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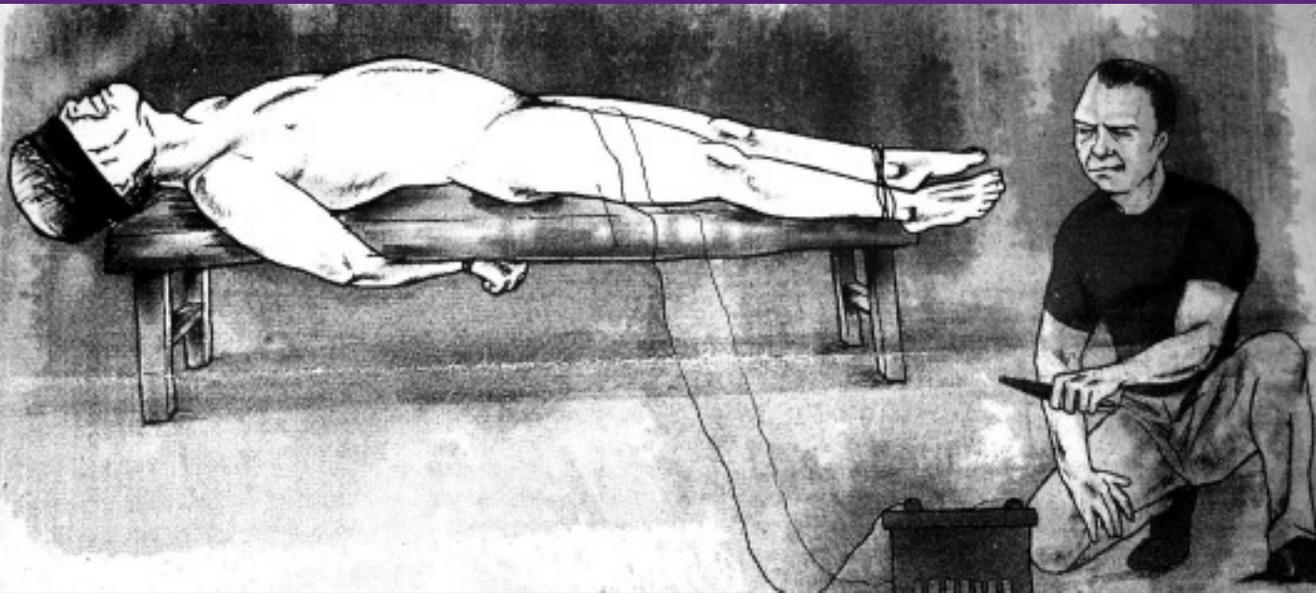
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special report

torture in the Philippines & the unfulfilled promise of the 1987 Constitution



*including articles on the cases of the
Abadilla 5, GenSan 3, Morong 43,
Sasa 5 & Maguindanao massacre*

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Overcoming the failure of the 1987 Constitution of the Philippines: Changing the operating structures of an authoritarian regime

Basil Fernando, Director, Policy & Programme Development, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

The toppling of dictators in Tunisia and Egypt during January 2011 has inspired uprisings against longstanding authoritarian regimes in several countries of the Arab world. The question now for those countries is what next? Will the dreams of the people for a state in which their rights are protected be realized in coming years? In all countries where similar uprisings have taken place, these questions naturally arise.

For people in Asia, the recent events in Arabia bring to mind uprisings in certain Asian countries during the 1980s and 90s. Among these, the People Power movement in the Philippines against Ferdinand Marcos was particularly remarkable, and even today it is an uprising that people keep talking about. In that movement too, the question soon emerged as to how it would be possible to bring an end to a long period of authoritarian rule in a way that would guarantee the basic rights of people within the framework of the rule of law.

Unfortunately, a quarter-century on, this profoundly important question remains unanswered. The aspirations of the people who took part in this uprising have not been realized. In reflecting on why these aspirations have not been realized, we may also find useful answers of relevance to people who are just now asking those questions as their authoritarian regimes fall.

The People Power movement in the Philippines resulted in a constitution in which the democratic aspirations of the people were adequately expressed. Indeed, the 1987 Constitution of the Republic of the Philippines is considered a remarkable

achievement and a paradigm of democratic constitution making. However, in spite of the constitution the actual aspirations of the people have not been realized. The written word of the law has not been sufficient for the alteration of conditions in which repression and denial of basic rights are the norm. As such, it is important to ask why this constitution has failed to deliver on what it promised.

An important distinction

To begin, an important distinction needs to be made between the formal aspects of the state and their actual operations. The experience of the Philippines shows that while there can be a well-articulated constitutional structure for democracy, this does not guarantee that the structure for rule created during the time of authoritarianism will be altered.

The 1987 Constitution clearly recognizes the separation of powers between the legislature, executive and judiciary. It was created to reflect the needs of the people at the time. Indeed, Marcos's dictatorship had expanded the powers of the executive to the detriment of the power of legislators and the independence of the judiciary. Through the development of emergency and special laws, the police and the military had great power to override the checks and balances that had been built into the constitution prior to his declaration of emergency. This period of emergency highlighted the limitations of the parliament and the judiciary to intervene and to protect the rights of the individual. The new constitution removed these powers and created limitations on the possibility of bringing about similar emergency powers in the future.

However, the actual practices of the policing and administration systems which people face every day did not change after adoption of the constitution. As illustrated by the contents of this edition of *article 2, 'Torture in the Philippines and the unfulfilled promise of the 1987 Constitution'* (vol. 10, no. 1, March 2011), the police have not learned to operate within the limits imposed by law enforcement agencies according to the 1987 Constitution. Although the constitution guaranteed the rights of the people through various avenues, the document was unable to alter the behaviour of policemen so that they would work within the framework of the law. It is this problem of the disparity between written legal instruments and their practical development which must be examined when trying to understand the challenges that are faced in countries following successful uprisings at the end of prolonged periods of authoritarian rule, such as in Tunisia and Egypt today.

The need for intense dialogue

When making the 1987 Constitution, lawmakers in the Philippines used valid principles of constitutionalism and studied various developments that had taken place internationally in the period leading up to their drafting of the new charter. However,

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“ Intense dialogue between the legislator and the citizenry after the collapse of an authoritarian regime is an essential part of any project to alter existing authoritarian practices ”

these lawmakers apparently did not closely examine the practices developed by the police and the military that had been brought into their daily operations during emergency rule.

The examination of the practical effects on law-enforcement agencies of a lengthy period of authoritarianism is an altogether different exercise to the rearticulation of accepted principles of constitutional law, and an altogether more difficult and trying one. This kind of study requires detailed observations about every aspect of how an institution behaves on a day-to-day basis, taking into account all the routine and real activities of state institutions in the name of law enforcement.

To make sense of what they need to do to bring about change, lawmakers must be intimately aware of the systemic aberrations that have grown under the emergency laws of an authoritarian regime. But lawmakers can become intimate with these aberrations only through close contact with citizens who know the real workings of the system much better than they, and who must be given opportunities to come before legislative bodies and speak candidly. It is only when a legislator obtains the insights of people who understand the real working of the system that he or she will be in a position to devise laws that can effect real change to how institutions actually operate.

Thus, a period of intense dialogue between the legislator and the citizenry after the collapse of an authoritarian regime is an essential part of any project to alter existing authoritarian practices in law enforcement, and when such a dialogue is skipped over or truncated in the rush to come up with a new constitution and all the other paraphernalia of a purportedly democratic state, among the long-term consequences is likely to be the persistence of authoritarian operating structures, as found in the Philippines today.

Among key topics for the dialogue between lawmakers and citizens after the collapse of authoritarianism in any country is the question of torture and ill treatment of persons in custody. Legislators need to examine this topic in great detail if they are to alter the way the police traditionally handle investigations. It is not enough for legislators to entrench the provisions of the Universal Declaration of Human Rights or international human rights conventions into local law. The entrenchment of international legal standards in the constitution is no match for the entrenchment of torture as a method of criminal investigation in the work of policing and security forces.

For the legislator to understand the practical methods by which a law-enforcement system has promoted and propagated extraordinary illegality in the name of authoritarian oppression is not an easy task. However, there are certain obvious places to start study. These include the documenting of routines and habits. For example, torture is often preceded by other illegal acts, such as unlawful arrest and detention. Thus, the legislator needs to hear from citizens and document these types of practices

and through them dig deeper and deeper into the systemic behaviour associated with the operating structures of authoritarianism. Narratives should be gathered from victims of abuses and police and other officials alike. As many different people from as many different backgrounds as possible should be encouraged to come forward and speak out about institutional degeneration during authoritarianism, so as to get the fullest picture of current conditions, with which to prepare for a new period ahead.

Internal controls of law enforcement

To go into close study of the operating structures of law enforcement under an authoritarian regime in order to effect change requires the legislator to understand the manner in which internal controls are maintained over these structures.

In law enforcement, formal documents describe how it is the duty of higher-ranking officers to carry out their duties in an ethical manner, because they set an example for lower-ranking officers. Departmental manuals explain how higher-ranking officers maintain order and control over lower-ranking officers in all their operations.

In all systems of law enforcement, there are gaps between the stipulations of formal documents and what happens in practice. However, during periods of authoritarian rule, these written rules are neglected to an extent that higher-ranking officers not only cease to apply them but also go so far as to encourage lower-ranking officers to engage in forbidden activities, such as torture, abduction, manipulation of records and deceit on a vast scale. Abuses of human rights by low-ranked personnel are rife not simply because they are overlooked or tolerated, as may be the case in other settings, but because in times of authoritarianism, they are actively promoted as standard law-enforcement methods.

The task of the legislator preparing the country for a new post-authoritarian future is to come to terms with this body of practices and the linkages between low ranked and high ranked personnel, not just on an anecdotal basis but through close scrutiny and extensive empirical study, so as to understand how, and how far, law-enforcement personnel have departed from the formal stipulations of their duties. If this is not first done then it will not be possible for the legislator to prepare laws and measures to stop such practices in the future, since even with a change in constitutional form, the operating structures of authoritarianism that are embedded in the system will persist.

In short, the challenge is to develop ways of dealing with internal retardations that have fundamentally altered the operations of a system, rather than simply rearticulating existing international norms. Moreover, study of internal mechanisms must be reinforced by further study of external controls.

“During periods of authoritarian rule, written rules are neglected to an extent that higher-ranking officers not only cease to apply them but also go so far as to encourage lower-ranking officers to engage in forbidden activities”

External interventions

“Repression creates its own kind of ‘justice’, which is in fact closer to a model of injustice”

Internal controls cannot function, or malfunction, without being coupled to the interventions of external bodies. In terms of law enforcement, these include judicial interventions, or the absence of interventions, into the violations of law enforcers. Remedial measures must exist, and following the collapse of an authoritarian regime must be developed, which make it possible for citizens to counter violations through judicial intervention. The legislature must concern itself with thorough consultations with those involved in the administration of justice, as well as citizens, so as to develop practical measures to allow the judiciary to address the incidence of torture and other abuses in extant authoritarian operating structures. These must include strengthening measures for access to justice and for the provision of legal aid, so as to enable citizens to seek judicial remedies, since in the absence of complainants the authoritarian operating structure cannot be challenged through the courts.

During a period of repression, judicial independence gives way to various types of political authority and to patronage. Political appointments to judicial positions become quite normal and resistance to interference is steadily weakened. Social expectations of judicial institutions are gradually transformed. Judgements take on a warped logic, which fits with the manner of authoritarian rule. More professionally minded judges and lawyers either quit their positions or begin to retreat. Corruption gradually becomes part of how cases are decided. Naturally, in this situation public trust is replaced with public cynicism, and unless this aspect of authoritarian operations is also addressed then many of the undesirable practices associated with the period of repression will continue despite formal constitutional change.

Apart from changes to the judiciary during periods of authoritarianism that need to be reassessed and addressed after the collapse of a regime, there are also changes to the prosecution system. These can be among the most difficult features of change in response to oppression for outsiders to identify, since there may be few changes to the formal framework for prosecution of criminal cases. Statutes regulating the prosecution system may remain as before. However, operations change in response to new political conditions and with realization that law-enforcement agencies are not the agencies that they were before authoritarian rule. New practices emerge that run contrary to the provisions of statutes, and which are coordinated with law enforcers to get the best outcomes in terms of the new rules of the game rather than in accordance with the terms of the statute books. For example, prosecutions become politically motivated, and more and more cases are passed through the courts with the collusion of police and prosecutors. Rules relating to exclusion of fabricated evidence may be ignored and fake documents used as evidence. These habits once institutionalized, like others described here, require careful study and preparation if they are to be eliminated.

Finally, the changes to all these other institutions inevitably also affect the legal profession as a whole, since repression creates its own kind of “justice”, which is in fact closer to a model of injustice. Those who are clever enough to read the changes often learn to adjust themselves to the new situation and acquire capacities to benefit from the situation. Advocacy begins to be replaced with various clever skills for bargaining, and unscrupulousness begins to be considered as a form of wisdom. Traditions established through long years of work and education give way to various types of opportunism and cunning.

These are some of the considerations for people in the Philippines who are keen to address the incidence of torture in their country and who want to complete the process that began with the 1987 Constitution. It is not too late for unresolved problems to be addressed, if legislators are prepared to engage in a careful and lengthy process of consultation with citizens. However, the experience of the Philippines amply shows that where legislators concern themselves only with international standards and sophisticated practices from abroad that have few parallels or linkages with what is going on in their own country then the consequences can but be the persistence of authoritarian operating structures, to the detriment and dismay of citizens who are daily confronted with the consequences of these structures’ real operations, not the constitutional niceties of 1987 that remain to be transformed into reality.

Preparation of this report

This special report was prepared by Danilo Reyes for the Asian Legal Resource Centre with the cooperation and involvement of the following organisations and individuals in the Philippines:

1. Alliance for the Advancement of People’s Rights (KARAPATAN)
2. Atty. Romel Bagares of Roque & Butuyan Law Offices
3. DEFEND ST (Southern Tagalog)
4. Kilusan Para sa Pambansang Demokrasya (KPD)
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6. Moro Women’s Center (MWC), General Santos City
7. Task Force Detainees of the Philippines (TFDP)

The limitations of the Philippines' Anti-Torture Act

Philippines Desk, Asian Human Rights Commission,
Hong Kong

The Anti-Torture Act of 2009 has given the Commission on Human Rights (CHR) of the Philippines responsibility to investigate complaints of torture and assist victims in the prosecution of their complaints. The CHR is a constitutional body required to investigate on its own, with or without formal complaints of human rights violations. The Public Attorney's Office (PAO), a government legal aid agency, is also mandated to provide legal assistance to victims to ensure the proper recording of their complaints whether the complainant is indigent or not. The role of the CHR and the PAO is very important at the early stage of torture investigation.

In all ordinary criminal investigations, only the Philippine National Police (PNP) and special investigators of the National Bureau of Investigation (NBI), a specialized investigating agency under the Department of Justice (DoJ), have the authority to investigate. The role of the CHR becomes important when crimes, including torture, are committed by the PNP, the NBI and members of the security forces.

Unless torture victims or complainants ask the PNP or the NBI to investigate an allegation of torture, the preliminary stage of investigation begins with the CHR. The CHR's role, however, is limited to submission of the findings of its investigation to the DoJ and Office of the Ombudsman with recommendations regarding the prosecution of the case. This is because no filing of criminal charges can be made in court against members of the PNP, Armed Forces of the Philippines (AFP) and other law enforcement agencies without the approval of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO). The Ombudsman has the authority to review, accept or dismiss the findings of the investigations, including the findings of the National Prosecution Service (NPS) of the DoJ and the CHR.

The CHR investigates and submits its recommendation to the DoJ, which submits the result of its review on the CHR's report to the Ombudsman; which reviews both the CHR and the DoJ

reports before initiating any action. The Ombudsman has the final decision on whether to proceed with the prosecution of the case in court or not. No charges can be filed in court without its review and approval.

The possibility of effective prosecution of the case depends on the quality of the investigation. The strength of the case depends on the ability and willingness of investigators to collect material evidence, and interpret and appreciate the facts and the testimonies of the complainants and witnesses.

Regrettably, since the Anti-Torture Act was signed into effect in November 2009, in none of the complaints that the Asian Human Rights Commission has documented has a court so far resolved that the accused have a case to answer. The process of these cases has been characterized by neglect resulting in victims losing interest to complain, failure to investigate and conclude investigation promptly as required by law, lack of competence and misunderstanding of officials' roles, inadequate forensic analysis and medical reporting, and lack of protection for victims complaining of torture and their families, who are subjected to intimidation and threats.

Victims do not complain

No investigation and prosecution can proceed without a written complaint, complainant and witnesses as required by the Revised Rules of Criminal Procedure (rule 110, sections 1 to 12). The Anti-Torture Act (section 11) allows for third party complaints or reports from third parties asking for cases to be investigated. It allows "any interested party thereto" to assist in the process of "investigation and monitoring and/or filing of the complaint". Despite this, a persistent problem in investigation is the unwillingness of complainants to come forward, due to the failure of the authorities to investigate complaints, lack of confidence and trust in the legal process, long delays in trial and the legal costs that complainants have to incur in pursuing their cases.

“Since the Anti-Torture Act was signed into effect in 2009, in none of the complaints that the AHRC has documented has a court so far resolved that the accused have a case to answer”

Liability for torture

The Administrative Code of 1987 (Chapter 9, General Principles Governing Public Officers) and the Ombudsman Act of 1989 [section 15 (1)] holds public officers and employees, which include members of the PNP, AFP and government employees liable to both criminal and administrative charges. Criminal charges are violations of the Revised Penal Code (RPC), statutory laws and other applicable laws on crimes. Administrative charges are violations of the Civil Service Law by public officers and employees in the performance of their official duties.

The Implementing Rules and Regulations (IRR) of the Anti-Torture Act define a "public officer and employee" as a "person in authority" and an "agent of a person in authority". They can be prosecuted under both criminal and administrative charges.

“ Where complaints are made, the Anti-Torture Act requires that investigation be completed within 60 days; however, the absence of sanctions for failing to meet this requirement means complainants have no choice but to wait”

In the Abdulbayan Guiamblang case (story 7 in this report), the CHR Region 12 failed to intervene and investigate promptly the complaint of torture filed on his behalf. Abdulbayan is a farmer whom soldiers illegally arrested, detained and tortured in custody on 26 February 2010. The soldiers accused him of being a rebel leader and tortured him to force him to admit that his identity was that of somebody else. The complaint was filed by Task Force Detainees of the Philippines (TFDP) on 26 April 2010 via email. After submitting the complaint, no response was received acknowledging receipt or to inform what actions the CHR had taken. The complaint had to be submitted twice and followed up on to make sure that the CHR had in fact received it. By the time that the CHR investigators visited Abdulbayan at the Cotabato Provincial Jail, he said that he was no longer willing to pursue a complaint.

Three activists, Charity Diño, Billy Batrina and Sonny Rogelio (story 11) were detained, tortured and had fabricated charges brought against them after they were illegally arrested in Talisay, Batangas on 23 November 2009. The three, who are all community organizers, were arrested without a warrant and allegedly had firearms and ammunitions planted on them to justify their arrest. They have not considered filing a complaint of torture, since the soldiers, police and prosecutors responsible for any investigation of their torture would belong to the same agencies as those responsible for their abuse. They instead have chosen to focus on having the fabricated charges laid against them resolved in court.

Nor in the Morong 43 case (story 8) has a complaint of torture been filed against the soldiers and policemen involved in their illegal arrest, detention and torture. The victims were a group of medical practitioners and community health workers arrested on 6 February 2010. The CHR found in its 26 February 2010 investigation report that the alleged perpetrators had committed a variety of human rights violations under the Anti-Torture Act and other penal laws. Despite strong evidence on which the complainants could pursue charges, they choose to postpone because of lack of confidence in the criminal justice system. The number of victims involved in this case is large. The opinion of one victim differs from another. Some of them may be open to prosecute the case in court. But for victims who have had negative experiences with the system in the past, there is little to reassure them that there now exists a legal remedy for crimes of torture.

No prompt investigation

Where complaints are made, the Anti-Torture Act requires in section 9(a) that investigation be completed within 60 days from the time that a complaint is filed. However, the absence of sanctions imposed on investigators failing to meet this requirement means that complainants have no choice but to wait until whenever they finish the job.

In the Anuar Hasim case (story 5), it took more than two months for the CHR Region 12 to begin investigating the case, let alone to complete it. Anuar was tortured in police custody after he was illegally arrested and detained on 4 April 2010. Before the CHR could begin investigate, local police investigators, who were also ordered to investigate, secured a sworn statement from Anuar declaring that he was no longer interested to make a complaint. The CHR was informed that the actions of the police were illegal under section 13(b) of the Anti-Torture Act since they constituted “concealing the act of torture” “or destroying the effects of instruments thereof in order to prevent its discovery”. But after completing its investigation report on 20 August 2010 the CHR could not resolve to recommend the filing of charges of torture. It instead asked to be “given another time to probe further into the details of the case”. None of the policemen accused of torture and those who attempted to prevent the prosecution have been charged in court as of yet.

“The Philippines has no domestic law defining criminal liability in cases of enforced disappearances”

A complaint about the custodial torture and death of Sumar Abdulwahab (story 2) was made with the CHR Region 12 on 3 September 2010. At time of writing, the CHR is not known to have completed its investigation. Sumar’s relatives know that he was last alive in the custody of the NBI in General Santos City, following his arrest on 3 June 2010. His relatives were denied entry when they tried to visit him at the NBI a day after his arrest, on June 4. When they were finally permitted, they were told that Sumar had escaped by breaking the glass window of his detention cell. Four days later his body was found. It had visible signs of torture.

In the Ambrosio Derejeno case (story 9), it took over three months for the CHR Region 8 to complete its investigation into his torture and disappearance. It was Ambrosio’s son, Edwin, assisted by the TFDP, who filed a complaint on 25 March 2010. When its investigation report was completed, the CHR recommended only a charge of arbitrary detention under article 124 of the Revised Penal Code (RPC) being lodged against the two paramilitary men involved. Their military superiors were not included in the recommendation, despite the principle of command responsibility. None of them were charged either for murder or for torture because the victim’s body was not found.

The Philippines has no domestic law defining criminal liability in cases of enforced disappearances. In cases of prosecution for murder and torture, the legal system requires that there has to be a body. In Ambrosio’s case, the CHR resolved that the crime of murder or homicide has not been proven and stated that “as corpus delicti (body of crime) means the fact of specific injury or loss sustained, in murder the fact of death is the corpus delicti”. The CHR, however, knew that the victim’s wife “mentioned several persons who might be able to help her locate the place where the victim was allegedly killed and buried. However, she has doubts as to whether she can convince them to cooperate

“The appreciation of forensic evidence by police investigators and prosecutors and its admissibility as evidence in Philippine courts has emerged only in the last 15 years”

and serve as witnesses”. Without the body of the victim the two accused have no criminal liability. No legal action could be taken against them unless a body is produced.

CHR misunderstanding of its role

In the case of Rolan Corpuz and his companions (story 11), the CHR Region 3 investigation report lacked credibility due to questions of legality and procedures in the process of investigation. Rolan and his four colleagues were illegally arrested, detained and questioned in the custody of soldiers on 1 December 2009. There is strong evidence that the soldiers, village officials and other individuals have a case to answer under the Anti-Torture Act, but the CHR Region 3 did not recommend prosecution (see the statement by the Asian Human Rights Commission, AHRC-STM-231-2010).

In their interviews of individuals and witnesses in the community, the CHR Region 3 included those accused of torture and those who worked for them. At the early stage of an investigation, the evidence to be collected, like testimonies and material evidence, is used as the basis to determine the probability of the commission of the crime. It was not necessary for them to interview the accused. The accused would have had their own opportunity to respond to the allegations as required in the preliminary investigation procedure under the Revised Rules of Criminal Procedure (rule 112). The CHR investigators are not journalists who have to take both sides of the story at the early stages. They can accept testimonies or written statements from the accused; however, they should have not been deliberately locating them to get interviews with which to dismiss the need for prosecution.

In this case, the CHR ultimately resolved not to prosecute the perpetrators simply because a third party, who was helping the victims, phoned to inform that changes had to be made in the details concerning the location where the torture allegedly happened. The CHR argued in its investigation report of 6 April 2010 that the changes, which were made neither with the knowledge of the complainants nor with their instructions and consent, were “totally astonishing” and “totally changed the landscape of the case”. Finally, they recommended only to have a “dialogue between and among the persons involved” and to “summon all the persons involved in the case”.

Underdeveloped forensic investigation

In countries with developed forensic investigation mechanisms experts play an important role in the successful prosecution of torture cases. Medical and scientific opinion is a strong foundation of evidence with which to establish the guilt or innocence of a person. In the Philippines, by contrast, evidence still turns heavily on oral testimonies and eyewitness to prove that a crime was committed. The appreciation of forensic evidence by police investigators and prosecutors and its admissibility as evidence in Philippine courts has emerged only

in the last 15 years [see *Antonio Lejano v. People* (G.R. No. 176389), 14 December 2010]. The courts still do not have developed jurisprudence on matters of forensic investigation, and there is strong resistance for many practical reasons. Courts still heavily depend on oral testimonies of witnesses to establish the guilt or innocence of the accused.

Most forensic experts in the Philippines are in the government service, particularly in the PNP Crime Laboratory and the NBI. Only a few are in private practice. Others are attached to the universities, where they teach medicine and forensic science. Because of the small number of private forensic experts who can be consulted and who can challenge the credibility of forensic examinations presented as evidence in court by forensic experts from the government, the court in practice considers the testimonies of the latter uncontested. Forensic and medico-legal experts routinely testify as expert witnesses in court trials for the prosecution.

In cases where there are questions as to the reliability of government forensic experts, there is no way in which a court can test or examine the credibility of their testimonies and findings. Unless the aggrieved party wanting to question the credibility of the examination can offer a private forensic expert to do this, the court routinely takes the testimonies and findings of the forensic expert from the government as accurate. There is a presumption that whatever the testimonies and findings of the forensic experts are, they are accurately done and done in good faith.

Where the party cannot afford to pay private forensic and medico-legal experts there is no other means to challenge the forensic evidence presented in court and the testimonies of the expert witnesses, apart from presenting witnesses to give oral testimonies. In this situation the court has to decide whether the forensic or testimonial evidence deserves judicial consideration and which is of greater weight. There is no consistent rule as to which carries greater weight, and the jurisprudence on matters involving the weighing of forensic evidence and the testimonies of expert witnesses in criminal cases remains underdeveloped. There is no rule clearly defining the value of forensic evidence to determine the guilt or innocence of a person.

Although the requirement for forensic and medico-legal experts under the Anti-Torture Act of 2009 deserves appreciation as a development in the field of law, it is problematic in practice. Since most forensic and medico-legal experts work for the government, they are themselves policemen or have close working relationships with police. They are part of the police establishment and are subject to their own regulations. Because they are used to testifying for policemen in prosecution cases, it would be extremely difficult for them to testify against the

“Although the requirement for forensic and medico-legal experts under the Anti-Torture Act deserves appreciation as a development in the field of law, it is problematic in practice”

policemen whom they work for. It is also difficult for them to represent on behalf of the defence when their orientation to testifying in court is for the prosecution.

Some of the weaknesses in forensic science in the Philippines relevant to cases of torture can be found in the case of Darius Evangelista (story 6). Police filed a complaint of torture against the policemen involved without being certain by way of evidence from scientific examination of a human skull found in garbage was that of a man whom eyewitnesses had seen being tortured in police custody before he disappeared.

