

HOW MANY MORE?



BISHOP
ALBERTO
RAMENTO
Killed
October 3, 2006
Tarlac City
Philippines

**STOP THE KILLINGS
in the Philippines!**

Hong Kong Campaign for the Advancement of Human Rights and Peace in the Philippines
Asian Human Rights Commission / KARAPATAN-Stop the Killings in the Philippines Campaign

Lesson Series 57

Arbitrary deprivation of life in the Philippines

Summary

In studying the widespread situation of extrajudicial killings in the Philippines today, this lesson documents how arbitrary deprivation of life has become a norm in that society. Such arbitrary deprivation takes numerous forms and occurs under various pretexts. Ultimately, it erodes value for human life and destroys the criminal justice system.

Whether in the way of abductions, disappearances or outright killings, arbitrary deprivation of life is hardly new to Asia. And yet, the protection of the right to life is the basis of all international human rights norms.

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THEME: Arbitrary deprivation of life in the Philippines

The Issue

While the right to life is a fundamental human right that forms the basis of all international human rights norms and principles, there are unfortunately numerous forms of arbitrary deprivation of life that occur throughout Asia. These include enforced disappearances and extrajudicial killings. The existence of such gross human rights violations belies the responsibility of the state to protect its citizens and ensure their well-being.

The Lessons

Lesson 1 examines cases of arbitrary and extrajudicial killings occurring in the Philippines as well as the country's criminal justice system.

Lesson 2 discusses international standards protecting the right to life, including principles guiding the use of force by law enforcement agencies.

Cover image: Postcard depicting extrajudicial killings. Source: AHRC.

Lesson 1

A. Cases of arbitrary deprivation of life

The Philippines has seen a horrendous number of lives lost through arbitrary killings. Below are some pretexts for such killings:

‘Legitimate encounter’

Individuals who lose their lives in ‘legitimate encounters’ are usually civilians who have been killed on the pretext of an armed encounter between security forces, soldiers and/or police, and illegal armed groups, rebel or ‘terrorist’ groups.

‘Vigilante killings’

This term initially referred to killings committed by the notorious group ‘Davao Deaths Squads’, or the ‘DDS’. Their victims are persons accused of being involved in criminal activities or gang warfare. Former detainees, recidivist offenders, or those with criminal records have also lost their lives in this manner.

With similar violence now also occurring in Davao’s neighboring cities, ‘DDS’ has evolved into Dadiangas Death Squads and Digos Death Squads—Dadiangas and Digos being two cities near Davao.

‘Gangwar’

Deaths supposedly motivated by gang rivalry are quickly dismissed under this term. However, most victims’ deaths are being concluded as such even prior to any thorough investigation. There are also claims that the killers could have been hired by security forces themselves, or have links with rogue police.

‘Shootout/Rubout’

The deaths of crime suspects, often during police operations, are explained under this category. In a ‘shootout’, individuals are killed because they fought or traded bullets with the police. A ‘rubout’ is the opposite; as the Philippines Commission on Human Rights describes, it is a summary killing.

If a death occurs as a result of a shootout, the police are not accountable. There have been several deaths however, where persons were killed without putting up a firefight at all.

Regardless of how these deaths are termed, they all constitute an arbitrary deprivation of life, and are an obvious result of the police and government’s failure to protect citizens’ lives, and to hold those responsible to account. The state’s inability

to undertake effective investigations in these cases, to identify perpetrators and provide witness protection has further fueled such arbitrary deaths in the country [Danilo Reyes, 'Documenting the slaughter of innocents', *Ethics in Action*, vol. 2, no. 3, June 2008, pp. 14-15].

Since January 2008, the Asian Human Rights Commission (AHRC) reported the extrajudicial killing of 42 persons, including women and children, by vigilantes in the country's south. Earlier, the AHRC had also documented 139 cases of extrajudicial killings of social activists between January 2003 and November 2007. Local groups estimate that there have been 886 such killings and 179 forced disappearances between 2001 and July 2007. Almost none of these cases have resulted in convictions, nor have the perpetrators been identified, charged or prosecuted in court.

