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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
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 2008]

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

PHILIPPINES: The failure to implement the Human Rights Council's key recommendations concerning extra-judicial killings

During its Universal Periodic Review, on April 11, 2008, the representative of the government of the Philippines expressed “its commitment as a human rights defender to protect the rights of all its citizens, and to observe the Universal Declaration of Human Rights.” The Asian Legal Resource Centre (ALRC) recalls that Article 3 of the Declaration states that, “everyone has the right to life, liberty and security of person.” Additionally, it states under Article 8 that, “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Similarly, Article 2 of the ICCPR, to which the Philippines is party, states that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

However, the ALRC has seen no evidence that the Philippines is making any good-faith attempts to take action that will ensure that victims of even the gravest human rights abuses are being provided with effective remedy. This is evidenced by the lack of effective, independent investigations into the hundreds of extra-judicial killings and forced disappearances reported since 2001. Without effective investigations there cannot be prosecutions that result in those responsible being brought to justice or the provision of effective remedies to the victims or their families. The representative of the Philippines promised “to maintain the momentum on addressing killings of activists and media professionals.” The ALRC is not aware of any real momentum or actions concerning these violations, other than the ongoing political and diplomatic efforts by the authorities to save face and side-step their responsibilities under international law.

The ALRC welcomes the significant drop in killings that have followed the increased international pressure on the government of the Philippines, but remains concerned that killings and forced disappearances and that the perpetrators of these grave abuses remain free and capable of resuming the killings again, unless brought to justice. The fact that the killings dropped at the same time as international pressure was being applied clearly indicates that State-agents are involved in these abuses. This was also highlighted by the Special Rapporteur on extra-judicial killings, Professor Philip Alston, in his report to the Council, in which he noted that “the military is in a state of denial concerning the numerous extra-judicial executions in which its soldiers are implicated.”¹ Since this report was presented, there have been no improvements to the situation with regard to investigations and prosecutions.

Following his visit to the country in February 2007, Philip Alston made a series of initial recommendations, which were followed by further recommendations in his report.² Despite claims by the government that it would take concrete action, these recommendations are not being implemented, allowing impunity to be enjoyed by those responsible for the killings.

¹ Please see UN document with reference: A/HRC/8/3/Add.2

² Please see the initial recommendations in the document with reference: A/HRC/4/20/Add.3, and further recommendations in the report in A/HRC/8/3/Add.2.

Furthermore, during the Universal Periodic Review process, a number of comments and recommendations were made concerning the killings and other grave rights abuses.³ Canada stressed its concern about how few convictions there have been. France expressed concern about the low number of resolved cases and asked for evidence of follow-up and implementations of the Special Rapporteur's recommendations, as did Australia, Brazil, the Netherlands, Norway and the United Kingdom. Switzerland recommended that the Philippines intensify its efforts to carry out investigations and prosecutions on extra-judicial killings and punish those responsible, and suggested that the witness protection programme should be strengthened. It also recommended that the Philippines address the root causes of this issue in the context of the appropriate reforms of the judiciary and the security forces. The United States also asked the Philippines for information on actions being taken to address extra-judicial killings and to ensure the prosecution and conviction of perpetrators. The representative of the Holy See called on the government of the Philippines to completely eliminate torture and extra-judicial killings.

Another significant problem has been the continuing surge of vigilante killings this year in Davao City as well as General Santos, Tagum and Cagayan de Oro cities in Southern Philippines. The continuing climate of impunity concerning extra-judicial killings is clearly a factor enabling this upsurge of violence. This phenomenon has previously been endemic in Davao City, prompting Professor Alston to recommend the "abolition of death squads" there. However, once again, the government is ignoring recommendations and has failed to intervene to stop the killings.

No improvement to witness protection mechanism

A key recommendation made by Professor Alston urges the provision of protection to witnesses and "all those who will be put at risk by an individual's testimony." The police have frequently used the lack of witnesses coming forward as an excuse for the lack of progress concerning investigations. For example, in Davao City, Senior Superintendent Ramon Apolinario attempted to justify this failure, stating that "as long as we do not have the testimonies of the witnesses, we can never file formal charges." The lack of forensics and effective investigation techniques and political will are of greater significance, in reality.

