

## **Court delays and the Abadilla Five: A discussion with Father Roberto Reyes**

**Editor's note:** Background information regarding the Abadilla Five case is provided at the end of the article.

On 20 July 2007, Basil Fernando, Executive Director of the Asian Human Rights Commission (AHRC) and Asian Legal Resource Centre (ALRC), Hong Kong, met with Father Roberto Reyes, also known as the 'running priest' to discuss court delays in the Philippines.

**Basil Fernando:** Please describe the situation of court delays in the Philippines and how this has affected the Abadilla Five case.

**Fr. Roberto:** It is crucial that a case like the Abadilla Five should have a favorable resolution as early as possible. If not, time becomes your enemy in the Philippines. The longer a case drags on, the less people are interested in the case. There are several landmark cases, very important in terms of history and renewing the justice system, which remain unsolved. There is a deliberate attempt within the Philippines' judicial system to delay cases until people forget about them. It is a very different situation than what you would find in certain societies such as Hong Kong perhaps, where cases are tried as quickly as possible, but not haphazardly.

In the Philippines you have two problems. First is the problem of legal mechanisms that delay the case until it simply dies in the public mind. When a case is dead in the public mind, you may still have victims who are innocent, who are very much alive, but they are forgotten by the people. So no matter how difficult it is, for the last eight years - I got involved in 1999—every year, year in and year out, I remind people that the Abadilla Five case is not solved, that there are innocent men blamed for something they never committed, and that the flaws of the legal system condemned not only the five men, but all of us. And this will repeat itself, and it does repeat itself. It is therefore necessary to study the legal mechanisms that institutionalize historical murders.

The second problem is that activists during President Marcos' era (1965-1986) were very important in elevating the discourse on human rights and keeping it relevant. Unfortunately, the human rights discourse in the time of President Cory Aquino (1986-1992) started losing steam, and Cory herself did not pursue human rights.

**Basil Fernando:** Can you elaborate a little on the mechanisms of delay that you mentioned.

**Fr. Roberto:** One mechanism of delay is that judges—including those of the Supreme Court—are pressured by politicians to sit on a case. In this way, cases become political; there is an interplay between the legal and the political, between the justice system and the executive.

**Basil Fernando:** So delays are due to deliberate pressures?

**Fr. Roberto:** Delays are also the result of a very inefficient justice system. It is quite possible that you will have a case where nobody is deliberately delaying it; many cases are just shelved or put under files. But in the case of the Abadilla Five, the inefficient justice system and political elements are both contributing to its very, very disturbing delay.

**Basil Fernando:** Please explain the 'inefficient justice system'.

**Fr. Roberto:** The watch of Abadilla was given to me by those who claimed that they had murdered Abadilla in December 1999. I presented it to the court in January 2000. The judge practically insulted me in court, he made fun of my presentation and he even sang a song to undermine and trivialize the issue. Of course, no one could hold the judge in contempt in his own court. I was in court because of something very serious—the watch that belonged to the man they murdered—not trivial, but it was trivialized by the judge. It is shocking to see the judge himself behave in such a manner, and it forces you to question what is wrong with the justice system. I have seen this happen in other cases as well.

**Basil Fernando:** So you are saying that when applications are made by individuals or lawyers for particular decisions, such as the speeding up of cases, the judges act, directly or indirectly, in a manner that trivializes the issue.

**Fr. Roberto:** The person primarily responsible for the arrest of the Abadilla Five was Senator Robert Barbers. To impress his boss, President Fidel Ramos, Barbers boasted that in three days he would solve the case. And so within 72 hours Barbers presents five men to the media and says this case is solved. How can you say that without any proper investigation or trial, how can you arrogate yourself as judge and jury; what then is left for the courts? This man used the Abadilla case for his senatorial campaign, won as senator and was still a senator in 2000. When new evidence was presented to the judge at this time, Barbers' camp vigorously opposed the reopening of the case because it would be an embarrassment. At the same time, Abadilla's family also did not want the case reopened for various reasons: perhaps they were tired, they just wanted to dismiss the whole thing, or because it might open a can of worms due to Abadilla's role in other cases.

So the judge is aware that influential politicians are watching his every move. Under these circumstances, is he likely to decide judiciously or politically? By dismissing my evidence as hearsay simply because I don't belong to the group that claims responsibility for the murder, it was very clear that the judge betrayed his sacred duty to uncover the truth.

**Basil Fernando:** In a properly functioning court set up, for instance in Hong Kong, if you came out with that statement and brought the watch to court, the first thing the judge would do is to order the police to take your statement. Secondly, he would order further investigations to be conducted and for the police to submit new reports. Based on these, he would decide how to proceed with the matter. In other words, your application will be treated seriously. In your case this didn't happen; the judge did not take his obligations seriously.

