

## *PHILIPPINES: The State of Human Rights in 2012*

### **Strong rights, No remedy**

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The discourse on protection of rights this year in the Philippines has been unique. Rights that were not previously recognized are now recognized; public officials and security officers, who could not be prosecuted even in one's imagination, were prosecuted; and victims and their families, who often chose to keep silent due to fear and oppression, now seek remedies demanding their rights.

This phenomenon is taking many forms, offering enormous prospects for the protection of rights. To cite a few examples: the conviction of Renato Corona, former chief justice, following a widely publicized impeachment trial, has given rise to the discourse on judicial accountability. The prosecution of former President Gloria Macapagal-Arroyo and her former General Jovito Palparan, who is now a fugitive, for corruption and abduction of student activists respectively, has given rise to the prospect that public and security officials who breached public trust and committed human violations in the past, can now be prosecuted.

Also, that a group of people—particularly the Muslims in the south—who had been subject to systematic and widespread subjugation for many decades, would now agree on creating a political entity under the same sovereignty which it fought against, is further evidence of confidence in the government. The Bangsamoro Framework Agreement (BFA), signed between the rebel group and the government on October 15, 2012, is a historic development, which offers the prospect, not only of peace emerging from decades of conflict in Mindanao, but also of the building of democratic institutions.

Still, it is difficult to understand why confidence is being renewed, given the ongoing mass murders, systematic killings, torture and enforced disappearances, indicating the lack of any institutional protection of rights or remedies.

There is evidence that the codification of rights in domestic law, in line with the country's obligation to international human rights instruments, such as the enactment of a domestic law against disappearances, is in the works; however, whether the enactment will be followed by an effective and adequate implementation of rights, is yet to be established.

In fact, if indeed protection and implementation of rights is adequate and effective, why is there still discontent and dissent, expressed notably by victims and their families? Why do people speak of the absence, if not the lack, of any sort of remedies? While people speak of their 'strong rights' in accordance with legal norms, these have to be implemented using the country's institutions of justice. The question is: are these institutions functioning effectively enough to comply with domestic and international obligations?

This report not only narrates the human rights situation in the Philippines in 2012, but also attempts to articulate why and how the victims and their families continue to demand protection, and whether the State's justice institutions—the police, prosecution and judiciary—operate as they ought to.

## Convicted chief justice & the court judges

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When Renato Corona, former chief justice, was convicted for his “failure to disclose to the public his statement of assets, liabilities, and net worth”<sup>1</sup> following a much publicized impeachment trial in May 2012, there were mixed reactions. Some expressed concern that the judiciary had been undermined by the legislative and the executive; others displayed optimism that it was a watershed in the fight against judicial corruption; however, there was pessimism too that it would not result in practical changes in the daily functioning of the judiciary where people are engaged daily, and that the conviction only served a political purpose: ‘business would be as usual’.

Corona's conviction has dangled the hope of increased judicial accountability, but the real test is whether lower court judges will also be held accountable for committing wrongdoing in the performance of their daily duties in reality. To assume that when a chief justice is held to account for corrupt practices, court judges subordinate to him would also be punished is to be detached from reality. Rather, the development shows that corruption within the judiciary is so entrenched that a chief justice had to be impeached. The conviction merely reaffirms that the judiciary and its officers ought to be credible and with integrity. But, while Corona was afforded due process and fair trial to defend himself before his conviction was arrived at by majority vote, these fundamental rights are rarely afforded by lower court judges when they investigate and hear cases under their jurisdiction.

The denial of these fundamental rights is clear in the case of Temogen ‘Cocoy’ Tulawie, an indigenous human rights activist from Sulu, southern Philippines. Temogen was detained after his arrest in Davao City on January 13, 2012. The prosecutor had resolved to indict him, on which the court judge agreed, for charges of murder using the confessional evidence taken by force from the witnesses by the police. The witnesses subsequently recanted their testimonies; however, the court judge deliberately ignored this to proceed with the trial. In fact, even though the Supreme Court had already granted Temogen's petition to transfer the hearing of his case from Sulu to Davao City on the grounds that he could not get a fair trial in Sulu court, the judge ignored this by giving orders to another judge in Davao City;

*“We wish to most respectfully inform your end...to deliver/transfer the custody of the accuse, one Temogen “Cocoy” Tulawie, to the jurisdiction of the Regional Trial Court (RTC) of Jolo, Sulu,”*  
*Betlee-Ian J. Barraquias, executive and presiding judge, Regional Trial Court (RTC), Branch 3”<sup>2</sup>*

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<sup>1</sup> *Philippine Daily Inquirer*, “Senate votes 20-3 to convict Corona,” 29 May 2012, can be accessed at: <http://newsinfo.inquirer.net/202929/senate-convicts-corona>

<sup>2</sup> Read full text of his letter here: <http://www.humanrights.asia/countries/philippines/cases/temogen-tulawie/Sulu-RTC-order-for-transfer>

The Supreme Court stood by its order to transfer the case from Sulu to Davao City, but did not take action against Judge Barraquias who openly defied its order. It was alleged that the judges and the prosecutors in Sulu are allegedly under heavy influence by the complainant, Governor Tan; this makes it extremely difficult for Temogen to get a fair trial even if he would decide to submit himself to trial in Sulu court. The influence of Governor Tan cannot also be taken lightly. For the second time, although the SC is fully aware of the threat on Temogen's life, the trial of the case was transferred from Davao City to Manila by granting the petition of the complainant's legal counsel.

