

THE UNCERTAIN SEARCH FOR JUSTICE IN THE AUGUST 2010 MANILA BUS HOSTAGE TRAGEDY*

*James A. Rice***

Introduction

In December 2010, a number of Hong Kong legislators (and others from a wide spectrum of political parties) requested the presence of some 116 witnesses from the Philippines.¹ They were being summoned to Hong Kong for the purpose of giving their testimony at a Coroner's inquest relating to the eight Hong Kong tourists who were killed during the bus hijacking and related standoff that occurred on August 23, 2010. However despite the views from Hong Kong's Legislative Counsel (or Legco), there are many serious objections relating to the request for the witnesses as well as the nature of the Coroner's Inquest itself. First and foremost, it is suggested that both in terms of the objective finding of fact on the part of the judiciary, as well as the best interests of the Republic of the Philippines, there is no reasonably obtainable "upside" to the exercise. However this lack of a clearly obtainable positive outcome is balanced by a range of highly negative outcomes for both the people and the Government of the Republic of the Philippines which may well have an impact for years to come.

This article will attempt to outline the specific difficulties and potential risks of sending a contingent of witnesses to Hong Kong as well as referring to the jurisdictional difficulties in doing so. It is hoped that this display of skepticism will offer the reader a concise insight into not only what those witnesses may expect during their testimony, but also the wider impact that this may have on the Philippines and its interests in Hong Kong and the wider world.

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** Assistant Professor, Department of Philosophy, Lingnan University, Hong Kong. The author would like to express his deepest thanks to the editorial staff at the Philippines Law Journal for their professionalism and kind assistance in the final preparation of this article.

¹ AFP, "Hong Kong to hold inquest over Manila bus hijack," ABS/CBN.com, December 1, 2010 available at <http://www.abs-cbnnews.com/global-filipino/world/12/01/10/hong-kong-hold-inquest-over-manila-bus-hijack> (last visited February 8, 2011).

The search for closure

It has been suggested by some, both in Hong Kong and the Philippines, that the participation by the Government of the Philippines in the aforementioned Coroner's inquest would have at least a few favorable outcomes. These parties have suggested that it would provide the families of the victims, the people of Hong Kong, and the HKSAR Government a "sense of closure," and that it would serve to draw a line under the whole affair. Thus, it is argued, all parties involved could then move on at having justice "being seen to be done." However, this position ignores several key aspects of the matter including the intense politicization of the affair, and the very nature of the Coroner's inquest itself. It is argued here, that neither a sense of resolution nor the prospect of justice is a likely outcome, given both the lurid and sensational media coverage that this affair has attracted and the manner and circumstances in which the proposed inquest has been conducted.

First of all, it is argued that in fact, there would be no sense of closure regarding the issue. In studying the manner in which the news of the tragic events played out in the media, the issue has been highly politicized. This sensationalism fueled by both the media and by inflammatory comments on the part of politicians has reached a point that this dispute is not being regarded as a dispute between two equal sovereign states. Instead, the Government of the Hong Kong Special Administrative Region has taken the position of colonial master, dictating its own terms to political inferiors. This tone is ironic since the HKSAR does not possess anything like the sovereign status of a nation state. It is in fact, an integral part of the People's Republic of China, with no authority to conduct international negotiations,² except in specific areas of trade and sporting activities.³

Second, as mentioned, the matter has not only been sensationalized not only by the Hong Kong media, but also by all relevant officials of the HKSAR itself, including both, the executive, the legislative branches and all political parties. This was especially true in terms of the media coverage (which is increasingly government controlled) that devoted itself to the bus hostage crisis and the aftermath.⁴ In the

² See, Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law) Article 13: The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region.

³ Basic Law, Article 151 The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

⁴ Kane Wu, "Manila hostage crisis voted top event of 2010," China Daily, January 20, 2011, http://www.cdeclips.com/en/hongkong/Manila_hostage_crisis_voted_top_event_of_2010/fullstory_59037.html (last visited February 8, 2011).

immediate aftermath of the bus hijacking and the deaths that ensued in the shooting, the press and television reports served to generate a real sense in Hong Kong of victimization, anger, outrage, and the demand for revenge. In the days, weeks and months following the incident, one could witness senior government officials making stern accusations, calling for compensation, for punishment of those responsible and for “justice.”

