



## **ASIAN HUMAN RIGHTS COMMISSION**

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### **PHILIPPINES: The Human Rights Situation in 2006**

#### ***Getting Away With Murder – Widespread extrajudicial killings combine with a defective system to ensure impunity and injustice***

With gross violations of human rights continuing unabated and avenues for seeking justice and redress completely lacking, the Philippine government's institutions are showing little sign of having the will or capacity to deliver justice. The human rights crisis in the country has worsened during 2006. There are numerous serious cases, in particular the shocking targeted extra-judicial killings of activists, enforced disappearance and torture, being documented almost daily. In fact, these gross violations have already become a subconsciously acceptable way of life for Filipinos. These rights violation cases only represent a fairly well-documented fraction of the reality of human rights – or the lack of – in the country.

While the government claims to have upheld human rights at home and abroad, in reality the victims of violations and their relatives are experiencing the complete opposite. The government's election to two of the United Nations main organs--the Human Rights Council and the Economic and Social Council (ECOSOC) in May and November respectively--does not exonerate the government from its bleak human rights records.<sup>1</sup> The victims have lost faith in the criminal justice system's vital pillars: the police, the prosecution and the judiciary. Should they file cases in court and with quasi-judicial bodies, expectations are low concerning the delivery of, adequate and prompt justice in most cases. While seeking justice these persons have no state-sponsored protection, no compensation,<sup>2</sup> among others. The perpetrators, on the other hand, enjoy total impunity.

What can victims expect from the Philippine National Police (PNP), when in fact they are not only entirely incapable of carrying out effective investigations, but some of their members stand accused of having committed or being accomplices to these crimes. While the police are on occasion able to identify suspects, make arrests and file charges in court, the results of investigations are frequently being challenged or questioned by victims themselves. Police investigators likewise often make premature pronouncements as to the

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<sup>1</sup> AHRC Statement, AS-274-2006: Election of the Philippines to U.N. bodies does not exonerate its bleak human rights record, 4 November 2006

<sup>2</sup> AHRC statement, AS-250-2006: Witnesses and victims of extrajudicial killings and torture deserve protection and compensation too, 13 October 2006

motive of the killings, and reject any suggestions from the victims' families that may be helpful in the investigation of the case. The police have also adopted a strange definition of what they consider as been solved cases. Even if the police's actions do not lead to the successful prosecution of the alleged perpetrators in court, and even if arrests of alleged perpetrators have not been made, they consider cases as being solved. Once the case is with the prosecutor, they reason, their job is done. What happens after that is someone else's business.

Acting on a defective and partial police investigation, the vital role of the Department of Justice's (DoJ) public prosecutors in examining the evidence submitted to is also undermined. Often, the burden of proof rests on the victims to deny the fabricated charges being laid against them by the police. In April, a labour leader who was allegedly ambushed by policemen was instead<sup>3</sup> charged with frustrated (attempted) murder. The prosecutors upheld the results of the police's investigations. In this case, the investigating policemen were colleagues with those accused of ambushing the labour leader.<sup>4</sup> How could any court of law then execute its functions with impartiality and fairness, given this flawed police investigation?

Not only in cases of violence against activists are the public prosecutors being accused of failing in their duties – they are also failing to look into complaints of torture, illegal detention and arrest allegedly perpetrated by policemen. In July, a public prosecutor recommended the filing of criminal charges against a torture victim, whose arrest resulted from a case of mistaken identity. The torture victim was denied his right to have his torture complaints investigated, was not provided with any rehabilitation, compensation and had to remain in jail.<sup>5</sup> In another case, one of the 12 torture victims who is thought to be at risk of being killed as the result of death threats is not being afforded protection. Although the prosecutor handling the case has been informed of his plight, no concrete action has been taken to secure his personal integrity. No further investigations were conducted to identify who is behind the plot to kill him.<sup>6</sup>

Although the government is a State-party to international human rights Covenants and Conventions, in particular the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), its actual implementation of the provisions enshrined within these instruments is derisory. Furthermore, the government has failed to implement most of the December 2003 concluding observations of the UN Human Rights Committee regarding the ICCPR.<sup>7</sup> The unabated extra-judicial killings of activists, could have been prevented if not completely stopped had the government seriously addressed [the] “lack of appropriate

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<sup>3</sup> AHRC statement, AS-250-2006: Witnesses and victims of extrajudicial killings and torture deserve protection and compensation too, 13 October 2006

<sup>4</sup> AHRC Urgent Appeals, UA-142-2006: Labour leader survives ambush by police in Imus, Cavite, 28 April 2006

<sup>5</sup> AHRC Urgent Appeals, UP-186-2006: Prosecutor failed to look into victim's torture claims; criminal charges of evidence taken by way of torture filed in court, 28 September 2006

<sup>6</sup> AHRC Urgent Appeals, UP-092-2006: Plot to kill torture victims in jail, 25 April 2006

<sup>7</sup> CCPR/CO/79/PHL, UN Human Rights Committee, Concluding Observations/Comments, 1 December 2003

measures to investigate crimes allegedly committed by State security forces and agents,” and had taken all necessary measures to improve the witness protection programme.

Amidst the crisis of human rights in the country, the role of the Commission on Human Rights of the Philippines (CHR) is being unnecessarily undermined. While the CHR is trying to carry out its functions to investigate, recommend the filing of cases and ensure the victims and their relatives are provided with compensation, despite limited human and financial resources, the government on the other hand has tried to isolate them. Instead of improving their work, President Gloria Macapagal-Arroyo issued an executive order creating another investigating body to supplant the CHR--the Melo Commission, a special panel tasked to look into the cases of extra-judicial killings. Retired Supreme Court Justice Jose Melo heads this body, which, to date, has failed to make any headway in the investigation of the rampant killings witnessed in the country.

The Melo Commission’s function is actually duplicating that of the CHR’s. Its power is also recommendatory concerning the filing of charges in proper courts. Unlike the CHR, which has a clear constitutional mandate, that ensure that it can grant immunity, guarantee protection and make use of contempt powers, the Melo Commission has none of these. As a result, the Melo Commission is duplicating investigations on cases that have already been investigated by the CHR. There are no shortages of cases in the Philippines, so this is truly wasteful. The government has in practice undermined the CHR, which runs contrary to the substance of its pledge to the UN General Assembly made in the run-up to the elections to the Human Rights Council. The government had promised to “Strengthen the independent National Human Rights Commission, which is a Constitutional body”.<sup>8</sup>

### **Widespread extra-judicial killings and their links to the military and police**

Since January 2006, 56 victims of extra-judicial killings were reported<sup>9</sup> by AHRC with source information coming from various human rights non-governmental organisations around country. This, however, is a fraction of the over-765 cases of extra-judicial killings that have been documented by human rights group Karapatan (Alliance for the Advancement of People’s Rights) since 2001. The number of cases received by the AHRC this year, however, more than doubled compared with last year, in the AHCR documented 20 cases.

The attacks against human rights defenders, political activists, human rights lawyers, labour leaders, religious leaders, journalist, peasants and others serving the poor and defending human rights have intensified this year--with killings taking place almost daily in recent months. According to Councils for the Defence of Liberties of the Philippines (CODAL), 10 judges and 15 lawyers have been killed since the Arroyo administration

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<sup>8</sup> The Philippines Commitment to UN General Assembly in the Human Rights Council, 9 May 2006.

<sup>9</sup> The number of victims of extra-judicial executions is based on cases received and issued with appeals by the AHRC as of 25 November 2006. See list at: [http://www.pinoyhr.net/list\\_killed.php](http://www.pinoyhr.net/list_killed.php)

took office.<sup>10</sup> Contrary to the figures given by CODAL, the Philippines National Police (PNP) Task Force Usig indicated that there were only a total of 16 judges and lawyers, including 11 judges and 4 state prosecutors, killed during 1999-2006.<sup>11</sup> According to the International Federation of Journalists (FIJ) and the National Union of Journalists of the Philippines, over 50 media workers have been killed during the Arroyo administration's time in office, and from January to July 2006 there have already been nine killings.<sup>12</sup> It is also reported that at least 23 church workers, including pastors, priests and a bishop have been killed since 2001.

There are clear patterns that often occur before victims are killed: they receive death threats, their names are included in so-called "order of battle" by the military, they are tagged as either being sympathetic to left or having "communists" ideologies, they are subjected to harassment and surveillance.<sup>13</sup> But there are other cases in which the victims had no known enemies and were killed for motives that also remain unknown. Not only are activists vulnerable to these attacks; often witnesses and the victims' families--including women and children--are also targeted.

With the absence of state-sponsored protection and security, those facing serious risks to their lives have been forced to take care of their own security. This includes activists, witnesses, the families of the dead and others who can play a role in seeking justice and redress for the violations committed against them. A group of bishops described the situation in the country in a statement after the brutal killing of Iglesia Filipino Independiente (IFI) Bishop Alberto Ramento on October 3, stating that: "No citizen in this country is safe anymore!"<sup>14</sup>

Despite mounting pressure on the government from inside the country and the international community, the police authorities have resorted to downplaying the extra-judicial killings, stating that they are not part of a "systematic and widespread" phenomenon. The police have also tried to exonerate themselves by putting the blame on the New Peoples Army (NPA) for perpetrating the killings against "enemy spies" and "counter revolutionaries."<sup>15</sup> While some cases point to involvement by rebels, the police system cannot exonerate itself from accountability for its failure to protect these people. It is the paramount duty of the state to protect the lives of its citizens. There is an entrenched bias against groups critical of the government. Instead of acknowledging the police's incapability to take credible action to halt the killings, there are attempts to discredit the efforts made by human rights groups to document and inform about the killings as being "propaganda". This is the manifestation of the police's inability to provide protection and security to its citizens. These claims cannot explain the over 765 cases of killings.

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<sup>10</sup> Fact-finding report of the Hong Kong Mission for Human Rights and Peace in the Philippines from July 23 to 28, 2006, page 5

<sup>11</sup> Ibid

<sup>12</sup> Ibid, page 24

<sup>13</sup> AHRC Forwarded Press Release, AHRC-FP-008-2006: Law office under tight military surveillance

<sup>14</sup> AHRC Forwarded Press Release, AHRC-FP-008-2006: Law office under tight military surveillance

<sup>15</sup> Police Chief Supt. Rodolfo Mendoza, deputy director for Directorate for Investigation and Detective Management, PNP, 26 July 2006.

