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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).



PHILIPPINES: Failure of the court to prevent arbitrary detention

1. The Asian Legal Resource Centre (ALRC) takes note of the opinion of the two reports of the Working Group on Arbitrary Detention (A/HRC/27/47 and A/HRC/27/48) on the role of courts in protecting persons from arbitrary detention. The ALRC agrees on the importance of the “right to challenge the lawfulness of detention before court as a self-standing human right (A/HRC/27/47, para 13),” but expresses reservations on the enforceability of this right given the structure and operation of the country’s justice institutions.
2. During the 10th session of the Human Rights Council, the ALRC expressed concern on the subversion of the rules of criminal procedures (A/HRC/10/NGO/89) by prosecutors that have resulted in arbitrary arrest and detention. The prosecutors routinely deny the accused opportunity to adequately respond to charges. And, the police do not explain the nature of charges and the legal basis of the arrest and detention.
3. In its submission during the 19th session, the ALRC raised concerns about the routine, systematic, and widespread abuse of prosecutorial powers by prosecutors (A/HRC/19/NGO/51). This included targeted prosecutions by police and prosecutors of human rights and political activists, i.e. those critical of public officials and the government’s repressive policies. False witnesses, witnesses either lacking credibility or influenced by the military, and testimonial evidence that is either recanted or taken by way of torture, are used in such targeted prosecutions.
4. Recalling the mandate of Working Group (UN Doc, E/CN.4/1998/44, para 8 (a), (b) (c)), arbitrary deprivation of liberty, falls in three categories: invoking legal basis is impossible; a result of one’s exercise of rights or freedoms, and a total or partial non-observance of fair trial norms. The ALRC, however, expresses deep concern about the complicity and failure of the courts to prevent or stop arbitrary deprivation of liberty.
5. In the Philippines, there are procedural mechanisms, like writ of habeas corpus, wherein the “right to challenge lawfulness of detention” can be invoked; however, this right becomes inoperative because the courts are either complicit or fail to prevent arbitrary deprivation of liberty. The court fails to protect persons when its protective power, notably judicial oversight, is needed the most. It fails to protect people in cases where police and prosecutors subvert legal processes.

Failure to prevent arbitrary detention

6. Rule 113, section 1 and 2, of the Revised Rules of Criminal Procedure, defines the purpose of arrest and its legal basis. It stipulates that arrest can be made when persons are to “answer for the commission of an offence” and “violence or unnecessary force” must not be used by arresting officers. Additionally, Republic Act No. 7438 (also known as, the Rights of persons under arrest, detention or custodial investigation) stipulates the rights of arrested persons and the obligations of officers in arresting and detaining persons.
7. Although the country’s legal framework for lawful arrest and detention is robust, this legality has not prevented arbitrary arrest and detention. The ALRC continues to document numerous cases of persons being arrested, detained incommunicado, and tortured, despite not having committed any criminal offences at all.
8. Take the case of Rolly Panesa, a security guard arrested, detained, and tortured on October 5, 2012. Panesa was forced to admit that he and a certain Benjamin Mendoza, a fugitive communist leader, is the same person. Panesa endured nearly a year of arbitrary detention while he was pursuing legal remedy to prove he is Panesa, not the real accused, Mendoza. On August 2013, he was released after the court granted his petition for writ of habeas corpus. The military, the police, and the prosecutors were never held accountable for their unlawful actions.

9. In granting Panesa's petition for the writ of habeas corpus, the court held that he could not be Benjamin Mendoza, a communist leader, rejecting the claim of the police and soldiers as the basis for Panesa's arrest. Though Panesa has regained his liberty through the legal process of challenging the lawfulness of his detention, it was always clear that, legally, he should not have been arrested, detained, and prosecuted in the first place. There was no legal basis for his arrest and detention because he is not the real accused.

10. This practice by the police to arrest, detain, and prosecute people – whether or not they are the real accused – is routine, widespread, and systematic in the Philippines. They arrest wrong persons, not to make them answer for any criminal offenses, but for the arresting officers and their intelligence assets to be able to collect reward money for a person's arrest or for promotion to a higher rank.

11. Take another case of Mohjeennar Dagam Cabalo. He was arrested on March 5, 2013, while he was being treated for heart ailment in a hospital. The police claimed he is Aman Kabalu, a person wanted for bombing a public terminal in Kidapawan City on October 5, 2007. But on December 10, 2013, the court ordered Cabalo's release because he is not Kabalu, the real accused. Cabalo was arbitrarily detained for nine months. The real accused has a USD\$32,000 arrest bounty on his head.

