



PHILIPPINES

Systemic failure of investigations aggravates rights abuses

The continued failure to prosecute and punish the perpetrators of extra-judicial killings,¹ forced disappearances and other grave violations of human rights, illustrates how deep the problems concerning human rights are today in the Philippines. Despite repeated assurances, commitments and pledges by the government that it would take action, investigations are cursory at best and legal remedies for the victims and the families of the dead remain beyond reach. In reality, the perpetrators of these killings - whether they are the police, military or paramilitary groups - are not yet being held to account. It is worth recalling that the United Nations Human Rights Council's Special rapporteur on extra-judicial killings, Philip Alston, visited the Philippines in early 2007 and concluded that the military are responsible for a large number of the political killings taking place in the country. The government's pledges to its people and the international community, notably in the Human Rights Council itself, have either proven meaningless or deepened the distrust felt by the victims and their families, as they have not resulted in any substantial progress. A lack of political will and failing institutions of the rule of law are at the centre of the government's failure to address the killings in the country in 2007.

The lack of political will and the ineffective or corrupt institutions explain why, despite the numerous recommendations from various institutions and groups on how to deal with killings and disappearances - for instance, the Melo Commission that the president created, the U.N. Special Rapporteur on extra-judicial, summary or arbitrary executions; the European Union (EU) and several local and foreign organizations - the government is still failing to make progress. The criminal justice system remains deeply flawed and incapable of dealing with crimes committed by State-actors, notably in cases where those actors are committing violations on behalf of the State. The notion of protecting fundamental rights is almost non-existent within this system. Some of the institutions of the rule of law – the police, prosecution and elements within the judiciary – are in state of denial about the practical problems that are undermining the delivery of justice. Their inability to try those responsible for grave abuses and to protect the lives of the victims and witnesses results from deeply rooted systemic failures. Repeated commitments and pledges are not enough if the authorities continue to ignore the root causes of the failure of the country's systems to address human rights violations. The lack of political will to do this is the main obstacle to the enjoyment of human rights and security in the Philippines at present.

¹ AHRC documented 36 cases of extra-judicial killing since January 2007 up to the time of writing of this report. This represents only a fraction of those believed to have been carried out. Local groups report 60 cases from January to July, for example.



The continuing problem of threats to and violations of the right to life, the failure to punish and prosecute perpetrators, and the lack of adequate remedies to victims, despite a large amount of international condemnation and pressure concerning these problems in the country, are frustrating and further deepening the loss of faith by the victims and their families in the authorities. The failure to hold those responsible to account is without any doubt ensuring that violations continue to occur.

These are the reasons why victims of human rights violations refuse to come out to complain or seek legal remedies. Activists or persons facing continuing threats are forced to take protection into their own hands because of the state's inability to help. The existing mechanisms are unable to address this insecurity, sometimes with fatal results.

Furthermore, there are gaps in legislation that ensure that victims cannot receive appropriate reparation. Victims of torture and enforced disappearance remain unable to seek appropriate remedies due to the absence of laws criminalizing these practices. Workers and labour leaders are forced to give up legitimate struggles to obtain improved rights and welfare due to continuing violence and the lack of protection. As mentioned earlier, a large number of recommendations by various expert bodies have not been implemented to address this lack.

To cite an example, special courts had been created to hear cases of extra-judicial killings but progress has been negligible. How could these courts function when there are no cases filed and complainants are not coming forward, and where prosecutors or the police fail to effectively perform their duties, often resulting in the dismissal of the complaints? The Witness Protection, Security and Benefit Programme (RA 6981) was to be strengthened further, but there are no indications that this is happening at this time. Large numbers of witnesses, the families of the dead and those seeking legal remedies often remain unaware about how they can best do this or who can assist them with this. However, when questioned about the lack of prosecutions, the government often casts blame on these persons for not cooperating.

The legislative bodies have continuously failed to take appropriate action to remedy the prevailing situation by using their power to enact laws and policies to ensure protection of fundamental rights, and to impose punishment and remedies. For many years, bills concerning torture, for example, have been filed in the legislative bodies but have not been enacted. Torture and enforced disappearance are not criminal offences in the penal code. The government repeatedly ignores the gravity of these cases that should long ago have merited the enactment of adequate laws.

Torture has been systemically used as a method of police investigation. Soldiers routinely employ this practice to extract information from persons suspected of committing terror acts, and prosecutors too routinely prosecute innocent persons on evidence and testimonies taken by way of torture. The limited documentation of cases involving how police use torture in investigations does not mean these practices are not widespread. In fact, most victims are so scared that they prefer not to talk or make complaints.



Instead of enacting laws to ensure the protection of rights, the legislature instead sometimes threatens them. For example, the enactment of the Human Security Act of 2007 allows surveillance and labeling of persons and organizations as “terrorists,” and gives enormous power to the police on the pretext of fighting terrorism. It not only poses serious threats to civil liberties, but also places suspects at serious risk of being tortured or forcibly disappeared while in the police or military’s custody. The law empowers the police to arbitrarily arrest and detain persons on mere suspicion of committing or aiding acts of terrorism, with very loose definitions meaning that these powers can easily be abused.

The plight of farmers and workers have also worsened in 2007. Their respective struggles for land reform and the improvement of labour rights and welfare have even proven fatal on occasion. These groups have continued to suffer legal persecution, violent attacks, forcible abductions and extra-judicial killings in seeking their rights. Farmers who fought for land reform have been forced to take desperate measures, such as going on hunger strike, when demanding their rights. They have also been the targets of killings by influential landlords’ armed thugs. Workers and labour leaders engaged in peaceful strikes demanding benefits and improved working conditions are frequently subjected to violent attacks and abduction. These victims are unable to get adequate remedies for the atrocities perpetrated against them. Asserting one’s rights can be a fatal practice in the Philippines.