The AHRC has reported a number of cases in which members of the military were allegedly involved in the extra-judicial killings and other gross violation of human rights. In particular, retired Major General Jovito Palparan, the former commander of the 7th Infantry Division of the Philippine Army, and his men stand accused of;

1. EXTRAJUDICIAL KILLING: On 16 January 2006, 61-year-old activist Ofelia Rodriguez (a.k.a. Nanay Perla) of Barangay Divisoria, Mexico, Pampanga, was shot dead by two gunmen believed to be working for the military. Prior to the murder, 2nd Lt. John Paul Nicolas, head of the 69th Infantry Battalion, allegedly threatened to kill Rodriguez and had given a gun to her neighbour in order to carry out the killing. Earlier she was reportedly forced to state that she was a rebel leader. We are not aware of any progress in the murder investigation, or inquiries about the army's alleged role.

2. ABDUCTION & EXTRAJUDICIAL KILLING: On 31 January 2006, Allan Ibasan and Dante Salgado were found dead at a funeral home a day after they were arrested and forcibly taken to Sta. Ignacia, Tarlac, allegedly by four military men attached to the 71st Infantry Battalion. It is reported that seven other villagers were harassed, namely Glen Ibasan (17), Cesar Andaya (44), Annie Salgado, Reynaldo Reyla, Ricky Salgado, Eduardo Magallanes, Dominic Reyla. Again the soldiers are not known to have been investigated regarding their possible involvement in the killings.

3. EXTRAJUDICIAL KILLING: On 13 February 2006, 19-year-old activist Audie Lucero was found dead in Barangay Capitangan, Abucay, Bataan, near a hospital where a day earlier he was seen at a building being approached by Lubao (Pampanga) Police, and then by more than ten personnel of the 24th Infantry Battalion. Yet again, there is no known investigation into the alleged connection between his killing and the actions of the security forces that were present at the time.

4. FORCED DISAPPEARANCE & INTIMIDATION: On 14 February 2006, villagers Reynaldo Manalo (32) and Raymond Manalo (22) of Barangay Bohol na Mangga, San Ildefonso, Bulacan were reported to have been illegally arrested by elements of the 24th Infantry Battalion headed by Master Sergeant Rollie Castillo and subsequently disappeared in San Ildefonso, Bulacan. Several of their relatives, namely Jesus Manalo, his wife Ester, Reynaldo's wife Maria Leonora, and the victims' cousin Celeste and seven children were also reportedly threatened. Reynaldo and Raymond's whereabouts remain unknown. Again, there is no known investigation of the troops' alleged role in these events.

5. FORCED DISAPPEARANCE: On 6 March 2006, labour leader Rogelio Concepcion (36) was forcibly abducted and disappeared by armed men in Barangay Mataas na Parang, San Ildefonso, Bulacan. Witnesses allege that military men were in the area at the time of the abduction, and that Concepcion was a target due to his criticism of a military deployment inside the factory where he worked as an organiser.

6. FORCED DISAPPEARANCE: On 3 April 2006, 24-year-old activist Ronald Intal of Barangay Asturias, Tarlac City, was forcibly abducted and subsequently disappeared, allegedly by armed men who were seen taking him towards a military detachment in Barangay Asturias, Tarlac City, where elements of the 70th Infantry Battalion are stationed. He has not been seen since. Those allegedly involved are not known to have been investigated.<sup>16</sup>

All these allegations against Major General Palparan and his men have not been thoroughly investigated. The police instead exonerated him and his men even before subjecting them to investigations. The peoples' distrust and loss of faith in the police's criminal investigation procedure is deeply rooted. While the victims and families of the dead are living in enormous fear, Major General Palparan meanwhile is receiving commendations from President Gloria Macapagal-Arroyo herself, for example during her State of the Nation Address (Sona) on July 24. By doing so in public, the President has indirectly already exonerated Major General Palparan of gross abuses even before an impartial investigation, effective prosecution or court's decision confirming his innocence or guilt has been completed. The President also allegedly attempted to provide Major General Palparan with de facto immunity from questioning with regard to investigations into widespread extra-judicial killings, by nominating him for appointment as deputy director for counter-insurgency in the National Security Council (NSC).<sup>17</sup> The President, as Commander-in-Chief, has therefore effectively encouraged the police and military men to continue with the type of actions undertaken by Major General Palparan without fear of being prosecuted. The culture of impunity runs deep in the government security forces.

Other military officers and their men have also been accused of committing extra-judicial killings. In March, the CHR VIII recommended the filing of murder charges against Major Lope Dagoy, the head of the 19th Infantry Battalion, Philippine Army and his men - 2nd Lieutenant Luel Adrian Benedicto, Sergeant Ruel Fernandez and Corporal Dioscoro Jamorawon. They are accused of the killing of seven peasants, including a pregnant woman, in Palo, Leyte on 21 November 2005.<sup>18</sup>

In Tagum City, on September 6, after two years, a public prosecutor filed charges of homicide against Sergeant Serafin Jerry Napoles and his men for the killing of a couple on September 2004.<sup>19</sup> On August 3, one of the alleged perpetrators in the killing of religious leader Isaias de Leon Santa Rosa (47) was identified as Lordger Pastrana, a corporal in the Philippine Army. His dead body was recovered close to Santa Rosa after the latter was forcibly taken from his house and killed. Pastrana was believed to have

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<sup>16</sup> AHRC Open Letter, AHRC-OL-035-2006: Alleged rights abuses by army demand full investigations, not whitewashing, 27 July 2006

<sup>17</sup> AHRC statement, AS-211-2006: The administration of impunity- government seeking to shield alleged killings mastermind from justice, 11 September 2006

<sup>18</sup> AHRC Urgent Appeals, UP-053-2006: Commission on Human Rights (CHR) set to file charges against soldiers allegedly involved in killing peasants in Leyte, 24 March 2006

<sup>19</sup> AHRC Urgent Appeals, UA-72-2005: Prosecutor's inaction to file murder charges against military officers who killed two people, 27 April 2005

been carrying a mission order concerning the killing of Santa Rosa.<sup>20</sup> Although the military denied involvement, no impartial investigation was conducted in this case despite the presence of allegedly damning evidence.

The killing of Dr. Rodrigo Catayong confirms claims of the existence of black-lists of persons that are to be targeted for liquidation. Catayong was with his wife Marcela when armed men attacked them at church in MacArthur, Eastern Samar on November 5.<sup>21</sup> Two months prior to Catayong's killing, an alleged "liquidation list" containing the names of 31 persons, including him, circulated all over the province. Although Ka Hector of the Samar-Leyte Anti-Communist Movement (SLACM), the leader of an alleged anti-communist group signed it, there are serious allegations that the group is connected with the Civil Relations Service of the Armed Forces of the Philippines (CRS-AFP) in the area. It is reported that the SLACM and local military unit had conducted joint anti-communists rallies and activities in the past.

Armed, hooded attackers, wearing bonnets that cover the face, have also been linked to the police. In April, labour leader Gerardo Cristobal survived an ambush by armed, masked men, who were later identified as being Senior Police Officer 1 (SPO1) Romeo Lara, Police Officer 3 (PO3) Nicanor Diaz and police informer Ador Esternon. These persons are attached to the Imus Municipal Police Station. Cristobal claimed it was the police who attacked him but the police investigators, who are the colleagues of those he accused, filed murder charges against him instead.<sup>22</sup> No impartial and independent investigation was conducted to look into the labour leader's version of events.

### **The use of hired killers and armed vigilante groups**

It is also alleged that the killings have been perpetrated by hired killers and armed groups. This nexus between the authorities and criminal elements shows the extent to which the police and the authorities in general are corrupt and unable to ensure the rule of law.

After environmental activist Elpidio de la Victoria was killed in April 12, it was learned that, prior to his death, the victim disclosed that Php 1 million (USD 19,954) had been raised to kill him by the people affected by his campaign. The identities of those who are alleged to have raised the money and paid the reward for his murder remain unknown. De la Victoria was a staunch campaigner against destructive and illegal methods of fishing in Visayan sea. His colleague, Antonio Oposa Jr., has reportedly received serious death threats. One of De la Victoria's alleged perpetrators was a police officer.<sup>23</sup> No effective investigations have been conducted to determine whether the authorities are engaging in financing killings.

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<sup>20</sup> AHRC Urgent Appeals, UA-274-2006: Family members of slain church worker faces security risk, 18 August 2006

<sup>21</sup> AHRC Urgent Appeals, UA-369-2006: Another activist in "liquidation list" killed; two others survive attempts on their lives in separate incidents, 10 November 2006

<sup>22</sup> AHRC, UA-142-2006

<sup>23</sup> AHRC Urgent Appeals, UA-131-2006: Killing of an environmental activist and threat against another, 20 April 2006

The killing of another activist Enrico Cabanit on April 24 was also alleged to have been perpetrated by hired killers. Cabanit's daughter, Daffodil, was also wounded in the shooting but survived the attack. A reliable source connected to the victim has claimed that a hired killer was paid P150,000 (USD 2,973) to carry out the murder.<sup>24</sup> Although the police claimed to have identified one of the perpetrators, Monching Solon, the case has not progressed in court as the latter was killed under suspicious circumstances on May 26. After the suspect's death, it was impossible to identify who masterminded Cabanit's murder. While the alleged mastermind remains at large, Cabanit's family members are living in fear.

Although two of the gunmen in the murder of activist Rico Adeva on April 15 have already been identified as being members of an armed group, no arrests have been made. Adeva's wife, Nenita, positively identified her husband's attackers as Ronald Europa, a member of the Revolutionary Proletarian Army - Alex Boncayao Brigade (RPA-ABB), an armed rebel group.<sup>25</sup> Adeva's group was actually at odds with that of Ronald's. The leadership of the RPA-ABB confirmed that Europa is their member, but the authorities have not arrested him. The rebel group, however, did not categorically deny or accept responsibility of the killing.

On the other hand, the leadership of the Communist Party of the Philippines' (CPP) has declared in public its decision to set up armed partisan forces to counter-attack the operatives and masterminds of the killings.<sup>26</sup> The formation of liquidation squads to execute police, military and government security forces accused of committing gross abuses of human rights--in particular extra-judicial killings--is a cause for concern. The fact that armed groups are resorting to extra-judicial means in seeking justice is condemned, but it must also be seen as a manifestation and bi-product of a dysfunctional criminal justice system and failure of the government to put a halt to the killings.

