

Development and Political Violence

Conference on Political Killings and the Rule of Law

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Political killings, human rights and the peace process

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Introductory remarks

From 2001, the number of killings of political and community activists in the Philippines, predominantly those associated with legal leftist or left-orientated groups, increased alarmingly. In 2006 Amnesty International released a report, *Political Killings, Human Rights and the Peace Process*¹, analysing the pattern of killings and their context and making urgent recommendations for remedial measures. During 2007 a significant decrease in the number of killings was reported, but periodic killings continue. The questions I hope we may be able to explore during this conference are:

- Will the reported current reduction in the number of killings be sustained?
- Will the reforms pledged by the government be implemented effectively – and what obstacles stand in the way of their implementation?
- How can the international community best monitor developments with regards to political killings and the wider human rights situation in the country, and so offer appropriate support both to civil society and to a programme of institutional reform?

The pattern of political killings

¹ To view the complete report in English: <http://www.amnesty.org/en/library/asset/ASA35/006/2006/en/dom-ASA350062006en.pdf>

Der vollständige Bericht auf Deutsch ist abrufbar unter:

[http://www2.amnesty.de/internet/deall.nsf/AlleDok/9714081448240547C125722C003E6EA8/\\$FILE/PhilippinenASA350606.pdf](http://www2.amnesty.de/internet/deall.nsf/AlleDok/9714081448240547C125722C003E6EA8/$FILE/PhilippinenASA350606.pdf)



The killings - mostly carried out by unidentified men often wearing face masks who shoot the victims before escaping on motorcycles - have rarely led to the arrest, prosecution and punishment of those responsible. A climate of impunity persists.

The methodology of the attacks, including prior death threats and patterns of surveillance by persons reportedly linked to the security forces, the leftist profile of the victims and the climate of impunity which, in practice, shields the perpetrators from prosecution, has led Amnesty International to conclude that the attacks are not an unconnected series of criminal murders but constitute a politically-motivated pattern of killings.

These victims are mostly members of political parties, human rights organisations, media, HRDs, farmers, community leaders, indigenous leaders etc. Our organisation remains gravely concerned that members of the security forces

may have been directly involved in the killings, or else have tolerated, acquiesced to, or been complicit in them. Subsequent international and national investigations have reinforced this conclusion. To name but a few:

- The national commission of inquiry, Melo Report, released February 2007, concluded that circumstantial evidence existed showing the involvement of certain elements in the military to the killings.²
- The Commission of Human Rights of the Philippines (CHRP), an independent body which receives and monitors complaints, has noted 'a pattern of acquiescence and complacency on the killings of journalists'³ and the direct involvement of the military and the police as suspects in cases of political activists.⁴
- UN SR Philip Alston highlighted the main causes of extrajudicial killings, namely the failure of the judicial system to address impunity and in particular the military's counter-insurgency strategy that seeks to target civil society labelled as communist fronts.
- A number of fact-finding missions has been undertaken by international NGOs such as Human Rights Watch, Fédération internationale des droits de l'homme (FIDH), World Association of Journalists, lawyers, women's groups etc.
- In addition, several cases have pointed strongly to the involvement of the military:
 - Pastor Isaias Sta Rosa (political killing - military)
 - Reynaldo and Raymond Manalo (enforced disappearance - military)
 - Gerardo Cristobal (police)

Amnesty International's concerns have been exacerbated by broader political developments during 2006 to 2007, including the declaration in February 2006 of a temporary State of Emergency, and an intensified counter-insurgency operations in the con-

² To view the complete Melo Report in English: <http://www.asienhaus.de/menschenrechte-philippinen/dokumente.html>, click on "Melo Bericht"

³ Dr. Purificacion Quisumbing, CHRP and Extrajudicial Killings, Presentation at the 'National Consultative Summit on Extrajudicial Killings and Enforced Disappearance', Manila Hotel, 16 July 2007.

⁴ Commission of Human Rights of the Philippines (CHRP), Advisory on the Killings of Members of Bayan Muna, Anakpawis, Gabriela and Other Allied Organizations, Human rights Advisory CHRP A2005-05 (Philippines, 8 July 2005); Philippine Daily Inquirer, Gov't must answer for all killings - CHR, 23 May 2006.

text of an "all-out-war" against the NPA, the armed wing of the CPP.