Of the 42 killings documented in 2008, the following ten cases of vigilante killings/shootings were reported by the AHRC on 12 August 2008, in the cities of Tagum, Cagayan de Oro, General Santos, Carmen and Davao del Norte, all in southern Mindanao; and in Cebu City in Central Philippines:

1. **JOEL BAPILAR**, 25, of Purok Talisay, Tagum City, Davao del Norte. On June 19, Joel was at the city's public transport passenger terminal when an unidentified man shot him in the head, killing him instantly. He had reportedly been detained for rape earlier, and was released in November 2007.
2. **CELMAR RADAZA**, 30, of Everlasting Street, Cagayan de Oro City. On June 30, when he was standing along a dark portion of the street, two men travelling on motorcycles shot him. He suffered gunshot wounds to his shoulder and the back of his head. He was declared dead on arrival at a hospital. Police recovered a sachet containing methamphetamine hydrochloride from his hand. He was reported to be a member of the BM-29 gang.
3. **CARYL LLOYD ABELLANA**, 20, and cousin **CHRISTIAN ARSUA**, 23, of Crossing Ulas, Davao City. On June 30, when the two victims were playing a game of cards, two unidentified men approached them. One stabbed Abellana and shot him in the stomach, hand and shoulder, while the other attacker shot Arsua on his right thigh. The suspects fled by motorcycle. According to one of the victim's relatives, "We could not do something about what happened to the victims as they have done something wrong in the past." The two men were last reported undergoing treatment.
4. **ALBERT BATAYULA**, alias **KOKONG**, 21, former employee of a beverage company and a resident of Barangay Labangal, General Santos City. On July 2, when he was about to board a tricycle on his way home, he was shot by a lone gunman in the back and head and later died from the fatal gunshot wounds. The gunman ran to a waiting motorcycle to escape. Police claimed no witnesses were willing to cooperate in the investigation.

5. **JASPER CANTON**, alias TABILONG, 28, of Barangay Duljo-Fatima, Sugbo City. On July 9, the day the victim was supposed to be charged with attempted murder in court, was shot dead by an unidentified man as he was riding on public transport. The suspect sped off with another unidentified man on a motorcycle. The victim was reported to have also been involved in a clan conflict.

6. **GILSON BINDANILLO**, 21, of Union Village, Barangay Mankilam, Tagum City. On July 8, when he was playing billiards at a crowded billiard hall, two men appeared on a motorcycle, one of whom shot the victim several times. The three gunshots caused the victim's death. The gunman left the scene of the crime with his companion.

7. **TEODOLO ALQUISAR**, 30, a motorcycle taxi driver of Purok 1, Magsaysay, Carmen, Davao del Norte. On July 7, when he was playing basketball, a lone gunman approached and shot him several times in the neck and body. The gunman escaped with his companion, who was waiting for him on a motorcycle nearby. The victim was already dead when he was taken to the hospital.

8. **UNIDENTIFIED**, found in Cagayan de Oro City. On July 7, an unidentified man was found dead in the city's Zone 9, Bulua. His injuries show that he was tortured. The police discovered he had been stabbed 14 times and had gunshot wounds in different parts of his body. The victim did not bear any identification documents [See AHRC-UAU-051-2008 for more information].

In January 2008, the government investigating body Task Force Usig concluded that a farmer, Tildo Rebamonte, who was found dead four days after he had disappeared, was a 'rebel killed in a legitimate encounter' with the police. For the head of the investigating body, as well as the police, such a conclusion was enough to close the case and excuse the police from all responsibility of the man's death.

But who has the authority to decide that a person's death or the manner he was killed was legitimate or not? It is not the police. Even when he was killed in the manner the police claim, still it does not give any molecule of immunity to the actions by the policemen which resulted to the deprivation of a person's life. The security forces had fundamental obligations to ensure protection of right to life. Deprivation of this right to life perpetrated by security forces is so grave that explanation to his death must be substantial and reasonable. Therefore, the police owe an explanation to the victim's relatives and family: How was he killed?