Then, at the same time, virtually all political parties in Hong Kong made a succession of bizarre media-fueled visits to the Consulate General of the Philippines where they would chant slogans against the Philippine Government and then deface the official plaque and consulate sign in the outer office. This tableau was repeated in the television media again and again, generating a groundswell of hatred against ordinary Filipinos living in the territory. A mass protest was organized by the political parties across the political spectrum, and some 80,000 people marched from Victoria Park to Statute Square (symbolically the place in which many Filipino migrants often gather on their day off).⁵

One protester was quoted as saying, “the Philippine government mishandled it from start to finish and still hasn’t taken any responsibility.”⁶ Commenting in a news report about the event on Bloomberg Asia on the following day, the Chinese news reporter Du Wei boldly stated on camera, “We gave them a siege that they’ll never forget.”

In such a torrid atmosphere, one would think that those in authority would try and reduce the anti-Filipino sentiment that was building, but instead Hong Kong officials did no such thing. In fact, they had a motive to let the matter play itself out. Over the summer, Donald Tsang and his government had been considerably damaged by the constitutional reform legislation that polarized society and angered many. The Manila bus incident however, freed Tsang and his government from the political mistakes of the past several months, and allowed them to be rehabilitated from their reduced status as politically corrupt officials and thus to portray themselves as mourners-in-chief, channeling the righteous anger of the people of Hong Kong against the “corrupt and inept” government of the Philippines. Cheung Kin-wah, the Editor-in-Chief of Wen Wei Po, (a pro-Beijing Hong Kong newspaper)

⁵ Debra Mao, “Hong Kong Stages March to Call for Probe into Manila Bus Siege,” Bloomberg August 30, 2010, available at <http://www.bloomberg.com/news/2010-08-29/hong-kong-rally-is-held-to-protest-at-deaths-in-manila-tourist-bus-siege.html> (last visited February 8, 2011).

⁶ *Id.*

stated, "The government took prompt and effective measures after the tragedy, which the Hong Kong people highly appreciated..."⁷

And of course in addition to the manner in which the incident served to provide the rehabilitation of Hong Kong officials, it would be a mistake to overlook the racism that flowed just under the surface and served to further fuel the anger and resentment felt against the some 100,000 Filipinos living and working in Hong Kong. This racism which I have witnessed many, many times while I have lived here over the course of some 19 years, is in large part attributed to the official policies that discriminate against the thousands of Filipino migrant workers who have long lived here. These include immigration policies that preclude migrants from ever obtaining resident status, forcing them to leave the territory 14 days after having been terminated, and a law that prevents them from living outside the homes of their employers. Such policies it is suggested underline and reinforce the perception of the inferiority of these individuals.

Given these incendiary statements and the actions on the part of Hong Kong government officials, it was no surprise that in the days and weeks that followed the bus incident, there were numerous antidotal incidents of hate speech and other crimes directed against Filipinos in Hong Kong that was somehow encapsulated in the words of the Bloomberg reporter, "We gave them a siege that they'll never forget."

One of the most certain indications that the HKSAR is not at all interested in finding closure and putting this matter behind it, has been seen in the manner in which they have responded to each of the gestures of goodwill that have been offered by the government of the Philippines. In all of these instances, such gestures have been either ignored or rebuffed. Note that each of these substantial overtures cited below were rejected:

1. The offer of sending a delegation consisting of Vice President Jejomar Binay, Foreign Secretary Alberto Romulo, and Presidential Spokesman Edwin Lacierda to explain to the government of Hong Kong and others what the Philippines has been doing to obtain justice for the victims.

⁷ "Manila Hostage crisis voted top event of 2010," Kane Wu, China Daily, January 20, 2011, http://www.cdeclips.com/en/hongkong/Manila_hostage_crisis_voted_top_event_of_2010/fullstory_59037.html (last visited February 8, 2011).

2. The offer that was made by private Philippine groups to provide cash payments to the victims or their survivors as a gesture of “solidarity.”
3. Or even, the decision taken by the Administration to boycott the Nobel Peace Prize ceremony at the behest of Beijing officials.

It is important to note that all of these gestures that have been taken in good faith by the government of the Philippines have not been perceived by the HKSAR or the HK media as being measures to redress the situation, or to instill good will, but merely as acts of appeasement. As such, one can conclude that further actions of this kind will only serve to further humiliate the Philippines in the eyes of the HKSAR and their political masters in Beijing. To quote a recent editorial published on December 22, 2010 and taken from the Philippine Daily Inquirer which made a similar point:

“What Hong Kong wants is not moral justice but vendetta. It seeks to subject the Philippines to the lynch mob of blind hate and tribal justice. There are limits to a sovereign nation’s degradation and humiliation. And those limits have already been breached.”⁸

The conclusion to be drawn here by the reasonable policy-maker is this: the HKSAR is not interested in making amends with the Philippines. It seeks to place it under a continual state of indebtedness and subject it to a perpetual attitude of hostility and resentment.