- In January 2008, the AFP's force was strengthened with six new battalions involving the recruitment of 3,000 soldiers to undertake the 'final blow' against the communist insurgency.
- Meanwhile, the peace process with the communist insurgency has been stalled. Civil society representatives have expressed concern that the government is not committed to renewed negotiations as part of the peace process.
- The Comprehensive Agreement on the Respect of Human Rights and International Humanitarian Law (CARHRIHL), signed by the Philippine government and the CPP in 1998 remains a promising tool to help rebuild mutual trust and confidence in the peace process. However, the operationalisation of the Joint Secretariat and the Joint Monitoring Committee, tasked to investigate complaints of human rights violations, has been impeded by continuing disagreement between both sides.

Philippines initiatives and assistance from the international community:

The government has officially condemned acts of extrajudicial killings and denied the existence of a state policy that supported it. While the government has tried to displace responsibility of the killings to the NPA due to an 'internal purge', it has also admitted that 'rogue elements' in the military structure may have perpetrated a small number of the killings. In an effort to respond to the problem, the government has undertaken a number of initiatives. A selection of these are:

- Pushing for investigations
 - creation of an independent commission headed by retired Supreme Court Justice Jose Melo (Administrative Order 157, 21 August 2006, Executive Order No. 173, 23 March 2007)
- Strengthening of awareness of HR standards and implementation in different government agencies including military and police
 - establishment of Human Rights Offices in the AFP (February 2007)
 - activation of the PNP Human Rights Affairs Office which oversees the imple-

mentation of police guidelines and policies on human rights (29 June 2007); implementation of a new set of PNP-wide policy directions and guidelines on the respect, promotion and protection of human rights (Letter of Instruction PAMANA, signed by PNP chief Director General Avelino Razon Jr., 7 February 2008)

- Strengthening prosecution and the courts
 - establishment of cooperation and coordination between the National Prosecution Service (NPS) and other concerned agencies of government for the successful investigation and prosecution of political and media killings (Administrative Order 181, 3 July 2007)
 - creation of 99 special courts for political killings (Administrative Order No. 25-2007, 1 March 2007)
 - creation of 5 military courts to try cases of human rights violations by military agents (June 2007)
- Fostering coordination among different government bodies
 - coordination of the Department of Justice and the Department of National Defence with the CHRP to set up a joint fact-finding body (Statement of the President, 31 January 2007)
 - creation of the Task Force against Political Violence (TFAPV) (Administrative Order No. 211) aimed at mobilising government agencies, political groups and sectoral organizations for the prevention, investigation, prosecution and punishment of political violence, and the protection of people and communities victimized and threatened (26 November 2007).
- Support in judicial reform initiatives aimed to strengthen the protection of victims and families through the:
 - promulgation of a new law, the Writ of Amparo, pursuant to the recommendations of the National Consultative Summit in July 2007 (A. M. No. 07-9-12-SC, approved by the Supreme Court 25 September 2007, in effect 24 October 2007).
 - promulgation of a new law, the Writ of Habeas Data in (A. M. No. 08-1-16-SC, approved by the Supreme Court on 22 January 2008, in effect 2 February 2008).
 - Facilitate access to the witness protection programme
- Facilitate congressional oversight

- revocation on 6 March 2008 of the Executive Order 464 (issued 26 September 2005) and Memorandum Circular 108 (issued 27 July 2006) thus ending the requirement for government officials, military and police officers to acquire consent from the President prior to appearing in a Congressional inquiry.

- Sustain the momentum
 - In April, the government of the Philippines announced in its voluntary commitment at the Universal Periodic Review of its human rights situation in the United Nations to 'sustain the momentum on addressing killings of activist and media'.

As I flagged at the outset, the challenge ahead is the implementation of these initiatives. President Arroyo has called on the help of the international community to which the European Union has responded with the EU Needs Assessment Report launched on 4 April. It forms the roadmap ahead for the EU Justice Assistance Mission (EJAM) that aims to provide technical assistance, training and capacity building to improve the criminal justice system of the Philippines. Amnesty International welcomes the recommendations in the EU Needs Assessment Report in strengthening the capacity of the justice system, through enhancing the skills and competencies of law enforcement agents, witness protection, prosecution, the judiciary, the AFP, the Commission on Human Rights and other government agencies.