The government's obligation, as State party to the International Covenant on Civil and Political Rights (ICCPR), to do so is rightly mentioned in the excerpt of the UN Human Rights Committee's General Comment No. 6 (3 and 4); "... States parties should take measure not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. State should

establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared person” [AHRC, “Legitimate encounter’ is not a license to kill’, AHRC-STM-023-2008, 24 January 2008].

Moreover, allegations were made that before Tildo Rebamonte was found dead, several policemen forcibly entered his residence, handcuffed him and took him away to use as a guide in search for rebels and their camps. He then went missing for four days until his mutilated body was found. This needs to be investigated. It is not the responsibility of the police to reach conclusions and verdicts regarding cases; that is the responsibility of the court. The police should focus on investigation and the collection of evidence, which will help the court in its proceedings.

Concluding and deciding prematurely that the victim’s death does not merit further investigation constitutes an excess of the police duty and usurping of the court’s judicial power and authority to hear complaints and cases. If these practices are allowed to continue it will seriously threaten every citizen’s fundamental right which gravely puts to risk, not only the activist, but every citizen. This action by the police of prematurely making conclusions and their distorted understanding of the protection of right to life and the State’s obligation to uphold it thus legitimized this murder.

It is every Filipino’s Constitutional right that every allegation of police atrocities and violations of rights are effectively investigated and remedies are made available. In this case, however, the police effectively deprived the victim’s relatives and families of their right from obtaining that remedy; an investigation into the victim’s death that is adequate and effective. They denied them the possibility of adequate remedies when they concluded the investigation based on their judgment. They made themselves complicit in depriving them of any possibilities of redress and remedies... Not only had they effectively given the policemen immunity from prosecution but also a de facto license to kill without being held responsible [AHRC, “Legitimate encounter’ is not a license to kill’].

State officials in the Philippines have even resorted to justifying these killings and therein removing—in their own minds at least—the need for any investigation. In the case of seven alleged criminals killed in separate shooting incidents by men reportedly on motorbikes from March 18-22 in General Santos city for instance, the police and mayor wasted no time in announcing that the killings were likely the result of a conflict amongst thieves, given that all the victims had criminal records.

One of the victims, 16-year old Rolim Dagano, was reported to be on a ‘list’ of persons allegedly involved in the theft of motorcycles. Prior to this killing, murders of motorcyclists and the subsequent theft of their motorcycles was a widespread problem—at least ten were reported in January alone. Aside from Rolim, the remaining victims were not on any ‘list’ of criminals.

Whether or not the murder victim had a criminal record is irrelevant however, to carrying out an effective investigation. Murder is a criminal act and it is the duty of the police to hold those responsible to account.

In failing to do so, they deny victims' families of any remedies, particularly of knowing the circumstances of their loved ones' deaths. Meanwhile, families' claims that their loved ones were not criminals and were not involved in any criminal activity, are not looked into. Families are also forced to live with the stigma of their loved ones being branded as criminals. They are deprived of equality before the law and equal protection by the law, because the law enforcement authorities themselves have justified the murders, concluding they were nothing but a 'war amongst criminals'.

In fact, the justification of these murders has given blanket impunity to the perpetrators, who continue to shoot their targets in public. The police and city mayor's premature conclusion of these murders not only endorses murder for a certain sector of society, but it also dilutes the notion that police authorities have a responsibility to investigate all crimes and punish offenders. They have abandoned their fundamental responsibility of protecting the lives of all citizens—whether a criminal or not [AHRC, 'Endorsing murder in the Philippines', *Ethics in Action*, vol. 2, no. 2, April 2008, pp. 28-29].

B. Rotten justice system

The state is obliged to protect its citizens, and extrajudicial killings and disappearances represent the ultimate failure to protect. In cases where such violations occur, the state must at the very least, adequately and promptly investigate each case and ensure that investigations lead to the successful conviction of those responsible. The above cases clearly indicate that this is not the situation in the Philippines, where beginning with the police, the country's entire justice system is dysfunctional and offers no justice to applicants.

