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PHILIPPINES

The Rolando Abadilla murder inquiry - an urgent need for effective investigation of torture

Introduction

The murder of Rolando Abadilla in June 1996 led to the arrest and interrogation of nine suspects. At least six of the suspects alleged that while held incommunicado in police custody and denied access to lawyers, medical care or family members, they were subjected to torture, including electro-shocks and suffocation, to coerce confessions. Attempts by the suspects to exercise their right to a thorough, prompt and impartial investigation of their claims have proved unsuccessful. In 1999 after a trial lasting nearly three years, five of the suspects were found guilty of murder and sentenced to death.

Amnesty International is gravely concerned by the alleged torture and ill-treatment in this case, which may have violated the rights of the accused to a fair trial. The organization believes that the conduct of the Abadilla murder investigation illustrates a wider failure of the laws, procedural safeguards and institutions established to protect fundamental human rights in the Philippines.

In October 2000, Amnesty International launches a year-long campaign aimed towards the eradication of torture around the world. The campaign is driven by the knowledge that torture victims include criminal suspects as well as political prisoners, the disadvantaged as well as the dissident, and people targeted because of their identity as well as their beliefs. The campaign aims to achieve progress by focusing on three related areas - preventing torture, confronting discrimination and overcoming impunity.

The following case study begins by placing Amnesty International's specific concerns about the Rolando Abadilla murder investigation within the context of wider patterns of torture and ill-treatment of detainees in the Philippines. It goes on to outline international human rights standards related to torture, and how they are reflected in Philippine law, procedural safeguards and institutions. The report then describes the murder of Rolando Abadilla, the launch of a police investigation, and the arrest of the suspects. A series of testimonies by the suspects alleging torture are presented, and the role of the Philippine Commission on Human Rights (PCHR) and the Department of Justice (DOJ) described. After an account of the current appeal process before the courts, the report ends with a number of recommendations to the government of the Philippines.

Torture in the Philippines

For many years Amnesty International has monitored patterns of torture of detainees in the Philippines. Within the context of the government's campaign against communist insurgents and their suspected sympathisers during the 1970s and 1980s, the organization recorded how the torture of political detainees during interrogation was commonplace. At the same time there were persistent, but largely undocumented, reports of similar techniques of torture being used against common criminal suspects to coerce confessions.

The end of President Ferdinand Marcos' rule in 1986 and the subsequent establishment of a range of legal and institutional safeguards for detainees marked a turning point in the protection of human rights for both political and criminal suspects in the Philippines. Nevertheless, the continuing anti-insurgency campaign combined with a *de facto* climate of impunity shielded suspected perpetrators (often military or paramilitary personnel or police) from effective prosecution and allowed torture to continue at high levels.

In the 1990s, the frequency of incidents of torture and ill-treatment of political detainees declined gradually as the scale and scope of armed insurgency abated. Today, although cases of torture within the context of counter-insurgency still occur, the long-hidden practice of torture and ill-treatment of criminal suspects by police has become more apparent, highlighting flaws within the body of laws and procedural safeguards, which facilitate the continuation of torture.

Amnesty International believes that this practice must now be confronted and emphatically condemned, not least because the current administration of President Joseph Estrada has responded to public frustration at rising levels of crime and apparent failures of the criminal justice system by pledging to get tough on criminals. The resumption in 1999 of executions of prisoners sentenced to death, after a period of 23 years, in part reflected this response.¹

Unless effectively checked, Amnesty International fears that the torture and ill-treatment of criminal suspects may increase further. Institutional safeguards for detainees are known to be weak at a time when police, under mounting pressure to solve crimes and themselves lacking confidence in the judicial process, are not deterred from using torture and ill-treatment as a 'short-cut' to extract confessions and thereby secure a conviction. Moreover, public opinion reflecting the fear and insecurity engendered by high levels of violent crime appears to tacitly accept periodic use of 'third degree' interrogation methods by the police as necessary if the criminal justice system in its present form is to secure convictions.

Amnesty International takes no position on the guilt or innocence of those accused of common criminal offences. However, the organization asserts that the fundamental dignity of every Philippine citizen, as enshrined in international human rights law and the Philippine Constitution, must be respected and upheld. Torture strikes at the heart of the dignity of any human being and can never be tolerated.

In many cases discrimination is a major contributing factor to the use of torture, as the identity, gender and status of the detainee influences the treatment they receive. The most impoverished and marginalized members of society are particularly at risk. These include women detainees (especially suspected prostitutes), street children and drug users. Amnesty International has found that male criminal suspects from impoverished communities often expect beatings as part of police 'standard operating procedure', while women in police custody also report being

¹ In March 2000 President Joseph Estrada announced a temporary moratorium on executions to mark the Jubilee Year celebrating the 2000th anniversary of the birth of Christ.

subjected to rape and sexual abuse, slaps, punches and kicks. Sensing a climate of impunity protecting the perpetrators and fearing reprisals, such marginalized victims rarely have the capacity or confidence to pursue a complaint.

The example of the Rolando Abadilla murder investigation reflects many of Amnesty International's concerns about how, despite procedural safeguards and legal sanctions against torture and ill-treatment, the practice is able to persist in the Philippines. The organization regards the chronology of events in the Abadilla investigation, combined with the compelling testimony of the detained suspects and the available physical evidence, as consistent with patterns of arrest, detention and torture reported by a broad range of political and criminal suspects both in the past and today.

This pattern includes the beating of suspects as they are arrested, mostly without warrants; the denial of rights to counsel and to medical and family visits during extended periods of incommunicado detention; and the use of torture, including techniques applied deliberately so as not to leave visible marks, mainly to coerce confessions or the naming of suspected 'accomplices'.

In addition, attempts by the suspects in the Abadilla case to use existing complaints procedures to obtain a prompt judicial examination of their claims of torture were undermined by the same constraints that frustrate the ability of other victims of grave human rights violations to seek justice and achieve redress. Amnesty International believes that the Abadilla case exposes how, in practice, a cycle of human rights violations and impunity can continue.

Five suspects in the Abadilla case have been sentenced to death. While Amnesty International is unequivocally opposed to the death penalty in every case around the world, the organization's concerns in the Philippines are deepened by the fact that the suspects' testimonies in this case mirror allegations of pre-trial torture recounted by other prisoners on death row in the National Penitentiary at Muntinlupa.²

If torture takes place and confessions are coerced how can the right to a fair trial be upheld and the risk of judicial error reduced? The risk of executing an innocent person who may have already suffered torture is real.

Amnesty International seeks to mark the October 2000 launch of the International Campaign Against Torture by calling on the authorities in the Philippines to address a number of specific and grave concerns raised by the Rolando Abadilla murder investigation, and to confront a wider failure of institutional and legal safeguards which the organization believes the case vividly brings to light.

² Officially known as the New Bilibid Prisons (NBP).

International Human Rights Standards

The Philippines has acceded to and is bound by the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).

As enshrined by the ICCPR and other standards, “*no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”.³ By ratifying the Convention Against Torture, the Philippines has agreed to be legally bound by its provisions, and to take effective legislative, administrative, judicial and other measures to prevent torture in any territory under its jurisdiction.⁴ States Parties to the Convention Against Torture have a duty to instigate prompt and impartial investigations whenever there are reasonable grounds to believe an act of torture has taken place, and are obliged to ensure that any individual who alleges torture has a right to complain, and to have the case heard promptly and impartially.⁵ The duty to investigate is not dependent on a formal complaint by a detainee.⁶

International standards recognize that people suspected of criminal offences are vulnerable to torture and other human rights violations during the investigatory stages of criminal proceedings, particularly during interrogation by law enforcement officials. To safeguard the rights of detainees, including the right to a fair trial, international law makes clear that anyone arrested or detained must be notified at once of the reasons for their arrest or detention and of their rights, including their right to counsel.⁷ Everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to assist in their defence.⁸

In addition to prompt access to legal counsel, people held in custody are also entitled to prompt access to families, doctors and a judicial official.⁹ Experience has shown that access to the outside world is an essential safeguard against human rights violations, including torture, and vital to the process of obtaining a fair trial. The key safeguard of the presence of a lawyer during

³ ICCPR - Article 7; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) - Principle 6.