Farmers and their families struggle to gain ownership of land despite the law requiring distribution of farm lands. Farmers are also met with violence once they started claiming ownership of land to which they are entitled. Many farmers struggle to put food on the table even though they produce food crops, while many others continue to suffer abject poverty and starvation. The failure of genuine land reform and the continuous attacks against farmers asserting their right has pushed them further into such poverty. Workers and labour unions members also suffer, as conditions in many workplaces remains poor, and salaries and wages barely support a family. There have been very few successful struggles for the improvement of rights and welfare.

Legal remedies have been extremely difficult to obtain for farmers and workers for many reasons. For instance, cases involving land and labour dispute drag on for many years because of: excessive delays; influential persons subverting laws and manipulating judgments by quasi-judicial bodies in their favor. During this time the perpetrators of extra-judicial killings and attacks on farmers and workers continue to enjoy impunity and threaten the victims. Even peaceful demonstrations or protests to expose these systemic abuses have not been tolerated by the security forces, particularly the police.

Police – a major obstacle to the prosecution of cases

The police’s role in investigating cases is essential for the effective prosecution of perpetrators. However, the police are failing to perform this fundamental duty, in particular in relation to any case of human rights violation in which State-actors are thought to be involved. Their inaction has become a major obstacle concerning the



delivery of justice in the notorious cases of extra-judicial killings. Investigations, if they take place, are cursory in nature, leading to cases collapsing if they go any further in the judicial process.

As clearly stipulated in Chapter III, Section 24 (a and c) of the Republic Act 6975, the powers and functions of the Philippine National Police (PNP) are, amongst others, to:

- a. Enforce all laws and ordinances relative to the protection of lives and properties;
- c. Investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution.

Although the police acknowledge that there is a need for witness protection, they have not taken any action to correct this problem. They are fully aware that the reason why witnesses and families of the dead are reluctant to pursue legal action is because of fear of reprisals and insecurity, but they do nothing about this. The lack of progress and non-prosecution of perpetrators is largely a result of their inaction.

At least twelve cases documented by the AHRC that involve extra-judicial killings, abductions, torture and violent attacks have not either been filed or seen any progress in court due to a lack of witnesses and complainant, which is a direct result of the lack of witness protection.

Take the case of the sole witness into the murder of activist Jose Manegdeg III on November 28, 2005. He recanted his testimony out of fear for his life. He was expected to testify that Captain Joel Castro, who was formerly attached to the 50th Infantry Battalion of the Philippine Army, killed Manegdeg. The witness feared for his life yet the police paid no attention to his concerns, eventually causing him to recant. This subsequently made it extremely difficult for the police to locate or encourage other witnesses to come forwards in this case. The prosecutor handling the case had to subsequently dismiss the case against the soldier for insufficiency of evidence.

Manegdeg's family were also not provided with any protection. His wife and two daughters have had to take their security into their own hands by moving from place to place, following suspicion of being followed by unknown persons. In this urgent situation the police should have taken immediate action to adequately ensure their safety, but they have not done so.

On September 13, 2007 the Deputy Director of the Directorate for Investigation and Detective Management (DIDM), Chief Superintendent Rodolfo Mendoza, wrote to the AHRC, stating that the DIDM would "conduct reinvestigation into the case to unearth evidence that could possibly prosecute the suspect/s". In his letter, he did not mention about what action they would take to protect the victim's family that were facing continuing threats or to protect potential witnesses who could help in successfully prosecuting the case. They pledged to prosecute the perpetrators, but they paid no



attention to protecting the victim's family and witnesses who are crucial for the prosecution. No progress has so far been made in this case as a result.

The police have likewise acknowledged that the fear of retaliation has discouraged the witnesses into the murder of labour leader Jesus Buth Servida. Servida was murdered in December 2006, following an ambush of his colleague, Gerardo Cristobal in April 2006. In February 2007, another attempt on the lives of Cristobal and his colleagues was made in Imus, Cavite. The firearm used in shooting them then reportedly malfunctioned. A witness was supposed to testify that those responsible in the recent attempt on Cristobal are the same persons who murdered Servida. The police failed to provide the witness with protection that could perhaps have encouraged him to testify.

The possibility of locating the whereabouts and identifying the perpetrators involved in the forcible abduction of six persons (one of whom was later found dead) in separate incidents are also being prevented by a lack of witnesses and cooperation by the victims' families that results from a lack of protection. The police investigators have acknowledged this, however, no action has been taken to encourage witnesses and victims' families to engage in the process by providing them with protection.

Take the case of activist Gilbert Rey Cardeno, who was forcibly abducted on June 6, and was released two days later in Koronadal City, Mindanao. He believed that the perpetrators were members of the security forces. After he was freed, investigations into his case were brought to an end rapidly by the police after he and his family's supposedly showed reluctance to cooperate. The police blamed the end of investigations on the victim and his family's unwillingness to fully cooperate. On June 11, the PNP's regional director, Chief Supt. Felizardo Serapio, wrote in his report furnished to the AHRC:

“Apparently, the victim gave piece-meal information for he is suspicious that the gov't had a hand in the incident, though he has no sufficient evidence to prove such suspicion”

They failed to take appropriate action to address the victim's reluctance to cooperate. They also did not consider other means to gain the victim and his family's confidence that could have possibly convinced them to cooperate. They did not take action to provide protection to the victim and his family through a credible institution. The victim and his family's reticence can be understood, as the same police unit had in the past been accused of forcibly abducting or illegally arresting persons. The police investigators halted its investigation, became hostile to Cardeno's case and filed criminal charges against him. They charged him and his colleagues for their alleged involvement with a rebel group.