Failure to investigate

Investigation is the crucial first step towards solving crimes and affording remedies for human rights abuses. Police investigations in the Philippines though, are in reality an obstacle for victims seeking redress. Poorly conducted investigations, in which there is little or no reliance on forensic evidence as well as an inability to produce witnesses, mean that many complaints are dismissed before they are heard in court.

The policing body responsible for investigating extrajudicial killings, Task Force Usig, defines cases as being solved once they have been filed with the prosecutor's office. In other words, the police feel their job is done once they have filed a case, regardless of whether or not a successful conviction follows. The current policy prioritizes rapid (and consequently summary and inadequate) investigations over thorough and result-oriented ones, and provides a way for the police to try to evade being held accountable for the system's failure to provide justice.

The law enforcement authorities have also alarmingly shirked their duty to investigate by blaming the killings, abductions and disappearances on internal struggles between criminals and rebels. In doing so, they undermine the judiciary's authority to decide on the merit of cases. Moreover, investigations are now only conducted to attempt to establish the victim's identity where this reinforces the police's aforementioned theory of 'gang warfare'; no investigations are conducted in cases where it would point to the responsibility of state actors.

Absence of witness protection

Despite repeated appeals, victims needing urgent protection and assistance are not given any. The authorities, notably the police, fail to assist victims seeking redress and do not make use of them during their investigation. In one shocking incident, human rights activist Siche Bustamante-Gandinao, a witness who spoke to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions during his visit to the country in February 2007, was killed on March 10, just days after speaking with him.

The police have frequently used the lack of witnesses coming forward as an excuse for the lack of progress concerning investigations. For example, in Davao City, Senior Superintendent Ramon Apolinario attempted to justify this failure stating that, "as long as we do not have the testimonies of the witnesses, we can never file formal charges". While the police blame complainants and witnesses for not cooperating with them, they fail to include them in a witness protection programme created under the Republic Act 6981. The Department of Justice, which is the programme's implementing agency, also blames its failure on the witnesses without taking needed steps to make the programme work, for instance by widely informing the public of how to make use of it, and to ensure that the police and prosecutors consider using it as part of their work.

It is the police's constitutional obligation to ensure that the cases they are investigating are effectively prosecuted, including by providing interim protection to potential witnesses before they are covered by the witness protection programme. Their failure to do so is the prime cause of the lack of witnesses, and therefore convictions. [For a detailed study on witness protection in Asia (including the Philippines), see [HRCS Lesson Series 47: Victim and witness protection](#).]

Lack of prosecutions

As mentioned above, there have been no convictions in the numerous cases of extrajudicial killings occurring over the past few years. According to a written statement to the Human Rights Council by the Asian Legal Resource Centre (ALRC), sister organization of the AHRC,

Other than the three persons that were convicted in October 2006 for the March 2005 murder of journalist Marlene Esperat, no other cases of extra-judicial or vigilante killings have resulted in convictions. It is reported that it was only because these

three pleaded guilty to the murder charges that the convictions were possible. They were not the result of effective police investigations. The masterminds behind the killings remain at large.

Aside from the Esperat case, none of the 139 cases of extra-judicial killings of social activists that the ALRC has documented between January 2003 and November 2007 (and submitted as part of its UPR submission) have resulted in convictions. Furthermore, concerning the killings of 42 persons, including women and children, by vigilantes in the country's South since January 2008, none of the perpetrators have been identified, charged or prosecuted in court. The witnesses, families of the dead and even NGOs there are too frightened to get involved [ALRC, 'The failure to implement the Human Rights Council's key recommendations concerning extra-judicial killings', August 2008, ALRC-CWS-09-04-2008].

Lack of judicial remedies

To address the large number of extrajudicial killings, the Supreme Court designated at least 99 special courts in March 2007 to hear these cases. However, the AHRC remains unaware of these courts ever being used. In effect, these courts may have been set up on paper, but have not functioned in reality. Even if these special courts do exist, the failure to have charges or complaints filed against the perpetrators in court has made these special courts meaningless. If no charges are filed, there can never be prosecutions. Designating special courts alone without addressing problems surrounding investigation and prosecution does not serve any real purpose.