In Darius's case, the testimonies of eyewitnesses were alone sufficient to establish probability that a crime of torture and murder had been committed by the policemen involved. They described vividly the physical condition of the victim when he was taken inside the police station, they heard his screams from excruciating pain, they saw how badly injured he was and that he was last seen in the custody of the accused. They contain enough information for the prosecutors to recommend the filing of charges in court for trial; however, unless the body of evidence, as required by the court rules, is produced in this case to prove the crime, the policemen involved are very likely to get away with torture and murder. At time of writing, the prosecutor handling this case has yet to resolve whether or not to recommend for the filing of charges in court.

Meanwhile, the skull which is believed to be that of the victim and in this case which would serve as the body of evidence has not been examined by forensic experts from the PNP or NBI. When the skull was found in March 2010, the policemen required the victim's family to produce dental records of the victim, which they would use to match the dental structure of the skull that was found. The victim's family, however, could not produce dental records because they do not have any. Most people in the Philippines do not have dental records. They only go to the dentist to have their rotten teeth extracted, not to record their dental structure. There is not systematic recording of dental structures.

Another way of determining the identity of the skull is to compare its DNA to the DNA of a member of the family; however, this procedure is enormously expensive and the victim's family cannot possibly afford to pay for the cost. Even the PNP and the NBI, who are legally obliged to perform this test since the result of their examination will also be used as evidence for the prosecution in court, have not been able to do it because the government has no adequate facility.

Poor medical reporting

Section 12 of the Anti-Torture Act requires that "physical examination and/or psychological evaluation of the victim shall be contained in a medical report" and "include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report". Furthermore, sections 22 to 24 of the IRR require medical examiners to "conduct a diligent and

“The Anti-Torture Act requires that ‘physical examination and/or psychological evaluation of the victim shall be contained in a medical report’”

complete medical examination”. Their medical examinations of torture victims must be thorough and properly recorded. Among the important details required to be recorded in the medical report are: the identity of person who brought the patient or victim, to ascertain who took him into custody; the nature and cause of the injury; approximate time of the infliction of injury, and relate it to the period of custody; and, the diagnosis and disposition of the victim.

However, the medical reports produced by Ms. Ma. Antoinetta Odi, MD, a medico-legal officer in General Santos City, after examining victims Anuar Hasim on 12 April 2010 and Misuari Kamid on 18 May 2010 did not contain this required information. Anuar informed Ms. Odi that he had been tortured, but she allegedly did not pay close attention to him. She did not record the visible contusions on his left chest. Without bothering to check his blood pressure, she declared him “physically fit for commitment (to jail)” right away. In Misuari’s case, her medical report was too general and broad. Her reports lacked details about the medical interpretation of the impact of torture on victims, cause of injuries and her opinion of the victims’ medical condition.

None of what Ms. Odi did complied with the requirements of either the Anti-Torture Act or of the United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Her method of examination was purely clerical rather than scientific in nature. She tried to get rid of her patients as quickly as possible by completing her examination right away. Her examination had no semblance at all of how an effective examination of torture victims should proceed. Her examinations were purely to comply with paperwork to declare the ‘fitness of detainees’ to be remanded to prison, rather than to comply with her obligation to investigate allegations of torture. Ms. Odi’s close association with the local police investigators, as she is one of the few practicing medico-legal experts in the city, puts her credibility to question in performing medical examinations of torture victims. She also stands as expert witness in numerous criminal cases the police are prosecuting, like rape and murder.

Abdulbayan (story 7) was taken for a medical check-up by the same persons who had interrogated him; however, no real medical examination could take place. Again the purpose of examination was reduced to complying with paperwork, and to deliberately cover up and prevent any medical proof of torture from emerging. The person examining him only took his blood pressure. He was informed of neither the identity of those who took him for examination nor the person who examined him. Abdulbayan’s medical report must have a contained declaration that he was fit for remand to prison because he would have not been accepted at the Cotabato Provincial Jail had it not.

“Abdulbayan was taken for a medical check-up by the same persons who had interrogated him; however, no real medical examination could take place”

Obstacles presented by the prosecutor

“The problem of undue delay in the investigation and prosecution of criminal cases against state agents is common in the Philippines”

The problem of undue delay in the investigation and prosecution of criminal cases against state agents is common in the Philippines. Some accused deliberately delay the process by filing numerous appeals and petitions. Such tactics are used to enable public officers and employees to retire from public service without records of criminal prosecution, or to frustrate victims and cause them to lose interest in pursuing their cases due to long delays.

In the case of Lenin Salas and his companions (story 1), P/Supt. Madzgani Mukaram has taken numerous petitions to prevent a torture complaint from being admitted by the prosecutor as a criminal complaint. He has also petitioned that documents in the case be completely expunged from the record. He has questioned the medical examination result of the CHR and the Medical Action Group (MAG), a local nongovernment organization, claiming that their findings are hearsay and do not comply with the technical requirements of criminal procedure, such that findings be “sworn and subscribed to”, and that the doctors did not present themselves for possible clarificatory questioning.

In determining probable cause, the Rules of Criminal Procedure do not require that complainants or defendants have to submit position papers. It also is not necessary for petitions or appeals to be taken into consideration as absolutely necessary in complying with the probable cause. This stage is not yet proper trial where the requirements of due process strictly apply; however, most accused in torture cases have exploited this provision either to delay proceedings or to have them expunged from the records. Also, in the Philippines the right to appeal is a statutory and not a constitutional right. It is subject to limitations and regulations as provided by the law. In most criminal cases though, the prosecutors who are in charge of the case would have to study the appeals and petitions and would have to satisfy the appellant that they were given consideration.

Other obstacles from the prosecutor in aiming to resolve cases promptly arise because as lawyers and government employees they are subject to rules and regulation of the Integrated Bar of the Philippines (IBP) and the Civil Service Law. They fear being prosecuted for charges related to their practice of law and of being members of the bar—for example any complaint that relates to legal practice, and in this case probably falls under violation of due process, is a serious offense. Once charged and convicted, be they in administrative or in the criminal proceedings, there are enough grounds to impose a penalty of suspension or dismissal from the government service. This is also a sufficient ground to have the lawyer disbarred for ignorance of the law.

Prospects for administrative cases

Under the Administrative Code of 1987 each of the government departments and agencies to whom a public officer and employee is attached has its own mechanism to investigate complaint as an administrative case.

The National Police Commission (NAPOLCOM) was created under the PNP Reform and Reorganization Act (RA 8551) to exercise “summary dismissal power” over members of the PNP. It has jurisdiction to receive complaints and investigate wrongdoing. It can impose a maximum penalty of dismissal from the police service on any police officer found guilty of gross misconduct. Other penalties include demotion, forced resignation and suspension. In a situation where an accused threatens or harasses complainants, a 90-day preventive suspension can be imposed while the administrative proceedings are being conducted.

There are two sub-complaint mechanisms under NAPOLCOM’s jurisdiction. These are the Internal Affairs Service (IAS) and the People’s Law Enforcement Board (PLEB). The IAS, a complaint mechanism within the PNP hierarchy, is national and regional in scope, while PLEB is a citizens’ complaints mechanism created by members of the local legislative assembly. It is required to have one local PLEB for every 500 city or municipal police personnel, to receive complaints and conduct summary hearings on officers and members of the PNP. Both of these mechanisms have summary dismissal powers; however, their decisions are subject to appeal by the Regional Appellate Board of NAPOLCOM.

Administratively, a complaint of torture against a police officer constitutes an allegation of grave misconduct. If NAPOLCOM, PLEB and the IAS determine that the accused is guilty, he can be dismissed from the police service right away. The punishment is enforceable immediately. It is effective even when the appeal on the punishment has not been resolved by the appellate courts and quasi-judicial bodies. No pending appeal can prevent the implementation of this punishment. Once a complaint is filed with the CHR and in court, the retirement benefits of the officer would be withheld. Only when the court clears him from any criminal liability on a final judgment can he receive benefit and compensation, and also be reinstated into the police service.

But in the Sasa Five case (see article by Danilo Reyes in this report) a police officer who prevented the victims from signing statements alleging torture so as to block evidence from the victims from being included in the official record was not punished proportionately for his attempt to obstruct justice and cover up for the policemen accused of torture. The punishment that he got from the IAS was only a verbal reprimand.

“Administratively, a complaint of torture against a police officer constitutes an allegation of grave misconduct”

Lengthy appeals process

“ Unfortunately, the appeals process has been abused so as to frustrate torture victims seeking prompt legal remedies ”

In all criminal and administrative cases the accused has the legal right to file appeals and motions questioning the findings of the CHR, the DoJ and the Ombudsman. The accused also has the right to file appeals or motions for dismissal of the case, even when already filed in court. Without appeals from the accused, a complaint of torture is supposed to be filed in court within four months. But in reality this does not happen. This timetable does not include proceedings for appeals and the trial process when the case is tried in court.

A decision of the prosecutor to bring charges against a person in court can be appealed with the secretary of the DoJ on questions of law; for lack of evidence, and for absence of probable cause. The secretary has the final decision on whether or not the prosecution proceeds, unless the president, who has political control over the department, gives contrary orders. The secretary also has the power to reverse or approve the findings of all decisions made by public prosecutors.

But the DoJ decision is subject to judicial review, should the accused decide to bring the case to the Court of Appeal (CA) or Supreme Court (SC). When probable cause is being determined, the accused also can question the case in the CA and the SC. The CA and SC have the authority to accept, review and reverse the decision of the DoJ on questions of law under rule 45 of the Rules of Court.

Unfortunately, the appeals process has been abused so as to frustrate torture victims who are seeking prompt legal remedies. The Anti-Torture Act and its IRR require time limits in the completion of investigation and the filing of criminal charges in court. But provisions of the Speedy Trial Act (section 10; on exclusions) and the Rules of Court (rules 40, 41 and 42) among others exempt delays in the course of ordinary procedure. The effect of these provisions is to prevent effective prosecution and to prolong the trial of the case in court. Even where there is no legal justification for an appeal and no questions of legality are involved, appeals are made for the purposes of delay, and the legal system tolerates these.

Torture and wrongful prosecution of alleged bombers and assassins

Danilo Reyes, Programme Officer,
Asian Human Rights Commission, Hong Kong

As a reporter for a local newspaper in Mindanao during the late 1990s, rushing to the sites of bombings was part of my routine work. The higher the number of people killed, the quicker I would arrive at the scene and get exclusive information on the identity of the bomber. Often I raised no questions about how the police could identify with certainty the bombers, their motives and their hideouts within a few hours. Nor did it matter to me at all if what they said was believable or not. I was just after headlines.

Whatever the police said about details of the bombing and the suspects, I reported. However, when bomb suspects in the custody of the police and soldiers would claim torture, I doubted—not because I did not believe them, but because that is how I was taught and trained as journalist. My training in journalism was that the police version of the story, as against that of the defendants, weighed more because it was ‘official’; it came from ‘persons in authority’. Unconsciously, after a year of covering bomb blasts and hearing suspects claiming torture, I developed the attitude of not taking torture complaints seriously. Police investigators put it, “The suspects always complain of torture,” and it was safe for me and safe for my paper to go along with this. Anyway, we had our story.

To go against this arrangement would have been very difficult. To write about detainees’ allegations of torture and to question the legal flaws in how the police arrested suspects and collected evidence as part of their investigation was not in my training. I doubt my editors would have agreed to publish such articles (my editor and I did not have a thorough discussion on how to deal with this type of situation). In small cities and communities where journalists, police, soldiers and others in official circles know each other personally, it is extremely difficult not to compromise to some extent. So, the stories of detainees, whom I also managed to interview while in police custody, I invariably

omitted from my articles for fear of legal and security implications, and so that the paper could retain good relations with its sources among officials.

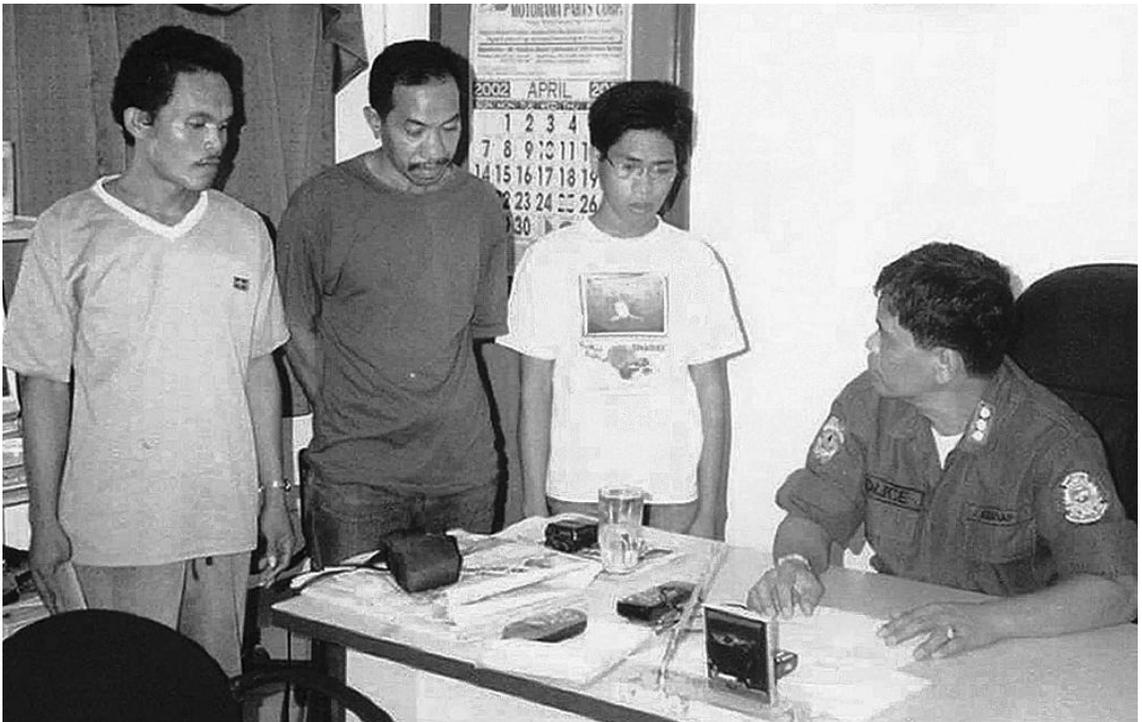
The GenSan Three: Exonerated after an eight-year trial

For these reasons, I had never thought that I would get involved in a case of illegal arrest, detention and torture like that of the GenSan Three. The case began on 24 April 2002. I cannot forget that day, when I went to the investigation section of the General Santos City Police Office, where I saw the three torture victims, Jehhon Macalinsal, Abubakar Amilhasan and Arsul Ginta. I was struggling to comprehend why Jehhon, an activist whom I interviewed on many occasions during protests and demonstrations, was now a bomber.

Before I went to see the police investigators for an interview, I had limited details as to the suspects for the Fitmart Mall bomb blast, which occurred three days before, on April 21. A friend who worked for a local television station had told me that the arrestees were fall guys and the police planted evidence on them. He covered the police operations in the case, since police usually want television reporters and their cameras present when they think that they can get some good publicity.

Police Superintendent Bartolome Baluyot, former regional director of the Philippine National Police, led the police operations to arrest and conduct searches at the victims' place in Barangay Calumpang, General Santos City. It was him who also announced in public that the three were responsible for the bomb blast.

General Santos City police director Senior Superintendent Jorge Aquisap interrogates the GenSan Three, from left, Arsul Ginta, Abubakar Amihalsan and Jehjon Macalinsan on 24 April 2002 (AFP PHOTO)



However, the police did not prosecute the victims for murder because they had no evidence that could prove that they were the bombers. But whether they were responsible for the bomb blast or not no longer mattered anymore. The community already believed, after the media reports, that the police had arrested the culprits.

“In public the police did an excellent job of solving the case”

In public the police did an excellent job of solving the case. My contemporaries in the local media, who also write for the national media, made headlines of the story. While the police, particularly P/Supt. Baluyot, enjoyed being interviewed by one radio and television station after the other, phone calls between newspaper journalists mentioned commendations from their superiors for their job well done. The three victims, their families and those helping them were hardly heard. Their complaints of being tortured were largely ignored; their allegations of arrests and searches done illegally and of their valuables being stolen by policemen during the raids were never aired in broadcasts or printed in newspapers.

Most in the local media who reported the claims of the policemen that they had arrested the bombers, including me, were not aware about P/Supt. Baluyot's past record and about the reason that he was assigned to Mindanao. The province is a dumping ground for ranking police and soldiers with records of human rights violations, including use of torture and planting of evidence on arrestees. P/Supt. Baluyot, it turns out, was one of these.

It was only in June 2007, over four years after I ceased writing for a local newspaper, that I came to know that P/Supt. Baluyot was one of the policemen investigated for allegedly torturing the Abadilla Five, whose case is mentioned below. P/Supt. Baluyot was part of “Task Force Rolly”, a special police task force, who illegally arrested, detained and tortured the suspects in the murder of Col. Rolando Abadilla in June 1996.

But even if I knew of P/Supt. Baluyot's past record at the time the GenSan Three victims were arrested, it would have been difficult for me to expose him. The police would have subjected me to isolation, would have refused requests for interviews and to have access to the police records, or could have filed libel charges against me if I had made any accusations. I had already been charged with libel when I was still writing for a local newspaper.

Perhaps it was for my own good that I did not know about P/Supt. Baluyot's past record. Firstly, had I known about it early, I would have felt tremendous guilt if I did nothing, or I would have had to endure the unbearable feeling of not being able to do anything; secondly, I felt exonerated that my strong belief at the time that the three were innocent and that the police had indeed tortured, illegally arrested and detained them and planted evidence on them turned out to be true. Over eight years after I first reported on their case and after I ceased writing for a local

“The GenSan Three endured unthinkable difficulties in their quest to have their names cleared, but even after they had been legally acquitted, they have had to endure social isolation as ex-convicts”

newspaper I still followed their case, until the date that a court finally ruled in October 2010 that they were innocent (for details see Asian Human Rights Commission, Press Release No. AHRC-PRL-026-2010).

Prior to the court ruling, the regional office of the Commission for Human Rights (CHR) of the Philippines had also concluded that the rights of the victims had been violated and that they had been denied due process. However, it took the CHR four years to commence the investigation process. By the time the CHR had finally resolved the complaints of the victims, they had already lost interest in pursuing their complaints. By then, the victims were ready to forego the case rather than spending further years in prosecuting the police officers involved, including former city police director Supt. Jorge Aquisap and P/Supt. Baluyot, who had already been transferred and retired from the police service respectively.

The GenSan Three had endured unthinkable difficulties in their quest to have their names cleared. But even after they had been legally acquitted, their quest for exoneration has remained unfinished. In the community and the society where they live, they are still outcasts and have had to endure social isolation as ex-convicts. The Philippines is a country where former prisoners are persons who are feared and avoided. There is no concept of them being integrated back into society.

After the victims' release from detention in October 2010, the AHRC interviewed one of their relatives, Abina Rombaoa. When asked about how the victims had endured their years in prison while under trial she said of Jejhon Macalinsal that, “Jejhon spat blood due to police torture and suffered trauma. He, however, never had the opportunity to be checked by a professional psychiatrist, for lack of money.” Jejhon said of his release, “I never thought that if the police and military want to have accomplishments for promotion it is so easy for them to do. They can arrest persons without evidence. It is easy to invent accomplishments for them. Just like that.”

On Arsul Ginta, Abina remarked that,

His wife died due to depression because of what had happened to her husband [eight months before the three men were acquitted]. One of the reasons for his wife's depression was the continued police impoundment of their five items of luggage which contain valuables. The luggage contained products they would have been selling as their source of livelihood; however, since they were used as evidence in court, they could not get them from the police. Before she died, she seemed to have already decided that the case of her husband would not finish even after her death.

Torture victims acquitted after eight-year trial

(A press release by the AHRC, AHRC-PRL-026-2010, 2 November 2010)

The Asian Human Rights Commission (AHRC) is pleased to inform you that four men, three of whom were illegally arrested and detained, were acquitted by a local court from two charges of illegal possession of explosives. The court found that the case laid against them “exhibits a straightforward violation of due process”.

Three of the accused, Jejhon Macalinsal, Abubakar Amilhasan and Arsul Ginta, were illegally arrested during a police raid on April 24, 2002 in Barangay (village) Calumpang, General Santos City. They were charged with illegal possession of explosives using the evidence planted by the policemen who were led by Police Superintendent Bartolome Baluyot, former director of the Regional Police Office (PRO XII). The evidence was planted at the house where the accused were staying during the arrest.

In his 16 page decision read in open court on October 29, 2010, Judge Oscar Noel Jr., presiding judge of the Regional Trial Court (RTC), ruled that, “As gleaned from records of these cases the pieces of evidence presented by the prosecution fall short of the constitutional guarantee, the execution of search warrants suffers from several fatal flaws, equally deadly”.

The violations that the policemen have committed were:

1. *Use of wrong witnesses:* When the police served the court order (search warrant) to search the houses where the accused were staying, the two village officials who stood as witnesses were legally unacceptable. Searches can only be valid when the place to be searched is within the jurisdiction of these village officials.

But the two officials, Sabina Castomayor and Jose Arrojo, who came with the policemen when they implemented the order, were officials of Barangay Labangal not Calumpang. Under the procedure in conducting searches, policemen are required to have village officials from the same village to be present as witnesses.

2. *Scheming and planting of evidence:* The issuance by another court of an order to conduct searches, which justified the policemen to conduct searches at the houses at 3am on April 24, 2002, were also a product of scheming by the policemen and a prelude to their planting of evidence on the accused all along.

Firstly, at 11am on April 23, 2002, a day before the policemen raided the house, two gunmen entered one of three houses wearing balaclavas. Once inside, one of them gave Jejhon Macalinsal, one of the four accused, a piece of paper with a telephone number written on it. He was forced to dial the telephone number and tell the person on the other end that: “There’s a bomb in the front and at the back of their office”. The gunmen later left after they made sure that Macalinsal had done it.

The telephone number was later found to belong to the office of Bayan Telecommunications (BayanTel), a local telecommunication company in the city. The company had a caller Identification System in their telephone system which enabled them to accurately determine the telephone number used in calling and the name of the subscriber that the telephone is registered to.

The policemen used the said record of the phone call and subscription to deliberately falsely charge the four accused. In his numerous media interviews, Supt. Baluyot declared them as responsible in bombing Fitmart Mall in General Santos City on April 21, 2002. But strangely, none of the accused was charged with murders in relation to the death of civilians in that bombing incident.

Secondly, the scheming justified the policemen's application of search orders from Judge Antonio Lubao of RTC, Branch 22 in the same city, claiming that the occupants of the house were keeping M14 and M16 armalite rifles. The court then issued orders for policemen to search the house owned by Aron Sala. Sala was not physically present during the raid but was included in the charges.

Sala was studying in Marawi City, more than ten hours travel from General Santos City where the raid took place.

3. Arbitrary inclusion of the accused in the cases: Aron Sala's name was arbitrarily included for the simple reason that the telephone number used by Macalinsal to make a fake bomb threat upon the instruction of the armed men is registered in his name. The phone call and subscription were used by the policemen as evidence in justifying their application for the issuance of the court order to search Sala's house.

When the police conducted the raid they also searched the two other houses that were not part of the court's order. The policemen also prevented the three accused and the occupants from seeing what they were doing inside the house when they were conducting the searches.

The policemen who stood as witnesses for the prosecution did not deny or challenge the claim of the accused that they were not in possession of the evidence used on them—a mortar and a grenade. The court ruled that they were planted and taken inside the house by “three persons wearing black bonnets and combat shoes who entered the compound together with the raiding team who threw a sack full of something in the house of one of the accused's mother-in-law.”

4. Policemen could not identify the accused in court: During the court hearing, the two policemen, Senior Police Officer 1 (SPO1) Rex Diongon and Police Inspector (PI) Harrison Martinez, who served the search orders, “did not point categorically where in particular they seized the pieces of evidence they presented in support of their cases”. Martinez could also not identify in open court which one was Amilhasan and which one was Macalinsal.

5. Police try to extort money in exchange for dropping cases: On May 12, 2002, while Arsul Ginta was in custody he was approached by three persons who introduced themselves as police officers. He was told that they were given instructions by Supt. Baluyot to negotiate the dropping of charges against him. He was told that the policemen could withdraw from prosecuting the complaint if he paid Php 150,000 (USD 3,500). But Ginta refused to do so.

Before Supt. Baluyot retired from the police service he had previous records of having involvement in illegally arresting, detaining, planting evidence and torturing persons arrested during police operations. He is also one of the policemen the Commission on Human Rights (CHR) found to have tortured and violated the rights of the Abadilla Five while they were in police custody.

Although the four accused have been acquitted from these charges, they are still being tried for charges of illegal possession of firearms before the Municipal Trial Court (MTC) Branch 3 in the same city. The evidence that the policemen and the prosecutors used in this case was also planted and used in the case in which the accused have already been acquitted from.

The Sasa Five: Exonerated after almost seven years on trial

In April 2003, I was collecting a colleague at Sasa Wharf in Davao City who was arriving from a provincial trip onboard a vessel. As we approached the gate of the port to exit, we heard a loud explosion nearby. The impact was so strong that it shook the ground we walked on. It happened just after the sunset. I saw a stream of visibly shocked and frightened people running away from where the explosion had occurred. But curious as I was (I forgot I was no longer a reporter at that time), I ran towards where the explosion was, leaving my colleague and her luggage.

After seeing a crowd of people who also wanted to get a clear view, I climbed half way up the steel fence that divided the compound from the outside, where the explosion was. As I was clinging on the steel fence, I could closely and clearly see dead bodies littered on the ground, and blood on the ground, on stalls and on vehicles where the impact of the blast had taken it. I could smell the blood and stench of explosives. It never occurred to my mind that had my colleague and I walked faster than we did, we would have been among those injured, if not killed, since the blast site was where passengers and by-passers go to enter and exit the seaport.

Although I was no longer a reporter, I relayed the details of what I experienced to a journalist friend, the late Alejandro “Bong” Reblando (one of the 58 people killed in the Maguindanao massacre) about what I had witnessed. He wrote a headline story for a national daily with me as his source of information.

Investigators comb the scene of the Sasa Wharf explosion on 3 April 2003, where over 15 people were killed and 50 injured (AFP PHOTO/Jay DIRECTO)



“ With my previous experience of covering bomb blasts, it came as no surprise when the five suspects claimed that they had been tortured ”

With my previous experience of covering stories of bomb blasts, it came as no surprise to me when the five suspects, Tohamie Ulong, Ting Idar, Jimmy Balulao, Esmael Mamalankas and Tho Akmad, collectively known as the Sasa Five, whom the police and soldiers arrested on 8 April 2002 in Poblacion Dos, Cotabato City, claimed that they had been tortured while under custodial investigation following their arrest.

A few days after the five men were transferred from Cotabato City to Davao City, which is seven hours travel by passenger bus, I interviewed three of the five detainees. At that time, none of the local media or human rights organizations had spoken to them. Others were perhaps reluctant to get involved because all the five suspects had been portrayed in the media, based on the interviews they had reportedly had with the police and military, as “bomb experts of a rebel group”.

Strangely though, when I introduced myself to the duty police officer attached to the Criminal Investigation and Detention Group (CIDG) at their headquarters in San Pedro Street, Davao City and told him of my purpose in interviewing the five victims who were inside their detention cell, I did not draw any suspicion from him. He voluntarily led me to the prison cell where the five were held, and as much as I could, I interviewed three of the five detainees. I did not know that I was one of the first persons whom the detainees had spoken to and been in contact with apart from the police. Some of their relatives had not even seen them since they were arrested.

As I usually do before doing interviews, I introduced myself to the three victims and explained to them the purpose of the interview. They were inside their detention cell while I sat just in front of them, writing the details. I cannot forget how each of them urged me to record as much information as they could possibly give me, information that I would relay to their relatives and details about how they were tortured to forced them into admitting that they were responsible for the bomb blast.

