

PHILIPPINES: The perversion of the justice system as a cause of rights violations

The Asian Human Rights Commission (AHRC) has documented a range of serious violations of human rights in the Philippines over the last year. Despite some very high profile cases - such as the November 23, 2009, massacre in Maguindanao or the Manila bus hostage incident that left eight Hong Kong nationals dead - assurances by the authorities that investigations would be launched and that justice would be delivered - no significant developments have ensued. The AHRC notes that despite general elections that resulted in a change of leadership, the situation has not improved in any meaningful way. The AHRC has argued in previous years that systemic problems in the country's institutions that are supposed to protect human rights mean that it is virtually impossible to expect the effective protection of human rights in the Philippines. The following report will examine in detail how the country's system of impunity is guaranteed by a perverted justice delivery system. Only when serious efforts are made to correct this problem will it be possible to envisage human rights as a reality in the Philippines.

As things stand at present, the country's system of justice had been used to violate human rights or to provide impunity and justify such violations, allowing the perpetrators of the worst forms of violations to go unpunished. The rights of victims have been systematically denied, not because the country lacks laws or that its system of justice is structurally incapable of holding perpetrators to account, but because its institutions are perverted. The police, the prosecution and the judiciary, all allow grave human rights violations to take place with impunity, and as such are responsible for the continuing high incidence of grave violations that plagues the country.

State agents, including the military, the police and government officials, make use of the State institutions that should be working to protect human rights to instead protect the perpetrators of such violations. The justice system in reality rarely functions to uphold human rights, even though structurally it carries the tradition of rule of law and human rights. Where violations of human rights are concerned, it mainly functions to preserve perpetrators rather than to protect the rights of victims.

The country's system of impunity is permitting the continuation of numerous grave human rights, including: the routine of filing fabricated and politically-motivated charges against human rights defenders and political activists; the reoccurrence of extra-judicial killings of human rights and political activists, a phenomenon that has drawn worldwide condemnation over the last decade; enforced disappearances; and the widespread use of torture by the police as part of routine criminal investigations. The change of political leadership as a result of the May 2010 general elections was meant to result in governmental policy changes designed to ensure the protection of human rights. As 2010 grew to a close, the effects of these promised changes had not been seen, and the AHRC believes that this is down to the

fact that the necessary steps to address the problems facing the justice system have not at all been addressed. It is all very well to promise to improve human rights, and the AHRC welcomes such declarations as a starting point, but unless systemic blockages and lacuna are tackled head-on, such promises will remain meaningless.

The widely reported Manila bus hostage incident that left eight Hong Kong nationals dead illustrates how the newly-elected government is failing to address deep-rooted problems within the country's system of justice. President Benigno Aquino III's decision not to file criminal charges against the public officials and policemen involved in the hostage incident demonstrates the continuing lack of accountability of public officials and law enforcement agents, even in such a high-profile case involving foreign relations.

This report will examine in detail the systemic failings of the country's system of justice that render it incapable of effectively ensuring the protection and enjoyment of human rights.

The police and prosecutors acting outside of the law

Despite documenting hundreds of cases of grave human rights violations over the years in the Philippines, the AHRC has seen little evidence of effective investigations into these or prosecutions of those thought to be responsible. Investigations and prosecutions of cases are typically performed without any semblance of due process. They are conducted outside the legal framework of the institutions of the rule of law that are responsible for conducting such essential components of justice delivery. Members of the Philippine National Police (PNP) are not held accountable for illegally arresting and detaining persons or the use of torture in criminal investigations. Prosecutors file cases in court based on evidence that has been gathered using illegal means by the police. Cases are prosecuted without basic legal requirements being met, including standards concerning evidence and whether there is probably cause concerning alleged crimes.

The PNP and the National Prosecution Service (NPS), which is under the Department of Justice (DoJ), enjoy institutional protection that shelters them from any repercussions for their use of illegal methods. Abuses of authority by the police and NPS prosecutors of the NPS, and the vulnerability of these institutions to political control, however, permit the prosecution of human rights and political activists in politically-motivated and fabricated cases. Such individuals and their organizations are targeted by the government's justice system, particularly when the military and the police take a keen interest in prosecuting them. Such prosecutions are usually preceded by the accused being labelled or publicly accused of involvement with communist rebellion - regardless of whether these allegations are supported by any evidence.

The principle that witnesses must be credible and that their testimonies must be supported by evidence is routinely ignored in the prosecution of cases, notably

when the investigation and the prosecution of cases are backed by the military and the police. At the early stages of deciding whether or not a case can proceed to a prosecution in court, in such cases, prosecutors typically fail to exercise their authority to protect the fundamental statutory and Constitutional rights of the accused.

The use by the police and the military of false witness has also been widespread. For example, former rebels and acquaintance of the accused are used to concoct and make false testimonies, which provide the prosecutors with the legal basis to subpoena the accused. These witnesses are persons who enjoy benefits, including money from the military and the police. The prosecutors abdicate from their power to dismiss cases based on a lack of evidence by not thorough examining whether the charges meet acceptable standards. An evaluation should be made to assess whether the evidence presented is enough to show that a crime has been committed. Such due diligence would prevent the filing of legally incoherent and fabricated cases in court. However, prosecutors typically leave it up to the courts to decide on the merits of the case.

Prosecutors are subservient and allow themselves to be co-opted by the police and the military. Prosecutors have been conducting inquest proceedings inside military camps, when the military have illegally arrested persons. This is a violation of section 2 of the Department of Justice's (DoJ) Department Circular No. 61 that stipulates that "(prosecutors) assigned to inquest duties shall discharge their functions during the hours of designated assignments and only at the police stations/headquarters of the PNP". This practice is therefore illegal and undermines the civilian nature of the prosecution service. Prosecutors that act illegally are however not being held accountable.

Flawed prosecutions of demonstrators and activists

The following are some examples of the prosecution of activists that the AHRC has documented in 2010:

Fabricated charges against eleven activists

Mr. Esperidion R. Solano, assistant provincial prosecutor in Camarines Sur, sent subpoenas to eleven activists on August 16, 2010, requiring them to respond to allegations of murder that the military had filed. The key witnesses in the murder complaint were persons who are known supporters of the military. The attack, which killed a military officer, a civilian and wounded four other soldiers, took place on May 25, 2006 at 10pm in Barangay (village) Pawili, Pili, Camarines Sur.

In a complaint filed by Captain Allan Cornejo, a member of the 9th Infantry Division of the Philippine Army attached to the Camp Elias Angeles, Caboclodan, San Jose,

Pili, the investigating prosecutor heavily relied on the testimony of one of his witnesses, Edwin Nazarionda. Nazarionda claimed that prior to the attack the eleven activists took part in a meeting on April 28, 2006 unanimously agreeing to launch a tactical offensive against the Armed Forces of the Philippines (AFP) Intelligence Camp in Pawili, Pili, Albay.

Nazarionda also claimed he knew the accused as he was a former New People's Army (NPA) and at the time was working as a pastor for the United Methodist Church. He claimed that he personally knew them, particularly Leo Caballero. Apart from him, two other witnesses, Eleazar Cells and Renante Legata, also claiming to be former NPA rebels, accused them in sworn statements recorded at the Pili Municipal Police (PNP) of being involved in the attack at the military camp.

Apart from stating that the persons knew the eleven accused and that the latter allegedly plotted the attack, the testimonies did not contain information that could have satisfied the legal requirements to establish 'probable cause' that a crime had been committed, enabling prosecutors to take action. The prosecutor could have dismissed the complaint following a summary investigation after it was filed, but he did not.

Those included in the complaint, which concerned two counts of murder, four counts of frustrated (attempted) murder, three counts of 'carnapping' (stealing a vehicle) and a special case of malicious mischief, were:

1. Leo Caballero, correspondent for the Center for Trade Union and Human Rights (CTUHR) in Bicol region and also the head of the Human Rights Department of Kilusang Mayo Uno (KMU)-Bicol
2. Maria Agnes Pacres, regional coordinator of Alliance for the Advancement of People's Rights (KARAPATAN)
3. Beverly Quintillan, Bagong Alyansang Makabayan (BAYAN)
4. Felix Paz, chairperson of Kilusang Magbubukid ng Pilipinas-Bikol (KMP)
5. Jose Pernia, chairperson of Bayan Muna-Bikol
6. Jariz Vida, secretary-general of Bayan Muna-Camarines Sur
7. Eric Torrecampo, Bayan Muna-Camarines Sur
8. Neptali Morada
9. Reynaldo Hugo
10. Edgar Calag
11. and Ka Boris Taba

The prosecutor's decision to proceed with the prosecution process and subpoena the accused solely based on subpoena witnesses testimonies undermined safeguards concerning the protection from being falsely charged and subsequently deprived of liberty.

The case also raises the legal question about how an individual or group of persons can be held liable for the crime of murder, based only on the fact that they had made a declaration, without any further evidence. If such testimony is sufficient to charge accused persons in courts, anyone could be prosecuted for any crime based on any

testimony, without any supporting evidence. The absence of any credible evidence requirement shows how corrupted the justice process can be, and how it can bend to fit the interests of the State. The AHRC also believes that the idea that a group of key leaders and organizers of human rights and political organizations would come together to launch an armed offensive on a military camp is preposterous.