A lack of witnesses also hampered the police's investigation into the abduction and subsequent disappearance of four persons: Ismael Sarip, Datu Abubakar, Ali Barabato and Edgar Sabdula in separate incidents in August and October 2006 in Davao City, Mindanao. One of them, Barabato, was found dead on a nearby island with his body showing torture marks. His hands were tied behind his back with wire. His body and his



legs were also wrapped with it. He also had a gunshot wound to the upper section of his forehead and three gunshot wounds to his neck.

On March 19, Senior Supt. Jaime Hermo Morente, Davao City Police Office (DCPO) police director wrote the following to the AHRC:

“[The police] had exhausted all efforts to identify and locate the perpetrators, as well as to established vital witnesses and evidences, however, all their [his policemen] efforts remain in vain.”

Once again, while the police acknowledge the need for witnesses to come forward as being vital for progress in this case, they did nothing to ensure this. Claim that witnesses in the abduction of these four persons could not be found is unconvincing. Three of these victims - Sarip, Abubakar and Barabato - were seen being taken from a crowded market place, while Sabdula was forcibly taken from his house. The latter's wife and two of his children witnessed his abduction by persons carrying firearms. It is the police' failure and inaction to take appropriate steps to prove that they could protect the witnesses and the victim's families that prevented the witnesses from coming forward to cooperate, nothing else.

As a result, there are no indications so far that the perpetrators of the brutal killing of one of the victims and the continuing disappearance of three others will be identified or held to account. Their families, particularly that of Sabdula, who was abducted inside his house in front of his wife and children, are also at risk of reprisals. They offer continuing threats to their lives in the absence of any protection by the State.

Why investigations are flawed or non-existent?

Investigation is the primary duty of the police. Apart from the provisions of RA 6975 which clearly stipulate the PNP's duties and obligations, there are also existing memoranda regarding the requirement for collection and storage of evidence; and the government is also required to implement the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. These instruments set the minimum requirements and standards to ensure that an effective investigation is carried out by the police or other investigating bodies, notably in cases of killings. The successful prosecution of cases depends on how the investigation and gathering of evidence is being conducted to support cases in court.

The manner in which police investigators have been investigating cases involving extra-judicial killings, enforced disappearances and torture, are falling short of the minimum standards on effective investigation. For example, they routinely and systematically delay the results of investigations, the collection and storage of evidence is poor, the concept of a credible and independent investigation is almost non-existent, and they consider cases as solved once they have been filed, regardless of whether or not these result in successful prosecutions in court.



In August 2006, President Gloria Macapagal-Arroyo gave instructions to the police to resolve ten cases of extra-judicial killings in ten weeks. A year later, Task Force Usig, a special investigating police body tasked to investigate these cases, claimed to having solved 56 cases² by filing charges in court. In none of the cases filed concerning politically motivated killings have perpetrators have been convicted, so these cases cannot be considered as being solved, leading to serious questions out the manner in which they are investigating and handling cases.

No results of the investigation into cases reported to the police since early this year involving the disappearance of six persons and the extra-judicial killings of seven activists³ that happened in different places are known at present. Three of these killings and one disappearance were allegedly perpetrated by the police and military officers. The perpetrators have so far not been identified or charged, preventing the victim's family from getting remedies. The failure of the police to promptly investigate these cases contradicts the UN Principles of effective investigation, which stipulates;

Investigation (9): There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.

Even though investigations are sometimes conducted promptly, the collection of evidence and building of the case is conducted so poorly that the cases do no stand up in court. Take the case of murdered activist Jose Manegdeg III. A witness has identified a military captain as being responsible for killing him, but the prosecutor had to dismiss the case. The police reportedly depended heavy on the lone witness' testimony, therefore, when the witness recanted his testimony, the lack of additional evidence by the police prompted the prosecutor to dismiss the case for insufficiency of evidence.

The police also deliberately failed to take action into the murder of a young activist, Nelson Asucena, who was shot dead in front of his family in December 2006. Asucena, an elected youth representative for their village in Rizal, Cagayan, was s allegedly hot dead by Lieutenant Marcelo Pascua of the 21st Infantry Battalion (IB), Philippine Army, and five other men wearing balaclavas. The victim's family has filed complaints but the police allegedly did not take action to investigating the case promptly. The perpetrators, despite being identified by the victim's relatives as being responsible for shooting him, have so far not been investigated or charged in court.

² Peoples' Tonight news, 7 October 2007

³ Please see the list annexed



The police's crime scene investigation techniques are very poor, particularly concerning the collection of forensic evidence and the proper handling of dead bodies. When activist Alberto Yadan was murdered in December 2006, the police investigators attached to the San Juan Municipal Police Station, Batangas, failed to conduct proper on-site investigation. They simply gathered empty shells left by the weapon that supposedly killed the victim and hauled his dead body into their service vehicle. They took the body to the Municipal Hall and later turned it over to the victim's relatives without subjecting it to an autopsy. No proper investigation or further collection of forensic evidence was performed at the crime scene.

The police's failures in investigating into Yadan's murder are illustrative of many other instances of poor police investigations into cases involving extra-judicial killings of activists. When activist Enrico Cabanit was also murdered in Panabo City in April 2006, police investigators responding to the crime scene deliberately failed to collect all the empty shells. They also failed to produce photographs of the crime scene because the camera they were using was broken. They also did not conduct an autopsy on the victim's body. The body had to be exhumed later to perform the autopsy. The police investigators however stated that their actions did "not constitute a violation of police procedures." The investigation report by the police describing the type of bullet that pierced the victim's head was different from the description of a forensic expert who conducted the autopsy on his body. They did not conduct an autopsy but were willing to jump to conclusions, as is often the case.