### **Non-existent and defective Witness protection program**

Under the Philippine law, Section 3 of the Witness Protection, Security and Benefit Act (RA 6981) provides that any person who has "witnessed or has knowledge or information on the commission of a crime" can be admitted for witness protection provided:

“(c) He or any member of his family...subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony”<sup>27</sup>

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<sup>24</sup> AHRC Urgent Appeals, UP-175-2006: Flawed police investigations into killing, with no arrests made despite gunmen having been identified, 7 September 2006

<sup>25</sup> AHRC, UP-175-2006

<sup>26</sup> A Forwarded Statement by AHRC, FS-029-2006: “The Killings Must Stop”, 6 October 2006

<sup>27</sup> Witness Protection, Security and Benefit Act (RA 6981)



While the role of RA 6981 is vital in permitting witnesses to come forward and fully cooperate in any investigation and prosecution of cases in court, in reality, the program is severely dysfunctional. Its failure must be attributed to its implementing agency, the Department of Justice (DoJ). The AHRC has repeatedly pointed out that the absence of protection for witnesses is blocking the effective prosecution of perpetrators in court.<sup>28</sup> While the DoJ and the PNP acknowledge this fact, efforts to improve this program are lacking.

Potential witnesses, activists who are facing serious threats, survivors of attacks and violent atrocities, and the families of the dead, have thus far received no protection. In the absence of protection from the State, these people are forced to seek refuge in church sanctuaries, non-governmental organisations' safe houses or in other hideouts. They live in extreme fear of being located and being exposed to their would-be attackers.

Not only is the DoJ failing to implement the witness protection programme, in particular concerning cases of human rights violations, but the DoJ also displays prejudice and biases against the witnesses and families of the dead that are seeking protection. The department often adopts a confrontational attitude when dealing with them, blaming victims for their “uncooperativeness and distrust”. This is why, despite the appeals made by President Macapagal-Arroyo in her Sona speech - “urge [ing] witnesses to come forward. Together we will stop extrajudicial executions”<sup>29</sup> - no significant improvement in the implementation of RA 6981 has taken place. No witnesses have come forward.

The PNP, in particular the Task Force Usig, a special police investigating body tasked with conducting thorough investigation into extra-judicial killings, are also encountering difficulties in identifying and arresting alleged perpetrators and sending them for effective prosecution in court in most cases due to a lack of witnesses. In a letter received by the AHRC from Police Director General Oscar C. Calderon, responding to cases of extra-judicial killings, it was noted that:

“...the police are having difficulties in the filing of charges against the assailants due to the non-cooperation of the witnesses and families of the victim, out of fear for their lives, considering that the place of incident is categorized as a rebel infested area”<sup>30</sup>

The investigations being conducted by the Melo Commission have also been effectively halted due to a lack of cooperation with the commission by witnesses and the families of the dead. As a result, there cannot be effective and factual investigations by any investigating body unless the serious matter of protection is adequately addressed without delay. It is shocking, however, that despite the government's institutions being fully aware of this need, no effective actions have been taken to date.

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<sup>28</sup> AHRC statement, AS-120-2006: Task force on killings must start with witness protection, 26 May 2006

<sup>29</sup> President Gloria Macapagal-Arroyo, State of the Nation Address (Sona), 24 July 2006

<sup>30</sup> Letter of Police Director General Oscar C. Calderon, chief of the PNP and commander of Task Force Usig, 25 July 2006

The AHRC has reported on numerous cases where perpetrators have not been identified and prosecuted for lack of witnesses. Even those who had survived attacks and families of the dead who are themselves eyewitnesses to the violent death of their loved ones were either not able to or had difficulty in pursuing their cases in court due to insecurity.

This situation has been seen in the case of Daffodil Cabanit, mentioned above, whose father Enrico was shot dead by armed men.<sup>31</sup> Ofelia Bautista, whose husband Napoleon was found dead days after they were forcibly abducted in August 30 in Hagonoy, Bulacan, was freed by her captors, but her husband was not and was killed.<sup>32</sup> The abductors and killers of Ofelia's husband have yet to be prosecuted in court despite her being a survivor to the atrocity. The family of slain religious leader Pastor Isaias Sta. Rosa too who saw the latter being brutally tortured and abducted before he was subsequently killed.<sup>33</sup> The brother of slain activist Jose Doton (62), Cancio, who survived the attack in May 16 also experienced similar plight. Jose was killed while he and his brother Cancio were riding on a motorcycle. Cancio suffered a gunshot wound and survived the attack.<sup>34</sup> The perpetrators have so far escaped being made accountable for the killing.

In another case, even though peasant activist Amante Abelon survived the attempt on his life on March 20 in San Marcelino, Zambales his wife Agnes and their 5-year-old son Amante Jr. did not.<sup>35</sup> Amante can identify their attackers but has refrained from testifying in court due to a lack of protection. This situation is also similar to the killing of activist Crisanto Teodoro in March 10. His wife Lucila and their companions, although they witnessed his murder by armed men in Malolos, Bulacan, are refraining from seeking justice and redress due to a lack of protection. Lucila has lost faith in her husband's killers being arrested and prosecuted.<sup>36</sup>

### **Flawed or inexistent investigations by the police**

The investigations conducted by the PNP concerning extra-judicial killings are either completely inconclusive or unsatisfactory. The police system lacks the ability to conduct forensic investigations and professional gathering of evidence to build a strong case that will stand up in court. Their ability to secure vital pieces of evidence in solving the killing is also not satisfactory.

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<sup>31</sup> AHRC, UP-175-2006

<sup>32</sup> AHRC Urgent Appeals, UA-295-2006: Two more activists killed; one of six abducted activists remains missing while four others remain in detention, 7 September 2006

<sup>33</sup> AHRC, UA-274-2006

<sup>34</sup> AHRC Urgent Appeals, UA-175-2006: Three more activists killed; another priest faces serious threats on his life, 1 June 2006

<sup>35</sup> AHRC Urgent Appeals, UA-107-2006: Another peasant leader wounded and his wife and son killed by armed men in Zambales, 28 March 2006

<sup>36</sup> AHRC Urgent Appeals, UA-096-2006: Activist killed and an attempt made on another's life, 20 March 2006

In fact, there is a serious concern that the PNP is unwilling to properly investigate these killings. For example, during an interview conducted by an international fact-finding team, General Avelino I Razon Jr., the head of the PNP's Task Force Usig, said that there is no government policy of politically motivated killings of opposition party-list members, journalists or activists. According to him, no members of the armed forces or the police have killed any such people.<sup>37</sup> Such a statement from the head of TFU that is tasked with investigating such killings is inappropriate before all the cases have been fully investigated. Furthermore, the current structure and operation of the Task Force causes great concern, as it shares information and intelligence with the army and other components of the authorities.<sup>38</sup> This severely undermines the independence and effectiveness of the Task Force and it should be re-structured such that its independence is not compromised.

Not only are investigations being compromised due to the police's negligence, lack of capacity and willingness to solve the cases, but there also are obvious attempts to pass the buck. The killings are often blamed on the armed rebel groups or other forces, but these claims are made without supporting evidence, which could only come to the surface if effective, credible investigations were actually being carried out.

In a letter received by the AHRC in July,<sup>39</sup> the PNP did not acknowledge their failings. Instead, they made spurious claims about their "successes." The PNP claimed to have 77 percent case solution efficiency, in particular concerning cases of slain journalists – however, this solution efficiency does not refer to actual sentencing of persons found to have committed the crimes, so has little value:

“The Philippine National Police would like to express our deep appreciation on your concern over the unresolved violence and murder of church people, human rights activists, journalists and political activists.

I have the pleasure to inform you that as per data and statistics gathered and analyzed by the PNP from 2001 to present, one hundred two (102) incidents of militants’ activists slain were recorded in which twenty five (25) cases has already been filed in court against the suspects...

Our records show that twenty (20) cases out of the twenty six (26) recorded cases of slain journalist has been filed in court while the remaining six (6) are still undergoing investigation. There are ten (10) suspects who were arrested while nine (9) more suspects are still at-large who are now the priority for police manhunt”

In a number of cases the PNP are accused of ignoring the versions by the families of the dead and making premature pronouncements in absence of thorough investigations, undermining the victims’ case. They have shown themselves to be negligent in securing

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<sup>37</sup> Ibid (n 4), page 15

<sup>38</sup> Ibid (n 4), page 7

<sup>39</sup> Police Chief Supt. Rodolfo Mendoza

scientific evidence. If there are arrests of suspects being made, often they are due to unnecessary pressure. On one occasion, the PNP warned their field commanders that they would be sacked from their respective assignments if they fail to make arrests following the killing of an activist in their jurisdiction – this obviously leads to arbitrary and wrongful arrests. When such knee-jerk arrests are made, the police commit violations of the suspect's rights. Once these arrests have been made and charges are filed in the prosecutor's office, the police no longer care whether they have arrested the right persons, whether the case is strong and the perpetrators are effectively prosecuted. For them, once the case is with the prosecutor, the case is solved.<sup>40</sup>

Take the case of development activists George Vigo and his wife Maricel who were killed in Kidapawan City on June 19. According to Maricel's younger sister, Maribel, the manner of the investigation by the Task Force Vigo was not thorough and was completed too quickly. The findings were also contrary to another report by local police who initially conducted the investigation. One of the victims' relatives was also made to sign an affidavit that the police had prepared, but the content of which was not properly explained to her. It was later found that the affidavit had been used by the police to file the case in court. The version given by Vigo's relatives concerning the motive of the killing was completely ignored.<sup>41</sup>

The investigation conducted into Enrico Cabanit's case was also defective. It is reported that the Panabo City Police were unable to completely secure the relevant physical evidence from the crime scene. Not all of the spent shells resulting from the gunmen's shooting were recovered. They were unable to secure photographs and sketches of the crime scene. The photographs the police investigators had taken from the crime scene were of no use, because the camera they used was later found to be defective. There was no autopsy or post-mortem examination performed on Cabanit's body.<sup>42</sup>

The police were also quick to declare the brutal killing of IFI Bishop Alberto Ramento, a prominent human rights defender on October 3, as a case of robbery and homicide. However, Bishop Ramento's family and his fellow clergy believe that his murder was methodically planned and politically motivated. Bishop Ramento himself confirmed having received several death threats before he was killed. He once told his family, "I know they are going to kill me next. But never will I abandon my duty to God and my ministry to the people."<sup>43</sup> The police investigators claimed there were missing belongings at Bishop Ramento's quarters, an indication of robbery. But Bishop Ramento's family and human rights group who conducted a separate investigation denied the police's claim that robbery was the motive of the killing. They established that the stolen belongings had already been taken out from Bishop Ramento's convent several days before he was

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<sup>40</sup> AHRC, AS-171-2006

<sup>41</sup> UA-205-2006: A couple engaged in development work and two other activists killed in separate incidents, 28 June 2006

<sup>42</sup> AHRC, UP-175-2006

<sup>43</sup> AHRC Urgent Appeals, UA-331-2006: Killing of prominent human rights defender Bishop Alberto Ramento, 5 October 2006

attacked. The police did not consider this version. They declared the case solved based on their findings.