The workings of the Coroner’s Court

The coroner is the government official who is primarily responsible for determining the cause of death, particularly, deaths that occur in suspicious or unusual circumstances. He/she may also decide as to whether a post-mortem examination is warranted. The Coroner also may at his/her own discretion (or at the behest of the Department of Justice) conduct a formal inquest into a particular death or deaths. The inquest will be presided over by the Coroner, and he/she will direct the jury to reach a finding over a range of possible causes of death that the coroner shall indicate, including some 20 causes of death as set out in Appendix I of the Coroner’s Ordinance:

⁸ “Humiliation” Editorial, The Inquirer Newspaper, December 22, 2010, available at <http://www.inquirer.net/specialreports/grandstandhostage/view.php?db=1&article=20101222-310331> (last visited February 8, 2011).

Death, the medical cause of which is uncertain, sudden unattended death, death caused by an accident of injury, death caused by crime, death caused by anaesthetic within 24 hours of administration, death caused by a surgical operation, death caused by an occupational disease, still birth, maternal death, death caused by septicaemia with an unknown primary cause, death in official custody, death occurring during discharge of duty of an officer having statutory powers of arrest or detention, death of a mental patient in a hospital of mental institution, death in private home care, death caused by homicide, death caused by a drug or poison, death caused by ill treatment, starvation or neglect or death which occurred outside Hong Kong where the body of the person is brought into Hong Kong.⁹

Appendix III of the Coroner's Ordinance sets out 13 possible findings of the Coroner's inquest including: natural causes, industrial/occupational diseases, dependence on drugs, want of attention at birth, suicide, attempted self-induced abortion, accident, misadventure, self neglect, lawful killing, unlawful killing, stillbirth, and open verdict.¹⁰

Having set out the formal powers of the coroner, and writing as a professor (whose research area is in the law and constitutional development of Hong Kong) having lived in the territory for the past 18 years, I have closely observed the operations of the Coroner's Court (C.C.) over the course of many years, and what I have seen hardly makes me assured that the C.C. inquest would accomplish either the perception of closure or a popular or official sense of the victims having achieved "justice."

Perhaps the principal difficulty regarding the Coroner's Court is the nature of the office of the Coroner itself. While as a rule, the judicial branch is at least *prima facie* independent of the other branches of government. It is the independence of the judiciary that serves as one of the essential pillars of the rule of law. However in the case of the Office of the Coroner, it is in large part dependent on and a part of the executive branch. Given the close relationship between these two government branches, the workings of the Coroner's office raise some questions as to the overall efficacy of any inquiry in which the government holds any kind of stake. Indeed, this lack of judicial independence has contributed to concerns among the public about its ability to conduct truly impartial inquiries.

⁹ Hong Kong Judiciary, Court Services and Facilities, The Coroner's Court, http://www.judiciary.gov.hk/en/crt_services/pphlt/html/cor.htm#12 (last visited February 8, 2011).

¹⁰ *Id.*

The Dil Bahadur Limbu inquest

In the interest of brevity, only a couple of examples will be given here. One such case was the Dil Bahadur Limbu case in 2009.¹¹ In this case, a man named Dil Bahadur Limbu, was shot in the head at close range in March 2009 by police constable Hui Ka-ki (age 31) when he refused to show the officer his identity card and allegedly attacked him with a chair leg. The investigating police officer claimed that he felt his life was threatened when Limbu attacked him after he was called to investigate complaints of him behaving strangely on a hillside where he lived. After a Coroner's Court hearing which lasted 76 days and took place over the course of nine months, the five-member jury found that the police officer had not used excessive force when he fatally shot Limbu, despite the findings that the bullet entered Limbu's skull from behind his ear, indicating that the victim was either looking or moving away from the officer when the gun was fired. In the wake of the findings of "lawful killing" by the five member jury in the Coroner's inquest, the widow of the shooting victim, Sony Rai, brought a judicial review, arguing that that the inquest was too narrow in its scope and that it was biased. The Court of First Instance dismissed this application in its entirety, stating that the court was satisfied that the Coroner had conducted the inquest in a proper manner.¹²

The Vicky Flores inquest

In addition, when considering the workings of the Hong Kong Coroner's Court, it is essential to consider the Vicky Flores inquest. Here, a Filipino woman, Vicky Flores was found dead in the waters near Tung Chung. She had been working for some 11 years for her employer, Eric Lee and his wife, who lived in their luxury home located in Discovery Bay, Hong Kong. In March 2008, she was last seen fleeing in terror from the Lee residence, wearing only a tee-shirt and pajama bottoms. She was next seen trying to board a bus to the airport terminal in Tung Chung. Following her discovery, the police did not conduct anything resembling a proper investigation.

