

A Human Rights Watch Submission to the Office of the High Commissioner for Human Rights regarding the Universal Periodic Review of the Republic of the Philippines

1. Main issues of concern: Extrajudicial killings and enforced disappearances

Since 2001, hundreds of members of left-wing political parties, human rights activists, political journalists, and outspoken clergy in the Philippines have been killed or abducted. Their murders and “disappearances” have for the most part gone unprosecuted. Human Rights Watch has done extensive research on the issue, documenting the involvement of the armed forces in the killings of individuals because of their political activities in the June 2007 report, *Scared Silent: Impunity for Extrajudicial Killings in the Philippines*.

2006 saw a sharp increase in the number of extrajudicial killings, which coincided with President Gloria Macapagal Arroyo’s June 2006 declaration of an “all-out war” against communist insurgents called the National People’s Army (NPA). Arroyo gave the Armed Forces of the Philippines (AFP) a two-year deadline to cripple the insurgency. In March 2007, the United Nations’ Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Philip Alston, concluded after visiting the Philippines that, “the AFP remains in a state of almost total denial... of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them.”

The Philippine military insists that extrajudicial killings and disappearances are being carried out by the NPA and the Communist Party of the Philippines (CPP) as part of an internal purge, despite reports to the contrary gathered by Alston, Human Rights Watch and other organizations. In any case, the Philippine government is consistently failing in its obligations under international human rights law to hold accountable perpetrators of politically motivated killings. Victims’ families are denied the justice they deserve as the killers literally get away with murder. With inconclusive investigations, implausible suspects, and no convictions, impunity prevails.

Out of hundreds of killings and “disappearances” over the past five years, there have been only two successfully prosecuted cases resulting in the conviction of four defendants¹. The number of senior

¹ One gunman and his two lookouts were sentenced to life imprisonment in October 2006 for their involvement in the killing of journalist Marlene Esperat in March 2005. Rowie Barua, a military intelligence official who ordered the killing, was acquitted after testifying for the

military officers convicted either for direct involvement or under command responsibility remains zero. The doctrine of command responsibility in international law means that superior officers can be held criminally liable for the actions of their subordinates, and also if a superior had reason to know that subordinates under his command committed an offence and failed to use all feasible means under his command to prevent and punish it, he too may be found guilty for the offence.

The Philippines National Police (PNP) blames failures in the prosecution largely on witnesses' unwillingness to cooperate. In some cases, witnesses are indeed reluctant to cooperate with police investigations, because of fear that they would be targeted by doing so. An extremely weak witness protection program exacerbates this problem. The fact still remains that police are often unwilling to vigorously investigate cases implicating members of the AFP. Families of some victims told Human Rights Watch that when they reported relevant cases to the police, police often demanded that the families themselves produce evidence and witnesses. Even when police filed cases with a court, they often identified the perpetrators either as long-wanted members of the NPA or simply as "John Doe." Some families told Human Rights Watch that police gave up investigating after only a few days.

2. Evaluating the Philippine government's response to extrajudicial killings and enforced disappearances

The Philippines has ratified the International Covenant on Civil and Political Rights and its first optional protocol,² the International Covenant on Economic, Social and Cultural Rights,³ and the Convention against Torture.⁴ However it has yet to sign and ratify the Convention for the Protection of All Persons from Enforced Disappearances, or the Optional Protocol on the Convention against Torture, which allows for the Committee to conduct visits to places of detention. In response to domestic and international criticism on failed prosecutions, the Philippine government has undertaken a series of specific measures to address extrajudicial killings and enforced disappearances. These initiatives may seem impressive "on paper", but they have done very little to actually resolve the problem. Specific measures undertaken by the Philippine government include:

- a) **Task Force Usig:** In August 2006, President Arroyo created a special police body, Task Force Usig, which she charged with solving 10 cases of killings of political activists or journalists within 10 weeks. During its 10-week mandate, the Task Force claimed that 21 cases were "solved" by filing cases in court against identified suspects, all of them members of communist insurgent groups. Only 12 of those suspects were actually in police custody. The

prosecution. Two Agriculture Ministry officials, on whose behalf Barua hired the killers, were not indicted. In another case, Guillermo Wapile, a former police officer, was imprisoned for life in November 2005 for killing journalist Edgar Damalerio in August 2002.

² Philippines ratified the ICCPR on October 23, 1986 and the first optional protocol on August 22, 1989.

³ Philippines ratified the ICESCR on June 7, 1974.

⁴ Philippines acceded to CAT on June 18, 1986.

police often call a case “solved” when they hand it over to prosecutors, although many such cases are subsequently dismissed in court, either for lack of evidence, witnesses or basic information necessary for prosecutors. So far, none of the 21 cases the Task Force Usig filed in court have led to a conviction.