The gruesome murder of urban poor activist Eduardo Millares (50) on October 18 in San Pablo City, Laguna was also declared by the police as having been perpetrated by gang members. As usual, the pronouncement was made before a thorough investigation had been completed.<sup>44</sup> They rejected the suggestion made by human rights groups that the killing of Millares was politically motivated and was connected to his activities with the urban poor. Not only did the police deny the victims a proper investigation, their practice of making premature pronouncements prior to conducting thorough investigations is unacceptable.

There were also alleged irregularities in the arrest of a police officer who is suspected in the killing of environmental activists Elpidio Dela Victoria. The suspect was arrested without an arrest warrant several days after the killing of Dela Victoria. In justifying the suspect's warrant-less arrest, the arresting policemen claimed that it was carried out during a "hot pursuit" operation.<sup>45</sup> Under the law, however, warrant-less arrests can only be made immediately after a crime is committed and in the case that the arresting officers have with them witnesses who can directly identify the suspect.

It is the police investigators' duty to determine all aspects of a killing and to identify the perpetrators by considering all the information available to them. Only after they have exhausted all leads in an investigation should they produce their findings and make any pronouncements (as long as these remain non-prejudicial to the prosecution of the suspect). To reject information coming from the families of the dead is totally unacceptable. This does not only manifest the police's flawed or manipulative investigative skills, it also reflects a deep-rooted bias against victims. Not only is this apparent in cases where they considered the victim as being a "leftist" – we see this bias even in cases where the person has no affiliation. The police are themselves instruments in denying the victim's struggle for justice and redress. Given the police's failure and unwillingness to acknowledge this critical concern, unless there is implementation of rigorous police reforms, the policing system in the country cannot be effective.

### **Delays in resolving cases of killings and torture**

Promptness in resolving cases of gross violations of human rights is essential for victims. Often unnecessary delays places victims and witnesses at serious risk, while giving those accused plenty time to attack or harass them. The failure of the concerned authorities to ensure that cases are promptly resolved is of serious concern. Such delays compound the problem of non-existent protection mechanisms.

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<sup>44</sup> AHRC Urgent Appeals, UA-347-2006: Gruesome killing of another activist; another one survives attack, 24 October 2006

<sup>45</sup> AHRC, UA-131-2006

For example, the Office of the Ombudsman for the Military and Other Law Enforcement Office (MOLEO), a quasi-judicial body dealing with complaints against officials of the police and military, has for example failed to resolve whether or not murder charges should be filed against two military lieutenants and several others accused of involvement in a killing. The respondents, all of whom are attached to the 25th Infantry Battalion of the Philippine Army, are accused of allegedly killing three farmers and wounding three others in Davao del Sur, Mindanao in February 8, 2005.<sup>46</sup> Almost two years on, the case against them cannot be filed in court due to delays on the part of the MOLEO. Under the existing procedure, before any complaint is filed in court the result of investigation by the public prosecutors should be submitted to the Ombudsman first for review and recommendation.

This is also the case in the killing of peasants in Palo, Leyte on 21 November 2005. Although the CHR VIII<sup>47</sup> has already recommended the filing of multiple murder and attempted murder charges against the military officers to the Ombudsman, the Ombudsman is still unable to resolve the case one year on. The case cannot be filed in court unless the Ombudsman acts on it.

The Ombudsman has also failed to promptly resolve cases concerning allegations of torture, illegal arrests and detention. No substantial progress has been made concerning the six policemen accused of brutally torturing eleven persons, including two minors, in Buguias, Benguet on February 14.<sup>48</sup> The Ombudsman's assurances that the torture of Haron Abubakar Buisan<sup>49</sup> over mistaken identity by policemen in General Santos City on 12 December 2005 would be looked into also produced no result. No investigations were conducted or any charges have been brought against the perpetrators. The torture victim remains in jail and is facing false charges against him as a result of evidence allegedly collected through the use of torture.

In another cases, the Ombudsman has also delayed replying to a court's recommendations concerning the amendment of charges against a military sergeant and his men, who were allegedly involved in the killing of a couple in Tagum City.<sup>50</sup> The Ombudsman's delayed action resulted in the non-filing of criminal charges against the perpetrators in court despite "probable cause" having been established to prosecute them. Even if recommendations concerning the filing of the case in court had already taken place, the Ombudsman completely failed to review the background of a public prosecutor, before having him deputized to handle the case. In this case, it was the same prosecutor who earlier rejected the same case for a lack of "probable cause" but whose findings were later reversed by the Ombudsman. The families of the dead raised serious concerns regarding how the case could be effectively prosecuted under such circumstances.

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<sup>46</sup> AHRC Urgent Appeals, UP-153-2006: Another delay by Ombudsman prevents filing of murder charges against military men, 3 August 2006

<sup>47</sup> AHRC, UP-053-2006

<sup>48</sup> AHRC Urgent Appeals, UA-082-2006: Brutal torture of 11 persons and subsequent filing of fabricated charges against them, 3 March 2006

<sup>49</sup> AHRC Urgent Appeals, UA-251-2005: Brutal torture of a 25-year-old man over mistaken identity in General Santos City, Mindanao, 30 December 2005

<sup>50</sup> AHRC, UA-072-2005

It also took the CHR XII four years to take up the case of three torture victims in General Santos City. It was only on June 5, when the CHR met torture victims Jehon Macalinsal and his two companions. They were asked whether or not they are still decided to pursue their complaint.<sup>51</sup> Even though the CHR took up the case, the probability of holding the perpetrators accountable is very slim. The police officials involved leading to the arrest and detention have either been transferred or retired from service. They were never held accountable and will likely escape any responsibility. Obviously, the CHR's long overdue response did not only deny the victims the possibility of seeking redress, but also indirectly exacerbated the impunity enjoyed by the perpetrators.

### **Investigation bodies lack sufficient powers**

The governmental bodies--the CHR and the Melo Commission--tasked with investigating cases of extra-judicial killings either lack sufficient resources to perform their duties or have no power to prosecute the perpetrators in court. When President Macapagal-Arroyo created the Melo Commission on August 21, in response to local and international pressure, there was a certain amount of hope amongst the victims, the families of the dead and human rights groups that perpetrators would be prosecuted. It is the President who appointed the panel members of the Melo Commission, led by former Supreme Court Justice Jose Melo.

But months after the Melo Commission conducted their investigations, no substantial progress has been seen. Instead, the victims started to feel distrust and reluctance to cooperate with the Melo Commission. It is now widely perceived as another type of machinery created by the government to cover-up its atrocities. Given the victims and witnesses reluctance to cooperate with the body, the Melo Commission has halted its investigations. The authorities' inability to provide witnesses with protection should they cooperate and testify in court also made it difficult to convince witnesses to participate.

The Melo Commission also received criticism not only from local human rights groups but also from the CHR, for undermining its offices. The Melo Commission's work, although created by the President Macapagal-Arroyo, duplicates that of the CHR. CHR Commissioner Purificacion Quisumbing reacted sharply to the Melo Commission's gesture of sending them a "subpoena" in connection with the investigation that the latter is conducting;

"The Melo Commission was graciously invited by the CHR Chairperson [Purificacion Quisumbing] to visit the Office and be enlightened on the way the independent constitutional body handled the complaints of human rights violations including alleged killings and disappearances filed by cause-oriented and progressive groups. ...the CHR top official intimated that the Commission is not subordinate to any branch of government and as a matter of principle should

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<sup>51</sup> AHRC Urgent Appeals, UP-150-2006: Commission on Human Rights' (CHR) investigation into torture cases in General Santos City dragging, 27 July 2006

never be cross-examined in any proceedings as far as human rights issues are concerned.”<sup>52</sup>

Both the CHR and the Melo Commission do not have prosecutory powers. While the CHR has a constitutional mandate under the 1987 Constitution, its powers are restricted to the submission of findings and recommendations to concerned quasi-judicial bodies and court prosecutors. These are subject to review before a charge against perpetrators can formally be filed. Therefore, despite the CHR and Melo Commission having established a “probable cause” to warrant an indictment, the powers of decision concerning whether a can be filed in court remains with the prosecutors and quasi-judicial bodies. Given the delays by quasi-judicial bodies and prosecutors to resolve cases involving gross violations, the efficiency and promptness of the delivery of justice is undermined. Beyond the prosecution of cases, the CHR can only also recommend the provision of compensation to victims of gross abuses.

Both the CHR and Melo Commission likewise have no existing mechanisms to provide victims, families of the dead and witnesses facing serious risk to their lives with adequate security and protection. Therefore, even if the CHR and the Melo Commission were able to establish a strong case as a result of investigations, this often ends up being meaningless, as they could not ensure the protection of witnesses and therefore the effective prosecution of the cases. This leads to the possibility that the case is dismissed for lack of witnesses.

Although there are proposals in the Senate to improve “grant [ing] it the power to prosecute cases of violations of human rights that it has investigated”, it is not showing progress and the bill remains pending. The proposal was in response to observations that “while the CHR is [faithfully] discharging its mandated task to investigate cases of political killings, abductions, torture and other forms of human right violations, these cases are hardly moving in the courts and are largely unresolved.”<sup>53</sup>

### **Poor implementation of United Nations Covenants and Conventions**

The Philippine government’s implementation of the International Covenant on Civil and Political Rights (ICCPR) is poor and insufficient. The government has failed to implement most of the concluding observations and recommendations of the UN Human Rights Committee during its periodic review in December 2003. It also failed to enact laws against torture and enforced disappearance, which it is required to do as a State party to the ICCPR.

In recent times, the Supreme Court of the Philippines’ has issued a number of landmark decisions which reject the government’s attempt to justify illegal acts. While the high court acknowledges internationally human rights law as enshrined in the 1987 Constitution, the actual protection of these rights is poor. The government’s response to

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<sup>52</sup> CHR News Release: We [CHR] are not subordinate to any government branch, 4 October 2006

<sup>53</sup> Senate Minority Leader Aquilino Pimentel Jr., 28 August 2006



inquires from the UN is also poor. In particular, the Department of Foreign Affairs (DFA) is neglecting its responsibility to respond to inquiries relating to the government's continued failure to enforce UN covenants and conventions. Likewise, the DFA neglects its obligation to reply to complaints of human rights violations, while not providing regular periodic reports to the UN.