On 24 October 2007, the writ of 'amparo', or protection, was initiated by the Supreme Court under Chief Justice Reynato Puno. At that time there was much enthusiasm that the new mechanism would offer an effective legal remedy for the victims of killings and disappearances as well as their family members and witnesses.

After all, anyone could file the writ at no cost in a variety of courts throughout the country, and it applied to both those who had experienced violence as well as those who were facing threats. It provided, among other remedies, orders for temporary protection and witness protection. Moreover, it did so through an expeditious judicial process in which a summary hearing must be held seven days after the writ is issued and the court must render a decision within 10 days after the hearing concludes.

Various legal obstructions, such as counterclaims or motions to dismiss or postpone the hearing, were also prohibited, further facilitating a speedy judicial process.

The first disappeared person to be released was [Ruel Munasque] in Mindanao on November 7. [Munasque], a member of the Christian Youth Fellowship of the United Church of Christ in the Philippines and a Bayan Muna organizer, had been abducted by soldiers of the 53rd Infantry Battalion in Zamboanga del Sur on October 24, the day that the writ of amparo took effect.

By mid-December, writs of amparo had been issued in seven other cases of disappearances [Bruce Van Voorhis, 'Deadly judicial reasoning', UPI Asia Online, Column: Rights and wrongs, 3 September 2008].

Less than a year later, the judiciary is undermining the writ's credibility by rejecting petitions seeking issuance of the writ. In a statement of July 2008, the National Union of Peoples' Lawyers criticized the Court of Appeal's decision to deny five of their petitions, supposedly because the petitioners had failed to produce "clear evidence" of "apparent or visible" threats to their lives. One of those petitions denied included a writ filed by Nilo Baculo, a journalist in the province of Oriental Mindoro, who claimed that he had learned in December that a group of government officials and business people he had offended with his exposés wanted him dead.

This judgment has unreasonably placed the burden of proof of threats on the person seeking protection. It runs contrary to the intent of the writ, which concerns "not a criminal action requiring proof beyond reasonable doubt, nor is it a civil or administrative proceeding, but a prerogative writ intended to protect human rights". On cases involving extrajudicial killings, it is extremely difficult for a victim experiencing threats to produce evidence sufficient to convince a court, and threats are not made in a way that allows that.

Impunity

The widespread lack of accountability of the security forces—both the police and the military—continues the culture of violations and denial of rights. Members of the police or military accused of violations have remained free to commit further violations. Once complaints are made, the government and its institutions have either exonerated or defended their men without conducting credible investigations.

Although both the police and military have created human rights offices that in theory accept and investigate cases of human rights violations, these investigations either do not take place or fall very short of meeting the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. There are instances in which those accused of committing violations are the same persons who investigate them. The policemen who are negligent in their investigation duties are not held to account. The imposition of disciplinary actions against officers involved in committing abuses is largely nonexistent. The suspension of officers that are the subject of investigation in order to ensure credible investigation is typically not taking place. The police and army's human rights offices are simply another face-saving tool.

The cycle of violence and impunity is reinforced by excessive delays in the adjudication of cases against security forces. Even in cases involving the gross abuses of extrajudicial killings, enforced disappearance and torture, where the perpetrators have been identified and charged in court, the trials do not result in punishment as they do not progress, but are instead usually dismissed. This is due to a lack of witnesses and evidence, a direct result of the police and prosecutor's failure to effectively perform their duties.

In addition, concerning abduction and enforced disappearances, the police and military routinely refuse to cooperate with the families of the victims of enforced disappearance in locating their loved ones, particularly when the victims are labeled as being ‘communist’ or ‘leftist’.

Equality

It is important that people are treated equally before the law. This means they must have the same protection of the law, regardless of whether they are criminals, state officials or ordinary citizens. The singling out of any group as unworthy of legal protection is not only morally and legally absurd, but it also creates a slippery slope for any government; who will single them out and on what basis?