**Fr. Roberto:** Indeed. With five innocent men and a public clamor to know the truth, his obligation should have been obvious. But perhaps the clamor was not strong enough.

**Basil Fernando:** You mentioned two very important things: the role of public or political pressure in judicial delays and the habit of judges to trivialize matters. Do you see these two things as being related?

**Fr. Roberto:** They are certainly related, which is why people are asking how many decent judges we still have if most judges buckle under political pressure or even public outcry. For instance, judges who, in order to become famous at the height of the death penalty debate, would sentence people to die and even rush a sentence of innocent people in order to gain mileage for themselves. It is not simply enough to have public outcry because the public also needs to be informed and educated. During the death penalty debate there was an enormous outpouring of protest with many people just asking for blood.

In the case of the Abadilla Five we have been giving the public as much information as possible, convincing them that these are five innocent men, however, it is not creating enough indignation. Thanks to the media, people are slaves to sensationalism. For them to react, we have to make a case quite scandalous and exciting. But how do you make an 11-year-old case exciting to people? In fact, if a case starts getting old then the culprits are happy. The longer the case takes in the Philippines, the greater the chance people will forget about it and the truth will die.

**Basil Fernando:** There was quite good media coverage in the case of the Abadilla Five, and yet it was not enough to make an impact. Why do you think this is?

**Fr. Roberto:** As I said, there are political obstacles. Senator Barbers boasted to his boss, President Ramos. Barbers recently died of cancer but Ramos is still alive. Ramos worked with Abadilla: does Ramos know anything about why Abadilla was put away? What if he knew? And if he knew would he want a reopening or would he want the status quo?

**Basil Fernando:** Is it just political influence that causes delays, or is there something problematic with the system? When judges are afraid to touch on sensitive cases, is it a fear built into the judges?

**Fr. Roberto:** Judges are afraid because of what is already built into the system; the unspoken law of corruption. A large number of judges can be bought. Courts in the Philippines are not courts of truth, but courts of bank accounts. Moreover, judges can be promoted or demoted. If a judge is looking upwards in his career, towards the court of appeal or the Supreme Court, he will be very careful as to who he antagonizes. He will act favorably towards a case if it can help his career.

There are very few judges who will lay their future and their names on the line for the sake of justice. There are good judges, but not enough of them to swing the balance in a different direction.

**Basil Fernando:** In countries with functioning justice systems, various procedures and remedies exist to counteract any weaknesses of judges. With the assistance of lawyers, individuals can make use of these remedies. Why have these not developed in the Philippines?

**Fr. Roberto:** There can be little possibility for remedies when the system of corrupt judges and political appointments is so deeply entrenched. Even if there were remedies that an aggrieved party resorts to through a lawyer, poor people can't pay the counsel fees.

In the case of the Abadilla Five, there are very generous people but they also have to look for their own bread and butter. They cannot pursue the case persistently because they are just pro-bono. If you have a case where people cannot pay the legal fees even the besthearted lawyers cannot say how long their commitment can be sustained.

**Basil Fernando:** If substantial contributions were made to retain powerful lawyers do you think that this case can be expedited?

**Fr. Roberto:** Yes, I think it can be expedited. At present, it is not the well known and influential legal firms who are pursuing controversial cases. It is the human rights pro-bono volunteers, such as the Free Legal Assistance Group (FLAG), who are pursuing controversial cases of the poor. They try their best, but they have to practice law elsewhere to survive. They can only contribute their spare time after office hours to work on these cases.

**Basil Fernando:** In your opinion, what would be the cost of retaining a more powerful lawyer?

**Fr. Roberto:** About US\$ 40,000. In the Philippines, fighting a legal case takes up millions of pesos. An acceptance fee—paid just for the act of retaining a lawyer—ranges from 50-100,000 pesos. Once they sign the contract there is the per diem, and thereafter every court appearance has to be paid for. Moreover, if it is a civil case the legal firm will collect a sizable percentage of the damages awarded to you. Good firms will take the money and then push through the case. But it is all about money.

**Basil Fernando:** So it can be argued that one of the reasons for this case to be delayed is because the people are poor and unable to retain a powerful legal firm.

**Fr. Roberto:** It still remains to be seen whether the Abadilla Five case will flourish if it is handled by an influential and well known firm. We are assuming that if there had been such a firm, this case would probably have been reopened in 1999. Whether it would have made a difference, I don't know. Another question we must think about is whether such a firm will remain independent while pursuing the case. Will political and other factors not come into play to put them in their proper place? Unfortunately in the Philippines, a lot of these legal firms are also controlled by politicians because a good number of senators used to be in legal firms. At the same time, it is

difficult for the case to stay in the public mind when it is a well intentioned but unknown lawyer pursuing the case, who does not have the means at his disposal to dedicate all his time and energy to a particular case.