Temogen's case is no different to many other cases where lower court judges, in connivance with prosecutors, are not held to account for deliberately breaching the fundamental rights to due process and fair trial of the accused. Here, it is obvious that while rights to due process and fair trial of a chief justice, who was tried in an impeachment for committing corrupt practices are protected, for other accused who are not known and have no influence, even rudimentary forms of protection are disregarded. The judges and prosecutors routinely get away with it. These accused are tortured, illegally detained, and forced to endure trials in criminal cases not even under their names.

The judge who allowed the prosecution of Abdul-Khan Ajid<sup>3</sup>, a baker who was tortured and set on fire by the police and the military in Sumisip, Basilan on July 23, 2011, was never held to account even a year after his illegal acts were exposed. Judge Leo Principe, presiding judge of Regional Trial Court (RTC), Branch I, allowed the prosecution of Ajid and ignored the compelling evidence that he had been tortured. The soldiers insisted that Ajid's real identity was Kanneh Malikil, relying heavily on the testimony of a witness whose identity they had deliberately refused to disclose on the pretext of security concerns. The right of the accused to confront his accuser to make his own defense, and that evidence taken by way of torture cannot be used as evidence in criminal prosecution, are both Constitutional and Statutory rights; however, both the prosecutor and the judge completely disregarded this.

Ajid's case is not surprising. There are many other cases which are either not reported or are reported only many years after their arrest. The latter is what happened to Hamsa Pedro and Alex Salipada<sup>4</sup>, whom police in General Santos City arrested on June 18 and June 20, 2005, respectively. Hamsa, a labourer at the public market, and Alex, a religious Muslim leader, both of whom were illegally arrested, detained, and tortured in police custody, are now prosecuted for murder charges in connection with the December 2004 bomb-blast at the public market under others' names. Similar to Ajid's case, both the prosecutor and court judge in General Santos City prosecuted them disregarding the evidence of torture. After over seven years of trial, there is no substantial progress in their case.

It is very common practice for the accused to be prosecuted under somebody else's name and for the prosecution to have witnesses unknown to them. In order to justify the prosecution of the accused under someone else's name, prosecutors routinely seek the judge's approval to insist that it should appear on

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<sup>3</sup> AHRC Urgent Appeals, "Soldiers torture a man and set him on fire," 8 September 2011, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-157-2011/>

<sup>4</sup> AHRC Urgent Appeals, "Trial of two men tortured and falsely charged seven years ago drags on," 8 October 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2012>

record that the name of the person written in the criminal charge and the person whom the police arrested are the same. It does not matter whether they are real or not, or that the accused has compelling evidence proving he is not that person. The prosecution of the accused would continue, deliberately disregarding evidence the accused had presented that he is not the person subject to prosecution.

This is what happened to Ramon Dadulo,<sup>5</sup> a faith healer in his village, now prosecuted after he was arrested on November 10, 2010 in place of the real accused, Nasser Malaguia. Nasser is listed as one of the accused in the November 23, 2009 Maguindanao massacre. To legally justify the prosecution of Ramon, the police threatened his common-law wife, Lilibeth Lombone, and forced her to "admit that the man in the picture, Nasser Malaguia, and my live-in partner Ramon Dadulo are one and the same person". They coerced Lilibeth after they summoned her to their police station to sign a sworn statement already prepared for her. Two years after Ramon's arrest and his repeated appeals, the prosecutor and the judge did not take action to exclude his name from the list of accused. He remains in detention in Camp Bagong Diwa, Taguig City.

It is not surprising that the prosecutors have not taken action to exonerate Ramon; in fact, the prosecution had systematically been involved in prosecuting persons, notably human rights and political activists, on fabricated charges. Prosecution no longer regards merit in evidence, or on whether the person subject to prosecution is the same person alleged to have committed the crime. Rather, the prosecution presently exists more for the purpose of expediency – to make it appear that someone is being held to account.

Take the case of Edwin Egar, a pastor of the United Church of Christ in the Philippines (UCCP), who was falsely charged, but later exonerated by the court. Edwin is one of the 72 human rights and political activists charged with murder. The prosecutor investigating the case of murder against Edwin and others, for the death of two policemen and their civilian driver in an ambush on March 3, 2006 in Puerto Galera, Mindoro, allowed a hooded witness to testify in the criminal investigation<sup>6</sup>. To allow hooded witnesses to testify for the prosecution and for the latter to deliberately conceal the identity of the witnesses on the pretext of security is a breach of the fundamental right to due process. It denies the accused the opportunity to make his own defense by knowing and confronting his accuser.

In another case, labour activist Ronald Ian Evidente<sup>7</sup>, a trade union organizer and spokesperson of Kilusang Mayo Uno (KMU), was charged in the criminal case of "Robbery in Band". He was charged on July 16, 2011 at the Office of the City Prosecutor in Sagay City, Negros together with 30 others. In August, Ronald submitted himself to a murder trial to clear his name. In indicting Ronald and others, the prosecution used the testimony of witness Freddie Sanchez. Freddie claimed to be a former rebel but is now under the influence of the military. Freddie Sanchez's testimony was used as evidence by the

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<sup>5</sup> AHRC Urgent Appeals, "A man is detained for Maguindanao massacre in place of the real accuse," 7 October 2011 can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-195-2011/>

<sup>6</sup> AHRC Press Release, "'Hooded witness testifies on false murder charges," 17 July 2012, can be accessed at: <http://www.humanrights.asia/news/press-releases/AHRC-PRL-025-2012/>

<sup>7</sup> AHRC Urgent Appeals, "Falsely charged labour leader submits himself to trial to clear his name and those of others" 29 August 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-152-2012>

prosecutors, even though they knew full well that he was not even physically present when the incident occurred.