Torture and false charges filed against three activists

Peasant community organizers and activists Charity Diño (29 years old), Billy Batrina (29) and Sonny Rogelio were illegally arrested on November 23, 2009 and tortured and faced false charges. When their case was reported in March 2010 they were in detention at the provincial jail in Batangas, where they remain to date. They had previously been held for 17 days in a military camp, instead of legal detention facilities as required by the law, under the pretext that they were security risk. They were tortured before they were transferred to proper jail facilities.

At the time of their arrests in Talisay, Batangas, they had been inviting local community members to participate in Urban Poor week. They are members of Samahan ng Magbubukid ng Batangas (SAMBAT), a local peasant group. Soldiers attached to the 730th Combat Group of the Philippine Air Force Camp in Palico, Batangas forced them into vans. Their whereabouts were not immediately known following their forcible abduction. The day after their arrest, November 24, they were taken to the Office of the Prosecutor in Batangas, where they were subjected to inquest proceedings.

The victims in this case were held for 17 days by the military and were tortured. They were blindfolded with adhesive tape and handcuffed. Two of the victims, Batrina and Rogelio, had their heads hit against a wall. ; Charity had her finger squeezed hard with bullets inserted in between them. Several military men interrogated them one after the other. They were forced to admit that they are members of the NPA rebel group and questioned about other alleged members of the group.

The manner of their arrest was a violation of Rule 113, section 5 of the Revised Rules on Criminal Procedure, which allows arrest without warrants only when: a person is attempting to, or is in the act of committing or has committed a crime. Any person arrested under such provisions should be subjected to an inquest, but the charges must satisfactorily establish a credible level of probability that a crime had been committed in order to allow the launching of a prosecution.

On November 26, charges of illegal possession of firearms and explosives were filed against the three at the Regional Trial Court (RTC), Branch 6 in Tanauan, Batangas; Charges of illegal possession of drugs were also filed against Diño at the Municipal Trial Court (MTC) in Talisay, Batangas. The soldiers allegedly planted evidence, which they used to enable the filing of charges.

The manner of the arrests and the subsequent filing of charges under the inquest proceedings did not meet the requirements under the existing Rules. The three victims were initially abducted and were not properly and adequately informed of the nature of charges against them. Evidence was allegedly planted on them. They were also held in a military camp instead of a legally sanctioned detention centre

The military usurped the authority of the police by arresting these persons and investigating their alleged crimes. The police station that is supposed to have primary jurisdiction in the area, the Talisay Police Office (TPO), was apparently not even aware of the military operation.

The case of the 'Morong 43'

On February 6, 2010, 43 health workers, collectively known as the 'Morong 43',¹ were illegally arrested while they were holding a training workshop on health skills in Morong, Rizal, and detained and subsequently laid with questionable charges in court. The training was organised by the Community Medicine Development Foundation (COMMED) and the Council for Health and Development (CHD) 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 COMMED; Dr. Merry Mia of the CHD; Mr. Gary Liberal, a nurse; Ms. Teresa Quinawayan, a midwife; and CHD staff-members. Physicians Montes and Mia had been working with their respective NGOs for many years. The 43 victims were blindfolded before they were taken to Camp Capinpin in Tanay, Rizal, where they were still being arbitrarily detained as of the end of 2010.

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 202nd Infantry Brigade of Armed Forces of the Philippines (AFP) and the Philippines National Police (PNP) Provincial Police Office (PPPO) of Rizal province – have claimed in various media interview that the 43 victims were members of the New People's Army 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. According to reports from KARAPATAN, a local human rights organisation, when the policemen and the 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

¹ For more information about this case see an AHRC urgent appeal <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-032-2010/>; and a campaign page set up concerning this case: <http://freethehealthworkers.blogspot.com/>

the training had any arrest warrants pending against them, so this use of force is unjustifiable.

When the police have a court order to conduct searches they have a legal obligation to present them to the person who owns or occupies the place that is to be searched. In this case, the police only presented the document after they had finished the search. Furthermore, the search warrant did not specify the exact location to be searched or the names of any of the persons that were arrested.

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 Camp Capinpin in Tanay, Rizal, the headquarters of the 202nd Infantry Brigade of the Philippine Army (PA), by a convoy of military vehicles composed of four 6 x 6 military trucks, two military Armoured Personnel Carrier (APC), a car and an ambulance. Some of the vehicles had no licence-plate numbers, while the others were either covered or smeared with mud.

All 43 victims have now been charged with the Illegal Possession of Explosives at a local prosecutor's office. The manner in which the inquest proceedings were carried out is of concern. The public prosecutor went to the military camp to conduct the inquests, instead of the police and the military going to the prosecutor's office.

As mentioned above, under section 2 of Department of Justice's (DoJ) Department Circular No. 61, public prosecutors can only conduct inquests in police stations, not in military camps.

In February 2010, the victims' legal counsel filed a petition for the writ of habeas corpus with the Court of Appeal (CA). . However, 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 in the *Ilagan vs. Enrile* case.² According to this, once a charged in filed against the accused, their detention can no longer be questioned because criminal charges have already been filed against them in court. The legality of their arrest and detention, and the validity of evidence used by the prosecution, is a matter for the court to decide upon in hearing the case. This enables cases that should have been dismissed prior to reaching the court for legal flaws and insufficiency of evidence, are allowed to go to trial. This allows cases that are the product of torture and flawed due process to be tried in court and can then result in travesties of justice.

² Laurente C. Ilagan vs. Juan Ponce Enrile;
http://www.lawphil.net/judjuris/juri1985/oct1985/gr_70748_1985.html

Karnation workers imprisoned based on false charges

In August 2009 the AHRC first reported the detention and filing of fabricated charges against 20 workers of Karnation Industries and Export, Inc.³ They were charged with Illegal Detention after they held a protest in front of their factory in May 2007 concerning the illegal dismissal of fellow workers, the non-payment of salaries, holiday pay, their 13th month's pay and night differential payments. They were only being paid Pesos 160, which is half of the Pesos 320 (USD 6.6) mandated as the daily minimum wage in the area.

The hearing of their case had been pending for two years, during which two of their number had died in prison after contracting tuberculosis. The evidence used by the prosecution in pursuing the charges against them was only pictures of the gate the complainants had claimed the workers had padlocked. The pictures showed workers on strike outside the compound. The workers, however, argued that the pictures and the persons in the said picture are not known to them and, in fact, did not resemble any of them.

It is only after the workers were represented by a lawyer in court that the hearing of their case progressed. On November 20, 2009, the court judge hearing the detainees' case, Ma. Teresa Cruz San Gabriel of the Regional Trial Court (RTC) Branch 80, in Morong, Rizal, granted the workers' petition to post bail allowing temporary liberty. Judge San Gabriel recommended P60,000 (USD 1,292) as bail for each of the detainees. Their employer filed a petition on December 28, 2009, asking the court to reverse its decision granting them bail. The complainants also asked the court to increase the bail to an amount the workers could not possibly afford. On January 26, 2010, the court rejected the complainants' appeal but did increase the bail amount from P60,000 to P80,000 (USD 1,760). Despite these attempts, by March 30, 2010, all of them had been released on bail by posting a surety bond.

Under article 3, section 13 of the Bill of Rights of the 1987 Philippine Constitution it is clearly stipulated that "the right (of the accused) to bail shall not be impaired" and that "excessive bail shall not be required". Only in cases where the 'evidence of guilt is strong' and where there is a serious risk that the accused may attempt to escape from prosecution, can the right to bail may be denied by the court hearing the case.

In this case, none of these conditions exist. The evidence against the detainees is not strong and they are not likely to escape from being prosecuted. Also, to increase the amount of bail to P200,000 as had been requested by their employer, would amount to an excessive bail level for the accused, who were ordinary factory workers, with no wealth or properties. The reason they were being prosecuted in the first place stemmed from their making demands to be paid the minimum wage and other lawful benefits due to them.

³ <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-102-2009/>

There are questions as to the admissibility of the evidence against the workers. As mentioned above, in the photographs used as evidence showing workers padlocking the factory gate, none of the persons in the picture resembled any of the workers charged. While the workers were holding their strike outside the establishment, any persons seeking to enter or exit the establishment were reportedly not prevented from doing so, including the employers and other workers.

Use of torture in criminal investigations

The following section will present examples of how the police use torture as part of routine investigations and how such abuses are conducted with impunity

Police force torture victim to withdraw his complaint

Anuar Hasim was arbitrarily arrested by the police in General Santos City on April 4, 2010. When carrying out the arrest, the police did not show him their order to arrest him or inform him of the charges motivating his arrest. Anuar had been riding his motorcycle, when two plain-clothed persons riding on another motorcycle stopped him. One of them grabbed his left arm and told him to, "Come 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 simply told him to "just come with us". The police brought him to the GSCPO's Police Station No. 6 located in Barangay (village) Bula, where they tortured him for seven days following his arrest in order to force him to admit to being a commander of the Moro Islamic Liberation Front (MILF) rebel group. He was He was kicked in the chest, was burned with lit cigarettes, was suffocated with cellophane wrapped around his face and head. He was also blindfolded and strangled and forced to squat, while handcuffed and punched and kicked in this position.

