



Strengthening Human Rights in the Philippines Program

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The Asia Foundation

Strengthening Human Rights in the Philippines Program (Cooperative Agreement No. 492-A-00-07-00016-00) January 1, 2008 – March 31, 2008

SUMMARY

This quarterly report covers activities from January 1, 2008 to March 31, 2008 under The Asia Foundation's Strengthening Human Rights in the Philippines Program. The program is funded through a Cooperative Agreement with the United States Agency for International Development (USAID) and runs from October 1, 2007 to September 30, 2010. The program aims to introduce substantial and durable measures that will strengthen enforcement of human rights and rule of law in the Philippines through a three-pronged strategy to:

- (1) Promote respect for human rights and freedoms and progressively secure their effective recognition and observance;
- (2) Protect human rights of citizens in law and in reality through improved monitoring of violations; and
- (3) Prosecute human rights violations through capacity-building for better investigation, prosecution, and adjudication of cases.

During this reporting period, The Asia Foundation (the Foundation) intensified efforts to jumpstart key program activities and carry on projects initiated during the previous quarter. To **promote respect for human rights**, the Foundation forged a partnership with the Public Trust Media Group, Inc., publisher of a multi-awarded investigative magazine, to conduct human rights orientation seminars for media practitioners and pilot a local media ombudsman system. The Presidential Human Rights Committee (PHRC), after extensive preparations for the Philippine Universal Periodic Review (UPR)¹ before the United Nations Human Rights Council, is gearing up for consultations with civil society on the UPR recommendations to set the course for the drafting of the National Human Rights Action Plan. In view however of anticipated changes in the PHRC leadership, the Foundation is exploring alternative initiatives for crafting a government-civil society framework to uphold human rights.

For the **protection of human rights** component, the Martus Local Committee composed of seven human rights networks² and the Commission on Human Rights³ held a

¹ The UPR is a review mechanism implemented by the United Nations Human Rights Council to assess the fulfilment of the human rights obligations and commitments by all UN member states. The Philippines was among the 16 states subject of the review during the first session of the first UPR cycle on April 7-18, 2008 in Geneva.

² Philippine Alliance of Human Rights Advocates (PAHRA), Task Force Detainees of the Philippines (TFDP), Center for Trade Union and Human Rights (CTUHR), Mindanao Tulong Bakwet (Help for

productive workshop to chart the committee's future direction. To improve the documentation of media killings, the Center for Media Freedom and Responsibility began enhancements to its online database as it continued to monitor summary deaths of and attacks against journalists.

Activities toward the effective **prosecution of human rights violations** went full steam this reporting period. The Supreme Court remained at the forefront of human rights advocacy by issuing the Rule on the Writ of Habeas Data⁴ on January 22, 2008. Like the writ of amparo,⁵ habeas data is novel legal concept in the Philippines. To raise public awareness on this new remedy, the Foundation partnered with:

- The Supreme Court Public Information Office for the conduct of a forum on the writ of habeas data;
- The Upholding Life and Nature to develop a comic book on the writs of habeas corpus, amparo, and habeas data; and
- The Philippine Working Group for the Establishment of an ASEAN Human Rights Mechanism for the conduct of a "Case Conference on Extra-judicial Killings and Enforced Disappearances and Their Available Remedies".

The Foundation continued to work with the Supreme Court in developing and disseminating rules to enforce human rights. During this period, the Foundation, through a consultant human rights lawyer, supported the drafting of a Supreme Court rule that will ensure the safety and security of witnesses in human rights cases. Preparations for the conduct of "Multi-Sectoral Seminar-Workshops on Extrajudicial Killings and Enforced Disappearances" for judges and key stakeholders commenced this period under the auspices of the Supreme Court's training arm, the Philippine Judicial Academy.

The Foundation also worked closely with the Department of Justice. Two trainings to equip new public prosecutors to handle human rights cases were completed this quarter. The Foundation likewise supported the participation of selected public and private prosecutors in the International Training Course in the Investigation and Prosecution of Extrajudicial Killings and Enforced Disappearances organized by the Center for International Law. With the assistance of another consultant human rights lawyer, the National Prosecution Service started to draft the human rights section of its revised Manual for Prosecutors.

Mindanao Evacuees), Institute of Bangsamoro Studies (IBS), Bangsamoro Lawyers' Network (BLN), and Foundation for Media Alternatives (FMA)

³ The Commission on Human Rights is a constitutionally-created independent body primarily tasked to investigate human rights abuses, provide legal measures for the protection of human rights, and monitor the Philippine government's compliance with international treaty obligations on human rights.

⁴ The rule protects the right to privacy by providing for remedies for updating, correcting, suppressing or destroying information about a person.

⁵ The Supreme Court issued the Rule on the Writ of Amparo on September 25, 2007. The writ is a legal remedy available to any person whose right to life, liberty and security is violated or threatened to be violated.

To complement these efforts, the Foundation collaborated with a seasoned human rights lawyer to develop a manual on civil and administrative remedies for human rights violations. The Foundation and the Ateneo Human Rights Center also began groundwork for the establishment of Multi-Sectoral Quick Reaction Teams in eight extrajudicial killing hotspots.

HIGHLIGHTS AND OUTCOMES OF SIGNIFICANT ACTIVITIES

I. Promoting respect for human rights

Violence Against Media Project Phase 1 – Human Rights Orientation Seminars.

Alarming reports of killings and other forms of violence against members of the media⁶ have been traced to volatile conflicts that emerge in the wake of hard-hitting investigative stories. In the absence of an effective institutional method for dealing with media-related grievances, community members who perceive themselves as being wronged by the media often resort to violence.