Given the examples above, it is obvious that the conviction of former chief justice Renato Corona was not a result of, and did not lead to, fundamental changes to hold judges accountable for committing rights violations. The manner in which lower courts and judges operate is still systematically flawed; convicting the chief of the judiciary is thus insufficient. It is good that the credibility and integrity of the judiciary was seen to be restored and that his conviction offered a watershed in exposing corrupt practices within the judiciary; however, this was only possible due to the high profile status of the case, and the enormous publicity surrounding the impeachment.

It is in fact more challenging when lower court judges not only commit corrupt practices, but also breach fundamental freedoms. Not being high profile persons and not widely exposed in public, they are not held accountable for their actions. The possibility of prosecuting them, putting them on trial, and punishing them, is remote.

## Old and new cases: no arrest, remedy

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Knowing full well the flaws, if not the breakdown of how the institution of justice is operating, the victims, their families, and groups helping them, still resolve to file complaints in their pursuit of remedies and redress for wrongs committed. They complain to expose the depth of the problem, with no illusion that remedy or redress would ever emerge. The act of filing a complaint has its own importance where adequate remedy and protection for those seeking it cease to exist in reality.

The indictment of former president “Gloria Macapagal-Arroyo, General Victor Ibrado, General Delfin Bangit, Lt. General Jorge Segovia, Colonel Aurelio Baladad, Colonel Cristobal Zaragosa and 10 other officials of the AFP”<sup>8</sup> in May 2012 in connection with the arbitrary arrest, detention and torture of 43 health workers<sup>9</sup>, collectively known as “Morong 43”, in February 2010 is one of the many examples of how victims and their families seek remedies. The accused here are being prosecuted under the Anti-Torture Act of 2009, Republic Act 7438 (Rights of Persons Arrested, Detained or under Custodial Investigation), and robbery. This explains how the victims are now making use of laws protecting fundamental rights, notably the Anti-Torture Act, to fulfill rights that had no domestic legal protection in the past.

While there might be laws protecting rights under which victims can file complaints to seek remedies, given the flaws in investigation, prosecution, and how the court system operates, as explained above, the prospects of any remedy are negligible.

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<sup>8</sup> Karapatan Media Release, “Torture, criminal raps vs GMA, PNP, AFP officials filed”, 3 May 2012

<sup>9</sup> Article 2, “Special Report: Torture in the Philippines & the unfulfilled promise of the 1987 Constitution”, Story 8: Arrest and torture of the Morong 43, Vol. 10 - No. 01 March 2011, can be accessed at: <http://www.article2.org/pdf/v10n01.pdf>

To illustrate, the special report, published in the periodical *article 2* in March 2011, titled “Torture in the Philippines & the unfulfilled promise of the 1987 Constitution”, concluded that there was no remedy to the torture cases mentioned. None of the police personnel, the military personnel, or their accomplices, who committed torture, had been punished. And, nor were the complaints of the victims adequately addressed.

To have former President Arroyo and her military generals indicted for past human rights violation is a breakthrough. However, whether they will indeed be held to account and punished by the law is yet to be seen. The “confirmation of the promotion of three officials of the Armed Forces of the Philippines (AFP) who are direct parties to the illegal arrest, torture and detention of the 43 health workers” and that “the said officials are Lt. Gen. Jorge Segovia, Brig. Gen. Aurelio B. Baladad and Col. Jaime Abawag”<sup>10</sup> clearly demonstrates that while these generals were indicted for past violations, they have also been simultaneously rewarded. Their promotion disregards the entire concept of vetting public officials.

The prosecution for torture and arbitrary arrest of former president Arroyo, under the principle of command responsibility, and of her military generals, is one of the numerous cases involving influential and powerful figures in the government making no progress in court.

The dismissal of murder charges<sup>11</sup> against fugitive Joel Reyes, Palawan province governor; and his brother, Coron Mayor Mario Reyes, for their alleged involvement in the January 24, 2011, murder of journalist and environmentalist Gerry Ortega<sup>12</sup> in Puerto Princesa City, illustrates that to have influential and powerful persons indicted for their crime does not mean they will also be held accountable and punished. It must be said though that the government did take Gerry’s case seriously, as it has been one of the controversial extrajudicial killings of high profile journalists in the country.

Also, the government did take decisive action by increasing the reward in August for the arrest of Governor Joel and her brother, Mayor Mario Reyes, from 1.5 million pesos each to 2 million<sup>13</sup>.

But, with the court’s order to dismiss the murder charges against the Reyes’ due to a procedural violation, the President’s order to increase the reward becomes meaningless, as they would no longer be subject to arrest. The dismissal of the murder complaint was the result of the Department of Justice’s breach of their own rudimentary rules for preliminary investigation. It is clear that the Department of Justice (DoJ) was responsible for the lack of progress, if not non-prosecution, of the murder case.