After I finished interviewing them, I went back to my office and quickly put all the details that they had told me into documentation. When I went back to the CIDG headquarters, I was carrying with me statements of the three torture victims that I put into writing for them to sign. However, as the victims were signing their statements after I had explained the details to them, the duty officer, Senior Police Officer 2 (SPO2) Gabunada of the CIDG started confiscating the signed and unsigned statements. He did it in open view of one of the legal counsel of the victims and some of the relatives as they were just visiting them at the CIDG detention facilities. I demanded from SPO2 Gabunada to return the copies to me but he just ignored me.

We filed administrative charges against SPO2 Gabunada before the police Regional Internal Affairs Service; however, the punishment that the service imposed on him after a long hearing was merely a verbal reprimand. The statements were never

returned. Below are excerpts of the unsigned statements of Jimmy Balulao, Ting Idar and Esmael Mamalankas when I interviewed them. These are the testimonies that SPO2 Gabunada had suppressed from coming out. They were never included as part of the record of the case.

Testimony of Esmael Mamalankas:

At 6am on 8 April 2003, I was inside our shanty residence together with my wife and five children. I was drinking coffee while my wife Norma was cooking our food when several armed men wearing balaclavas suddenly entered, handcuffed me and placed a blindfold over my eyes. Those men forced me to a waiting vehicle where my co-accused were already held. They brought us to the Sixth Infantry Division at Awang, Datu Odin Sinsuat, Maguindanao where we were held in a room. They punched and kicked me in the different parts of my body while I was blindfolded with a cloth and a masking tape. I was forced and tortured by my abductors to admit participation in the said incidents. As I did not have anything to do with it they repeatedly assaulted me. In spite of my complaint of body pains I was not allowed to be examined by an independent doctor, not until my head and body contusions were gone.

Testimony of Jimmy Balulao:

I was handcuffed and dragged into a waiting L-300 van. I resisted but was assaulted so I was forced to go with the persons arresting me. Inside the L-300 van I was blindfolded with a cloth and masking tape. I was interrogated and tortured inside the Sixth Infantry Division camp and forced to admit to participation in the Davao International Airport bombing and Sasa Wharf bombing. I was repeatedly assaulted to the extent that they placed my belt on my neck and pulled it upward to strangle me until I could already hardly breathe. Then, I was dragged near to a dog pen and I was threatened to be fed to the dogs every time I denied any involvement in those bombings. While I was interrogated, one of the abductors kept on hitting my elbow with a hard object, to the extent that it got numbed. I was made to lie on the cement floor while three bullets were placed between three of my fingers on my left hand and then it was pressed which was very painful. Then they placed an object on my lap which according to them was a bomb. They did this twice. They repeatedly punched my head and other parts of my body. Then they brought Tohami near me who persuaded me to admit to participation in the Davao Airport and Sasa Wharf bombings so that our abductors would stop torturing us, but I still refused. One of my abductors told me to admit to the bombing otherwise more harm would be inflicted on us once we were brought to Davao City. On 9 April 2003 we were put on a helicopter and brought to the CIDG in Davao City. Because of fear that I would eventually be killed if I continued denying involvement I was forced to admit to participation in those bombings while undergoing investigation at the CIDG. In my forced admission I implicated Tho and Tohami as my companions. On 11 April 2003 we were brought to the prosecutor's office with strict instructions from the CIDG to admit to the bombings or else we would be tortured again. As a matter of fact one of the officers of the CIDG was present while the prosecutor was asking me questions. I was complaining of my body pains but I was not allowed to be examined by an independent physician in the presence of my lawyer and relatives. I was never informed of my rights under the law, while being investigated and interrogated. I was not allowed to communicate with my relatives nor talk to a lawyer of my own choice. I do not even know Atty. Melodias who assisted me in my extra-judicial confession.

“ I was repeatedly assaulted; they placed my belt on my neck and pulled it upward to strangle me until I could already hardly breathe, then I was dragged near to a dog pen and I was threatened to be fed to the dogs every time I denied any involvement in those bombings ”

—Jimmy Balulao

Testimony of Ting Idar:

“They threatened to electrocute me if I would not admit to participation in the said bombings; they electrocuted my left foot, which caused me intense pain and I almost lost consciousness”

—*Ting Idar:*

I showed my wallet with 3000 Pesos, the proceeds of fish I delivered from Payan to Cotabato City for my father, and they suddenly dragged me to a waiting L-300 van. I resisted but they punched and kicked me so I was forced to go with them. Inside the L-300 van, they blindfolded me with a face towel and masking tape, and then we were brought to Sixth Infantry Division headquarters in Awang, Datu Odin Sinsuat, Maguindanao. I was placed in a room where I was tortured. One of my abductors placed an object on my lap to frighten me, which according to him was a bomb, but it did not explode when it fell to the floor. Our abductors forced me to admit to participation in the Davao International Airport and Sasa Wharf bombing incidents. They repeatedly assaulted me and placed a rope around my neck which they pulled up every now and then, until I could not breathe anymore. In spite of the torture, I insisted that I had nothing to do with their accusations because I had never been to Davao City. They again placed an object on my lap which according to them was a bomb and they let me sit on the bowl inside a comfort room then they brought me out of the comfort room and they threatened to electrocute me if I would not admit to participation in the said bombings. They electrocuted my left foot, which caused me intense pain and I almost lost consciousness. When I was almost unconscious they poured water on me. In the morning of 9 April 2003, they loaded me into a helicopter with my co-accused. Upon reaching the CIDG in Davao City, they compelled me to put a thumb mark on some documents the contents of which I did not know and one of the officers assigned there even pointed his handgun between my eyes. I was not informed of any of my rights under the law while being interrogated and investigated. On 11 April 2003, we were brought to the prosecutor’s office with instructions to admit the bombings or else we would suffer the consequences upon our return to CIDG. In spite of my complaints of body pains, I was not examined by any independent physician and in the presence of my lawyer and relatives.

On 29 January 2010, after over seven years of detention for charges of multiple murder and frustrated murder in connection with the Sasa Wharf bomb blast, Judge Pelagio Paguican of the Regional Trial Court Branch 12 in Davao City acquitted all of the victims and ordered their release. Judge Paguican ruled that “the prosecution was unable to provide sufficient evidence that would prove the guilt of all the accused beyond reasonable doubt”. I deeply respect the victims’ lawyer, Hamlet Pahm, who defended them in their case all those years.

Judge Paguican, however, convicted one of the victims, Tho Akmad, for his alleged “direct participation” in a separate bomb blast on 4 March 2003 which took place at the waiting shed of Davao International Airport. In my interview with Balulao in 2003, he said that he had implicated Akmad in that bombing while he was being tortured in police custody. Balulao’s statement never became part of the record of the case.

The Abadilla Five: Convicted on evidence taken by way of torture

Unlike in the two cases mentioned above, torture victims Lenido Lumanog, Augusto Santos, Senior Police Officer 2 (SPO2) Cesar Fortuna, Rameses de Jesus and Joel de Jesus, who are collectively known as the Abadilla Five, were sentenced to life imprisonment after a trial of over 14 years for the murder of Col. Rolando Abadilla in June 1996.

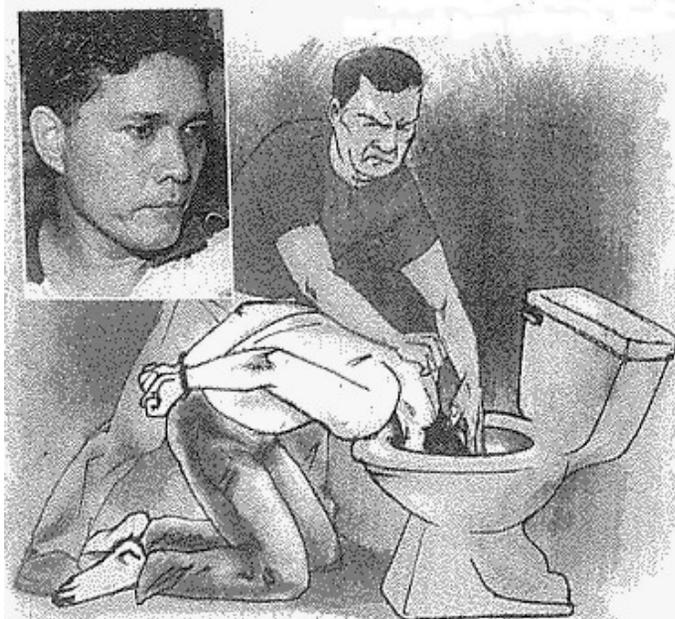
The AHRC has set up a campaign website with extensive documentation on this case (go to www.humanrights.asia and click on campaigns to reach the page), and here I would only like to mention some salient facts concerning the final verdict of the Supreme Court on 8 February 2011. (See also 'Case analysis: Supreme Court's rulings on Vizconde and Abadilla cases are contradictory' in this special report.)

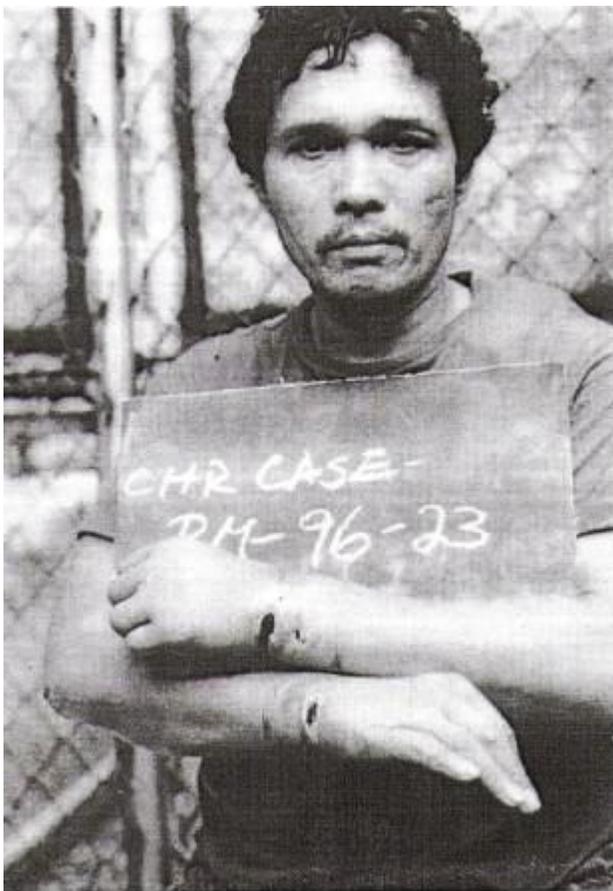
On 11 January 2011, after over 14 years, the Office of the Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) concluded that the policemen involved in investigating the case have a case to answer, as established by the findings of the CHR in its Investigation Report of 27 July 1996. The CHR had resolved that "based on the circumstances and evidence gathered, there was sufficient basis to warrant a prima facie case of human rights violations". Accordingly, the MOLEO recommended the filing of criminal charges against the policemen for variety of violations of the articles of the Revised Penal Code.

The alleged perpetrators in this case cannot be prosecuted for torture because at the time of their alleged offences there was no law; and since the Anti-Torture Act was enacted in November 2009, under the principle of the non-retroactivity, meaning that a person cannot be prosecuted for a crime that did not exist in law at the time the offence was committed. The protection against retroactive prosecution is a right in the 1987 Constitution. Furthermore, two of the respondents have already passed away; and another, P/Supt. Baluyot (later Snr. Supt.), has been permitted to retire from the police service.

Not mentioned in the CHR's report was the manner how the police arrested, subjected to torture and denied legal counsel to one of the victims, Joel de Jesus. It was Joel who implicated the other victims, whom the police arrested subsequently, due to severe torture. As for how Joel came to be accused, before the key

An artist's interpretation of the police torture of Cesar Fortuna (inset) (Illustration by Albert Rodriguez, Philippine Daily Inquirer)





Cesar Fortuna shows scars on his wrists obtained during torture (Philippine Daily Inquirer/CHR)

witness, Freddie Alejo, identified him as one of the perpetrators in the police line-up, the policemen had already shown him Joel's photograph and said that he was one of the suspects.

Also, the lawyer that the police provided to Joel was not of his own choice. The lawyer was appointed by the policemen for him. This violation of Joel's right to due process was the subject of a dissenting opinion by one of the Supreme Court justices, Antonio Carpio, following the promulgation of the court's decision on a petition for certiorari on 7 September 2010 (G.R. Nos. 182555/G.R. No. 185123/G.R. No. 187745. September 7, 2010).

In his dissent, Justice Carpio argued,

The police showed only one photograph, that of Joel's, highlighting the fact that the police primed and conditioned Alejo to identify Joel as one of the murderers of Abadilla. The police focused on Joel as one of the suspects, prior to Alejo's identification. The police did not show Alejo any other photograph, only that of Joel's. Assuming Alejo refused to glance at Joel's photograph, which is quite unbelievable, the fact that he was shown only one photograph violates standard operating procedures in

criminal investigations.

However, in affirming the conviction, the SC held that "we find nothing irregular in the identification made by Alejo at the police station" and that "assuming *arguendo* that Alejo's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. We have held that the inadmissibility of a police line-up identification should not necessarily foreclose the admissibility of an independent in-court identification".

The torture victims again appealed the 7 September 2010 decision of the Supreme Court; however, in concluding with finality their appeal on 8 February 2011 (G.R. Nos. 182555/185123/187745) the court upheld once again its earlier ruling affirming the guilty verdict solely on the basis of Alejo's positive identification. In concluding the appeal process, two of the justices, Antonio Carpio and Roberto Abad, iterated their dissent.

The court did not take judicial notice of the MOLEO's recommendation for the filing of criminal charges against the policemen who had illegally arrested, detained and allegedly tortured the five victims. The court argued that, in the process of review, they could not act on the MOLEO findings because they were not officially offered as part of the case for consideration.

Eleven recent cases of torture in the Philippines

Story 1: “There are no human rights for us”

1. Lenin Canda Salas, 29, of Barangay San Antonio, Mexico, Pampanga
2. Rodwin Mando Tala, 26, of Barangay Sto. Domingo, Mexico, Pampanga
3. Jose Llonas Gomez, 44, of Barangay. Lourdez, Lubao, Pampanga
4. Daniel Kalayaan Navarro, 26, of Barangay. San Jose Mtulid, Mexico, Pampanga
5. Jerry Pamandan Simbulan, 32, of Barangay San Miguel, San Simon, Pampanga

All of them are presently detained at the Pampanga Provincial Jail.

Supt. Madzgani Mukaram, commander of the Provincial Public Safety Company; and the San Fernando City Police, in Camp Diosdado de Leon, Barangay San Felipe, of the same town

3 August 2010 at 9:30am

Villa Barcelona Subdivision, Barangay Sindalan, San Fernando City, Pampanga Province

AHRC-UAC-133-2010; AHRC-UAU-039-2010

On 3 August 2010 at 9:30pm Lenin Salas, Jerry Simbulan, Daniel Joseph Navarro and Rodwin Tala were arrested by elements of San Fernando City Police and the Provincial Public Safety Office under Supt. Madzgani Mukaram in Villa Barcelona Subdivision, Barangay Sindalan over their alleged involvement with the Marxist Leninist Party of the Philippines, an illegal armed group.

On August 5 one of the victims, Lenin Salas, was interviewed while in detention. He said while he and companions were at the house of a friend, Donald, in the same subdivision, a security guard approached them. They were asked who they were looking for. He told him the name of the persons. The security called Lenin’s companions to come closer.

VICTIMS

**ALLEGED
PERPETRATORS**

DATE OF INCIDENT

PLACE OF INCIDENT

AHRC APPEALS

While Lenin was speaking to the security guard, he saw a policewoman talking on her mobile phone. She was exiting from one of the houses close to where they were. After a few minutes, another three policemen whom he knew later as SPO4 Hernando Sarmiento, PO3 Arnold Barrion and PO1 Edward Bengbeng arrived onboard a police car. All of them are attached to the Sindalan Police Station.

Three of Lenin's companions, who were inside their car, were asked to alight. The policemen arresting them had also called for police reinforcements from the Provincial Public Safety Office (formerly Regional Mobile Group) under the command of Supt. Madzgani Mukaram. When the group of Supt. Madzgani Mukaram arrived, Lenin and his four companions, Jerry Simbulan, Daniel Joseph Navarro, Rodwin Tala and Jose Llonos Gomez were already lying face down on the ground. Supt. Mukaram started assaulting and kicking Lenin when he came close to him. He also assaulted Lenin's companions.

Lenin and his companions were taken to separate vehicles. Inside the police car, he was continuously assaulted and beaten with a stick. All of them were taken to the Provincial Police Office. Inside the police headquarters, all of them were blindfolded and tortured. Lenin was assaulted and beaten with a gun, burnt on his body and his neck with lit cigarettes, had his face wrapped with cellophane and was kicked in his genitals. While blindfolded, the policemen purposely squeezed and clicked a revolver beside his ear for him to hear. They were not given enough food for a day.

Abbreviations & terminology

AHRC	Asian Human Rights Commission
Barangay	Village
CHR	Commission on Human Rights of the Philippines
DoJ	Department of Justice
IB	Infantry Battalion
IO	Intelligence Officer
MILF	Moro Islamic Liberation Front
NBI	National Bureau of Investigation
NPA	New People's Army
PA	Philippine Army
PNP	Philippine National Police
PO	Police Officer
SI	Senior Inspector
Sitio	Sub-section of a barangay
SPO	Senior Police Officer
Supt.	Superintendent

Lenin dared Supt. Mukaram saying: “Fine, kill us all, you already got hold of our families but is this what you are still doing to us?” This was after Supt. Mukaram threatened to harm Lenin’s family if he refused to cooperate. Supt. Mukaram carried on threatening them that more of their companions would disappear and that he had already ordered his men to work on it.

When Lenin demanded from Supt. Mukaram to respect their rights, he was told: “There are no human rights for us. We will kill each of your contacts in the media and other groups and we will just bury them”. Supt. Mukaram told Lenin that he had had enough of his sister, Donna Salas Lopez, but he did not elaborate. Supt. Mukaram said to kill her would be easy; and Lenin could not visit even her wake because they would make sure that he could not get out of the jail.

On August 4 at 2pm they were taken to the Provincial Prosecutor’s Office in San Fernando, Pampanga Province where they were charged for illegal possession of firearms, ammunitions and explosives.

Lenin Salas showing injuries to his face obtained during the assault (KDP)



Story 2: Found dead after a mysterious escape

VICTIM

Sumar Abdulwahab, 47 years old, a resident of Sitio Manil, Barangay Daliao, Maasim, Sarangani province (deceased)

ARRESTING OFFICERS

Officers from the NBI stationed in General Santos City

DATE OF ARREST

3 June 2010 at 2:30pm

PLACE OF ARREST

Sitio Manil, Barangay Daliao, Maasim town, Sarangani Province

AHRC APPEAL

AHRC-UAC-127-2010

Sumar Abdulwahab was a Maguindanaon (an ethnic tribe). On 3 June 2010 at 2:30pm, officers from the NBI, a special investigating body under supervision of the DoJ, arrested him in Sitio Manil. The NBI claimed they had arrest orders for Sumar on one count of murder, multiple frustrated murder, and multiple attempted murder. The victim was sitting at a post of the Barangay Defense Force when the NBI officers arrived onboard four separate vehicles. They immediately cuffed his hands behind his back after showing him the arrest orders. The person manning the post was then told to take his motorcycle to the office of the village chief.

On June 4 Sumar's sister, Johaniya; and a council member of their village, went to the office of the NBI in General Santos City. The NBI, however, told them that they could only see Sumar the next day. They were told to bring the personal effects of the victim for him to use when they returned.

On June 5 when Johaniya, and others returned at 3pm, the NBI personnel refused them entry. They were told that Sumar had escaped the night before at 11 to 11:30pm by breaking the glass window of his detention cell. After that they had not received any information regarding the victim's whereabouts.

But on June 8, five days after Sumar disappeared, his family heard over the radio of the recovery of a dead body by scavengers in Malalag, Davao del Sur (a place which is a considerable distance from their town). After hearing the report, they immediately went to the place. It is common in the Philippines for families of missing persons to check every reported recovery of bodies to see if it is their loved one. When they arrived at a local funeral parlour, they were able to confirm that it was Sumar.

They recognized it was Sumar by the clothes and a picture of his child still in his pocket. The decomposing body had been placed inside an oil drum filled with construction cement; his hands were tied behind his back and the body showed visible signs of torture. The corpse was found near a cliff after a foul smell had drawn the attention of the scavengers, who then informed the police. The post mortem report indicated that he suffered a 5.2 centimeter wound behind his ear, a skull fracture, a contusion in his right cheek, and that his teeth had been extracted.

Story 3: Tortured then shot dead

1. Eric Miraflores, 27

2. Raymond Miraflores, 23

3. Rosmel Miraflores, 16, all residents of Sitio Hobol, Masinloc, Zambales

Members of the Zambales Provincial Mobile Group-Philippine National Police (PMG-PNP)

2 June 2010, between 12 and 2pm

Sitio Hobol, Masinloc, Zambales

AHRC-UAC-130-2010

On 2 June 2010, three brothers, Eric Miraflores, 27; Raymond, 23; and Rosmel, 16; were on their way to their farm in Sitio Hobol onboard their three-wheeled motorcycle. Their father, Roosevelt, had asked the three to help him on the farm that day.

While the three siblings went to their farm on the motorcycle, their father followed with a motorised hand cart. Roosevelt last saw his three sons alive overtaking him on the road on their way to their farm. When he arrived at the farm at 8am, his sons were not there but nevertheless he carried on doing his own chores presuming they had already started doing their respective chores.

Shortly after, Roosevelt was stunned to hear extended gunfire from a place close to where he was farming. At that point, he was concerned about the safety of his three sons and wanted to check on them; however, he was too scared that something could happen to him. He decided to take shelter at the guard house of a mining firm nearby. After the gunfire stopped he went home.

After an hour, Roosevelt and his wife, Mila, saw the dead bodies of their three sons, Eric, Raymond, and Rosmel, on a hearse. When the corpses were presented, they were already wearing camouflage uniforms, clothes which the three were not wearing when they were last seen alive, apparently to create the impression that they were members of an illegal armed group.

The couple broke down in tears after seeing their corpses. The faces of their sons could barely be recognized. They were badly bruised and had suffered numerous gunshot wounds. The autopsy report revealed that Eric suffered two gunshot wounds, the fatal shot was in his lung; Raymond suffered four gunshot wounds, the fatal shot to his kidney.

Their youngest sibling, 16-year-old Rosmel, showed visible signs of torture. He had suffered five gunshot wounds and the fatal one was in his artery. According to the June 15 investigation report of the CHR Region 3, when his body was re-autopsied on June 9, Dr. Eduardo Vargas, medico-legal officer “cut a portion of Rosmel’s penis and brought it for examination. The penis had a cut on top, a sign that Rosmel was tortured”.

The Miraflores couple were later told that their three sons were killed by policemen attached to the Zambales PMG-PNP. Inspector Rolando Delizo of the PMG-PNP said that the three

VICTIMS

ALLEGED PERPETRATORS

DATE OF INCIDENT

PLACE OF INCIDENT

AHRC APPEAL

victims were killed in an “encounter” during a police operation. The Miraflores couple argued that their sons could not be members of an illegal armed group. Their mother Mila said none of the three were affiliated to any organizations. None of their sons had ever owned a gun and or knew how to use one.

Story 4: Threatened for exposing torture

VICTIM

Misuari Kamid, a utility man of Barangay Lun Padidu, Malapatan, Sarangani Province, presently detained at the General Santos City Reformatory Center

**ALLEGED
PERPETRATORS**

1. IO1 Rodrick Gualisa, Philippine Drug Enforcement Agency
2. SO2 Frederick Ocana, PDEA
3. IO1 Vincent Quilinderino, PDEA
4. IO3 Arce Adam, PDEA
5. IO1 Eleazar Arapoc, PDEA
6. SI2 Raymund Parama, PDEA
7. Luisito Epino, PDEA informant
8. Richard Autor, PDEA informant

DATE OF INCIDENT

30 April 2010

PLACE OF INCIDENT

Silway, Barangay Dadiangas West, General Santos City

AHRC APPEAL

AHRC-UAC-138-2010

On 30 April 2010 at 4:40pm Misuari was waiting for a motorcycle in Silway, Barangay Dadiangas West, General Santos City. He was with two others, attending a feast earlier that day at ‘Baraks’, a police reservation settlement.

Misuari separated from his companions, who were buying grilled fish, to hire a passenger motorcycle they could ride on their way home. While waiting, he bought cigarettes from a store close to where he was standing. A man whom he later knew as Richard Autor, an informant of the Philippine Drug Enforcement Agency, PDEA, approached and started asking him questions.

Richard started asking Misuari whether he was familiar with or knew persons they were looking for, living in the same area. Misuari told him that he did not know them and that he lived in Barangay Lun Padidu, but Richard’s companion, IO3 Arce Adam, arrived by car, alighted from the vehicle, drew his firearm and pointed it at Misuari. His hands were cuffed behind his back and he was forced to get inside their vehicle. When Misuari refused, IO3 Adam hit his nape with the pistol grip. They took Misuari to the regional headquarters of the PDEA.

According to Misuari, “When we reached the PDEA compound they brought me to a cottage and I heard Richard Autor call the PDEA agents. When they came, they took turns in hitting and boxing me. They boxed my face, left and right side of my chest, left and right thighs.”

Misuari identified those who assaulted him as IO1 Rodrick Gualisa, SO2 Frederick Ocana, IO1 Vincent Quilinderino, IO3 Arce Adam, IO3 Eleazar Arapoc, SI2 Raymund Parama and two of their informants, Luisito Epino and Richard Autor. IO3 Adam told

him: “Aminin mo na pusher ka! (Admit that you are a pusher)” in between repeated blows. They ignored his plea to stop assaulting him.

Misuari was taken to a parking lot where he saw the officers place two plastic sachets containing illegal drugs, dried marijuana leaves, or cannabis, and a 500 peso bill on the ground. They forced him to kneel beside the evidence, forcibly dragging him close to it so that photographs could be taken. When he struggled, SI2 Parama struck his feet with the handle of an Armalite rifle, dropping his knees due to the excruciating pain.

Misuari was detained inside the cell of the PDEA. He could not sleep that evening due to excruciating pain. On 1 May 2010 at 9am Misuari was taken to the office of the PDEA where some journalists were waiting for him. When he was presented, Misuari saw the evidence they had planted on him on a table.

On May 18 he was examined by Ma. Antoinetta Odi, MD, a medico legal officer, confirming the injuries he suffered. But the examination was not thorough. She described only the injuries he suffered, but did not produce a medical report containing a detailed examination, medical assessment and opinion, as required by the Anti-Torture Act of 2009 (section 12).

After Misuari’s torture was exposed, he began receiving threats to his life while inside prison. Persons whose identities he does not know began visiting or passing messages to other prisoners that if he does not stop his complaint of torture, they will harm him and his family.

On 25 January 2011 the AHRC wrote an urgent letter to Loretta Ann Rosales, chairperson of the CHR in the Philippines, concerning the threats that Misuari is receiving but at time of writing we are not aware of any action taken to protect him.

Story 5: “Have you finished digging the hole so that we can bury this one?”

Anuar Hasim, 30, a tricycle (rickshaw) driver presently detained in Manila after transfer from the Provincial Jail in Alabel, Sarangani

- 1. Colonel Dodoy of PNP Provincial Headquarters in Alabel, Sarangani and three subordinates*
- 2. Jamael Amykulot of Police Regional Office (PRO XII), PNP*
- 3. Policemen attached to the General Santos City Police Office (GSCPO), General Santos City*

From 4 to 11 April 2010

Police Precinct No. 6, Barangay Bula, GSCPO HQ

**AHRC-UAC-065-2010; AHRC-UAU-031-2010;
AHRC-UAU-043-2010**

On 4 April 2010 Anuar Hasim was riding his motorcycle near Champaca Street in General Santos City when two persons wearing plain clothes riding on another motorcycle stopped him. One of them grabbed his left arm and sternly warned him, “Come

VICTIM

**ALLEGED
PERPETRATORS**

DATE OF INCIDENT

PLACE OF INCIDENT

AHRC APPEAL



Anuar Hasim (TFDP)

with us. Do not attempt to run otherwise you will be killed.” When Anuar asked the two men what he had done wrong and why he was being arrested they told him, “Just come with us.” The two persons cuffed his hands. One of them also took over driving his motorcycle. He was taken to a place near the city hall building, where two other persons later arrived.