### **Issuance of proclamations, orders and “partly unconstitutional” policies**

Excessive violations of civil and political rights also occurred following the government's declaration and issuance of Presidential Proclamation 1017 (PP 1017)<sup>54</sup>, General Order No. 5 (G.O. No. 5)<sup>55</sup> and the Calibrated Pre-emptive Response (CPR) policy. All these policies had previously been declared unconstitutional in part by the Supreme Court. The PP 1017 placed the entire Philippines under the “State of National Emergency” while G.O No. 5 was pursuant to PP 1017, directing the Armed Forces of the Philippines (AFP) to “maintain public peace, order and safety and to prevent and suppress lawless violence.”

When PP 1017 was declared on February 24, there were illegal arrests and detentions, protesters were violently dispersed, fabricated charges were filed against those critical of the government, as well as an illegal raid of a newspaper without a search warrant. Those who secured rally permits for the mobilization on the day to commemorate the 1986 EDSA revolution also saw them revoked. One of those illegally arrested--Anakpawis Representative Crispin Beltran--remains in detention and is still facing rebellion charges. The police arrested him with a 21 year-old warrant on charges that had long been dismissed by the court. The police justified their violent acts in the name of CPR policy, which replaced “maximum tolerance” in dealing with street protests. In another incident, six religious leaders and several others who had held a peaceful protest, were violently assaulted by the police under CPR policy. The group had gathered at the Malate Church in Manila on 7 April 2005. Four of them were also briefly detained.<sup>56</sup>

After petitions were filed questioning the legality of the Presidential Proclamation No. 1017 and General Order No. 5, the Supreme Court ruled;

**“WHEREFORE**, the Petitions are partly granted. The Court rules that PP 1017 is **CONSTITUTIONAL** insofar as it constitutes a call by President Gloria Macapagal-Arroyo on the AFP **to prevent or suppress lawless violence**. However, the provisions of PP 1017 commanding the AFP to enforce laws not related to lawless violence, as well as decrees promulgated by the President, are declared **UNCONSTITUTIONAL**. In addition, the provision in PP 1017 declaring national emergency under Section 17, Article VII of the Constitution is **CONSTITUTIONAL**, but such declaration does not authorize the President to

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<sup>54</sup> Read Presidential Proclamation No. 1017, President Gloria Macapagal-Arroyo, 24 February 2006

<sup>55</sup> Read General Order No. 5, President Gloria Macapagal-Arroyo, 24 February 2006

<sup>56</sup> AHRC Urgent Appeals, UP-41-2005: Several protesters, including four priest, beaten by police during a peaceful demonstration in Malate Church, Manila, 8 April 2005

take over privately-owned public utility or business affected with public interest without prior legislation.

G.O. No. 5 is **CONSTITUTIONAL** since it provides a standard by which the AFP and the PNP should implement PP 1017, i.e. whatever is “**necessary and appropriate actions and measures to suppress and prevent acts of lawless violence.**” Considering that “acts of terrorism” have not yet been defined and made punishable by the Legislature, such portion of G.O. No. 5 is declared **UNCONSTITUTIONAL**.

The warrantless arrest of Randolph S. David and Ronald Llamas; the dispersal and warrantless arrest of the KMU and NAFLU-KMU members during their rallies, in the absence of proof that these petitioners were committing acts constituting lawless violence, invasion or rebellion and violating BP 880; the imposition of standards on media or any form of prior restraint on the press, as well as the warrantless search of the *Tribune* offices and whimsical seizure of its articles for publication and other materials, are declared **UNCONSTITUTIONAL**.<sup>57</sup>

The Supreme Court also ruled on the Calibrated Preemptive Response (CPR) policy;

“...Calibrated Preemptive Response (CPR), insofar as it would purport to differ from or be in lieu of maximum tolerance, is NULL and VOID and respondents are ENJOINED to REFRAIN from using it and to STRICTLY OBSERVE the requirements of maximum tolerance.”<sup>58</sup>

B.) Excessive violation of Bill of Rights, 1987 Constitution<sup>59</sup>

“Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”

While the Constitution guarantees that “no search warrant or warrant of arrest shall [be] issue except upon probable cause,” police and military men on most occasions arbitrarily and excessively violate this with impunity. It has become a “systematic and widespread” practice by them to execute arrests and searches in the absence of a lawful court order. The law does not provide policing powers to the military or permission to arrest civilians. However, in practice it is otherwise. Often the police, as well as the military, effect arrest

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<sup>57</sup> Supreme Court of the Philippines, G.R. No. 171396, Randolph David, et al. Vs. Gloria Macapagal-Arroyo, et al., 3 May 2006

<sup>58</sup> Supreme Court of the Philippines, G.R. No. 169838/G.R. No. 169848, Bayan, et al. Vs. Eduardo Ermita, et al./ Jess Del Prado, et al. Vs. Eduardo Ermita, et al., 25 April 2006

<sup>59</sup> Read Article III, Bill of Rights, 1987 Philippine Constitution

and search without a warrant. On instances when they make an arrest in the absence of a warrant, they justify their illegal acts on the basis of a “hot pursuit” operation. In practice, the police and military can decide when an arrest and search can be made without a warrant despite not having any legal basis.

When development worker Uztadz Kusain Abedin was arrested and subsequently detained on August 3 in Cotabato City by the military, they did not have arrest warrants with them.<sup>60</sup> The arresting officers detained the victim on the basis of an SMS they received from an intelligence asset. The informant reportedly warned them of the arrival of a person involved in making bombs. He was apparently referring to Abedin. Had Abedin’s relatives and lawyer not intervene they would have not released him without charges. In another case, eight human rights activists were also illegally arrested, tortured and subsequently falsely charged in the absence of sufficient grounds on August 22 in Catanauan, Quezon. The victims were on a legitimate fact-finding mission when the military arrested them.<sup>61</sup> There were also attempts to charge them with rebellion but the prosecutor rejected it.

Likewise, a pregnant victim named Wenifreda Marigondon was also arrested without a warrant on 25 November 2005 in Plaridel, Quezon. She gave birth at the military hospital the following month. It was not until the first week of April 2006 that she was taken to the Regional Trial Court (RTC), Branch 62, for the preliminary trial of her case. Only then did she find out that she was charged with rebellion. This victim had been in military custody for more than eight months without being properly informed of the charges laid against her or why she was being detained.<sup>62</sup> She was also not afforded with legal counsel and had restrictions on visits by her relatives at the military camp.

Another eight workers were also illegally arrested and detained in Rosario, Cavite on September 28. The victims were arrested inside a warehouse of an economic zone and had their personal belongings searched without warrants.<sup>63</sup> It was only upon their arrival at the police station that the policemen figured out what charges could be filed against them. The arrest also did not meet the requirements for an arrest without warrant-- under Rule 113 of the 1985 Rules of Criminal Procedure. The police likewise attempted to file fabricated charges of inciting sedition but were rejected by the prosecutor. Instead, they were falsely charged for trespassing. However, the workers did in fact have permission from the management to stay on the premises.

Under the 1985 Rules of Criminal Procedure, Rule 113, Sec. 5, arrest without warrant is lawful, when;

A peace officer or a private person may, without a warrant, arrest a person:

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<sup>60</sup> AHRC Urgent Appeals, UP-160-2006: Arrested development worker released, 11 August 2006

<sup>61</sup> AHRC Urgent Appeals, UP-171-2006: "Obstruction of justice" charges registered against 8 human rights activists, 5 September 2006

<sup>62</sup> AHRC Urgent Appeals, UA-346-2006: Deteriorating health condition of a female torture victim in detention, 23 October 2006

<sup>63</sup> AHRC Urgent Appeals, UA-325-2006: Eight workers illegally arrested and detained; police threaten to file fabricated charges, 30 September 2006

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In another case, policemen also allegedly illegally searched and harassed the convent of Contemplative Sisters of the Good Shepherds (CGS) in Butuan City on November 1. The policemen forced themselves into the convent and conducted searches without any lawful order to do so.<sup>64</sup> The police, who all were attached to the Regional Intelligence and Investigation Division (RIID) in Butuan City, were reportedly looking for a person subject to arrest but who was actually not there since the police had entered the wrong building. The sisters were extremely frightened during the illegal raid as the police were heavily armed and backed up by service vehicles.

“Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”

Although the Constitution and Presidential Decree 442 as amended (Labor Code of the Philippines) upholds workers rights to “self-organisation,” those who are planning to or have organised labour unions are being subjected to harassment and intimidation. In practice, the employer exerts all efforts—including the use of violence—either to discourage workers from forming unions or to disband them. The employers, such as foreign-owned companies, do not encourage and in fact warn their workers from forming labour unions. In the province of Cavite, the Office of the Provincial Government (OPG) imposed an anti-labor policy of “No Union, No Strike (NUNS)” since 2001. The policy is curtailing the workers from exercising their rights to ensure an “industrial peace” in the province. They allegedly bribe union leaders to reconsider their plans to form unions and then they either warn or discourage workers from taking protest actions—holding picket lines, they intervene into labor disputes, and allegedly hire armed goons to violently disperse strikers.

This NUNS policy is contrary to the Constitution and the provisions of the Labor Code concerning workers “right to strike” and “self-organisation”. To curtail or prevent workers from exercising their constitutionally recognized rights by using this NUNS policy by the local government is illegal and contrary to labour law. This is a serious threat to unorganised workers, and labour unions that are often targets of violence.

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<sup>64</sup> AHRC Urgent Appeals, UA-361-2006: Policemen allegedly harass and illegally search a convent of sisters after forced entry, 6 November 2006

Violent dispersal was experienced by two labour unions inside the Cavite Economic Processing Zone (CEPZ), who went on strike on September 25 following their Korean employers' refusal to negotiate on their Collective Bargaining Agreement (CBA). The CBA contains the unions' demand for salary increases, improved benefits and humane working conditions. Instead of negotiating with the workers for their CBA, the management and the Philippine Economic Zone Authority (Peza) security forces violently dispersed them,<sup>65</sup> imposed a food blockade<sup>66</sup> and illegally dismissed them from work while on a lawful strike. The Peza is a government-owned and controlled corporation.