Unfortunately, the notion of equality before the law is not often found in the Philippines’ institutions of criminal justice. While the criminal justice system is meant to impartially hold persons guilty of crimes accountable for their actions, in reality it operates with significant prejudice, notably when conducting official investigations. The government has failed to take effective measures to prevent its officers from the continuing practice of labeling persons and groups as being ‘criminals’, ‘communists’, or ‘enemies of state’, which is often a precursor to these individuals or groups being the subject of attacks. One case illustrates the negative effects of such branding—two victims of extrajudicial killings were described by the police as being “Communist Terrorist (CTs), supporters or sympathizers” in their investigation reports. Subsequently, attention was paid only to this claimed affiliation, while the identification of their killers and the circumstances of their deaths were not adequately investigated. The prevailing attitude is that the act of labeling removes the police’s duties to investigate, which is as unacceptable as it is untrue.

Questions For Discussion

1. What are the various ways you have come across in which individuals are arbitrarily deprived of their lives? Do these different ways have anything in common?
2. Discuss the relationship between the criminal justice system and the deprivation of life.
3. What are the mechanisms by which the right to life can be protected?

Lesson 2

A. International norms and standards

Protecting the right to life

The right to life is a fundamental right forming the basis of international human rights norms and standards. Article 3 of the Universal Declaration of Human Rights succinctly notes that “Everyone has the right to life,

liberty, and security of person,” while article 9 requires that “No one shall be subjected to arbitrary arrest, detention or exile.” These rights are further elaborated and legally mandated in the International Covenant on Civil and Political Rights (ICCPR), one of the key sources of international human rights jurisprudence. The body responsible for monitoring the implementation of the ICCPR, the Human Rights Committee, noted in its General Comment 6 of April 1982 that the right to life “is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation”.

Article 6 of the **ICCPR** lays out the right to life:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

The Human Rights Committee has made it clear that to enforce this right, governments “**should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.** The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities” (General Comment 6, 1982, emphasis added).

Moreover, the Committee further notes that governments should also take measures to prevent the disappearance of individuals, which too often leads to arbitrary deprivation of life. Disappearances in many Asian countries begin with arrests and/or abduction by law enforcement agencies. [See HRCS [Lesson Series 48: Enforced disappearance](#) for a detailed study of the issue.]

Preventing the arbitrary deprivation of life

Precisely to prevent such arrests and abduction, **article 9** of the ICCPR sets out the following:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Moreover, the **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions** (1989) state:

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions...
2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.
9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries...
15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations (emphasis added).

As noted in the above principles, it is crucial that clear regulations and discipline exist with regard to the use of force by law enforcement officers. The **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** (1980) establishes that the minimum use of force is to be exercised:

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

B. Recommendations made to the Philippines by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions

Following his visit to the Philippines, UN Special Rapporteur Philip Alston made these recommendations to the government to address extrajudicial killings:

66. I am encouraged by the many measures recently taken by the Government, and I have found instructive the many recommendations made in other reports. Based on my own observations, I believe that the following measures are essential.

67. Extrajudicial executions must be eliminated from counterinsurgency operations:

(a) As Commander-in-Chief of the armed forces, the President must take concrete steps to put an end to those aspects of counterinsurgency operations which have led to the targeting and execution of many individuals working with civil society organizations.

(b) The necessary measures should be taken to ensure that the principle of command responsibility, as it is understood in international law, is a basis for criminal liability within the domestic legal order.

(c) The Government should immediately direct all military officers to cease making public statements linking political or other civil society groups to those engaged in armed insurgencies. Any such characterizations belong solely within the power of the civilian authorities. They must be based on transparent criteria, and conform with the human rights provisions of the Constitution and relevant treaties.

(d) Transparency must be introduced to the “orders of battle”, “watch lists”, and similar list of individuals and organizations maintained by the AFP, PNP, and other elements of the national security system. While their contents might justifiably be considered secret, which lists exist, their purposes, the criteria for inclusion, and the number of names on each should be made public.