In police custody, he was slapped hard several times while being questioned. He was interrogated about an incident that he did not know had happened in Maasim, Sarangani Province. He was forced to admit that he is a commander of the MILF rebel group. When he refused to answer they slapped him.

By 7pm that day, he was taken to the GSCPO Police Station No. 6 in Barangay Bula. Here, they severely tortured him. He was first brought to a shed at the back of the police station. Later, four policemen arrived, one of whom introduced himself as Colonel Dodoy, the leader of the group. He is attached to the Provincial Headquarters in Alabel, Sarangani. He subjected the victim to lengthy interrogation. Col. Dodoy and three policemen with him repeatedly punched Anuar hard in his stomach. Col. Dodoy demanded an explanation from him about a letter they claimed was taken from him during his arrest. They repeatedly pulled his hair while others were holding his shoulders to restrain him. They repeatedly punched his abdomen and slapped his face. While blindfolded, he was told to walk while he heard one of them shouting: “Nahuman na ba ang buslot kay ilubong na ni? (Have you finished digging the hole so that we can bury this one?)”, to

which another person responded: “Oo human na (yes, it is already done).” He was punched hard in his stomach on several occasions.

Five persons wearing plain clothes questioned and tortured Anuar. He was kicked on his chest and his left thumb was burnt with lit cigarettes. He was also suffocated by wrapping his head with cellophane. Every time he refused to admit to anything, they repeat the procedure. He was blindfolded, strangled, forced to squat and cuffed in a manner that he could not cover himself from the blows. The torturing last until 3am of April 5.

When his mother visited him at the police station at 10am on April 5, SPO4 Dennis Yuson grabbed him as she was hugging him. At 1pm, the police took Anuar to the GSCPO where he was interrogated and tortured again. By 8pm, he was taken back to the Bula Police Station.

On April 6 Anuar was taken back to the GSCPO again. Col. Dodoy asked whether he knew the names of persons he showed to him on his laptop. Every time he replied in the negative his shirt would be removed to blindfold him. On one occasion, he heard them say, “Why don’t we just kill this person and dump him at sea.” On April 6, Anuar’s wife and his relatives visited him at the Bula Police Station. His wife took photographs of the visible torture marks on his chest. He was held there until April 11. He could still feel the pain and the torture marks were visible when he was interviewed at Alabel Provincial Jail on April 14.

On July 27 an investigator from the CHR Region 12 was dispatched to visit and investigate the complaint at the Provincial Jail in Alabel. But prior to the CHR’s investigation, on June 8, SPO2 Argie Miraflores of Regional Intelligence and Detective Management (RIDM XII) and SPO1 Israel Lantingan of the Municipal Police Station in Alabel had already made the victim sign an affidavit of desistance, a sworn statement declaring that he will no longer testify in court about his complaint of torture.

Before he signed the document, two other policemen, one of whom was identified as a certain Jamael Amykulot attached to the Police Regional Office (PRO XII) of the PNP visited and interviewed the victim in jail. They were the ones who drafted the affidavit-complaint (for the complaint of torture) that Anuar had signed. These policemen were supposedly tasked to investigate his complaint of torture; however, when this complaint was later presented to him to be filed at the prosecutor’s office the victim’s reluctance due to trauma and fear of the police presence was interpreted by the policemen as him withdrawing the complaint.

The police also were unable to explain to the victim why he had to leave the jail premises and accompany the police in absence of the court order, and that his lawyer was not present during the signing of the documents relating to his complaint. Also, the victim’s family had not been properly informed of the actions the police had taken.

Story 6: Police torture caught on video

VICTIM

Darius Evangelista, 31, of 1083 Area A, Gate 5, Parola Compound, Tondo, Manila

ALLEGED PERPETRATORS

1. *SI Joselito Binayug*
2. *SPO1 Rodolfo Ong*
3. *SPO3 Joaquin De Guzman*
4. *SPO1 Dante Bautista*
5. *PO1 Nonito Binayug*
6. *PO1 Rex Binayug*
7. *SPO1 Burt Tupas*
8. *Supt. Rogelio Rosales (commanding officer)*
9. *Supt. Ernesto Tendaro (commanding officer)*

DATE OF ARREST

5 March 2010 at 12pm

PLACE OF ARREST

Pier 2, Tondo, Manila

DETAINED AT

Police Station 11, Manila Police District

AHRC APPEAL

AHRC-STM-175-2010

On 5 March 2010 at 12pm Darius Evangelista was arrested for alleged robbery in Tondo by policemen attached to Police Stations 2 & 11 of the Manila Police District. Three detainees who personally knew Darius saw him taken upstairs to a room inside Police Station 11 where he was tortured and questioned. One of them described Darius' physical condition as "badly injured, with visible blunt trauma to his face; and his eyes swelled" (unofficial translation). They heard thuds and screams of excruciating pain from the room where Darius was held.

At 4pm Darius's wife, Margie, went on looking for him at Police Stations 2 & 11. At Police Station 2, a police officer on duty told her that no person of Darius's description was detained there. At Police Station 11, a policeman on duty again denied her husband was in their custody. One of the detainees, however, told her that they saw Darius taken upstairs. She managed to go upstairs without being noticed by the policemen to check the rooms, but when a police officer saw her she was asked to leave. One of the rooms was occupied by the station commander, Supt. Rogelio Rosales.

By 12:30am of March 6, a police officer instructed a detainee who was responsible for keeping order inside the cell to put the other detainees to sleep. Shortly after, the detainee saw Darius and several policemen emerging from the room of Supt. Rosales. Darius could not walk properly. He was being assisted by the policemen, visibly weak, badly injured and with adhesive tape wrapped around his mouth. It was the last time he was seen alive.

From March 5 to 8, Margie had keep going back to Police Station 11, repeatedly checking their records, but she did not find the name of her husband written there. On March 7, she reported the disappearance of her husband to the Manila Police District, General Assignment Section. In the "Missing Person Alarm

Report” completed and signed by PO2 Gilbert Isole, a police officer assigned to handle the case, no record was made about the details of the victim being seen in the custody of the police.

On March 20, Margie was informed by a person that he saw a video of her husband being tortured in police custody. Margie did not see the video herself. Three days later, she read from a tabloid newspaper that a human head was found by scavengers in Vitas, Maynila. The policemen had already taken the head to a local funeral home by the time she arrived to inquire about it from villagers. One of the villagers showed her a photograph that he took of the human head when it was found. She noticed similarities to the head of Darius. At the funeral home, Margie examined the human skull that was found. The dental features of the skull were similar to those of Darius.

The police required Darius’s family to produce dental records within 90 days as proof that the skull was indeed his. The skull was submitted for forensic examination to determine its identity; however, no forensic examination result has so far been produced on the identity of the skull.

On April 6, Darius’s father, Asprin, and three witnesses submitted sworn statements regarding the arrest, torture and disappearance of Darius to the CHR, National Capital Region. The CHR, however, failed to complete the investigation required by the Anti-Torture Act after the case was reported to them.

Only after August 17 when the torture video was broadcast by national television station ABS-CBN did the investigation of the case made some progress. The video was reportedly given to a reporter by a person who did not want to be identified. In the video, the victim has his penis pulled by a string tied around it as he is lying on the floor naked. He is beaten every time he folds his body as he tries to reach his genitals in pain. The torture is shown to be taking place in front of several policemen who are also attached to the same police station. The policeman shown torturing the victim, SI Joselito Binayug, is the chief of the police station, and his subordinates were watching him as he was torturing the victim and telling him “Dito bawal ang snatcher (snatchers are prohibited here).”

Screen grab from TV news broadcast of video footage showing Darius Evangelista lying naked on the floor of Police Station 11, Manila Police District



When Police Director Leocadio Santiago, of the National Capital Region Police Office made comments on the torture video, he said, “I’ve gone through physical interrogation before. I’ve conducted it but not to the extent that it would be sadistic, there are boundaries and parameters.” His comments demonstrate that the notion of an absolute prohibition of torture does exist not in the minds of police in the Philippines, nor in those of the military men.

Notwithstanding, after the video was aired the police were under pressure to create a team to investigate the case, which they called Task Force Asuncion. They again interviewed three witnesses, who gave further details about what they witnessed, which were not mentioned in their statements made to the CHR.

On August 23 the Criminal Investigation and Detection Group filed charges for violation of the Anti-Torture Act with the DoJ against the accused policemen. Section 9(a) of the Act requires that the DoJ must resolve whether the policemen have a case to answer within 60 days; and if there is an appeal, it must still be “within the same time period prescribed”. But at time of writing they have not resolved the case.

SI Joselito Binayug listens to questions during a Senate committee hearing in Manila on 26 August 2010 investigating the video torture case (AFP PHOTO/Noel CELIS)



Educating torture ‘experts’ is pointless

(A Statement by the AHRC, AHRC-STM-180-2010, 23 August 2010)

The widely publicised video of police torture has drawn mixed reactions and opinions from the public, including lawmakers, lawyers and human rights groups, who have all joined in the chorus condemning such a barbaric and cruel act. Most of them share the opinion that ‘lack of education of the law enforcers’ is to blame for it happening, but the Asian Human Rights Commission strongly argues that this is not the case.

While educating law enforcers about the content of the Anti-Torture Act of 2009 is necessary, the lack of education of this law cannot be used as an excuse to justify the said incident. If there is anyone who are ‘experts and well-educated’ on the use of torture, it is the law-enforcement officers themselves. Torture is not something so new that one has to be told that it is abhorrent and prohibited.

The enactment of the Anti-Torture Act in December 2009 did not mean that the term ‘torture’ just came into existence and was an alien concept to the law enforcers. The term torture itself has been widely used and understood to refer to violence and cruelty perpetrated against a person. Before the right not to be tortured was included in the 1987 Constitution, the police and the military had already been practicing it, particularly during the Martial Law period, against political dissenters. Therefore, it would be too naïve to argue that the lack of education amongst law enforcers is to blame as to why it continues to persist. For any police officer who thinks with reason, torture is absolutely a condemnable act undeserving of those who wear the uniform of the Philippine National Police.

Some of the authors of the Anti-Torture Act were victims of torture themselves during the Martial Law regime. It is their experience, and that of countless others, that made the enactment of this law possible. It was also after the Marcos regime that the concept of the right against torture was first introduced in the Philippine Constitution. The torture victims, most of them in disbelief as to how cruel people of their own nationality could become, felt the depth of what torture really is. It meant being a witness of their own suffering long before this was written into law. Those who ‘survived’ have to suffer and live with the trauma of having been tortured for the rest of their lives.

Torture is not a result of ignorance and lack of education by the law enforcers. It is the absence of an effective mechanism that would hold them accountable. It is also this absence that breeds and develops a culture of violence amongst the law enforcers. When a law enforcer or torturer cannot be held accountable for torture or any other form of violence he would commit, this becomes an accepted norm which we know to have been thriving in the police force for decades. This is what happened in the Philippines. The policeman who tortured the suspected thief in the video did not become a torturer overnight, but had learnt and developed his expertise of using torture and the accompanying mindset to an extent that has become acceptable to him because it is a commonplace practice.

Filipino policemen also do not become police officers overnight. The Philippine National Police (PNP) and the National Police Commission (NAPOLCOM), two agencies who are responsible in training and recruiting applicants into the police force, require highly competitive academic qualifications, accomplishments and intensive training before it awards a policeman the rank of a police captain, the rank that the policeman in the video held. They also undergo civil service examinations, regular background checks and continuing education on law enforcement.

Also, the Philippine National Police Academy (PNPA), one of the highly competitive police training academies, even conducts background checks of their recruits, interviewing family and persons who know the applicant, before admitting them for training, to ensure that immoral persons or those with psychological problems would not be allowed in the academy. This is in addition to passing a lengthy qualifying examination.

Apart from training in the police academy, the PNP and NAPOLCOM also absorb applicants with a bachelor's degree in criminology and those who had already earned units from any social sciences course but were unable to graduate. This is also after passing a civil service examination. Thus, those who are absorbed into the police force are either university graduates or have studied for years in a university. They are educated people and need not be told that torture is prohibited. They have completed at least the rudimentary teaching on logic, ethics, philosophy and morals in the universities. They are certainly not uneducated.

When the policeman tortured the victim in the video, he did it consciously. It was not indiscriminate or an isolated case, as earlier mentioned by the police establishment. It reflects the tip of the iceberg as to the state of policing in the country. The emergence of further complaints on torture as reported in the media, after the video had been exposed, only demonstrates the ugly reality of the country's policing, the surface of which has yet to be scratched. It is a matter that most of the people know and live with. Any further complaints must therefore be seriously acted upon under the law.

Story 7: Tortured to admit he is somebody else

Abdulbayan Guiamblang, 53, married farmer, presently detained at the Cotabato Provincial Jail, Amas, Kidapawan City

Elements of the 38th IB, PA

26 February 2010 at 4:30pm

Military detachment in Barangay Makagiling, Sultan Kudarat, Maguindanao Province

AHRC-UAC-067-2010

VICTIM

**ALLEGED
PERPETRATORS**

DATE OF INCIDENT

PLACE OF INCIDENT

AHRC APPEAL

On 26 February 2010 Abdulbayan Guiamblang was passing from his farm through the detachment of the 38th IB, PA in Barangay Solon, Sultan Mastura, Maguindanao Province. He usually passes through this detachment to tend his farm adjacent to his village. But this time a soldier guarding the detachment stopped him. Without explaining to him why he was being held, the soldier took him to a nearby community centre (Purok house) in the village. Soldiers cuffed his hands behind his back, wrapped his legs with adhesive tape and blindfolded him using the same tape. He was loaded into a military truck that drove him for about 20 minutes to an unknown place. Here, he was interrogated and severely tortured.

In custody, those questioning him told him that they had been looking for him for some time; he was told that he had pending arrest orders but they did not show them to him. They insisted he is Ameril Umbra Kato, a commander of the MILF rebel group. He allegedly admitted that he is an MILF member but he is not Ameril. However, he was forced to admit that he is the person.

During questioning, he was hit several times on the head with a bottle of water. His interrogation lasted from the time of his arrest until 12 midnight. He could not sleep at night. His handcuffs were attached to the lower portion of the door making it difficult for him to move freely.

On February 27 Guiamblang was taken to another room for further interrogation. They shoved his face on the table. He was asked how many houses he had burned. When he explained that he had not burned any houses, they called him a liar. Three times he was hit on the head and nape with a bottle of water. He was questioned and tortured for an hour. On February 28 Guiamblang was again taken to the same interrogation room. His left ribcage was punched hard twice. He was again subjected to interrogation for an hour.

On March 1 and 2 he was questioned and tortured using the same method. Each time he was taken to the interrogation room they wrapped more adhesive tape on as a blindfold. Guiamblang asked his custodians to contact his wife by informing the chairperson of his village about his arrest. His request was denied. On March 3, Guiamblang asked for a medical check-up but no real medical check-up took place. The person examining him only checked his blood pressure. In custody, he did not have enough food to eat.

On March 4 they allow him to bathe. He was given a shirt to wear before he was taken to court in Midsayap, North Cotabato where they filed charges against him. It was only at that time that his blindfold was removed for the first time in six days. At the court, Guiamblang was made to sign a document the contents of which he did not know and nor were properly explained to him. That day, he was remanded to the Cotabato Provincial Jail.

Story 8: Arrest and torture of the Morong 43

VICTIMS

Ray-Om Among, Jane Balleta, John Mark Barrientos, Elenor Carandang, Eulogio “Elu”Castillo, Samson Castillo, Mercy Castro, Dr. Merry Mia Clamor, Ramon Dela Cruz, Romeo Dela Cruz, Leah Cristine “Ria” De Luna, Edwin Dematera, Angela Doloricon, Lilibeth Donasco, Julius Duano, Mark Escartin, Ronilo Espera, Jacqueline Gonzales, Janice Javier, Sylvia Labrador, Gary Liberal, Reynaldo Macabenta, Emelia Marquez, Emily Marquez, Pearl Irene Martinez, Ace Millena, Dr. Alexis Montes, Glenda Murillo, Lydia “Del” Obera, Delia Ocasia, Carina “Judilyn” Oliveros, Jovy “Marvin” Ortiz, Miann Oseo, Linda Otanez, Valentino Paulino, Danny Pinero, Jenelyn Pizarro, Ma. Teresa Quinawayan, Franco Romeroso, Lorelyn Saligumba, Marla Elena Serato, Chenilyn Tawagon and Yolanda Yaun

ALLEGED PERPETRATORS

Southern Luzon Command, PA, under Lt. Gen. Roland Detabali; Brig. Gen. Jorge Segovia, chief, 2nd Infantry Division, PA; Col. Aurelio Baladlad, Commander, 16th IB; Supt. Marion Balonglong, Rizal Provincial Police

DATE OF INCIDENT

6 February 2010 at 6am

PLACE OF INCIDENT

At a farm house in Morong, Rizal

AHRC APPEAL

**AHRC-UAU-003-2010; AHRC-UAU-032-2010;
AHRC-STM-255-2010; AHRC-STM-259-2010**

On 6 February 2010, 43 health workers collectively known as the ‘Morong 43’ were illegally arrested while they were holding a training workshop on health skills in Morong, Rizal, detained and subsequently charged in court.

The training was organised by the Community Medicine Development Foundation and Council for Health and Development to provide community organisers and volunteer health personnel with skills they could use in their communities. Among those arrested were physicians Dr. Alexis Montes of the foundation; Dr. Merry Mia of the council; Gary Liberal, a nurse; Teresa Quinawayan, a midwife; and staff members.

The military and police who arrested them have been accused of planting firearms and explosives on them. Those arresting them—approximately 300 military and policemen attached to the PA and PNP—have claimed in various media interviews that the 43 victims were members of the NPA and that the training they were conducting was for the making of explosives.

There were irregularities in the manner of arrest, the securing of evidence and the filing of criminal cases against the victims. When the policemen and military came to serve the search warrant, they forced their way into where the training was being held. At gunpoint, the military forced the caretaker to open the gates and they also kicked open the main door to get into the building. None of the persons involved in the training had any arrest warrants pending against them, so this use of force was unjustifiable.

The police and the military handcuffed the 43 victims, conducted a body search, questioned them, took their photographs and recorded a video while they were being questioned. The male victims were blindfolded and all of their personal belongings were also taken by the military. The military and police conducted the search of the compound without supervision, allegedly enabling them to plant evidence.

The victims were then taken to the headquarters of the 202nd Infantry Brigade, PA Camp Capinpin in Tanay, Rizal. Here they were charged under the inquest proceeding, which was a violation of the rules on inquest. The DoJ Department Circular No. 61 (section 2) requires public prosecutors to conduct inquest only in police stations, not in military camps.

The victims' legal counsel subsequently filed a petition for the writ of habeas corpus with the Court of Appeal. In ruling on the petition, the appellate court upheld the legality of the filing of charges against the victims by invoking an old decision produced during Martial Law that once a charge is filed against the accused

Relatives of the Morong 43 hold photos of loved ones at a press conference in Manila on 7 February 2010 (AFP PHOTO/Jay DIRECTO)



their detention can no longer be questioned because criminal charges have already been filed in court. The legality of their arrest and detention, and the validity of evidence used by the prosecution, would then be a matter for the court to decide in hearing the case.

While in custody members of the 43 suffered various types of torture. Dr. Alexis Montes, 62, was electrocuted and repeatedly hit on the chest while being questioned. The military has accused him of being a member of the NPA and of the rebel's supposed special unit tasked for assassinations. The extent of the pain he had suffered for several hours would have made him willing to admit to anything.

Dr. Merry Mia Clamor, 33, was blindfolded and handcuffed while subjected to questioning inside a room she could not describe. She said of her experience: "I was shocked. I could not say anything" when asked whether she had treated Gregorio Rosal a.k.a. Ka Roger, the spokesperson of the Communist Party of the Philippines. "I was doing this (training health work) with the purest intention—to train volunteers and to give them skills so they themselves can help others in their community," she said.

Out of the 43, five of the female detainees and 10 of the male detainees were found to have suffered injuries when examined while in detention.

On 10 December 2010, President Benigno Aquino III ordered the DoJ to withdraw the charges of illegally possessing explosives against the group. The victims were released from jail after the DoJ withdrew the prosecution. Some of the victims remained in jail for other criminal charges.

Although the president's intervention was a welcome relief for some of the victims in this case, it would have been better if the DoJ and the National Prosecution Service had acted on their own to deal with the case responsibly. They need their own mechanisms to correct and quickly cease the wrongful prosecution of cases. By failing to have their own internal control mechanisms, the DoJ and the NPS are exposing themselves to political control by the executive branch. If the executive is allowed to interfere it will have a tremendous consequence in the future, not only on the prosecution system but also other institutions under the executive branch.

It is also important that the withdrawal of the charges, regardless of who ordered the withdrawal, should not limit or prevent the victims from seeking legal remedies and redress. They must also not be prevented from prosecuting the perpetrators, the police and the military, for the violations of rights committed on them that the CHR had already confirmed to be true in its own investigation. The right of the victims to seek legal remedies cannot be subject to conditions. Their release must not hamper whatever legal actions of their own choosing they would take against the perpetrators.

‘Morong 43’ case exposes a prosecution system directly under political control

(A Statement by the AHRC, AHRC-STM-255-2010, 10 December 2010)

The Asian Human Rights Commission (AHRC) welcomes with reservations President Benigno Aquino III’s order to withdraw the charges against 43 health workers, collectively known as ‘Morong 43’, as reported today. We strongly believe, based on the documents and information that we have also obtained, that they should have not been arrested, detained, and forced to endure trial on deeply legally flawed charges in the first instance.

The case of the Morong 43 is no different to numerous cases of prosecution on fabricated charges that are mostly political in nature. However, the number of people tortured and falsely charged; the background of their work in this case—volunteer doctors, nurses and grassroots community health workers—exposes the ugly reality of the prosecution of cases without regard to legality and due process, nothing else.

The victims owe nothing to President Aquino, who used his executive power to withdraw the charges of the Department of Justice, to whom he had issued his order. It is rather the President and the DoJ that owe explanations to the 43 victims, their families and the Filipino people, as to how on earth deeply flawed and procedurally defective charges can be pursued in courts. The victims’ rights were violated, not only by the police and the military, but also by the prosecution and the judiciary for having the case admitted for trial.

Why did the National Prosecution Service (NPS), under the direct control of the DoJ not perform its legal obligation? It is the responsibility of the NPS to examine the legality of charges before they can be filed in court. They have the obligation to weigh the evidence of any case to determine whether or not the crime alleged had ‘probably been committed’ as the basis of its prosecution; however, as already shown they did not do so. The DoJ’s review of the case found procedural and legal flaws in the process of filing the case. It was the prosecution service, who is supposed to prosecute violations of penal laws, who commit the violations, by allowing the prosecution of fabricated charges...

President Aquino’s order also demonstrates that the prosecution system, by giving orders to the DoJ to withdraw the charges; and of having a direct executive power on what charges can be pursued in court, is structurally under direct political control. The authority of the prosecution department on paper is based on the legality and merit of cases; but in reality performs at the behest of the executive branch. The country’s prosecution system is structurally deeply political in nature. The system does not function within the rule of law, as is being publicized, but rather of rule of lords. The prosecution service is nothing but an underdog and subservient to the executive.

This political control explains the people’s attitude that regardless of their cases, they routinely ask the President to intervene in their cases for relief and remedy—even cases that are no longer within his authority: for example, appeals to overturn court orders, orders of local chief executives independent from the President, appeals to have a crime investigated on which the police did not take

action; and others. This explains that the people know full well the extent of the President's political control and influence over most of the institutions of the government.

There is a double standard in the application of the rule of law and due process. They are likely to operate on the basis of how influential persons, groups or foreign governments are; how heavy the pressure is applied; how popular the demand would have to be met regardless of their reasons. The system does not operate on legality and due process that is understood in its real sense, but rather appears to be so. The system does not operate of its own course, but rather on the basis of political consideration, gain and influence. The continued existence of this type of system of justice pushes the weak and the vulnerable even further into the corner without protection.



Protest at the Consulate General of the Philippines in Hong Kong over the Morong 43 case; Necta Montes, niece of Dr Alexis Montes, at centre

Story 9: Disappeared after being tortured by armed militia

Ambrosio Derejeno, 41

Ilo and Lontoy Surio, members of the Citizen Armed Force Geographical Unit (CAFGU), a paramilitary unit; commanding officers Lt. Col. Paloma of the 63rd IB in Tinambacan, Calbayog and Lt. Col. Narciso of the 20th IB in Catubig, Northern Samar

12 January 2010 after 1pm

Barangay Sumuroy, Lope de Vega, Northern Samar

AHRC-UAC-135-2010

Ambrosio Derejeno disappeared after he was last seen being tortured while in the custody of Ilo and Lontoy Surio, both members of the Citizen Armed Forces Geographical Unit (CAFGU). CAFGU is a paramilitary unit under the control and supervision of the Philippine Army.

At 1pm on 12 January 2010 Ambrosio was with his 19-year-old son Edwin, working on their farm in Barangay Sumoroy. They were stripping abaca. When it was time for them to take a break for lunch, Ambrosio asked Edwin to fetch water from a creek not far from the makeshift hut.

In his testimony, Edwin said that as he was returning, he saw several armed men surrounding the hut where his father was. They were wearing camouflage fatigues. Edwin positively identified two of the men as Ilo and Lontoy Surio. He saw them tying the hands of his father with a rope behind his back. He knew the two because they are also locals. The two were former members of an armed group, Dose Pares, which has been absorbed in the military service as CAFGU. They were accompanied by several armed men crouching and pointing their weapons at his father. That was the last time he saw his father alive.

The membership of Ilo and Lontoy Surio in CAFGU has been confirmed by Lt. Col. Paloma of the 63rd IB in Tinambacan, Calbayog and Lt. Col. Narciso of the 20th IB in Catubig, Northern Samar, PA.

On January 13 Edwin requested his two cousins, Boyet and Edgar, to accompany him back to their farm hoping that his father might have returned. Since he disappeared, they have not received any information about his whereabouts. But a message sent to them by a concerned neighbour (the identity of whom cannot be revealed) claimed his father had been tortured and killed and his body was buried in Barangay Victory, Silvino Lobos.

On March 25 Edwin filed a complaint at CHR Region 8 in Tacloban City, Leyte. In completing their investigation on July 1, the CHR only recommended the filing of charges for arbitrary detention against Ilo and Lontoy Surio at the Provincial Prosecutors Office in Catarman, Northern Samar. The CHR ruled that unless the victim's body is found, they could not prosecute for murder or torture.

VICTIM

**ALLEGED
PERPETRATORS**

DATE OF INCIDENT

PLACE OF INCIDENT

AHRC APPEAL

Story 10: Tortured for not having identity documents

VICTIMS

1. *Lolit Agbayani*
2. *Rolan Corpuz, 20*
3. *Jun Jun Acleto, 17*
4. *Ricky Torres, 21*
5. *Edwin Buryo, 30*

ALLEGED PERPETRATORS

Soldiers attached to the 48th IB, 7th Infantry Division, PA, based in Fort Ramon Magsaysay, Palayan City, Nueva Ecija

DATE OF INCIDENT

1 December 2009

PLACE OF INCIDENT

Barangay Dikapinisan, Dingalan, Aurora province

AHRC APPEAL

AHRC-UAC-074-2010

On 1 December 2009 Rolan Corpuz and his four companions, all Dumagats, an indigenous tribe, were illegally arrested by soldiers attached to the 48th IB, PA, in Barangay Dikapinisan, Dingalan town, Aurora Province of Luzon. The victims had been searching for rare birds' nests when the soldiers arrested them.