Given this reality, the Foundation partnered with the Public Trust Media Group, Inc. (Public Trust), publisher of a leading investigative magazine, to establish a mechanism for the peaceful resolution of media-related conflicts. The project will be implemented in two phases. Phase 1 will involve the conduct of human rights orientation seminars. The second phase will be implemented in the next fiscal year and will include the setting up, pilot testing, and popularization of a local media ombudsman system. Under the system, trained and respected members of the press can receive media-related complaints of community members, discuss potential remedies with aggrieved parties, and craft acceptable solutions.

During this reporting period, Public Trust commenced preparations for the two human rights orientation seminars to be held next quarter in Western Mindanao⁷ and Southern Tagalog⁸, where media-related conflicts have been prevalent. Public Trust is currently finalizing logistical details and the seminar program. The seminars will discuss the dual roles of media as a rights holder and a responsible citizen; human rights norms in relation to press freedom; balancing the right to privacy and the right to public information; and professional and ethical standards for journalists (with case studies on the best practices of investigative journalism). Each seminar will bring together at least ten journalists from radio, television, and print, as well as ten members of civil society and other sectors that engage the media.

⁶ The Center for Media Freedom and Responsibility reports that since 1986, 70 journalists have been summarily executed (<http://www.cmfr.com.ph/alerts/jskilled.html>). The National Union of Journalists in the Philippines declared 2007 as the most violent year for Filipino journalists, with five journalists killed and ten injured in the performance of their work.

⁷ For press members from Zamboanga, Sulu, Tawi-Tawi, and Basilan.

⁸ For press members from Laguna and Quezon.

In implementing this project, the Foundation has been coordinating with the Open Society Institute (OSI) which has been actively supporting initiatives to address media violence in developing countries. OSI generously shared with the Foundation its resource materials on best practices for media ombudsman, which the Foundation is currently reviewing for adaptation in the Philippines.

Development of a National Human Rights Action Plan. This quarter, the Presidential Human Rights Committee (PHRC), the government agency mandated to draft the National Human Rights Action Plan, has been preoccupied with preparations for the Universal Periodic Review (UPR) by the United Nations Human Rights Council in Geneva in April 2008.⁹ This inevitably caused delays in the proposed human rights audit of government agencies.¹⁰ At the same time however, PHRC's UPR work provided a starting point for such audit and ultimately, for the drafting of the National Human Rights Action Plan which the Philippine government publicly pledged to prepare and implement.¹¹ This is because UPR preparations opened an opportunity for the Philippine government and civil society to comprehensively take stock of and evaluate the country's existing policies and programs on human rights. Taking advantage of this momentum, the PHRC is currently preparing for a consultation with civil society and human rights stakeholders on the recommendations raised during the UPR. Scheduled in the next reporting period, the consultation is intended to galvanize government and civil society support and inputs on how the recommendations can be effectively operationalized and incorporated into the National Human Rights Action Plan. The consultation will be a one-day event that will also serve as the formal launch of the drafting of the plan. Plenary discussions on the purpose of the action plan and sectoral break-out sessions among 200 government and non-government stakeholders will be included in the program,

An important concern in the implementation of the project is the possible change in leadership of the PHRC. Its Executive Director, who is the prime mover and focal person for the action plan, is among the candidates to be appointed Commissioner of the Commission on Human Rights in May 2008.¹² Reports of a cabinet revamp may also result in a new Executive Secretary who serves as PHRC Chairperson. The Foundation is making itself ready to adjust to developments that these changes may bring about. Thus, the Foundation, in consultation with civil society, is exploring strategic alternatives to crafting a national framework for promoting and upholding human rights.

⁹ The Philippine government presented its Universal Periodic Review Report before the UN Human Rights Council on April 11, 2008.

¹⁰ As discussed in the previous quarterly report, the human rights audit will involve a baseline study of existing human rights initiatives and programs of the government to identify gaps in policies and implementation.

¹¹ Commitments of the Philippines to the United Nations Human Rights Council, April 18, 2007, par. 18.

¹² A new set of Commissioners of the Commission on Human Rights is expected to be appointed on May 6, 2008 upon the expiration of the term of its previous officers.

II. Protecting human rights of citizens

Martus. Members of the Local Martus Committee met on February 19-20, 2008 in Metro Manila for a strategic planning workshop to discuss project transition from Department of State to USAID funding, identify areas for enhancement, and plan future activities. Fifteen participants representing the Commission on Human Rights (CHR) Central Office and Region 12, Mindanao Tulong Bakwet (MTB), Task Force Detainees of the Philippines (TFDP), Bangsamoro Lawyers' Network (BLN), Center for Trade Union and Human Rights (CTUHR), Institute of Bangsamoro Studies (IBS), Foundation for Media Alternatives (FMA), and PH Net attended.

The workshop allowed the group to reflect on how the network has evolved from an organization focused on the use of the Martus software to a community concerned with broader issues of human rights education and promotion. Introspective discussions about the nature of the group led the committee to formalize a vision¹³ and craft strategies to achieve that vision. To maximize time, members agreed to first hold separate consultations with their respective organizations about specific Martus activities for the next year. The Committee also created a sub-group composed of FMA, BLN and CHR, to review the draft Martus Framework of Governance, a document that lays down the guidelines for membership and outlines the overall organizational set-up of the Local Martus Committee.

Although the Committee has to meet again next quarter to finalize its 2008-2009 activities, members agreed to hold a Training on Secure Online Communication in the next reporting period. The training will be conducted by FMA, a non-government media organization that has been extending technical assistance to the Committee on the Martus software system. The training aims to equip Martus users with skills to ensure the integrity of data transmitted over the internet, particularly through the Martus system.

Expansion and Interactivity of the CMFR Database on the Killings of Journalists.

The Center for Media Freedom and Responsibility (CMFR) is the only local media organization that regularly investigates, monitors, and publishes reports of media killings, attacks, and threats. It actively maintains an online database of journalists killed in the line of duty in its website <http://www.cmfr.com.ph>. CMFR's database has been useful in the research and activities of the Freedom Fund for Journalists, Inc. (FFFJ),¹⁴ a network of press organizations that seek to provide support for cases media killings and promote public advocacy for the protection of journalists.