- b) **The Melo Commission:** In August 2006, President Arroyo appointed former Supreme Court Associate Justice Jose Melo to lead a commission to investigate extrajudicial killings and enforced disappearances since 2001. The Commission issued a report of its conclusions in January 2007 stating there is evidence implicating “some elements and personalities in the armed forces... as responsible for an undetermined number of killings, by allowing, tolerating, and even encouraging the killings.” Relevant government agencies have so far largely ignored the commission’s recommendations. As of November 2007, the final Melo Commission report, submitted to President Arroyo more than two months ago, has not been made public.
- c) **Measures taken by the Supreme Court:** The judiciary has been the most active player in trying to resolve these issues, but it has limited powers in enforcing members of the military to comply with its orders. In July 2007, the Supreme Court hosted a summit on extrajudicial killings and enforced disappearances, and in late September passed a resolution promulgating the rules on the writ of *amparo*, which is designed to stop the AFP from stalling a case by simply denying having a person in custody. The new writ went into effect on October 24, 2007, and its effect remains to be seen.
- d) **“Special” trial courts to give priority to political cases:** In early March 2007, the Chief Justice of the Supreme Court, Reynato Puno, issued Administrative Order 25-2007 designating 99 trial courts across the country as special tribunals to try cases of political killings, a designation which is apparently intended to give priority to such cases in the courts’ trial calendars. The order mandates continuous trials for such cases, and limits the duration of such trials to 60 days after their commencement, with judgment to be rendered within 30 days of the close of the trial. A spokesperson for the Presidential Human Rights Committee told Human Rights Watch in October 2007 that only a small fraction of relevant cases were in fact being tried in front of these special courts, while the vast majority were being handled by regular courts.
- e) **The creation of other human rights offices:** In 2007, both the AFP and PNP established new human rights offices to deal with extrajudicial killings, enforced disappearances and other issues. President Arroyo also ordered the creation of the new Presidential Human Rights Committee, in addition to the existing Commission on Human Rights and the Ombudsman’s Office, which are largely tasked with similar functions. So far, these offices have done much to advertise the government’s rather cosmetic measures taken on the issue of extrajudicial killings and enforced disappearances, but have done little to help bring perpetrators to justice.

3. Cooperation between the government and NGOs and human rights experts

The Philippine government officially invited United Nations' Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions Philip Alston to visit the Philippines, which he did from February 12 to 21, 2007. Despite the invitation, Philippine Justice Secretary Raul Gonzalez called the Special Rapporteur a "*muchacho*" (lowly servant) at the UN, and also accused him of having been "brainwashed" by leftists, while Philippine Defense Secretary Hermogenes Ebdane called him "blind, mute and deaf." Alston later said in response to these statements, "...anyone reading between the lines will receive a far more disturbing message: Those government officials who must act decisively if the killings are to end, still refuse to accept that there is even a problem." Alston noted that it was the responsibility of the president to persuade the military that its reputation will be enhanced not undermined by acknowledging the facts and take real steps to investigate the killings and "disappearances".

4. Human Rights Watch's research on the issue and recommendations

Human Rights Watch's staff conducted research on extrajudicial killings and enforced disappearances in the Philippines between September and November 2006. The research team interviewed more than 50 witnesses, family members, and close friends of victims as well as more than 50 government officials, lawmakers, academics, lawyers, diplomats, representatives of non-governmental agencies and civil society organizations, police, and members of the Philippine military.

Human Rights Watch solicited cases from a variety of interest groups, as well as some cases where no political affiliation was apparent. Human Rights Watch has also been in ongoing communication on the issue of extrajudicial killings and enforced disappearances with the Embassy of the Republic of the Philippines in Washington, D.C., the Philippine Mission to the United Nations and international organizations in Geneva.

Based on our research findings, Human Rights Watch recommends;

To the Philippine President:

- Immediately issue an executive order to the AFP and PNP reiterating the prohibition on the extrajudicial killing of any person. Vigorously investigate and prosecute members of the military implicated in extrajudicial killings or enforced disappearances, particularly those identified by the Melo Commission report.
- Immediately direct the AFP, the PNP, and all other executive agencies to desist from statements that incite violence, such as by implying that members of non-governmental organizations are valid targets of attack because of alleged association or sympathy with the CPP or the NPA.

- Immediately implement the full recommendations of the Melo Commission report and those in the preliminary note of Philip Alston, the United Nations special rapporteur on extrajudicial, summary, or arbitrary executions.

To the Armed Forces of the Philippines:

- Suspend soldiers implicated in extrajudicial killings or enforced disappearances from active duty, hand them over to the appropriate prosecutorial authorities, and comply with all requests for appearances or information by civilian investigative bodies.

To the Philippines National Police:

- Send a clear message to police officers across the country that they can and must work with prosecutors to build strong cases against suspects in extrajudicial killings or enforced disappearances.
- Carry out an immediate review of closed cases of extrajudicial killings, attempted killings or enforced disappearances with a view to identifying further genuine lines of inquiry leading to arrests.
- Investigate possible collusion between police officers to suppress evidence of military involvement in unlawful killings or attempted killings.

To the Justice Ministry

- Send a clear message to all prosecutors that they can and must work with the police to build strong cases against suspects in extrajudicial killings or enforced disappearances.

Attachments:

Report *Scared Silent: Impunity for Extrajudicial Killings in the Philippines*