68. The use of a death squad in Davao City must end:

(a) NAPOLCOM should withdraw the mayor of Davao City’s powers of supervision and control of PNP units within his jurisdiction and should hold the officers commanding those units accountable for shutting down the death squad.

(b) While particular crimes should be reported, laws and practices in which barangay councils or captains submit names (e.g., of drug pushers) for inclusion on law enforcement watch lists should be abolished.

(c) An independent investigation should be conducted to identify the persons directing the death squad’s “assets” and hit men.

69. Convictions in a significant number of extrajudicial executions must be achieved. Appropriate institutional arrangements exist but they must be more transparent if they are to be effective. Thus:

(a) CHRP should issue a monthly report listing allegations of extrajudicial executions that it has received together with the current status of its investigations.

(b) Members of the public should be able to submit cases to be overseen by Task Force Usig. If it concludes that a case does not fall within its mandate, it should provide a reasoned explanation in writing.

(c) Task Force Usig should issue a monthly report on the status of all cases it is attempting to resolve.

(d) The Supreme Court should issue a monthly report on the status of all cases before the special courts.

70. IALAG should be abolished, and the criminal justice system should refocus on investigating and prosecuting those committing extrajudicial executions and other serious crimes.

71. The witness protection program should be reformed and fully implemented:

(a) It should be proactively administered by an office independent of the NPS.

(b) Witness protection should be unstintingly provided to all those who will be put at risk by an individual's testimony.

(c) Individuals should be permitted to remain in the witness protection system for as long as they are at risk, even if a case stalls.

(d) Housing and other benefits provided under the witness protection program should ensure the security and comfort of those protected.

72. The Supreme Court should take all available measures to ensure the effective prosecution of extrajudicial executions. Among other measures:

(a) The system of special courts for killings of political activists and members of the media should be fully implemented so as to improve the efficiency of trials, and the judiciary should take all other measures necessary to facilitate the participation of witnesses, including sympathetic consideration of requested venue changes and docket management decisions that facilitate witness participation and protection.

(b) In conjunction with the executive branch of Government, the Supreme Court should use its constitutional powers over the practice of law to impress upon prosecutors that they have a duty to the public to uphold and protect human rights by acting to ensure the effective investigation of cases and protection of witnesses and that they should provide reasoned decisions for probable cause determinations.

73. Human rights should be safeguarded within the peace processes:

(a) The JMC should meet and fulfill its mandate under the CARHRIHL.

(b) Consideration should be given to establishing a mechanism for monitoring human rights abuses within the framework of the Government – MILF peace process.

74. The Commission on Human Rights (CHRP) should guard its independence and increase its effectiveness:

(a) CHRP should hire and train more investigators and provide them with the resources necessary for effective investigations.

(b) CHRP should increase the resources available for victim assistance to ensure that witnesses are sufficiently secure as to enable the non-judicial clarification of their cases.

(c) To provide more accountability in the AFP promotions process, CHRP should follow-up on its human rights clearance decisions by publicly tracking the subsequent promotion decisions of the AFP and the Commission on Appointments.

(d) CHRP should consider measures to more effectively protect as well as monitor human rights during military operations throughout the country.

75. The Ombudsman's office should begin to fulfill effectively its independent constitutional role in responding to extrajudicial killings plausibly attributed to public officials.

76. The Government should reinstate a policy of facilitating the constitutionally mandated role of Congressional oversight in relation to the AFP and the PNP, starting by rescinding all directives, memoranda, and orders that impede such oversight.

77. The CPP/NPA/NDF should stop using people's courts that do not comply with human rights and humanitarian law standards and should ensure that lethal force is directed only against combatants and civilians directly participating in hostilities.

78. The CPP/NPA/NDF should repudiate statements that persons owe "blood debts", have "accountabilities to the people", or are subject to prosecution before people's courts.