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Under Section 7 of the Speedy Trial Act of 1998 (Republic Act 8493), the time limit on the length of period any accused should be arraigned and subjected to trial is clearly prescribed;

“Time limit between filing of information and arraignment and between arraignment and trial. — The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs”

Even though the RA 8493 stipulates the upholding of any accused person's Constitutional right to speedy disposition of their case, in a number of cases it has been reported that public prosecutors and judges are failing to meet this objective. One example is the case of three torture victims Jehon Macalinsal, Aron Salah and Abubakar Amilhasan. The local court commenced their trial only on 9 August 2005,<sup>67</sup> over two years after they were arraigned on 26 February 2003. The reasons for the delays is due to frequent absences or seminars being attended by the presiding judge, the appointment of a new judge, a

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<sup>65</sup> AHRC Urgent Appeals, UA-314-2006: Ten injured in violent dispersal of workers on strike in Cavite, 25 September 2006

<sup>66</sup> AHRC Urgent Appeals, UP-185-2006: Food blockade imposed on workers on strike, 26 September 2006

<sup>67</sup> AHRC Urgent Appeals, UP-108-2005: Court commences trial of three men due to pressure following frequent postponement, 9 September 2005

seminar of lawyers and the absence of a court stenographer.<sup>68</sup> All these do not fall under exclusions prescribed by Section 10 of the Act. On October 25, a police officer set to testify at the scheduled hearing at the Municipal Trial Court (MTC), Branch II, once again failed to appear because he had been transferred to another station assignment. It was his second failure to appear in court in recent times. Not only are police officers failing to appear in court but the recent replacement of prosecutors handling the case is further delaying the long overdue trial. The hearing was again set for March 28, 2007.

In another case, even though the prosecutor resolved that a charge should be filed in court against torture victim Haron Abubakar Buisan on July 28,<sup>69</sup> a schedule for his arraignment has yet to be set. As of October 25, the victim's relatives and legal counsel were unaware of any progress concerning the scheduled arraignment. This, however, is contrary to the provisions of Section 7 of the Act--which stipulate that a person must be arraigned "(30) days from the filing of the information" or the filing of a complaint.

Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted...

Section 19 (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."

Torture and inhumane treatment is prohibited under the Constitution as stipulated by the Bill of Rights. The failure of the government to enact enabling laws without delay in order to ensure that these rights are protected has since denied victims any possibilities of seeking justice and redress. This has also encouraged the police and military to use torture as part of their criminal investigation. While the police are guilty of filing fabricated charges in court, taken by way of torture, the military consider torture as a viable method to extract information from persons under their custody. In particular, this is the case for people that they arrest for rebellion or "terrorist" acts. It is a fact of life that severe cases of torture and inhumane treatment have been reported, but not a single perpetrator has been prosecuted and punished for lack of a domestic law.

The use of torture has long been practiced by the police and military as part of the investigations that they are conduct. The tortured persons--including women and children—are forced into admitting the charges that they are being accused of against their will. They employ such methods of ill-treatment and torture as electric shock, brutal beatings, food and sleep deprivation, sexual humiliation, lengthy incommunicado or solitary confinement, harassment, intimidation, extraneous exercises, and death threats. The police and military employ torture with impunity and without fear of prosecution.

While the Constitution prohibits these brutal acts, the use of torture and inhuman treatment is systematic and widespread. These practices are deeply rooted among the police investigators and military. Those hardest hit are persons under custodial

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<sup>68</sup> AHRC Urgent Appeals, UA-74-2005: Trial of three men yet to begin after three years, 4 May 2005

<sup>69</sup> AHRC, UP-186-2006

investigation either by the police or military in their respective detention centers and camps. The term “custodial investigation” or “invitation for questioning” is equivalent to the likelihood of being brutally tortured and inhumanely treated. The police likewise have resorted to justifying the use of excessive force in conducting arrests as a “justifiable degree of force.”<sup>70</sup> When criticism and condemnation over the incident of torture is strong, the police are the ones who usually conduct the investigation amongst themselves. As expected, police findings suggest that any allegation of “the accused having been brutally tortured has no basis.”<sup>71</sup> This was the police’s response into the case of torture victim Haron Abubakar Buisan.<sup>72</sup>

The police and military inflict torture and inhuman treatment in an extremely brutal form. Take the case of 11 persons, two of them minors, who were brutally tortured following their arrest in Buguias, Benguet on February 12. They were beaten on different parts of their body, exposed under the heat of the sun and had their hands tied behind their backs. They were also blindfolded, beaten in the genitals and threatened with death. Some of the victims were thrown into a pit and had soil, garbage and other matter dumped over their heads. They were electrocuted, stepped on and their fingers were squeezed with bullets inserted between them. Others were suffocated with plastic bags or had their heads forced into pails of water. Buckets were also hung from their heads and water was poured into them. They were also forced to strip naked, at which point they had freezing water sprayed on them. The police and military forced them into admitting they are rebels.<sup>73</sup>

Not only are police and military guilty of torture, even armed village militia have resorted to using brutal beatings while conducting “arrests.” On August 13, 16 year-old Don Bon Diego Ramos was severely beaten with clubs by the village militia in Pasig City. The boy was on his way home after watching a concert when the perpetrators attacked and arrested him. They falsely accused the boy of throwing stones that broke a signand for being part of a concert that creates disturbance. When the boy asked: “Bakit n'yo ako hinuhuli (Why are you arresting me?)” he was repeatedly beaten with a wooden club instead of receiving an explanation.<sup>74</sup>

Such torture and ill-treatment by law enforcement officers breaches the ICCPR, to which the Philippines is party Furthermore, in terms of the rights of the child rights, the government does not acknowledge the recommendations made by the Committee on the Rights of the Child (CRC). In September 2005 after reviewing the periodic report of the government, the CRC’s concluding observations expressed the Committee’s concerns,

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<sup>70</sup> AHRC Statement, AS-041-2006: To justify the use of torture is a constitutional and human rights violation, 16 March 2006

<sup>71</sup> Letter from Police Superintendent Willie Dangane, Police Regional Office 12 (PRO 12), 14 February 2006.

<sup>72</sup> AHRC, UA-251-2005

<sup>73</sup> AHRC, UA-082-2006

<sup>74</sup> AHRC Urgent Appeals, UA-269-2006: Torture of a 16-year-old boy by a village militia during arrest, 15 August 2006

“particularly for children in detention”<sup>75</sup> and urged the government to “investigate and prosecute all cases of torture and ill-treatment of children.”<sup>76</sup>

The prison conditions in detention centers and jails all over the country are generally not acceptable, as they are overly congested and lack medical and health services. In fact, three inmates have already died at the General Santos City in Reformatory Center (GSCRC) in Barangay (village) Lanton, General Santos City, in separate incidents in December 2005.<sup>77</sup> Although there are insufficient explanations concerning to the three inmates’ deaths, there is evidence that suggests that it was caused by poor medical and health facilities inside the jail.

Even ailing inmates who require medical attention are being denied adequate treatment while in detention. Two ill inmates, Elvie Apolona and Samuel Lagulao, were denied adequate medical treatment. In April, Apolona was denied treatment for his post-Meningitis-TB condition at the Provincial jail in Prosperidad, Agusan del Sur, following his arrest on February 10.<sup>78</sup> He was arrested at the Butuan Doctors Hospital in Butuan City while receiving treatment. In May, another inmate Lagulao, did not received treatment for his injuries at the provincial jail in Iloilo.<sup>79</sup> Lagulao was arrested by the police and military while being treated for injuries to his spine at the hospital.

These cases, however, only represent a fraction of those actually occurring all over the country. While the government is completely aware of the poor and inhumane conditions of its jails, no adequate measures have been taken to improve the country’s prison conditions. Instead of acknowledging the problem, their failure to address the worsening prison conditions is being justified as a result of slow progress in court cases, an increasing number of criminal offenders and the lack of resources. Detention centers and jails have been described as hell by prisoners. The proposals to improve prison conditions are yet to be adequately implemented.

### **Absence of law on torture, disappearance denies victims of redress**

The absence of an enabling law on torture and enforced disappearance is denying victims and their families the possibility to seek justice and redress. Torture victims cannot file charges in court against the perpetrators, they do not received compensation, are not admitted for adequate rehabilitation and counseling, and often have to face false charges in court based on evidence taken by way of torture. The burden of proof concerning the fact that the victims were tortured lies with the victims themselves, not with the perpetrators. On the other hand, the families of disappeared victims do not get any

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<sup>75</sup> Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259, 21 September 2005, Para. 38

<sup>76</sup> Ibid, para. 39

<sup>77</sup> AHRC Urgent Appeals, UP-01-2006: Two more inmates died at the General Santos City Reformatory Centre in Mindanao, 2 January 2006

<sup>78</sup> AHRC Urgent Appeals, UA-149-2006: Sick inmate denied adequate treatment, 5 May 2006

<sup>79</sup> AHRC Urgent Appeals, UA-153-2006: Another sick inmate denied adequate treatment after being falsely charged, 11 May 2006



assistance from the government. No government agencies exist to help them to locate their loved ones. No existing mechanism exists to help them with resources, logistics and other means. The police authorities also have either no jurisdiction or lack capability to investigate disappearance cases. Only when a dead body is recovered or a disappeared victim surfaces will they consider investigating.

Often relatives of disappeared victims have sought help from human rights non-governmental organisations (NGOs), religious groups and local officials in. When NGOs assist them, they are either harassed or not welcomed by police and military when they go to police stations and military camps to inquire as to whether they are holding missing persons in their custody. Often, the police and military deny holding disappeared victims. In one case, five men who were forcibly abducted and went missing for three days in Tagaytay City on April 28,<sup>80</sup> were later found in police custody.

Although Republic Act 7309, an Act creating a Board of Claims under the Department of Justice for victims of unjust imprisonment or detention and victims of violent crimes, provides compensation, in practice most victims do not receive this;

Section 3, (d) any person who is a victim of violent crimes. For purposes of this Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelly or barbarity.

Victims of violent crimes reported by the AHRC have not received any compensation as provided for by RA 7309. None of the twenty-one persons reported to have been forcibly abducted and subsequently disappeared this year have been found.<sup>81</sup> Their whereabouts remain unknown. None of the 40 victims of torture, six of whom were either found dead or were subsequently killed, have received compensation as provided for by law. Although there are efforts by the Department of Social Welfare and Development (DSWD) to provide counseling and assistance to victims of violent dispersal in Rosario, Cavite, they have been found to be insufficient. The assistance that has been provided to a woman who had had a miscarriage in January,<sup>82</sup> during the dispersal was also insufficient, while another woman who had a miscarriage during dispersal last September has yet to receive any assistance.