Thus, President Aquino’s order, acting on the recommendation of DoJ secretary Leila De Lima, on November 22, of creating yet another Inter-Agency Committee on Extra-Legal Killings, Enforced

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<sup>10</sup> See Note 8

<sup>11</sup> *Manila Standard Today*, “Court clears Reyeses in Ortega case,” 28 November 2012, can be accessed at:

<http://manilastandardtoday.com/2012/11/28/court-clears-reyeses-in-ortega-case/>

<sup>12</sup> AHRC Statement, “Murder of Gerry Ortega, an anti-mining activist, cannot be passed off as a robbery,” 25 January 2011, can be accessed at: <http://www.humanrights.asia/news/abrc-news/AHRC-STM-012-2011/>

<sup>13</sup> *Philippine Daily Inquirer*, “Aquino ups reward for Palparan, Reyes et al.,” 17 August 2012, can be accessed at: <http://newsinfo.inquirer.net/251212/palparan-bounty-raised-to-p2-million>

Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty, and Security of Persons<sup>14</sup> with a mandate to “investigate old and new cases of extrajudicial killings, enforced disappearances, torture and other grave human rights violations” offers little prospect that it would result in adequate remedy and redress to old and new cases. It merely repeats the ritual of task forces, and special investigation bodies, with this “super body” — as De Lima described it — every time the executive branch and its justice institution is under pressure. In fact, the idea of creating the so-called “super body” is akin to the creation of Task Force 211 in November 2007 by former President Arroyo, who is now herself the object of prosecution for past human rights violation.

Even when the lower court resolved to arrest those involved in torture and enforced disappearance of human rights and political activists, most notably former general Jovito Palparan Jr.<sup>15</sup> and his men on the case of disappeared University of the Philippines (UP) students Sherlyn Cadapan and Karen Empeno, the government could not ‘find’ the prime accused in order to arrest and prosecute them. With the government’s sophisticated intelligence network, embedded down to the village level, it is difficult to imagine it unable to locate this well-known former military officer in the country. In this case, even though the complainant succeeded in securing arrest orders of military officers responsible for enforced disappearance and torture, the police’s inability to arrest him means there will be no substantial progress in the trial of the case.

So President Aquino’s order to increase the reward for Palparan’s arrest, from 1 million to 2 million pesos<sup>16</sup>, works for political gain by making it appear that the government is strong in its resolve to hold perpetrators accountable. Its inability to arrest Palparan, however, is not surprising at all. It is routine practice among powerful politicians, police, and military officials, to go into hiding — inside or outside the country — once it is likely that the court will issue arrest orders for criminal charges laid on them. Also, before the court issues orders for their arrest, it is very common that these influential and powerful figures are leaked information about their impending arrest; they are often aware before the police serve the court’s order for their arrest. It is during this time that the powerful accused are able to prepare, by either leaving the country or going into hiding, if they are prevented from leaving due to the hold departure order issued against them.

Palparan for instance, attempted to leave the country, but did not succeed because he was listed in the hold departure order. Other politicians, like the Reyes’, who are being prosecuted over the murder of Gerry Ortega, succeeded in escaping out of the country by reportedly using the identity of another person. While the hunt for Palparan is on within the country, the hunt for the Reyes’ has had to be conducted outside the country. However, since the court had ruled that the murder charges on the latter had to be dropped due to procedural flaws, it is likely that the Reyes’ will come out in public once the charges against them are dropped. This is what happened in the case of Philippine Senator Panfilo Lacson. He too went into hiding

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<sup>14</sup> *Philippine Daily Inquirer*, “Super body formed to probe extrajudicial killings,” 27 November 2012, can be accessed at: <http://newsinfo.inquirer.net/313685/super-body-formed-to-probe-extrajudicial-killings>

<sup>15</sup> AHRC Statement, “The importance of arresting retired general Jovito Palparan Jr.,” 30 March 2012, can be accessed at: <http://www.humanrights.asia/news/abrc-news/AHRC-STM-075-2012/>

<sup>16</sup> See Note 13

when issued with an arrest order for allegedly masterminding the double murder of Salvador “Bubby” Dacer, publicist of former president Joseph Estrada, and driver Emmanuel Corbito. He surfaced and resumed his senatorial role<sup>17</sup> after the court dropped the charges.

While other accused powerful politicians, and police and military officers, go in hiding, the Dutertes and local officials in Davao City continue to rule with an established stronghold in their community. And, they do so despite being found out, by the Commission on Human Rights (CHR), to have been responsible for “systematic failure... to conduct any meaningful investigation,”<sup>18</sup> in connection with the systematic extrajudicial killings of persons from 2005 to 2009. Most of the victims have been accused, or suspected, of being involved in the use and trade of illegal drugs; this includes minors and those who have nothing to do with drugs at all. The CHR conclusion only affirmed the AHRC’s and a local group’s finding in 2009<sup>19</sup> that the killings are a result of deliberate government inaction.

Nevertheless, the CHR conducting a *motu proprio* investigation in Davao City in March, April, May, and September 2009, after the AHRC, and a local group repeatedly intervened, demanding the government to take action, has been helpful in drawing attention to the government’s failure to address the systematic and widespread killings. It notably took the CHR over three years to conclude their investigation, which has found that “there was a systematic failure on the part of the local officials to conduct any meaningful investigation into said killings, thereby violating the State’s obligation to protect the rights of its citizens.”<sup>20</sup> In the conclusion of their report, the CHR has recommended that:

- 1) *“the Office of the Ombudsman investigate the possible administrative and criminal liability of Mayor Duterte for his inaction in the face of evidence of numerous killings committed in Davao City and his toleration of the commission of those offenses”;*
- 2) *“a serious, impartial, and effective investigation into the facts and circumstances surrounding the deaths attributed or attributable to a so-called Davao Death Squad be conducted by the NBI or other independent task force and that the Office of the Ombudsman or Department of Justice duly prosecute the persons responsible”;* and
- 4) *“appropriate measures be taken by the local police to prevent any further killings fitting the pattern herein described, particularly with respect the use of motorcycles and loose firearms”.*