Quality forensic investigations are rarely conducted. This year, there have been incidents of corpses and mutilated body parts being thrown into crowded streets, on river banks, the seashore and elsewhere in many urban areas, particularly in Metro Manila and Davao City. The police's usual practice in investigating these cases of suspicious deaths are aimed more on identifying the victims than those responsible in the crimes, or to determine the circumstances of the victims' deaths. Although corpses are taken to morgues and funeral parlors the purpose is for identification by their families, rather than collection of forensic evidence that could help in investigations to identify the perpetrators.

The Department of Justice (DoJ) Circular No. 16 regarding New Rules on Inquest, under Section 16, which requires the inquest prosecutors to get involved in the police's on-site crime scene investigation of cases of suspicious death are rarely observed. The police carry out their investigations into cases of suspicious death regardless of whether inquest prosecutors are present or not. A forensic expert noted that police investigators who have no knowledge on forensic investigations pretended that they do when carrying out investigations. The investigation into Cabanit's murder is an example. The use of forensic investigation techniques is negligible in most criminal cases, particularly concerning human rights violations.

Given the increasing number of extra-judicial killings and enforced disappearances, the police and prosecutors should have been complying with the legal requirements



concerning on-site investigations, but they have failed to do so. Their failure denies victims' families remedies from court and the prosecution those responsible.

The need for impartial investigation

The impartiality and independence of persons or bodies investigating cases of human rights violations are paramount in obtaining an effective investigation. This is an absolute necessity to ensure that the victims and their families receive remedies and those responsible for perpetrating violations are effectively prosecuted court. This is sadly lacking within the police, quasi-judicial bodies, and other authorities empowered to investigate cases of rights violations in the Philippines.

For example, no credible or independent investigations was carried out into the violent attack by unknown perpetrators against persons peacefully picketing in front of their factory inside the Cavite Export Processing Zone (CEPZ) in Rosario, Cavite in June 2007. The CEPZ police, which is responsible for investigating cases taking place within the CEPZ, allegedly failed to promptly investigate the worker's complaint and to protect them from being attacked. The CEPZ police are not directly accountable to the PNP since they are separate body of the security force. They are responsible to the Philippine Economic Zone Authority (PEZA).

In the past, the workers have accused the CEPZ police of having been involved in violently attacking them, or failing to take action to prevent the attacks on them. These confrontations usually takes place when workers are picketing and demonstrating inside the CEPZ. Some of the workers were brutally beaten - one woman had a miscarriage due to violent beating - by the said security forces and other private guards.

Nevertheless, the CEPZ police concluded their investigation into the June 10 and 11 attacks claiming that those involved could not be identified, and that there are no witnesses to prove the workers' claims that their picket line was attacked and their makeshift tent was destroyed. They concluded that the workers destroyed their own tent. The attack on the workers was apparently designed to harass and frighten them into halting their strike. Those who conducted the investigation in the CEPZ police are from the same police unit that had been accused of inaction and complicity in the attacks against the workers in the past. The latter have filed criminal charges against the police in court.

Therefore, there impartiality of their investigation is highly questionable. However, when the AHRC raised serious concerns on this and subsequently made calls for a credible and independent investigation, the PEZA's Deputy Director General for Finance and administration, Justo Porfirio Yusingco, wrote (on August 31):

“Regarding your concern, we assure you that the investigation was conducted in an utmost professional manner sans any partiality...”



“The PEZA police is being criticized for conducting the investigation of the reported incident because in the past some strikers filed charges against some of them. Be that as it may, this alone should not cast doubt on the credibility of the investigation.”

There are no indications though that the PEZA appointed disinterested persons or bodies that could conduct the investigation in an impartial way. The principle of an effective and impartial investigation is obviously not well understood even by the very institutions empowered to investigate cases. It is clear, for instance in this institution, that by mere “assurances” they feel they can absolve themselves from questions concerning impartiality and carry on with their duties.

Impunity concerning violations by the police and soldiers

The certainty of punishment of those responsible for atrocities is paramount for the effective prevention of crimes and further violations. The failure of the police and military to promptly hold their personnel responsible for committing violations aggravates the condition of denial of justice to victims and engenders further violations. In recent times, there have been incidents in which the police and soldiers get away with ease with the worst forms of human rights abuses. No actions are taken against them despite serious allegations of extra-judicial killings, enforced disappearances and torture, for example.

In the case of couple Bacar and his wife Carmen who were murdered in September 2004 in Tagum City allegedly by Sergeant Serafin Jerry Napoles and his men from the 404th Infantry Battalion of the Philippine Army, the victim’s brother, Talib Japalali, struggled for over three years before those involved were issued with arrest orders by the court. Until then, they were allowed to carry on their usual duties under the same military leadership while the investigation was ongoing. All their superiors did was to transfer them from one assignment to another, but they were still able to carry on their usual duties. Even after arrest orders were issued by the court in November 2006; it took six months before they were served. Had there been no pressure on the military it would have not turned over its personnel facing criminal charges to the police.

The policemen who failed to promptly serve the arrest orders on the soldiers were also not held responsible for their inaction. In December 2006, the policemen already had copies of the arrest orders but failed to carry out the arrests promptly. They waited for the victim’s relatives and a group assisting the latter to push them into implement the arrest orders. Even when the arrest orders were served on May 23 at the military’s headquarters, the victim’s family was prevented from entering the camp. The military later turned over the soldiers charged to the police and they subsequently posted their bail. The military hierarchy’s failure to impose sanctions against their men shows their inability to take action into the illegal acts committed by their personnel.

