Secretary has the authority to decide whether or not a charge is filed in court once a prosecutor's findings are challenged. However, the appeal process dragged on for over a year, and it was only on January 8, 2003 that the DoJ Secretary allowed the case to be reopened for preliminary investigation.

On March 25, 2004, the prosecutor issued charges against the respondents in court, but they did not include charges concerning torture. On 27 September 2004, the prosecutor submitted recommendations to the Ombudsman, who has the authority to review and make recommendations concerning criminal cases perpetrated by members of the police and military, for their review and appropriate action. The complainant's legal counsel has filed a partial motion for reconsideration to the prosecutor's office; however, it ruled that since the case was already under the jurisdiction of the Ombudsman, the authority to decide on its merit is upon them.

At the time of writing, the Ombudsman is yet to recommend the filing of charges in court. The complaint is still pending with the Ombudsman. Apart from the delays to the complaint of torture the Abadilla Five have filed, their two other appeals—the Petition for Review on Certiorari and the Motion for Reconsideration filed before the Supreme Court and the Court of Appeals (CA)—regarding the latter's decision on 1 April, 2008, affirming their conviction for murder, had not been resolved.

THE WRIT OF AMPARO IS UNABLE TO HELP THE VICTIMS OF VIGILANTE ACTION

While there is a glimmer of hope for activists facing threats that they may be able to obtain judicial protection under the writ of amparo, this is not the case for persons who are routinely targets of the vigilante killings in southern and central part of the Philippines. These victims are typically alleged to have had involvement in criminal activities or are former detainees. Vigilantes have been taking the law into their own hands and executing such persons, with impunity. In the cities of Davao, General Santos and Tagum in Mindanao and Cebu in the Visayas, where vigilante killings have become part of local people's daily lives, persons who are likely targets of such action cannot obtain protection from the State, notably the police and the judiciary. Many persons are not aware of the writ of amparo and do not know how to



seek protection under it. Many do not trust the authorities to help them, notably as some local officials have been openly endorsing as justifiable the murders of suspected criminals.

Furthermore, the authorities publish lists of individuals who are involved in illegal drug dealing and those using drugs, saying that they will suffer the consequences. These amount to death threats. These lists and threats are attributed to Mayor Rodrigo Duterte of Davao City.

The plight of Jhonson Tiempo, of 1st road, Barangay Calumpang, in General Santos City who had to seek refuge in a local radio station, instead of seeking police assistance or judicial remedies, after having been told that he was going to be killed, shows the lack of protection mechanisms provided to targets of vigilante killings. Another man, Aque Aballe of Purok 6, Sitio Lanton, Barangay Apopong, was an eye witness to the murder of another victim by vigilante group in his village in Barangay (village) Lanton, in April. He killed himself by hanging on July 27. His suicide was driven by fear that he was now being targeted because he had witnessed the murder of his neighbour who was sitting next to him when he was shot dead. The gunmen warned he would be next.

These two incidents took place at the peak of vigilante killings in General Santos City this year. They illustrate how ordinary persons have been deprived of protection or are not aware of how to avail themselves of it. It is the government's duty not only to provide protection, but to make sure that these offers are known to the public.

While there is a Public Attorneys Office (PAO) that may be able to assist the victims, this office is overwhelmed with cases.

Most of the applications for writs of amparo are filed by human rights lawyers or lawyers who are involved in private practices, who know the law and its intricacies. For most persons, notably the types of persons being targeted by the vigilantes, this remains out of reach. There is no local group currently assisting persons experiencing threats of vigilante killings. Local NGOs are too frightened to get involved in documenting cases of vigilante killings or to assist families of the dead by way of affording them the legal assistance they require.

There is also a perception that the families of the victims of vigilante killings are unwilling to pursue cases in court. As a result, none of the tens of cases involving vigilante killings have reached courts. It is therefore of utmost priority for the concerned authorities, in particular the judiciary, to address these needs with urgency. In the cities of Davao and General Santos, although the existence of a "death squad" has long been public knowledge, no action has been taken to prevent further killings or bring justice concerning past killings.



One of the Melo Commission's recommendations was the need for legislation on the principle of command responsibility with respect to extra-judicial killings. The Commission sought to "penalize a superior government official, military or otherwise, who encourages, incites, tolerates or ignores any extra-judicial killing committed by a subordinate". Since the Commission's recommendations were put forward, no such legislation has been created, which means that public officials who incite or tolerate vigilante killings cannot be held accountable for their actions. Officials and the police authorities are failing with regard to their constitutional obligations to protect the right to life of any persons regardless of their social standing, and have furthermore often become complicit in these deaths by failing to act.

ARRESTS RESULTING FROM FALSE TERRORISM CHARGES

The country's prosecutors have abused their powers in particular in cases relating to terrorism charges.

An example is the case of Edgar de la Cruz Candule of Botolan in the Zambales province. When the police arrested him from his friend's house on March 21, 2008, he was first charged with illegal possession of a firearm and ammunition. Candule was forced to admit that he owned the pistol and the ammunition recovered from the house while in police custody.

However, on April 1, 2008, the prosecutor, in the absence of substantial evidence, amended the complaint from illegal possession of firearms and ammunition to a violation of the Human Security Act of 2007 (Republic Act 9372). The prosecutor simply copied verbatim the core elements, notably "sowing and creating a condition of widespread and extraordinary fear and panic," stipulated in the law that would constitute an act of terrorism, without providing any further information to substantiate the amendment to the complaint.