It is good that the CHR has completed its investigation; however, the conclusion of their investigation only begins a chapter of another lengthy and tedious legal process in the prosecution of the Dutertes, local

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17 Philippine Daily Inquirer, “Sen. Lacson surfaces, back in Manila,” 26 March 2011, can be accessed at:

<http://newsinfo.inquirer.net/breakingnews/nation/view/20110326-327742/Sen-Lacson-surfaces>

18 CHR Chairperson Statement on the ‘Davao Death Squad (DDS)’; “14 August 2012, can be accessed at:

[http://www.chr.gov.ph/MAIN%20PAGES/speeches/lapr\\_spch14Aug2012\\_DDS.htm](http://www.chr.gov.ph/MAIN%20PAGES/speeches/lapr_spch14Aug2012_DDS.htm)

19 AHRC, “The State of Human Rights in the Philippines in 2009,” 10 December 2009, can be accessed at:

<http://www.humanrights.asia/resources/brreport/2009/AHRC-SPR-007-2009-Philippines-HRReport2009.pdf>

20 See Note 18

officials, and the security forces. The CHR's heavy reliance on the Ombudsman, to investigate administrative and criminal liability of the Duterte and the local officials, offers dim prospects that prompt action will be taken.

The Ombudsman is itself known for its failure and inability to promptly investigate and prosecute cases involving violations committed by the police and the military. This is clear in the case of the June 1993 torture of five individuals, collectively known as the Abadilla Five; and the murder of Bacar Japalali and his pregnant wife, Carmen, in September 2004.

In Abadilla Five's case, the Ombudsman resolved to act on CHR's recommendation to prosecute the policemen involved in the torture of the victims in January 2011<sup>21</sup>. And, in the case of the murder of Japalali couple, the Ombudsman only commenced its prosecution<sup>22</sup> of the military officers involved in August 2007. In these two cases, however, enormous campaign and advocacy work had to be done to pressure the government to take action.

## Cycle of rights violations: massacre, killings, torture & disappearance

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Keeping in mind how the investigation, prosecution, and court system operates, it is clear that the chances of obtaining remedies to violations that occurred this year—extrajudicial killings, torture and forced disappearances—are slim to nothing. If so many old cases remain unaddressed, it will be unrealistic to think that cases from this year on will have better chances for obtaining remedies. Although the possibility of remedy or redress is small, it is important that the victims, their families, and those who supported them draw attention to this in order to cultivate public discourse.

To speak out in this manner, is what Myrna Reblando, widow of Alejandro "Bong" Reblando —one of the journalists murdered in the Maguindanao massacre on November 23, 2009 — has since been doing, even after she left the country. Myrna was forced to leave in May 2011 because of the continuing threats to her life and inadequate protection for speaking against the irregularities in the prosecution and trial of the accused who masterminded the massacre, notably the Ampatuans. In July, Myrna came out in public, after over a year in hiding, to talk about the difficulties<sup>23</sup> she had to endure to seek refuge and protect her life while pursuing her aspiration of redress for her murdered husband and others.

It will also be likely that there will be no redress for new cases of massacre, like the massacre of Capion family on October 18 in Tampakan, South Cotabato. This massacre involved the killing of Juvy Capion (27), a member of Kalgad, an organization of the Blaan tribe, opposed to the entry of Xstrata-Sagittarius

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<sup>21</sup> Article 2, "Special Report: The Philippines' hollow human rights system," Vol. 11, No. 2-3, June - September 2012, can be accessed at: <http://www.article2.org/pdf/v11n0203.pdf>

<sup>22</sup> AHRC Urgent Appeals, "Trial begins for soldiers charged with homicide after a three-year delay," 9 August 2007, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/UP-110-2007/>

<sup>23</sup> AHRC Press Release, "My life was empty when I was in hiding," 3 July 2012, can be accessed at: <http://www.humanrights.asia/news/press-releases/AHRC-PRL-023-2012/>

Mines, Inc. (SMI) in their community; and her sons, John (8); and Pop (13). Soldiers attached to the 27th Infantry Battalion of the Philippine Army opened fire at the house of the Capions. Juvy's husband Daguil and other Blaans declared a *pangayaw*<sup>24</sup> (tribal war) against the SMI-Xstrata for intruding into their ancestral land, because their mine operation threatens to displace about 30,000 Blaans in their community. It is clear that the victims were targeted for opposing the intrusion of the mining firm. The soldiers justified their action by claiming that the victims' deaths were a result of 'legitimate encounter' in order to escape criminal liability.

To justify civilian deaths in massacres as 'legitimate encounter' is common practice by soldiers. They are able to escape scrutiny because of practical difficulty for the police to effectively and impartially investigate these cases in their remote sites of occurrence. Before the Ombudsman resolved to indict soldiers for the death of Bacar Japalali and his pregnant wife Carmen in September 2004,<sup>25</sup> the deaths were also justified as a 'legitimate encounter'. The Ombudsman, however, rejected the soldiers' claim, because the bodies of the couple were still inside the mosquito net when found. The soldiers also portrayed the couple as members of a Muslim rebel group in an attempt to discredit them and to escape criminal liability. However, investigation by the prosecutors and the police revealed the couple had nothing to do with armed rebellion.

While the prosecution in the Japalalis' case has progressed somewhat in court, the killing of eight people, including a four year old girl and a pregnant woman<sup>26</sup>, also on the pretext of "legitimate encounter" by soldiers in a coastal village in Maimbong, Sulu on February 4, 2008, has not. In this case too, the families of the victims have filed charges against the soldiers; and the CHR has also recommended the prosecution of the soldiers. But the AHRC is not aware whether the prosecution of this case has progressed in court.