⁴ Convention Against Torture - Article 2(1).

⁵ Convention Against Torture - Article 13.

⁶ Convention Against Torture - Article 12.

⁷ ICCPR - Article 9(2).

⁸ UN Basic Principles on the Role of Lawyers - Principle 1: “All persons are entitled to call on the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”.

⁹ UN Body of Principles - Principle 19; ICCPR - Article 9(3).

interrogation is buttressed by the prohibition against coerced confessions.¹⁰ This right is applicable at both the pre-trial and trial stages.

If an accused alleges during the course of proceedings that he or she has been compelled to make a statement or to confess guilt, the judge should have the authority to consider such an allegation at any stage.¹¹ All allegations that statements have been extracted through torture must be promptly and impartially examined by competent authorities, including judges.¹² In addition, those prosecutors who come into possession of evidence against suspects that they know or believe on reasonable grounds to have been obtained through torture should refuse to use such evidence and inform the Court accordingly.¹³ Evidence elicited as a result of torture or other coercion, including confessions by the accused, must be excluded by the court and not be used in any proceedings except those brought against alleged perpetrators of torture.¹⁴

Amnesty International is unconditionally opposed to the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment, and a violation of the most fundamental of human rights - the right to life. In countries where the death penalty is still applied, in view of the irreversible nature of executions, trials in capital cases must scrupulously observe all the international standards protecting the right to a fair trial. All safeguards and due process guarantees set out in international standards applicable to pre-trial, trial and appellate stages must be fully respected.¹⁵ While encouraging the abolition of the death penalty,¹⁶ international safeguards state that death penalty should only be imposed when the guilt of the accused person is, “*based on clear and convincing evidence leaving no room for an alternative explanation of the facts*”¹⁷. The UN Human Rights Committee takes the position that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the ICCPR had not been respected and which could no longer be remedied by appeal, would constitute a violation of the right to life.¹⁸

Laws, safeguards and complaints mechanisms in the Philippines

¹⁰ ICCPR - Article 14(3)(g); Body of Principles - 21(2).

¹¹ Human Rights Committee General Comment 13, para 15.

¹² Convention Against Torture- Articles 13 and 16.

¹³ UN Guidelines on the Role of Prosecutors - Guideline 16.

¹⁴ Convention Against Torture - Article 15.

¹⁵ UN Human Rights Committee General Comment 6, para. 3.

¹⁶ The UN General Assembly has stated that “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment” Resolution 32/61, adopted on 8 December 1977.

¹⁷ UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

¹⁸ UN Doc. CCPR/C/47/D/282, para 10.6, *Kelly v. Jamaica*, (253/1987), 8 Apr 1991, Report of the HRC, (A/46/40), 1991, paras. 7 and 5.14.

Arrest, custodial rights and the inquest procedure

Reflecting fundamental rights enshrined in international human rights law, the rights of detainees in the Philippines are defined and protected in the 1987 Constitution (Bill of Rights), various laws including Republic Act 7438,¹⁹ and an extensive array of executive orders and administrative codes, including the Police Manual.

In the Philippines, a primary safeguard underpinning the rights of detainees is the general rule that a person can only be arrested with a warrant issued by a judge upon a finding of probable cause. This allows the judge to assess the grounds put forward by the police or the complainant implicating a particular suspect, and so assert a degree of judicial scrutiny over the manner of the arrest and the subsequent investigation.

However, the law does permit arrests without a warrant in certain limited circumstances. Under Rule 113 of the Rules on Criminal Procedure, a warrantless arrest is lawful if the crime is being committed in front of the arresting officer, or if the crime has just been committed and the officer has personal knowledge of facts indicating that the person has committed the crime.

After a warrantless arrest a suspect must be taken to the nearest police station or jail, after which a sworn complaint or an “information”²⁰ subscribed by a fiscal (public prosecutor), is filed in court against the person arrested, unless he or she requests a preliminary investigation before the charges are filed.²¹

In the case of lawful warrantless arrests, Article 125 of the Penal Code makes clear that police officers are required to deliver an arrested person before a proper judicial authority (i.e. a charge must be filed in court) within prescribed periods of 12, 18 and 36 hours, depending on the seriousness of the alleged offence. Failure to do so can subject the officers responsible to prosecution and penalties for arbitrary detention.

During the period of ‘custodial investigation’,²² before charges are subscribed and filed, the rights of a person being investigated as a suspect in the commission of a crime are clearly

¹⁹ Republic Act 7438 - an Act defining certain rights of persons arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officer and providing penalties for violations thereof.

²⁰ An accusation in writing charging a person with an offence subscribed by a fiscal and filed in court.

²¹ A suspect requesting a preliminary investigation must sign a waiver, in the presence of counsel, waiving his rights under Article 125 of the Penal Code to be brought before a judicial authority within a maximum of 36 hours. Preliminary investigations may be conducted by provincial or city fiscals, judges, or national or regional state prosecutors.

²² The definition of ‘custodial investigation’ includes interrogation after arrest, and interrogation after a person is ‘invited for questioning’ by police.

protected by the Constitution²³ and by the law.²⁴ These recognize the right of detainees to remain silent; to have competent and independent counsel preferably of their own choice, and to be assisted by counsel at all times; to be informed of their rights; and to have visits or conferences with family members. These rights cannot be waived, except in writing in the presence of counsel.

The Constitution also provides that, “no torture, force, violence, threat, intimidation or any other means which vitiates the free will shall be used against [the accused]. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.”²⁵ Should these rights be violated, any confession or admission obtained while in custodial interrogation is inadmissible in evidence against the detained person.²⁶ The law provides penalties for violation of these rights.

A further potential safeguard is provided by the inquest procedure whereby a suspect, after undergoing custodial interrogation, is brought by police before an inquest fiscal²⁷ to determine which, if any, charges should be subscribed and filed before the court. While examining the various custodial investigation reports and statements and in the presence of the assisting counsel, the fiscal is mandated to determine the physical condition of the arrested person, to ascertain if any torture and ill-treatment has been committed, or any admission or confession coerced.²⁸

However, monitoring by Amnesty International and other human rights groups of patterns of arrest and investigation of political and criminal suspects suggest that, in practice, the procedural safeguards outlined above fail time and time again.²⁹

Amnesty International believes that in reality the vast majority of arrests in the Philippines are effected without warrant. During custodial investigations which, tellingly, continue to be described by police officers as “tactical interrogations”,³⁰ access to lawyers and family members is frequently denied or restricted. The organization is gravely concerned that these conditions heighten the risk of torture and ill-treatment to coerce confessions or admissions of guilt.

²³ Article 111, Section 12.

²⁴ Republic Act 7438.

²⁵ Article 111, Section 12 (2).

²⁶ Article 111, Section 12 (3).

²⁷ While fiscals (public prosecutors) are part of the executive arm of government, during inquest hearings a fiscal takes on the role of a judicial officer.

²⁸ LOI 621, promulgated 27 Oct 1977.

²⁹ See *In Custody of the Law*, LAWASIA Human Rights Committee, Ateneo de Manila, 1984.

³⁰ “Tactical interrogation” was a term used during the martial law period to describe the period after arrest when the military refused access to counsel claiming that interrogation was not to seek evidence against the particular suspect, but rather to seek information about the intentions and forms of the communist insurgency. “Tactical interrogation” was then followed by “custodial investigation” during which, theoretically, counsel might have access to the detainee.

Moreover the safeguards suggested by an inquest before a fiscal are, in reality, weak. In theory, a suspect could use this opportunity to report ill-treatment, request a medical examination or complain about extended detention periods. In practice, disorientated or intimidated criminal suspects often remain silent, believing that the fiscal, police and assisting lawyer (frequently state-appointed) may be in collusion or that complaining would worsen their predicament. While some fiscals probe effectively to determine if due process and the rights of the detainees have been upheld, in many cases it appears that the inquest procedure has become a legal formality to facilitate the filing of charges.

