A LEADER of the National Federation of Sugarcane Workers (NFSW), Armando Dolorosa, 45, was gunned down by three masked men in Manapla, Negros Occidental on June 6, 2008.

According to Dolorosa’s wife, Janetta, she suspects that her husband’s murder had something to do with the implementation of the agrarian reform program. She said her husband and 36 other agrarian reform beneficiaries were given certificates of land ownership award by the Department of Agrarian Reform (DAR) last year. The certificates covered a portion of a sugar estate. Dolorosa was the third local NFSW leader slain in Manapla since 2003, local police records show.

Eric Cabanit, staunch peasant leader since the martial law period, was killed in a marketplace in Davao City. His daughter was with him when he was attacked.

Kathy Alcantara, a woman leader-organizer of the Pambansang Kilusang ng Makabayan Magbubukid (PKMM), was killed mid-morning of December 5, 2006 in Brgy. Gabon, Abucay, Bataan. She was just a short distance from an ongoing seminar of PKMM, of which she was both organizer and resource person, when she was gunned down by killers on motorcycles. People who turned to look when they heard the shots were not in a position to recognize the motorcycle riders who in the meantime had sped away.

Their deaths add to the several hundreds of persons who had lost their lives for standing up and defending fundamental freedoms, social justice and human rights. They are usually, among others, leaders of people’s organizations and/or cause-oriented groups, farmers, workers, youth, professionals, journalists and church people. More often than not they or their organizations have been branded at one time or another.

Photos by TRACY PABICO
or another by the military and/or police as “enemies of the state” or as “fronts” of the Communist Party of the Philippines (CPP) or that of the New People’s Army (NPA), the armed wing of the CPP. These killings are closely linked if not actually caused by the victims’ struggles for human rights. These unsolved killings, with no perpetrators brought to justice nor convicted, entrench deeper the culture of impunity.

**Unknown Extent of Impunity**

The extent of impunity in relation to the human rights situation in the Philippines, particularly in extrajudicial executions, enforced disappearances and torture, at the moment, can never be completely known.

The case of the brothers Raymond and Reynaldo Manalo (see “The Manalo Brothers: From Victims to Defenders,” Human Rights Forum, Vol. IV, No. 4, October-December 2007, pp. 12-16) graphically illustrate the extent of impunity in the country. The enforced disappearance and torture of the brothers confirm the poor implementation of civil and political rights in the Philippines. In granting the brothers’ petition for a Writ of Amparo, the Supreme Court gave credence to the brothers’ account of military atrocities, despite government and military denials.

What is particularly alarming in the brothers’ sworn account is how they saw:
- Other victims of torture and enforced disappearance, and
- Other victims being extrajudicially killed.

The testimony of the Manalo brothers depicts a horrifying possibility of a much deeper problem of impunity. It also proves to what extent perpetrators of human rights violations would go so as to suppress evidence, including the burning of victims’ bodies.

The climate of fear and the culture of impunity engendered by these heinous acts are much more extensive and intensive, and the devastating effects on the lives of survivors and their families are unimaginable.

When campaigns against insurgencies and terrorism become operations, directly or indirectly, against the whole range of human rights, the resulting climate of fear severely impedes people’s effective participation in human development.

**Corruption: A Component of Impunity**

In the midst of controversies and charges of corruption, President Arroyo blocked the people’s access to information. These obstacles, among others, are Executive Order 464, Memorandum 108, the use of executive privilege, and Administrative Order 197. These legal measures supplement and exacerbate an already existing coercive environment and climate of fear and uncertainty among the people.

The stonewalling of truth only further entrenches impunity in the face of the State’s un-
willingness to give in to demands of transparency and accountability, especially with regard to loans and economic projects in bilateral and multilateral agreements. The most glaring example of this is the NBN-ZTE deal between China and the Philippines, a project that was overpriced by hundreds of millions of dollars which would be paid for by the Filipino people. Corruption thus results in violations of the economic, social and cultural rights of the people.