Anuar was finally remanded in custody at the Provincial jail in Alabel, Sarangani Province on April 12, 2010. He later learned that he had been charged with murder, arson, robbery with violence, and intimidation of persons, before the Regional Trial Court (RTC) Branch 38 in Alabel, Sarangani Province.

On July 27 an investigator from the Commission on Human Rights (CHR XII) from Cotabato City was dispatched to visit the victim in the Alabel jail to investigate a complaint of violation of the Anti-torture Act of 2009. However, before the CHR could commence its investigation, Senior Police Officer 2 (SPO2) Argie Miraflores of the Regional Intelligence and Detective Management (RIDM XII) and SPO1 Israel Lantingan of the Municipal Police Station in Alabel made the victim sign an Affidavit

of Desistance on June 8. This is a sworn statement declaring that he will no longer testify in court about his torture complaint or bring witnesses to testify for him.

Before he signed the document two other policemen one of whom was reportedly called Jamael Amykulot, attached to the Police Regional Office (PRO XII) of the Philippine National Police (PNP) - visited and interviewed the victim in jail. They had drafted the Affidavit-Complaint concerning his torture that Hasim had signed. These policemen were supposedly tasked with investigating his torture complaint. They did obtain his testimony, but when they were to take the victim to the prosecutor's office to file the charges relating to the complaint, as per the law, the victim was afraid of what these policemen may do to him. He refused to go with them, out of fear, and the police then used this to block the filing of his complaint.

Furthermore, his lawyer was not present during the signing of the documents relating to his complaint and his family-members were not properly informed of the actions the police had taken.

When the CHR visited the victim at the jail, he was too frightened and no longer wanted to be interviewed, after learning that the CHR investigator, who had introduced himself as being attached to the government, wanted to interview him again. Having been tortured by the police and later forced to sign the document in the absence of his legal counsel, Anuar was understandably fearful of persons from government agencies.

Before Anuar was transferred to prison on April 12, he had informed Ma. Antoinetta Odi, the medical health officer who examined him, that he had been tortured. However, she deliberately ignored the information and declared him "physically fit for commitment (to jail)". She did record the contusions that were visible on the left side of his chest.

Police torture a man and plant evidence to frame him

Misuari Kamid is a utility man employed by the Sarangani provincial government. When he was illegally arrested on April 30, 2010, he had been waiting for a ride on a motorcycle in Silway, Barangay (village) Dadiangas West, General Santos City. He was with two others who had attended a feast earlier that day at 'Baraks', a police reservation settlement.

While Misuari was waiting a man, who he later learnt was Richard Autor, an informant of the Philippine Drug Enforcement Agency (PDEA), approached him and started asking him questions. Richard asked Misuari whether he was familiar with some persons they were looking in the area. Intelligence Officer 3 (IO3) Arce Adam, then arrived in a red car (with license plate number UED 147) and having got out of the vehicle, drew his firearm and pointed it at Misuari. Misuari's was handcuffed behind his back and he was forced to get into the vehicle. Misuari refused and IO3 Adam hit the back of his neck with the handle of his handgun. They took Misuari to

the regional headquarters of the Philippine Drug Enforcement Agency (PDEA), General Santos City.

In his sworn statement Misuari stated: "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 had assaulted him as Intelligence Officer 1 (IO1) Rodrick Gualisa, S02 Frederick Ocana, IO1 Vincent Quilinderino, IO3 Arce Adam, IO1 Eleazar Arapoc, S12 Raymund Parama and two of their informants - Luisito Epino and Richard Autor. IO3 Adam was trying to get him to admit to being a drug dealer Misuari pleaded for them to stop assaulting him.

He was later Misuari was taken to a parking lot where he saw the officers place two plastic sachets containing cannabis and a 500 peso bill on the ground. They then forced Misuari to kneel beside the evidence, so that photographs could be taken. When he struggled against them S12 Parama hit him with the handle of an Armalite rifle.

That evening, Misuari was detained inside the detention cell of the PDEA. He was unable to sleep due to the pain caused by the torture. The injuries that he suffered were later documented in a medical certificate issued following an examination by government physician Ma. Antoinetta Odi, on May 18, 2010.

At 9 a.m. on May 1, 2010, Misuari was taken to the office of the PDEA where some journalists were waiting for him. When he was presented to them, Misuari saw the evidence they had planted on him on a table which the officers claimed were confiscated from him. Misuari is presently being detained at the General Santos City Reformatory Center (GSCRC).

Farmer detained incommunicado for six days

Farmer Abdulbayan Guiamblang was arbitrarily arrested by members of the military on February 26, 2010, on suspicion that he was a commander of a rebel group. He was tortured and held incommunicado for six days. The soldiers did not turn him over promptly to police custody, as they should have done, but illegally detained him. The military refused to inform his wife and the head of his village about his whereabouts.

He was arrested while travelling between his home and his farm, which takes him through the 38th Infantry Battalion's detachment in Sultan Mastura, Maguindanao. On this occasion a soldier guarding the detachment stopped him, took him to a nearby community centre, handcuffed him, tied his legs with adhesive tape and blindfolded him. He later loaded into a military 6x6 truck and driven for about 20 minutes to an unknown place, where he was interrogated and severely tortured. He

was told that the military had been looking for him and that orders for his arrest were pending in court, due to his allegedly being a commander of the MILF rebel group. He admitted that he is a member of the MILF, which in itself is not a crime, but denied being an MILF commander.

During questioning, he was hit several times on the head with a bottle of water. His interrogation lasted from the time of his arrest at 4.30 pm on the 26th of February until 12 midnight the same day. He was detained incommunicado until March 4, when he was produced before the Regional Trial Court (RTC) Branch 18 court in Midsayap, North Cotabato, where charges had been filed against him. These concerned frustrated murder, attempted murder,⁴ kidnapping and serious illegal detention, robbery and arson.

Police deny the existence of human rights

Five men, Lenin Salas, Jerry Simbulan, Daniel Joseph Navarro, Jose Llonos Gomez and Rodwin Tala were arbitrarily arrested by the police in San Fernando, Pampanga, on August 3, 2010. They were tortured while in police custody. One of the victims, who revealed his ordeal in an interview, said the police suffocated him, severely assaulted him, burnt his skin with lit cigarettes and threatened to kill members of his family.

They were arrested by members of San Fernando City Police and the Provincial Public Safety Office, under Superintendent (Supt) Madzgani Mukaram, in Villa Barcelona Subdivision Barangay Sindalan, in relation to their alleged involvement with the Marxist Leninist Party of the Philippines (MLPP-RHB), an illegal armed group.

When the group of Supt. Madzgani Mukaram arrived, the men were forced to lie down faced to the ground and were kicked and assaulted by the police, including Supt. Mukaram. They were then put into separate vehicles and continued to be assaulted, including with sticks, while being transported to the Provincial Police Office (PPO), where they were blindfolded and suffered various forms of torture. Lenin, for example, claims to have been beaten with a gun, burnt with lit cigarettes, suffocated with cellophane and kicked in the genitals. The police reportedly also threatened to kill him with a gun. Supt. Mukaram also allegedly threatened to harm Lenin's family members if he refused to cooperate.

When Lenin asked Supt. Mukaram to respect his human rights, he was told that "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 also reportedly told Lenin that to kill his sister would not take long and that even if he decides to visit his sister's wake, he would not be able to because he will make sure he could not get

⁴ Under the law, frustrated murder is when injury has been caused to a victim that could have been enough to kill him/her, yet the victim survived. Attempted murder is where a fatal injury was not caused but the intention to kill has been established.

out of jail. On August 4, the five men were taken to the Provincial Prosecutor's Office in San Fernando, Pampanga where they were charged with Illegal Possession of Firearms, Ammunitions and Explosives.

The failure to investigate and prosecute killers

Investigations into extra-judicial killings by the police, military, paramilitary groups and individuals working for all of these, have not resulted in successful prosecutions of alleged perpetrators. The failure of such prosecutions is due to the inability of the justice system to effectively identify perpetrators and due to lacuna in the law and its implementation. Specifically, the prosecution of cases cannot take place if the police cannot identify the crime under the penal code. Legal loopholes allow the police to dodge cases of extra-judicial killings.

Impunity being granted for killings through the use of unproven justifications

When a person dies in custody or is killed in an armed encounter with the police or the military in the Philippines, such deaths are typically not investigated. The country's criminal justice system takes at face value the justifications given by the involved State agents and the deaths are not considered to have resulted from any crime. The AHRC condemns this practice, as it provides impunity to possible perpetrators of torture and extra-judicial killing, and completely side-steps the judicial process. It therefore also encourages the use of torture and extra-judicial killings by the State.