A number of countries have raised the issue of political killings especially those who are providing development aid to the Philippines such as Japan, the US, Australia, New Zealand and Canada. Parliamentarians in some of these governments have engaged particularly in discussions on these issues.

Parliamentary scrutiny is increasingly being encouraged and used in monitoring and scrutinising the use of development assistance and as one way to improve the accountability of both donors and recipient states for the use of such assistance, and the human rights impact of assistance.

Ending Political Killings: Persisting Gaps and Challenges

- Political will: Although there is compelling evidence for the involvement of the security

sector in political killings, some officials appear to remain in a state of denial. It is important that security and military agents at all levels accept their responsibility to protect the right to life. Only with a changed mindset and attitudes can there be confidence that technical assistance will be aimed at a common goal in ensuring effective investigations, prosecutions and convictions of all those responsible, including state agents at the commanding levels.

- Counter-insurgency policy: This needs to be reviewed. Institutional reforms and pledges will be undermined if the line between civilians and combatants are blurred. A particular point of concern is the persisting 'red labelling' or the characterisation of legal left oriented political parties, sectoral groups and CSOs as 'front organisations' for armed groups and as 'enemies of the state' - that creates a climate in which fur-

ther political killings are likely to occur.

- Convictions: This is particularly important. The numerous initiatives undertaken by the government still need to result to a number of convictions. The recent decline in reported cases should not overlook the pressing need to provide access to justice to victims through successful convictions. This would have to embody the power of deterrence and therefore, combined with institutional reforms, to guarantee against the risk of any future resurgence.
1. Investigations and prosecution of cases - Successful convictions can be reached only if the present deficiencies in investigation and prosecution practices by Philippine authorities are addressed. A number of these were highlighted in the EU report.

Zusammenfassung: Philippinische Initiativen und die internationale Gemeinschaft

Offiziell verurteilt die philippinische Regierung die außergerichtlichen Tötungen und leugnet, dass eine offizielle Staatspolitik diesbezüglich existiert. Lea Biason nannte sieben Maßnahmen der Regierung, um den politischen Morden entgegenzuwirken. So wurden Untersuchungen der Morde eingeleitet (z.B. durch die Melo Kommission), Rechtsreformen zum Schutz von Opfern und ihren Familien unterstützt (z.B. der „Writ of Amparo“) und die parlamentarischen Kontrollfunktionen gefördert. Die Umsetzung dieser Maßnahmen bleibt jedoch weiterhin die zentrale Herausforderung.

Die philippinische Regierung hat die internationale Gemeinschaft um Hilfe bei der Umsetzung gebeten. Die EU hat daraufhin im April 2008 eine Bedarfsanalyse vorgelegt, die auch als Grundlage für die ab September 2008 erwartete Hilfsmission EUJAM dienen soll.

Besonders von Ländern, die direkte Entwicklungshilfe an die philippinische Regierung zahlen (Japan, USA, Australien, Neuseeland, Kanada), wurden die außergerichtlichen Tötungen thematisiert.

Politische Morde stoppen: Diskrepanzen und Herausforderungen

Für ein Ende der politischen Morde nannte Biason vier Bedingungen:

1. Der politische Wille muss besonders innerhalb der Streitkräfte gefördert werden.
2. Die Politik der Aufstandbekämpfung muss überprüft werden.
3. Hinterleute der Morde müssen bestraft werden.
4. Die Untersuchungen und strafrechtliche Verfolgung der Täter muss gewährleistet werden.

Lea Biason endet ihren Vortrag mit einigen Empfehlungen an die philippinische Regierung und die internationale Gemeinschaft, indem

5. der zeitnahe Zugang zu rechtstaatlichen Mechanismen entsprechend internationaler Menschenrechtsstandards gewährleistet,
6. die unabhängige, umgehende und effektive strafrechtliche Verfolgung sicher gestellt,
7. adäquater Schutz und Sicherheit für Zeugen durchgesetzt und
8. eine ernsthafte Rechtsreform (v.a. in Bereichen des Folterverbotes und der Institutionalisierung der Kommandoverantwortlichkeit), verfolgt wird.