**Vilification Campaign: Military Response to Protests Against HR Violations**

The vilification campaign against people’s organizations branded as “enemies of the State,” the consequent harassment and intimidation of members, and the use of the “order of battle” (OB) listings by the military reveal a pattern that can only come from a State policy. Although unwritten and unofficial, the results of the policy are just as deadly for people and disastrous for their human rights.

Aside from Professor Alston’s independent find of an “order of battle” list during his official visit as U.N. Special Rapporteur on Extrajudicial Killings, the Report of the EU Needs Assessment Mission, has this to say:

...in Region 3, the Brigade level Order of Battle lists 300 individuals. It was reported to the Mission in that Region that Orders of Battle are amended and updated from time to time.

Officials in the military headquarters in Manila questioned the authenticity of the document. The same EU report pointed out that:

The overall counter-insurgency strategy, including military involvement in civil affairs, blurs the differentiation between combatants and non-combatants, thus contributing to the extrajudicial killing and forced disappearances. On more than one occasion, AFP personnel confirmed that civilians who supported the counter-insurgency through political affiliation, financial support, or legal representation were legitimate military targets.

**The People’s Struggles to Break Impunity: Government and Military Responses**

The campaigns to expose grave human rights violations have been made and sustained by concerned groups both in the national and international arenas. These campaigns include human rights education and para-legal trainings to enable communities especially in difficult and/or militarized areas to assert their human rights whether to State or non-State actors. Efforts are also continuously made to organize formations of human rights defenders and to dialog with appropriate government officials and bodies towards obtaining a breakthrough against impunity. People’s diverse actions, on their own and/or in solidarity with others, toward the common goal of breaking impunity, elicited different responses from the three branches of Philippine government.

President Arroyo, for example, praised the work and record of then General Jovito Palparan, Jr. who was suspected as responsible for the extrajudicial killings committed in the areas of his different assignments.

Until now, there are determined efforts to make justiciable the human rights treaties that the Philippine government had already signed and ratified, especially the ICESCR.
bills formulated to this end have not been certified urgent by the Chief Executive show the rank of importance Ms. Arroyo’s administration gives to the justiciability of human rights.

There is, for example, an absence of laws criminalizing torture and enforced disappearances. This situation is contrary to the international commitments of the Philippines under Article 7 of the ICCPR. The Philippines is a State Party to the Convention against Torture (CAT). Yet the FIDH mission in 2007 stated that “…in zones of armed conflict, acts of torture accompany every military operation.”

Impunity thus could persist due to the absence of laws that translate ratified international human rights instruments into national laws. Impunity could also thrive through laws that purport to protect human rights, such as the anti-terrorism law (the Human Security Act of 2007), which uses “a misleading semantic.”

There are now bills on criminalizing torture and on enforced disappearances which closely follow definitions and provisions in the related international conventions. Their passage into laws could help in realizing justice for people.

In the meantime, the laws leading to the resolutions of cases of extrajudicial killings and enforced disappearances have been found wanting. Victims and relatives of victims who pursued justice through the legal system have been frequently frustrated by persons and processes meant to assist them in obtaining redress. For example, FIDH observed that Article 7 of the ICCPR and article 15 of the CAT [to both of which the Philippines is a State party], Section 25 of the 2007 anti-terrorism law (RA 9372), also prohibited the admissibility of evidence obtained through torture or duress.

However, the actual case of the Supreme Court in this domain threatens the effectiveness of this principle. Indeed, the Supreme Court considers that “the confessant bears the burden of proof that his confession is tainted with duress, compulsion or coercion by substantiating his claim with independent evidence other than his own self-serving claims that the admissions in his affidavit are untrue and unwillingly executed. Bare assertions will certainly not suffice to overturn the presumption.”

Impunity could also thrive through laws that purport to protect human rights.

Judicial Activism

It is within this context that the judicial activism of the Supreme Court, which resulted in the issuance of the writ of amparo and the writ of habeas data, must be considered.

