



ASIAN HUMAN RIGHTS COMMISSION

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Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: The urgent need for effective laws against torture, witness protection, and end to the increasing occurrence of extra-judicial killings in the Philippines

On the occasion of the December 10 Human Rights Day, the Asian Human Rights Commission (AHRC) takes this opportunity to raise serious concerns regarding the human rights situation in the Philippines. Although there are many concerns we have regarding this topic, we choose here to restrict our focus to the urgent need for effective laws against torture, the current state of witness protection, and the increasing occurrence of extra-judicial killings, notably of human rights defenders.

It is the AHRC's strong belief that the enactment of an enabling law to punish the perpetrators of acts of torture in the Philippines is long overdue. The government's failure to enact a law has deprived its citizens of their right to be free from the most abhorrent and barbaric of acts - torture. It is also completely in complete disregard of the government's international obligations as a State Party to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). By ratifying the Convention, the government is required to implement the provisions therein, including by enacting domestic legislation.

By failing to take action to ensure the passage of an anti-torture law, the members of the Philippine Senate and the House of Representatives have not protected their citizens against attacks and abuses by state agents. The provision of the 1987 Philippine Constitution, which prohibits torture, has been betrayed by the lack of an enabling law, in particular for torture victims seeking justice and redress. It constitutes a failure of the legislature when it cannot protect the very people it represents. There is therefore, an urgent need to have the law on torture enacted. This is a necessary precondition and achievable means of enabling the protection against torture in the country.

A review of the country's witness protection mechanism as also essential for the protection of human rights to the Philippines. It is becoming increasingly obvious that getting away with murder in the Philippines is made easy by the absence of any functioning witness protection

scheme. The lack of witnesses also becomes a convenient excuse for investigators to say that they have done their jobs but have no further avenues for action.

Although provisions exist for witness protection in the Philippines, they are clearly not working. Despite the numerous reports of victims' families refusing to press complaints or witnesses going into hiding out of fear after the unrestrained killings of human rights defenders, peasant leaders, lawyers and others, there does not seem to be any serious effort by the authorities to address this issue.

While the government of the Philippines has given assurances at the highest levels that the perpetrators of extra-judicial killings will not go unpunished, without a proper scheme for witness protection such assurances are meaningless. The government should immediately review the management and handling of witness protection by the Department of Justice, with a view to greatly enhancing and expanding the scheme, so that security can be given immediately and for as long as necessary to those who need it. This requires a sense of urgency: the unrestrained killings occurring in the Philippines at present will be neither solved nor abated until the government recognises that immediate and effective witness protection is the missing element. Until witness protection is taken seriously, the prospects for protection of human rights, criminal justice and the rule of law in the Philippines remain dim.

This leads us to the final point, which regards the unrestrained killings themselves of activists in the Philippines. The AHRC is aware of twenty human rights defenders and political activists having been killed since January 2005 - and these are only the cases that have come to our attention. Common among all the victims is that they were persons that have been critical of the government. In response, government and army officials have labelled the victims as being communist sympathisers, as if to excuse themselves of responsibility or involvement. The effect of this branding has been to excuse the authorities of responsibility in dealing with the cases: by implication, killing an alleged communist is not a crime in the Philippines. A further conclusion is that killing members of legitimate opposition parties or human rights activists is also permitted.

The apparent unwillingness of the current administration to do anything to address this trend is bitterly disappointing. The combined effect of its inaction and unhelpful public statements is to suggest that the killing of political opponents and human rights activists is of no concern, and may even be beneficial to the country's internal security and social order.

To prevent further killings of activists and to avert a new social crisis in the country, the government must take immediate action regarding this matter. First, and most obviously, full investigations and judicial inquiries must follow without delay, with a view to holding the perpetrators fully accountable for their crimes and making clear that this pattern of killings will not be allowed to continue. Secondly, and as stated above, witness protection must be given to all persons attached to these cases. Thirdly, the Commission on Human Rights of the Philippines must play an active role by coordinating its work with the National Bureau of Investigation, rather than waiting for other agencies to take the initiative, and by considering recommendations to indemnify the families of the dead. Fourthly, the government must condemn and demand the retraction of statements by the armed forces listing groups as 'communist sympathisers'. Until these measures are taken, little will be achieved in stemming this wave of extra-judicial killings.

The government of the Philippine's response to these and other grave issues concerning human rights in the country, has so far been characterised by inaction and a lack of proper direction. It is now time for the government to send a strong message to its own people and those abroad that issues such as witness protection, extra-judicial killings and torture will no longer be ignored.