Failure to prevent false prosecutions

12. Under Rule 110, section 5, of the Revised Rules of Criminal Procedure, the public prosecutor has power to prosecute "under its direction and control" all criminal actions. Although prosecutors have powers to prosecute, the judiciary has legal responsibility in ensuring that the complaints and its evidence satisfy a prima facie case. The role of the court is not only to accept complaints and evidence from prosecutors; it should also ensure that the evidence is sufficient in the adjudication processes. It means the probability that the person has committed an offence must have clear legal basis. This is established in the case of Santos v Oda, wherein the judiciary is given power "on what to do with the case", and that it has "exclusive jurisdiction" in determining the merit.

13. The ALRC, however, has documented numerous cases wherein the arrest, detention, and prosecution of persons were because the courts abdicate from their exercise of judicial oversight in ensuring prima facie case and probable cause in criminal prosecutions. Not only do cases by the prosecutor lack sufficient evidence, prosecutors also take testimonial evidence from false witnesses; they admit witnesses, who are not credible; and they take testimony from persons tortured or under duress. The police and prosecutors also arbitrarily add names to their list of accused without the accused knowing.

14. Take the case of labour leaders Roy Velez and and Amelita Gamara who were charged with fabricated murder in connection with the killing of four soldiers in Labo, Camarines Norte on April 29, 2012. In addition to this case, Roy and Amelita, and other activists, namely Randy Vargas, Raul Camposano, and Rene Abiva, were also charged with murder for supposedly attacking a convoy of soldiers on April 25, 2012, killing ten soldiers and a civilian in Tinoc, Ifugao.

15. In cancelling the arrest order on Velez and Gamara, the court granted their petition for dismissal. They argue that they were never informed about the charges and that they did not receive subpoenas. On July 26, 2013, the court cancelled the order for the arrest of Velez and Gamara, but it did not dismiss the entire case filed by the prosecution. This case therefore exposes over dozen of human rights and political activists, who were falsely charged together with Velez and Gamara, at risk of arbitrary arrest. The witness in the case against Velez, Gamara, and others, is a former rebel turned military asset. He is under the control and influence of the military.

16. In another case, the witness in the case of activists Zara Alvarez, a human rights defender, and Ronald Ian Evidente, a labour leader, in the criminal complaint for "robbery in band" is, likewise, a former rebel turned military asset. Alvarez and Evidente were charged in connection with the robbery incident in Sagay City, on July 16, 2011. Evidente was able to post bail for robbery, but Alvarez remains in jail as she was facing another murder case where the witness against her is also a military asset.

17. In ALRC's earlier written submission (A/HRC/19/NGO/51), the case of Temogen "Cocoy" Tulawie, an indigenous human rights activist, and four other people, was raised. They were charged for murder in connection with the bomb blast in Patikul, Sulu on May 13, 2009. In this case, the court proceeded to try the accused for murder, despite knowing well that the prosecutors had already admitted that the testimonial evidence he obtained had been recanted by the witness giving it. The prosecutor justified the admissibility of his testimonial evidence as credible.

Failure to observe fair trial

18. The ALRC argues that when the court fails to prevent arbitrary detention and false prosecutions, the arrested persons and detainees are denied their fundamental rights to a fair trial. The use of torture by police to extract confession from the accused; the use of fake witnesses and witnesses under heavy influence of the police and military; arrest of persons as replacement for a real accused to get reward money, amongst others, are clear denials of the right to a fair trial.

19. Furthermore, needless delay in the trial of cases and the absence of adequate legal representation when complaints and evidence are fabricated, not only denies the detainees fundamental right to a fair trial, but also aggravates and prolongs such denial of the fundamental rights to a fair trial. Delays in adjudication of cases; the lack of, if not absence of legal counsel, has been a commonplace.

20. Take the case of Fernando Obedencio, a human rights defender illegally arrested, tortured, and held incommunicado in September 2005 in General Santos City. On June 23, 2014, nearly nine years since he was first arrested and detained, the court has concluded there is insufficient evidence to prosecute him. The court agreed to Obedencio's legal counsel that the evidence of the police and the prosecution has been very weak.

21. While Obedencio has regained his liberty, another detainee, Haron Abubakar Buisan, a man who was illegally arrested and tortured by the same police unit that arrested Obedencio, remains in detention. In Buisan's case, the prosecutor changed his real legal identity to Ariel Bansalao, the accused in the bus robbery in 2005, so they could proceed with the trial. By approving this, the court is also complicit in this denial of fair trial.

Recommendations

22. The ALRC recommends that the Human Rights Council makes a request to the Government of the Philippines to conduct an impartial investigation on the failure of the court to prevent and stop this practice of arbitrary arrest and detention;

23. The ALRC urges the government of the Philippines, as a matter of urgency, to review, assess, and dispose cases where they are proven to have no evidence or legal basis to justify continued detention and prosecution of persons. The detainees must be released promptly, and;

24. The ALRC urges the government of the Philippines to ensure the judiciary complies with its "role of judicial review and due process" (A/HRC/27/47, para. 19) to ensure that arbitrary arrest are prevented and stopped; and that "adjudication of the case should take place as expeditiously" as possible (A/HRC/27/47, para 17).