Due to the popular outcry and the demonstrably suspicious circumstances surrounding her death, a coroner's inquest was held. In that case, in which there were many suspicious aspects, the Coroner's decision was that she had

¹¹ Patsy Moi, "Family wants to know why police killed homeless man," *The Standard*, March 27, 2009, available at http://www.thestandard.com.hk/news_detail.asp?pp_cat=30&art_id=80179&sid=23254423&con_type=1 (last visited February 8, 2011).

¹² "Court dismisses Limb shooting death appeal," *China Daily*, January 22, 2011, available at http://www.cdeclips.com/en/hongkong/Court_quashes_Limbu_shooting_death_appeal/fullstory_59197.html (last visited February 8, 2011).

committed suicide, despite there being no evidence at all (e.g., no suicide note, no motive for killing herself and no physical evidence that would suggest a death by suicide) except for the bare fact that she had died in the water. While the proceedings and decisions of the Coroner's Court are not normally made available to the public, during the Vicky Flores Coroner's Inquest, a local reporter, Mike Poole took notes and posted his observations on his blog entitled, "A Death in Hong Kong."¹³ Although these observations are fairly cursory, in light of the lack of transparency on the part of the Coroner's Court itself, they do provide a valuable insight into the workings of the inquest itself.

In his account, Poole makes the suggestion that the jury were to some extent manipulated in the sense that they were exposed to testimony that was brought to their attention by the Court itself. Instead of the Court hearing evidence about the obvious question, (i.e., why did Miss Flores run out of her employer's house in the middle of the night, dressed only in her night clothes) the jury was exposed to a narrow selection of witnesses, and where the questions directed by counsel raised questions about her mental stability. As Poole writes:

These assessments seem to have persuaded the jury to make a leap of logic from a woman in Discovery Bay who was suffering from headaches, was clearly overworked and perhaps having some associated, and no doubt stress-related, mental difficulties to a suicide on the other side of Lantau island.¹⁴

The jury, it must be said, had a difficult task in determining Vicky's actions when they had next to no material evidence to consider. The inquest was essentially a rehash of the various statements made to the police from April to around June. However, the level of English comprehension expected of them was much higher than the norm in Hong Kong (blog administrator Mike Poole is a managing editor and writer for Chinese-speaking people who use English as a second language, so this is a professional assessment). There were also numerous references to Filipino cultural phenomena left unexplained, such as the penchant for labeling denominations separate religions and an entire corpus of folklore from southern Luzon remarked upon as though its implications were obvious.

This was compounded by the lawyer for Vicky's employers, who encouraged the jury to take the view that Vicky's seemingly unstable mental state should be their major consideration, despite evidence from his own clients that they had noticed nothing unusual about the woman in the days leading up to her

¹³ M. Poole, "A Death in Hong Kong: Discovery Bay Residents Seeking Justice for Vicenta Flores," available at <http://adeathinhongkong.wordpress.com/> (last visited February 5, 2011).

¹⁴ *Id.*

death. Essentially, the lawyer acted as a prosecution counsel, as though Vicky's character were on trial.¹⁵

Over the course of observing the proceedings of the Coroner's Inquest, Poole makes the further observation regarding the unusual procedural aspects of the Coroner's Court and the remarkable fact that while the deceased person into whose unexplained death the court was charged with investigating, the survivors of the deceased person were unrepresented whilst the employer of Miss Flores, Mr. Eric Lee, was represented by counsel who selected the witnesses for examination and conducted most of the oral examination:

Given these aspects of the inquest, and the fact that Vicky's sister Irene had no legal representation to counter their effects, the finding of suicide rather than the proffered alternative of an open finding – is not entirely surprising. It is, however, disturbing because the overwhelming majority of the evidence presented was inconclusive, and suicide should be a finding backed by probative facts.¹⁶

The lack of transparency in the Coroner's court

In addition to the two cases cited above, it should be borne in mind that the judgment of the Coroner's Court is not normally made available to the public. In order for anyone to obtain a copy of the written decision of the Court, it is first necessary for that person to send a written request to the Coroner's office stating the reasons for such information. As such, the person requesting the information must establish him/herself as a "Properly Interested Party." Examples of this would be a relative of the deceased person in question or the legal representative of the same. Such lack of transparency in terms of the publication of court decisions is not promising, and bodes ill for the institution as a whole.