To make CMFR's database a more useful resource on violence against the media, the Foundation and the CMFR will work together to provide more detailed information about reported cases and improve the interactivity of CMFR's website. Since the project

¹³ The Local Martus Committee envisions an aware, vigilant citizenry actively asserting their rights, and a responsive and proactive state working for the protection, promotion and fulfillment of human rights in an environment of social justice, good governance, culture of tolerance and respect for diversity and peace.

¹⁴ CMFR is a founding member and acts as the Secretariat of FFFJ.

officially started in February 2008, CMFR has been coordinating with the FFFJ to gather updates and additional information on media killings, posted in the “Media Alerts”¹⁵ section of its website. Significant updates include the Supreme Court’s issuance of the first writ of amparo to a journalist¹⁶ and the evasion from arrest of suspected masterminds of the celebrated Marlene Esperat case.¹⁷ CMFR reported that from January to March 2008, no Filipino journalist was killed in the line of duty.¹⁸

CMFR will continue to monitor and post updates (including multi-media reports) about past and new cases of media killings. In the next reporting period, it will layout the platform of the enhanced website and develop an online “Report a Threat/Attack” system for journalists who have received death threats or who have been attacked in the course of their work.

In line with its advocacy to combat violence against the media, the CMFR, in partnership with Southeast Asian Press Alliance and with funding support from the Open Society Institute (OSI) and the Committee to Protect Journalists, organized a Conference on Impunity and Press Freedom on February 27 to 29, 2008 in Manila. The conference gathered members of media organizations and journalists from Southeast Asia, as well as local and foreign human rights lawyers and advocates to discuss how to fight impunity and protect members of the press in the Philippines. The event was not funded under this Human Rights Program but the Foundation’s participation in the conference provided a broader perspective on media killings and opened doors for future partnership on the issue with other international organizations like OSI. The Foundation is currently coordinating with OSI representatives to bring foreign experts, such as a Peruvian forensic anthropologist, and to embark on related initiatives to address cases of impunity.

III. Prosecuting human rights violations

Basic Orientation Seminar-Workshop for New Prosecutors (with emphasis on Human Rights). With co-funding from the Asian Development Bank (ADB),¹⁹ the Foundation supported a series of workshops for public prosecutors. The first workshop

¹⁵ http://www.cmfr.com.ph/alerts/alerts_08.html.

¹⁶ Nilo Baculo, publisher of a community newspaper in Oriental Mindoro, secured a writ of amparo on March 11, 2008 for receiving death threats from a local businessman and local officials whose questionable deal he had exposed.

¹⁷ Marlene Esperat was a radio broadcaster and publisher of a local newspaper who wrote exposés about corrupt practices of Department of Agriculture (DA) Region XII officials. She was killed in 2005 in full view of her family in Sultan Kudarat. Although the Regional Trial Court in Cebu convicted her assassins of murder in September 2006, not one of the suspected mastermind DA officials have been served with warrants of arrest.

¹⁸ As of this writing however, CMFR reports that Benefredo Acabal, publisher of a Cavite-based newspaper, was shot by motorcycle-riding assassins in Pasig City on April 7, 2008.

¹⁹ Through the ADB’s Technical Assistance on Strengthening the Efficiency and Accountability of the Judiciary and the Administration of Justice: Component B (ADB TA 4938). The TA also supported the development of the module used in the workshops.

for 35 new State Prosecutors from the National Prosecution Service and the Office of the Ombudsman was conducted on January 7 to 11, 2008. Aimed at building the capacity of government prosecutors to handle human rights cases, the workshop included discussions on drafting resolutions, information and other pleadings; inquest and preliminary investigation; and trial, with focus on handling forensic and other evidence. A leading Filipino forensic pathologist delivered the lecture on the application of forensics in cases of extrajudicial killings and enforced disappearances.

After the first workshop, an external evaluator assessed the training content and identified several improvements in training design. Based on the evaluator's recommendations, the Department of Justice (DOJ) Technical Working Group streamlined the topics and reduced the training period from five to four days. The revised module was used for the second workshop of 30 DOJ prosecutors from Regions I, II and III that was held on March 25-28, 2008 in Clark Field, Pampanga. ADB also co-funded this activity.

The DOJ reported that after the workshops, the new prosecutors showed improved efficiency in handling cases (such as murder cases, including extrajudicial killings). In fact, senior prosecutors who are tasked to review draft pleadings and resolutions are challenged to keep up with their work. It is expected that with enhanced skills, the newly-trained prosecutors, especially those from hotspots like Region III (Central Luzon), can assist in the successful prosecution of cases of extrajudicial killings.

The Foundation and the DOJ formalized a partnership for the conduct of five more similar workshops throughout the country for the rest of 2008. The next workshop will be in Cagayan de Oro on July 1 to 4, 2008 for new prosecutors from Regions IX, X, and XIV.

Development of a Prosecutors' Manual on Human Rights. The DOJ, with support from the USAID's Rule of Law Effectiveness Program, embarked on a project to update the 1996 Manual for Prosecutors. The Foundation saw this be an opportune time to ensure that the revised manual embodies a rights-based approach and lays down clear rules on how to handle human rights cases. Currently, there are no standard guidelines to be followed in prosecuting cases of extrajudicial killings; hence such crimes are treated like any ordinary murder case, without due regard to the special circumstances behind the victims' deaths.

The Foundation partnered with the DOJ and a consultant human rights lawyer (who is also a former prosecutor) to draft guidelines for prosecutors who will be handling cases of extrajudicial killings and enforced disappearances. The guidelines will comprise the human rights section of the revised Manual for Prosecutors.