Additionally, periods of custodial investigation frequently appear to be unlawfully extended beyond the permitted 36 hours maximum through misuse of signed waivers. Amnesty International is concerned at persistent reports that intimidated detainees, already having suffered ill-treatment, or threatened by police with a new arrest on fresh “trumped up” charges are coerced to sign waivers or a statement that they have not been ill-treated. In many cases the presence of an assigned lawyer to assist the detainee in signing waivers does not act as an effective safeguard.

The murder of Rolando Abadilla

On 13 June 1996, Rolando Abadilla, a bus-company owner and former vice-governor of Ilocos Norte province, was ambushed on his way to work while held up in a traffic jam on Katipunan Avenue, Quezon City, Metro Manila. According to witnesses, four men approached Rolando Abadilla’s car and fired at point blank range. One assailant reportedly dragged the wounded man out of the car and shot him in the head. Various items, including a watch and pistol, were stolen from the victim.

The killing generated widespread media attention. Rolando Abadilla was well-known for the role he played as a former colonel in the Philippine Constabulary.³¹ He had been in command of the Metropolitan Command (METROCOM) Intelligence and Security Group (MISG), the intelligence unit of the Philippine Constabulary, which became notorious in the years following former President Ferdinand Marcos’ imposition of martial law in 1972.

The MISG has been implicated in a sustained pattern of grave human rights violations including torture, extrajudicial executions and “disappearances” perpetrated against suspected members of the communist movement and other political opponents of former President Marcos.³² In 1993, in a civil suit, the Quezon City Regional Trial Court found Rolando Abadilla and other intelligence officers liable for the torture of nine detainees in 1981. The case remains pending before the Court of Appeal.

³¹ The Philippine Constabulary was the former national police force organized on military lines and involved in counter-insurgency operations.

³² See: *Report of an Amnesty International Mission to the Republic of the Philippines -November 1981* (AI Index: ASA 35/25/82).

Following the ousting of President Marcos in 1986, Rolando Abadilla maintained a high political profile. He was dishonourably discharged from the Philippine Constabulary after claims that he was plotting subversion against the new government of President Cory Aquino. In 1987 he was arrested, but subsequently acquitted. While in detention he ran unopposed for the vice-governorship of Ilocos Norte, the home province he shared with former President Marcos. He then ran unsuccessfully for Governor of the province in 1992, and for a Congressional seat in 1995. Subsequently, he filed a complaint with the House of Representatives Electoral Tribunal alleging irregularities in the poll, which was pending at the time of his death.

In the aftermath of Rolando Abadilla's murder the authorities constituted a special investigation unit, "Task Force Rolly", which combined officers from the Criminal Investigation Division (CID) of the Central Police District Command (CDC) of the Philippine National Police (PNP) based in Camp Karingal, and officers from the Police Assistance and Reaction Against Crime squad (PARAC II) of the Department of Interior and Local Government (DILG), based at the PNP headquarters at Camp Crame.

Media comment about the killing included speculation that the crime was a contract killing linked to political rivalries in Ilocos Norte province and that it stemmed from a business dispute, or that it was the work of a communist assassination squad exacting 'revolutionary justice' for the former activities of the MISG. Pressure on the police mounted, with senior officials reportedly calling for the case to be solved within 72 hours.

According to police, a number of initial suspects were identified through an examination of photo-files and of forensic sketches provided by a security-guard, Freddie Alejo, who had witnessed the killing. At this stage Freddie Alejo reportedly identified a man named Joel de Jesus, and subsequently accompanied the police to Fairview district, Quezon City, to 'point him out' on 19 June 1996.

Joel de Jesus' arrest led to the detention of eight other men: Arturo Napolitano, Felicisimo Helera, Lorenzo delos Santos, Cesar Fortuna, Rameses de Jesus, Lenido Lumanog, Romeo Costibolo and Augusto Santos.

Joel de Jesus and at least six other detainees claimed that while held incommunicado in unknown locations they were subjected to torture or ill-treatment by police in order to coerce confessions, to implicate suspected accomplices, or to provide other incriminating information.

The authorities subsequently filed charges of theft of Rolando Abadilla's possessions against six of the suspects, charges of illegal possession of firearms against three, and charges of murder against seven of the suspects. After a lengthy trial the Regional Trial Court of Quezon City handed down a verdict on 11 August 1999. The court dismissed all the theft and illegal possession of arms charges and acquitted two of the accused, Lorenzo delos Santos and Arturo Napolitano, of murder. The remaining five - Joel de Jesus, Cesar Fortuna, Lenido Lumanog, Rameses de Jesus and Augusto Santos - were found guilty of murder.

Allegations of arrest without warrant, incommunicado detention, torture and forced confessions³³

Joel de Jesus

The first person to be arrested in connection with the Abadilla murder was then 22-year old tricycle driver Joel de Jesus. In interviews with Amnesty International representatives in March 1997, he stated that armed men in civilian clothes, whom he recognized as police officers involved in an earlier investigation of rape allegations made against him, seized him on the afternoon of 19 June 1996 as he repaired his tricycle on the curbside in Fairview district, Quezon City. Two of his acquaintances working nearby, Arturo Napolitano and Felicisimo Helera, queried what was happening and were also arrested and bundled inside a van.

Joel de Jesus claimed that while in the van he was blindfolded with packaging tape, beaten, and a gun was held to his head. Later, during incommunicado detention in what he believed was a “safe house”,³⁴ he says that he was questioned about the Abadilla killing, beaten, kicked and slammed against a wall. On denying any knowledge of Rolando Abadilla, or of his murder, Joel de Jesus said his interrogators then subjected him to further torture and ill-treatment with his hands cuffed behind his back. According to affidavits sworn on 3 July and 12 September 1996 and to the account given to Amnesty International, a plastic bag was placed over his head and held tightly at the back of the neck until he could scarcely breathe. Joel de Jesus said that this process, interspersed with aggressive questioning and shouting, was repeated at least three times. Reportedly, while struggling for breath he was also hit in the stomach with a rifle butt, and at one point four men held him down while another sat down heavily on his stomach. During cross-examination in court, Joel de Jesus stated that he had been repeatedly hit during interrogation, that the blows had been painful, and that visible marks had not been left because those responsible had wrapped their fists with wet cloths.

Joel de Jesus recounted that, fearing he would soon be killed, he admitted his involvement in the Abadilla killing and, after his interrogators again used a plastic bag to suffocate him, agreed to supply the names of his alleged ‘accomplices’. He told lawyers on 26 July 1996 that he “...couldn’t bear their *maulings* (assaults) any more, so I pointed them out”. Joel de Jesus told Amnesty International that he named people he knew personally or had seen before in his neighbourhood of Fairview. These included Lorenzo delos Santos, with whom he had a serious personal dispute, Lorenzo’s nephew, Augusto Santos, and a neighbour, Rameses de Jesus.

³³ The following accounts of the arrest, incommunicado detention and torture and ill-treatment of the suspects in the Abadilla murder investigation are collated from a number of sources, including sworn statements of the suspects recorded by lawyers of the Philippine Commission on Human Rights (CHR) in June 1996 and later affidavits and counter-affidavits, from personal interviews conducted with Amnesty International representatives in March 1997, and from testimony given in open court in 1998-9.

³⁴ “Safe-house” is a term used in the Philippines to describe unofficial places of detention, typically houses in unknown locations used for incommunicado detention and interrogation.

On the evening of 19 June 1996, Joel de Jesus was taken by police to Rameses de Jesus' house in Fairview. On finding Rameses de Jesus absent, police arrested another man, Cesar Fortuna, who was at the house at the time, and whom Joel de Jesus then proceeded to also 'point out' as one of his accomplices. Joel de Jesus was subsequently escorted by the police to the house of Lorenzo delos Santos, who was arrested that night.