If a person dies under any circumstances while in the custody of the State, it is imperative that an immediate, impartial investigation be launched in order to determine whether there has been any foul play and whether the State is in any way responsible for the death. In such a case, those responsible should be prosecuted for extra-judicial killing. The burden should be on the State to prove that it was not responsible for the death of any person that dies while under their custody. However, in the Philippines at present, deaths in custody are rarely investigated thoroughly. If investigations are conducted, they are superficial and intended to show that action has been taken rather than to establish the cause of death. The investigations are conducted by members of the police that are not sufficiently independent from those potentially responsible for the deaths.

Similarly, when a person is killed in an encounter with State agents, it is imperative that an immediate, impartial investigation be launched in order to assess whether the killing took place in a legitimate fashion, for example if an armed person attacked a member of the security forces they could legitimately, as a last resort, kill this person in self defence. Only under very strict circumstances can State agents legitimately kill persons. However, in the Philippines, these conditions have not been clearly defined under laws or procedures, which leads to these justifications being abused to cover up extra-judicial killings.

'Legitimate encounters' in theory involves the death of persons who have exchange fire with the police or military during their operations. This happens when the military conducts offensives against rebels, when policemen are in pursuit of suspected criminals or in the process of carrying out arrest orders, or any deaths which involve a person being killed after having exchanged gunfire with the authorities. As will be seen in the examples below, the authorities frequently claim that killings were legitimate encounters, thus halting any further investigation into killing.

However, it is not up to those that carried out the killing to define whether it is a legitimate use of force resulting in a killing. The evidence proving that the encounter was legitimate must be gathered by an impartial investigation. This evidence must prove that the strict conditions permitting the State agent to kill the person have been met.

At present, however, in the Philippines, the military or police simply claim that the killings were legitimate and no further investigation is launched to verify this. Therefore, State agents can get away with murder, as there is no system allowing the independent investigation of such killings to take place, and it is therefore impossible for the relatives of victims to seek legal remedies or for those responsible to be held accountable.

The lack of credible investigations into human rights violations by State agents is a fundamental and insurmountable obstacle to the protection of human rights, to any efforts to seek justice by victims and to any attempts to eradicate torture, extra-judicial killings and forced disappearances, as well as impunity for these acts. There is an obvious, glaring need for an independent investigation mechanism that can be used when State agents, such as members of the police or the military, are accused of human rights violations. Such independent investigation is evidently required in cases that must by default be deemed suspicious, such as custodial deaths or encounter killings.

Numerous cases have been documented in which the killing of farmers, villagers and human rights activists have been justified as being the result of 'legitimate encounters,' for example:

In February 2005, three people from the B'laan Tribe, in Barangay Abnate, Kiblawan, Davao del Sur, were killed and three others were wounded, when the soldiers opened fire at them. The soldiers claimed that the deaths and wounding were a result of a legitimate encounter. However, an investigation later revealed that the victims had been summarily executed.

In November 2005, nine farmers and several others were wounded when soldiers in Palo, Leyte, Visayas opened fire on a group of people holding a protest vigil. The soldiers claimed the shooting was also a result of a legitimate encounter. However, an investigation later revealed it was not the case and led to the prosecution of the soldiers.

On May 21, 2006, the killing of Reverend Andy Pawican, a human rights defender, had been justified as coming as the result of a 'legitimate encounter'. He was forcibly taken, allegedly by military agents, after concluding a mass in Pantabangan, Nueva Ecija. His body, which bore visible signs of torture, was found six hours later.

In February 2008, eight people, including a four year old girl and a pregnant woman, were killed by soldiers in an incident branded a legitimate encounter in a coastal village in Maimbong, Sulu. The soldiers claimed that shooting was supposedly exchanged with an illegal armed group holding a kidnap victim.

On March 2009, two persons, a man and a woman were killed in a so-called 'legitimate encounter' that took place between rebels and government soldiers. The victims were farmers living in Maramag, Bukidnon. The body of one of the victims bore evidence indicating he might have been tortured and summarily executed.

In 2010, the AHRC documented cases of such false encounter killings, including the following:

On June 2, 2010, three brothers - Eric Miraflores, 27; Raymond, 23; and Rosmil, 16 – were shot at their farm in Sitio (a sub-section of the village) Hobol, Masinloc town, Zambales.

After less than an hour of having left to the farm they were returned to their parents, Roosevelt and Mila, in a hearse. Their faces were barely recognizable because they were badly bruised and had suffered numerous gunshot wounds. The bodies of the victims showed visible signs of torture. When the corpses were returned, they were wearing camouflage uniforms, clothes which the three were not wearing when they were last seen alive. It is believed that the corpses were dressed in camouflage uniforms to create the impression that they were members of an illegal armed group.

The Miraflores couple were later been told that their three sons were killed by the policemen attached to the Zambales Provincial Mobile Group (ZPMG) of the Philippine National Police (PMG-PNP). Inspector Rolando Delizo of the PMG-PNP announced that the three 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 and had never been affiliated with any organizations or owned guns.

In another example, on September 7, 2010, at around 12:30pm neighbours Vicente Flores, Richard Oliva and Melecio Monacillo and his son, Jonathan, were resting at the house of Eliseo and Rosie Albao after having been hunting near Barangays (village) Mapuyo and Mabuhay, in Mobo, Masbate. An undetermined number of soldiers, reportedly attached to the 9th Infantry Battalion of the Philippine Army (IBPA), were passing by Rosie's house, and suddenly open fired on the house, instantly killing three of the occupants, Vicente, Melecio and his son, Jonathan. The soldiers shot at the house even though they had in no way been provoked.

Richard, who initially suffered gunshot wounds from the first volley of gunfire, tried to run for his life by jumping out the window. The soldiers finished him off after seeing him escaping. Rosie and her children, shocked by the assault ran for their lives away from their house. Vicente had his genitalia smashed by the impact of the bullets; his abdominal area also burst open and one of his hands was almost severed. One of Melecio's shoulders was shattered, and his leg bore gunshot wounds. Jonathan suffered gunshot wounds to his jaw, which pierced his skull, and to his back.

The soldiers, who left the area after ensuring that the victims were all dead, proceeded in the direction of Barangay Sta. Maria. Upon arriving there, they informed village officials that they had killed four New People's Army (NPA) rebels during an encounter.

The AHRC has documented numerous cases in which the police's failure to investigate the perpetrators of these killings shows a deeply rooted problem within the policing system that is directly responsible for the lack of successful prosecutions and therefore impunity. At the root of the problem is that there is no effective system of accountability within the police, which could ensure that the failure to investigate killings would have an impact on the police officers that failed in their duties.

Recommendations have been made concerning the need for the government of the Philippines to ensure investigations and prosecutions concerning all forms of killings, by Professor Philip Alston, the UN Special Rapporteur on extra-judicial, summary or arbitrary executions in April 2008, as well as in the Report of the Working Group on the Universal Periodic Review of the Philippines in May 2008. The government continues to ignore these recommendations and has not taken the required steps to ensure a system that is capable of carrying out effective investigations. As a result, the police and military continue to justify the torture to death of persons in custody or summary executions, without fear of being challenged and held accountable.

These defects within the structure of the police investigation mechanisms do not only affect the investigation and prosecution of cases involving human rights and political activists, but also the killings of ordinary, poor persons. In fact, political killings are more likely to at least receive some form of cursory investigation, due to the greater attention that they receive. In cases of killings of poor persons, with no political party or organizational affiliations, no legal aid or persons to document their cases, there is little chance of even getting basic investigations.

Even concerning the killings of persons with organizational affiliations and political connections, their relatives find it difficult to have their cases investigated by the police. The families and colleagues often have to gather evidence themselves, locate witnesses and provide them with protection in order to build a case.

The killing of human rights and political activists

Edward Panganiban: Target of overt surveillance

Edward Panganiban is the secretary of independent union Samahang Lakas ng Manggagawa sa Takata Philippines (SALAMAT-Independent), a labour union in Takata Philippines Incorporated in Laguna Technopark Incorporated. The company is owned by Japanese employers.

On June 2, 2010, after 5 p.m. he was on his way to Santa Rosa City when gunmen riding on a motorcycle shot him dead. His motorcycle stopped due to traffic. The gunmen took advantage of this by overtaking his motorcycle and shooting him dead. The gunmen knew the victim's identity, because one of them was heard to have called his name before he was shot. Panganiban died instantly from 12 gunshot wounds.

Before Panganiban was murdered, two reportedly well-built persons wearing balaclavas or other things covering their heads and riding on a motorcycle had been seen acting suspiciously near where he lived

Police investigators arrived at the crime scene about ten minutes later. There were eye witnesses to Panganiban's killings that could have helped the investigation in identifying the perpetrators. However, the police or prosecutors appear to have made no effort to locate the witnesses and provide them with security should they cooperate in the investigation, to ensure the prosecution of the case.

Furthermore, no adequate investigations have been made into reports by Panganiban's colleagues that his fellow union officers and union members have been palced under surveillance by the Intelligence Service of the Armed Forces of the Philippines (ISAFP) following his death. The ISAFP has reportedly been intimidating workers from participating in union activities since 2007.

