

Philippines: Institutionalized violations of rights due to a perverted system of justice

Tuesday 14 December 2010, by [AHRC](#) (Date first published: 9 December 2010).

FOR IMMEDIATE RELEASE

AHRC-STM-249-2010

December 9, 2010

A Statement by the Asian Human Rights Commission on the occasion of the Human Rights Day

PHILIPPINES: Institutionalized violations of rights due to a perverted system of justice

The biggest obstacle to the protection and enjoyment of rights in the country is not the absence of law that protect rights and the institution of justice, the police, prosecution and the judiciary, that implements them, but rather the way in which they operate. The dominant presumption that these institutions have been functioning within the law and in good faith at all times, despite the numerous evidence to the contrary, have been giving these institutions immunity from being held to account.

No rights can be protected and fulfilled if the institutions of justice that are supposed to protect them operate contrary to their role and responsibility. Rights will have no meaning, not only when they have no remedy; but when the institutions responsible for protecting them operate with no respect for the society they are supposed to protect.

In a country where policemen, who are supposed to enforce law actually break the law; prosecutors, who prosecute violations to criminal law violate laws by disregarding legal and due process; and the judiciary, who make judgment based on evidence allow trial based on fabricated and politically charged cases, it is meaningless exercise to demand or to even think that remedy would ever be possible from them. For rights to be protected in a real sense it is not enough to have legal instruments and mechanisms to implement them but also to examine its character how this institutions operates.

One of the obstacles for a rational and logical public discourse about how rights are protected and implemented within the framework of the institutions of justice, is the dominant perception, and is virtually absolute, that the institutions functions in good faith and within the framework of the law. Thus, when comments and evidence surfaced to demonstrate it is otherwise, there is negligible space to discuss. There is a distorted deep sense of conservatism, not only of public officials who are part of the system; also of some Filipinos of their obligation to protect these institutions from criticisms.

In its Human Rights report chapter on the Philippines, the Asian Human Rights Commission (AHRC) examined in detail individual cases which illustrates the existing character of the country's system of justice. These cases revealed that not only violations of rights are perpetrated by state agents but the system of justice from which the victims seek remedies is perverted from its real functioning. This systemic perversion has effectively allowed violations of rights to be institutionalized in character.

This has tremendous consequences because not only the state and its agents had perpetrated the crime that the victims would want to hold to account, but the perversion of how the system has allowed these violations to go unpunished. It is a condition in which the victims and complainants had their rights violated, but were also deprived of the possibility of obtaining redress and remedy. No real remedies can ever be possible once violation takes place within the institutions of justice.

The numerous laws, policies, legal instruments and others the government of the Philippines had agreed to implement and protect by binding the government to obligation, will remain rights good only on paper, nothing else; if the very institutions that is responsible of implementing them will have no systemic reforms. There should be reform, not for the trivial purposes of reforming them or introducing new policy, but they should be a product of a conscious effort to understand the complexities and problem in the system. Only by doing this process can solutions to the lack of remedies be possible.

The AHRC puts strong emphasis on understanding how the system of justice functions in reality in the country as fundamental on human rights work. In this report, we have described and analyse some of the cases that illustrates our observations below:

Police are lawbreakers: The police routinely used torture as part of their criminal investigation, arrests and detains persons they suspected of committing criminal offense without court orders or regard to legal process, exonerates themselves from murdering persons on pretext of 'legitimate encounter' or 'shoot out? they fabricate testimonies and evidences they used in prosecution of cases in court. Policemen pursuing prosecution of fabricated cases that is political in nature is very common.

The police are subservient to the military abdicating their authority as superior over the military. This is very common to cases where the accused involved they claimed had 'terrorist activities' or part of their 'counter insurgency?campaign. They tolerate soldiers arresting, detaining and torturing individuals at the military camps before they are turned over for police investigations. Thus, not only they commit violations, they also abdicated their police powers to the military.

Prosecutors prosecute fabricated charges: The practice in the prosecution of cases is dominantly not more about a person having violated the penal law. The functioning of the prosecution system has double standards. They are used as a political tool by influential and powerful individuals against the persons without regard to whether the person being prosecuted had violated penal laws or not; or whether they are legal basis to pursue the prosecution. The prosecutors also abdicates their role on screening cases to be prosecuted by exercising legal reasoning in weighing whether or not they have a case to prosecute; that the investigation report and evidence the police had submitted to them to be used in the prosecution could stand in court; and others.

Cases are prosecuted whether or not the reasoning that prosecutors have invoked in recommending the filing of charges in court had logic, or that legal procedures conducted in their investigation have been observed in real sense. Thus, cases are prosecuted without certainty that the prosecutors have the probability of obtaining convictions; or that the cases being prosecuted had legal merit or had passed legal procedures at all.

Courts allows trial on false charges: The courts are not only made incapable of punishing perpetrators of violations, as a result of the police and the prosecutors failure to ensure evidences of the case stands in court, but institutionally it also allows fabricated charges to be tried in its court. The court has the judicial authority to summarily dismiss cases lacking sufficient evidence or when the legal procedures are not met and violated in the process of filing cases in court. This is to ensure that cases being tried in court have legal merit and are not dubious.

However, the court abdicates its right to judicial review. To do so, the court invoked previous court decisions which argues that regardless of whether the merit of case is questionable or that the legal procedures have been violated these matters can only be proved in the process of court trial. This involves cases of illegal arrest, illegal detention and the filing of charges. The court t argued that the accused has not been deprived of remedy because his innocence or guilt could still be established in the course of the court trial. Thus, a person can be illegally arrested, detained and tortured; and the court allows the trial of this type of cases.

* *The State of Human Rights in the Philippines 2010 report:*

<http://www.humanrights.asia/resources/hrreport/2010/AHRC-SPR-008-2010.pdf?lt;/strong>>