On November 28, 2007, Mr. Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, expressed concern in his report, concerning several provisions of the RA 9372. Mr. Scheinin criticised the law for "not in accordance with international human rights standards." The government gave assurances that only when the elements mentioned earlier - "sowing and creating a condition of widespread and extraordinary fear and panic" - are satisfied could there be charges filed in court against any a person. However, Candule's case illustrates that even if they are not substantiated and irregularities take place at the prosecution level before they are endorsed to court, terrorism charges can be filed. The Human Security Act remains in effect despite criticism about the prosecutor's misuse and the UN expert's opinion.

Before Candule was charged for terrorism, this law had also been used against activists. Once a person is charge with terrorism, he is exposed to risk and may be killed. Those who kill a person charged with terrorism know they do not risk prosecution.



For instance, Jaime Rosios disappeared after he was charged for acts of terrorism he disappeared after having been forcibly abducted. Rosios, a member of the Board of Trustees of the YBL (Yellow Bus Line) employees union, was charged for the August 2007 bomb blast at the company's bus terminus in Koronadal City. At the time he disappeared, he and the union were in the process of negotiating a Collective Bargaining Agreement (CBA) with the company, seeking better compensation and benefits for union members. He was charged together with three other persons for allegedly committing acts of terror. Rosios' whereabouts remains unknown to date.

As with the Candule case, the prosecutor who endorsed the filing of terrorism charges against Rosios and his fellow accused in court did not substantiate these or satisfy the requirements needed to make such charges. Rosios and his fellow accused were charged with committing acts of terror without the prosecutor having established that there were grounds to suspect that they were the ones responsible for the bomb blast. It is believed that Rosios' disappearance was directly linked to his being charged.

CONCLUSION AND RECOMMENDATIONS

Many of the human rights problems facing the Philippines are well known. At the heart of the problem is a lack of political will to implement solutions to problems, even though there are many recommendations about how to bring about these solutions. In particular, the AHRC is of the opinion that the strengthening of the justice system should be of primary importance, as there is no other way to effectively ensure the protection and enjoyment of rights, the punishment of perpetrators and reparation to the victims of violations.

Therefore, it is strongly recommended that an independent mechanism be created to monitor and evaluate the actual implementation of the recommendations made by the concerned international and local agencies, in particular the UN Special Rapporteur on extra-judicial, summary or arbitrary executions and the Melo Commission, as well as the key outcomes of the Universal Periodic review and other UN Special Procedures and relevant Treaty Bodies. There has been a serious failure by the government to date concerning the implementation of much needed recommendations from these bodies.

There should be a through review of the provisions and the implementation of the Witness Protection, Security and Benefit Act (RA 6981). The government's pledge to have this law strengthened, in particular the clauses regarding the requirements before a witness can be admitted into the programme, have remained unfulfilled to date. The draft on strengthening this law, if there is one, should be made public to enable a reasoned discussion on this subject.

The concerned government agencies, in particular the Philippine National Police (PNP), the Commission on Human Rights (CHR) and the Department of Justice (DoJ), should urgently develop interim protection



measures for persons facing continuing threats and risks, as the failure to take steps regarding this will likely lead to further deaths, that it is the duty of the government to prevent.

The DoJ and Task Force 211, the presidential agency created to take responsibility for the prosecution of murder cases that are political in nature, should also consider as a priority the expansion of their mandate to include vigilante killings. Although these cases may not be political in nature, the number and frequency of such killings are making a mockery of the country's justice system and they represent a significant failure concerning the government's obligation to protect the right to life and security of the country's citizens, regardless of their social orientation.

The Supreme Court's (SC) adoption of two writs, the writ of amparo and the writ of habeas data which complements it, deserves recognition. However, there have been strong reservations as to how judges are dealing with applications, as they are ignoring the fact that these writs are designed to provide urgent relief and not lead to exhaustive and lengthy procedures before decisions. These are tools designed to protect the lives and security of persons.

With regard to the government's policies of arming civilians, in particular the continued operation of the Citizens Armed Forces Geographical Unit (CAFGU), Civilian Volunteer Organization (CVO), and the Police Auxiliaries (PAX), it must be abandoned. These groups must be disbanded. The continued existence and operation of such armed militias has already obscured the notion of state responsibility, permitting abuses of authority and rights while enabling impunity.

In addition to the policies arming civilians, there should also be a thorough review regarding the implementation of firearms controls. The spread of firearms is exacerbating the incidence of extra-judicial and vigilante killings in the country. The practice in which officials of the military and the police issue de facto weapons permits to persons they consider as being "assets" should be abolished.

Existing laws that lead to the violation of human and constitutional rights, in particular the Human Security Act of 2007 (RA 9372), which has already been declared contrary to international standards, must be repealed. The continued implementation of this law has arbitrarily deprived accused individuals of their rights, notably concerning their right to obtain legal counsel, the rights of the accused under custodial investigation, and the type and extent of punishment they face, inter alia. The arbitrary use of this law by public prosecutors, notably in the filing of unsubstantiated criminal complaints, has already resulted in arbitrary detentions.

In addition to the country's pledge that it would ratify the Optional Protocol on the Convention against Torture (OPCAT), the country's Congress should also ensure that domestic laws criminalizing torture are enacted without delay. The ratification of OPCAT would have no meaning, unless domestic laws are



promulgated to bring national legislation in line with the Convention Against Torture, notably concerning legal remedies, and the country's constitution.

The government should also ensure the enactment of the proposed laws regarding the criminalization of enforced disappearance. The lack of such a law, even though the Philippines is a signatory to the Declaration on the Protection of All Persons from Enforced Disappearance, is a contributing factor to the families of the disappeared's inability to seeking adequate legal remedies in cases of disappearance.