



Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review on human rights in the Republic of the Philippines

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The Asian Legal Resource Centre (ALRC) wishes to highlight its priority issues of concern with regard to the human rights situation in the Philippines and calls upon all those involved in the Universal Periodic Review process to ensure that these matters are given due consideration, and figure prominently in the review's outcome.

Extra-judicial Killings, Forced Disappearance and Impunity: Without doubt, one of the main human rights issues plaguing the Philippines over recent years has been the high number of targeted and politically-motivated extra-judicial killings and forced disappearances that have been perpetrated by the State all over the Philippines in total impunity. The Philippines is the scene of a vast range of human rights abuses, both in terms of economic, social and cultural as well as civil and political rights. This list includes problems from extreme poverty resulting in starvation deaths, endemic corruption, increasing environmental degradation resulting from unfettered industrial activity, labour rights violations, mass forced evictions, election-related killings and violence, widespread torture to deplorable detention conditions, to name but a few. However, we wish to focus here on the problem of killings and disappearances, as this crisis offers a telling insight into the violence, impunity and failing institutions and domestic protection mechanisms that is relevant for any attempts to protect and prevent all types of human rights abuses. If the right to life is being violated in total impunity, what hope is there for other rights?

Local NGOs estimate that there have been 886 such killings and 179 disappearances between 2001 and July 2007. The ALRC has documented 139 cases of extra-judicial killings since January 2003, as well as 23 cases of forced disappearance that remain unsolved during the same period. To date, none of the cases¹ that the ALRC and its sister-organisation, the Asian Human Rights Commission (AHRC), have documented and reported on have concluded in successful convictions. The lack of credible investigations, and therefore prosecutions and convictions concerning these gross violations are testimony to the failure of State-institutions and the supremacy of impunity. The government has taken actions designed more to placate its' critics the international community than to actually address these problems. The victims and their families have yet to achieve justice or receive any measure of adequate reparation.

The government of the Philippines has taken certain actions, as stated above, but these have not translated into concrete results. In the country's voluntary pledge prior to its re-election to the UN Human Rights Council, the government condemned extra-judicial killings "in the strongest terms and, in cooperation with the international and national human rights community, shall continue to strongly address the issue." Additionally, the President established the Melo Commission (headed by Justice Melo) on August 21, 2006 to investigate and make recommendations concerning the killings. In its report, which was handed to the president

¹ Please see Annex I for brief details of cases documented by the AHRC since January 2003

in January 2007, the Melo Commission points to the complicity of military officers in the killings and suggests that retired Major General Jovito Palparan Jr. and other military officers could be held liable for the unabated extrajudicial killings of human rights defenders, social campaigners, priests, political organizers and others in the Philippines. The government has since claimed that this was not a final report and has therefore ignored its findings and failed to implement its recommendations.

However, in its pledge to the Human Rights Council, the government stated that “In line with its commitment to uphold justice and strengthen efforts to address impunity, special bodies, such as the Melo Commission and Task Force Usig, were created to undertake a comprehensive investigation of cases of extrajudicial killings.”

The failure to investigate: The State is obliged to protect its citizens and extra-judicial killings and disappearances represent the ultimate failure to protect. In cases where such violations occur, the State must at very least adequately and promptly investigate each case and ensure that investigations lead to the successful conviction of those responsible. However, police investigations are in reality a major obstacle for victims seeking redress. Poorly conducted investigations, in which there is little or no reliance on forensic evidence and an inability to produce witnesses mean that many complaints are being dismissed even before they are heard in court. The police’s failure to ensure the successful prosecution of cases is being side-stepped by the Philippine National Police (PNP). The PNP’s body responsible for investigating the killings, Task Force Usig, defines cases as being solved² once they have been filed with the prosecutor’s office. This means that the police feel that the job is done once they have filed a case, but ignores the fact that suspects should be considered innocent before proven guilty. A case should rather be considered solved once a suspect has been found guilty as the result of a fair trial. The current policy prioritises rapid (and consequently summary and inadequate) investigations over thorough and result-oriented ones, and provides a way for the police to try to evade being held accountable for the system’s failure to provide justice. The crime solution rate appears to be high, but there have in fact been no convictions of perpetrators in politically-motivated killing cases that have been declared solved under this policy. Once a case is declared as being solved, the police are doing little if anything to ensure that the case results in a conviction. When urged to change this policy, the police have thus far resisted, as this system makes them look somewhat efficient, whereas a more realistic evaluation of their activities would highlight the absolute lack of results in terms of effective investigations and justice dispensation.