During this reporting period, the Foundation and the consultant closely coordinated with the DOJ Technical Working Group to discuss the contents and format of the manual. The consultant reviewed pertinent laws and rules that need to be considered in drafting the section on human rights. The section will include steps on gathering and presenting

evidence, as well as on how to properly coordinate with witness protection providers for the security of the victim, their witnesses and family. The draft of the human rights section will be presented to the DOJ Technical Working Group in June 2008. To gather comments on the draft and to seamlessly incorporate the human rights section with the rest of the Prosecutors' Manual,²⁰ the Foundation will support the conduct of validation sessions in Davao and Manila; an inter-agency²¹ roundtable discussion; and a Technical Working Group writeshop on the Manual for Prosecutors in the next quarter. The revised Manual for Prosecutors is scheduled to be launched in July 2008.

International Training Course in the Investigation and Prosecution of Extrajudicial Killings and Enforced Disappearances: Lessons from the Hague, Latin America, and Beyond. Extrajudicial killings and enforced disappearances are not unique to the Philippines. Other nations, particularly Latin American countries, have experienced similar human rights violations and have instituted their own mechanisms to address the issue. There is thus much to learn from the experiences of other countries. With this in mind, the Center for International Law (Centerlaw), a non-stock, non-profit advocacy group that seeks to advance international legal norms relating to human rights and international humanitarian law, organized a three-day training on impunity cases featuring local resource persons as well as judges, justices and prosecutors from Argentina, Spain and the International Criminal Court. The training was held from February 29 to March 2, 2008 in Davao City with more than 100 public and private prosecutors from Mindanao and other hotspots, human rights, police and military lawyers as participants.

The Foundation supported the participation in the training of: (a) five public prosecutors from Samar and Leyte (where the Department of Justice has a pilot project on the investigation of extrajudicial killings); and (b) six members of the Bangsamoro Lawyers' Network (BLN) from Zamboanga, Davao, Cotabato and Metro Manila. The training provided participants with local and international perspectives on prosecuting cases of extrajudicial killings and disappearances, including concepts of state and command responsibility. The group workshops and case studies allowed the participants from different sectors to interact with one another and share the different challenges they face in handling human rights cases. BLN members who attended the training found the discussions useful in their on-going court case against Philippine Army members who allegedly killed a Muslim couple in Tagum City, and in the complaint that they filed before the Commission on Human Rights against military men who reportedly tortured Tausug children. Although some parts of the discussion became heated, the training provided a healthy exchange of views among foreign and local practitioners.

²⁰ The manual will also include a section on prosecuting tax cases.

²¹ The following agencies will participate in the roundtable discussion: Department of Social Welfare and Development (DSWD), Philippine National Police (PNP), Juvenile Justice and Welfare Council (JJWC), Bureau of Internal Revenue (BIR), Bureau of Customs (BoC), Commission on Human Rights (CHR), Office of the Ombudsman, Office of the Special Prosecutor (OSP), Office of the Solicitor General (OSG), Anti-Money Laundering Council (AMLAC), Department of Environment and Natural Resources (DENR), Dangerous Drugs Board (DDB), among others.

The University of the Philippines Center for Integrative and Development Studies, Southeast Asian Press Alliance, International Rehabilitation Council for Tortured Victims, International Committee for the Red Cross, and the Open Society Institute (OSI) co-sponsored the training. Interaction with these organizations during the activity allowed the Foundation and local organizations to explore partnership opportunities in the area of human rights. After the training, the Foundation held meetings with groups like the OSI and discussed possible collaborative efforts to maximize program resources and impacts.

Forum on the Writ of Habeas Data. Following its issuance of the Rule on the Writ of Amparo, the Supreme Court again issued a novel judicial remedy - the Rule on the Writ of Habeas Data²² - to address the alarming spate of extrajudicial killings and disappearances. The remedy is relevant in light of reports that a number of political killings have been committed pursuant to an alleged list of “state enemies” or based on false or inaccurate information about a person’s political beliefs or affiliation.²³ Through the writ of habeas data, the court may compel the disclosure, rectification or deletion of erroneous data or files about a person.²⁴

To introduce this new remedy to the public, the Foundation, the Supreme Court Public Information Office and the Asian Institute for Journalism and Communication organized a launch *cum* forum on the Writ of Habeas Data on February 1, 2008, a day before the rule took effect. More than 70 participants from print and broadcast media -- who have an important stake in protecting the right to information and privacy as both seekers and holders of information -- attended the event in the Supreme Court. Retired Justice Florida Ruth C. Romero delivered the opening remarks while Chief Justice Reynato S. Puno gave the keynote speech. The activity ended with an interesting open forum where the Chief Justice himself answered questions on how the writ of habeas data may be used by and against journalists. Hanns Seidel Foundation co-funded the forum.

Case Conference on Extra-judicial Killings and Enforced Disappearances and Their Available Remedies. Despite the issuance of new judicial remedies such as the writs of amparo and habeas data, and the government’s creation of various task forces²⁵ to address the issue of extrajudicial killings and enforced disappearances, human rights violations continue to happen with impunity.²⁶ To thoughtfully discuss how victims can

²² A.M. No. 08-1-16-SC, January 22, 2002.

²³ UN Special Rapporteur Philip Alston links summary killings to an “order of battle” which lists “civil society groups and individuals who have been classified, on the basis intelligence, as members of organizations which the military deems ‘illegitimate’”. (Report of the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Philip Alston, on His Mission to Philippines, p.10)

²⁴ Sec. 16, Rule on the Writ of Habeas Data.

²⁵ These include the Melo Commission, Task Force USIG of the Philippine National Police, the Department of Justice’s Task Force on Extrajudicial Killings, and the Inter-agency Task Force on Political Violence (TF 211).

²⁶ Task Force 211’s database (www.taskforce211.com.ph) reveals that out of 245 complaints for extrajudicial killings, only 8 resulted in convictions.

successfully pursue cases and effectively avail of remedies against such violations, the Foundation and the Philippine Working Group for the Establishment of an ASEAN Regional Human Rights Mechanism (through its Secretariat, the Ateneo Human Rights Center and member organization, the Philippine Alliance of Human Rights Advocates) organized a case conference on February 12, 2008 at the University of the Philippines.