In his affidavit of 12 September 1996, Joel de Jesus stated that the next day, 20 June 1996, while in the "safe-house", threatened and physically broken, he signed a seven-page document which detailed the Abadilla killing, his accomplices, and his role as a 'look-out' during the attack. He stated that, later that day, he was then taken to the Quezon City Hall of Justice where a lawyer assigned to him endorsed the confession he had signed earlier. He added that he was then taken upstairs by his police escorts to an assistant fiscal (public prosecutor) before whom he again signed the confession. The lawyer assigned to him later disputed this version of events, stating that the confession he had affirmed was related by Joel de Jesus inside the Hall of Justice, and then signed before a fiscal, and that at that time Joel did not complain of any previous coercion or torture.

Joel de Jesus claimed that after signing his confession he was kept incommunicado and denied access to family members or to lawyers of his choice until 24 June 1996 when, during an interview at a press conference at the Philippine National Police (PNP) headquarters in Camp Crame, he again admitted his involvement as a 'look-out' in the attack and named alleged accomplices, including Lenido Lumanog and Arturo Costibolo.

At the press conference, attended by former Department of Interior and Local Government (DILG) Secretary Robert Barbers, and former PAP Chief Recaredo Sarmiento, all the handcuffed suspects were forced to crouch before the assembled media with name-boards around their necks. Journalists noticed physical marks on some of the suspects,³⁵ and as the press conference progressed a number of family members, who had previously been denied information from police about their relatives' whereabouts, became hysterical. The presentation of the suspects to the public in these circumstances was inconsistent with the presumption of innocence guaranteed by the Constitution³⁶ and Article 14 of the ICCPR, and contrary to the UN Guidelines on the Role of Prosecutors.

Joel de Jesus and the other suspects were eventually taken before an assistant City Prosecutor (fiscal) on 25 June 1996, when an inquest hearing took place, and charges including murder, theft and illegal possession of firearms were filed before the Quezon Regional Trial Court. Relatives of the suspects told Amnesty International that as the inquest was about to begin a relative of Rolando Abadilla was able to slap the faces of a number of the suspects.

³⁵ 'Philippine Daily Inquirer' 25 June 1996.

³⁶ Article 111, Section 14.

Joel de Jesus and the other suspects were not given medical attention until 25 June 1996, when they were examined by a police doctor who reportedly found no external marks or injuries suggesting ill-treatment, and immediately afterwards by a doctor from the Philippine Commission of Human Rights (PCHR), who submitted a report detailing various marks and external injuries on at least four of the other suspects. On 26 June 1996, when PCHR lawyers and staff dispatched by Senator Raul Roco (then chairman of the Senate Committee on Justice and Human Rights) were given access to the suspects, now detained at the Camp Crame Custodial Centre, Joel de Jesus gave a sworn statement retracting his signed confession and alleging torture.

On 13 September 1996, Joel de Jesus filed a range of charges against named police officers, including illegal arrest, arbitrary detention, grave threats and coercion, and violation of custodial rights. In support of his complaint he swore an expanded affidavit on 12 September detailing the alleged torture and forced confession, and asserting he had been denied access to lawyers of his choice.

On 11 August 1999, Joel de Jesus was found guilty of Rolando Abadilla's murder and sentenced to death. The Judge ruled that allegations of coercion and torture had not been proved, and that Joel de Jesus' signed confession of 21 July 1996 was admissible as evidence. Additionally the testimony of one eye-witness, security guard Freddie Alejo, who had identified Joel de Jesus and other accused, was found to be credible. The testimony of another eye-witness, security guard Merlito Herbas, who testified in court that he did not recognize the accused as the gunmen who attacked Abadilla, was found not to be credible.

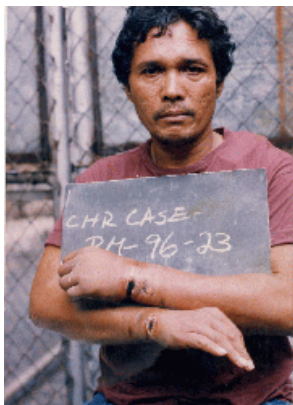
On receiving the sentence, Joel de Jesus and the four others convicted of murder were transferred from the Camp Crame Custodial Centre to Death Row at Muntinlupa National Penitentiary where they remain.

Lorenzo delos Santos

Lorenzo delos Santos, then aged 37, a customs broker married with four children, was arrested late on the evening of 19 June 1996. He stated that a large group of unidentified armed men entered his house and, in front of his wife and children, dragged him out to a car. Personal effects were taken from the house during a search.

In interviews with Amnesty International representatives, Lorenzo delos Santos stated that he was blindfolded, handcuffed, and struck on the mouth and head in the car, as men shouted at him that he was the killer of an unnamed man. After about an hour driving, during which he felt that the car had been moving in circles, he was carried out and guided up some stairs. He sensed it was not a prison or police station, but some kind of house.

Lorenzo delos Santos stated that during interrogation lasting over a period of up to five hours a plastic bag was placed at intervals over his head, interspersed with 'rest' periods of 10 to 15 minutes. In his statement given to PCHR lawyers on 26 June, he also said he was subjected to electro-shocks, which included shocks to his genitals. He told Amnesty International that he



eventually broke down, agreed to cooperate with his interrogators and to state that he had participated in the killing of Rolando Abadilla.

In a police line-up (identity parade) on 21 June 1996 at Camp Karingal an eye-witness, security guard Freddie Alejo, identified both Lorenzo delos Santos and Joel de Jesus as being at the scene of the crime. On the same day Lorenzo delos Santos signed a confession in the presence of an assigned lawyer at the Quezon Hall of Justice detailing the attack on Abadilla, admitting that he was involved as a 'look-out', and claiming that the 'mastermind' was Rameses de Jesus assisted by Lenido Lumanog, Joel de Jesus, Cesar Fortuna and four other unidentified men. On 26 June 1996, on being interviewed by PCHR lawyers at the Camp Crame Custodial Centre, he retracted his signed confession claiming he had been coerced through torture.

In August 1999, notwithstanding his signed confession of 21 June 1996, the judge acquitted Lorenzo delos Santos of Abadilla's murder, on the grounds that his alibi on the day of the murder was supported by a credible witness, and that there was reasonable doubt as to his participation in the crime. He was freed from detention.

Cesar Fortuna

Cesar Fortuna, then aged 37 and married with a daughter, was a serving police officer assigned to the Traffic Management Command in Cagayan de Oro City, Mindanao. In early June 1996, he had been sent on an official mission to Manila. At around 11:00pm on 19 June 1996 armed police in civilian clothing, accompanied by Joel de Jesus, arrived at the house of Rameses de Jesus in Fairview district. Cesar Fortuna, who was a friend of Rameses de Jesus and rented a room at the house, came out of the house's car workshop and identified himself as a police officer. He was asked to accompany the police for identification purposes, but was then handcuffed, blindfolded with packaging tape and brought to what he believed to be a PARAC (Police Assistance and Reaction Against Crime) office. In a sworn statement given to PCHR lawyers on 26 June, he said that while he was in the car he felt someone bring the flame of a cigarette lighter near to his chin.

Cesar Fortuna said in his statement to PCHR lawyers that at the PARAC office he was questioned aggressively about Rameses de Jesus' whereabouts, and was subsequently taken to Palmera district where he said Rameses had a second house. He told Amnesty International that, after an unsuccessful search for this house, an officer angrily put a pistol into his mouth and accused him of lying. He recounted that he was brought back to the office and early in the morning of 20 June 1996 was again blindfolded and subjected to interrogation.