Police

Amnesty International is concerned that inadequacies in policing practices seriously undermine the quality of investigations. The international standards under the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions stated that investigations need to be 'thorough, prompt and impartial.'

1. Reports have shown a pattern where the police failed to carry out 'prompt' investigations. This is illustrated in the case of Nelson Asucena, a youth representative allegedly shot by a member of the military accompanied by a group of men in December 2006. Despite complaints filed by his family who have identified the perpetrators, the police failed to investigate the suspects promptly and bring the case to the court.
2. The police also lacked forensic expertise and competence in applying thorough investigative techniques and professional policing practices. In December 2006 in the case of Alberto Yadan, a peasant leader campaigning on land reform issues, the police was reported to have failed to perform an autopsy, collect forensic evidence and carry out a proper investigation at the crime scene.
3. In a number of cases the police have themselves been suspected as the perpetrators of human rights violations and have failed to investigate such cases. This was illustrated in the attempted murder of Gerardo Cristobal, a labour leader, allegedly ambushed by the police in April 2006 and his eventual murder in March 2008.
4. The police have been reluctant in investigating senior military officials.
5. While government officials and the police have cited the lack of witness testimony as one of the major obstacles that prevent them from gathering evidence, they have failed to provide witnesses with adequate protection. The killing of Siche Bustamente-Gandinao in March 2007, a witness who has testified to Philip Alston, is illustrative of the potential fate of witnesses. (she testified against the murder of her father-in-law Dalmacio Gandinao, a provincial Bayan Muna chairman)
 - As mentioned in the EU report and in others, the 1991 Witness Protection, Security and Benefit Act needs to be strengthened to ensure the effective long term protection and support for witness and families of the victims – particularly the housing benefits

and medical care as well as the penalties against intimidation and threats.

- Example: the penalties against witness harassment; a fine of Peso 3000 (USD 65) and/or imprisonment between six months to one year are too minimal to provide adequate deterrence.
6. In January 2008, the police announced 'solving' 58 cases of political killings out of 113 cases and 22 cases of media killings out of 28, which totals 80 killings out of 141 cases from mid-2006 to 2007. They claimed they have solved 56.7% in 18 months. However, the police tend to categorise cases as 'solved' when they have been merely filed with the Public Prosecutor. This is only an initial stage in the justice process which does not guarantee that the cases will lead to a successful prosecution. Due to the inefficiency of gathering evidence and data and a heavy reliance on witness testimony which is not forthcoming, AI remains concerned that a high number of cases filed tend to be dismissed by the prosecutors, before being filed as a criminal charge in court.

Military

Although a number of investigative mechanisms exist for the military, these have failed to effectively scrutinise military officials allegedly involved in political killings.⁵

1. AI is concerned that apparent inaction of some senior military officers may be interpreted as a signal of condoning or tolerating political killings. Example: During the Melo hearings, AFP Chief of Staff, General Esperon stated that investigations into killings are undertaken only when a complaint is filed. As a result, despite the reports on General Palparan, particularly the increase of political activists slain in areas formerly under his command, the AFP did not con-

⁵ Military criminal justice system: Office of the Deputy Ombudsman for the Military and other Law Enforcement Agencies (MOLEO), Office of the Provost Marshall General (TPMG), the Office of the Inspector General (TIG), the Office of the Judge Advocate General (TJAG), and the Office of Ethical Standards and Public Accountability (OESPA), the AFP Human Rights Office. In addition, five new military courts have been set up in June 2007. Investigative mechanisms: Office of the Ombudsman.

duct any 'formal investigations' due to the absence of a 'formal complaint'.