Reynaldo Labrador: shot in front of his wife, children

Reynaldo was 39 years old, had 3 children and was a member of the Paquibato District Farmers Association (PADIFA), a local chapter of Kilusang Magbubukid ng Pilipinas (KMP) or Philippine Peasant Movement. He was shot dead at 7:30 p.m. on September 3, 2010 in front of his wife, Leonisa and his daughters Reylon, 10; Raquel, 8; and Jennifer, 4, at their home in Paquibato District, Davao City.

Labrador was inside his house when two men, one of whom was identified as Berto Repe, a member of the Citizen Armed Forces Geographical Unit (Cafgu), came looking for him. Cafgu is a paramilitary unit under the immediate control and

command of the military. Repe is attached to the 69th Infantry Battalion of the 1003rd Infantry Brigade of the 10th Infantry Division Philippine Army (IDPA).

The two were met by Labrador's wife, Leonisa, and they told her that they were carrying documents for her husband to receive. When she offered to receive them, they insisted that they could only give the documents to her husband. She then called to her husband who was resting inside. When he emerged, Repe's companion pulled out his handgun and shot him in the head and chest. He died instantly.

Reylon, the victim's eldest daughter, tried to go to her father after hearing the gunshot, but after seeing her father dead she jumped out of the house. She immediately called for their neighbours help. Leonisa immediately took the other two children, Raquel and Jennifer, to safety. The gunmen escaped after the shooting. They left a note at the victim's house that read: "Demonyo ka! Hiposon ka!" (You're evil! You must be killed!)

On the 6th of September, a group of soldiers came to Labrador's house. The victim's family believes that the soldiers had come to see them to intimidate them from taking part in any demand for an investigation. This was after a local human rights group, Karapatan in Davao City, had sought the help of the local government to look into the case. The city's legislative body commenced an inquiry in aid of legislation on 9 September. The elected members of local legislative bodies, such as City Councils, have the right to conduct an 'inquiry in aid of legislation.' The purpose of this type of inquiry is to assist local legislative councils in the development of local laws that can address problems and provide remedies to victims. However, these local laws have to remain within the ambit of national laws. This kind of inquiry is not a criminal investigation and cannot be used as the sole basis for prosecutions, although they can support cases.

Vicente Felisilda: shot in front of his brother

38 year-old Felisilda was a farmer with four children and member of a political party, Bayan Muna. On September 9, 2010 at 7pm, he and his elder brother, Allan, were resting inside a small hut in Mawab town, Compostela Valley after working on their farm.

Two gunmen arrived wearing plain clothes and armed with .45 calibre pistols. One of them shot Vicente at close range. Allan ran for safety, but he could hear his younger brother moaning in pain. About 20 minutes later, he heard another gunshot, as the perpetrators finished his younger brother off.

The following day, Felisilda's body was taken to a local funeral parlour to be embalmed. Here, there were four police investigators from Mawab Municipal Police Station who conducted an investigation; however, the victim's family did not report the shooting to the police. No post mortem examination was conducted before the burial.

Rene Quirante: executed by soldiers

48 year-old Rene Quirante, a farmer with five children lived in Sitio Labaklabakan, Barangay Trinidad, Guihulngan, Negros Oriental. He was the chairperson of Kapunungan Alang sa Ugma sa mga Mag-uuma sa Oriental Negros (KAUGMAON), an affiliate of Kilusang Magbubukid ng Pilipinas (KMP) - the "Philippine Peasant Movement."

On 30 September 2010, Quirante and Romeo Gador went to Sitio Amomoyong to meet with the members of his organization. Quirante and Gador decided to stay overnight at the house of the latter's relative, Neneng Nilles, in sitio Amomoyong when their meeting ended late in the afternoon. The place is far from Sitio Labaklabakan, where Quirante lived.

At 2 am those inside heard someone, who claimed to be a member of a rebel group New People's Army (NPA), calling them from outside asking them to open the door. They did not pay attention to the call. Then the caller forced himself in by opening the door's lock. Quirante and Gador tried to prevent them from entering but they were overpowered.

Once it was open, they saw a group of about 30 soldiers, in full uniform and armed with rifles, outside the house. One of those in the group was identified as Dennis, a rebel returnee working for the military. Neneng and her nine children, the youngest of whom is aged 2, were awakened by what was happening. The perpetrators, however, went straight to Quirante, beating him with their rifles butts. They forced him to admit that he is an NPA member. When Romeo and Neneng tried to help him the soldiers too assaulted them in open view of the frightened children.

The soldiers dragged Quirante towards the veranda where they continued to assault him, after which, the soldiers allegedly executed him by shooting him at close range twice in the head and once on the chest. The soldiers, who were heard by Gador to have said: "Tinlo na!" (It's clear!), left after shooting the victim dead.

Prior to his murder, Quirante was been detained on 24 March 2007 after the military laid fabricated charges against him for Illegal Possession of Firearms. They accused him of involvement in an ambush that killed 3 soldiers attached to the 11th Infantry Battalion of the Philippine Army (IBPA). The case, however, did not reach court as the prosecutor rejected it.

At the time of his death, Quirante had been very vocal against the installation of a military detachment and Barangay Defense System (BDS), a paramilitary unit under the control of the military, in the interior villages of Guihulngan, Negros Oriental. He was also the object of public vilification by the military in their radio programs.

Benjamin Bayles: soldiers shot him in public

43 year-old Benjamin Bayles was lived in Himamaylan City, Negros Occidental. He was a leader and district coordinator of the Aglipayan Forum, the organization of members of Iglesia Filipina Independiente (the Independent Church of the Philippines). He was active in campaigns against mining and a community organizer of the National Federation of Sugar Workers (NFSW). He was also a local leader of Bayan Muna, a political party.

On June 14, 2010 at 4:30 p.m. Bayles was waiting for a ride in Barangay Su-ay, Himamaylan City, when two men riding a motorcycle stopped nearby. They were wearing helmets and their motorcycle did not have license plate. The person riding at the back walked towards Bayles and shot him repeatedly. The driver also came close and shot him as he fell to the ground, to finish him off. Then the gunmen escaped onboard their motorcycle.

After the shooting, bystanders took Bayles to the Valeriano Gatuslao District Hospital but he was already dead. One of the bystanders, a government employee, immediately called someone he knew from the Himamaylan City Police Office (HCPO) to report the incident. The policemen there immediately also alerted the policemen at the adjacent city, the Kabankalan City Police Office (KCPO), who subsequently arrested the gunmen, Ronnie Caurino and Roger Bajon, having identified a description given by witnesses.

The police confiscated from Caurino a .45 caliber pistol, an STI Custom Shop model with serial number 129528. They confiscated another .45 caliber pistol and a lightweight Colt Defender Series 90 model with serial number 195879 from Bajon. The two were positively identified by witnesses as the ones who shot Bayles. They have since been identified as being members of the 61st Infantry Battalion of the Philippine Army. The perpetrators are facing charges of murder before the Regional Trial Court (RTC) in Himamaylan City.

The lack of effective witness protection

Beyond the lack of investigations and prosecutions, another systemic failure that is preventing the protection of human rights and upholding impunity is the lack of effective witness protection. In many cases that the AHRC documented in 2010, one significant obstacle preventing the justice delivery system from functioning has been the unwillingness of witnesses to come forwards and testify in court. This is understandable given the lack of adequate protection provided to them by the State. The government has failed to implement the Witness Protection Security and Benefit Act (RA 6981).

Since 2005, the AHRC has been urging the government to ensure adequate protection for witnesses if it is serious about holding promises made nationally and at the international level about investigating extra-judicial killings. The AHRC urges the government not only to effectively implement the provision of RA 6981, but to also introduce amendments to the law in order to make it effective in providing protection. For example, the law must be amended to enable interim protection to be provided to witnesses while their application for coverage under the witness protection program is being decided. Witnesses have been killed due to a lack of protection while waiting for extended periods while their applications are being considered.

Furthermore, under the Witness Protection Law, a witness can only be provided with protection once the case they are testifying in has been filed in court. During the lengthy period while the police conduct an investigation and before the prosecutors are able to file charges in court, witnesses are exposed to unnecessary risk. This lack of interim protection allows the State to claim that it is not responsible for the witnesses, as they have not yet entered the witness protection system, and the State can therefore not be held accountable for anything that happens to them during this time. This is effectively acting as a green light for perpetrators to intimidate or even kill witnesses before they have had a chance to testify and represents a significant blockage to the justice system, as this system is overly dependent on witness testimony as part of court cases. A lack of witnesses equates with a lack of effective prosecutions and continuing impunity.

No investigation, no witness, no arrest

Edwin Bargamento: "we killed your father"

Edwin Bargamento had five children and was a community organizer of the National Federation of Sugar Workers (NFSW), a local farmer organization.

Bargamento was killed on April 13, 2005. He and his nephew, Sandro, were on their way home when gunmen attacked them. The gunmen had been waiting to attack them at the roadside as they had parked their motorcycle. Sandro had noticed the gunmen, but before he could say something they had already shot his uncle, Edwin, with a .45 calibre pistol.