However, it can not do this only with words. The government must take genuine and effective measures to implement laws that will help prevent the blatant violations of human rights that are currently sweeping the country.

We trust that you will share in our concern for the human rights situation in the Philippines and act accordingly to pressure the government for change.

Yours sincerely,

Basil Fernando
Executive Director



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December 7, 2005

A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

PHILIPPINES: Human rights defenders being killed in droves; the victims of a failing system

The failure of the policing and prosecution system in the Philippines is completely undermining the protection of human rights in the country. Cases of extra-judicial killings, in particular those involving human rights defenders, have continued unabated. The government has not responded adequately to this situation. Thus, it has impaired its own ability to deliver justice. There is no serious implementation of policing or judicial reforms, which is essential for the protection of human rights.

There is also a completely ineffective protection mechanism for victims, families of the dead and witnesses. The victims have been deprived of state-sponsored security and protection when attempting to seek justice and redress. Even the existence of the state human rights commissions has not guaranteed them security and protection. Those victims who have suffered from hunger and starvation have been threatened, intimidated and harassed, especially when they lodged complaints to the authorities and took steps to expose their grievances. This reflects the lack of an effective complaints mechanism for human rights violations in general.

The government's failure to introduce domestic legislation on torture has deprived the victims of the ability to prosecute state agents. Despite being a state party to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), no legislation has been enacted in full conformity with the Convention.

Extra-judicial killings and violence against human rights activists; witness protection

There have been a number of extra-judicial killings in the Philippines by state officials and non-state armed groups in the year 2005. No perpetrators have been punished in relation to the separate killings of 20 human rights defenders and political activists¹ across the country.² This is also true for those who attempted to take the lives of two activist couples, Fr. Allan Caparro and his wife Aileen,³ and Daniel Brylle Cruz and his wife Emmylou Buñi-Cruz.⁴ Though an investigation was conducted in the latter case, the police refused to include vital pieces of evidence and information provided by the victims. The investigation was, therefore, superficial

¹ The 20 cases refer to the cases covered by AHRC only. It is highly likely that many more occurred.

² UP-143-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1364/>

³ UA-30-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/963/>

⁴ UP-146-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1374/>

and biased. The charges against the police and the military allegedly responsible in the death of seven protesters in Hacienda Luisita, Tarlac⁵ were dismissed as a result of the police investigators' inadequate evidence gathering. In this case, the police failed to employ effective forensic and scientific expertise in the investigations. Despite killings and violence against activists, the Government's response has been entirely inadequate and ineffective. The investigations by the Government institutions into some cases have led to no conclusive findings. For example, in some of the cases mentioned above, the perpetrators were not identified after the investigation, thus charges were never filed against them.

Even if charges are or could be filed in a court of law, there is no effective or functioning mechanism for the protection of families of the dead or for witnesses. The cases of Ernesto Bang and Joel Reyes;⁶ Felidito Dacut, Rev. Edison Lapuz and Alfredo Malinao⁷ are clear examples of this. The lone witness in the Bang and Reyes' killing was killed just prior to his testifying in the case. The Philippine Commission on Human Rights (CHR) admits that the Republic Act No. 6981 and the Witness Protection, Security and Benefit programme are not known to the populace. However, under no circumstances is this a justification for the security forces to intimidate, harass or kill witnesses. Owing to this situation and the real fear that exists amongst witnesses as a result of this, many are reluctant to cooperate. Naturally, without witnesses coming forward to give evidence, there cannot be effective prosecution of perpetrators. The blatant disregard for the Republic Act by state officials, and the Government's unwillingness or inability to effectively enforce it, are seriously jeopardising the entire justice process.

Judicial delays; inadequate judicial reforms

Prolonged adjudication of cases in local courts is widespread and a serious problem. The lack of competent judges, prosecutors and adequate resources has affected the judiciary's ability to effectively administer justice. For example, one judge usually presides over several courts, because in certain courts no judges have been assigned. There are also inadequate communication facilities in the Courts, such as fax machines and sufficient paper, which hinders the receiving of documents. In the cases of victims, Jejhon Macalinsal, Aron Salah and Abubakar Amilhasan of General Santos City;⁸ Pegie Boquecosa of Alabel, Sarangani;⁹ and the killing of Bacar Japalali and his wife Carmen by soldiers in Tagum City,¹⁰ courts have failed to commence trials, despite a lapse of two to three years.