In affidavits and during interviews with Amnesty International representatives he described how a plastic bag was placed over his head and clasped at the neck till he nearly

suffocated. He said, “*I struggled and fell to the floor and several men sat on me and pushed me down as another held the plastic bag over my head.this was repeated about three times...I struggled for breath and I thought that this would continue until I died so in the end I agreed to do what they wanted*”. He stated that he was then questioned in detail about the ambush and murder of Abadilla, and subjected to further suffocation with a plastic bag when he failed to give the right answers, or to draw the correct locations in a layout of the attack.

Later that afternoon he was again taken to look for Rameses de Jesus’ house in Palmera. The house was located and searched,³⁷ after which he was returned to the PARAC office. Cesar Fortuna told Amnesty International representatives that he was made to sit up blindfolded in the kitchen area and that at around midnight he heard the voice of Rameses de Jesus shouting and protesting. Around 6am on the morning of the 21 June 1996 he was told “*Cesar, now its your turn!*” and was questioned again, this time about the location of the gun allegedly stolen from Abadilla at the time of the attack.



Cesar Fortuna described to Amnesty International representatives how he was laid down blindfolded, shirtless and face up, on a bench covered with an iron roofing sheet. Ice-cold water was poured over his body, ice placed on his genitals and a wet towel placed over his face and mouth. With an electric wire tied round his toe to act as an ‘earth’, another live electric wire was then touched against different parts of his body, including his face. When he convulsed he had great difficulty breathing through the wet towel.



Torture Marks on Cesar Fortuna’s wrists. ©Private

He recounted to Amnesty International that on the afternoon of 21 June he told his interrogators that he did have some pistols, and that they were at a gun repair shop in Sampaloc district. He was then taken to the Sampaloc gunsmith, where a number of pistols were recovered.

³⁷ Rameses de Jesus’ wife reported that her child had let the plainclothes men into the house, but on her return a policeman gave her his namecard. Subsequent telephone calls to try to locate her husband went unanswered.

One of the pistols was publicly identified by Rolando Abadilla's son at the 24 July press conference as being the one stolen from his father. Later comparison of the respective serial numbers found this to be a mistake, and forensic tests proved that the seized guns were not used in the Abadilla killing. In the afternoon of 21 June 1996 Cesar Fortuna was questioned again, this time about the location of Abadilla's stolen Omega watch. He reported that he was made to lie down on a bench, was doused with water and subjected to electro-shocks. According to his account given to Amnesty International, his hands and feet were tightly cuffed, and as he convulsed and struggled the metal cuffs cut into his wrist and ankles. At intervals of around 20 minutes as the water evaporated from his body, he was doused again with cold water. In an affidavit sworn on 18 September 1996, Cesar Fortuna also stated that he had been forced to eat faeces and to drink urine during his detention.

He stated that the interrogation and torture ended in the late afternoon of 21 June 1996 and a rice sack was placed over his body and his cuffs changed. He remained in incommunicado detention and was denied access to legal counsel, medical attention or to family members. Deprived of food and given very little water, he felt increasingly delirious and disorientated.

At around noon on 24 June 1996, Cesar Fortuna was presented with his fellow suspects at a press conference at Camp Crame, when family members saw him for the first time since his arrest. On 25 June 1996 he was taken with his fellow suspects before the fiscal for the charges to be filed. This was reportedly the first time he had access to legal counsel since his arrest. Later that day he was given a medical examination by a police doctor who noted wounds and marks, especially on his wrists and ankles. Police later claimed these were caused as Cesar Fortuna tried to twist his hands and feet out of the cuffs to escape, and the task force commander stated that other physical marks on some of the suspects were caused because a "reasonable degree of force" had been necessary when the suspects violently resisted arrest.

On 26 June 1996, after being transferred to the Camp Crame Custodial Centre, Cesar Fortuna was interviewed by PCHR lawyers and gave a sworn statement that he had been tortured and coerced. The PCHR doctor and other observers noted the deep cuts on his wrists and blue-ish marks on his chest. In the following weeks a number of Cesar's toenails peeled off, which he believed was as a result of the electro-shocks he said he received.

On 18 November 1996, Cesar Fortuna signed an expanded affidavit alleging illegal arrest, torture and forced confession in support of criminal charges filed against named police officers and lodged at the Department of Justice.

In August 1999, Cesar Fortuna was found guilty of Rolando Abadilla's murder and sentenced to death. The judge found that his alibi claims were not proven, and noted also that his testimony explaining why he had failed to mention his alibi in the statement alleging torture given to PCHR lawyers on 26 June 1996 was not convincing. The judge argued that Cesar Fortuna's explanatory statement in court that, when interviewed by PCHR lawyers he "*had so many things he wanted to say and did not feel well*", lacked credibility.

Rameses de Jesus

Rameses de Jesus, then aged 35, a trader and married with three children, stated that on the afternoon of 20 June 1996 he drove back to Manila from Pampanga province, accompanied by Lenido Lumanog and Arturo Costibolo. On reaching the city, they decided to pass by a hospital in Fairview to visit Arturo Costibolo's sick son. At around 10.00pm, as he locked the car outside the hospital, a large group of unidentified men approached, seized him and dragged him to a van.

According to Rameses de Jesus' own account, he was blindfolded and his wallet, watch, and ring taken from him. He recounted to Amnesty International that he was struck with fists and gun butts on the back of the head and after being driven for about twenty minutes was taken into an unidentified building, where he could hear loud disco music nearby. He said he was then interrogated about whether he knew Cesar Fortuna, Lorenzo delos Santos and other suspects.

In his affidavit of 26 June 1996 and in more detail in his account to Amnesty International representatives, Rameses de Jesus claimed that in addition to being punched and struck with pistols, he was placed down on a bench, with his head hanging over the edge, and subjected to electro-shocks and suffocation with a plastic bag and a wet cloth. His interrogators questioned him about the location of Abadilla's stolen pistol and watch. He added that, as the interrogation continued he was asked how much money Cesar Fortuna had paid him to participate in the killing of Abadilla.

He told Amnesty International that at times he could bite a hole through the plastic bag placed over his head in order to breathe a little, but that a wet cloth was placed over his face and water poured over it at intervals. He described how a wire was rolled around his toe and he was electro-shocked with another wire attached to a plug in the wall. He said that as the wire was touched against various parts of his body, including his genitals and ears, he screamed and convulsed. He added that pieces of wood were used to hit his thighs and the back of his head.

Although he reportedly confessed verbally to police, Rameses de Jesus told Amnesty International that he refused to sign a confession, and in the following days suffered intense physical and psychological pressure designed to force him to cooperate. This included being suddenly transferred from one location to another after being told he was about to be "salvaged" (extrajudicially executed). On one journey he claimed he heard police officers whispering that as he had not confessed they should kill him and bring his body to a hospital for cremation. In the early morning of 24 June 1996, before the press conference, as he was held blindfolded in an office at Camp Karingal, Rameses de Jesus said he overheard a telephone conversation saying that "*all his companions are now dead*".



Rameses de Jesus © Private

On 25 June 1996, he was taken with his fellow suspects before the fiscal for the filing of charges. This was reportedly the first time he had access to legal counsel since his arrest. In 1999 he was convicted of Rolando Abadilla's murder and sentenced to death.

Lenido Lumanog

Lenido Lumanog, then 40 years old and married with five children, was a manager of a security guard agency and a former candidate in Fairview district council elections. He stated that he drove back to Manila from Pampanga province accompanied by Rameses de Jesus and Arturo Costibolo on 20 June 1996. After arriving back in the city and getting out of the car, he then changed his mind and decided to accompany his companions to visit Costibolo's sick son at a Fairview hospital. Lenido Lumanog told Amnesty International representatives that



Torture Marks on Lenido Lumanog's head. © Private

he was outside the hospital waiting for Rameses de Jesus to park when he was approached by unidentified armed men who questioned him about the car and then forced him into a van. He stated he was blindfolded with packaging tape, handcuffed at the back and struck with blows to the ribs and hard slaps to his head, and thought that he had been kidnapped by a criminal gang.

According to his account after more than 45 minutes driving he was led into a room, where he could hear loud disco music nearby. He said that he was forced to sit down alone in a room, and on hearing shouted death threats imagined that he would soon be killed.