They were at the house of a villager who invited them to stay overnight when they were arrested. An unknown villager reported to Carlito Amaba, village chief of Dikapinisan of the same municipality, about the presence of the five at the house. This report had supposedly prompted Amaba to call the soldiers to take the five for questioning. The soldiers posted at the detachment in the same village acted on his request.

The victims were surprised when 10 fully armed soldiers stopped and searched them without explaining why. The soldiers conducted body searches and demanded a Community Tax Certificate, a document that government agencies require as proof of a Filipino's local residency. The soldiers arrested them after they failed to produce this certificate and identification documents.

Upon reaching the camp the soldiers began torturing them. One after the other they were subjected to interrogation. The soldiers demanded that they cooperate and affirm that they have knowledge about the activities of the NPA rebel group in the area.

One of the victims, Rolan, was told that they would give him 10,000 Philippine Pesos (USD 215) as a reward once he revealed the location of the rebels' firearms and ammunitions. When he told the soldiers that he had no knowledge about the NPA and that he and companions were only searching for birds' nests, they choked and kicked him. Two other soldiers also repeatedly kicked him.

Another victim, Ricky, was also repeatedly kicked in different parts of his body in front of Rolan, and soldiers also punched another victim, Jun Jun, in his stomach. A sergeant named Moreno allegedly beat him with a steel pipe. The soldiers also threatened that if they did not reveal any information about the rebels they would kill them. The soldiers ordered Ricky to dig a

pit and warned that if he refused to cooperate he would be buried in it. Out of fear Rolan falsely confessed that they were members of the NPA.

On December 2 the other victims were taken by the soldiers towards the mountains called “Balagbag” in Barangay Alasanay, supposedly in search of the firearms that Rolan had buried. To make sure that the victims would not escape, the soldiers tied them together by their waists and hands with rope. For two days, they were in the soldiers’ custody in the forest. On December 3, Lolit and Rolan were able to escape. Rolan managed to descend from a cliff near a river bank and board a small passenger vessel. He went straight to Fr. Pete Montallana, OFM, a missionary priest in Barangay Ibona, where he sought refuge and asked for help.

On December 5, the other three victims, Jun Jun, Ricky and Edwin, were released from the soldiers’ custody. When they were released, no information was given on what charges they had been held. Despite having been identified, the soldiers have continuously denied either taking them into custody or having tortured them. Some of the victims have sought refuge at one of the churches in Metro Manila.

The victims filed a complaint against the soldiers with the regional office of the CHR Region 3 in San Fernando, Pampanga. On 2 February 2010 the CHR investigators interviewed the victims at the CHR Central Office and recorded their testimony. The victims had clearly pointed out that the incident took place in the village of Dikapinisan, San Luis, Aurora; however, a month later, Fr. Montellana called the CHR’s office telling them to change the location of the incident to Barangay Dikapinikian, Dingalan, Aurora.

The CHR report was authored by special investigators Valente Rigor, Luzviminda Venasquez and Joel Boanjares Ocampo. They were tasked to investigate the victims’ complaint against the soldiers and village officials who were accused of violating the laws on Rights of Persons Arrested, Detained or under Custodial Investigation (RA 7438), rule 113 of the Revised Rules of Criminal Procedure and the Anti-Torture Act of 2009.

The CHR investigators resolved their report of 6 April 2010 solely on the change of location of the place of the incident, even though the change was made by Fr. Montellana, not by the victims who filed the complaint. The investigators also did not mention whether the change was made with the full knowledge of the victims. Instead they wrote only that “a month after (changes to place of incident) the sworn statements of the victims were signed is, to say the least totally astonishing, because it totally changed the landscape of the case”.

Consequently, the CHR report exonerated the soldiers, despite the fact that none of the witnesses and soldiers that the CHR investigators had interviewed could give reasonable grounds as to why the victims had to be deprived of liberty and taken for questioning. None of the victims were in the act of committing,

had not committed or were about to commit a crime that could justify having them arrested without warrant or being taken into custody.

One of the soldiers, 2nd Lt Dennis Moreno, platoon leader of Reconnaissance Platoon, did not deny the fact that they took the victims into custody at the detachment but denied torturing them. Col. Escarcha and Lt. Jerson Igloria also did not deny having three of the victims—Jun Jun Acleto, Ricky Torres and Edwin Buryo—in custody for a “few days”.

The soldiers also did not challenge the fact that Rolan Cruz and Lolit Agbayani were in their custody on December 2, the day that, according to the investigation report, “the soldiers brought them to the place where they (the victims) said their firearms were hidden”; and on December 3, when Lolit jumped into a ravine, “Cruz was instructed to go down the ravine and look for Lolit”.

The CHR should also have taken note that when Dr. Ben Molina, a medical expert, examined torture victims Rolan Cruz and Jun Jun Acleto after the incident, the torture marks and bruises on their bodies were still visible, particularly on their arms. Rolan had difficulty breathing due to his injuries.

The role of the CHR in investigating complaints is to test the probability as to whether or not a crime has been committed. It is by application of simple logic and reason; however, the investigators’ judgement in this case lacks any sense of logic, merit and legality. The investigation had rather become a means to make a defence for the soldiers and barangay officials rather than to establish the probability that a crime had been committed.

VICTIMS

Story 11: Electrocuted and sexually humiliated

1. *Billy Batrina, 29*
2. *Sonny Rogelio, 26*
3. *Charity Diño, 29*

All three are community organisers for Samahan ng Magbubukid ng Batangas (SAMBAT), a local peasant group, and are presently detained in Batangas Provincial Jail in Lipa City, Batangas

**ALLEGED
PERPETRATORS**

Security forces attached to the 730th Combat group, Philippine Air Force and the 301st Intelligence Group, all based in Palico, Nasugbu, Batangas

DATE OF INCIDENT

23 November 2009 at 8am

PLACE OF INCIDENT

AHRC APPEAL

Marquez St., Zone 3, Talisay, Batangas

AHRC-UAC-005-2010

On 23 November 2009 at 8am, Charity Diño, Billy Batrina and Sonny Rogelio were in Talisay, Batangas to invite people in the community to participate in the Urban Poor Week as part of their activities for the Samahan ng Magbubukid ng Batangas (SAMBAT), a local peasant group.

While they were walking, three vans bearing armed persons in plain clothes suddenly blocked their way. The armed men alighted and forced them into the vans. One of the vans had been seen roaming the village a day before. They were taken to the 730th Combat Group of the Philippine Air Force Camp in Palico, Batangas.

In the military camp, they were tortured, subjected to prolonged questioning and held for 17 days. They were handcuffed and blindfolded with adhesive tape. Two of them, Billy and Sonny, had their heads hit against the wall; while the other victim, Charity, had her fingers squeezed hard with bullets inserted in between them. Charity was blindfolded and when she went to the toilet someone had to remove her underwear for her. Billy and Sonny were electrocuted by wiring laced around their toes and fingers. Several military men interrogated them one after the other.



Charity Diño awaiting trial in Batangas Provincial Jail (DEFEND ST)

Under torture they were forced to admit that they are members of the NPA rebel group. Several names were also mentioned and they were asked if they knew them. The soldiers allegedly planted evidence on them.

On November 24 they were taken to the Office of the Prosecutor in Batangas for inquest proceedings. On November 26 charges of illegal possession of firearms and explosives and illegal possession of drugs was filed against them. After they were charged, they remained inside the military camp where they were held for 17 days. They were transferred to Batangas Provincial Jail in Lipa City.

Military camps are not regular detention facilities; however, courts allow continued detention of accused, should soldiers request it, if they are 'high risk' prisoners. The court depends solely on the soldiers' security assessment; thus, when soldiers request detention, they are very likely get approval. The practice, however, places detainees at risk of torture.

At time of writing, the charge of illegal possession of firearms and explosives against the victims is pending at the Regional Trial Court, Branch 6, in Tanauan, Batangas. The illegal possession of drugs case filed against Charity Diño at the Municipal Trial Court in Talisay, Batangas is also pending.

The role of defence lawyers and prosecutors is to encourage witnesses to speak, not merely to find contradictions: An interview with Bijo Francis on the Maguindanao massacre trial

Philippines Desk, Asian Human Rights Commission,
Hong Kong

Danilo Reyes: Today our topic is about the practice of law and ethics while conducting hearings inside the court. The reason why we have to discuss this is as we have issued a statement of the Asian Human Rights Commission on the reaction of Myrna Roblando, wife of murdered journalist Alejandro “Bong” Reblando to the lack of lawyers’ ethics within court when the hearing was conducted in the case of her murdered husband.

The purpose of this interview is not to say that other countries have better legal practices than in the Philippines and not to say that other lawyers in other countries are better than in the Philippines. The purpose is to have some opinions from a practicing lawyer on how to look at legal practices in terms of ensuring legal remedies for victims of human rights violations and relatives who are seeking remedies and who have acted with a real sense of justice and expectation of how the court will function.

So we have here a lawyer from India, Bijo Francis, a programme officer of the Asian Legal Resource Centre, the sister organization of the Asian Human Rights Commission. He has been practicing law and has dealt with many cases in court, in the media and has also been involved in affording legal aid to victims

This article is an edited transcript of an interview dated 23 February 2011 by Danilo Reyes of Bijo Francis, an Indian lawyer who handled numerous human rights cases before joining the Asian Legal Resource Centre, Hong Kong, on the Maguindanao massacre case, which is currently going through the criminal justice system of the Philippines (for details see the Asian Human Rights Commission’s Urgent Appeal AHRC-UAC-165-2009). Bijo has met with Joseph Julebag, one of the three journalists who had survived the 23 November 2009 massacre. Since then, he has followed the progress of the case in court. The interview is available in the podcast series of the AHRC Philippines desk, available online at www.humanrights.asia/countries/philippines. The same podcast series includes an interview with Myrna Reblando, widow of Alejandro “Bong” Reblando, on her discontent as to how the trial of the persons accused of the murder of her husband is taking place.

of human rights violations, in particular in South Asian countries. He is aware of the Maguindanao massacre case and he spoke to one of the journalists who survived, Joseph Jubelag, a few days after the incident.

Bijo Francis: The massacre of over thirty journalists in Mindanao on 23 November 2009 was an event that shocked not only the Philippines, but also the whole world. The event also raised a lot of questions, not only for people of the Philippines, but also for the government of the Philippines and for governments that are engaged in the protection, promotion and fulfilment of human rights across the world.

Since the trial is in process, it would be inappropriate for me to comment on the quality of evidence, on the substance and relation of the evidence and character of witnesses and so on, because I believe that the court will discharge in the full sense its responsibility for these matters. But from what I have been told and what I have come to know from reading materials concerning the trial and events that have unfolded during the trial, I have a few observations to share.

Now in the event of a massacre of this nature, the state has a responsibility to ensure that the investigation of the case is taken in a proper and appropriate manner, and under prompt management with appropriate investigation. Among the things that the state shall ensure when the investigation is under way, which I think is of paramount importance, is the safety and security of persons who could be vulnerable; the rehabilitation of witnesses, because testifying in court involves an examination process of finding truth that hugely extends trauma, not just because people have lost husbands or fathers or wives, but because of the magnitude of the incident. This was not a premeditated murder of one person. It was the premeditated murder of 58 persons.

But on the face of it, there are certain things that I have come to notice when I went through the transcription of the process of examination and also the videos. It appears that the defence is trying to create an impression of corresponding and compounding negligence on the part of the journalists, that they put themselves in a life-threatening situation. I think that raises more serious questions about journalism and the environment in which journalists are working in the Philippines.

From the questions that the defence lawyer posed to the witnesses which I have read, as provided to me in translation, it seems that the lawyers are posing questions of whether the deceased exposed themselves to the risk of being murdered, or did they conduct their job in a way that exposed them in an extreme way whereby they lost their lives? This in itself indicates that the environment in which this incident happened is an environment where journalism is not appreciated, which means that the state to a certain degree has failed to guarantee the rights of professionals to undertake their careers with assurances that they won't lose their lives in the process.

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The event that was being reported was not a bullfight or scheduled bomb blast or war or anything of that sort at all. It was a constitutional process where a candidate in an election was going to post his nomination. It was a process by which people in the Philippines were deciding to contest in an election. It was a process of democracy, the essence of a democratic country. So, reporting about a candidate going to post his nomination in the democratic process, if that is a life-threatening environment, then I am afraid that we are talking about very large and very alarming issues in the Philippines which the state has to answer.

I find that the questions posed by the defence lawyer were posed in a manner which ridiculed the whole process but also in a manner which defied common sense. For example, the defence lawyer posed these questions not only to the wife of the victim, who lost her composition in court, but also to an expert witness who had undertaken an autopsy of a body. These are questions which do not require answers, because I believe that the autopsy report itself concluded how the incident occurred. The lawyer seems to have questions about a document which was already proved in accordance with law so as to offend the expert who undertook an autopsy, in a manner that ridicules the whole autopsy process itself. This implies to me that the defence is not taking the case seriously, or lacks respect for the process.

Unfortunately, when trial is conducted, defence lawyers undertake very stressful tasks. I myself have the experience, and I have also prosecuted criminal cases of a highly politically

A crowd gathers at the site of the Maguindanao massacre to observe excavation and recovery of bodies (Mark Navales)



charged nature in India and outside of India, and I understand the difficulties of professionals as well as the difference in understanding of witnesses in such a charged situation, but it is up to the lawyer to be true to his or her profession and not cross the limits of the lawyer, particularly when cross-examining witnesses.

The logic of cross-examination is to encourage the witness to tell the truth before the court of law. It is not, as many lawyers see it, an attempt to pose all sorts of questions to ridicule the witness or to intimidate the witness or just to find contradictions. But from what I saw and what I have understood about this particular trial is that the manner in which the witnesses have been examined was unfortunate, in that it appeared to be ridiculing the witnesses: not only the expert witness, the doctor who conducted an autopsy, but also the woman who broke down in court.

This is an occasion where the court should step out from its role as merely being an umpire and also show the maturity to guarantee that the process which is underway is done in a manner that is convenient for the rendering a justice. And that term “justice” has immense weight, because it should not be a process which should be undermined by defence lawyers or by a prosecution lawyer who gets the witnesses to speak whatever that he or she requires by using whatever means.

DR: Bijo, you mentioned two very important points. You mentioned about the purpose of court examination, which unfortunately in the Philippines, as you have put it, is that the understanding among lawyers is whatever they do it is a part of the legal process and not that cross-examination is for the purpose of encouragement for a witness to tell the truth. You also mentioned that the court has a responsibility to ensure that the environment for a witness allows him or her to tell the truth. So how do you, according to your experiences as a lawyer in India, ensure this responsibility of helping the truth to come out instead of suppressing or distorting it, or confusing the witnesses to defeat the purpose of the cross examination?

BF: I think a lawyer has a very limited role in a court of law, even though that limited role in itself is a very noble role. It is unfortunately often wrongly conceived that the role of the defence lawyer is somehow to get his client out of the dock, but that is not a role of a defence lawyer. The role of a defence lawyer and the role of a prosecution lawyer is the same so far as a criminal trial is concerned. Both have roles to help the court find the truth and nothing but the truth, and in that process, you are encouraging the witnesses to speak, you are trying to get clarification from the witnesses. Now in prosecution examination, chief examination, the prosecutor would encourage the witnesses to speak to the prosecution case and the prosecution case is based on certain facts, and a question of fact is what is discussed with supporting evidence. The role of a defence lawyer is much more limited than that the prosecution lawyer in that sense, because once the witness has spoken his or her mind and also departed regarding the facts and circumstances in the case, as the court may consider as relevant

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or irrelevant, the role of the defence lawyer is to find out whether there are any contradictions in the statement that has been made, and whether there are any possibilities by which the court can consider that the crime happened in a manner that has not yet been brought to the attention of the court. If there are any contradictions, then the question is, what is the reason? Was there any bias for the witness to speak against the accused in the court of law, and if there was bias, what is the proof of that, and so on.

So, the role of defence lawyer is not to defend clients by all means possible, although it is often considered like that, because in this world of high-ended competition, a successful defence lawyer is assessed by the number of cases that he has successfully defended by getting the clients out. It also counts quite a lot if in a particular bar or country defence lawyers are mostly seen as bullies. It means that the role models that these lawyers are following are quite wrong. I would say that if the defence lawyer is conducting the defence or the prosecution lawyer is conducting the prosecution in a manner which is not congenial for the court to do its duties, then we have a problem relating to professionalism itself.

DR: With regard to this case in the Philippines, the Maguindanao case has drawn a lot of attention from different news organizations and is a highly political case, and you can see on video and from the translation also of conversation in court that there is no showing of any pretence at all about how lawyers conduct themselves, how they talk to journalists, that they are indifferent to the suffering of the complainants or victims. So, I know that this may not be within the legal framework, but if you could reflect on ethics, on the issue of morality, should this issue not been one for everybody in society? Because if we have seen this sort of behaviour in highly political cases, there must be thousands of hearings in courts involving ordinary persons, most of them with no lawyers, most not having not received any coverage from the media, in which the same types of behaviour go on. So how do you look at this?

BF: I am not of an opinion that it is just a problem of morality. I am fully convinced that it is a problem of law and justice, so a lawyer whether dealing for the prosecution or for a defendant, to come out and comment on a witness or to comment upon the manner in which a witness has deposed in the trial when he or she is engaged in the trial is against the law, because I believe that the purpose of making comment can be to interfere with the process of trial by trying to influence the judge by making opinions regarding a particular witness, the nature of the evidence that has been tendered to the witness box, or the bias or lack of trustworthiness of the documentary or other scientific statistics produced. This is all legally wrong, because this is for a judge and nobody other than the judge to decide. In the country where I have practiced, if you make such a statement, your license can be suspended, and action can be taken against you as you have tried to interfere in the court of law.

It is even worse for a lawyer who is directly engaged for the prosecution or defendant to speak out of context about a witness when the trial is under way because it can be easily interpreted

or will be interpreted as none other than an attempt to interfere in the court process through the media. It is not also for the media to say that the nature of a witness is like this or that. If it was otherwise, I mean, if it was for other people to comment about the evidential value or the merits of a witness or the nature of the evidence produced in a court of law when the trial is on the way, then you would not need a judge. That is the difference between media trial and court trial. Media trial can be used for influencing judges, influencing the adjudicating process, and a judge also needs to be aware of that.

The time when opinions are to be given is when the argument of the case happens in open court. You give your view about the evidence, about the implications of the evidence, to the judge as a part of the argument. You can do that in court, but it should not be done outside the court, particularly when the trial is under way, because it cannot only be interpreted as trying to interfere with the judge and judicial process in the argued case, but also it can be interpreted as trying to intimidate the witnesses. So this thing is prohibited in advance in a mature jurisdiction, and in a jurisdiction where these things are allowed and considered as normal then I would say that this judiciary has a jurisdiction where the notion of rule of law starts to be erased, or has been erased already.

Three victims of the Maguindanao massacre: at left, Victor Nuñez, seated on ground at centre, John Caniban, on right, Mac Delbert Areola (Mark Navales)



DR: In order to end our discussion today, can you give a brief closing summary of your thoughts on the legal practices in this case.

“I am sure that the decision in this trial will go on a long way, not only to the present generation but also to future generations of Filipinos—so, the task is of immense importance”

BF: I just want to come back to the reflection that I made when we started our discussion, that a massacre of 32 journalists because of nothing other than that a candidate went to file his nomination in the democratic process, in a democratic country, is shocking. It not only points to how dangerous it is to be living in that country. I also would suggest that today the victims were journalists, tomorrow they can be doctors, the day after tomorrow they can be lawyers, the next day they can be judges. It can happen to anybody.

From my understanding, what has happened in the Philippines is that the state of affairs of the country is in such an appalling condition, that such an incident could happen. There are places where there are extreme restrictions on freedom of opinion and expression and so on, and there are places where the judiciary and judicial process are completely wrecked. I don't think that the Philippines is a place like that, but that 32 journalists were massacred this way in public, and that not just the persons but the vehicles were taken, we can see the extent of preparation that must have been made. What makes a person in a country like the Philippines think that he or she can do this? What makes people in power believe that not only do they want to do this and can conceive of doing this but that they have a possibility of escaping punishment for it? This is an incident which has cast such shame on the Philippines and its people that is not easy to overcome.

As to the trial, when you engage in the process of finding the truth for what has happened in an event like this, as an investigator, a defence lawyer, a prosecutor or judge, I believe that the person is undertaking an extraordinary duty with immense social, political and legal implications, and that the job has to be done in the utmost seriousness. It has to be done in a manner that respects the process itself. Anyone involved in the process must legitimize their presence in the court. They should not conduct themselves in a way that ridicules the notion of justice.

I am sure that the decision in this trial, whatever it be, will go on a long way, not only to the present generation of the Philippines, but also to future generations of Filipinos. So, the task that the lawyers, investigators, witnesses and judge are engaging in is of immense importance to Filipinos and the Philippines. I hope that the people who are involved will realize that and conduct themselves with the seriousness that the trial demands.

Maguindanao massacre case demonstrates the delusion of the existence of a justice system

(A statement by the AHRC, AHRC-STM-234-2010, 24 November 2010)

It does not take much time for any rational person to agree that the families and the victims of the Maguindanao massacre must obtain justice. Anything less is unacceptable. The sheer evil that the perpetrators demonstrated in killing 57 innocent people, 32 of whom were journalists, and to disappear one person in the manner that is already widely known, obviously stimulates outrage and condemnation.

But to demand for justice must also involve conscious thinking as to whether the institutions of justice to whom these demands are addressed can deliver it in a real sense. It is madness and foolishness for one to demand justice knowing full well that it is something that could not possibly be given. It is nothing less than self-deception for a person to believe that something can be created from nothing. Water cannot be squeezed from boulders; nor can boulders be softened by hammering.

Demands that are detached from reality will have no real contribution and are meaningless when attempting to afford redress to victims. It rather perpetuates, consciously or otherwise, the delusion of something that is not there. To make demands without any regard as to whether they would make sense in reality is nothing less than echoing popular demands, to satisfy a person or a group's desire of having supported a cause. This is the usual gesture by politicians to show solidarity as they gain more by supporting rather than ignoring popular causes. If this is done to sustain interest in a massacre that most Filipinos could not fathom, that could still be done as it appears logical, but it should be a response to the realities and substance of the case.

The quest for justice must confront head-on the realities. Witnesses and families of the victims are being bought, over a hundred suspects remain at large, the criminal justice system allows out of court settlements, the continuing lack of protection to families, journalists and persons who are testifying and the repeated delays in court hearings that are endemic in Philippine courts are allowing this to happen. The quest must not also place limits on the punishment imposed upon the perpetrators, but should also have a clear judgement on the certainty that the perpetrators have committed the crime. That they would be convicted based on the evidence that the police and the prosecutors have collected in establishing their guilt; not due to popular demands and the public pressure and political consideration that is prevalent in political cases, like the Abadilla Five case.

If that case has taught us anything it has revealed that in the Philippines, cases are often decided not because of their merit but rather because of political pressure. The more pressure is applied, the more likely the possibility of redress for victims and punishment to perpetrators. Thus, in reality the system of justice functions contrary to how most people in developed systems of justice thought it should be. The question must be: can this type of institution of justice be

considered competent, impartial and effective? Can this system of justice function on its own without pressure? No. If it is the contrary of what makes a system exist in a real sense, the country does not have it.

While it is easy for all to agree on demanding justice that the perpetrators of the massacre must be punished and that murders of this magnitude must not happen again, there is no real certainty that justice will be done. The people know full well that the case will not be resolved any time soon; not even in ten years to come. The journalists, the lawyers, witnesses, the widows and families of the dead also know this to be the case.



Demonstrators call for justice for the victims of the Maguindanao massacre outside the Consulate General of the Philippines in Hong Kong

A Filipino in Hong Kong: Looking from a territory with protection towards a country without

Pepe Panglao, Writer, Hong Kong

When I was a little boy growing up in the Philippines I heard countless stories of mothers who lost their sons in senseless killings. There were stories of young men either stabbed or shot dead while walking home from work; for curiously looking at a person who disliked to be stared at, or walking a pretty girlfriend home before the envious eyes of other men. There was no rational motive or logical reason why they had to be killed, but they were. The killers never hesitated to kill. Neither did they fear arrest; they just killed the target of their frustration or anger. That is just the way that life went on in our village.

In some streets or communities in our area senseless murders by stabbing and shooting have been so common that names have been changed de facto to 'Kanto Hagba' (a street corner where a person falls dead). One of these places was the corner of a street close to where we lived in my childhood days.

I must have been seven years old then. But regardless of age, I could not forget my mother's perpetual warning to me and to my two elder brothers to avoid passing through that street, especially during night time. When night fell, that street was virtually deserted. None of the villagers would dare rent or live in a house close to that street. Our mother's repeated warnings and the numerous deaths in that street left in us a deep-seated fear of the place and it took me many years to get over it.

There is no doubt in my mind that my mother did not intend to cause trauma or sow fear in us. Her warnings, by way of telling us which places we should avoid, were her way of protecting us, her sons, from harm. Like any mother it was her intention to keep us safe. I also had no doubt that my mother's warning to us to "keep our mouths shut" when we witnessed a crime and that we "should not testify or become a witness" were also intended

to protect our family. But I did ask, what if the victim was my father, one of my brothers or relatives, would someone testify for us? I do not know.

“When I was a little boy, I witnessed the stabbing death of a man in full view of the public... When I told my mother, she told me, ‘You did not see anything, if anyone asks, you tell them you know nothing’ ”

When I was a little boy, I witnessed the stabbing death of a man in full view of the public. The story was one of the countless killings that I have either heard of or witnessed. I saw with my own eyes how the killer, who was carrying a kitchen knife, had chased after and repeatedly stabbed his victim while the people who had seen the incident yelled for help. I could not forget how the victim struggled to protect himself. He was holding a small wooden table that he placed between him and his attacker. I recognized both of them because they were locals in the area and I saw both of them during the stabbing incident.

When I told this to my mother, she told me, “You did not see anything, if anyone asks, you tell them you know nothing.” When the police started investigating the incident, as was to be expected no one else was willing to testify either. None of the people in the crowd had seen anything. When no one testified, it was not because no one had seen the stabbing, but the people knew full well, including my mother, that testifying and standing as a witness in a criminal investigation would surely make one the next target. I am not sure what the result of the case was but I can presume that it was just another case involving a man dying in a senseless killing, and another killer who was willing to kill again.

This is how my siblings and I were brought up. However, I believe that our mother did not intend to prevent us from talking about what I had seen, but it is rather the lack of protection for people in the Philippines that convinced her that for me to stand as witness would not be safe. This is even though my mother was a public school teacher. I knew her as a kind person to others, a person who taught a wide variety of subjects, including good moral values: among them, the value of compassion and helping others.

This was one of the many instances in my life that made me ask many questions as to the contradictions and double standards my mother had in terms of helping others; however, it was only in my adult life that I began to understand. She had to make a choice. It was the choice between keeping us safe and her allowing me to testify at the expense of the safety and security of our family. For her it was not a simple matter of principle and helping others, but a question of survival in an insecure environment.

I cannot imagine how difficult it must have been for my mother to raise and protect three sons in this way. It is easy to pass judgment on people as to how they lack compassion and concern for others, but it is only when we try to understand the fundamental reasons as to why most people in our society prefer survival and self preservation that we get a sense of the realities of our society, and of the downright failure of our own government to ensure security and safety.