Similarly, the killing on pretext of 'legitimate encounter' of farmers—Emily Ratilla (23) and Danilo Guinanas<sup>27</sup> (37) on 22 February 2009 in Quezon, Bukidnon; farmers—Vicente Flores, Richard Oliva and Melecio Monacillo and his son, Jonathan in Mobo<sup>28</sup>, Masbate on 7 September 2010; brothers--Eric Miraflores (27), Raymond (23) and Rosmil<sup>29</sup> (16) in Masinloc town, Zambales in June 2, 2010, and many other cases remain undocumented.

Like Myrna Reblando and other families of victims, those who supported the Capión family also openly criticized and spoke against the atrocities of soldiers in the countryside. They held protests, solidarity, fact-finding missions, and public forums on the prevailing impunity in the country. Thus, the importance of

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<sup>24</sup> KARAPATAN Public Information, "On the Capión massacre: Fact-finding mission confirms massacre, points to accountability of the AFP, LGU and Mining Co.—Karapatan," 19 November 2012

<sup>25</sup> See Note 22

<sup>26</sup> AHRC Urgent Appeals, "Soldiers kill eight persons in Sulu on pretext of "legitimate encounter", 13 February 2008: can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-027-2008/>

<sup>27</sup> AHRC Urgent Appeals, "Two farming villagers killed on pretext of a "legitimate encounter" 13 March 2009, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-023-2009>

<sup>28</sup> AHRC Urgent Appeals, "Soldiers kill four farmers in another 'legitimate encounter' pretext," 8 October 2010, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-161-2010/?searchterm=legitimate%20encounter>

<sup>29</sup> AHRC Urgent Appeals, "Three brothers killed in another 'legitimate encounter,' 8 September 2010: can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-130-2010>

this is beyond the ideal of holding the soldiers to account, which is not likely to happen. The exposure drew public attention to the lack of remedy and redress within the country's criminal justice system. It is the pressure of the public that often facilitates possibilities of remedies.

## **No remedy, redress: they be Filipinos or not**

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To seek intervention from foreigners and their governments to pressure the Philippine government is based on the idea that once they intervene, the government would take action, resulting in some sort of remedy. The Filipinos who now live abroad, and those who support their cause, have since played an important role in drawing attention to the human rights problems in the country.

But, we now see a pattern wherein foreigners, just like human rights defenders who have been living and working in the country for decades, have been targeted for supporting the relief work and grassroots advocacy for protecting the rights of indigenous people, the poor, and the vulnerable. Take the case of Fr. Fausto "Pops" Tentorio, 59-year old Italian missionary, who was murdered on October 17, 2011 inside the compound of Mother of Perpetual Help Parish, Arakan Valley, North Cotabato Province<sup>30</sup>. The charges against those involved in his murder were filed only in April this year, after "a new witness to the killing of Fr. Tentorio came out"<sup>31</sup>. At the time of his death, Fr. Pops had spent 33 years working on literacy and health programmes for indigenous people and peasants. Those charged for his murder, Jan Corbala and four others, are all attached to the Bagani paramilitary group, also known as Alamara. Corbala is known in Arakan, North Cotabato as Commander Iring (cat). The Bagani paramilitary group is the military's version of the CAFGU (Civilian Armed Force Geographical Unity) among the indigenous peoples in Mindanao<sup>32</sup>.

Another foreign national, Wilhelm Geertman, a Dutch executive director of the Alay Bayan, Inc. (ABI), a relief and disaster NGO based in Angeles City, was murdered on July 3, 2012. He was shot in the back at close range by two armed men as he entered his office<sup>33</sup>. Wilhelm had been in the country for more than four decades. He was known for his advocacy in defense of farmers, especially in the case of Hacienda Luisita (in Pampanga) and his compassion for disaster victims<sup>34</sup>. There is no substantial progress in the investigation to identify and prosecute those responsible for his death.

In Mindanao, the increasing activity of foreign corporations, notably large scale mining operations and plantations, has also resulted in targeted attacks, threats, harassment, and fabrication of charges against indigenous people and the human rights defenders who support them in opposing intrusion into their

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<sup>30</sup> *Justice for Fr. Fausto 'Pops' Tentorio Movement, "End the Impunity in Arakan Valley: An International Appeal for Justice for Father Fausto 'Pops' Tentorio," October 2011*

<sup>31</sup> *KARAPATAN Press Statement, "After a year since Fr. Pops Tentorio's killing: Still no justice as the Aquino gov't refuses to go after its own people--Karapatan," 17 October 2012*

<sup>32</sup> *See Note 31*

<sup>33</sup> *HKCAHRPP (Hong Kong Campaign for the Advancement of Human Rights and Peace in the Philippines), "Justice for Geertman: HK-based human rights advocates call for immediate investigation of Dutch missionary's killing in the Philippines," 5 July 2012*

<sup>34</sup> *National Council of Churches in the Philippines, "Statement on the killing of Willem Geertman," July 4, 2012*

communities. Before the massacre of the Capion family,<sup>35</sup> there have been documented cases of extrajudicial killings, threats, and fabrication of charges against other human rights and political activists opposing mining operations.