This is also the case concerning 11 torture victims, nine of whom are still in detention.<sup>83</sup> When one of the victims, Rundren Berloize Lao, was able to escape from police custody he went to DSWD to ask for help. Instead of providing him with the medical assistance

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<sup>80</sup> AHRC Urgent Appeals, UA-143-2006: Five missing persons are allegedly being detained in the army camp in Lipa City, 30 April 2006

<sup>81</sup> This figure is according to cases received and issued with appeal by the AHRC from Center for Trade Union and Human Rights, KARAPATAN, Task Force Detainees of the Philippines and other independent sources

<sup>82</sup> AHRC Urgent Appeals, UA-115-2006: Three workers injured in a violent dispersal in Rosario, Cavite, 6 April 2006

<sup>83</sup> AHRC, UA-082-2006

he urgently required, he was turned over to the National Bureau of Investigation (NBI). The NBI likewise turned him back over to his torturers. His allegations of torture were not recorded and his need for medical attention and counseling was not addressed. Even when there was an alleged plot to kill five of them inside the jail, including Lao and Jefferson De la Rosa, in April,<sup>84</sup> no measures were taken to ensure their security. The jail warden merely assured “that we are doing best to secure inmates, Rundren Lao, Jefferson De la Rosa and their Co-accused; and all other detention prisoners for that matter.”<sup>85</sup> On July 28, torture victim Jefferson Dela Rosa survived an assassination attempt by an inmate named William Pangan, who is believed to have been hired to kill him.<sup>86</sup> Pangan had also been previously investigated concerning a plot to kill other torture victims.

Despite repeated appeals, no compensation, medical attention or trauma treatment were afforded to torture victim Haron Abubakar Buisan<sup>87</sup> who is detained at the GSCRC in General Santos City. Although the CHR XII had already decided to take up the complaint of torture victims Jehon Macalinsal and his two companions, no recommendations for them to receive appropriate compensation and rehabilitation have been made. While the victims have shown signs of progress, there are concerns that they may still experience side-effects of the torture since they have not received appropriate medical treatment.

There is also inadequate help for the families of disappeared victims Reynaldo Manalo and his brother Raymond. The victims were forcibly abducted and subsequently disappeared on February 14, 2006 in San Ildefonso, Bulacan. Although their relatives tried to seek help from the military to locate the victims--despite having suspicions the military could be involved-- they only told them: “not to worry and that they would coordinate with those [military] who took custody of the Manalo brothers.”<sup>88</sup> The victims however have not been seen since. Their relatives also went into hiding, fearing for their lives.

In another case, Marissa, the wife of labour leader Rogelio Concepcion, who was forcibly abducted and disappeared on March 6, is living in total insecurity. After Rogelio’s abduction, Marissa and her family noticed the suspicious movement of persons not known to them and believed to be closely watching them. Despite the high security risk she and her family are facing, she did not get any protection or security.<sup>89</sup> There has also been no help from the authorities to help locate her husband. Rogelio has not been seen since he was abducted. As a result, the family lives in permanent fear.

There is also the case of journalist and activist Joey Estriber who was abducted and forcibly disappeared on March 3, 2006. At around 6:20 pm, Estriber was on his way home, when he was dragged towards a tinted maroon van parked nearby by four armed

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<sup>84</sup> AHRC Urgent Appeals, UP-092-2006: Plot to kill torture victims in jail, 25 April 2006

<sup>85</sup> Letter from James C. Simon, Provincial Jail Warden, La Trinidad, Benguet, 22 May 2006

<sup>86</sup> AHRC Urgent Appeals, UP-152-2006: Attempted stabbing of a torture victim; continuous threats on torture victims and legal counsels, 1 August 2006

<sup>87</sup> AHRC, UA-251-2005

<sup>88</sup> AHRC Open Letter, AHRC-OL-035-2006

<sup>89</sup> UP-052-2006: Missing labour leader abducted and feared dead, 24 March 2006

men.<sup>90</sup> The getaway van had no license plate number. As in previous cases, his whereabouts and fate remain unknown and his family has had difficulty finding assistance from government agencies.

The disappeared victims' families can file habeas corpus petitions, but they cannot indict perpetrators in court for the crime of disappearance despite strong circumstantial evidence showing the involvement of either the military or the police. Take the case of two student activists Sherlyn Cadapan and Karen Empeño, and peasant Manuel Merino who were abducted on June 26 in Hagonoy, Bulacan.<sup>91</sup> Cadapan was pregnant at the time. Although the Supreme Court has granted the victims' families petition for habeas corpus, requiring retired Major General Palparan and others to produce the victims, no substantial progress has been made so far regarding the whereabouts of the victims. Those alleged to have been involved have remained unpunished. In another case, when Ronald Intal<sup>92</sup> was seen being forcibly taken by armed men in Tarlac City on April 3, the perpetrators were subsequently seen heading towards a military camp. While the military denied having him in their custody, no impartial and independent investigation took place to determine whether or not this is true. Ronald has not been seen since.

In August and October, six people were forcibly abducted by unknown persons and disappeared in separate incidents in Mindanao.<sup>93</sup> One of them was later found dead with brutal torture marks on his body, while another was freed by his captors. This is the latest string of disappearances in the area. Sitti, the wife of disappeared victim Cadir Malaydan, was with her husband when he was forcibly abducted by armed men in Monkayo, Compostela Valley on October 19. There has been no police investigation and no assistance for her in locating her husband. Another victim, Ustadz Habib Darupo, was released a day after he was abducted in Banaybanay, Davao Oriental on October 24, but only after being tortured by his captors. After his release, no security protection was afforded to him and no effort or assistance was made available to help him recover from extreme trauma that he experienced. Again, no effective investigation was conducted to identify the perpetrators. Although Ali Barabato's body was found three days after he was abducted in Davao City on August 28, the whereabouts of his two other companions remain unknown. Barato's family heard in the media about the discovery of a dead body—which was later confirmed to be his. No mechanism exists to help relatives of the disappeared to locate their loved ones and they are left to monitor media reports in the hope that they will report on the whereabouts of their missing loved ones—whether dead or alive. Often, they also visit funeral parlors and morgues to check for unclaimed bodies.

Even though torture is outlawed by the 1987 Constitution, torture remains widespread and perpetrators enjoy total impunity. There is no way for victims to lodge complaints or obtain redress as envisaged by common article 2 of the International Covenant on Civil

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<sup>90</sup> AHRC Urgent Appeals, UP-048-2006: Forcible abduction and disappearance of an activist in Baler, Aurora 17 March 2006

<sup>91</sup> AHRC Urgent Appeals, UA-245-2006: Two female student activists and a peasant forcibly abducted and disappeared; one of the victims is pregnant, 20 July 2006

<sup>92</sup> AHRC Urgent Appeals, UA-127-2006: Missing activist could be in military's custody, 18 April 2006

<sup>93</sup> AHRC Urgent Appeals, UA-363-2006: Disappearance of four persons; one of two torture victims found dead in separate incidents in Mindanao, 8 November 2006

and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment--both of which the government of the Philippines claims to uphold. A 2005 bill to introduce the Anti-Torture Act (HB 4307) has yet to be approved. The failure to enact a law to criminalise torture violates the government's international obligations, especially under the Convention against Torture.<sup>94</sup>

On the other hand, as the Philippines is a signatory to the Declaration on the Protection of All Persons from Enforced Disappearance where it recognised the principles contained in the 1992 declaration.<sup>95</sup> In view of the fact that state agents and others acting on their behalf in the Philippines are known to routinely abduct and disappear persons, there should also have been a far greater sense of urgency in enacting this domestic law. The government, however, has continued to fail in this regard. The proposed law, House Bill 1556, “an Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance”, is yet to be approved. No substantial progress on the part of the government has been made to push for the enactment of this law without delay, as required by the ICCPR.

## **Gross violation of rights on land reform and labour**

### **1. Attack against farmers seeking land reform**

Targeted attacks, both by government security forces and armed groups, against farm beneficiaries seeking genuine land reforms have also resulted in extra-judicial killings, violent attacks, the filing of fabricated charges, massive displacement and deprivation of source of livelihood for villagers. The violent attacks are often a result of strong opposition by land owners to land redistribution or having their land holdings covered under the Comprehensive Agrarian Reform Law (CARL) of 1988 (RA 6657. Section 2 of RA 6647 upheld that it is the “right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till.” However, while farmers are asserting these rights, they are being subjected to violent attacks and harassment.

In July, sixty-eight farmers and their families were forced to flee their homes in Bondoc Peninsula, south of Luzon.<sup>96</sup> This was after an influential landowner arbitrarily filed a string of criminal cases against them in court leading to the issuing of arrest warrants. In October, 21 families of farmers in Balasan, Iloilo<sup>97</sup> were violently attacked and forced to leave their villages after an influential land owner employed armed thugs to attack them. In these two cases, it was either the public prosecutor or the court judge who recommended the filing of criminal charges against the villagers--for offenses such as

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<sup>94</sup> AHRC statement, AS-043-2006: No law to address persistent forced disappearances in Philippines denies the possibility of redress, 20 March 2006

<sup>95</sup> Forwarded appeal, FA-016-2006: Alleged continued harassment by landowners, rebel group against hundreds of villager over land dispute, 10 August 2006

<sup>96</sup> AHRC Urgent Appeals, FA-016-2006: Alleged continued harassment by landowners, rebel group against hundreds of villager over land dispute, 10 August 2006

<sup>97</sup> UA-350-2006: Alleged use of armed goons in attacking villagers; one leader seeking land reform killed, 26 October 2006

trespassing, theft and robbery--and by taking undue jurisdiction over criminal cases. The provision of Section 57 of the Act stipulates that:

“The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.”

The October 11 incident in Iloilo is the latest violent attack against farmers. It occurred after one of their leaders, Hernan Baria, was brutally killed by armed men alleged to be policemen on July 23, 2005. On October 30, another leader was wounded in a shooting days after armed thugs of an influential landowner violently attacked the farmers' village. In these cases, the public prosecutor and court judges' hearing of agrarian related cases has resulted in the unjust prosecution of farmers seeking genuine land reform. The actions by defiant landlords who file criminal charges against the farmers in court, instead of the Special Agrarian Courts, has become a tool to persecute farmers and deny them of their rights to own land. The government's failure, in particular the Department of Agrarian Reform (DAR), to adequately intervene is denying the farmers the possibility to seek justice and redress.