I owe my life to my mother, father and my siblings. However, to get over my traumatic experiences is something that I had to deal with myself. But while to some extent I have overcome this trauma, my mother and most of my family members, who continue to live in our hometown, have not. Even in my adult life my mother still tries to discourage me from complaining or speaking of the evils that I have seen in our society. My younger sister always describes me as a 'troublesome' person for speaking my mind, but I always tell them: "Don't worry, I'm old enough to decide for myself; and I will take great caution."

I began to understand as an adult the insecurity and lack of protection that had prevented my mother, my siblings and many other Filipinos from testifying and trying to make their society safer for all. For them, even to think of becoming a witness to a crime is an act of suicide. This dominant mentality and attitude is what I continue to express with contempt in exposing the situation of our society. The value of life, due to one's self preservation and survival, has lost its meaning. The real sense of "community" simply ceased to exist due to deep-seated fear and insecurity.

When I was a university student, on one occasion I came close to death after becoming a robbery victim myself. I was walking home from school through an alley when a young man pushed me to the wall. He was with another man who served as his lookout. Poor as I was, I was dressed in formal clothes as a requirement for our school production and this man demanded money from me. He began to thrust a pointed object at my chest which he claimed was a knife. He was serious in telling me that he would surely stab me once I moved or drew attention to what was happening. I could see many people passing by just over his back. I tried giving clues to the passersby that I was being robbed, but I think even if they knew they would not get into trouble. None of them came to my rescue. This was exactly what my mother had told me would happen.

I was lucky that the robbers finally gave up on me after they checked my penniless wallet. I had only a few pesos, just enough to pay for a jeepney (public utility vehicle) ride to collect the allowance that my mother had just sent for me. But before the robbers got rid of me, one of them hit my chest hard, leaving me gasping for air. A few days later, I heard a story about another graduating student from an expensive university close to mine who was stabbed to death when she refused to give up her expensive watch and jewellery to the robbers.

A Filipino looking at Hong Kong

I had these experiences with me as I settled down in Hong Kong and it took me some time to believe that what I and the Filipino people had thought would be next to impossible, is, in fact, possible here. The people in Hong Kong live a life exactly the opposite of the life I used to live: an environment with protection, security and safety.

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“ In Hong Kong one need not wield political power, influence and have connections with those people in the government before filing a complaint and have it investigated or acted upon ”

It struck me very hard that I dreamt of a society in which a person could testify and file a complaint with the police or any government agency and enjoy the security provided by existing mechanisms. To report to the police on crimes, even on cases that are not life threatening, to file a complaint and to testify in criminal investigation to help solve crimes, is the way of life of the people in Hong Kong. Of course, as in any society not everyone is satisfied with the police; however, by and large the people have confidence in their police force. Yes there is street-level crime here, as there is in any territory, but the incidence of such crime is far less than most cities of the region.

In Hong Kong one need not wield political power, influence and have connections with those people in the government before filing a complaint and have it investigated or acted upon. One need not have a huge amount of money to spend in litigation before filing a complaint. There are legal aid services and it is easy to avail yourself of these services because they are widely publicized. There are instructions on how to process this type of request. And should your life be threatened as a result of your complaint, I am confident that there is an adequate protection mechanism available.

Like elsewhere, crimes are committed here in Hong Kong but the criminals do not always get away with them. They are prosecuted and held to account because the laws here are not put in place to protect the interests of the government and those in power. There are norms and standards that are applied in a real sense in Hong Kong. The government and its laws protect the lives and the interests of the people and the people have the confidence that this is the case. To seek redress and a remedy for a violation of one's rights is a battle not only by the victim, but of the community who, despite being largely apolitical, are compassionate to others.

The law is applied to all, not only a selected few. There are fewer crimes here not because the people are religious, but because they know full well that they could not get away with it without being punished. The offenders also know full well that should the victims and their witnesses file a complaint, the law would be there to protect them.

Unlike the lives that many Filipinos continue to live, the parents of children in Hong Kong need not to tell them that to stand as a witness is equal to becoming the target of a killing or an act of suicide; that they should choose whom they should speak to so as to protect themselves; or simply to prevent them from walking out at night time due to the risk. The people here need not be given assurance or be convinced that they are safe and secure.

I can still remember a few years ago when my wife called 999, the emergency police hotline, asking for assistance after our daughter had accidentally locked herself inside our bedroom. It only took five to ten minutes for the responding officers to come

to our house, break open our bedroom and take our child to safety. They also offered to take our child to the hospital over concerns that she may have been traumatized by the incident. They had a standby ambulance and numerous rescue officers waiting outside. This could not have happened in my country.

Over 140,000 Filipino migrants in Hong Kong are living and working as domestic workers, professionals and residents. While most of them have lived most of their adult lives in the Philippines, some were born and grew up in Hong Kong and there is no doubt in my mind that they would share a deep appreciation to the government of Hong Kong who ensures our safety and protection.

Some Filipinos who have resolved to speak out against the ugly reality of their country find it too risky for them to remain there. Out of necessity they choose to leave their families and their homes to come to places like Hong Kong where they can campaign openly about the system and injustices in their country. Due to Hong Kong's close proximity to the Philippines before it became widely known as a destination for Filipino domestic workers it also used to be the haven of Filipino political dissenters, from the Spanish colonial period up to the martial law regime of the late President Ferdinand Marcos.

Hong Kong has shown to Filipino people, particularly those who want to speak against the defects of their own country, that it is possible to live and work in a secure and protected environment. The territory of Hong Kong and its people have been the benchmark of a rule-of-law society, a society which remains the dream of the Filipino people. Hong Kong today is an example for the Filipino people who work here in safety. This place has shown us the meaning that something is possible. It encourages us to work for our country and to hope that the day will come when we can return home and enjoy the same degree of safety.

A Filipino in Hong Kong looking at the Manila hostage incident

I can fully understand how the Hong Kong people reacted to the tragic end of the Manila hostage incident. They had every right to expect the same degree of response and professionalism towards the situation that they would have found here. Sadly the government of the Philippines failed in that respect.

The concerns of local Filipinos that anger and hatred could be vented towards them by people sympathetic to the families of the hostage victims are not imagined: this is happening. There have also been instances like this in the past, such as the discrimination and isolation of Filipinos following a local newspaper report that they were the carriers of a communicable disease. Following the hostage taking, some employers sacked their Filipino domestic workers; others have been verbally abused in the streets. A person known to me was told by her employer that if anyone asks what her nationality is, she was instructed,

“Due to Hong Kong's close proximity to the Philippines it also used to be the haven of Filipino political dissenters, from the Spanish colonial period up to the martial law regime of the late President Ferdinand Marcos”

“Tell them you’re an Indonesian.” Some employers are restraining their workers from going out, supposedly for ‘precautionary reasons’.

Some workers avoid discussing the hostage incident with their employers and believe that this is the safest way to get past it. They just hide in toilets or their own rooms to cry hard due to the humiliation they feel for this shameful incident, and to make sure they do not draw their employer’s attention.

This is not to trivialize the feelings of the families of the hostage victims. I completely agree that that the victims’ families and the people in Hong Kong have every right to express their anger and that my family and I owe our safety and protection in living here to the Hong Kong government. However, this feeling of safety is what enables me to speak out on behalf of those workers who are not at liberty to do so. To deny the already growing concern and the existing problem of the needless tension; and to calculate one’s statement to avoid offending others does not help. It rather prevents the needed precautionary measures and could deprive the possibility of a dialogue.

When Filipinos fear to allow their children to go to the playground or send them to school it is not out of paranoia, it is rather their traumatic response due to the insecure life they used to experience and live with back home. It is not an overreaction for them to believe that the people of Hong Kong might resort to violence out of a misguided sense of revenge. It is simply the fact that this was the lifestyle they lived in the Philippines and they are all too familiar with the concept of bloody revenge.

The hostage incident has provided for the people of Hong Kong a glimpse of what Filipinos have to endure in their country daily, which is why so many people choose to work abroad, not only to earn a living but also to escape from their country. It would be unfortunate if some people in Hong Kong misunderstand this and take out their feelings about the incident on people who are already traumatized by the experience of growing up in a country which offers them no protection.

I express my deepest condolences to the families of the hostage victims. Like them, I have also lost many personal friends due to the insecurity of the Philippines—mostly at the hands of the police, the military and the people who work for them. The latest case was the Maguindanao Massacre, where I lost personal friends and colleagues amongst the 57 who were murdered.

However, it is also my duty and obligation as a Filipino to speak against anything that could compromise the safety and security of fellow Filipinos in Hong Kong. Here I can say without fear and reservation that if I was attacked or persecuted for my views and opinions I am confident the law in Hong Kong is capable of protecting me. It is for this reason that I have deep respect for the Hong Kong people and government. The protection that Hong Kong provides its residents is what is lacking in my own country, and what we all long for.

“The hostage incident has provided for the people of Hong Kong a glimpse of what Filipinos have to endure in their country daily, which is why so many people choose to work abroad, not only to earn a living but also to escape from their country”

Anti-Torture Act of 2009, Republic of the Philippines

REPUBLIC ACT NO. 9745

AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. *Short Title.* - This Act shall be known as the “Anti-Torture Act of 2009”.

Section 2. *Statement of Policy.* - It is hereby declared the policy of the State:

(a) To value the dignity of every human person and guarantee full respect for human rights;

(b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or, agent of a person authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;

(c) To ensure that secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and

(d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.

Section 3. Definitions. - For purposes of this Act, the following terms shall mean:

(a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or Buffering arising only from, inherent in or incidental to lawful sanctions.

(b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.

(c) "Victim" refers to the person subjected to torture or other cruel, inhuman and degrading treatment or punishment as defined above and any individual who has suffered harm as a result of any act(s) of torture, or other cruel, inhuman and degrading treatment or punishment.

(d) "Order of Battle" refers to any document or determination made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

Section 4. Acts of Torture. - For purposes of this Act, torture shall include, but not be limited to, the following:

(a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

- (1) Systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
- (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
- (3) Electric shock;
- (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
- (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
- (6) Being tied or forced to assume fixed and stressful bodily position;
- (7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
- (8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
- (9) Dental torture or the forced extraction of the teeth;
- (10) Pulling out of fingernails;

- (11) Harmful exposure to the elements such as sunlight and extreme cold;
- (12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;
- (13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
 - (i) The administration or drugs to induce confession and/or reduce mental competency; or
 - (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and
- (14) Other analogous acts of physical torture; and

(b) “Mental/Psychological Torture” refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person’s dignity and morale, such as:

- (1) Blindfolding;
- (2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
- (3) Confinement in solitary cells or secret detention places;
- (4) Prolonged interrogation;
- (5) Preparing a prisoner for a “show trial”, public display or public humiliation of a detainee or prisoner;
- (6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
- (7) Maltreating a member/s of a person’s family;
- (8) Causing the torture sessions to be witnessed by the person’s family, relatives or any third party;
- (9) Denial of sleep/rest;
- (10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim’s head or putting marks on his/her body against his/her will;
- (11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
- (12) Other analogous acts of mental/psychological torture.

Section 5. *Other Cruel, Inhuman and Degrading Treatment or Punishment.* - Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.

Section 6. *Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, An Absolute Right.* - Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a

Background of the anti-torture legislation

1908: The Philippine Supreme Court recognized the right of a person under police custodial investigation to remain silent

1935: The 1935 Philippine Constitution recognized the right of a person not to self-incriminate as a constitutional right

1966: The Supreme Court of the United States gave its decision in *Miranda v. Arizona*, entitling a person to be informed of the right to remain silent and of a right not to self-incriminate. The Philippine Supreme Court resisted efforts to have it adopt the Miranda warning

1976: The International Covenant on Civil and Political Rights entered into force

1986: The Philippine Government ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

1987: The Philippine Constitution was promulgated. The Bill of Rights (article 3, section 12, subsections 1 to 4) recognized the right to be free from torture as a constitutional right for the first time in the history of the Philippines

Some of the laws used in the absence of a domestic law on torture:

The Revised Penal Code (RPC)

Republic Act 7438 or the Act defining certain rights of person arrested, detained or under custodial investigation

Republic Act 8353 or the Anti-Rape Law of 1997

Republic Act 3019 or the Anti-Graft and Corrupt Practices Act

Administrative Code of 1987

Numerous Statutory laws, Executive Orders, Memorandum Circulars and Department Orders relating to the conduct of public officers and employees

1989: The Philippine government ratified the Optional Protocol to the International Covenant on Civil and Political Rights (OPCAT)

2007: The Philippine government ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights

April 2009: The Asian Legal Resource Centre (ALRC) submitted an alternative report to the United Nations Committee Against Torture on the situation of torture in the Philippines

May 2009: In concluding the Periodic Review on the status of implementation of the CAT Convention by the Government, the CAT Committee had observed that it was “deeply concerned about the numerous, ongoing, credible and consistent allegations, corroborated by a number of Filipino and international sources, of routine and widespread use of torture and ill-treatment of suspects” (CAT/C/PHL/CO/2)

November 10, 2009: The Anti-Torture Act of 2009 was signed into law

December 10, 2010: The Department of Justice and the Commission on Human Rights of the Philippines promulgated the Implementing Rules and Regulations of the Anti-Torture Act of 2009

January 2011: The Office of the President submitted the Optional Protocol to the Convention against Torture (OPCAT) to the Philippine Senate for ratification

document or any determination comprising an “order of battle” shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

Section 7. Prohibited Detention. - Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity are hereby prohibited.

In which case, the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned shall make an updated list of all

detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, date of arrest and incarceration, and the crime or offense committed. This list shall be made available to the public at all times, with a copy of the complete list available at the respective national headquarters of the PNP and AFP. A copy of the complete list shall likewise be submitted by the PNP, AFP and all other law enforcement agencies to the Commission on Human Rights (CHR), such list to be periodically updated, by the same agencies, within the first five (5) days of every month at the minimum. Every regional office of the PNP, AFP and other law enforcement agencies shall also maintain a similar list for all detainees and detention facilities within their respective areas, and shall make the same available to the public at all times at their respective regional headquarters, and submit a copy, updated in the same manner provided above, to the respective regional offices of the CHR.

Section 8. *Applicability of the Exclusionary Rule; Exception.* - Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings, except if the same is used as evidence against a person or persons accused of committing torture.

Section 9. *Institutional Protection of Torture Victims and Other Persons Involved.* - A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

(a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein,

(b) To have sufficient government protection against all forms of harassment; threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and

(c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any fora in order to avoid further trauma.

Section 10. *Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order.* - A writ of habeas corpus or writ of amparo or writ of habeas data proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.

Section 11. *Assistance in Filing a Complaint.* - The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.

The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BRRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).

Section 12. *Right to Physical, Medical and Psychological Examination.* - Before and after interrogation, every person arrested, detained or under custodial investigation shall have

the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment. The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

Following applicable protocol agreed upon by agencies tasked to conduct physical, psychological and mental examinations, the medical reports shall, among others, include:

- (a) The name, age and address of the patient or victim;
- (b) The name and address of the nearest kin of the patient or victim;
- (c) The name and address of the person who brought the patient or victim for physical, psychological and mental examination, and/or medical treatment;
- (d) The nature and probable cause of the patient or victim's injury, pain and disease and/or trauma;
- (e) The approximate time and date when the injury, pain, disease and/or trauma was/were sustained;
- (f) The place where the injury, pain, disease and/or trauma was/were sustained;
- (g) The time, date and nature of treatment necessary; and
- (h) The diagnosis, the prognosis and/or disposition of the patient.

Any person who does not wish to avail of the rights under this provision may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel.

Section 13. *Who Are Criminally Liable.* - Any person who actually participated or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts shall be liable as principal.

Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principals.

The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before,

during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals.

Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:

(a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;

(b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or

(c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment; provided, that the accessory acts are done with the abuse of the official's public functions.

Section 14. Penalties. - (a) The penalty of reclusion perpetua shall be imposed upon the perpetrators of the following acts:

(1) Torture resulting in the death of any person;

(2) Torture resulting in mutilation;

(3) Torture with rape;

(4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and

(5) Torture committed against children.

(b) The penalty of reclusion temporal shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.

(c) The penalty of prision correccional shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described in paragraph (b) of this section.

(d) The penalty of prision mayor in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; or shall have become permanently incapacitated for labor.

(e) The penalty of prision mayor in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.

(f) The penalty of prision correccional in its maximum period to prision mayor in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days.

(g) The penalty of prision correccional in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for

labor for thirty (30) days or less.

(h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of this Act.

(i) The penalty of *prision correccional* shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention as provided in Section 7 of this Act where torture may be carried out with impunity.

(j) The penalty of *arresto mayor* shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of this Act.

Section 15. *Torture as a Separate and Independent Crime.* - Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be impossible without prejudice to any other criminal liability provided for by domestic and international laws.

Section 16. *Exclusion from the Coverage of Special Amnesty Law.* - In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

Section 17. *Applicability of Refouler.* - No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including, where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

Section 18. *Compensation to Victims of Torture.* - Any person who has suffered torture shall have the right to claim for compensation as provided for under Republic Act No. 7309; provided, that in no case shall compensation be any lower than ten thousand pesos (P10,000.00). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations.

Section 19. *Formulation of a Rehabilitation Program.* - Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), the DOJ and the Department of Health (DOH) and such other concerned government agencies, and human rights organizations shall formulate a comprehensive rehabilitation program for victims of torture and their families. The DSWD, the DOJ and the DOH shall also call on human rights nongovernment organizations duly recognized by the government to actively participate in the formulation of such program that shall provide for the physical, mental, social, psychological healing and development of victims of torture and their families. Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading punishment shall likewise be formulated by the same agencies.

Section 20. *Monitoring of Compliance with this Act.* - An Oversight Committee is hereby created to periodically oversee the implementation of this Act. The Committee shall be

headed by a Commissioner of the CRR, with the following as members: the Chairperson of the Senate Committee on Justice and Human Rights, the respective Chairpersons of the House of Representatives' Committees on Justice and Human Rights, and the Minority Leaders of both houses or their respective representatives in the minority.

Section 21. *Education and Information Campaign.* - The CHR, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (DILG) and such other concerned parties in both the public and private sectors shall ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The Department of Education (DepED) and the Commission on Higher Education (CHED) shall also ensure the integration of human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.

Section 22. *Applicability of the Revised Penal Code.* - The provisions of the Revised Penal Code insofar as they are applicable shall be supplementary to this Act. Moreover, if the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment as defined herein, the penalty to be imposed shall be in its maximum period.

Section 23. *Appropriations.* - The amount of Five million pesos (P5,000,000.00) is hereby appropriated to the CHR for the initial implementation of tills Act. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

Section 24. *Implementing Rules and Regulations.* - The DOJ and the CHR, with the active participation of human rights nongovernmental organizations, shall promulgate the rules and regulations for the effective implementation of this Act. They shall also ensure the full dissemination of such rules and regulations to all officers and members of various law enforcement agencies.

Section 25. *Separability Clause.* - If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.

Section 26. *Repealing Clause.* - All laws, decrees, executive orders or rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 27. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,

(Sgd.) PROSPERO C. NOGRALES Speaker of the House of Representatives

(Sgd.) JUAN PONCE ENRILE President of the Senate

This Act which is a consolidation of House Bill No. 5709 and Senate Bill No. 1978 was finally passed by the House of Representatives and the Senate on 2 September 2009.

(Sgd.) MARILYN B. BARUA-YAP Secretary General House of Representatives

(Sgd.) EMMA LIRIO-REYES Secretary of Senate

Approved: November 10, 2009

(Sgd.) GLORIA MACAPAGAL-ARROYO President of the Philippines

Torturers and torture chambers in the Philippines

Asian Human Rights Commission, Hong Kong

In Philippine society where people often know everyone in their communities, torture is known to be a common practice. People know who the torturers in their locality are, and where victims are taken to be tortured. Once a person is arrested and held, whether by the police or soldiers, being assaulted and beaten in crowded places is common and no longer shocks those witnessing such incidents. It has become a norm, for an arrested person—regardless of guilt or innocence—to face assault and torture in custody.

An average Filipino would have little doubt that torture victims are held and abused in police stations and military headquarters, safe houses or hideouts and the de facto detention centres (detention facilities not recognised as regular detention centres) under the control of the police or military. Numerous police stations and military camps have been confirmed by torture survivors to have been repeatedly used as places of torture. Such places are known not only to the torture survivors, but also by journalists who cover the police and military.

In fact, local television stations and investigative TV shows broadcast footage of arrestees whom the police have either assaulted or allowed an angry mob to assault while in their custody. Newspapers also publish photographs and write lengthy articles of badly injured torture victims. The police and military no longer bother to cover-up such stories. They present torture victims, with visible traces or injuries on their bodies, to journalists at press conferences for publicity. They do so, knowing full well that they enjoy impunity from legal action.

This impunity does not stem from the failure of the judiciary, but from the protection of senior officers in the police and military establishments. A status quo of officers protecting one another is maintained to avoid prosecution, a by-product of a grossly misunderstood notion of 'brotherhood' and 'camaraderie' within

This article comprises the text of a statement issued by the Asian Human Rights Commission, AHRC-STM-135-2010, dated 29 June 2010.

the establishment. As long as the police and soldiers protect one another they are all safe. In reality, the police and military dictums “serve and protect” and “civilian supremacy” have become absurdities.

Torture victims in the Philippines are distinguished as either ‘political detainees’ or ‘common criminals’. The former are victims arrested and tortured due to their political activities, whether real or imagined. The latter, meanwhile, are victims who are not considered priorities. They are given no assistance in pursuing legal redress and prosecution should they choose to make complaints. They receive negligible, if any, attention. They have little opportunity of obtaining legal remedies and rehabilitation. Labelled as common criminals, they are not deserving of assistance because their crimes are a result of personal interest.

The Philippines has a long history of rebellion and insurgency, which can explain how the use of torture is seen as a political tool. The experience of the Filipinos during the colonial period for instance, when those who dissented and fought against the Spanish were tortured and executed by garrotting; or their experiences under oppressive regimes such as that of the late president Ferdinand Marcos, wherein torture was a tool to control and instil fear in order to cripple dissent.

While it is true that most ‘political detainees’ were tortured because of their membership to a political party and its activities, this is only one part of it. For years, the ultimate purpose of torture and violence had been maintaining the status quo and instilling fear to control society. A clear message was given that any deviation from the status quo, a way of life in which citizens are largely subordinated to the police and military, or any challenge to the authority of the security forces, would be dealt with by torture.

Whether they are ‘political detainees’ or ‘common criminals’, no distinction is made while they are being tortured however; both suffer similar experiences. Based on detailed accounts of torture victims, it can be said that the police and military use sophisticated methods they have mastered. While these methods might not be taught in any academy, there is definitely a culture of violence embedded within these institutions. This culture further develops within officers not only during their training, but also in response to media reporting and people’s acceptance of it in daily life.

This mindset explains the torture of ‘common criminals’, regardless of their guilt or innocence. In arresting ‘common criminals’, the police are not enforcing law and order, but punishing them for ‘breaking the law’, and for not submitting to the status quo—being law abiding citizens and submissive to persons in authority. Unlike political detainees, common criminals obtain less attention from local human rights groups

“In arresting ‘common criminals’, the police are not enforcing law and order, but punishing them for ‘breaking the law’, and for not submitting to the status quo—being law abiding citizens and submissive to persons in authority”

and suffer from a lack of protection. None of the local organisations document cases of torture concerning ‘common criminals’.

“A promising and intelligent young man quit the police academy due to unbearable training: he recalled having been deprived of food, and drinking water from the toilet bowl for days, with the knowledge and tacit consent of the superior officers or trainers ”

In this way, a grossly misunderstood notion has developed, that human rights, particularly the right to be free from torture, only applies to political detainees and not to common criminals; nor to ordinary, poor persons. To get a certain level of protection therefore, ordinary people would have to affiliate themselves to a human rights or political organisation. Should they be arrested, tortured or have their rights violated, they would then have a person or group to go to. This has led to the adverse stereotyping of people as supporters of particular political groups.

Apart from ordinary civilians, even those working in the police and military establishments have endured violence and were themselves victims of torture before becoming fully pledged officers. Violence, psychological warfare, and deprivation of food are the norm, on the pretext of strengthening the recruits’ ability to prepare for their careers. Those who cannot bear the extreme training have no choice but to quit. Deaths of recruits while undergoing training in academies, or in mysterious circumstances, are not uncommon.

The Asian Human Rights Commission (AHRC) is aware of the case of a promising and intelligent young man who quit the police academy due to unbearable training. He could have been a police major had he completed his training. For many weeks after quitting, he was emotionally and mentally disturbed due to his traumatic experience. Some of his senior cadets died while in training. He recalled having been deprived of food, and drinking water from the toilet bowl for days, with the knowledge and tacit consent of the superior officers or trainers. These inhuman practices have also played a part in turning police and military training academies into ‘torture chambers’.

This explains how police or soldiers become experts in torturing their victims; it begins from their own violent training. The drowning and suffocation simulation using plastic bags, blindfolding victims by wrapping their entire head with adhesive tape, inserting bullets between fingers and squeezing hard, the application of electric shocks on genitals and bodies, force-feeding victims excreta and urine, and forcing victims to dig a hole where they would be buried are among the common acts of torture in the country. These acts were also used during Marcos’s’ dictatorial regime against political dissenters; the police and soldiers are experts at such acts.

The roots of torture and punishment also exist from pre-colonial Philippines, when any person guilty of committing a serious crime after trial (which today would be considered as lacking logic and unjust), was sentenced to death. Historical accounts of crime offenders note that thieves were subjected to a ‘Trial by Ordeal’, wherein their innocence or guilt would depend on their endurance of pain: dipping their hands into boiling water for

instance. Also, during the Spanish and American colonial period, garrotting was systematically used to torture and execute criminals.

Today, torturers with past records of torturing victims become part of the government, they are elected as senators, promoted to higher police or military ranks, or are appointed to work in the government after retiring from law enforcement. Some of these persons were involved in torturing political dissidents during the Marcos regime. The total and continuing impunity these persons enjoy has resulted in the public lack of trust and confidence that perpetrators of crimes and abuses can be prosecuted.

In November 2009, the government made torture a criminal offence by enacting into law the Anti-Torture Act of 2009, after years of lobbying in which the AHRC also participated. Below is a profile of police stations and military headquarters where victims are tortured; these cases are but a fraction of those occurring in the country.

POLICE HEADQUARTERS, STATIONS:

Camp Rafael Crame

This is the national headquarters of the Philippine National Police (PNP) located in Quezon City, Metro Manila. It is a compound where key offices of the police, including the intelligence section, are stationed, as well as the residential quarters of top police officials. A victim claims he was tortured in this compound by police intelligence agents, following his arrest.

Torture victim Ricardo Ayeras accused the head of the PNP's intelligence group and two others of torturing him while in custody inside their headquarters. He was interrogated in absence of legal counsel and threatened with death if he refused to admit his involvement in a bomb blast. After being missing for several days, his relatives only learned he was in police custody when he was presented to the media (AS-098-2007: reference numbers throughout are to AHRC statements and appeals available online at www.humanrights.asia).

May 2007

General Santos City Police Office

In every city they have their own police office. This police station is located in General Santos City in Mindanao. This city police office is under the direct control and supervision of the PNP national headquarters; however, the local chief executive also functions as an oversight. This police office is known for illegally and arbitrarily detaining, torturing and forcibly disappearing persons. None of the complaints against them made progress in any court of law.

The policemen attached to this office arrested three men, Jehon Macalinsal, Arsul Ginta and Abubakar Amilhasan, whom they falsely accused of being responsible for bombing a mall. The three were detained at the Pendatun Police Station

April 2002

(PP1), one of the local police stations in the city, for three months without arrest orders. While in police custody Macalinsal, a gay rights activist, was sexually harassed and humiliated. They also subjected him and his companions to repeated questioning, forcing them to admit they were responsible for the bomb blast (UA-74-2005).

