

Human Rights and Judicial Remedies in the Philippines: Problems and Prospects

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Why has there been no improvement in the human rights situation in the Philippines?

- We are, after all, a “democracy;”
- We have a “free press;”
- We have active and committed civil society groups;
- We have a President who was himself a victim of human rights violations, a Secretary of Justice well versed in human rights, and a pro-active Commission on Human Rights;
- We have civilian courts run by judges schooled in both the common law and civil law systems;
- We have legal remedies like the writ of *habeas corpus*, the writ of *amparo*, the writ of *habeas data* and the recently enacted Anti-Torture Law for victims of human rights abuses;
- And we receive a lot of funding for human rights coming from Germany, the United States and other countries.

So why has the Philippines not made any real progress in the human rights arena?

1. The answers to this question, I believe, can be found if we dig deeper into how my country works; if we look beyond the words and see the realities of the situation.
 - 1.1 We have a legal system that is fatally flawed; a system where 1 out of every 4 trial courts has no judge; a system where we follow rules of procedure designed for juries but we have no juries; a system where our judges are not independent; a system where judges are appointed and promoted not because they are good but because they are good to the Chief Executive; a system where judges are corruptible if not corrupted, or easily intimidated.
 - 1.2 We have legal remedies on paper but not in fact; legal remedies that promise justice to victims of human rights abuses, but deliver only more suffering and injustice.
 - 1.3 We have a press that is free, yes; but it is a press that has no access to vital information of public concern, a press that must content itself with sensationalism and which is dependent on big business for its survival.

1.4 We have military and police forces that declare their commitment to human rights with one hand, but take it away with the other; military and police forces who still believe that membership in the Communist Party of the Philippines is illegal when it was legalized more than 15 years ago; and who operate on the belief that communism is an evil that should be stamped out by any means.

1.5 We have a prosecution service that professes adherence to the rule of law but does not practice what it preaches; a prosecution service that protects witnesses but has no mechanism for perpetuating their testimonies—so that the witnesses end up languishing in safehouses for years waiting to testify, while the perpetrators roam free; a prosecution service that allows the filing of John Doe cases vs. human rights defenders and tolerates their persecution when the cases against them are utterly without basis.

1.6 And we have an Ombudsman's office that views human rights with disdain, that is too scared to go after high-ranking officials who commit or condone human rights violations; an office that is itself plagued by corruption, inefficiency and delay.

We have, in short, a democracy in name but not in fact; a democracy struggling to stay afloat in the dark sea of impunity.

What then can and should be done?

There are no easy answers because the problems are so deeply rooted. To solve these problems we must dig out those roots, by challenging, confronting and changing the institutions, policies and practices that generate injustice and human rights abuses on a massive scale.

To address these problems we must first attack the policies and practices that have been in place in the Philippines for a long time – policies and practices that outlast changes in political administration, that have caused untold suffering for many Filipinos.

I have 8 proposals, but my list is by no means exhaustive; these are only baby steps that I believe we must take if only to start us in the right direction.

- (1) Depoliticize the selection of judges, and fill the vacancies with qualified and well-trained members of the bar. The Judicial and Bar Council was created to remove politics from the process of appointment of judges, but sadly it has not achieved that goal.

- (2) Stop the practice of filing John Doe cases against human rights defenders, a practice that has been going on since the 1970s.
- (3) Establish mechanisms for perpetuating the testimonies of material and protected witnesses. The Philippine Congress should amend the Witness Protection Law to provide such a mechanism. The Philippine Supreme Court should amend the Rules of Court to the same end.
- (4) Strengthen the capability of our law enforcement agencies to solve extrajudicial killings and enforced disappearances by forensic and physical evidence instead of relying heavily on testimonial evidence. Witnesses can easily be intimidated, pressured, compromised, threatened or killed. Law enforcement agencies, with the support of the National Government, must reduce their reliance on testimonial evidence and develop their forensic capabilities.
- (5) Re-educate the military and police to eradicate their belief that membership in the Communist Party of the Philippines is illegal, and that communism is an evil to be destroyed by any means. This belief is the source of many human rights abuses.
- (6) Require all members of the military and police forces to secure clearance from the Commission on Human Rights before they can be promoted. During the term of President Fidel V. Ramos, this served an effective deterrent. Unfortunately, the presidents who succeeded him did not continue this requirement. President Aquino does not need congressional action to do this; he can do this himself simply by issuing an administrative order requiring such clearance.
- (7) Demand that the Ombudsman—
 - a. Concentrate on prosecuting high level government officials instead of wasting resources on low level officials; and
 - b. Exercise the powers granted by the Constitution to pre-empt and prevent corruption and human rights violations, instead of waiting for them to happen before taking action.
- (8) Insist that the Ombudsman and Department of Justice evaluate their performance not just based on conviction rates but rather on actual service of sentence. Conviction rates are mere paper statistics. To restore accountability the Filipino people must actually see corrupt

and abusive government officials in jail. To date, there is no central body in the National Government that monitors and ensures that those who are convicted by final judgement actually go to jail and serve their sentences. And there is no central database that collects the data needed to ensure that they serve time.

Eliminating impunity is no easy task. But address it we must, if we are to build a nation we can be proud of, a nation where our children can live in peace, instead of dreaming of a better life on distant shores.

Thank you.