In this case, i.e., the matter of the Manila bus hijacking or "bus massacre" as it is commonly referred to in the Hong Kong media, the case has been so totally sensationalized that it is difficult to imagine there being a jury that would have any degree of impartiality in the matter. In fact, it would be nothing more than a show trial. It is suggested that in the event, it would be the Philippines and their people that would be the unfortunate defendants here. The HKSAR government would have virtually unlimited resources to conduct its own case and lead the jury where it wanted to go. The Philippines on the other hand, would have considerably less resources (and bear in mind, this case would cost the Philippine Government and tax

¹⁵ *Id.*

¹⁶ *Id.*

payers millions of pounds) and the manner in which the Philippine government would be forced to conduct the proceedings would be a very long drawn out series of *mea culpas*. It would be sensationalized in the press on a daily basis for a period of several months to possibly a year in duration.

Jurisdiction of the HKSAR

As for the matter of jurisdiction, I would suggest that in broad terms, the HKSAR (which is not even a sovereign state) cannot demand the production of witnesses from a foreign jurisdiction involving a crime that happened in that same foreign jurisdiction. Clearly, if the Philippine Government voluntarily agrees to send those witnesses, they can appear, but this raises another host of questions about the matter.

Regarding the question as to whom exactly shall appear before the inquest, one can only ask oneself as to where to begin. The HKSAR has demanded the appearance of some 116 witnesses. In reply and as a compromise to this demand, the Philippine Government has suggested what the Hong Kong media referred to as a “mere” 20. Already the atmosphere has been poisoned and the press is attacking the Philippines over this matter alone. As recent as December 29, 2010, as reported on the front page of the Hong Kong Standard Newspaper, several members of Hong Kong’s Legislative Counsel were openly excoriating the Philippine Justice Secretary for being both insincere and incoherent in her alleged suggestion that “there cannot be a prosecution by the HKSAR for crimes committed outside the territory.”¹⁷ Given the government and media inspired perception of “bad faith” on the part of the Philippines over this issue, one can reasonably draw further conclusions over the ultimate question of closure.

But consider the prospect of sending any witnesses at all. For a start, their testimony alone would take place over the course of many months. It certainly did for the police killing of the Nepalese man, and there were only a few witnesses there. With regard to the bus hostage inquiry, these men and women sent from the Philippines would likely be put up in flea-bag hotels during that time, subsisting on food vouchers. Were that myself, I would not ever agree to do it. Who would be supporting their families during this protracted period of time?

And what if these men (many of whom are members of the police and support staff at the scene) did not agree to this proposition of taking a year out of

¹⁷ Dennis Chong, *Don't Count on us: Manila wary of sending key witnesses to bloodbath inquest*, The Standard, p. 1, December 29, 2010.

their lives? Would the Philippine government force them to go? Were I to be in a position of offering them advice, I would advise them to refuse to do so. Additionally, as a decision-maker, one might also wish to consider the ramifications of effectively turning over one's front-line staff in the uniformed services to intense scrutiny over an indeterminate period of time by officials of a foreign jurisdiction, and what that action will have on overall morale.

However, unfortunately, all this is not the end of the problems related to any Filipino witnesses that may be persuaded to testify before the Coroner's inquest. It is felt that unless specific declarations of immunity are granted by the Department of Justice of the HKSAR, these witnesses open themselves to potential civil and/or criminal liability while they are in Hong Kong. Should I be advising these persons, I would suggest that they insist on such guarantees of immunity to any and all civil and criminal liability and that they think twice about any testimony before the coroner's inquest. As for the wider 'rightness' of the people of the HKSAR demanding an inquest, let them do so, bearing in mind that this is in no way shape or form a democracy and so there is a real disconnect as between the state and the people as a corporate body.

Conclusion

There are some games in which the rules are so skewed that any participation would not serve the interests of the players. The Republic of the Philippines (unlike the HKSAR) is a democracy, in which the Government has earned a mandate to govern from its people possessing universal suffrage and voting in free and fair elections. It has conducted its own review of the matter of the Manila bus hijack deaths. These findings were done thoroughly and transparently. The results were duly conveyed to the Government and to the people of the HKSAR. It is strongly suggested here that if these results did nothing to quell the resentment and hatred of those in and out of authority, then further efforts by the Republic of the Philippines would not serve those same ends.