December 2005

Haron Abubakar Buisan was arrested by the General Santos City police in another person's stead. He was repeatedly kicked, beaten all over his body with stones and arbitrarily detained at the headquarters for three days without charges. At the time of arrest, the police did not present any arrest orders, explain the reasons for his arrest or the nature of charges against him (UA-251-2005).

April 2010

Another man, Anuar Hasim, was also arrested by the policemen attached to the same police headquarters. They tortured him in custody for seven days. He was severely beaten, suffocated with a plastic bag and had his left thumb burnt with lit cigarettes. The traces of torture were visible when he was visited by his wife, who took a photograph of them. When he was arrested, the policemen neither showed him arrest orders nor explained to him the reasons for his arrest (AHRC-UAC-065-2010).

HIDEOUTS, SAFE HOUSES:

Hideouts and safe houses are also used by the police and military to question and torture persons. Since such places are not legally acknowledged as regular detention facilities, oftentimes victims do not know their exact locations. Rules regarding keeping records of persons in police custody, access by the victim to his relatives or legal counsel and minimum rules on the rights of detainees do not apply in these places.

June 1996

Five accused collectively known as the 'Abadilla Five' were brutally tortured while kept in police hideouts. They were electrocuted, suffocated with plastic bags, brutally beaten and assaulted to force them to admit to murdering an influential police colonel. The Commission on Human Rights (CHR), who had conducted an investigation into their case, found sufficient evidence to prosecute the police and individuals involved in torturing them; however, until now, the CHR's recommendations to prosecute the perpetrators have not been acted upon by the Ombudsman.

April 2006

After being abducted by unknown persons (later known to be police and military officers), five men collectively known as the 'Tagaytay Five' were taken to various police and military hideouts where they were detained and tortured. Their relatives struggled in locating their whereabouts. They went to inquire at various police and military headquarters and even private morgues hoping to find their bodies, but to no avail. It was only seven days after their arrest that they came to know that the victims were held in police custody.

While in custody, they were kept blindfolded and their hands were tied behind their backs by the policemen attached to the Cavite Provincial Police Office (CPPO) of the PNP. They were assaulted, threatened with electrocution and death, and questioned without their legal counsel. One of them, Aristides, suffered a second-degree burn to his right leg (AHRC-UAU-041-2008).

MILITARY HEADQUARTERS:

Camp Siongco

This camp is the headquarters of the 6th Infantry Division (ID) of the Philippine Army located in Datu Odin Sinsuat, Maguindanao. Historically, the creation of this army unit and its headquarters in March 1973 was to fight against the onslaught of insurgency in Mindanao. Therefore, soldiers attached to this unit were perpetually accused of routinely arresting persons with suspected involvement in insurgent or ‘terrorist’ groups in Central Mindanao, with or without arrest orders.

After being arrested in separate incidents in Cotabato City, five men, Tohamie Ulong, Ting Idar, Jimmy Balulao, Esmael Mamalankas and Tho Akmad were taken to this military headquarters. The soldiers and police accused them of being involved in a bomb blast in Davao City. Finally, in January 2010, after years of trial, four of the victims were acquitted by the court.

April 2002

While inside the headquarters, the victims were subjected to questioning. They were blindfolded using a cloth and masking tape, had their necks strangled with their belts, had their heads wrapped with adhesive tape, were frightened by being told that the object placed on their lap was a bomb, having their fingers squeezed hard after inserting bullets between them, and given electric shocks (AHRC-UAU-002-2010).

Torture victim Hadji Omar Ramalan was also taken to this headquarters following his arrest at a checkpoint in Parang, Maguindanao. The soldiers suspected him of involvement in a bomb blast in the same town. In the camp, the soldiers assaulted him, struck his body with hard objects, applied electric shocks on him and squeezed his fingers hard after inserting bullets between them. They also forced him to drink a liquid substance, which tasted and smelled like urine. He was also threatened with being thrown into a canal and with having his sex organs fed to a dog.

January 2004

They also did not allow Omar to bathe, take care of his personal hygiene, sleep well, eat well or rest while in custody. He was placed inside a secluded room naked and severely tortured several times. He only heard the voices of his investigators. For four successive days, his relatives did not know his whereabouts as they kept looking for him (FA-04-2004).

Soldiers attached to this headquarters also tortured a farmer, Flory Balilid. He was arrested and detained on suspicion of

February 2004

being a communist rebel. When arrested, he was on his way to a village to haul his corn harvest. One of the soldiers covered his head and started assaulting him. He was struck with a rifle butt to his chest, underarm and punched on his neck. Several soldiers assaulted him one after another.

The soldiers humiliated him by pulling his underpants down and saying that he is not circumcised (to tell a man he is not circumcised is offensive in the Philippines). While in this ordeal, some of the soldiers were pointing their firearms at him. He was able to escape from the soldiers (FA-11-2004).

September 2005

Four farmers, Daniel Gusanan, his son Remy, Romeo Mural and Rhoderick Amante were also illegally arrested in Columbio, Sultan Kudarat, by soldiers attached to the same military headquarters. The four victims were arrested after their houses were raided without any search or arrest orders. The four were briefly detained at the detachment of the 66th Infantry Battalion (IB) in the same town, where they were tortured.

One of the victims, Amante, had his right toenail pulled off by one of the soldiers questioning him. The three others were also severely beaten. They were blindfolded, beaten on their chests and threatened with death. The soldiers were forcing them to admit they were responsible for the murder of a village chief (UA-167-2005).

May 2007

Two men, Thos Ulimpain and his cousin Nasser Mendo, were also tortured inside the headquarters of Camp Siongco. The soldiers arrested them over allegations of involvement in bombing incidents. They were repeatedly beaten every time they could not provide information. They were subjected to suffocation with a plastic bag, dragged along and made to sit on the cement floor, handcuffed and blindfolded. One of the victims also lost consciousness during the ordeal. (UA-204-2007)

January 2009

Mansur Utto Salih was abducted by soldiers attached to the same unit. They tortured him and held him incommunicado for over three months following his arrest. He still remains in detention over questionable charges.

While in custody, his ankles were chained, and the soldiers applied electric shocks to his sex organs, his body and behind his ears. Whenever he fainted they poured cold water on his face and body. Both his feet became swollen when they were repeatedly struck with an iron bar. He was also punched around the stomach and chest several times. The soldiers also deprived him of food and water (AHRC-UAC-081-2009).

Camp Capinpin

This camp is where the headquarters of the 202nd Infantry Brigade of the Philippine Army (PA) is located in Tanay, Rizal. Under arrest rules, arrested persons should be promptly turned over to the nearest police stations and not kept in military camps;

however, when they arrested these 43 persons the soldiers justified their detention in the camp on the pretext of ‘security threats’.

February 2010

Forty-three persons, collectively known as the ‘Morong 43’, were tortured while inside the headquarters. The 43, most of whom are community health workers, were arrested over fabricated and legally flawed charges. The soldiers allegedly applied electric shocks on some of the victims, they repeatedly hit them to their chest while questioning, and they were blindfolded and handcuffed. They were also deprived of sleep. The victims were accused of being members of a rebel group, the New People’s Army (NPA). (AHRC-UAU-005-2010)

The inquest proceeding of this case was also legally flawed. Under section 2 of the Department of Justice’s Department Circular No. 61, public prosecutors can only conduct inquests in police stations; however, the prosecutor in this case had conducted the inquest inside the military headquarters before the victims were turned over to regular detention facilities for trial.

Case analysis: Supreme Court's rulings on Vizconde and Abadilla cases are contradictory

Asian Human Rights Commission, Hong Kong

The Asian Human Rights Commission (AHRC) wishes to draw the attention of the Supreme Court (SC) of the Philippines to its recent decision on two well-known cases tried in the lower courts; the conviction in the Vizconde Massacre case was overturned while that of the Abadilla murder case was affirmed. The SC rendered its judgment on the Abadilla case on September 7 and on the Vizconde case on December 14 of this year [2010].

The SC's decision affirming the guilty verdict by the Regional Trial Court (RTC) of Quezon City on the Abadilla Five, the five men accused in the murder of police colonel Rolando Abadilla on June 13, 1996, is already the subject of a final appeal filed on October 8, 2010. The AHRC is deeply concerned by the contradiction in the application of jurisprudence by the SC in these cases, particularly its ruling on "positive identification", the "credibility of witness" and its appreciation of forensic evidence. All of these had been applied in acquitting the accused in the Vizconde case, which is contradictory to its earlier decision affirming the conviction of the Abadilla Five. The jurisprudence mentioned above that the SC invoked has not been equally applied.

The facts of the cases are as follows.

VIZCONDE MASSACRE CASE: This case is about the gang rape and murder of a 19-year-old woman, the murder of her 7-year-old sister and their mother on June 30, 1991 at their home in Paranaque City, Metro Manila. This is one of the most controversial and widely publicised massacre cases because of the involvement of the son of a former Philippine Senator, Freddie Webb; and six others from a wealthy family background similar to that of the accused.

This article comprises the text of a statement issued by the Asian Human Rights Commission, AHRC-STM-266-2010, dated 21 December 2010.

Webb's son, Hubert Jeffrey, is also the brother of a television host, Pinky, in one of the largest television networks in the country. Webb's co-accused, Antonio Lejano, is a son of a known singer and celebrity. The other accused were Artemio "Dong" Ventura, Michael A. Gatchalian, Hospicio "Pyke" Fernandez, Peter Estrada, Miguel "Ging" Rodriguez, and Joey Filart. A police officer, Gerardo Biong, has also been charged for destroying the evidence at the crime scene.

The prosecution of this case only began in August 10, 1995, four years after the massacre happened, when Jessica Alfaro, an informant working for the National Bureau of Investigation (NBI), told lawyer Artemio Sacaguing, an official of the NBI, that "she knew someone who had the real story behind the Vizconde massacre". When she could not produce the person, Sacaguing continued to press her saying that "she might as well assume the role of her informant."

Acting solely on Alfaro's testimony, the Department of Justice (DoJ) filed charges of rape with homicide against the eight accused on August 1995. The DoJ also placed Alfaro under the Witness Protection Program (WPP) during the trial period. The NBI is the agency responsible in providing security and protection of witnesses admitted under WPP. The NBI is a special investigating body attached to the DoJ.

On January 4, 2000, the Regional Trial Court of Paranaque City rendered its judgement "finding all the accused guilty as charged" imposing a penalty of life imprisonment. When the accused appealed the decision, the Court of Appeals (CA) affirmed the judgement of conviction by the RTC. On April this year, the Webbs filed an "urgent motion to acquit" when they found out that the NBI "no longer has custody of the specimen" that was taken from the body of the rape victim, Carmela Visconde.

During the trial, accused Webb made a defence of alibi claiming that he was in the United States when the massacre of the Vizcondes happened. To support this, Webb presented a "Certification issued by the U.S. Immigration and Naturalization Service" of August 31, 1995 confirming that "his entry into that country was recorded". But both the RTC and CA rejected his defence ruling that his "alibi cannot stand against Alfaro's positive identification of him as the rapist and killer".

On December 14, 2010, the SC rendered its decision on the appeals of the accused, questioning the guilty verdict by the RTC and the CA. It took the trial and appeal process in this case fifteen years. The SC acquitted all the accused, reversing and dismissing the guilty verdict of the RTC and the CA.

ABADILLA MURDER CASE: This case is about the murder of Rolando Abadilla, a police colonel during Marcos regime, at 8:30 on June 13, 1996 at the Katipunan Avenue, Quezon City. Originally, there were seven accused charged in this case. On August 11, 1999, the Regional Trial Court of Quezon City acquitted two of them and convicted the five others, now collectively known as the Abadilla Five. They are Lenido Lumanog, Augusto Santos, Senior Police Officer 2 (SPO2) Cesar Fortuna, Rameses de Jesus and Joel de Jesus. Their original conviction was capital punishment but their sentence was modified to life imprisonment when the death penalty was abolished.

There was only one vital witness for the prosecution, Freddie Alejo. It was Alejo who had “positively identified Joel and Lorenzo (delos Santos) during a police line-up. Alejo confirmed these two (2) as the persons he saw from his guard post walking to and fro before the shooting incident”. The RTC, however, acquitted Delos Santos despite being “positively identified” also by Alejo as one of those who was present at the crime scene.

Alejo’s testimonies in open court were also not consistent to what he had said to the police investigators immediately after the murder. In open court, he already said there were six, not four assailants; that it was two other gunmen, not one of the

The Abadilla Five:
Augusto Santos



four present close to the car who pointed the gun at him; and he was not nervous but rather had the opportunity to see the faces of all the assailants facing him all at the same time.

Apart from Alejo, earlier there was another witness, Merlito Herbas. Herbas and Alejo worked for the Abadillas as security guards. Like Alejo, Herbas also at first instance identified Joel de Jesus as one of the gunmen during a police line-up but later withdraw his statement in open court. The court rejected his testimony because he was a 'disgruntled witness'. Herbas had testified for the defence instead of the prosecution when the Abadilla "did not fulfil his promise to give him (Herbas) exactly the same salary he was receiving" and when he was "told that he would no longer be presented as witness because the testimony of Alejo would be sufficient". The prosecution did not present him as their witness during the trial.

Like Herbas, court records had also shown that Alejo has been receiving money and free accommodation from the Abadillas. For example, the prosecutor, instead of admitting Alejo to the WPP during trial, rather "chose instead to allow the Abadillas, who had an interest in Alejo's testimony, to make him dependent on them for his livelihood at least for the duration of the trial of the case". The prosecutors, the RTC and the CA have been made aware of this fact by the defence.

Similar to the Vizconde case, the five accused made a defence of alibi claiming that they were somewhere else on June 13, 1996 when the murder of Abadilla happened. Their claims were corroborated by witnesses who are disinterested parties, their relatives and friends and documentary evidence.

In their alibis, Joel de Jesus claimed he was driving his passenger tricycle in Fairview, Quezon City the whole day; for SPO2 Cesar Fortuna, he was at Camp Crame (headquarters of the Philippine National Police, PNP) for official business and his presence was also corroborated by two police officials whom he had transacted business with; for Augusto Santos, he was at the Jose Fabella Hospital in Sta. Cruz, Manila accompanying his brother-in-law, Jonas Padel Ayhon, whose wife had just given birth; and Rameses de Jesus and Lenido Lumanog had just left Manila for Mabalacat, Pampanga where they stayed until the evening of June 14.

DISCUSSION:

1. Credibility of a witness: In Vizconde case not credible, but credible in the Abadilla case

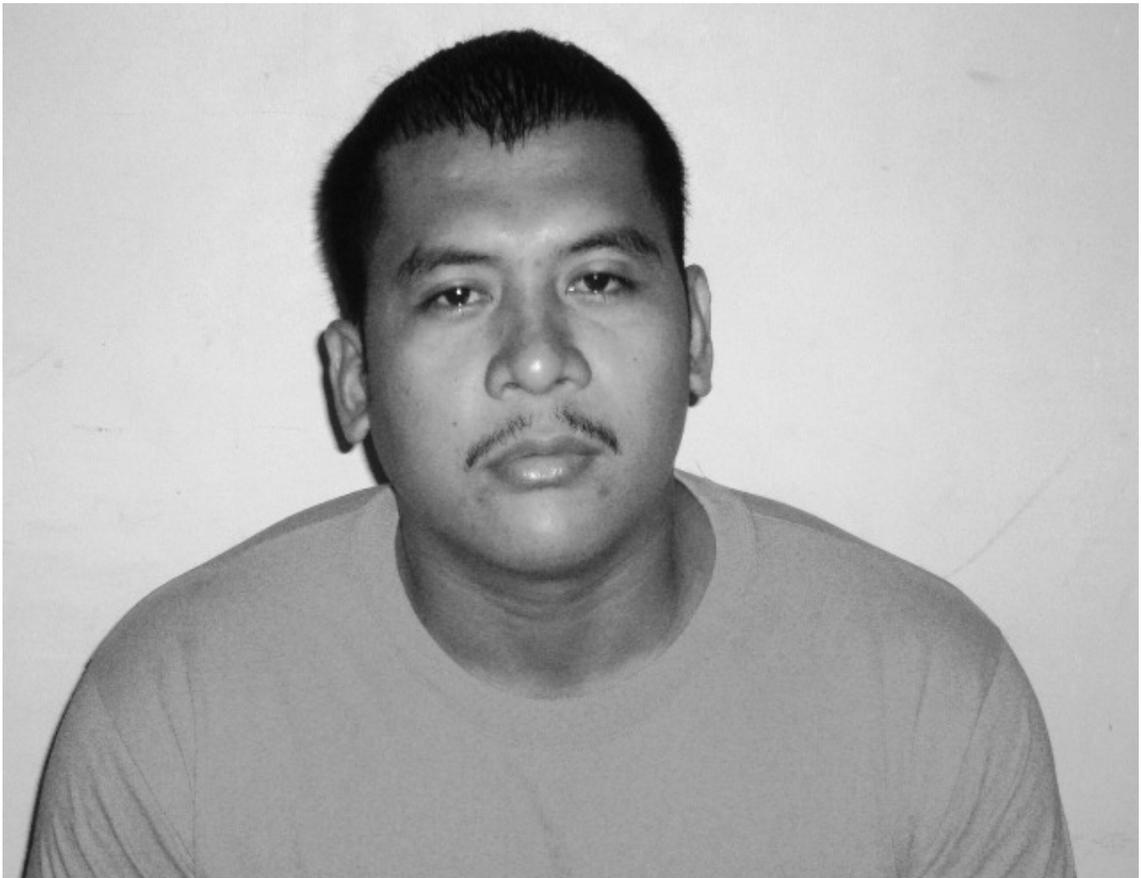
In Vizconde case: Jessica Alfaro's "positive identification" was rejected because she did not meet the test of a "credible witness" and that what "she personally saw must be believable, not inherently contrived". The SC required this test as necessary before a testimony of "positive identification" could be accepted as credible and with merit.

Firstly, the SC held Alfaro was not a credible witness. “She did not show up at the NBI as a spontaneous witness (only after four years) bothered by her conscience. She had been hanging around that agency for sometime as a stool pigeon, one paid for mixing up with criminals and squealing on them. Police assets are often criminals themselves. She was the prosecution’s worst possible choice for a witness. Indeed, her superior testified that she volunteered to play the role of witness in the Vizconde killings when she could not produce a man she promised to the NBI.”

The SC also held that it was possible for Alfaro to know the details about the Vizconde killings because she “had prior access to the details that the investigators knew of the case. She took advantage of her familiarity with these details to include in her testimony”. Thus, it was not surprising for Alfaro to testify with great details in court.

Secondly, “Alfaro’s quality as a witness and her inconsistent, if not inherently unbelievable, testimony cannot be the positive identification that jurisprudence acknowledges as sufficient”. The SC identified the inconsistencies and the incredible facts in Alfaro’s testimony: her claim that Hubert Jeffrey Webb and Carmela Vizconde had a relationship; that Carmela had another lover whom she met just before Hubert came to her home and that she saw in open the five other accused taking turns in raping

The Abadilla Five:
Joel de Jesus



Carmela. Alfaro claimed that Hubert was angry at Carmela thus raping and murdering her, her younger sister and her mother, to supposedly revenge her unfaithfulness to him.

Alfaro could not possibly prove the relationship between Hubert and Carmela, as they were strangers to each other, and Alfaro also could not have possibly identified the other accused because all of them were strangers to her. She did not know nor met any of them.

The SC, however, held that by failing to prove the existence of a relationship between Hubert and Carmela; and that the ‘lover’ that Alfaro claimed that Carmela had met did not come forward in public or in court, her testimonies about the accused and the victims were “like a piece of jigsaw puzzle trimmed to fit into the shape on the board but does not belong because it clashes with the surrounding pieces” and the lover was “a mere ghost of the imagination of Alfaro, the woman who made a living informing on criminals”.

In Abadilla case: The SC admitted the ‘positive identification’ of witness Freddie Alejo when it considered him a credible witness. This is despite questions to his credibility for receiving money and enjoying privileges while he was in Abadilla’s custody and the existence of inconsistencies in his testimonies in open court.

Firstly, like Alfaro, Alejo also received money and free accommodation from the persons who had interest in his testimony. Alejo had been under the Abadillas’ custody and protection instead of that of the WPP of the government. The SC did not apply the two tests it invoked on the Vizconde case before accepting the “positive identification” of Alejo as credible, and him as a credible witness.

Secondly, the SC affirmed the CA’s assertion that Alejo was a credible witness ignoring the questions to his credibility by arguing that “positive and unequivocal declaration is sufficient to support a conviction for murder against appellants. Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even for murder”.

On the acquittal of Lorenzo delos Santos, the accused whom Alejo had also positively identified, it ruled that his acquittal did not damage Alejo’s credibility; and his “positive identification” of the accused. It held that “the acquittal of their co-accused does not necessarily benefit the appellants. We have ruled that accused-appellant may not invoke the acquittal of the other conspirators to merit the reversal of his conviction for murder. For there is no law requiring that the testimony of a simple [sic] witness should be corroborated for it to be accorded full faith and credit”.

In rejecting questions to Alejo’s credibility, the SC affirmed the CA’s ruling that “the credible testimony of a lone witness(es) assumes more weight when there is no showing that he was actuated by improper motive to testify falsely against the accused,

as in the case of Freddie Alejo”. Both the SC and the CA affirmed the RTC’s guilty verdict without applying the test on the credibility of a witness as they did in Vizconde case.

2. Inconsistencies: In Vizconde case damages credibility, in Abadilla case does not

In Vizconde case: The SC applied two tests in rejecting the “positive identification” of Alfaro: firstly, the “credibility of a witness”; secondly, the testimony should be “believable, not inherently contrived”. It strictly laid down these as the least requirement in evaluating the credibility of the claim of “positive identification”. It cautioned itself from accepting the testimonies of witnesses without applying these tests. It held that “a positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused’s claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can”.

As already mentioned, the SC concluded Alfaro to be not a credible witness because she did not meet these two criteria. Thus, her testimony could not be admitted.

In Abadilla case: Both the RTC and the CA did not apply this test of credibility of a witness before accepting the testimony of Alejo. The CA rather held that “positive and unequivocal declaration is sufficient to support a conviction” which was

The Abadilla Five:
Lenido Lumanog



affirmed by the SC. It was also not true that there was “no showing that he (Alejo) was actuated by improper motive to testify falsely against the accused” because the defence had since been challenging his credibility during the trial.

One of the justices, Roberto Abad, who dissented the majority decision affirming the guilty verdict wrote: “the public prosecutor chose instead to allow the Abadillas, who had an interest in Alejo’s testimony, to make him dependent on them for his livelihood at least for the duration of the trial of the case. Knowing this, I cannot but hesitate to swallow everything that Alejo said at the trial”.

While the SC rejected Alfaró’s testimony being not a credible witness, it held Alejo still a credible witness despite the inconsistencies in his testimony. It defended the attack on Alejo’s credibility, for example, his inconsistencies on the number of gunmen, arguing that this had “already been explained by Alejo during cross-examination by correcting his earlier statement” and that the “affidavits, being ex-parte, are almost always incomplete and often inaccurate, but do not really detract from the credibility of witnesses.[165] The discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused,[166] as testimonial evidence carries more weight than an affidavit”.

3. Defence of alibi: In Vizconde case not admissible, in Abadilla case court acted on conjectures

Similar to the accused in Vizconde case, all the accused in the Abadilla case invoked their defence of alibi. Two of the accused have also been acquitted by the RTC on the basis of their defence of alibis. Lorenzo delos Santos was acquitted due to lack of evidence, but the RTC, the CA and the SC ignored that fact that the same “positive identification” it invoked in convicting the Abadilla Five came from exactly the same testimonies that have been used to acquit Delos Santos.

The SC, however, upheld the RTC and the CA’s judgement that the defence of alibi of the accused “is a weak defense, (and that) for it to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also, that it was physically impossible for him to be” or “within its immediate vicinity”. In rejecting the defence of the accused, the SC also affirmed the conjecture the CA had put forward as to the possibility that the accused could have been present or somewhere at the vicinity where the crime took place, as mentioned below:

On Joel de Jesus, “it was not impossible for him to have gone also Katipunan Avenue (from Quezon City where he was driving), which is also part of Quezon City, not to mention the fact that with his tricycle, he could have easily moved from one place to another”;

On Rameses de Jesus and Lenido Lumanog, their claims “lack credence as they are unsupported by the testimonies of independent witnesses. At any rate, Rameses de Jesus admitted that they were using the new car of Lenido Lumanog. Hence, it was not physically impossible for them to travel to Quezon City via the North Expressway at the time the crime took place”;

On Augusto Santos, the corroboration of his brother-in-law, Jonas Padel Ayhon, that he was at the Jose Fabella Hospital when the crime happened, the CA rejected his corroboration because he was not an “impartial witness” and ruled that “where nothing supports the alibi than the testimony of a relative, it deserves scant consideration”.

On SPO2 Cesar Fortuna, the RTC, the CA and the SC, accepted the fact that he was at Camp Crame, but the SC affirmed the RTC and the CA’s conjecture that “it was not impossible for him to have gone to Katipunan road, Blue Ridge, which is relatively near Camp Crame when the shooting happened around 8.40 in the morning. After the shooting, he could have easily and quickly transferred to Camp Crame between 9:00 and 9:30 in the morning”.

The Abadilla Five:
Rameses de Jesus



4. Conjectures have become the facts

In Vizconde case: The majority of the justices strongly argued against relying on conjectures on deciding the case, particularly on the claim that Hubert Jeffrey could have been in the Philippines, and not in the U.S., when the crime happened. Webb presented certifications from the U.S. Immigration but he failed to submit as evidence in court the original copy of his passport with immigration entry stamped on it.

But Justice Conchita Carpio Morales, who concurred with the decision, wrote strongly against basing judgement on conjectures: “Facts decide cases. Conjectures and suspicions are not facts, hence, they have no evidentiary value. They cannot be the bases of conviction as they cannot substitute for the constitutional requirement of proof of guilt beyond reasonable doubt. Suspicions, no matter how strong they are, must never sway judgment”. The majority of the justices also rejected as conjecture the argument of one of the dissenting justices, Martin Villarama Jr., that “it would not have been impossible during the interregnum for Webb to travel back to the country and again fly to the US several times considering that the travel time on board an airline from the Philippines to San Francisco, and from San Francisco to the Philippines takes only about twelve (12) to fourteen (14) hours”.

Justice Villarama argued that a photocopy of Webb’s passport in court to support his alibi and the testimonies of witnesses, mostly his relatives and friends could not be given merit, by cautioning his fellow justices that it “can be gleaned from the fact that passports and plane tickets indicating dates of arrival and departure do not necessarily prove that the very same person actually took the flight” and added that “indeed, alibi cannot be sustained where it is not only without credible corroboration, but also where it does not, on its face, demonstrate the physical impossibility of the accused’s presence at the place and time of the commission of the crime.[139] Against positive evidence, alibi becomes most unsatisfactory. Alibi cannot prevail over the positive identification of a credible witness [140].”

But Villarama’s opinion was not considered by the SC in their majority decision. Therefore, the SC’s rejection of Villamara’s opinion demonstrates a fundamental contradiction to its September 7 decision on the Abadilla case.

Firstly, in the Vizconde case, the SC still held as credible the corroborating testimonies of the witnesses favouring Hubert Jeffrey who are mostly his relatives and friends in support of his defence of alibi. But in the Abadilla case, the relatives and friends are “not an impartial witness” to corroborate the defence of alibi of the accused. For example, it rejected as not impartial the corroborating testimony of Augusto Santos’s brother-in-law that he was at the hospital with him when Abadilla was murdered.

Secondly, in the Abadilla case the SC held that the “defense of alibi is weak”, but in the Vizconde case it held that “not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman’s noose in the face of a witness positively swearing”.