A lack of witness protection: Although the government did allow the UN Special Rapporteur on extra-judicial, summary or arbitrary executions, to visit the country in early-2007 to investigate the reports of extra-judicial killings, this led to a shocking development, as a witness that spoke with Special Rapporteur Philip Alston, human rights activist Siche Bustamante-Gandinao was killed on 10 March, 2007, just days after speaking with him.³ It is a fact that victims needing urgent protection and assistance⁴ are not being given it, despite repeated appeals. The authorities, notably the police, fail to assist victims seeking redress and do not make use of them during the investigation. They fail to include potential witnesses in a

² Read more the Melo Commission report, p. 84, January 2007 at <http://www.pinoyhr.net/reports/meloreport.pdf>

³ See more information on the killing of Siche Bustamante-Gandinao at <http://www.ahrchk.net/ua/mainfile.php/2007/2278/>

⁴ Please see Annex II for more information on the case of continuing threats on Florence Manegdeg and her two children

witness protection programme created under the Republic Act 6981, Witness Protection, Security and Benefit Act, which results in the dismissal or lack of progress of cases in court. They instead blame complainants and witnesses for not cooperating with them. The Department of Justice (DoJ) which is the programme's implementing agency also blames its failure on the witnesses without taking needed steps to make the programme work, for instance by widely informing the public of how to make use of it, and to ensure that the police and prosecutors consider using it as part of their work.

The government, in its pledge prior to HRC elections, stated that "...the Philippine Government has strengthened its witness protection programme." This claim has yet to be proven in reality.

A lack of prosecutions: In its pledge prior to HRC elections, the government also stated that "The Philippine Supreme Court has established 99 special courts to specially and preferentially hear and expeditiously decide on such cases," and that "The Government's strong institutional response to the issue has already resulted in a number of convictions, with many more cases under active investigation and prosecution." In reality, no convictions concerning allegedly politically-motivated killings of activists have occurred. Only in a handful of killings of media practitioners have there been convictions, and these were not related to the alleged political killings.

The widespread lack of accountability of the security forces – both the police and the military – continues the culture of violations and denial of rights. Members of the police or military accused of violations have remained free and violated again.⁵ Once complaints are made, the government and its institutions have either exonerated or defended their men without conducting credible investigation. Although both the police and military have created human rights offices that in theory accept and investigate cases of human rights violations, these investigations either do not take place or fall very short of meeting the U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. There are cases in which those accused of committing violations are the same persons who investigate them. The policemen who are negligent in their investigation duties are not held to account. The imposition of disciplinary actions against officers involved in committing abuses is largely nonexistent. The suspension of officers that are the subject of investigation in order to ensure credible investigation is typically not taking place. The police and army's human rights offices are simply another face-saving tool.

The notion of equality before the law is not often found in the government's institutions of criminal justice. This system is responsible for making persons guilty of crimes accountable for their actions, but in reality it operates with significant prejudice, notably when conducting official investigation. The government has failed to take effective measures to prevent its officers from the continuing practice of labelling persons and groups as being "leftist, communist, enemies of state," which is often a precursor to these individuals or groups being the subject of attacks. One case⁶ illustrates the negative effects of such branding. The police described two victims of extra-judicial killings as being "Communist Terrorist (CTs), supporters or sympathizers" in their investigation reports. This branding has led to this claimed affiliation being given all the attention, while the identification of their killers and the circumstances of their deaths is not being properly investigated. It would seem that the simple

⁵ Please see Annex III for records of police and military personnel involved in repeated violations

⁶ Please Annex IV for more information on the case of Miguel Dayandante and Julio Camero

act of labelling removes the police's duties to investigate, which is as untrue as it is unacceptable.