Take the case of Jimmy Liguyon,<sup>36</sup> 37 years old and belonging to the Matigsalog tribe. He was murdered on 5 March 2012 at 6:30 pm in Purok 2, Dao, San Fernando, Bukidnon after receiving threats to his life from members of a paramilitary group due to his anti-mining advocacy. Murder of Jordan Manda<sup>37</sup>, 11 years old and belonging to Subanen tribe, on 4 September, 2012, at 7:20am, in Zamboanga del Sur. Jordan and his father, Lucenio, were on their way to school aboard a motorbike when they were stopped and shot by unknown persons. Jordan died on the spot due to gunshot wound to his back. His father was wounded, but survived from the shooting.

Then there was the murder of Gilbert Paborada,<sup>38</sup> 47 years old and belonging to the Higaonon tribe. Gilbert was shot dead as he was alighting from a *motorela* (local three-wheel tricycle) on 3 October 2012 in Puntod, Cagayan de Oro City. Gilbert and his group were opposing the expansion of a big US-based company operating a palm oil plantation.

Margarito Cabal<sup>39</sup>, an employee of the Kibawe, Bukidnon, on the other hand, was murdered on 9 May 2012 at 6:30pm for opposing the proposed construction of a Hydro-Electric Mega Dam.

Threats and harassment against those claiming their rights is also common. An example is the continuing threats against couple Loreto Cambo, Jr. and Mylen, since April 28, 2012, after they started claiming their ancestral land in Malalag, Davao del Sur. On April 29, 2012, the Cambo couple reported to the Malalag Municipal Police Station (MMPS) to complain against Angelito "Lito" Libay, a member of Barangay (Village) Intelligence Network (BIN); and his companion, Nemesio Legaspi. The couple said Libay and Legapi were carrying firearms when they went into their house. They accused the couple of being members of a rebel group, the New People's Army (NPA). In remote areas, it is very common to accuse villagers of having links to a rebel group to justify the actions, such as murder, of soldiers and their paramilitary forces.

In Visayas, activist Francisco 'Mano Ansing' Canayong<sup>40</sup>, 64 years old, was stabbed to death in Naparaan, Salcedo, Eastern Samar on May 1, 2012 at 2:40 pm. Prior to his death, Francisco knew there was a plan to kill him and two other activists, Antonio Norte and Carolyn Borja. The three victims had themselves "heard with our own ears" about this plot to murder them. After Francisco's death, the threat against

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<sup>35</sup> See Note 24

<sup>36</sup> AHRC Urgent Appeals, "Indigenous leader opposing mining murdered," 3 May 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-066-2012>

<sup>37</sup> AHRC Urgent Appeals, "The son of a tribal leader opposing mining and another transport leader killed in separate incidents," 6 September 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-165-2012>

<sup>38</sup> AHRC Urgent Appeals, "Another indigenous leader killed for opposing the incursion of a US-based palm oil company," 9 October 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-179-2012>

<sup>39</sup> AHRC Urgent Appeals, "Gunmen killed a government worker opposing construction of a dam that threatens to submerged villages," 18 May 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-081-2012>

<sup>40</sup> AHRC Urgent Appeals, "Murdered mining activist knew he and two others would be killed," 4 July 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-120-2012>

Carolyn and another activist, Nenita Lacasa, both of Eastern Samar, Visayas, has heightened. Shots have been fired at the houses of Lacasa and Borja on May 6 and May 23, 2012, respectively<sup>41</sup>. One of those who fired at Lacasa's house was a certain Mr. Terso Lopido, Field Operation Trustee of the Terrestrial Mining Corporation. But, even before the shooting on Lacasa and Borja's house, Francisco had made a testimony prior to his death, stating, "They are talking about mining and even mentioning our names and the associations. Terso Lopido in his loud voice says that if the mining operation will be stop we must leave our home and never show up because he will kill us all."<sup>42</sup> Yet, no action has been taken to protect Francisco's colleagues, who have had to endure ongoing threats and risk to their lives.

It is clear that regardless of whether the victims are Filipinos or foreign nationals, the possibility of getting remedy and redress for violations ranging from threat to murder, due to their support of the indigenous people, the poor, and vulnerable sections of society, is very rather tiny, if not nonexistent. There is a breakdown of even the most rudimentary forms of protection, forcing victims, and their families to leave the country and seek protection in other States.

## Prospects in the emerging justice system: Bangsamoro political entity

In October 2012, the Philippine government and the Moro Islamic Liberation Front (MILF), which is the largest rebel group fighting for self determination in Mindanao, agreed to sign the "Framework Agreement on the Bangsamoro"<sup>43</sup>, ending over 40 years of struggle that had been demanding secession to create a Bangsamoro political entity. This agreement offers a political solution to the Mindanao question and heralds the creation of Bangsamoro justice institutions with the proposed promulgation of Bangsamoro Basic Law.

The challenge in building these institutions is, apart from the creation of the political entity, also to ensure that they satisfy the aspiration of the Bangsamoro people. For many years, the conflict in Mindanao was due to the absence of any remedies for rights abuses, particularly those committed against the Muslim minorities. Laws and procedures are routinely disregarded and violated. There is no fair trial, especially when it comes to Muslims accused of committing terrorist activities. There are hopes that the creation of the proposed Bangsamoro political entity and its justice institutions would embody the aspirations of the Muslim minorities, and thus strengthen the institutional protection of fundamental rights of minorities.

For many years, Muslims are the usual suspects for the police and the military, particularly in cases where they need make arrests to satisfy public pressure of nabbing suspects responsible for bombing incidents.