No known actions were taken by the immediate superiors of Lieutenant Pascua and his companions, who stand accused of the brutal murder of youth activist Asucena. Not only



did the police fail to promptly investigate this case, the military leadership have also so far failed to take steps against these soldiers.

The policeman and an officer of the public security forces allegedly responsible in the ambush of labour leader Gerardo Cristobal in April 2006 have also not been held accountable following the incident. It was reported that Senior Police Officer 1 (SPO1) Romeo Lara, Chief of the Police Intelligence Office in Imus, Cavite; and Larry Reyes of the Civil Security Unit (SCU), and their companions, were involved in shooting Cristobal. Soon after the shooting took place, the police filed charges of attempted murder against Cristobal. There were no known sanctions imposed on the police and a security officer despite the gravity of Cristobal's allegations. Those who carried out the investigation into the incident were from the same police unit to which the involved policeman was attached. No known progress has taken place in the case.

The policemen attached to the Panabo City Police Office (PCPO) responsible for poorly investigating the case of murdered activist Cabanit have also not been held to account. Despite their admission that they failed to conduct an autopsy on the victim's body, to take photographs of the crime scene and needlessly delayed the investigation, no administrative sanctions or actions have so far been taken against them. They insisted that their actions have not violated any procedures of police investigation.

When the AHRC raised serious concerns about the police's action, a letter dated February 1 was received from Senior Supt. Armando Ramolete of the Department of Interior and Local Government (DILG) stating that:

"Please be informed that we have referred your letter to the PNP Task Force Usig, which deals with cases regarding the killing of activist and leaders of cause-oriented groups in the country for appropriate action"

The DILG is an institution which exercises oversight on the PNP. Months after his letter was received, no known sanctions have been imposed on the policemen involved. Although the DILG did refer the matter to the PNP's Task Force Usig, there are no indications so far that the police's failure would be acted upon anytime soon. The serious concern regarding the police incompetence in investigations has not been addressed adequately. The investigation by Task Force Usig mainly focuses on identifying those responsible in the murder, not on the police's failure regarding the manner in which they conducted their investigations. The policemen involved, despite having not been held to account for their actions, nevertheless concluded Cabanit's case as being solved as the gunman suspected of murdering him was killed in a separate incident.

Those accused of possible involvement in the abduction and subsequent disappearance of Arnold Aliman on May 27 in General Santos City has also not been investigated or punished concerning the allegations against them. Soon after Aliman's abduction, eyewitnesses went to the Pendatun Police Station, and later to the headquarters of General Santos City Police Office (GSCPO) seeking their assistance to investigate the case and locate the victim. Surprisingly, a witness noticed that the vehicle used by the



abductors was been parked besides the Intelligence and Detective Management Section's (IDMS) office there.

Even though the testimonies of the witnesses could have helped in locating the victim and identifying the abductors, no credible investigation have so far been conducted into the presence of this vehicle inside the police headquarters. Although the chief of the GSCPO, Senior Superintendent Vicente Bautista, has ordered the head of the IDMS to be relieved from his post, no further investigation has been conducted to compel him or his men to explain the matter.

Pleas for protection deliberately ignored

Under Section 24 (a) of RA 6975, the PNP are obligated to enforce laws for the protection of lives of Filipino citizens. Although the police have this obligation, particularly concerning those facing threats, there is no existing law that requires them to doing so. The lack of specific laws and acts of omission by the police aggravates the denial of protection given to victims facing continuing risk and threats, potential witnesses and anyone seeking redress.

A new measure, called the Writ of Amparo, brought in in late 2007 may provide protection where before there was none. The Writ provides temporary relief to persons whose right to life threatened. One of the requirements for applying for this petition is that the respondents should be identified in the petition. However, in most cases those facing threats cannot identify who is threatening them. However, prior to the existence of this mechanism there was no existing policy that required the authorities to provide protection to persons facing threats to their personal integrity. The Writ of Amparo

Although the RA 6981 provides protection, it is limited to persons who are testifying and witnesses in cases filed in court. The lack of protection by the authorities for persons experiencing threats who were not admissible to the witness protection programme has proven fatal in cases in the past.

Even if persons are admissible, in many cases the police have repeatedly, deliberately ignored pleas on behalf of the victims families and potential witnesses for protection. For instance, several appeals were made for the police to provide protection to the wives and children of activists Joseph Matunding and Manegdeg who were murdered on 30 January 2007 and 28 November 2005 respectively. Matunding's wife was also wounded when her husband was attacked.

When appeals were also made to provide protection to Cabanit's daughter, Daffodil and his surviving family, as well as to Cardeno and his family, the police did not respond even though they have investigated these cases. Daffodil, who was shot together with her father Cabanit, had been wounded but was able to survive the attack. She could have been an eyewitness to her father's murder but was not included in the witness protection. Pleas for protection for her and her family immediately after the murder of Cabanit were



ignored by the police. She had to move from one place to another and her family had to take their security into their own hands.

Shortly after the abduction and release of Cardeno, appeals were also made for the police to secure him and his family. Once again, these were ignored. Instead of providing them with protection, the police have instead blamed the lack progress in the case on him and his family's reluctance to fully cooperate.

Prejudice, labeling denies equal protection under the law

It is the obligation of the state to protect the lives of its citizens and ensure that victims of violations obtain remedies regardless of who they are. The principle of equal protection under the law requires the authorities to perform their duties without prejudice and partiality. This, while acknowledged by the authorities in principle, is not seen in practice. Prejudice, for instance by the police, has had serious effects on the manner in which they investigate.