The conference gathered 66 victims of extrajudicial killings and enforced disappearances, their families and lawyers, and human rights advocates from various parts of the country. The event started with a discussion of existing legal remedies – civil, criminal, administrative, and protective writs such as habeas corpus, amparo and habeas data – and how these can be availed of. Participants presented eight cases of summary executions that are in the case-building stage, and identified specific challenges to pursuing them. One is the lack of adequate witness protection that makes it easy for perpetrators to threaten and prevent witnesses from testifying. Another is the defense of “voluntary custody” that respondent state agents raise in amparo cases to render the writ moot and academic.²⁷ In another case, lack of effective coordination between a human rights organization and the Commission on Human Rights (CHR) made it difficult to enforce a court order to inspect a military camp.²⁸

At the end of the case conference, participants were able to share information and updates on available remedies, exchange experiences and expertise in handling human rights cases, and come up with civil society recommendations on how to address extrajudicial killings and enforced disappearances. Since the amparo rule can be misused by perpetrators, lawyers suggested that judges conduct in-chamber conferences with the victim to determine voluntariness of custody. Participants highlighted the need to strengthen witness protection mechanisms and the Commission on Human Rights. They also called on Congress to prioritize the anti-torture law, criminalization of acts of disappearance as well as other safeguards against human rights abuses. Systems for documenting the missing (e.g. through dental x-rays) and clear human rights guidelines for members of the police and military must be instituted. In view of all their recommendations, participants agreed that legal and meta-legal interventions involving different sectors – the local government, police, military, civil society, CHR, religious groups, among others – are critical to combat impunity.

Increased Protection of Witnesses through Reforms in Court Rules and Procedures. The difficulty in obtaining convictions for extrajudicial killings and other human rights violations is closely linked to the reluctance of witnesses to testify in court. This

²⁷ In two amparo petitions filed before the Supreme Court (*Ortiz et al. vs. Lt. Col. Tello*, and *Malapote, et al. vs. Lt. Col. Tello*), respondent defended that petitioners were not detained against their will but voluntary sought military custody; hence, there was no need for the court to order their release and protection. Lawyers and human rights organizations doubt the veracity of such defense since petitioner-victims are often tortured or placed under duress to compel them to admit voluntary custody.

²⁸ This happened in the case of *Robinos vs. Macapagal-Arroyo, et al.* where the Regional Office of the Commission on Human Rights was not able to immediately escort Karapatan members to inspect a military camp pursuant to a court order.

reluctance is a natural reaction to pervasive intimidation and the lack of adequate protection offered to witnesses who decide to testify. In order to ensure testimony from key witnesses, the Foundation is working with a consultant human rights lawyer to study innovative but practical mechanisms to protect victims and witnesses of human rights violations, and their families.

During this reporting period, the consultant reviewed existing laws and rules on witness protection, as well as recommendations raised during the Supreme Court's Consultation with Civil Society on the Draft Guidelines for Accreditation of Private Persons and Institutions Extending Temporary Protection, which the Foundation supported last quarter. Currently, the consultant, in coordination with the Supreme Court's Committee on the Revision of Rules, is preparing a draft rule on witness protection mechanisms that can be implemented by courts. The draft rule will complement the "protection order" remedy provided under the Rule on the Writ of Amparo²⁹ and will include provisions to strengthen and improve the existing system for perpetuation of testimony.³⁰ The draft rule will be presented to the Supreme Court's Committee on the Revision of Rules for consideration in the next reporting period.

Multi-Sectoral Seminar-Workshops on Extrajudicial Killings and Enforced Disappearances. To ensure that judges have the knowledge and skills necessary to properly decide cases of political killings, the Philippine Judicial Academy (PhilJA) prepared a series of human rights trainings for judges. PhilJA, in partnership with the Commission on Human Rights, conducted the first Seminar-Workshop for Judges on Extrajudicial Killings and Enforced Disappearances in May 2007. During that training, judges recommended that the workshops also involve prosecutors, police, and private lawyers who play equally important roles in prosecuting human rights cases.

The Foundation will work with PhilJA to train key actors in the efficient and effective resolution of cases involving extrajudicial killings and enforced disappearances. Since available resources will not be enough to cover all courts at the same time, the project will prioritize training of judges, prosecutors, public attorneys, police and the military³¹ in identified hotspots, i.e. areas with the highest incidence of extrajudicial killings.

During this reporting period, PhilJA worked on preparations for the seminar-workshops in two selected hotspots – one in Naga City on May 22-23, 2008³² and another in Legaspi

²⁹ Sec. 14 (a) and (d) of the Rule on the Writ of Amparo provides that the any person whose life, liberty or security has been violated or threatened to be violated, including their families and witnesses, may be protected in a "government agency or by an accredited person or private institution capable of keeping and securing their safety".

³⁰ Rule 24 (formerly Rule 134) of the Revised Rules of Court allows a party to preserve the testimony of prospective witness before a case is filed by filing a motion for perpetuation of testimony before a court, with notice to the expected adverse party.

³¹ In accordance with USAID rules and regulations, funding support for this activity will **not** be extended to participants who are members of the police and the military.

³² To be co-funded by the American Bar Association.

City on June 19-20, 2008.³³ PhilJA's Human Rights Committee finalized the program that will include discussions on what constitutes an extrajudicial killing and an enforced disappearance, state responsibility, command responsibility, protective writs that may be issued by courts, human rights and international humanitarian law. A Filipino forensic pathologist and a Peruvian forensic anthropologist will equip participants on the use and appreciation of forensic evidence in human rights cases. To facilitate interaction among participants from different sectors, a thematic problem solving workshop and a multi-sectoral dialogue will be incorporated in the program.

Development and Publication of a *Komiks* on the Rule on the Writ of Amparo.