The authorities have been replacing their duty to investigate with numerous methods, including blaming the extra-judicial killings, forcible abductions and disappearances on internal struggles between insurgent non-state actors. In doing so, they undermine the judiciary's authority to decide on the merit of cases. Instead, investigations are only conducted to attempt to establish the victim's identity where this reinforces their afore-mentioned theory on insurgent on insurgent killings. They are not identifying and prosecuting the perpetrators where this would point to responsibility of state actors.

In addition, concerning abduction and enforced disappearances, the police and military routinely refuse to cooperate with the families of the victims of enforced disappearance in locating their loved ones, particularly when the victims are labelled as being "communist or leftist." Once the victims are described or labelled as such, obtaining assistance from the concerned agencies is virtually impossible. On October 24, 2007, the Supreme Court established the writ of *amparo*, which can now be used to allow inspections of police and camps and protection for persons facing threats to their lives. This is useful because the police and military routinely refuse to grant access to persons investigating disappearances to their camps and headquarters. They also routinely deny access to relatives, legal counsel and human rights groups to persons being detained, notably once they have been accused of committing acts of terror or being involved in armed struggle against the government. A number of victims of forced disappearances have later been found in the police or military's custody. The detainees' rights stipulated under the Republic Act 7438, an Act defining the rights of persons arrested, detained or under custodial investigation, are frequently violated under the pretext of fighting terrorism and insurgencies. Persons suspected of committing a criminal offence are taken for questioning in the absence of legal counsel and are charged based on forced confessions. This remains a significant part of how the police and military's get results in investigations.

The lack of punishment for state actors who perpetrate torture, extra-judicial killings or force disappearances has emboldened them to commit further violations, which is why we see the large-scale problem of killings and disappearances in the country. The cycle of violence and impunity is reinforced by excessive delays in the adjudication of cases against security forces, and the loss of faith of victims as a result of the systemic failure in the criminal justice institutions. Even in cases of extra-judicial killings, enforced disappearance and torture, where the perpetrators have been identified and charged in court, the trials do not result in punishment as they do not progress and are instead usually dismissed. This is due to a lack of witnesses and of evidence due to the police and prosecutor's failure to effectively perform their duties; for instance their role in RA 6981. A large number of victims of torture by the police and military remain denied any possibility of remedies due to the lack of adequate laws. The use of torture is endemic and widespread, as it forms a central part of the security forces' methods in conducting investigations and imposing punishments. All of the above illustrates the government's continuing failure to uphold its commitment to ensure high standards in the protection and promotion of human rights.

One way of evaluating the effectiveness of measures the authorities have taken is how they respond to each case of violation reported to them. For instance, although the government has pledged to strengthen and fund the witness protection programme, created the independent Melo Commission to investigate extra-judicial killings, invited the U.N. Special Rapporteur on

extra-judicial killings and pledged to make those responsible accountable, the situation of victims and the families of the dead who are seeking redress has in reality not improved. Families suffering from repeated threats who seek protection are being refused it. The police and Department of Justice are aware of the need to protect witnesses and families as a precondition for ensuring effective investigations and prosecutions of cases, but are failing to make this system work.

A large number of victims refuse to come forward to complain out of fear of reprisals, and the police and prosecutors are failing to take concrete actions to address these endemic problems. Instead the complainants, victims or witnesses' refusal to come forward has been used cynically by the authorities as an excuse to explain their inactivity and attempt to exonerate themselves from their duty to investigate and protect rights.