Take the case of two members of political party Bayan Muna, Miguel Dayandante and Julio Camero, whose dead bodies were found hogtied, blindfolded and with gunshot wounds on January 22 in Ligao City, Albay. When investigations were conducted into their disappearances and subsequent murders, the police investigated the case in a manner that was prejudicial to the victims. In the police report, they needlessly described Dayandante as a Communist Terrorist (CT), while Camero was branded as being a either supporter or sympathizer of such groups. To describe them in such a manner effectively suggests they are undesirable persons. It effectively denied them equality before the law by investigating their case with partiality.

As expected the police have concluded that the motive of their killings was “purging” by leftist groups, reinforcing their own theory regarding the pattern of extra-judicial killings, which they systematically blame on killings between leftist groups rather than accepting any possibility of blame for State agents. The police's obligation to investigate cases was affected by their prejudice. Once cases are concluded in this manner the likelihood of the victims' families receiving legal remedies as the result of prosecutions becomes near-impossible.

Labeling also emboldens and engenders violations of rights against activists or groups once they have been labeled. In many cases, when activists are labeled as being “communists, leftists or enemies of the state” the likelihood for them to be killed becomes far higher. Actors, either from the State security forces or potentially other non-State actors, are encouraged to perpetrate killings and other violations as the result of such branding.

In his preliminary note following his official visit to the Philippines in February 12 to 21, Professor Philip Alston, the UN Special Rapporteur on Extrajudicial Killings, expressed concern about this practice. He noted that:



“Those causes constitute the second level at which an effective national response is required. The first cause has been variously described as vilification, labeling or guilt by association. It involves the characterization of most groups on the left of the political spectrum as front organization for armed groups whose aim is to destroy democracy.”

While Professor Alston reaffirms long standing concerns regarding this practice, there are no indications so far that it will be corrected or that the authorities will prevent their members from continuing to use labeling. In fact, the police’s investigation report into Dayandante and Camero cases were signed by Chief Supt. Mendoza on March 2, 2007, after Professor Alston’s visit. Professor Alston observed that the military have been involved in making similar remarks and recommended that the government “should immediately direct all military officers to cease making public statement linking political or other civil society groups to those engage in armed insurgencies.”

Apart from this practice of labeling, exposing activists into further risks, some elected local officials have also been adopting the practice of making threatening remarks against persons supposedly involved in criminal activities. In recent times, there have been increasing numbers of corpses of supposed criminals found in urban areas in Metro Manila and Davao City following public statements made by local officials suggesting harsh action would be taken against criminals if they fail to reform or move to other places. In Quezon City alone, a news source disclosed that 30 corpses have been discovered between January and August. These statements have effectively encouraged the killings. Most victims were suspected of being criminals or had criminal records in the past. The local officials denied these persons protection under the law by unjustly exposing them to risks by repeatedly making threatening remarks describing them as undesirable persons. This practice is possibly arbitrary, is extra-judicial and negates the principle of presumption of innocence.

When the Melo Commission released its report on January 22, 2007, it recommended the legislation of laws to require all State-actors, including government officials, to be subjected to command responsibility. It sought to penalize those who encourage, incite, tolerate or ignore, any extra-judicial killings committed by a subordinate. However, until this law is passed there are no indications that local officials would halt these practices. For an official to make such threats against suspected or actual criminals does not constitute a criminal offence at present. They have even argued that the presumption of innocence is only applicable to persons facing trial. However, as a result of these practices, many have become open targets for extra-judicial killings. Some of those killed had no criminal records at all.

Pretext of “terrorism” permits illegal arrest, filing of false charges

The frequent bombings in several parts of Mindanao in recent times have also resulted in the routine use of illegal arrests, torture and filing of false charges by the police and the military against victims, most of whom are from the Muslim minorities. When there is a bomb blast, members of the Muslim minorities become suspected by the security forces, often arbitrarily.



Take the case of victims Thos Ulimpain and his cousin Nasser Mendo, who were arrested by soldiers in Midsayap, North Cotabato on May 3, 2007. They were falsely accused of having been involved in a bomb blast in Central Mindanao. The soldiers, without showing any arrest orders or properly explaining to them the reasons for their arrest, forcibly took them from their house. They were handcuffed, blindfolded and forced to the ground. They were taken to the military headquarters in Awang, Cotabato City where they were brutally tortured during interrogation. They were repeatedly beaten on different parts of the body every time they refused to answer a question. From May 3 to 5, they were not given any food.

Another victim, Oting Mariano, was abducted by unidentified persons on January 13 and was subsequently brutally tortured. The perpetrators were later identified as being police officers. While he was in police custody, they tortured him to force him into admitting he was involved in a bomb blast in Makilala, North Cotabato, which had taken place three months earlier. They handcuffed him, blindfolded his eyes and covered his mouth with adhesive tape. He was electrocuted with wires attached to his head and arms. The policemen also wrapped his head with plastic bag, dipped him into a bucket of water and removed him only when he was nearly unconscious. He was, however, released from jail after eight months, after the false charges against him were dismissed.

The enactment of the Human Security Act (HSA) in 2007 that took effect on July 14, 2007, defines acts of terrorism as: 'sowing and creating a condition of widespread and extraordinary fear among the populace.' It has further undermined the protection of civil liberties. The police have already exploited this law by falsely filing charges against persons they have arrested in relation to bombings. For instance, on August 13, the police in Koronadal City filed charges for violations of HSA connected to the bomb blast that took place days earlier against four persons, three of whom are labour activists. The filing of charges was conducted based on a confession made by one of the respondents' fellow workers. The police insist that the bomb blast was motivated by the labour conflict between these persons and their management. One of the respondents, Jaime Rosios, was forcibly abducted and disappeared after the police filed charges against them.