Still blindfolded, Lenido Lumanog said that he was interrogated about the Abadilla killing. He described in his sworn statement of 26 June 1996 and in more detail in his account to Amnesty International representatives, how he was made to lie down on a bench and a towel was placed over his nose and mouth and water poured over it. He recounted how plastic bags were used to suffocate him, his shirt was taken off and ice put on his genitals and that a wire was wrapped round his toe and he was subjected to electro-shocks.



Lenido Lumanog. © Private

He stated how the live wire was 'stroked' against his body, including his arms, neck and torso, for about three seconds each time. Periodically a pitcher of cold water would suddenly be thrown over him. He also claimed that he was hit with fists and kicked on his back, and that at one point, still blindfolded, he heard a gun being cocked near his head. He claimed in his sworn statement that this caused him to jump up in fear, and that as he was forced back down to the floor, he hit

his forehead hard causing a wound. He stated that he could hear Rameses de Jesus crying and moaning as he was interrogated in another part of the building.

Lenido Lumanog told Amnesty International representatives that he consistently refused to sign blank confessions presented to him or to respond to suggestions that he pinpoint accomplices, in return for being charged with a lesser offence of illegal possession of firearms to facilitate his early release. According to his own account, he was held incommunicado and denied access to a lawyer, until being brought before the inquest fiscal on 25 June 1996, five days after his arrest.

On 26 June 1996 Lenido Lumanog gave a sworn statement to PCHR officials stating that he had been tortured, and was observed by Senator Roco's staff members to be walking with a limp and complaining of numbness in his left hand. The staff members noted that all the suspects complained of aching bodies.

In 1999 Lenido Lumanog was found guilty of Abadilla's murder and sentenced to death.

Romeo Costibolo

Romeo Costibolo, a former policeman, stated in an affidavit given to PCHR lawyers on 26 June 1996 that he had been hauled into a van by unidentified men in civilian clothes while outside the hospital with Rameses de Jesus and Lenido de Lumanog.

According to this affidavit, he was blindfolded and taken to an unknown 'safe-house'. He stated that he could hear Rameses de Jesus and Lenido Lumanog shouting and screaming throughout the night and into the next day. On 21 June 1996, while eating food and still blindfolded, he was struck on the face and twice on the stomach. He was taken to a room, which he presumed was where his companions were ill-treated, and made to lie down on a long table. During questioning over his alleged participation in the Abadilla killing, his feet were tied to the table and water was poured over his body. A wet cloth was placed on his face and water poured on it. He was also subjected to electro-shocks. Finally, his 'confession' to the interrogators caused the torture to stop. On 25 June 1996 he was taken with his fellow suspects before the fiscal for the filing of charges. This was reportedly the first time he had access to legal counsel since his arrest.

Romeo Costibolo was not charged with murder, but with illegal possession of firearms. However the charge was not pursued, and he was released. During the subsequent trial of the other suspects he testified in court that he was with Lenido Lumanog and Rameses de Jesus in Pampanga province on the day of Abadilla's killing. This testimony was found not to be credible.

Augusto Santos

Augusto Santos, then aged 21 and the nephew of Lorenzo delos Santos, was arrested at his house on the evening of 26 June 1996, two days after the press conference. Armed men wearing black

face-hoods, and apparently acting on information given to them by Joel de Jesus, broke down the door of his residence and seized him.

In a statement to lawyers in Camp Crame on 3 July 1996 and during interviews with Amnesty International representatives, Augusto Santos claimed that he was blindfolded, beaten and threatened with death to secure a confession that he had been paid by Joel de Jesus to participate in the killing of Abadilla. He stated he was held incommunicado at Camp Karingal, but was brought before a public prosecutor on 27 June 1996 for the inquest and the filing of charges.

Augusto Santos was then charged with murder of Rolando Abadilla, but not with the theft of his personal effects. In 1999 he was found guilty of murder and sentenced to death. The judge found that his alibi which was supported by a relative's testimony, namely that on the day of Abadilla's murder he was visiting a hospital after the birth of a nephew, was not credible. The judge also noted that he found unconvincing Augusto Santos' explanation that he did not allude to his alibi in his statement of 3 July 1996, because the lawyers did not ask him about the alibi.

Arturo Napolitano and Felicisimo Helera

Arturo Napolitano, aged 23, and Felicisimo Helera stated that they were arrested and put in a van in a street in Fairview on the afternoon of 19 June 1996 as they queried the seizure of Joel de Jesus. Arturo Napolitano told Senator Roco's staff on 26 June 1996 that they were blindfolded and put in a van with Joel. They were questioned about their participation in the Abadilla murder. Arturo Napolitano stated that Joel de Jesus was then taken out of the van, but he and Felicisimo Helera remained inside for many hours, until at least midnight. They were reportedly not subjected to ill-treatment, but were held incommunicado in the following days.

Arturo Napolitano, who was subsequently identified as an accomplice by Joel de Jesus, was charged with the murder of Rolando Abadilla and the theft of his personal possessions. He was acquitted on both counts in August 1999. Felicisimo Helera was reported to have been released shortly before the press conference on 24 July 1996. A police officer was reported to have said that Helera was never a suspect, but had signed a waiver allowing him to be placed in police custody.³⁸ No charges were pursued against him.

The role of the Philippine Commission on Human Rights (PCHR)

The Philippine Commission on Human Rights (PCHR) was founded in 1987 as a constitutional body, independent of other state legal institutions, to protect and promote respect for human rights in the Philippines. One of its primary roles is to investigate complaints of human rights violations. After receiving a complaint and completing its inquiries the PCHR can recommend the filing of appropriate charges for prosecution by the Department of Justice or the Office of the

³⁸ *Philippine Daily Inquirer*, 27 June 1996.

Ombudsman. The PCHR cannot itself pursue prosecutions or bring suspected human rights violators to justice before the courts.

In the Abadilla case, the PCHR demonstrated its key role as a forum for the receipt of human rights complaints, and for the exercise of its right of access to all places of detention. However, Amnesty International believes that the PCHR's handling of this case points to several weaknesses in its procedures for the effective investigation of torture complaints.

On receiving complaints from the families of the detained Abadilla suspects on 24 June 1996, PCHR investigative officers demanded and gained access to the Camp Crame Custodial Centre on 25 and 26 June 1996. A physical examination of the suspects was carried out by a PCHR doctor late on 25 June 1996, and interviews were conducted by PCHR lawyers the next day.

A preliminary PCHR report compiled by the investigators found a *prima facie* case of human rights violation, involving warrantless arrests, denial of rights of access by lawyers and family members, and the “*probability of torture*”.

However, after taking into account the counter-affidavits submitted by the police and by Joel de Jesus' appointed counsel, and after assessing that the medical reports of external physical injuries on four of the suspects were ‘inconclusive’ of torture, the PCHR chose not to recommend that charges of “*serious physical injuries*” (torture) be filed against the suspected perpetrators. While noting marks and external injuries on a number of the suspects the PCHR felt unable to take a position on whether they were a result of torture, or were self-inflicted.

A final PCHR Resolution recommended that the Department of Justice and/or Ombudsman file criminal and/or administrative charges against the suspected perpetrators for possible violation of:

1. Republic Act 7438, specifically the right of detainees to have access to and be assisted by counsel at all times; and
2. Article 125 of the Revised Penal Code, which prohibits and sets penalties for officers who arbitrarily detain a person for more than a permitted maximum of 36 hours before delivering them to the proper judicial authority.

The PCHR noted that the Abadilla suspects were held for between five and six days before being brought before a judicial authority, in this instance an inquest at the Office of the Prosecutor on 25 June 1996 where charges were subscribed for filing in court. The Resolution ended with the proviso that the PCHR would monitor the progress of its recommendations with the Department of Justice and other prosecutory agencies.