A lack of prompt and adequate assistance is also flagrant. The government is doing little to improve the compensation and assistance scheme for victims of violent crimes. The amount of compensation for victims of abuses and violent crimes has not increased and is based on Republic Act 7309, a law creating the Board of Claims under the Department of Justice granting compensation for victims of unjust imprisonment and victims of violent crimes that was approved 15 years ago. Most of the reported cases of extra-judicial killings, enforced disappearances and torture have not resulted in adequate compensation in accordance with this law, even though this law is being effectively implemented in other cases, for instance in bomb blasts. The victims of human rights violations have to take it upon themselves to carry out the long and arduous process of seeking remedies without any form of assistance from the government, including for burials, medical expenses, protection arrangements, etc. Seeking remedies is particularly difficult concerning cases involving torture, and forced disappearances as these acts are not defined as crimes under the law at present.

While Republic Act 6975, an act establishing the Philippine National Police under a reorganized Department of the Interior and Local Government, obliged the police to enforce laws and to protect the lives of the citizens, in reality the arrangement for protection of persons remains negligible, particularly for activists and the families of the dead facing continuing threats. Although requests for security escorts and protection have been made, the victims, witnesses or family-members of the dead or disappeared are expected to cover the costs of the police escorting them, by for example providing food and transportation. This is very difficult for persons who are poor. This frequently prevents persons from seeking police protection.

The lack of protection has proven fatal for many victims. A large number of victims of extra-judicial killings and enforced disappearance have been threatened and subjected to surveillance before being killed or disappeared. Activists are subjected to this and either have to stop their work or face the possibility of meeting a violent end. The police and particularly the military stand accused of involvement in failed attempts on persons' lives⁷ and extra-judicial killings, as well as placing people and groups' offices under surveillance.⁸

Violations by the police affect many sectors of Filipino society. For instance, when workers and labour unions begin legitimate actions to demand the improvement of their rights and welfare they are frequently met with violent attacks. Excessive force and violence has routinely been used by the police in complicity with other sections of the security forces to attack lawful pickets and peaceful demonstrations. Workers are forced to give up lawful demonstrations and

⁷ Please see Annex V for more information on the case of Gerardo Cristobal and Pastor Jeremiah Isaias

⁸ Please see Annex VI for more information on the case of Pro-Labor Legal Assistance Center (PLACE)

picketing out of fear. Workers also face judicial attacks that force them to give up their demands.

The security forces also use violent means to disperse farmers holding peaceful demonstrations to demand genuine land reform, leading to injuries and arrests. The police nevertheless justify their arbitrary acts through a blanket policy of “no permit, no rally” even in instances in which permits are not required or demonstrators have complied with the provisions of the Public Assembly Act of 1985.

The government’s failure to avert the cycle of violence and impunity by holding those responsible accountable through properly functioning criminal justice institutions is at the root of ongoing massive rights violations in the Philippines. This is even the case in the most grave of rights violations, notably extra-judicial killings, enforced disappearances and torture. The lack of trust in the system by victims and their inability to successfully seek domestic legal remedies is a by-product of these failing institutions. The government is failing to deal with these very fundamental aspects of human rights protection and claims made at the international level concerning its pledges should be evaluated in light of this.

The Asian Legal Resource Centre urges the government of the Philippines to:

- Ensure that each case of extra-judicial killings, enforced disappearance, torture and other forms of grave violations are effectively investigated and the perpetrators are prosecuted, leading to adequate reparation being provided to victims or their families;
- Comply with its obligations under the Convention against Torture and create legislation criminalizing torture
- Ratify the U.N. International Convention for the Protection of All Persons from Enforced Disappearances.
- Remove or correct all existing policies that serve as pretexts to dilute the authorities’ responsibilities in investigating prosecuting cases, such as the erroneous definition of “solved” cases must be corrected;
- The domestic mechanisms for protection of victims and witnesses, the provision of assistance and compensation must be improved, as these remain some of the main stumbling blocks concerning the delivery of justice. Give priority to and promptly resolve cases of human rights violations and related complaints against the police, military and other members of the security forces.
- Implement without fail the recommendations made by the Melo Commission, the U.N. Special Rapporteur on extra-judicial, summary or arbitrary executions, and other agencies.
- Review existing labour laws and the land reform process to address serious concerns being voiced by the affected parties.

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***About ALRC:** The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.*