During this period, Upholding Life and Nature (ULAN) completed three story lines on the writs of amparo, habeas corpus and habeas data. The stories center on a small town whose residents have been victims of summary killings, disappearances, and accusations of terrorism. Throughout the comics, discussions on how each judicial remedy may be availed of are incorporated.

Upon securing the Supreme Court Public Information Office's approval of the plot lines, ULAN completed the illustrations for all stories. ULAN is currently incorporating final comments on the comics and is preparing to print next quarter. The publication will be launched during the Supreme Court's Access to Justice Summit in June 2008.

Establishment of Multi-Sectoral Quick Reaction Teams (MSQRTs). The complexity of issues relating to cases of extrajudicial killings and enforced disappearances calls for a concerted approach to end impunity. Efforts initiated by the national government, including the judiciary, need to be complemented by efforts at the community level. Thus, the Foundation, in partnership with the Ateneo Human Rights Center (AHRC), will organize members of the community into Multi-Sectoral Quick Reaction Teams (MSQRTs). The MSQRTs will serve as a one-stop assistance center where victims and/or their families can report human rights violations, specifically violations of civil and political rights; request immediate investigation; seek legal advice and assistance; and request witness protection.

The MSQRTs will be established in eight pilot areas which will be selected based on the following factors: number of human rights cases, especially extrajudicial killings and enforced disappearances; existence of Barangay Human Rights Action Center (BHRAC) in the area; presence of the Integrated Bar of the Philippines; openness of the local government unit; presence of a law school for legal support; presence of specially designated court on extrajudicial killings; and the participation and commitment of local members of the civil society. Although the composition of the MSQRT will vary depending on the area context, efforts will be made to include representatives from the Barangay Human Rights Action Centers (BHRAC); local police; prosecutors' office;

³³ PhilJA previously conducted two similar multi-sectoral trainings in Pampanga and Baguio, with funding from the Australian Agency for International Development and the American Bar Association.

members of the legal community; social workers; doctors; psychiatrists; psychologists; nurses; and forensic experts, among others.

During this period, the AHRC started to coordinate with local prosecutors, police, human rights organizations, the Integrated Bar of the Philippines, and other stakeholders from Pampanga, Manila and Baguio who can be members of MSQRTs. The AHRC is currently preparing for visits to reported hotspots - Occidental Mindoro, Oriental Mindoro, Camarines Sur, Sorsogon, Albay, Leyte, Davao del Sur, Cotabato, Bulacan, Nueva Ecija, Pampanga, and Tarlac – to discuss with stakeholders, determine the feasibility of establishing MSQRTs within the area, and finally select the eight provinces where MSQRTs will be piloted.

In the next reporting period, the Foundation and AHRC will conduct basic forensic training in Manila and Legaspi City for selected MSQRT members. The training aims to equip local human rights workers with basic appreciation of physical and forensic evidence that can be used to support the prosecution of cases of extrajudicial killings and enforced disappearances. An expert forensic anthropologist from Peru, who will be visiting the country next quarter, will conduct the training.³⁴

Development of a Manual on the use of Civil and Administrative Remedies. Filing criminal cases against alleged perpetrators of summary killings and disappearances is fraught with difficulties. Aside from the usual slow pace of trial, cases often do not result in convictions due to lack of credible evidence or witnesses, reasonable doubt, ineffective coordination with the public prosecutor, and other factors beyond the control of complainants. Although civil and administrative remedies (which do not entail state intervention and require a lower quantum of evidence) are available, they are not popularly used in the Philippines. There is therefore a need to strengthen capacities to use civil and administrative modes of redress for human rights violations.

During this period, the Foundation finalized discussions with a consultant human rights lawyer for the development of a manual for lawyers and paralegals on using civil and administrative remedies in cases of human rights abuses. The manual will include procedures on how to claim civil damages, file complaints before the Philippine National Police and other administrative offices, and avail of applicable provisions of the United States Alien Tort Claims Act.³⁵ Drafting of the manual will commence in the next reporting period.

³⁴ The Peruvian forensic anthropologist will be conducting other trainings on forensics throughout the country with support from the United States Department of Human Rights and Labor, the American Bar Association, Center for International Law, Konrad Adenauer Foundation, and Open Society Institute. He is the same foreign expert who will conduct forensic trainings in the PhilJA and Centerlaw workshops scheduled next quarter.

³⁵ The Alien Tort Claims Act is a US Federal Law that allows an alien to file a civil suit for tort, committed against the law of the nations or a treaty of the United States, before a US district court. Effectively, the act “allows foreign victims of serious human rights abuse abroad to sue the perpetrators in U.S. courts.” (<http://www.hrw.org/campaigns/atca/>)

Publication of Proceedings of the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances. The Supreme Court's Public Information Office completed the publication of 1,000 copies of *A Conspiracy of Hope: Report on the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances*. The publication includes speeches, recommendations, and commentaries raised during the Supreme Court-led gathering of more than 400 human rights advocates in July 2007. The Supreme Court is distributing copies to concerned government institutions, non-government organizations, and other stakeholders. Hanns Seidel Foundation co-funded the printing of the publication.

Participation of Regional Trial Court Judge in the Summer Institute on International Humanitarian Law and Human Rights. Recognizing the important role of the judiciary in the fight against impunity, the Foundation completed preparations to support the participation of Davao Regional Trial Court Judge Marivic Daray in the Summer Institute on International Humanitarian Law and Human Rights: Asia Pacific Transitional Justice and Peace-building to be held on May 9 to 11, 2008 in Mahidol University, Thailand and in Cambodia. The institute will provide participants with an in-depth look at the key mechanisms being utilized to deal with gross international humanitarian law and human rights violations committed across the Asia Pacific region. Judge Daray's study will focus on judicial mechanisms and truth commissions which will look at how prosecutors seek to indict alleged perpetrators of war crimes, what kind of evidence is required to secure conviction, and how courts have treated the evidence presented.