The case of torture victim, Boquecosa, further demonstrates the public prosecutor's failure to complete documentary requirements of the case within the prescribed period, and therefore the case did not proceed. Such failure saw Boquecosa suffer for two years in jail without trial. Additionally, the case of torture victims, Macalinsal, Salah and Amilhasan¹¹ was delayed for years due to frequent postponements arising from the absence and lack of judges, competent prosecutors and public holidays. On one occasion, the absence of a court stenographer led to the cancellation of a hearing. Had it not been for the constant pressure applied by the Asian Human

⁵ UA-34-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/978/>

⁶ UP-75-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1140/>

⁷ UP-70-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1118/>

⁸ UA-74-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1070/>

⁹ UA-66-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1059/>

¹⁰ UA-72-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1066/>

¹¹ UP-78-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1153/> and UP-92-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1191/>

Rights Commission (AHRC), the concerned local court may not have commenced the trial at all.¹²

The provisions of the Republic Act No. 8493, which is an Act designed to ensure a speedy trial of all criminal cases pending before the courts, have not been effectively implemented. The detention of suspects without trial and prolonged delays in the adjudication of cases in courts could have been deterred had there been effective implementation of this Act. The AHRC reported on the prolonged detention of Tohamie Ulong (minor), Ting Idar (minor), Jimmy Balulao, To Akmad and Esmael Mamalangkak of Cotabato City¹³ in absence of a trial.

When charges were filed before the public prosecutor, such as in the case of the killing of Bacar Japalali and his wife Carmen by the military, the immediate prosecution of the perpetrators could not be guaranteed. The families of the dead had to endure risk and threats in seeking justice in the absence of protection as the prosecutor delayed the indictment due to administrative procedures.¹⁴ Even after compiling information on the case, the prosecutor refused to file the indictment or to furnish the complainant copies of his findings, due to the delay in getting approval by the Ombudsman for the Military for the release of such information.

In the Philippines, torture is not a crime

Acts of torture have not been criminalised in the Philippines. Even though the 1987 Constitution of the Philippines clearly prohibits torture, as stipulated in Article III, Section 12 (2), and the government has ratified the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), no domestic implementing legislation has been enacted to make torture a crime, in full conformity with the Convention.

Since February 2004, the AHRC has reported on 16 cases of severe torture across the Philippines. These are merely cases reported to the AHRC and no doubt represent only a fraction of the problem. Even though torture is widespread throughout the country, the lack of proper and efficient documentation of cases, even by human rights NGOs, remains an issue. Not a single perpetrator has been punished for torture, despite the alarming and increasing number of torture cases. One of the main reasons for this lies in the Government's failure to enact effective legislation on torture.

Further, there is a complete absence of state-sponsored rehabilitation programmes for torture victims. Almost all torture victims have not received any physical or psychological treatment. These victims include, Omar Ramalan of Cotabato City;¹⁵ the farmers in Compostela, Sultan Kudarat;¹⁶ the three torture victims, including a woman in Compostela Valley;¹⁷ 60-year-old Angelina Ipong of Misamis Occidental;¹⁸ Jehon Macalinsal, Aron Salah and Abubakar Amilhasan of General Santos City;¹⁹ Tohamie Ulong (minor), Ting Idar (minor), Jimmy Balulao, Akmad and Esmael Mamalangkak of Cotabato City;²⁰ four farmers in Sultan Kudarat;²¹ and

¹² UP-108-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1246/>

¹³ UA-69-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1063/>

¹⁴ UA-72-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1066/>

¹⁵ FA-11-2004: <http://www.ahrchk.net/ua/mainfile.php/2004/667/>

¹⁶ FA-11-2004: <http://www.ahrchk.net/ua/mainfile.php/2004/667/>

¹⁷ FA-11-2004: <http://www.ahrchk.net/ua/mainfile.php/2004/667/>

¹⁸ FA-12-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1043/>

¹⁹ UA-74-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1070/>

²⁰ UA-69-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1063/>

²¹ UA-167-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1267/>

several others. All of them have suffered severe forms of physical and mental torture. Prolonged trauma of torture victims is a serious issue and prevents them from living a healthy life. The failure to acknowledge the vital need for rehabilitation for torture victims is a blight on the Government.

The use of torture is routinely practiced by the police and military when conducting investigations. Even though most victims within the country are political detainees, suspected terrorists and other persons considered as a threat to “national security,” many are not, and these people often come from poor backgrounds. In General Santos City, two laborers named Michael Bautista and Benjamin Agustines were tortured by the military merely for being drunk and having an argument with military personnel.²² This, and many other examples, exemplifies the arbitrary use of power by state agents within the country. There is complete disregard for a person’s dignity, which is further highlighted by the violation of the principle of innocent until proven guilty, as the government allows suspects to be presented to the media and public prior to court trials.