2. According to the Melo Report there is circumstantial evidence linking the involvement of a group of the military to political killings. It also concluded that Gen. Palparan and some superior officers may be held responsible for failing to prevent, punish or condemn the killings under the principle of command responsibility.
 - The case of General Palparan was also taken up by a decision at the Court of Appeals following testimony from the Manalo brothers, Raymond and Reynaldo. As suspected communist insurgents, they have been abducted by the military and escaped after 18 months. They have testified to have been detained and tortured in several military camps and witnessed the killing of a peasant who was also abducted.
3. Amnesty International is concerned with the lack of clarity of the concept of command responsibility in law and practice in the Philippines. (Military officers and government officials have provided differing interpretations from international law. In addition, a commissioner from the CHRP has underlined the lack of a specific provision within the Philippine criminal law which prevents charges to be filed for criminal liability of commanders. As stated by the Melo Commission, although the Philippines is not party to treaty law specifically codifying the doctrine of command responsibility, it is however bound by it through international customary law.)

Prosecutions

Amnesty International is concerned that the cases involving political killings, especially where law enforcement agencies are suspected, tend to be dismissed or lead to questionable indictments.

Prosecutors have also reportedly been biased in their conclusions. In the case examined by the Asian Human Rights Commission on the alleged attempted murder against labour leader Gerardo Cristobal, the prosecution was faced with conflicting claims, one from the victim and the other from the police. While the prosecutor was aware that the police claim was filed by the same persons accused by the victim, the prosecutor took up the police claim without inquiring into the victim's case, hence indicting Gerardo Cristobal.

Recommendations

Amnesty International calls on the Philippine government and the international community to effectively make use of technical assistance in ending impunity by:

- Ensuring that victims are enabled to have effective access to justice in a timely manner and according to international human rights law standards, including through prompt and accurate convictions.
- Ensuring that investigations and prosecutions are independent, effective and prompt. To this end, the recommendation on the EU report for an independent monitoring body for investigations is encouraged.
- Providing witnesses with adequate security and protection, including protection of their right to life. Witness protection schemes should be secure and free of official interference.
- Ensuring legal reforms such as promulgating legislation under the Revised Penal Code prohibiting torture and institutionalising command responsibility.

Zusammenfassung: Lea Biason, amnesty international London - Politische Morde, Menschenrechte und der Friedensprozess

Seit 2001 ist die Zahl der Morde an politischen und lokalen Aktivisten massiv gestiegen. Amnesty International hat 2006 einen Bericht mit dem Titel „Politische Morde, Menschenrechte und den Friedensprozess“ (s. S. 9, Fußnote 1) verfasst und damit zur Analyse der Situation beigetragen. Während die Anzahl der politischen Morde im Jahr 2007 deutlich gesunken ist, gibt es weiterhin viele offene Fragen:

1. Wird der Rückgang an politischen Morden von Bestand sein?
2. Werden die angekündigten Reformen von der philippinischen Regierung umgesetzt und welche Hindernisse stehen dem entgegen?
3. Wie kann die internationale Gemeinschaft effektive Beobachtungsmechanismen für Menschenrechtsentwicklung in den Philippinen, sowie Zivilgesellschaft und institutionelle Reformen unterstützen?

Das Muster politisch motivierter Morde

In vielen Fällen werden bei verschiedenen außergerichtlichen Tötungen ähnliche Methoden angewandt. Oft sind die Täter nicht identifizierbar und ihre Verfolgung, Verhaftung und Verurteilung durch die polizeilichen und ju-

ristischen Organe findet nicht statt. Dies ist Ausdruck eines Klimas der Straflosigkeit. AI schließt daraus, dass es sich bei den Morden nicht um isolierte und kriminelle Einzelfälle handelt, sondern um ein strukturelles Muster mit politischer Motivation, das in Zusammenhang mit Aufstandsbekämpfungsmaßnahmen der Regierung steht.

Auf die Verstrickung von Sicherheitskräften in außergerichtliche Tötungen wurde nicht nur von den Betroffenen, sondern auch durch internationale wie nationale Untersuchungsmissionen hingewiesen.

Biason wies ebenfalls auf den Kontext der politischen Entwicklungen von 2006 und 2007 hin. Hier nennt sie stichwortartig mehrere Ereignisse, die markante Punkte in der Entwicklung darstellen: Der im Februar 2006 ausgerufenen nationalen Ausnahmezustand, die intensivierte Aufstandsbekämpfung und der „Totale Krieg“ gegen die NPA, die Aufrüstung des Militärs, der unterbrochene Friedensprozess und die mangelnde Operationalisierung des Abkommens über CARHRIHL zwischen der Regierung und der NDF.