Bargamento tried to run away despite suffering injuries but they finished him off when he fell into a canal. The gunmen did not stop shooting at him until they were sure he was dead. Bargamento suffered 21 gunshot wounds. Sandro, however, was able to escape from the attack by running to a nearby house.

The delay on part of the police to arrive at the crime-scene resulted in evidence that could have been useful in the investigation being spoiled. A crowd of people had gathered at the place before the police could start investigating. It took them six hours to respond to the shooting incident.

By 2006, the victim's elder brother, Susanito, was also killed, after he had testified to an international fact finding mission which was investigating the killing of activists there in May 2006. Gunmen shot him dead in a crowded place. There were many eyewitnesses, including the victim's wife, who was present during the shooting, but neither Edwin nor Susanito's case have advanced in court.

In 2009, a person name Ryan (nickname Kenneth) told one of the victim's children that he was the one who had killed their father and uncle. The family has not taken action against this person, but remain willing to pursue the prosecution of the case.

The case of Manuel Bartolina:

Manuel Bartolina had three children and was a resident of Hacienda Sanay, Barangay Purisima, Manapla, Negros Occidental.

On June 13, 2005, Bartolina was shot dead as he was resting inside a hut on his farm. Before he was killed, his wife Lourdes noticed the suspicious movements of two persons who were selling goods as she was tending their store. In the village, most people knew each other, however, she had not seen these two men before.

Later his wife ran to their farm after she heard of gunshots coming from their farm. At that time, there was an electricity failure in their village. When she arrived at the hut, she found her husband dead. He had gunshots to the soles of his feet that exited from his belly.

No one witnessed the killing, but the victims' family believes that he had been the subject of surveillance before he was killed. Although the victim's wife had seen the two persons she suspected of having carried out the killing, she could not recognize their faces again. There have been no further investigations conducted into the victim's case five years on.

The case of Carlito Dacudao:

Carlito Dacudao was 50 years old, had seven children, and earned a living by selling fish. He was also a community organizer of the National Federation of Sugar Workers (NFSW), living in Victorias, Negros Occidental. He was helping farmers to claim ownership to the land that they cultivate.

At 7am on August 21, 2009, after buying his fish stocks to sell from Victorias, Negros Occidental, he was on his way home driving his motorcycle. Along the road, Anastacio Dios, reportedly pretended to want to buy fish from him and stopped him. 12 armed men had positioned themselves to attack him.

The gunmen are allegedly former members of the Revolutionary Proletarian Army (RPA), former rebels who had been integrated under the military. They are under the direct control and command of the military unit which they are attached to.

After learning about the shooting incident, Carlito Dacudao's wife Norma went to the crime scene but was prevented from coming close to her husband until the police arrived. Shortly after, the military also arrived and took the victim's belongingd and mobile phone. When she asked why the soldiers were taking them from her husband, they told her that they were only borrowing it to check his SIM card and phone. When she asked the police about it, they did not know anything about it.

The police did take custody of one suspect named De Dios, whom witnesses had identified as being involved in the killing. However, he was later release for lack of witnesses willing to testify, despite many people have seen the murder. De Dios was allegedly involved because his son is a member of the RPA.

Living in fear – the problem of threats to activists

Remedies cannot work without complaints

Many human rights or political activists in the Philippines are subjected to a range of threats by State agents or those working for them. These result in such persons living in fear, as many of these threats, including death threats, are carried out, as shown by the hundreds of reported cases of extra-judicial killings of such activists over the last decade.

The protection of human rights and political activists who are the subject of threats is not at all effective in the Philippines. Institutionally, it is the utmost responsibility of the Philippine National Police (PNP) to protect individuals.

The cases below illustrate how a lack of accountability by the police means that there are no repercussions when they fail to protect activists. This results in a lack of confidence by activists leading to complaints rarely being made when they receive threats. The extent of fear, distrust, and the lack of confidence in public institutions run so deep that victims do not expect the police to investigate cases.

The making of complaints at police stations has been reduced to nothing more than keeping records. The victims who are object of threats may report them to bring attention to their situation, but they typically don't expect the police to provide effective protection.

Judicial remedies: The Writ of Amparo is a judicial remedy that grants temporary protection orders (TPO) to individuals whose security and life is threatened. The Writ of Habeas Data is a remedy that provides for the correction to or production of records of persons subjected to false profiling by the authority. While these have been heralded as important developments in the remedies available to victims in the Philippines, as with many other laws, remedies and rights, they are not being effectively implemented. In these cases, the limitations come from beyond the authority of the judiciary.

These remedies promulgated by the Supreme Court (SC) do not function if victims do not file complaints in court or do not have the resources to do so. The continuing extra-judicial killings and impunity in the country have instilled deeply-rooted fear and apathy amongst victims and witnesses, which has meant that remedies that may have a chance of proving effective have not been used effectively.

The cases below demonstrate how institutions and mechanisms alone cannot protect persons if those who are to be protected have little confidence in the system. The government of the Philippines must work not only to put in place effective protection mechanisms but also work to ensure that the public develop confidence in these systems – this remains a significant task.

Yolanda Pineda: marked for death

On April 9, 2010, Yolanda Pineda received a letter laced with black ribbon with her nickname, "Let Pineda", written on it. She got it from her eldest daughter who had found it. The sender was supposedly a certain Ka Diego Magtanggol. The message in the letter, written in Tagalog, has been unofficially translated below:

"We are giving you reasonable time after receiving this notice to clear your name. Your failure to comply would mean you are not interested in clearing your name and it will mean a bold forceful move or DEATH!"

The sender claimed to know Yolanda and accused her of having connections with an illegal armed group, the Marxist Leninist Party of the Philippines (MLPP-RHB / Marxista Leninista Partido ng Pilipinas – Rebolusyonaryong Hukbong Bayan). It also accused her participating in demonstrations alongside this as a member of Kilusan para sa Pambansang Demokrasya (KPD - Movement for Nationalism and Democracy).

Yolanda Pineda is a day care teacher for Antonio Day Care Center in Barangay San Antonio, Lubao. Since the military established an army detachment adjacent to the

day care center where she was teaching, June 2008, she had been very critical and been actively demanding the removal of the detachment. She had also organized the parents of the preschool students in joining her.

She also led in the submission of a petition letter filed with the Commission on Human Rights (CHR) and the Local Government Units (LGUs) which demanded the removal of the military detachment. It is believed that this is the reason why the army attached to the 3rd Infantry Battalion of the Philippine Army (IBPA) has subjected her to continuing harassment and intimidation.

Bernardino Patigas: he is worth 50,000 pesos

In November 2009, Bernardino Patigas received a letter from a person who claimed to know him, which stated: "Beware because the people led by Efren Amarilla will kill you. Efren is a member of an organisation (Guardians) established by the military".

In January 2010, he received another letter containing a threat, claiming that Efren Amarilla, Boy Palabrica, Tolendoy and two others whose names were not mentioned, would kill him. The letter also attached a mission order from Efren and signed by the chief of the Intelligence Special Action Force (ISAFP). They were reportedly to be given 50,000 pesos by Timoteo Ballesteros if they killed him. Patigas' colleague spoke with Boy Palabrica, one of those paid by Tim Ballesteros, who admitted that the message in the letters was true. However, this colleague does not want to stand as a witness in court.

Apart from the letters, Patigas has also been portrayed in numerous leaflets distributed in Escalante City showing him carrying a coffin towards a person in the mountain that is carrying firearms. There are also leaflets showing him carrying a firearm stepping on dead bodies.

Patigas, nickname Toto, is the secretary general of the Northern Negros Alliance of Human Rights (NNAHRA) in Negros Island and former organiser of fishermen in one of the districts in Negros Occidental province. Part of NNAHRA's advocacy is education about why human rights violations are happening and for people to learn what they should be doing in cases of violations.

Cerila Anding: soldiers repeatedly vilify her

Cerila Anding is the president of the Nagkahiusang Mamumuo sa Osmena (Namaos)-Kilusang Mayo, a banana plantation workers union in Compostela, Compostela Valley Province.

Since 2008, Anding and her union members have been systematically targeted with vilification by soldiers attached to the 66th Infantry Battalion of the Philippine Army, lead by 1st Lt. Mark Tema as well as the Workers for Industrial Peace and Economic Reform (WIPER), a unit under the military's control that reportedly has orders to eliminate any activities that threaten 'industrial peace' in the plantation areas.

The soldiers had been conducting meetings in the villages to tell the villagers that Anding and her union are working as a front for the communists. The soldiers had gone to each of the houses of the union members and their officers to convince them to cease membership and affiliation with the National Federation of Labor Unions (Naflu) and the KMU respectively. The soldiers told them that union dues that Namaos were giving to these groups were used to support a rebel group. Such vilification has in many cases in the Philippines later resulted in the extra-judicial killing of persons who have been thus targeted, so this remains a serious concern.

Vicente Barrios: gunmen hired to kill him

Vicente Barrios is the president of the Nagkahiusang Mamumuo sa Suyafa Farms (Namasufa) in Compostela, Compostela Valley Province. Namasufa is an association of banana plantation workers in the area.