The absence of effective legislation on torture has meant that investigations have not reached their desirable aim, which is to punish the perpetrators and compensate and rehabilitate the victims. Even the CHR regularly fails to investigate complaints of torture, particularly where victims have been charged for crimes in court. These charges, however, are often either fabricated or based on forced confessions resulting from torture. Although the government is aware of this problem, no effective measures have been taken to properly resolve this.

The lack of an effective complaint mechanism for victims of violation; hunger and starvation

There is a lack of an effective and functioning complaints mechanism, in which victims of violations are assured of their protection, security and freedom from any forms of harassment and intimidation. It is a fact in many cases, that the victims would rather keep silent than endure the consequences of seeking justice. Despite the existence of state human rights commissions, there has been no guarantee that the complaints would be dealt with effectively and efficiently. For example, there are no performance pledges by these commissions regarding how quickly a case will be resolved.

Fear has entirely overwhelmed ordinary Filipinos, to the point that it has not been possible for them to even express grievances of hunger and starvation without being ridiculed, threatened, intimidated, reprimanded and/or harassed. Government officials, politicians and local executives instead have tried to silence the victims rather than act on their legitimate grievances. The AHRC has previously reported that the families of farmers in Alabel, Sarangani suffering hunger and starvation were reprimanded by village officials and the officials of the Municipal Department of Social Welfare and Development after they voiced their desperate situation.²³

There is also evidence pointing to the complete denial and cover-up of the Government’s negligence on social services. The employees working with the State Department of Social Welfare and Development have a poor understanding of the right to food and food security issues. Hunger victims have been questioned by the officials of the Department as to why they should be given assistance by the state.²⁴

²² UA-198-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1332/>

²³ HA-25-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1273/>

²⁴ HU-10-2005: <http://www.ahrchk.net/ua/mainfile.php/2005/1346/>

Conclusion and recommendations

There is an obvious failure on the part of the Government of the Philippines to prosecute alleged perpetrators of torture, extra-judicial killings and violence against human rights and political activists. While the police investigators and public prosecutors have failed to bring the above-mentioned cases to court effectively and efficiently, there has also been no guarantee that victims and families of the dead would find justice within the domestic legal system.

This is the case not only because there is a lack of an effective mechanism to ensure security and protection for victims and witnesses, but the judiciary's competence to deliver justice has also been hampered by serious delays in the adjudication of cases. The combination of the lack of witness protection and judicial delays has completely undermined the rule of law. The absence of adequate resolutions or redress for human rights violations has created a culture of impunity and violence. It is also evident that the deteriorating policing system in the country is a fundamental hindrance to the protection of human rights for all Filipinos.

The Government's failure to take adequate action into this ever-worsening situation reflects its complete disregard for human rights. To remedy this and to ensure that the situation is addressed properly, the Government should closely coordinate with victims and families of the dead. It must ensure security and protection for victims and families seeking justice. The Government should effectively implement the Republic Act No. 6981 or the Witness Protection, Security and Benefit programme, and relevant procedures and institutions need to be urgently created for witness and victim protection.

One of the key obstacles is the Government's failure to enact effective laws against torture, despite having ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 4 (1) of the CAT Convention states that "Each State Party shall ensure that all acts of torture are offences under its criminal law" under which the Government of the Philippines has a clear obligation to enact effective domestic legislation on torture. Failure to do so is inexcusable given the prevalence of torture that is currently occurring in the country. Lack of effective domestic legislation against torture has deprived victims of torture the ability to seek justice and redress, and guaranteed impunity for the perpetrators, who are mostly military and police personnel. Domestic legislation on torture must be enacted without further delay. Unless the Government ensures the passage of the proposed law on torture as a priority, human rights violations across the country will continue unabated.

The government of the Philippines must urgently implement reforms in the policing system and the judiciary. Police reform must include an effective method of scientific and forensic investigation, and the creation of an independent body to investigate cases of human rights violations committed by state agents, free from manipulation and political influence.

The government should further take measures to urgently implement recommendations in the Action Program for Judicial Reform (APJR), especially addressing court delays and related issues such as human resources, administration flaws, the lack of prosecutors and judges, and the speedy disposition of cases.

Only when the government of the Philippines takes these recommendations seriously, will human rights begin to receive the respect that they so urgently require.