The prosecutor, however, file charges of arson instead of violations of the HAS against the respondents. In this case, the respondents had to face the charges in court as the result of a confession made by one of the respondents, Alex Magbanua, under the threat of being tortured if he refused doing so.

There have been previous cases of persons being illegally arrested, detained, tortured and falsely charged. Soldiers and policemen carry out arrests based on limited intelligence reports. Some of these reports have been proven false and unreliable but the police and military continue regardless. The police and soldiers routinely arrest and falsely charge persons with impunity, which is created and sustained by the lack of legal action against persons that bring such false charges. They can't be charged for torture because the act is not a criminal offence in the penal code. Although they could be charged for serious



physical injuries, most victims choose not to take legal action because it would mean a lengthy trial at great cost.

Although there is an existing legislation - Section 3 (d) of the Republic Act 7309 and an Act creating the Board of Claims - that provides compensation for the victims of illegal arrest, arbitrary detention and torture, most victims choose not to make use of it because its implementation had also been ineffective and dysfunctional. It is a lengthy process and the Board of Claims under the Department of Justice (DoJ) has not gained the faith of persons to date.

The amount that can be claimed is derisory compared with the cost of the process, and is therefore not appealing. For example, for victims of “unjust imprisonment or detention,” Section 4 of the Act provides a limit of Php 1’000 (USD 22.54) per month of detention for victims claiming compensation. It also set a maximum amount of Php 10’000 (USD225.47) for victims claiming compensation, regardless of the nature of their case. Most victims are not even aware that they could get compensation in this way, or where to file claim.

A powerless Congress

In a speech in July, 2007, Chief Justice Reynato S. Puno of the Supreme Court of the Philippines described the legislature as powerless for its continued failure to enact appropriate laws to ensure the protection of human rights. Puno stated that:

“It further revealed that a supine legislature can betray the human rights of the people by defaulting to enact appropriate laws, for there is nothing you can do when Congress exercises its power to be powerless. It is for this reason and more, that our constitutional commissioners deemed it wise to strengthen the powers of the judiciary, to give it more muscular strength in dealing with the non-use, misuse, and abuse of authority in government.”

Chief Justice Puno’s observation reinforces the long standing common knowledge of the failure by the legislature to enact laws that protect human rights, for instance laws against torture and enforce disappearance. For many years, the enactment of these two proposed laws has been dragging on without result. They have been filed in successive legislatures but have never been passed. The absence of these laws has denied a large number of victims of torture and enforced disappearance from any form of remedy.

The enactment of a domestic law against torture is an international obligation as the Philippines is a State Party to the Convention against Torture (CAT). As such, the government is required to enact adequate laws to address torture, which they have continuously failed to do. Apart from a lack of a law on torture, the legislature has also ignored the need to pass a law on enforced disappearances. The government also has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.



Torture victims cannot get adequate remedies as described in the CAT. The perpetrators, the police and military, who routinely use this as a method of investigation, particularly in relation to acts of terror and armed insurgencies, cannot be charged for torture because the act itself is not a crime. A large number of torture victims have been denied remedies, in particular medical treatment and rehabilitation from the trauma, as a result of this. Although RA 7309 provides for compensation for victims of torture, it falls short of providing adequate assistance to torture victims. The lack of a law, which results from the failure of the legislature, prevents any remedies from being obtained.

The Supreme Court has had to exercise its power to adopt the Rules on Writ of Amparo to address the lack of protection for persons whose right to life and personal are under threat or have been violated. The legislature is supposed to enact laws that provide sufficient remedies concerning violations. The Writ of Amparo was adopted by the Supreme Court to address the lack of remedies for victims of extra-judicial killings, enforced disappearances, and other forms of abuses. Instead of the legislature adopting appropriate laws concerning torture or enforced disappearances, the Supreme Court has been forced to take the initiative to provide at least limited and temporary relief in response the legislature's failings.

Assurance of impunity from torture, abduction

The lack of laws on torture and enforced disappearance allows perpetrators to easily escape from liability for their crimes. The failure of the authorities to promptly investigate cases, and excessive delays, has aggravated the situation.

When a victim accuses the security forces of committing acts of torture, there is little likelihood of the complaint being acted upon promptly and taken seriously. The victim must somehow prove that the torture occurred before any investigation will follow. The police and military easily reject allegations of torture without credible investigations ever being conducted.

For instance, after nine torture victims—two of them minors—were released from jail in La Trinidad, Benguet after they were exonerated from the false charges filed against them by the police, those responsible for brutally torturing them were not held to account. The victims, who were electrocuted, brutally beaten and nearly drowned, had to withdraw their complaint against the police in exchange for plane tickets and money to go back home to Davao City. Their unwillingness to sue the perpetrators does not exonerate the latter, but rather illustrates the victims' vulnerability to pressure to settle the case outside of the criminal justice system. The victims in this case knew full well that they lacked the means for a lengthy and expensive legal battle with few prospects of success, and attendant risks.

Those attendant risks are not small. While these victims spent ten months in jail, there were plots on the lives of two and threats against the others. Yet they were not afforded any protection as no law placed any obligations on any state authorities to do anything special to secure their lives from others. On the contrary, their interests lay only in



ensuring that they were not subjected to any action for their alleged offences. Thus a police officer, Chief Supt. Mendoza, on March 6 wrote that

“The alleged involvement of the military, police and militia forces, to the incident of torture of the above-cited civilians is only a fabrication. In fact, on December 18, 2006, the nine complainants with the assistance of their lawyers executed an Affidavit of Desistance pertaining to their complaint against the arresting officers. In their affidavit, they stated that, ‘It is now clear that the arresting officers merely relied in good faith on the identification made by the aforesaid witness and should not therefore be blamed.’”