On September 16, 2010, at 8pm a man (name withheld for security reasons) came looking for Barrios at his office in Barangay Siocon, Compostela. This person warned Barrios that the SUMIFRU Company had hired two persons to kill him.

According to this man, the manager of the company was angry at the protest that the union had held at the head offices of SUMIFRU in Tibungco, Davao City on September 13, 2010. The workers held a protest demanding the implementation of the Collective Bargaining Agreement (CBA) and protesting the refusal to open the Election Ballot Box of Namasufa that would determine their eligibility to negotiate the collective demands of the workers, as well as and the company's refusal to acknowledge that there existed an employer-employee relationship between them. The man also claimed that on September 14 and 15, 2010, he spoke with the two hired killers allegedly hired by the company to kill Barrios.

Three activists disappear in soldier's custody

On March 9, 2010, at 9 pm, five unknown persons armed with pistols reportedly entered the house of the Landingin family in Sitio Matalvis, Barangay (village) Inhobol, Masinloc, while the entire community was in darkness due to an electricity blackout. The armed persons forcibly took the victims, Ronron Landingin, Jinky Garcia and Daryl Fortuna, to a waiting car.

Three days later, on 12 March, the victims' whereabouts were located by villagers in Barangay Inhobol and Barangay Bamban, Masinloc. Persons fitting their description had been seen in the custody of the 24th Infantry Battalion, Philippine Army (PA), with their hands cuffed, during a military operation in the area. It appeared that the three victims were being used as guides by the soldiers. They were easily recognizable as they were well known community organizers in the area.

One of the witnesses was able to speak with one of the army soldiers on foot patrol, to confirm that the three persons were with them. On March 15, 2010, Ronron's parents were able to speak to him via his mobile phone, and he told them that he believed that the soldiers had taken him to Pangasinan, another province. They were helped at this point by the regional office of the Commission on Human Rights (CHR-III).

Meanwhile, the relatives of Jinky Garcia and Daryl Fortuna were unable to locate them despite going to the headquarters of the Philippine Army 24th Infantry Battalion and the Philippine National Police (PNP). They were also pursuing legal action against the soldiers to help secure the victims' release. Despite having been positively identified by witnesses and villagers as being directly involved in the victims' disappearance, Col. Wilfredo Patarata, the commander of 24th IBPA, denied having them in custody. He committed himself to cooperating with the investigation.

Since April 17, the victims' organization has been seeking a Writ of Amparo. This was to be lodged on behalf of the three victims after two witnesses had initially expressed their willingness to testify. Since then the witnesses have expressed concern for their safety and have been reluctant to cooperate. In March 2010, Ronron's parents withdraw from pursuing the case due to feelings of insecurity and had gone into hiding.

Lawlessness and the abandonment of due process

The problems arising from a lawless law-enforcement system

The Police

Members of the police routinely ignore elementary procedures when carrying out searches, arrests, detention. The nature of crimes that are prosecuted are even legally incoherent at times, as has been shown above. They conduct searches and arrests without considering whether they have court orders. However, there are no effective systems in place at present to hold policemen accountable when they do violate procedures.

Routine arrest without orders: Arrest can only be legal if they comply with Rule 13, section 1 of the Philippine Revised Rules of Criminal Procedures, under which the

arresting officer must be in possession of a court order to justify the arrestee's deprivation of liberty. The arrest order must be shown to the person to be arrested, and the specific charges must also be included in the written order.

In reality, members of the police arrests persons without such orders and the charges are often concocted later. The case of Misuari Kamid above illustrates this problem clearly. When PDEA agents took custody of Kamid, he was neither in the act of committing a crime nor had he just committed a crime. These are conditions that could justify his being arrested without a warrant.

Kamid was illegally arrested by PDEA agents based on information provided by their informer that he was selling illegal drugs, without any firm evidence that this was the case. The agents did not have any legal grounds that could justify his arrest. In order to fabricate evidence to be used in the prosecution of the case, they tortured him and then forced him to have a photograph beside the evidence that the agents had planted. The photographs were used by the agents in filing charges of illegal drugs on him.

Examples of legal and procedural violations by the police

Legally incoherent charges: Police charge farmers in legally incoherent cases

On May 21, 2010, 11 farmers, including four minors, were arbitrarily arrested by the police and detained. Legally invalid and non-existent charges were laid against them following their arrest. The farmers were requesting the landowner's representative, who had been accompanied by members of the policemen in Calamba City, Laguna, to refrain from entering property that was being contested in a land dispute under agrarian reforms. Not only was this request ignored, but the police forced the farmers to disperse and later arrested them.

The farmers and their children were at a makeshift camping site that they had erected in Sitio (subsection of the village) Buntog, Barangay Canlubang, Calamba City in Laguna, when the police arrested them. The farmers had been camping in the area since April 5, 2010, to protest against the cutting down of coconut trees in the Hacienda Yulo coconut plantation that they were cultivating.

The cutting down of the coconut trees was seen by the farmers as part of the landowners' attempts to convert the contested farm land into residential, industrial and commercial land, allowing them to construct expensive housing subdivisions. The farmers depend on the coconut plantation for their livelihoods.

On the day of the incident, the farmers were positioned at the main road entrance to the Sitio when land surveyors arrived. At least 20 private security guards, a composite team of about 30 members of the Special Weapons and Army Tactics (SWAT), policemen from the Calamba City Police Station and the Police Regional Office of the Philippine National Police (PRO-PNP), accompanied the land surveyors.

When the farmers presented them a petition that had been sent to the Office of the President (OP), asking for the revocation of the questionable order of the Department of Agrarian Reform (DAR) issued in 1992, they refused to consider it. The DAR had issued an order exempting the Hacienda Yulo from distribution under the Comprehensive Agrarian Reform Program (CARP) to the landless farmers, which these farmers were now contesting.

During the negotiation, policemen and private security guards were all carrying heavy firearms. They allegedly began violently pushing the residents away and subsequently arrested the protesting farmers one by one. The policemen arrested Maria Garcia (39 years old), Dorotea Mangubat (46), Annabel Natanauan (28), Mario Mangubat (36), Gilbert Caraan (25), Lamberto Caraan (40) and 71-year-old Francisca Mangubat, and took them to the Calamba City Police Station.

They also arrested four minors, namely Roger Nidia (16), Reyson Jeffrey De Leon (15), Melvin Natanauan (16) and Jorge Mangubat (12). Jorge is the grandson of Francisca; Reyson Jeffrey and Melvin were sons of farmers Wilfredo and Reynaldo respectively.

In filing charges in a Complaint-Affidavit against the farmers to the court, the police did not give information or make any allegations as to how the farmers had committed the cited offence of 'Grave Coercion and Alarms and Scandal,' despite this being a requirement under the Revised Penal Code (RPC). The policemen were not able to prove sufficiently that the farmers had used violence to justify charges of "Grave Coercion." Furthermore, nothing in the police statement contained acts that showed that they had committed "Alarms and Scandal".

Also, one of the charges the police and prosecutors filed against the farmers was, "serious resistance and disobedience." This offence does not exist under the RPC, but they nevertheless pursued the prosecution of this charge. The AHRC views the detention of all of the accused as being arbitrary, given the above.

The inclusion of the 71-year-old Francisca Mangubat and four minors under these charges raises further questions. Francisca's inclusion in the charge was simply based on the fact that the police saw her walking along the road where the policemen and farmers were also present, while the minors were reportedly sitting in the middle of the road. None of these actions can have justified the filing of charges in court.

The four minors were taken into the custody of the Department of Social Welfare and Development (DSWD). Instead of having them excluded from criminal liability because they were minors, they were included as respondents along with the adults.

Under section 6 of the Juvenile Justice and Welfare Act of 2006 (Republic Act 9344), children who are below 15 years of age should have been "exempt[ed] from criminal liability". Although those between 15 and 18 years old could be criminally

liable, in order for the prosecution to proceed, the prosecutors and the police must establish that the child had "acted with discernment" in committing the offence.

However, nothing in the complaint that the policemen filed included information about the three of the four minors who were 15 or above having acted with discernment, as is required by the Republic Act 9344. Therefore, the prosecution of the four minors together with the adults runs contrary to the law. All of the accused were temporarily released on May 25, 2010 after posting bail of Php 6,500 (USD 140) and a processing fee Php 1,500 (USD 32).

Court acquits victims following numerous due process violations by the police

In another case, four men, three of whom were illegally arrested and detained, were acquitted by a local court concerning two charges of illegal possession of explosives. The court found that the case "exhibits a straightforward violation of due process". Jehon 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, based on evidence planted in their place of residence by a group of policemen led by Police Superintendent Bartolome Baluyot, the former director of the Regional Police Office (PRO XII). They were later able to post bail.

In a 16-page decision read in open court on October 29, 2010, Judge Oscar Noel Jr., presiding judge of the Regional Trial Court (RTC), stated: "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, which is equally deadly."

The due process violations that the policemen committed include:

1. Use of false witnesses: When the police served the court order in order to search the houses where the accused were staying, the two village officials who stood as witnesses were legally unacceptable. The two officials, Sabina Castomayor and Jose Arrojo, who accompanied the policemen, were officials of Barangay Labangal, not from Calumpang. When conducting searches, policemen are required to have village officials from the same village as witnesses.