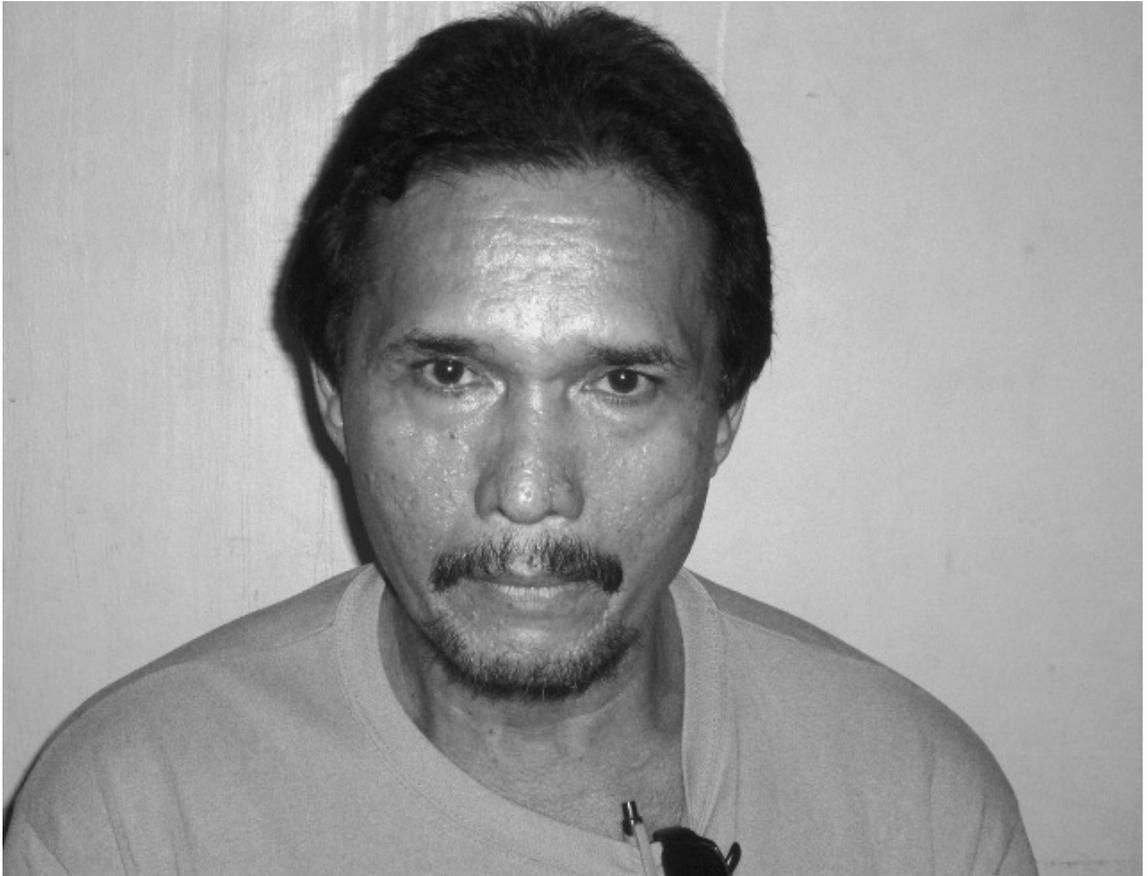
Therefore, the applications of the SC on evaluating the defence of alibi of the accused have not been equally applied.

In the Vizconde case, the SC does not accept “conjecture” as the basis of its decision. But in the Abadilla case, not only did the SC affirm the CA’s ruling in rejecting the defence of alibi, it did not also question the CA’s formulation of conjectures on which it based its judgement. The CA in effect crafted and formulated the conjectures giving them the appreciation similar to facts offered as evidence where it had based the judgment.

5. Forensic evidence: In Vizconde case it “cannot lie”, in Abadilla case it is “inconclusive”

In Abadilla case: The SC affirmed the CA’s judgement as “inconclusive” the use of forensic evidence, for example, the fingerprints and ballistic test results, showing that none of the

The Abadilla Five:
Cesar Fortuna



five accused had their fingerprints match to those extracted from the murder victim's car. The ballistic test results also did not match to any of the firearms supposedly taken from the accused to the empty shells that were recovered at the crime scene. The CA held that "these ballistic results are inconclusive and can never prevail over appellants' positive identification by eyewitness Freddie Alejo".

In Vizconde case: The SC has given weight to the importance of forensic evidence in a court trial. Hubert Jeffrey Webb sought for an acquittal after he had found out that the NBI could no longer produce the DNA specimen extracted from the cadaver of the rape victim. Hubert argued that the specimen could exonerate him from the charge and support his defence that he did not rape the victim. As to the failure to present the forensic evidence and its subsequent loss, the SC held: "the semen specimen taken from Carmela cannot possibly lie. It cannot be coached or allured by a promise of reward or financial support. No two persons have the same DNA fingerprint, with the exception of identical twins.[8] If, on examination, the DNA of the subject specimen does not belong to Webb, then he did not rape Carmela. It is that simple".

Once again, the SC's jurisprudence on admissibility of forensic evidence in criminal trial has not been equally applied.

CONCLUSION: The Asian Human Rights Commission (AHRC) is deeply concerned by this unequal application of jurisprudence by the SC on the Abadilla murder and the Vizconde massacre. The SC's decision in acquitting all the accused in the Vizconde case has fundamental contradictions to its earlier decision affirming the guilty verdict of the accused in the Abadilla case.

The AHRC urges the SC to thoroughly review the pending final appeal of the accused in the Abadilla case. It would be a serious miscarriage of justice and a demonstration of inequality before the law should jurisprudence not be applied equally. Like the accused in the Vizconde case and for any other cases for that matter, the accused in the Abadilla murder case also deserve equal protection of the law. Equal protection of the law is fundamental in the country's Constitution.

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Reforms required to protect witnesses in the Philippines

Asian Legal Resource Centre, Hong Kong

The Asian Legal Resource Centre (ALRC) welcomes the discussion during the 15th session of the Human Rights Council (HRC) concerning the High Commissioner's report on programmes and other measures for the protection of witnesses. The issue of failing witness protection systems is a key element in many Asian countries that permits impunity for State agents accused of grave human rights violations. In this submission, the ALRC will focus on the problems concerning the witness protection system in the Philippines.

In his report to the Human Rights Council on April 2008, Professor Philip Alston, UN Special Rapporteur on extra-judicial, summary or arbitrary executions, recommended that the Witness Protection Program (WPP) of the government of the Philippines "should be reformed and fully implemented." The ALRC has also informed the HRC in a written submission to the 9th session about the government's failure concerning the WPP's implementation, identifying this failure as the "the prime cause of the lack of witnesses and therefore convictions."

Despite the commitments made by government representatives during the Universal Periodic Review (UPR) to "protect the rights of all its citizens, and observe the Universal Declaration of Human Rights," the government has failed to introduce any effective reforms to the existing law on witness protection to ensure its full implementation and encourage witnesses into coming forward. This is required in order to improve the country's poor conviction rate. The government's failure to urgently implement the needed reforms has led to cases being withdrawn from court and even key witnesses, for example, a key witness in the high-profile 2009 massacre of journalists, being killed.

This article comprises two submissions by the Asian Legal Resource Centre to the 15th and 13th sessions of the UN Human Rights Council in Geneva during 2010. For all statements by the centre to successive sessions of the council visit the ALRC website: www.alrc.net

The ALRC would like to draw the Council's attention to the much-needed reforms to the Witness Protection, Security and Benefit Act (Republic Act 6981) that the government still has not performed and urge the Council to take all measures necessary to ensure that the government of the Philippines exhibits the appropriate levels of cooperation with UN experts and mechanisms, notably by implementing the recommendations made by Special Rapporteur Philip Alston and pledges made during the UPR.

No amendment to the existing law: The proposed amendment to the existing "Witness Protection, Security and Benefit Act (RA 6981)", which was declared by Professor Alston in his report as "deeply flawed", is pending in the two houses of Congress, the Philippine Senate and the House of Representatives. According to its official website, the proposed amendment authored by Roilo Golez in the House of Representatives, remains "pending with the Committee on Justice since July 27, 2010". The full text of the said proposal for amendment, however, is not available to the public, preventing a public debate on the matter.

Proposed Senate Bill 2081, authored by Senator Francisco Pangilinan, seeks to amend section 4 of RA 6981 to "provide for a separate Witness Protection, Security and Benefit Program for the resource persons and/or witnesses in legislative investigations." There has been no substantial progress concerning this Bill since it was first announced on February 13, 2008. Under the existing law, the screening, approval and implementation of the program is under the absolute control of the Department of Justice (DoJ). In highly political cases involving high-ranking government officials the DoJ lacks the independence and credibility to effectively protect witnesses testifying against government officials or members of the security forces accused of perpetrating crimes. For example, the Solicitor General, who is under the DoJ, also represents the interest of the military and police forces in court cases, and therefore has a conflict of interest in protecting witnesses standing against these forces.

The Senate's decision to increase the budget of the WPP from 84 million Pesos to 114 million Pesos for year 2009 deserves appreciation. However, unless this increase is accompanied by amendments to the budget allocation of the law, there is no guarantee that the WPP, which reportedly maintains only two staff and borrows staff from the National Prosecution Service (NPS), also attached to the DoJ, can be shielded from political interference and control. As of December 2008, a total of around 560 state witnesses were known to have received protection under the program nationwide.

Limitations of the law: Under the law a person who is "testifying or about to testify before any judicial or quasi-judicial body" can be admitted in the programme. However, under the existing practice, witnesses are only admitted when the case they are testifying in has been filed in court. There is no interim

“ Under the witness protection law a person who is ‘testifying or about to testify before any judicial or quasi-judicial body’ can be admitted in the programme; however, under existing practice, witnesses are only admitted when the case they are testifying in has been filed in court ”

“The failure to provide interim protection prior to DoJ approval of applications has been preventing most witnesses from coming forward”

protection mechanism available for persons who are waiting for a decision by the DoJ, which screens witnesses for the program to determine if the person is qualified to act as a witness. There is also no time limitation for the DoJ to resolve applications for protection under the program. This denies potential witnesses protection at times when they may need it urgently.

The killing on June 14, 2010 of Suwaib Upham (nickname Jessie), one of the key witnesses for the prosecution concerning the high-profile Maguindanao massacre illustrates the gross failure by the DoJ in responding to applications requiring urgent response. At the time of his murder, Suwaib was not officially yet under the program. He had been waiting for the DoJ's decision for inclusion in the program since March after submitting the necessary application papers, but the DoJ rejected his application in April 2010, after a long delay, without giving adequate explanation.

While private prosecutor Harry Roque considered Suwaib, who took part in the killing of 57 people in the November 23 massacre, as being a “strong witness,” former DoJ acting secretary Alberto Agra, referred to him as a “killer.” Roque reportedly said that Agra “did not give a reason for not taking” him under the programme. Suwaib was killed the day before he was to fly to Metro Manila to re-apply for inclusion in the program after learning about a change of leadership in the DoJ.

In many cases the failure by the government to provide interim protection prior to DoJ approval of applications has been preventing most witnesses from coming forward. It also therefore prevents cases from being filed in court for prosecution even if there are witnesses available, or being dismissed due to a lack of witnesses willing to testify.

No provisions concerning breaches of confidentiality: Before witnesses are admitted to the programme, the law provides for punishments for government employees who breach data confidentiality concerning the identity of the witnesses. The law, however, does not have any provisions concerning sanctions against persons who are not part of the government and who put witnesses at risk by exposing their identities. The killing of Suwaib Upham, one of the key witnesses concerning the Maguindanao massacre, can be attributed to the failure to protect his identity and illustrates the lack of accountability in preserving confidential information.

The WPP is built on political control: The DoJ is under the control and supervision of the executive branch of government. When cases that the DoJ is prosecuting conflict with the interests of the executive and its officials, the implementation of the WPP is detrimentally affected. Any applications that risk undermining the government will likely be rejected. The DoJ Secretary is the final arbiter under the law concerning the implementation of the WPP. In order to avoid being under the control of the DoJ, other bodies, for example the Commission on Human Rights

(CHR), have had to develop their own witness protection programmes, notably in this instance to deal with cases involving human rights violations by State-agents.

Weak support system: Most witnesses are reluctant to testify because of the very poor support system provided by the DoJ, particularly the financial support given to the witnesses' families. The amount the witness receives, once admitted to the program, is very low compared to the income the person typically had before he/she was admitted to the program. It cannot support their family, especially if the case drags on for years. For example, the witness to the murder of journalist Dennis Cuesta on August 9, 2008, has reportedly struggled to meet the needs of his wife and children, who were also under the program. They are only given 8,000 Pesos (USD 177) allowance a month. He lives with his family in a safe house run by the program but the living costs in the place where they live are very high and they can't find alternative sources of income to meet their needs, including for their children's schooling.

There is also no support system for recreation and self-development for witnesses, for them to become productive, alongside the protecting and security aspect of the program. Concerning the witness in Cuesta's case, all he does all day is "watch television, read books, and worry about the safety of his children," according to a report by the Committee to Protect Journalists (CPJ). Witnesses who suffer from trauma do not have any opportunity to receive professional psychological support or treatment. For many persons being admitted to the program is tantamount to becoming a guarded prisoner.

Uneven application of the law: The law provides no interim protection for witnesses. However, influential persons who have connections in the government can obtain security and protection. In the massacre case mentioned above, the policemen who wanted to testify against accused policemen in the case were given interim protection by the DoJ.

Under the law, policemen and military are not qualified to be admitted under the programme; however, in cases in which these policemen are testifying against their superiors, who have power and authority over their promotions, assignments and other aspects, it is simply impossible for them to come forward and testify without protection.

The National Bureau of Investigation (NBI), a special investigating body attached to the DoJ, can provide protection to witnesses, but such protection would have to be paid for by the person being protected. This prevents witnesses and victims' family members from testifying or asking for protection.

Prisoners who are also witnesses: For a prisoner who wants to testify, the policy on whether or not he can also qualify to enlist in the program is not clear. In one case, after torture victim Rundren Lao and ten of his companions filed charges against policemen following their arrest on February 2006 in Buquias,

“For a prisoner who wants to testify, the policy on whether or not he can also qualify to enlist in the program is not clear”

“Under the police force’s rules, it is the responsibility of the police to give protection to any person that is being threatened, even if the person is not a witness”

Benguet, they were informed of a plot to kill them inside the prison. The prisoner, who admitted having received the 100,000 Pesos (USD2,200) and a knife he would use to kill them, chose to inform the victims of the plot instead. He was willing to cooperate in the investigation to disclose the identities of those who planned the killings on the condition that he would have protection. However, despite having been informed of this, the authorities concerned paid no attention to his request and the identities of those planning the killings were never ascertained.

The police’s role in protecting witnesses: In practice, while the police encourage witnesses to come forward, they do not take prompt or effective actions to protect them. Under the police force’s rules, it is the responsibility of the police to give protection to any person that is being threatened, even if the person is not a witness. If necessary, the police may request/recommend that the DoJ admit the person to the program once a case is filed. Because of the lack of protection for witnesses at the early stage of the process, such as during police investigations, most cases do not progress beyond the initial stages of investigation. For example, this is the case in at least 538 cases of vigilante killings since 1998 in Davao City that the Commission on Human Rights (CHR) had investigated by early 2009. In principle those who are testifying or are about to testify can be admitted into the program. However, witnesses who help the police are often not officially enlisted in the program. The police obtain information from them but do not give them protection. Without binding arrangements between the police and witnesses, the latter are not under any legal obligation to appear in court and often can’t be found.

Council urged to ensure that justice is delivered concerning the Maguindanao Massacre

The Asian Legal Resource Centre (ALRC) wishes to bring to the attention of the Human Rights Council (HRC) the ongoing situation of impunity in the Philippines, illustrated by the failure by the government to take appropriate action in the widely-reported massacre of 57 persons including 32 journalists that took place in Ampatuan, Maguindanao province, Mindanao, on November 23, 2009. This is the single incident in which the largest number of journalists has ever been killed.

The massacre targeted a group that were travelling to file documents for the registration of Esmael Mangudadatu, challenging the incumbent governor, a member of the Ampatuan clan, in the race to be elected local governor. The party included numerous journalists accompanying Mangudadatu’s wife, as well as two human rights lawyers. They were halted by a group of armed men and executed.

The government of the Philippines’ elected local officials and its security forces were involved in perpetrating this atrocity, now known as the ‘Maguindanao Massacre’ which represents the worst election-related violent incident in the country’s recent history. The ALRC urges the Council to react to the interventions

made by several Special Procedures regarding the massacre and to urge the government of the Philippines to ensure that this event is effectively investigated, with those found responsible brought to trial and punished in accordance with international norms and standards.

A member of the Ampatuan family, Datu Andal Ampatuan Jr., was identified as the principal suspect in the massacre, and was arrested on November 26, 2009. On February 5, 2010, the Department of Justice (DoJ) indicted 197 individuals concerning the massacre. Fifteen of them were members of a powerful political clan, the Ampatuans; 62 were policemen; four were soldiers and the remainder included members of several militia forces. The list of those responsible, which includes powerful local officials and top police commanders, makes this a crucial test of the rule of law in the country, as previously State agents have typically enjoyed complete impunity concerning a wide range of human rights violations, including hundreds of alleged extrajudicial killings.

The list of those indicted is telling of the state of law enforcement and the rule of law in the Philippines. State agents function contrary to their lawful obligations to protect lives, and the liberty and property of the country's citizens. Instead, they serve the interests of the local political elite. The massacre also shines a light on the dangers associated with the government's policy to recruit and train civilians as a 'force multiplier' to counter insurgencies, as these have become private armies for local politicians.

The police and the military should also be held to account for failing to protect the lives of the victims. Both Police Chief Superintendent Faisal Ampao Umpa, the regional director of the Philippine National Police (PNP) in the Autonomous Region of Muslim Mindanao (ARMM) and Colonel Medardo Geslani, commanding officer of the 601st Brigade of the Philippine Army (PA), denied requests for security escorts by the Mangudadatus and the journalists in their convoy.

Geslani's senior officer, Major General Alfredo Cayton, commanding general of the army's 6th Infantry Division, insisted that it was safe for the convoy to travel when justifying the military's refusal to provide security. This illustrates the absence of even a rudimentary protection mechanism in the country, and even suggests complicity at the highest levels. While senior police and military officials were refusing to provide protection, their men were directly participating in the pre-meditated executions. It is essential for full and impartial investigations into this massacre to establish responsibility through the chain of command. Given the authorities in the Philippines poor track record in conducting any such investigations and prosecutions, there is a clear role for the international community to play.

“The Maguindanao massacre shines a light on the dangers associated with the government's policy to recruit and train civilians as a 'force multiplier' to counter insurgencies, as these have become private armies for local politicians ”

“Grabbing power from the government was not the Ampatuan’s political end; this is a purely criminal matter that should be dealt with accordingly.”

Investigations will likely face numerous hurdles, as the policemen involved also attempted to cover up the massacre by deliberately failing to record details concerning the massacre in their daily log, according to the findings of a prosecution panel. The exhumation and recovery of bodies was reportedly also carried out in ways that have destroyed vital forensic evidence.

The government’s response to the massacre was, in initially, one that further threatened fundamental human rights rather than ensured the delivery of justice. The declaration by the President of Proclamation No. 1959, placing the province’s 36 municipalities (except the areas previously identified as having been occupied by Moro rebels) under Martial Law and suspending habeas corpus resulted in numerous arbitrary arrests and detention, illegal searches of persons and properties, many of whom had nothing to do with the massacre.

Proclamation No. 1959 has risked making any legal action taken against those accused of being involved in rebellion, as is the case with those charged in the Maguindanao massacre, including evidence collected during the period of martial law, legally and procedurally flawed. This has placed the prosecution of those responsible in doubt.

Added to this, there is legal ambiguity concerning the crime of rebellion. For example, in a case involving the so-called “Tagaytay Five,” the Regional Trial Court (RTC) in Tagaytay City ruled, in August 2008, that the prosecutors failed to prove that the crime of rebellion existed at all or had been committed, resulting in their case being dismissed and their release from jail. The court held that: “by its nature, rebellion is a crime of the masses or multitudes involving crowd actions done in furtherance of a political end.” In order for the crime to exist legally “both the purpose and overt acts are essential components of [the] one crime, without either of them the crime legally does not exist.”

The act of taking up arms and the presence of “heavily armed groups” in order “to resist government troops” from affecting arrests or conducting searches—the arguments used as the justification by President Gloria Macapagal-Arroyo in declaring martial law—did not meet the fundamental elements that constitute the crime of rebellion. So legally, the crime never occurred and prosecution in court is inappropriate. The Ampatuans, a political clan accused of involvement in the November 23, 2009 Maguindanao massacre, were not taking up arms to grab power from the government. They, and their hundreds of supporters, are the people in power. The crime of rebellion was concocted by the government to justify the constitutionality of martial rule.

Grabbing power from the government was not the Ampatuan’s political end, nor was it the purpose of their heavily armed supporters. They are, as shown by their overt acts, either resisting arrest or obstructing the security forces from arresting and conducting searches as part of a police investigation. This is thus a purely criminal matter that should be dealt with accordingly by

the police. Thus, the prosecution of the accused in the rebellion case was instead a political move by the Department of Justice, one of the agencies that openly defended martial law to justify Proclamation No. 1959. This was never truly about prosecution of the crime of rebellion or for violations of criminal law.

Although Proclamation No. 1959 has now been lifted, Proclamation No. 1946, which was issued on 24 November 2009, placing the provinces of Maguindanao, Sultan Kudarat and the City of Cotabato under a state of emergency, remains in effect [at time of writing]. The military establishment has recommended prolonging the state of emergency until the winners of the May 2010 elections assume office in June 2010. However, under the state of emergency, human rights have been suspended and violations of rights are taking place on a daily basis. The ALRC urges the government of the Philippines to immediately lift this state of emergency and ensure the safety of its citizens through legal means that respect human rights.

The ALRC also urges the government of the Philippines to dismantle all non-State armed groups provided with law-enforcement powers, as the use of such groups has enabled local politicians to maintain private armies, leading to numerous incidents of violence, including the massacre in question here. Specifically, the government must dismantle the police's Civilian Volunteer Organizations (CVOs) and the army's Civilian Auxiliary Force Geographical Units (CAFGUs). Their continuing existence to this day, despite repeated local and international demands to have them dismantled, is an indicator of the government's tolerance of vigilantism, for which it must make amends.

The government should also without further delay implement the recommendations made in the Melo Commission Report in January 22, 2007, notably that calling for the enactment of a 'Special law for strict chain-of-command responsibility'. The government's failure to do so despite the passage of three years has contributed to the continuing impunity with which the police and military establishment conduct widespread human rights violations. The Maguindanao Massacre should act as a test case to assist in the establishment of mechanisms and laws to ensure that such atrocities cannot occur again. The best way to ensure future protection of human rights is to tackle impunity in the present.

The government should also review the existing processes through which police officials are selected and appointed to head provincial and town police commands. Presently, local executives have had control over the appointment and transfer of police commanders in their localities, leading to the police being heavily politicised.

There remain significant concerns that as international attention turns away from the Philippines in the aftermath of the massacre, the early steps taken by the government, including the arrest and indictment of 197 suspects in the massacre, will

“The government should implement recommendations made in the Melo Commission Report in 2007, calling for the enactment of a ‘Special law for strict chain-of-command responsibility’ ”

“Anything less than fair trials establishing and punishing all of those responsible for the massacre will have a seriously deleterious impact on the struggle to establish human rights and combat impunity in the Philippines ”

not progress into successful prosecutions and the effective delivery of justice. It is imperative for the future of human rights that justice be done and be seen to be done concerning this high-profile case. Anything less than fair trials establishing and punishing all of those responsible for the massacre, regardless of their rank in the establishment, will have a seriously deleterious impact on the struggle to establish human rights and combat impunity, as well as the freedoms of expression and the media in the Philippines.

The Human Rights Council is therefore urged to take all measures necessary to ensure that credible, impartial investigations are conducted, prosecutions are carried out in line with international standards, and those responsible receive adequate punishment and the relatives of those killed in the Maguindanao Massacre receive adequate compensation. This is important not only as concerns the case itself, but also for the prospect of improvements to the protection of human rights in the Philippines in general for years to come.

Abadilla



5



jailed for 12 years,
without justice

Court Delays Affect Us All!

In the last twelve years, Rolando Abadilla, Cesar Fortuna, Lemilo Lumanog, Ramon de Jesus and Augusto Santos have waited behind bars, for the resolution of their case. Aside from claiming some 66000, they also complained about torture. How much longer should they continue to endure more violence and brutality, more injustice. What is the biggest Philippine Justice System?

June 13, 1996: Col. Rolando Abadilla is ambushed on Katipunan Avenue, Quezon City.

August 11, 1999: the Regional Trial Court of Quezon City convicted Joel de Jesus, Cesar Fortuna, Lemilo Lumanog, Ramon de Jesus and Augusto Santos of murder.

December 1999: Commanding Officer of Alex Boncayao Brigade issues public statement stating that Abadilla had been responsible for the killing of Rolando Abadilla for reasons of "revolutionary justice."

January 2000: A member of the ABS passed to Fr. Roberto P. Reyes the Omega watch which he claimed belonged to Abadilla. Attempts by Fr. Reyes and defense lawyers to enter the new and other additional evidence were rejected by the Regional Trial Court, which instead elevated the case to the Supreme Court for review (as is required by law for all death penalty cases).

April 22, 2003: Lumanog's kidney transplant operation

March 25, 2004: DCI recommends that certain arresting police officers be indicted for delay in the delivery of detained persons & violation of the law on custodial investigation but not of other charges, including torture.

January 18, 2005: Supreme Court responds with resolution transferring the case to the Court of Appeals for appropriate action and disposition in conformity with its new jurisprudence pursuant to the judgment in "Mateo."

April 1, 2008: After 8 years, Court of Appeals concludes its appellate review Abadilla's case and reaffirmed the eight-year old decision of the Regional Trial Court.

May 5, 2008: Filing of the appeal Petition of Lumanog & Santos with the SC (G.R. No. 182555) but assigned to the Court of Appeals.

June 16, 2008: Supreme Court requires the Solicitor General (SG) to comment on the Petition for Review on Certiorari.

September 2008: Complaint of torture and other human rights violations on Abadilla's still-pending with the Ombudsman.

<http://www.punitiveaction.com/rolando>

Asian Human Rights Commission



In this issue of *article 2*

SPECIAL REPORT:

Torture in the Philippines & the unfulfilled promise of the 1987 Constitution

Basil Fernando, Director, Policy & Programme Development, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

- Overcoming the failure of the 1987 Constitution of the Philippines: Changing the operating structures of an authoritarian regime

Danilo Reyes, Programme Officer, Asian Human Rights Commission, Hong Kong

- Torture and wrongful prosecution of alleged bombers and assassins

Philippines Desk, Asian Human Rights Commission, Hong Kong

- The limitations of the Philippines' Anti-Torture Act
- The role of defence lawyers and prosecutors is to encourage witnesses to speak, not merely to find contradictions: An interview with Bijo Francis on the Maguindanao massacre trial

Pepe Panglao, Writer, Hong Kong

- A Filipino in Hong Kong: Looking from a territory with protection towards a country without

And

- Eleven recent cases of torture in the Philippines
- Torturers and torture chambers in the Philippines
- Case analysis: Supreme Court's rulings on Vizconde and Abadilla cases are contradictory
- Reforms required to protect witnesses in the Philippines
- Anti-Torture Act of 2009

Cover illustration: Artist's interpretation of the police torture of Cesar Fortuna, one of the Abadilla Five (Illustration by Albert Rodriguez, Philippine Daily Inquirer)

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