The two writs created hope that they would decrease the occurrence of extrajudicial killings and enforced disappearances. In fact, initial successes have been obtained. Some people who were abducted were surfaced. But then, for fear of retaliation and of the possibility of undergoing another round of harassment and intimidation, or worse – that of being extrajudicially killed – the victims and/or relatives do not pursue the filing of charges. In fact, some of those who were surfaced expressed gratitude to the military for “keeping them safe.” Some even returned with the military to the latter’s camp. Others who have been brought back home by the military after almost a year of enforced disappearance are too afraid to even officially acknowledge the atrocities committed.

There is at least one case in which a writ of amparo was filed against the human rights organization Karapatan. Somehow, the military was able to use the family of a youth who was in the ‘protection program’ of the said organization. This only shows that the military are learning how to use of both law and intimidation to further entrench impunity.
against the people.

As the EU Needs Assessment Mission notes, “The legal framework, including standard operating procedures, for investigating extrajudicial killing is in place, but seems not to be implemented or applied.”\(^{18}\) The Mission also noted that the “main obstacle to successful investigation of extrajudicial killings, given by officials within the Philippine authorities concerned, is the unwillingness of witnesses to come forward.”\(^{19}\)

FLAG had enumerated the weaknesses of the government’s Witness Protection Program in its report to the Special Rapporteur on Extrajudicial Killings.\(^{20}\)

From investigations to court hearings to protecting witnesses, the criminal justice system needs to win back the trust and confidence of the general public.

As for the AFP, it is not seen as a politically neutral entity in terms of its constitutional mandate. The current degree of involvement of the AFP in civil affairs is counterproductive towards developing democracy, especially among the grassroots communities, and is inimical to democratic processes and institutions. It is hoped that the new human rights office of the AFP would educate and train officers and soldiers on human rights and international humanitarian law and monitor their obligations of conduct.

The posturing of the top officers of the AFP (headed by the Chief of Staff, Hermogenes Esperon) and the PNP last February 25, 2008 only confirmed that they are partisan towards the incumbent political power.

It is thus not surprising that Professor Alston stated at the end of his initial report that his recommendations “will make little difference unless there is a fundamental change of heart on the part of the military or the emergence of civilian resolve to compel the military to change its ways. Then, and only then, will it be possible to make real progress in ending the killings.”

Concomitantly, real progress in the participation of people to realize their economic, social and cultural rights can only be done when the said fundamental changes are instituted in the government and in the military.

**Working for the Emergence of Civilian Resolve**

Building formations of human rights defenders at the grassroots level is an imperative and not an option when the rule of law is weakened and a culture of impunity pervades. Furthermore, impunity in the whole range of human rights persists not because it is formidable, but because civil society, and even human rights defenders, are fragmented.\(^{21}\)

There is a need, therefore, to organize broad formations that ensure a sensitized citizenry with appropriate skills and an engaged civil society. Aware of their dignity as expressed in their human rights, the affected people would exact accountability from all actors, whether State or non-State, yet without confusing that the State is the primary duty-bearer.

Fighting impunity should not just be in the realm of civil and political rights, but also in
the arena of economic, social and cultural rights. The rights to food, water, electricity and other basic services in this present crisis should be linked to the hemorrhaging of the people’s coffers due to corruption. The concomitant violations in the economic, social and cultural spheres in the government’s fight against terrorism must also be noted and denounced. Civilian resolve should not just break impunity, it should also reclaim back the people’s dignity and obtain justice for us all.

This article is from a paper submitted to the OMCT (World Organization Against Torture) for the seminar “Addressing the Economic, Social and Cultural Root Causes of Violence through the UN Special Procedures System” held June 23-27, 2008 in Geneva. The writer is the Chairperson of the Philippine Alliance of Human Rights Advocates (PAHRA). He is also a convenor of the Citizens’ Council for Human Rights (CCHR).

NOTES:

1 United Nations. “Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity”: “Impunity means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account

– whether in criminal, civil, administrative or disciplinary proceedings
– since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.”

2 This burning of bodies was also mentioned in the affidavit of torture victim Ver Eustaquio, mass leader of the organization United Masses for Democracy and Justice, when he and his companions filed charges of abduction and torture against their alleged perpetrators.