### **Civil labour disputes treated as criminal offences**

Union members' last resort to assert their rights is to declare a strike. This often comes as the result of the employer not honouring lawful orders. Take the case of two labour unions of a garment factory inside the CEPZ. Even though the Secretary of the Department of Labour and Employment (DoLE) has issued a final and executory order to two foreign companies to begin negotiations for the CBA proposal, they refused to do so. Instead, they filed several motions and appeals in court one after the other in an effort to delay the proceedings. The CBA contains proposals for increased salaries, improved benefits and human working conditions. The management however used the armed security forces of the Peza, the local police and security guards, to violently disperse the lawful strike.<sup>98</sup>

Although the DoLE order is self-executory, the companies are refusing to implement it, citing the pending petitions they have in court. Under the rules, however, the DoLE's final and executory decision can only be restrained by a lawful order—a Temporary Restraining Order (TRO). But in this case, the companies are defiant in the absence of the TRO and the government is failing to impose sanctions on them for labour law violations. These are obvious attempts by employers to delay the proceedings by treating labour disputes as criminal cases. A company's refusal to implement a lawful order could drag on for years, given the delays in resolving cases in regular courts and in the quasi-judicial bodies in the country.

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<sup>98</sup> AHRC, UA-314-2006

## **Conclusion and Recommendations**

The ongoing human rights crisis in the Philippines indicates a collapse of the rule of law in the country. While the government claims to uphold human rights and democracy before the international community, including the United Nations, at home there is no possibility for most victims of gross abuses of human rights to get justice and redress. The culture of impunity, including state and non-state actors, is so rife that victims have already lost faith in the government's criminal justice system. There is extreme fear amongst the victims that exacerbates the deep-rooted culture of silence and unwillingness to fight back, in the country. Those victims who dare to fight back or even to encourage and serve others to assert their own rights are subjected to torture, death threats, disappearance or extra-judicial execution.

There is a pattern of targeted attacks not only against progressive groups critical of the government, but also against those who simply assert their rights. The worsening human rights crisis has also been exacerbated by the unwillingness of those in government and its security forces--the police and military—to address the legitimate grievances of victims through the legal system. This is reflected in the authorities' public statements, in which they automatically deny any problems and exonerate themselves of any accountability. Both the civilian government and the security forces are either indirectly or directly complicit in the human rights crisis in the country, without fear of being prosecuted

There is also a critical failure of the system, which currently is not functioning concerning the prosecution of members of the police, the military and militiamen allegedly involved in cases of human rights violations. One key failure is the justice dispensation system, which needs to be improved, notably concerning its methods of police investigation, the prosecution system and the judicial system. The inefficiency of these core elements of the criminal justice system prevents victims from getting justice and redress and perpetuates a culture of impunity. The existing systems are defective and inefficient, and the absence of enabling laws to prosecute perpetrators of human rights violations--in particular concerning torture and disappearance-- have reinforced the culture of impunity concerning even the worst forms of abuse. The government has so far attempted to suppress international criticism of its bleak human rights records with pretences, half-truths, and downright deceit, instead of attempting to resolve the problems that its people face.

Instead of adequately addressing the human rights crisis, the government downplays legitimate criticism as merely being “propaganda” and attempts to discredit groups pursuing the victims' fight for justice as being “destabilizers”. The authorities' paranoia that those involved in the protection of human rights are “communist fronts” has already undermined the government's role of serving its citizens. The government has not yet seriously acknowledged the obvious failings of its criminal justice system; instead it is in complete denial of the scale of the problems that it faces.

Most of the actions the government has taken are merely gestures –for example the creation of Melo Commission and Task Force Usig—and do not respond to what is really required to meet the victims and their families’ needs. In practice, these bodies are being exploited to justify the government, however, the perpetrators are not being prosecuted and justice remains elusive for victims and their families.

Although the abolition of the death penalty in April indicates in theory indicates the respect for “right to life,” the government's failure to stop the ongoing unabated targeted killings has put the country’s sincerity in serious question. The abolition of the death penalty will have no meaning to the victims of extra-judicial killings and their families.

The government is failing to effectively address the extra-judicial killings. It is also failing to ensure protection for those asserting their rights concerning labour issues and land reforms. While protection exists for labour and land rights--the Labour Code of the Philippines and the Comprehensive Agrarian Reform Law respectively--the government and its agencies are failing to confront the abuses and exploitation committed by the influential and powerful, who are manipulating these laws to suit their interests. The loss of faith in the government and its agencies to effectively implement these laws is deep-rooted and entrenched. In fact, the government agencies are perceived as being engaged in covering up atrocities against people attempting to assert their rights.

The implementation of the international Covenants and Conventions to which the government is a state party is extremely poor. The non-implementation of the Concluding Observation and Recommendation of the UN Human Rights Committee on December 2003 following its periodic review is a stark example. The government’s election to the UN Human Rights Council and UN Economic Social Council (ECOSOC) has no meaning for the victims of human rights abuses in the country. In fact it is an insult to them. The country does not deserve to sit in these two UN bodies. The UN General Assembly should reconsider the country’s appointment to these bodies as the result of the current crisis.

Prior to the elections to the Un Human Rights Council, the Philippines pledged to uphold human rights to "the highest norms and standards” – however, this must feel like a very sick joke for most of the country's people. There is a need for a rigorous campaign to have those in the international community--in particular the UN--to deeply understand what is going on in the country. Unless these false claims and pretences by the government are not confronted and dispelled, the culture of impunity and attacks on human rights and democracy in the country will only continue. The country could be dragged even further into a disaster. There must be a concerted effort from the international community and Filipinos at home to make the authorities accountable for their misdeeds.

The AHRC urges the government to take the following measures without fail or delay:

- Create an independent body to investigate the systematic extra-judicial killings, forced disappearances and other abuses. This body should be able to receive and

launch investigations concerning criminal cases as well as initiate criminal proceedings against individuals. The appointment of its members must be conducted through the legislature. The Commission on Human Rights (CHR) must likewise be actively engaged in this process. It must be ensured that this special body does not undermine the CHR's work.

- The investigation body should conduct investigations for the purpose of launching prosecutions, with the body's performance being evaluated based on the extent to which such prosecutions are conducted and result in the sentencing of those found responsible. Implied in this is that investigators are aware that they are responsible only to the prosecutory and judicial authorities and only in the manner recognized in the law on due process within the country. Any interference in the body or its activities must be an offence under the law.
- The CHR's role and functions must be improved in accordance with the government's pledge to the UN General Assembly in May. Its implementation must be thoroughly reviewed to ensure that it serves its purpose.
- The investigation body must have authority to afford protection, ensure safety for the victims, the families of the dead and witnesses, until the case is completed in court.
- There must be a thorough investigation into the alleged involvement of the government's security forces in orchestrating the extra-judicial killings and other gross abuses of human rights. Those allegedly involved, including retired Major General Jovito Palparan, must be tried in an independent and competent court for their crimes.
- The implementation of the Witness Protection, Security and Benefit Act (RA 6981) must be thoroughly reviewed. The recommendations made as a result of this review must be sent to the legislative body to amend the provision of this Act in order to ensure that it is "proactive". Should it be found out that there is inaction by the implementing agencies—for example the Department of Justice (DoJ)--they must be held accountable.
- The government must guarantee that all perpetrators found guilty of having carried out or ordered extrajudicial killings or forced disappearances receive adequate punishment, in line with domestic law and international law and standards.
- The government must guarantee adequate reparation to the victims or their families, in line with international standards.
- Rigorous reform in the Philippine National Police (PNP) to improve the country's policing system must be imposed without delay. Methods of investigation must be improved to include forensic methods, and there must be "performance pledges" concerning how long it takes to complete investigations. Corrupt police and other State-personnel must be removed and prosecuted.
- Task Force Usig should be restructured to ensure that its independence is not compromised and to appear independent to the public, so as to ensure that witnesses or family members will report their cases to the Task Force.
- The PNP must reject their practice of classifying a case as being "solved" once it has been filed in court. The solution of cases must be based on the rate of convictions as the result of fair trials.
- The Department of Justice's (DoJ) prosecution system must also be improved; the number and quality of public prosecutors and lawyers must be increased to cope with



the ever-increasing number of cases and victims needing legal assistance. The government must exhaust all resources to improve the prosecution system.

- The public prosecutors must be involved in counter-checking the police's manner of investigation and submission of evidence, to avoid the filing of fabricated and false charges in court. The prosecutors must also be held administratively accountable for their failure to dispense their duties effectively and promptly, notably if there are violations under the Rules of Court and the Speedy Trial Act (RA 8493).
- The public lawyers--Public Attorney's Office (PAO)--must take a "proactive" role in providing assistance to victims requiring legal assistance. The number and quality of public attorneys must also be increased. This is to avoid backlogs, to decrease the number of cases handle by each individual and to ensure that the legal service rendered by each PAO lawyer is qualitatively improved.
- There must also be rigorous reforms imposed within the judiciary as provided for by the Supreme Court's long overdue Action Program for Judicial Reform (APJR).
- The number and quality of court judges must be increased, as well as the number and quality of quasi-judicial officers hearing cases on labour and agrarian-related cases (for example labour arbiters, hearing officers in agrarian special court officers). They must also have performance pledges as to the length of completion of cases.
- The government must ensure that laws and policies violating the protection of rights are removed; including the "No Union No Strike policy" in Cavite, the Calibrated Pre-emptive Response (CPR), the imposition of guidelines for the police and military in connection with counter-terrorist activities, the action by prosecutors and judges of taking undue jurisdiction over labour and agrarian related cases.
- Improve the prison and jail conditions all over the country to ensure that they are more humane, with adequate health and medical facilities, in accordance with international norms, standards and recommendations.
- Government officials, the police and members of the military must be sanctioned should it be proven that they have committed human rights violations in accordance with the law and international human rights law and standards.
- The government must retract public statements that are prejudicial to the victims and the course of justice, and ensure that this practice is halted.
- Domestic laws on torture and enforced disappearance must be enacted without further delay, in accordance with the ICCPR and other international laws and standards.
- Members of the UN General Assembly must consider reviewing the country's human rights records and its implementation of the international Covenants and Conventions and reconsider the country's membership in the UN Human Rights Council and ECOSOC.
- The government--in particular the Department of Foreign Affairs--must be held accountable for their failure to respond to the UN complaints mechanisms and Special Procedures concerning complaints of human rights violations.
- The government must live up to its pledges to the international community and cooperate fully with the United Nation's human rights mechanisms, ensuring that it responds fully and in good faith. It must also issues standing invitations for all of the UN Special Procedures to conduct visits to the country, in particular the Special Rapporteurs on extra-judicial killings, on torture, on the independence of lawyers and

judges, as well as the Working Groups on arbitrary arrests and detention, and on enforced disappearance.

- The government must without delay become a signatory to the International Convention for the Protection of All persons from Enforced Disappearance and ensure the full implementation of all other international instruments to which the country is party.
- The government must effectively implement the Concluding Observations and Recommendations by the UN Human Rights Committee.

December 21, 2006