Questions For Discussion

1. Discuss the above provisions for protecting the right to life. Are they legally mandated in your countries? How well are the provisions enforced?
2. Discuss any obstacles to the protection of the right to life, as well as how they could be overcome.
3. What are the moral and social implications of the arbitrary deprivation of life?

Appendix

The arbitrary deprivation of life

Basil Fernando, UPI AsiaOnline, 30 May 2008

Hong Kong, China — There are many forms of arbitrary deprivation of life in Asia other than the death sentence, although it is used frequently, particularly in China and Singapore.

Forced disappearances have become a common feature in many parts of Asia. While Sri Lanka's record on forced disappearances for several decades now in the south, north and east, is considered the highest, there are several other countries with very high records as well. These include Pakistan, parts of India – the Punjab, Kashmir, Assam, Manipur, Tripura, Nagaland, Orissa and Bihar – some parts of Rajasthan, Thailand and the Philippines.

There are also places such as Nepal, where in the recent past there have been large-scale forced disappearances, but no action has been taken against the perpetrators even after the conflict that gave rise to the disappearances is over.

The forced disappearance of persons is almost always accompanied by the disappearance of the criminal justice system. In order to enable such disappearances for political or military purposes, it is necessary to alter laws like those relating to the disposal of bodies — normally there should be a judicial order before such disposal. There is also the elimination of laws relating to post-mortems and allowing firearms, the suspension of laws relating to the protection of persons after arrest, and the suspension of laws relating to records of those who are arrested or otherwise dealt with by the police or military authorities.

The suspension of laws to allow for forced disappearances virtually breaks down the discipline within the policing and military systems. Once this type of indiscipline is allowed it is difficult to re-establish

respect for laws and rules within the law enforcement section itself. Forced disappearances also diminish the role of the judiciary. Legal remedies like habeas corpus applications, writs and the like are of little use once a forced disappearance completes its course by way of assassination in secret, as has happened in literally tens of thousands of cases.

The law enforcement agencies, which often work with criminal elements in such operations, become the accuser, judge, executioner and undertaker all at the same time. The tremendous problems caused to a legal system by allowing forced disappearances have not yet received sufficient international or local attention.

Though there is a convention against forced disappearances, it has received very little attention and is not one of the international conventions that is talked about very much. Perhaps this is because the experience of forced disappearances is far away from the eyes of developed democracies. However, given the frequency with which forced disappearances are being used in anti-terrorism drives, this issue needs to be discussed much more frequently and thoroughly both internationally and at local levels.

Another form of arbitrary deprivation of life that is frequently carried out in Asia is the killing of those who are called criminals or undesirable persons after arrest, without subjecting them to the jurisdiction of the courts. In India this form of killing is called an encounter killing, which tries to make it appear that the killing was a consequence of some group attacking the police or military and, as a result, these government officers returning fire.

There are many instances in which there is evidence that persons who have been killed in this way had been arrested previously and disposed of using this system. There are even instances where innocent persons were arrested and killed in order to create statistics about encounter killings which may lead to promotions for officers who have allegedly braved danger.

In Bangladesh similar occurrences are called crossfire killings and in Sri Lanka they are called self-defense killings. Newspaper items appear frequently stating that a person arrested by the police had been taken to the scene of the crime or a place where some stolen goods were hidden and that on the way, this person attacked the police and therefore they were shot dead. Often there are no further inquiries into these cases. In the Philippines such killings are called legitimate encounters.

Besides this there is also arbitrary deprivation of life by custodial deaths, which often means people dying due to torture in custody. These are frequent in India, Pakistan, Sri Lanka, Malaysia and the Philippines. Another frequent form of killings is lynching, which is a sort of mob killing that is directly or indirectly encouraged by the law enforcement agencies. These killings are most frequent in Bihar in

India, and often the reason is the complete failure of the rule of law, which forces people to take the law into their own hands as a last resort. Lynching also takes place frequently in Cambodia, Pakistan, Sri Lanka and many other places.

Thus, the question of arbitrary deprivation of life today needs a fresh discussion internationally, as well as locally, in different countries with a view to finding solutions to this most brutal denial of the right to life.