3 Philippine Daily Inquirer, May 18, ’08, p. A18. The right to education of children in Datu Halun Elementary School in Tawi-Tawi, Mindanao, as representative of the province’s 7,000 children in preschools up to grade 6 levels has been renegotied by the Department of Education in the Autonomous Region in Muslim Mindanao (ARMM) by not providing the much needed textbooks and other teaching aids. The province is perceived by the government and the military as Abu Sayyaf area.

4 This Executive Order bars any government official of the Executive branch from testifying before any legislative inquiry without the permission of the Chief Executive. In the meantime, this E.O. has been substantially nullified by a Supreme Court decision. (Pangalangan, Raul C. “Be careful what you wish for”, Philippine Daily Inquirer, March 7, 2008, p. A14.)

5 Ibid.

6 After the Supreme Court struck down significantly E.O. 464, the same SC made a “dangerously crippling decision” regarding executive privilege. (Bernas, Joaquin G., S.J. “A dangerously crippling decision”. PDI, March 11, 2008, p. A15)

7 Administrative Order 197 issued by Ms. Gloria M. Arroyo on September 25, 2008. Note specifically provision no. 2: “The DND/ AFP shall draft legislation in consultation with the Presidential Legislative Liaison Office and Congress allies for safeguards against disclosure of military secrets and undue interference to military operations inimical to national security.”

8 Freedom from Debt Coalition (Philippines) considered the following RP-China Loan-related agreements as corruption-riddled: The North Luzon Railways Project (NLRP), the South Luzon Railways Project (SLRP), the National Broadband Network (NBN) Project and the Cyber-Education Project (CEP). The anomalies and/or controversies surrounding these projects were heard during the Senate investigation on February 8, 2008 in which Engr. Rodolfo Noel “Jun” Lozada, Jr. revealed he had been involved in some of the said projects of government, all funded by the Export-Import Bank of China.

9 According to the Free Legal Assistance Group, “In other cases, soldiers conduct ‘public meetings’ where they present a version of the power point presentation ‘Knowing the Enemy’ and read aloud the names of ‘wanted persons’ listed in the ‘Military Order of Battle.’

10 A report by Jean Marie Ferraris, Legal Resource Center, illustrates this point: The indigenous people of the Ata Matigsalug who were internally displaced due to military operations in their areas were being accused as being used by militaries in the former’s complaints against the said operations, according to military-organized groups of indigenous people.

In March, 2008, several truckloads of military men in full combat gear were deployed in the city of Marikina, Metro Manila, particularly in the area where teachers belonging to the organization ASSERT were beginning to organize fellow public school teachers into unions. The teachers were forced to attend brain-washing seminars conducted by the military led by Col. Buenaventura Pascual, during which some non-government organizations were labeled as “fronts of the NDF-CPP-NPA”.


12 Ibid.

13 Gen. Palparan was chief of the 7th Infantry Division (ID), which includes command responsibility over troops deployed in Central Luzon. Charges of robbery, grave coercion and serious illegal detention were filed against him and 13 others, mostly Army personnel, recently for taking over a mine site in Masinloc, Zambales. (“Army probing troops with Palparan in Zambales port takeover”)

14 FIDH. “Report: International Fact-finding Mission in cooperation with the Philippine Alliance of Human Rights Advocates (PAHRA) and the International Rehabilitation Council for Torture Victims (IRCT), April, 2008, p.28. “[Torture] may be usual in the process of abductions by the military, the police or their civilian auxiliaries,” p.30

15 Ibid., pp.25-26. There are no specific references to international human rights laws. It must be remembered too that while there is mention of a general “safeguard” and “respect for human rights”, for one there is still no domestic legislation against torture, thus making implementation problematic.


17 Ruel Munasque, a youth leader, taken by the military in Mindanao, was released on November 7, 2007.

18 EU, op.cit., p.15

19 Ibid.


21 EU Needs Assessment Report, op.cit., p.44. “Though widespread and vibrant, civil society in the Philippines is fractured.... The consequences of this split are still reflected in civil society activity today.”

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