**Basil Fernando:** Let us explore how the present lawyers can be assisted and the case expedited. One option is to see whether a public defender would take the case, given that private lawyers are already engaged and that public defenders are state recognized. Another option is to look for a legal firm willing to take up the case. What is your advice?

**Fr. Roberto:** My advice would be to consult with the Abadilla Five lawyers in the Philippines and find out who among the respectable law firms could be asked to help.

They are in a better position to know which firms would not ask for a large fee and still do a good job until the five men are exonerated. I think such a collaboration would work.

**Basil Fernando:** When there are certain local problems standing in the way of justice, such as a lack of resources, various forms of lobbying can be undertaken to overcome them and to develop a practical strategy towards justice. In this case, if we could raise the funds for legal fees, what would be your next step?

**Fr. Roberto:** As I said, I can talk to present lawyers and tell them to start looking for a decent law firm that can really pursue this case until it's over in their favour.

**Basil Fernando:** What we are trying to do is not just help in this case; I am trying to give you a different strategy from sensationalizing. Sometimes people go for sensationalism simply because they don't know what else to do. They publish the whole story and expect that some public reaction will come. It is like the case of the Sri Lankan girl, Rizana Nafeek, who was sentenced to death in Saudi Arabia. The Sri Lankan government was not willing to provide the legal cost for an appeal, so we raised the money. If we had not done so, the deadline for the appeal (16 July 2007) would have passed, and one day she would have been beheaded. And everyone would then lament her death.

**Fr. Roberto:** But lamenting is not enough, the point is to have done something. To have exhausted all means available in order to save an innocent life. In the Philippines human rights groups are burdened with a large number of case review requests in instances of innocent people being condemned. The volume of cases is simply too large however, and judges are wary of setting a precedent by resolving the cases.

**Basil Fernando:** Perhaps, but the actions are also symbolic. If you take a strong step once, in other situations that step will be remembered and others will take it as well. Sometimes human rights organizations are hesitant to explore new avenues, or worried that if they take on something once, they may have to do so again and again. But that is not the case: just because we took Rizana's case does not mean we will take on other cases. Now there are others who know what

to do; today I will do it, tomorrow someone else will do it. We must try the same strategy in the Abadilla Five case.

**Fr. Roberto:** We need a law firm that is respected, a firm that can engage with the Supreme Court and Chief Justice if necessary.

**Basil Fernando:** So can you spend the next week trying to talk to some people and to come up with specific suggestions? Then we can take the suggestions to other people and in this manner evolve a strategy to expedite the case. In particular, we must view the case from a systemic angle. After Rizana's case for instance, we have created a huge impression in Sri Lanka; unlike all the rhetoric and media sensationalism created by others, we took some concrete action to move the case forward. This has caused significant embarrassment to the government as well, with everyone asking why the government did not cover the legal fees.

**Fr. Roberto:** I will look for more people to come on board for the Abadilla Five case, and for a respectable firm to work with the current lawyers and volunteers so that we stand a better chance.

### **Background information: Abadilla Five**

The Abadilla Five are five men who were arrested for fatally shooting Col. Rolando Abadilla of the former Philippines constabulary, and allegedly a feared hit man of the Marcos regime, on the streets of Quezon City in Metro Manila on 13 June 1996. The five

men - Lenido Lumanog, Augusto Santos, Cesar Fortuna, Rameses de Jesus and Joel de Jesus - claim that after being suffocated with plastic bags, electrocuted and brutally beaten they confessed to Abadilla's murder. Judge Jaime Salazar of the Quezon City Regional Trial Court, however, ignored the arguments of the five men that they had been tortured into confessing to this crime, and they were subsequently convicted and sentenced to death in August 1999.

Several months later the Alex Boncayao Brigade, an urban guerrilla group of the New People's Army, announced that they were responsible for killing Abadilla, and one of their members gave an Omega watch allegedly taken from Abadilla's body to a Catholic

priest, Father Roberto Reyes, to prove they were responsible for his death. However, the court failed to reopen the case and entertain this new evidence, as well as ballistics data that indicated that the bullets at the crime scene matched those used in other killings acknowledged by the group.

In February 2000, the Supreme Court began a mandatory review of the case as required in capital punishment cases. Nearly five years later, in January 2005, the Supreme Court transferred the review to the Court of Appeal where it languishes today, more than 11 years after the arrest of the five men.

Meanwhile, an investigation conducted by the Commission on Human Rights in June 1996 confirmed that the Abadilla Five had indeed been tortured, and recommended that criminal charges be filed against the police officers responsible. State prosecutor Marilyn Campomanes of the Office of the Chief State Prosecutor was assigned the case; but after five years, her preliminary investigation had not yet been concluded. Finally, in August 2001, the prosecutor's office dismissed the torture complaint on the rationale that the case was still being reviewed by the country's highest courts.