Similarly, on May 5 a man accused Chief Superintendent Romeo Ricardo, director of the PNP’s intelligence group, of brutally torturing him following his arrest in January. He told the media that he was taken inside the PNP headquarters in Quezon City where police serving under Ricardo beat, kicked, electrocuted and deprived him of sleep. The police shrugged off the complaint and no action was taken against them, by way of an inquiry or otherwise. That includes even as much as an examination of the case through the Internal Affairs Service (IAS), which is empowered to initiate a “*motu proprio* investigation” with or without a formal complaint.

And even when investigations into allegations of torture are made, it can take years for them to be conducted without the perpetrators ever being charged in court. For example, in June 1996 the Commission on Human Rights (CHR) recommended filing of charges against senior police officers accused of torturing five persons: Lenido Lumanog, Augusto Santos, Senior Police Officer 2 (SPO2) Cesar Fortuna, Rameses de Jesus and Joel de Jesus, who were arrested and convicted for the murder of an influential police colonel, Rolando Abadilla. The victims have a petition pending for intermediate review of their conviction before the Court of Appeals in Manila.

Eleven years on, those involved in torturing them—some of whom have already died while others have retired—have not been charged in court. In June, the latest information on the case from the Office of the Ombudsman for Military and Other Law Enforcement Office (MOLEO), which hears cases of complaint against police and military officers, was that it was yet to decide whether or not to file charges. The Ombudsman took over jurisdiction of the case three years ago.

The same sorts of problems drag down inquiries into disappearances. For instance, the soldiers who summoned Alan Bumanglag, a farmers’ leader in Gattaran, Cagayan on the same day that he is reported to have disappeared have not yet been investigated. On April 26, the soldiers, who are attached to the 17th Infantry Battalion, took him for questioning inside their camp for several hours before he was allowed to leave at around 2pm. Shortly after he was released, three men were seen following him. He has not been seen since, and nor have any investigators. In such cases, the police register a complaint of “missing person” or simply put down the details for the record, but make no effort to investigate or locate the victim.



In most instances police documentation of a disappearance is limited to what information is supplied by the victim's family. So when the family for various reasons refuses to cooperate, as in the case of abducted activist Gilbert Cardeno, police responsibility ends. They may even use the family's refusal to cooperate as an excuse for their inaction. The families are thus left to fight things out for themselves.

A policy of violent attack on peaceful protest and assembly

Violent dispersals of protestors peacefully expressing legitimate concerns—for instance, the enactment of laws threatening civil liberties and failures to address labour disputes—are common. They are especially likely when protesters either fail to secure rally permits or do not notify the authorities of when and where they will demonstrate. The existing law, Batas Pambansa 880 or the Public Assembly Act of 1985, requiring permits to be issued prior to demonstrations, has been used to justify violent attacks and legal action against protestors, even in instances where permits are not required or force is not necessary. The police implement their own unwritten rule that all protests without permits deserve to be violently broken up. Local officials have also classified some public places as “no rally zones”, thereby justifying violent dispersal of protestors once they cross these imaginary lines, even empty handed or in small numbers.

For instance, on September 26, policemen maltreated and arrested a doctor while his colleagues were violently dispersed shortly after holding an unannounced demonstration condemning the implementation of the Human Security Act of 2007, at the Mendiola Bridge in Manila. The police violently dispersed them even though use of force was not necessary. The police justified their actions by arguing that the area had been designated as a “no rally zone” and the protestors had no permits.

Several farmers also were injured on September 7 when policemen broke up their peaceful picket in front of the headquarters of the Department of Agrarian Reform (DAR) in Quezon City. The police started beating the farmers and tore down their makeshift tents. Farmer Rizaldo Inolva was taken to hospital after collapsing during the dispersal.

Then on October 10, police arrested seven persons and attacked their companions, who were on their second day of peaceful picketing and were about to start a hunger strike in front of the Department of Labour and Employment head office over the layoff of 575 workers from a telephone company and the subsequent decision by the department to take over jurisdiction of the dispute without acting on the workers' concerns. Police dragged and beat workers and other protestors during the incident, again without justification or restraint.

Conclusion and recommendations

Instead of issuing repetitive yet largely unfulfilled pledges and assurances, the government of the Philippines must take clear action to transform words into reality. It must ensure, among other things, that:



- Investigation and prosecution of each case is properly and thoroughly done to ensure that it will result in a conviction where a party is guilty.
- The definition of a “solved” case is changed from simply having filed it in court to having a successful conviction.
- Actions taken in addressing human rights violations are in conformity with established domestic and international standards.
- Charges are brought promptly against police, soldiers and other government officials perpetrating, encouraging, tolerating or failing to act on violations, particularly on extrajudicial killings, enforced disappearances, and torture.
- The recommendations of the UN Special Rapporteur on extrajudicial killings and also the Melo Commission are realized.
- The principle of command responsibility is brought into law so that senior public officials may be held accountable for criminal commissions or omissions.
- The Writ of Amparo is further developed in the Philippine jurisdiction through laws and policies.
- Proposed laws to protect human rights, notably on torture and enforced disappearances, are enacted promptly and in accordance with international obligations.
- Victims and their families obtain adequate protection and redress.
- Excessive delays in adjudication of cases are addressed.
- Laws and policies undermining and threatening the protection of civil liberties, particularly the Human Security Act of 2007, are amended or revoked.