The PCHR chose not to pursue the issue of warrantless arrests, reportedly in part due to a continuing wider legal debate spurred by a number of Supreme Court rulings³⁹ on what constitutes an unlawful warrantless arrest. Under Rule 113 of the Rules on Criminal Procedure, an arrest without a warrant is only lawful if the crime is being committed in front of the arresting officer, or if the crime has just been committed and the officer has personal knowledge of the facts indicating that the person to be arrested has committed it. The initial police justification for the warrantless arrests in the Abadilla investigation - that they were in 'hot pursuit' - lacks credibility in that the first arrests took place six days after the crime.

Media reports of the PCHR's final resolution suggested that because of the contradictory affidavits and 'inconclusive' medical reports, the PCHR felt it preferable for a preliminary investigation by the Department of Justice, or a full cross-examination in open court, to resolve the issue.⁴⁰

Amnesty International has a number of concerns about the process that led to this decision. For many years the organization has documented allegations of torture from both political and criminal suspects, which have referred specifically to the same techniques of torture as described by the Abadilla suspects. These include suffocation by plastic bags placed over the head or by cloths drenched in water placed over the face, and by the use of electro-shocks, facilitated by first pouring water over the body. Amnesty International believes that these particular techniques have been used deliberately to minimize or to avoid leaving marks on the victims.

The organization notes that a PCHR doctor was quoted as saying that the possibility of torture in the Abadilla case was present even if no marks were recorded as, "*there are torture means like the 'dry submarine' method which involves suffocation of the victim through a plastic bag placed on his head, which leaves no after-signs*".⁴¹

Amnesty International's concerns in this case are heightened by the fact that the complainants were kept incommunicado and without access to immediate, independent medical attention. Rectifying these deficits could have prevented abuses or, at least, documented them or

³⁹ Including *Valmonte v. de Villa* (178 SCRA 211); *Guazon v. de Villa* (181 SCRA 6230); *People v. Tejada* (170 SCRA 497); and especially *Umil v. Ramos* (202 SCRA 251) in which the Supreme Court ruled *inter alia* that warrantless arrest could be lawful if the arresting officers had personal knowledge of the criminal activity. This personal knowledge should be based on '*probable cause*', an actual belief or reasonable grounds of suspicion linked with good faith on the part of the arresting officer.

⁴⁰ *Manila Standard*, 31 July 1996: "there were conflicting claims about these (warrantless arrests and torture). We (the PCHR) feel the issues can only be resolved if there is a full dress hearing on these....these are grey areas...we will allow the Department of Justice to determine if there was really torture or warrantless arrests based on the documents we have submitted".

⁴¹ *Manila Standard*, 7 July 1996.

established if the allegations were false. This was a matter wholly within the power of the authorities, and failure to promptly investigate torture allegations is in contravention of international human rights standards.⁴²

The medical examinations conducted by PCHR medical staff on the suspects recorded that there were signs - abrasions, contusions, incised and lacerated wounds - consistent with physical trauma. However, the medical certificates, while noting the injuries, fail to address the issue of the likely cause of the traumatic injuries. While trauma can be inflicted accidentally, by fellow prisoners or even self-inflicted, the injuries needed to be evaluated in the light of prisoners' testimony that they had been tortured. In the affidavits recorded by PCHR investigators on 26 June 1996, which, apart from Joel de Jesus and Lorenzo delos Santos, was the first opportunity the suspects had to relate their experiences to lawyers, there was consistent agreement about the main methods of torture allegedly used - notably suffocation and electro-shocks.

The medical certificates lack any detail of the prisoners' allegations, any clinical history and any interpretation of the injuries recorded. They make no reference to any pain experienced at the time of examination or at the time the injuries were sustained. The reports make no evaluation of the consistency between the prisoners' allegations of ill-treatment, and the findings (or absence of findings) at the time of examination. The conclusions which are made in the medical certificates relate only to the compatibility of the age of the injuries and the time at which the injuries were alleged to have been inflicted.

In the cases of Cesar Fortuna, Rameses de Jesus and Lenido Lumanog, the medical certificates present a formulaic two-part conclusion: The first conclusion is that, "*The above described physical injuries are found on the body of the subject at the time of the examination, the age of which are compatible with the alleged date of infliction*" (or in one report "*the age of which is variable*"). The second conclusion made is that, "*Under normal conditions, without subsequent complication and/or deeper involvement but not clinically apparent at the time of the examinations, the above described physical injuries will require medical attendance for a period of no less than 1 day but not more than 9 days from the alleged date of infliction.*"

While these conclusions may be true, they do not offer help in evaluating the consistency between the examinees' complaints and the medical (but not psychological) findings. Even so, the findings of physical injuries on the prisoners gives *prima facie* cause for fearing ill-treatment, and these injuries need to be accounted for.

For the effective investigation of torture, Amnesty International believes that the PCHR and other agencies need to be given adequate resources to enable detailed examinations to be carried out by trained personnel to establish whether marks of observable physical and psychological effects are consistent with the torture that has been described. The principles for such examinations, as well as details of the required methodologies, are set out in a recently

⁴²UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and UN Standard Minimum Rules for the Treatment of Prisoners.

adopted international standard on the medical investigation of torture allegations, *'The Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'*. The Protocol includes the *'Principles for the Effective Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment'*. These Principles make clear that a doctor's examination of a person alleging torture should include:

- a history, "*including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms*";
- a physical and psychological examination; and
- an opinion, "*an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment*".

Amnesty International is concerned that the medical investigations in the Abadilla case did not meet acceptable standards for the forensic evaluation of torture allegations, including those standards set out in the Istanbul Protocol, and believes that further evaluation is called for.

Amnesty International is also concerned that the quasi-judicial investigative proceedings of the PCHR, in which the alleged victim and the alleged perpetrator file affidavits and counter-affidavits, at times place an undue burden upon the complainant, especially in torture cases involving 'specialized' methods. This burden can be heightened by the fact that the victims or their families are often intimidated by the prospect of 'proving' their complaints, are deterred by their lack of resources, or feel vulnerable to possible retaliation by the accused perpetrators.

International law and standards require prompt, independent, impartial and thorough investigation of all complaints and reports of torture. There needs to be a simple procedure which allows such complaints and reports to be investigated by the PCHR with the necessary powers and expertise required to ensure that prosecutions for torture can be successfully brought.

At a minimum PCHR investigatory practices should be fully consistent with those standards detailed in the Istanbul Protocol, Article 12 and 13 of the Convention Against Torture, and the UN Human Rights Committee General Comment 20, para 6.

Amnesty International is concerned that in cases where the procedures of the PCHR fail to reach a recommendation on torture allegations, the probability of a successful prosecution for the alleged torture is even further reduced. Without the weight of a specific PCHR recommendation, the Department of Justice is less likely to pursue a torture complaint against a police officer, despite their obligation to conduct an investigation of all reports of torture with or without a complaint.

Amnesty International believes that the PCHR plays a critical role in combatting torture in the Philippines and welcomed the Commission's prompt attention to the complaints lodged by relatives of the Abadilla suspects in June 1996. However Amnesty International is concerned at the procedures of the Commission that contributed to its decision not to recommend prosecutions in relation to the torture allegations in the Abadilla case.

The organization believes that the PCHR's procedures for investigating torture, reflecting the Istanbul Protocol and other international standards, should be aimed at avoiding situations where, by failing to specifically recommend further judicial investigation or prosecutions, the right of victims to redress is, in practice, denied. In the Abadilla case "inconclusive" findings of torture, and the passing of a decision on the issue to the Department of Justice, has led to a prolonged failure to adequately investigate or to resolve the complaints of the alleged victims.

The role of the Department of Justice

Amnesty International over many years has expressed concern that the extensive constitutional and legal provisions designed to protect human rights in the Philippines are undermined by a public perception that a climate of impunity (literally exemption from punishment) surrounds public officers suspected of torture and other grave human rights violations.