2. Conspiracy and planting of evidence: The issuance by another court of an order to conduct searches at 3am on April 24, 2002, were found to be the result of a scheme by the police that culminated in their planting evidence.

Firstly, at 11 am on April 23, 2002, a day before the police raid, two gunmen wearing balaclavas entered one of the three houses occupied by the victims. One of them forced Jehon Macalinsal to dial a telephone number written on a piece of paper and to say that "there's a bomb in the front and at the back of your office". The gunmen then left.

The telephone number was later found to belong to the office of Bayan Telecommunications (BayanTel), a local telecommunications company in the city. The company had a caller Identification System that enabled them to determine the telephone number and identity of the persons that called them and made the bomb threat. The policemen used this to falsely charge the four accused. In numerous media interviews, Supt. Baluyot declared that these persons were responsible for the bombing of the Fitmart Mall in General Santos City on April 21, 2002. However, none of the accused were charged with murder in relation to the death of civilians in that bombing incident.

Secondly, the policemen managed to successfully apply for search orders from Judge Antonio Lubao of RTC, General Santos City Branch 22, by claiming, without any evidence, that the occupants of the house were keeping M14 and M16 armalite rifles.

3. Arbitrary charges: The court then issued orders for the policemen to search the house owned by Aron Sala. Sala was not physically present during the raid, as he was studying in Marawi City, more than ten hours away from General Santos City, but was included in the charges anyway. Aron Salawas arbitrarily charged in the case 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 police also searched two other houses that were not part of the court order and prevented three of the accused and other occupants from supervising them during these searches, enabling them to plant evidence.

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

4. The policemen could not identify where they found the evidence or the accused in court: During the court hearings, the two policemen who served the search orders (Senior Police Officer 1 (SPO1) Rex Diongon and Police Inspector (PI) Harrison Martinez), "did not point categorically to 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 of the accused was Amilhasan and which one was Macalinsal.

5. Police try to extort money in exchange for the dropping of 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 had been given instructions by Supt. Baluyot to negotiate the dropping of charges against him. He was told that they could withdraw the complaint if he paid Php 150,000 (USD 3,500). Ginta refused to do so.

Before Supt. Baluyot retired from service, he had previously been accused of illegal arrests and detention, planting evidence and torturing persons arrested during police operations. He is also one of the policemen the Commission on Human Rights (CHR) found had tortured and otherwise violated the rights of the Abadilla Five while they were in police custody.⁵ Supt. Baluyot enjoyed impunity for all of these acts.

Court acquits four torture victims after seven year trial

Five persons, two of whom were minors at the time of their arrest, have been tried after having been charged with multiple murders and frustrated murders in connection with the March and April 2003 bombing incidents in Davao City, which killed dozens of people. They were arrested illegally, tortured and tried under fabricated charges. On 29 January 2010 the media reported that four of the victims, namely Tohamie Ulong, Ting Idar, Jimmy Balulao and Esmael Mamalankas, had been acquitted by Judge Pelagio Paguican of the Regional Trial Court Branch 12 in Davao City, from two charges because "the prosecution was unable to provide sufficient evidence that would prove the guilt of all the accused beyond reasonable doubt". Tohamie and Jimmy were minors when they were arrested in 2003.

Judge Paguican convicted one of the five, Toto Akmad, for his 'direct participation' in the 4 March 2003 bomb blast, which took place in the waiting area of Davao International Airport, killing 22 persons and wounding 145 others. Like the four others, Akmad was tortured after his arrest.

The military and the police deliberately covered up their use of torture. However several days after their arrest, a member of local NGO Task Force Detainees of the Philippines (TFDP), was able to interview each of the victims while they were being held at the Criminal Investigation and Detection Group (CIDG XI) headquarters in Davao City. However, Senior Police Officer 2 (SPO2) Gabunada of the CIDG had their signed, sworn statements confiscated the following day. Fortunately an electronic copy of three of the victim's statements had been kept by the TFDP in Davao City. Although SPO2 Gabunada was reprimanded following an administrative complaint filed by TFDP, the statements have never been returned. The reprimand involved this perpetrator of torture receiving a verbal admonishment. No suspension, prosecution or penalty was imposed. The AHRC deplores this serious failure by the authorities to punish the torture of five persons, including two children. This case is symbolic of the lack of effective action by the authorities to prevent torture.

⁵ See more about the famous case of the Abadilla Five here: <http://campaigns.ahrchk.net/abadilla5/>. The five men were sentenced to death for the murder of an influential police colonel, Rolando Abadilla, but have since protested their innocence. The court convicted them without giving them opportunity to submit further evidence that could have proved their innocence. An open admission by a rebel group claiming responsibility for the murder exonerating the five men was also not given due consideration in the trial. This case is emblematic of the failings of the justice system in the Philippines.

Examples of due process violations and extra-legal actions by the military

Members of the Armed Forces of the Philippines (AFP) routinely take extra-legal actions that undermine the role of the police and the very notion of due process. For example, the military has no legal authority to arrest and detain persons. However, the military frequently abduct and detain persons, and conduct custodial investigations inside illegal detention facilities that they maintain.

The Philippine National Police (PNP) and the National Prosecution Service (NPS) have abdicated their authority, by tolerating the illegal practices of the military establishment. The

Justifications concerning arrests conducted by the military: The military abuse powers granted to them to conduct arrests under rare and specific circumstances to justify routine arrests. Regardless of whether they had court orders to conduct arrest or not, the soldiers could 'legally' routinely justify their actions under various pretexts: a. on counter insurgency and terrorism operations; b. support unit of the police; c. arrest on 'hot pursuit'. Once a person is labelled in public to have been arrested and investigated in any of these three pretexts, their arrest and detention is justified regardless of merit. The legality of the arrest, detention and authority of the soldier could not be challenged before the complaints reaches to court for trial of the case.

The case of Abdulbayan Guiamblang cited above (Farmer detained incommunicado for six days), is a good illustration of how the military detain civilians extra-judicially. In this case, the victim was held in detention inside a military detachment, where he was tortured, deprived of food, refused contact with his family and legal counsel and criminal charges against him were concocted by the military. He was only brought before a court after fabricated charges had been filed and after the injuries he sustained as the result of torture had healed.

The illegal arrests of activists Charity Diño, 29; Billy Batrina, 29 and Sonny Rogelio (see above under Torture and false charges filed against three activists) by members of the Air Force further demonstrates this pattern of extra-judicial action in disregard for due process. The circumstances under which they were detained did not meet the special requirements that allow the military to arrest persons; they were arrested without court orders and none of the accused was in the act of committing or had just committed a crime. Their arrest and detention inside the air force headquarters are outright violation of the Rules on Criminal Procedure, despite which they were subsequently charged in court.

Invitation for questioning: The military also routinely use the pretext of 'invitation for questioning', particularly targeting human rights and political activists, as a prelude to illegally arresting and detaining persons. A person who is 'invited' in this way is placed in a difficult situation. There is a dilemma about whether to accept the invitation and risk arrest and worse, or to ignore it, which could also have grave consequences.

Once a person's arrest and detention is linked to countering an insurgency and terrorism, the media and the community do not tend to contest the arrests and go along with the military's story. The military has been labelling persons as 'rebels' or 'terrorists' regardless of whether they have evidence or not, in order to justify any arbitrary and illegal actions they take against these persons.

The military's lack of authority to so invite persons for questioning in this fashion is not being discussed and needs public attention, notably as this practice has become so common in remote areas that it has gained a semblance of legality.

Inquests inside military headquarters: Under section 2 of the Department of Justice's (DoJ) Department Circular No. 61, public prosecutors can only conduct inquests proceedings concerning cases in police stations, not in military camps: "...those assigned to inquest duties shall discharge their functions during the hours of designated assignments and only at the police stations/headquarters of the PNP in order to expedite and facilitate the disposition of inquest cases."

The police and prosecutors routinely disregard this Circular by tolerating the use of illegal inquest proceedings inside military headquarters. They blindly accept justifications by the military that holding these outside the military camps will be a security risk, for example. The accused, with the tacit approval of the prosecutors and the police, are not turned over to the proper judicial authorities and detention facilities, as required by the country's criminal procedures.

The inquest proceedings in the cases filed against the 'Morong 43' mentioned previously in this report were conducted in this manner. The detainees in this case were held in a military camp, before they were transferred to the regular detention facilities following appeals by their legal counsel in court. But when the detainees' legal counsel challenged the legality of arrest, detention and the filing of charges against their clients, the Court of Appeals dismissed their argumentation. The court ruled, by invoking jurisprudence concerning the *Ilagan vs. Enrile* case, that once a charge is filed, the detention can no longer be questioned because charges have already been filed in court.

This explains that within the system of justice, there is no legal remedy for victims of illegal arrest, detention and filing of fabricated charges, once charges against them have been filed in court. Persons in the Philippines run the risk of being deprived of their liberty and needlessly face trial over fabricated cases as a result of the prosecutor and the police abdicating their authority provided by the rules on criminal procedures.