Lessons and insights that Judge Daray will gain from the institute will be useful not only in her adjudicative duties (since she handles cases of extrajudicial killings and enforced disappearances), but also in her work as professorial lecturer in the Philippine Judicial Academy (especially in its on-going seminars on human rights) and the Ateneo de Davao College of Law, and as Executive Director of the Ateneo de Davao University Legal Advocacy Works. Upon her return from the institute next quarter, Judge Daray will hold re-echo seminars on human rights for judges in Mindanao.

Congressional Hearings on Anti-Torture and Anti-Enforced Disappearance Bills. Existing Philippine laws do not define torture or involuntary disappearance as specific crimes; hence, they are prosecuted as ordinary offenses under the Revised Penal Code, without properly considering the gravity of these human rights violations. Bills to punish these acts have been filed and are being discussed by the Committees on Justice and Human Rights of the House of Representatives.³⁶ The Foundation, through its Senior Program Officer Atty. Carolyn Mercado, along with other human rights stakeholders attended the public hearings and technical working group deliberations on the bills. Issues on the definition of torture and enforced disappearance, the scope of the proposed legislation (i.e. whether or not it will apply to state agents), and penalties were keenly

³⁶ These include House Bill Nos. 00326, 00327, 01053, 01745, 02263, 02619, 02863, 02933, and 03403.

discussed. The legislative committees are currently consolidating the different versions of the bills filed by lawmakers, taking into account the recommendations raised during the public hearings. More public hearings on these human rights measures are scheduled in the next quarter.

PLANS FOR THE NEXT PERIOD

In the next quarter, the Foundation will intensify efforts to keep activities rolling and embark on new human rights initiatives. Coordination with current partners for project monitoring and regular evaluation will be sustained to integrate all program activities toward strengthening the enforcement of human rights in the Philippines. As before, the Foundation will keep itself abreast of developments in the human rights scene that may impact on program planning and implementation, as it looks forward to new ideas and interventions that may be pursued in the coming fiscal year.

To promote respect for human rights, Public Trust Media Group will organize human rights orientation seminars for members of the local press, in preparation for the establishment of pilot local media ombudsman systems. Building on the gains of the recent Universal Periodic Review, the Presidential Human Rights Committee will hold consultations with government and civil society to consolidate recommendations that will be incorporated into the National Human Rights Action Plan. The consultation will gather 200 human rights advocates and will also serve as the formal launch of the drafting of national plan. With the University of the Philippines Institute of Human Rights, the Foundation is also exploring a parallel effort at the local government level. Development of government-civil society human rights action plans in selected provinces may begin next quarter.

On protecting human rights, the Martus Local Committee will hold another meeting to finalize its 2008-2009 action plan and for the conduct of a training on secure online communication. The Center for Media Freedom and Responsibility, on the other hand, will continue to update its online database of media killings and enhance the website's form and contents.

As human rights cases are filed in courts,³⁷ the Foundation will support more trainings to build the capacity of key sectors to investigate, prosecute, and adjudicate cases. Five Basic Orientation Seminar-Workshops for New Prosecutors (with emphasis on human rights) are lined up for the rest of 2008. Private prosecutors³⁸ will also have an opportunity to be equipped in human rights law and international humanitarian law in a Seminar-Workshop on Extrajudicial Killings to be organized by the Center for International Law (Centerlaw). Judges will undergo parallel training with public

³⁷ The Task Force on Extrajudicial Killings (Task Force 211) reported that as of April 12, 2008, 110 cases of extrajudicial killings are pending in courts nationwide. This figure, however, includes 69 cases which have been temporarily archived because the accused are at large. (www.taskforce211.com.ph)

³⁸ Private human rights lawyers who can assist in the State's prosecution of cases.

prosecutors, public attorneys and other human rights advocates in two Multi-Sectoral Seminar-Workshops on Extrajudicial Killings that the Philippine Judicial Academy (PhilJA) will conduct in May and June 2008. A Peruvian forensic anthropologist with expertise in cases of impunity will discuss the use and appreciation of forensic evidence in the Centerlaw and PhilJA workshops. As Multi-Sectoral Quick Reaction Teams are organized in selected hotspots next quarter, its members will participate in two separate forensic trainings from the Peruvian forensic expert.

Complementing these capacity-building activities is the development of new rules that will provide solid legal basis for a rights-based approach in handling human rights cases. A draft rule on how courts can extend protection to witnesses in cases of extrajudicial killings and disappearances is expected to be completed for the consideration of the Supreme Court in the next reporting period. Prosecutors will also be properly guided in handling impunity cases as the revised Prosecutors Manual with a special section on human rights is finalized in July 2008.

On the demand side, victims, human rights advocates and the general public will have a layman's appreciation of the writs of amparo, habeas corpus and habeas data when the Upholding Life and Nature and the Supreme Court launch a comic book on these remedies next quarter. Drafting of the manual on using civil and administrative remedies in human rights cases will begin next period.

The Foundation will also continue to monitor the Committee on Human Rights of the House of Representatives on the pending human rights bills. Apart from providing comments on the proposed anti-torture and anti-enforced disappearance bills, the Foundation will look into possible measures to define an extrajudicial killing as a distinct crime, and support consultations with civil society on proposed human rights legislation.

CHALLENGES IN IMPLEMENTING THE PROGRAM

Although the Supreme Court's pro-active stance provided innovative remedies for victims of human rights violations, enforcement of the rules on amparo and habeas data remains a challenge. The amparo rule has been tested in various petitions filed since it took effect on October 24, 2007.³⁹ But just like any legal remedy, the writ of amparo can be misused and abused. Respondent state agents have devised the defense of "voluntary custody" that renders a petition for the issuance of a writ of amparo moot and academic.⁴⁰

³⁹ By March 2008, 31 petitions for a writ of amparo have been filed (Report of Undersecretary Ricardo Blancaflor to the United Nations Human Rights Council during the Universal Periodic Review on April 11, 2008), facilitating the release of more than six illegally detained persons.