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<sup>41</sup> AHRC Urgent Appeals, "Two anti-mining activists face threats after the murder of their colleague," 4 July 2012, can be accessed at: <http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-006-2012>

<sup>42</sup> Full text of the testimony of Francisco Canayong, Antonio Norte and Carolyn Borja executed on 19 March 2012, full text can be accessed at: <http://www.humanrights.asia/countries/philippines/cases/joint-statement>

<sup>43</sup> Text of the Framework Agreement on the Bangsamoro, can be accessed here: <http://www.gov.ph/the-2012-framework-agreement-on-the-bangsamoro/>

This includes the cases of torture victims Jehhon Macalinsal, Abubakar Amilhasan, and Arsul Ginta, whom the police arrested on 24 April, 2002, in connection with the bombing of a shopping mall in General Santos City. They were exonerated from the charges after eight years of trial<sup>44</sup>. This also happened to torture victims Tohamie Ulong, Ting Idar, Jimmy Balulao, Esmael Mamalangkas and Tho Akmad, collectively known as the Sasa Five, whom the police and soldiers arrested on 8 April, 2002, in Poblacion Dos, Cotabato City, in connection with the bombing in Sasa wharf, Davao City<sup>45</sup>. None of the torture victims in these two cases, even though they have been cleared by the courts, obtained any sort of redress for the torture and detention they endured for the many years it took to prove their innocence<sup>46</sup>.

While some Muslims have been cleared after years of trial, others haven't been so fortunate. Hamsa Pedro, a 42 years old market labourer; and Alex Salipada, an Imam working as labourer at the General Santos City Fish Port, for instance, whom policemen in General Santos City arrested in connection with the December 2004 bombing, have been in jail for over seven years<sup>47</sup> now with no substantial progress in their case. Furthermore, their allegations of torture against the policemen who arrested them were not investigated, until their plight was exposed in October this year.

## Rights in the Philippines: on paper, not in practice

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In our submission<sup>48</sup> to the second cycle of the Universal Periodic Review (UPR) on the Philippines, a state-led peer review mechanism under which all UN member-states' domestic human rights records are reviewed and recommendations made, we already indicated the numerous domestic and international laws, notably the Anti-Torture Act of 2009, that the government had enacted and ratified respectively in line with its compliance to strengthen the normative and legal framework on protection of rights. The Philippines is a country with advanced legislation on human rights laws; however, remedies from these laws is very negligible and do not result in the adequate protection of rights.

In reality, the Philippine government, as the first country in Southeast Asia to have promulgated a law on torture and a law against forced disappearance, achieved 'diplomatic victory' inside and outside the country, rather than any genuine and realistic protection of rights. There is a breakdown in the most rudimentary form of protection of rights; however, because of the assumptions, whether real or imagined, that the government has had 'political will' and 'strong commitment to the protection of rights,' it has

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<sup>44</sup> AHRC Press Release, "Torture victims acquitted after eight year trial," 2 November 2010, can be accessed at: <http://www.humanrights.asia/news/press-releases/AHRC-PRL-026-2010>

<sup>45</sup> AHRC Urgent Appeals, "Court orders trial of five torture victims detained over two years without trial," 26 April 2005, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/UA-69-2005>

<sup>46</sup> Danilo Reyes, AHRC Programme Officer, "Torture and wrongful prosecution of alleged bombers and assassins," March 2011, can be accessed at: <http://www.article2.org/mainfile.php/1001/389/>

<sup>47</sup> AHRC Urgent Appeals, "Trial of two men tortured and falsely charged seven years ago drags on," 8 October 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2012>

<sup>48</sup> Asian Legal Resource Centre, "Stakeholders Submission concerning the Universal Periodic Review of the Republic of the Philippines," 28 November 2011, can be accessed at: <http://www.alrc.net/PDF/ALRC-UPR-13-002-2011-Philippines.pdf>

become even more difficult to draw support from foreign governments and the international community to demand accountability from the government and its justice institutions.

The landscape of human rights advocacy in the Philippines is also changing. In the past, dictatorial rule during Marcos' regime in the '70s and '80s indicated that the violation of rights and the oppression was a byproduct of a strong 'one-man-rule'. It was clear that it was necessary to change the government and dismantle the dictatorship. At present, it has been challenging to get support from the public – locally and internationally – and for the public to come to terms with the depth of the human rights problems, since we now have a new government and legislation that, on paper and in rhetoric, protects rights.

More than enacting laws and changing leadership, the real challenge for the protection of fundamental rights in the country is the implementation of rights. To examine how institutions of justice operate while denying rights, and to cultivate discourse to prevent this and to pressure the government to enforce and implement fundamental rights, continues to remain the main challenge. After years of oppression and denial of fundamental rights, the people's trust and confidence in the country's protection and justice mechanisms has weakened. This is obvious when victims and their families seek protection, not from the Philippine government, but from other States and territories, like Myrna Reblando who has sought protection in Hong Kong.

## Conclusion

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It is a welcome development that the Philippine government has, for the last few years, strengthened its normative and legal framework on protection of rights; and the government officials, particularly President Benigno Aquino III, who repeatedly speaks of the government's policy on protection of fundamental rights, reaffirms this in numerous public statements; however, it is one thing to affirm protection of fundamental rights, and another to make it real in practice. There is disconnect in terms of what is said and what is being implemented.

The government has also had positive achievements, notably the prospects of a political solution to the Mindanao question after over 40 years of protracted war between government security forces and the Muslim rebels. Without changes as to how the institutions of justice – police, prosecution and the judiciary – operate to ensure adequate protection of rights, these achievements run the risk of being derailed. If the very fabric of the system of protection of rights is flawed, no rights, whether they are for the protection of minorities or the building of democratic institutions, would have the possibility of obtaining any remedies.