In order to effectively combat patterns of human rights violations the government of the Philippines has a duty to bring suspected perpetrators to justice. As with other international human rights instruments, the Convention Against Torture makes clear the authorities must conduct a full, prompt and impartial investigation of complaints and reports of torture and, where there is sufficient admissible evidence, the suspected perpetrators must be prosecuted and brought to trial.

Failure to do so risks perpetuating a cycle of human rights violations, not least by sending a message of *de facto* state tolerance for such practices. If police or other public officers believe that they are, in practice, immune from prosecution for such crimes, they will be more likely to repeat them. Impunity undermines public confidence in the institutions charged with the protection of human rights, and erodes respect for the rule of law.

Within this context, Amnesty International is concerned about the actions of the Department of Justice in relation to the Abadilla case, both in its response to the PCHR's

recommendations on arbitrary detention charges, but also in response to a range of complaints of human rights violations filed by the alleged victims.

On 12 September 1996, Joel de Jesus lodged a complaint with an investigating prosecutor at the Department of Justice. Supported by an affidavit he sought to file criminal charges under the Penal Code, including 'grave threats', 'grave coercion' and illegal arrest and arbitrary detention against named police officers and others. In November 1996 Cesar Fortuna lodged a similar complaint. The other suspects reportedly did not lodge individual complaints at the Department of Justice. However under the Convention Against Torture, the authorities have an obligation to investigate, independent of whether an individual complaint has been made, whenever there are reasonable grounds to believe that torture has occurred.

Amnesty International is concerned at the prolonged, unexplained delays in issuing a resolution of these complaints. By mid-September 2000, four years after the complaints were lodged and the preliminary investigation began, no report had been made public. After repeated requests for information by relatives of the complainants, it was reported that the PCHR's resolution had focussed mainly on arbitrary detention, that the investigating prosecutor had been transferred, and that the case-file and preliminary findings could not be located at the Department of Justice. In late September 2000 the relatives of the complainants, assisted by a new lawyer, gained access to the case records of the investigating prosecutor. After examining the records the complainants' counsel deemed it desirable to submit additional evidence.

During this period, but especially in late 1996, it was reported that a number of relatives of the accused received death threats from unidentified armed men in relation to the case. The threats suggested that firearms might be planted in their houses and charges of illegal possession might be brought against them. A number of families felt forced to move from house to house for safety, and some decided to send their children to live permanently outside Manila. Under international law the state has a responsibility to protect victims, their families and other witnesses from intimidation and retaliation.⁴³

Amnesty International believes the Department of Justice's delay in issuing a resolution of complaints is unjustified and undermines the right of the accused to seek justice and redress before the courts. The organization is particularly concerned that, if in high-profile cases such as the Abadilla investigation, complaints to the Department of Justice are seen not to be acted upon, those numerous other citizens who have alleged human rights violations by the police, especially torture or ill-treatment, will be deterred from even lodging a complaint. The practice of torture risks continuing unchecked.

The Role of the Courts - Appeal

⁴³UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power - para 6(d).

After the verdict was handed down by the Quezon City Regional Trial Court in August 1999 finding five of the suspects guilty of murder, a number of motions for reconsideration were filed before the court by defence lawyers within the required period.

Among the grounds put forward for reconsideration and for a new trial was the emergence of potential new evidence, in particular a public statement in December 1999 signed by the commanding officer of the Alex Boncayao Brigade (ABB), a communist urban guerrilla group, stating that the ABB had been responsible for the killing of Rolando Abadilla in 1996 for reasons of “revolutionary justice”. In January 2000, a priest at the University of the Philippines, Father Roberto Reyes, was approached by an alleged member of the ABB, who stated that he had participated in the 1996 killing and that the five convicted men had no involvement. He passed to Father Reyes an Omega watch which he claimed was stolen from Abadilla. The motion for reconsideration also argued that previous evidence related to the alleged involvement of the ABB in the crime had not been pursued by the court - including ballistic evidence linking weapons used in the Abadilla attack with other ABB attacks.

Attempts by Father Reyes and by defence lawyers to enter the new and other additional evidence were rejected by the Regional Trial Court in January 2000. In rejecting the motion, the Regional Trial Court ordered that the case be elevated to the Supreme Court for review, as is required by law for all death penalty cases.

Subsequently, in March 2000, a lawyer for the accused lodged a Petition for Certiorari⁴⁴ with the Supreme Court, which argued that the Regional Trial Court’s rejection had violated the accused’s constitutional right of due process and, as a ‘radical relief’, called for the dismissal of the case. In July 2000 the Supreme Court sitting *en banc* resolved to accept the petition for Certiorari, and to consolidate it with the automatic review process required in all death penalty cases.

The Supreme Court’s automatic review of death penalty cases can take up to four years to be resolved. In light of the concerns about fair trials, including serious allegations of torture, and mindful of international standards that call for full respect in death penalty cases for all safeguards and due process guarantees applicable in pre-trial, trial and appellate stages,⁴⁵ Amnesty International hopes that the Supreme Court will address the Certiorari Petition and the death penalty Review at the earliest possible opportunity.

RECOMMENDATIONS

⁴⁴Petition for Certiorari (Rule 65) and for Extraordinary Legal and Equitable Remedies. ‘Certiorari’ is a special civil action to annul or set aside the ruling of a tribunal which acted with grave abuse of discretion, or with lack or excess of jurisdiction.

⁴⁵UN Human Rights Committee General Comment 6, para. 3, and UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

In the light of specific concerns related to the Rolando Abadilla murder investigation, Amnesty International recommends that the Government of the Philippines should:

Official condemnation

- Publicly declare that all reports and complaints of torture must be promptly, thoroughly, independently and impartially investigated. A clear and unequivocal message should be given to the Philippine National Police (PNP) and other security agencies that torture is a prohibited act, that it plays no part in the combatting of crime and that it will never be tolerated.

Investigation and Prosecution

- Ensure that the Department of Justice completes a prompt, impartial, independent and thorough investigation into complaints of the alleged victims in the Abadilla case, and in all other cases where there are reasonable grounds to believe torture or other human rights violations may have occurred, with a view to promptly filing appropriate charges in court. Complainants, witnesses and others at risk should be protected from intimidation and reprisals

No secret detention

- Uphold the law prohibiting the detention of anyone in unauthorized facilities and thoroughly investigate all reports of detention in so-called “safe houses” with a view to bringing anyone responsible for the use of such facilities to justice. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is being held and under what authority and to ensure the prisoner’s safety.

Access to detainees

- Enforce prohibitions on incommunicado detention and ensure access to detainees, especially during periods of custodial interrogation. Relatives, doctors and lawyers should have access to detainees without delay and regularly thereafter. Lawyers should be present during all interrogations.

Safeguards during detention

- Ensure that all prisoners are told of their rights immediately after arrest, including the right to lodge a complaint.

Philippine Commission on Human Rights

- Provide the Philippine Commission on Human Rights with the powers and resources necessary to enable it to hear complaints of torture and investigate them thoroughly using all available medical evidence.

The Courts

- Urge the Courts to establish, prompt, independent, impartial investigations whenever there has been a complaint or there are reasonable grounds to believe torture may have occurred.

Further recommendations necessary to prevent torture will be made by Amnesty International in the course of its Campaign against Torture and include:

Legislation

- The Government should designate the Bill defining torture as priority legislation, in accordance with its obligation under the UN Convention Against Torture (CAT) to incorporate CAT principles into national legislation.⁴⁶

Training

- It should be clear during the training of all officials involved in custody, interrogation or medical care of prisoners that torture is a criminal act. They should be instructed that they have not only the right but a duty to refuse to obey any instruction to participate in torture.

Provide reparation

- Victims of torture and their dependents should be entitled to obtain prompt reparation from the state, including restitution, fair and adequate financial compensation, and appropriate medical care and rehabilitation. Such reparations must never be used as a way to bypass judicial proceedings against alleged perpetrators.

⁴⁶CAT - Article 4. ICCPR - Article 7, and Human Rights Committee General Comment 20, para 6.