⁴⁰ In two amparo petitions filed before the Supreme Court (*Ortiz et al. vs. Lt. Col. Tello and Malapote, et al. vs. Lt. Col. Tello*), respondent defended that petitioners were not detained against their will but voluntary sought military custody; hence, there was no need for the court to order their release and protection. Lawyers and human rights organizations doubt the veracity of such defense since petitioner-victims are often tortured or placed under duress to compel them to admit voluntary custody.

The government even threatens to use amparo as a means to silence activist organizations. Recognizing the power of the amparo rule, military men reportedly transfer detainees secretly once they learn that an amparo petition will be filed.⁴¹ The habeas data rule, on the other hand, remains to be tested. Although three petitions⁴² for habeas data have been filed and given due course since the rule took effect on February 2, 2008, the Supreme Court has not yet decided these cases with finality. Clearly, implementation of these rules has to be closely monitored to ensure that they serve the purpose for which they were promulgated – to protect the right to life, liberty and security of persons. The Foundation supports trainings of human rights workers, prosecutors, lawyers and judges, and the popularization of amparo and habeas data remedies to ensure proper and effective application of the rules.

Government and civil society continue to monitor cases of extrajudicial killings. But the actual number of cases remains uncertain as each group comes up with a separate list and count of victims based on its own definition of an extrajudicial killing.⁴³ The absence of a standard definition not only confuses numbers but also complicates the approaches and interventions to be employed to address the issue. Further, since an extrajudicial killing is not specifically defined as a crime by the Revised Penal Code or a special law, it is prosecuted just like any murder case without due regard to the special circumstances of the victims and perpetrators. To address this ambiguity, the Foundation, in consultation with human rights lawyers and organizations, is exploring mechanisms that would define the crime of extrajudicial killing.

Despite the downward trend in extrajudicial killings in the past year,⁴⁴ killings and disappearances still happen.⁴⁵ As UN Special Rapporteur Philip Alston pointed out,

⁴¹ This happened in the case of National Democratic Front Consultant Elizabeth Principe who was allegedly abducted in November 2007 and later presented by the military as a “rebel captive”. On the eve of the filing of a petition for a writ of amparo for her release, Principe was reportedly transferred from Camp Crame to Ilocos Sur without the knowledge of her counsel and family. (“Daughter Seeks Amparo for Jailed Mom, Missing Dad”, Philippine Daily Inquirer, January 24, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080124-114426/Daughter-seeks-amparo-for-jailed-mom-missing-dad>)

⁴² Guillermo Luz of Ayala Foundation filed the first habeas data petition for his alleged involvement in the Manila Peninsula siege. Anakpawis party list member Francis Saez filed the second petition to delist him from the military’s “Order of Battle”. Jose de Venecia III filed the third petition against Armed Forces of the Philippines, et al. to stop the broadcast of his supposed wiretapped conversation and to compel production of other recordings of his private communications.

⁴³ The Supreme Court broadly refers to “extralegal killings” or “killings committed without due process of law, *i.e.* without legal safeguards or judicial proceedings”, regardless of the motive (Annotation to the Writ of Amparo, Supreme Court of the Philippines, 2007, http://www.supremecourt.gov.ph/Annotation_amparo.pdf).

For Task Force Usig, a case will be considered an extrajudicial killing only if it is duly established that the killing is politically motivated, or by occasion or by reason of the exercise of their political beliefs and ideologies, or work-related with respect to media practitioners (Task Force Usig Accomplishment Report as of February 27, 2008). The Department of Justice defines extrajudicial killings as murders “where the suspects or perpetrators are members of the military, police and other law enforcement agencies” (DOJ Department Order No. 841, October 10, 2007).

⁴⁴ Karapatan reports 63 extrajudicial killings in 2007, as compared to 143 in 2006; and 22 enforced disappearances in 2007 as compared to 60 in 2006 (from “Dangerous Regime, Defiant People: Karapatan’s

political killings and disappearances are expected to continue (and may even increase) while the government's strategy against counter-insurgency and communist groups remains the same.⁴⁶ Unfortunately, despite international scrutiny over the country's human rights situation, extrajudicial killings and enforced disappearances have taken a back seat from national issues such as the ZTE broadband deal scandal and recently, the rice crisis. This points to the need for a sustained campaign to ensure the public's and the state's attention and commitment to address the issue. Even if the killings and disappearances stop, justice for victims of past atrocities should still be pursued. Towards this end, the Foundation supports initiatives to mainstream human rights in key sectors and institutions, and build the capacity of agencies to investigate, prosecute and adjudicate human rights cases.

The Foundation continues to face some of the challenges raised in the previous quarterly report. As regards to anticipated changes in the leadership of project partners, such as the Presidential Human Rights Committee and the Commission on Human Rights, the Foundation works to strengthen its institutional partnerships and adjust programming strategies. Also, with civil society still wary both of donors and of government, and still very much concerned to avoid compromising the independence of their initiatives, the Foundation remains committed to allay such concerns in order to have the broadest possible engagement.

2007 Year-End Report on the Human Rights Situation in the Philippines"). The Philippine National Police's Task Force Usig also claims a "sharp drop" of 83 percent in the number of extrajudicial killing cases they handled from 2006 to 2007 (Philippine Daily Inquirer, January 14, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080114-112184/PNP-Extrajudicial-killings-fell-by-83-in-2007>)

⁴⁵ Bayan Muna party list group reports 13 summary deaths from January to March 2008. ("RP Ouster from UN Body Sought, Militants Say Killings, Disappearances Continue", Philippine Daily Inquirer, April 7, 2008, http://services.inquirer.net/print/print.php?article_id=20080407-128970)

⁴⁶ Report of the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Philip Alston, on His Mission to Philippines.