Despite claims by the government during the UPR review that legislation for the strengthening of the Witness Protection programme was urgent, it is not moving forwards with any urgency. It is the police's constitutional obligation to ensure that the cases they are investigating are effectively prosecuted, including by providing interim protection to potential witnesses before they are covered by the witness protection programme. Their failure to do so is the prime cause of the lack of witnesses and therefore convictions.

A glaring lack of convictions

Other than the three persons that were convicted in October 2006 for the March 2005 murder of journalist Marlene Esperat, no other cases of extra-judicial or vigilante killings have resulted in convictions. It is reported that it was only because these three pleaded

³ Information taken from the report of the UPR Working Group, A/HRC/8/28

guilty to the murder charges that the convictions were possible. They were not the result of effective police investigations. The masterminds behind the killings remain at large.

Aside from the Esperat case, none of the 139 cases of extra-judicial killings of social activists that the ALRC has documented between January 2003 and November 2007 (and submitted as part of its UPR submission) have resulted in convictions. Furthermore, concerning the killings of 42 persons, including women and children, by vigilantes in the country's South since January 2008, none of the perpetrators have been identified, charged or prosecuted in court. The witnesses, families of the dead and even NGOs there are too frightened to get involved. There is also lack of proper documentation concerning allegations of vigilante killings, in particular by the Commission on Human Rights of the Philippines (CHRP). Professor Alston recommended that the CHRP should issue a monthly report on the killings.

The ALRC's sister-organisation, the Asian Human Rights Commission (AHRC), has repeatedly appealed to CHRP Chairperson, Leila de Lima, for the CHRP to consistently investigate and document allegations of extra-judicial killings and other forms of arbitrary deprivation of life. However, no response has been received.

The lack of progress by Special Courts

Although the Supreme Court (SC) has reported that it had designated special courts to hear cases involving extra-judicial killings, the ALRC remains unaware of these courts ever being used. In effect, these courts may have been set up on paper, but have not functioned in reality. Even if these special courts do exist, the failure to have charges or complaints filed against the perpetrators in court - which is a result of lack of witness and their protection - has made these special courts meaningless. If no charges are filed, there can never be prosecutions. Designating special courts alone without addressing problems surrounding investigation and prosecution does not serve any real purpose. Perhaps this is what the authorities intended?

The Writ of Amparo being undermined

The SC's implementation of the Writ of Amparo, a judicial remedy which is supposedly to provide any person the judicial protection he requires once his life, security and liberty are threatened, was initially welcomed as providing a new avenue for security. However, a series of rejections concerning petitions seeking issuance of the writ are undermining its credibility. According to a lawyers' group, the National Union of Peoples' Lawyers (NUPL), five of their petitions have been rejected by the Court of Appeals (CA), as the result of claims that the petitioners supposedly failed to produce "clear evidence" of "apparent or visible" threats to their lives. This judgment has unreasonably placed the burden of proof of threats on the person seeking protection.

The courts' judgment runs contrary to the intent of the writ, which concerns: "not a criminal action requiring proof beyond reasonable doubt, nor is it a civil or administrative proceeding, but a prerogative writ intended to protect human rights". On cases involving extra-judicial killings, it is extremely difficult for a victim experiencing threats to produced evidence sufficient to convince a court and threats are not made in a way that allows that.

Numerous activists have been killed following receiving threatening short messages service (SMS) and phone calls, amongst others. The police have typically accepted to record the incident, but have not taken any further action, often resulting in the activists being killed. The police investigators claim to have no means of investigating threats originating from mobile phones and identifying those making threats.

The Asian Legal Resource Centre (ALRC) therefore urges the Human Rights Council to ensure that the Philippines immediately implement the large number of recommendations that the UPR and Special Procedures have produced. The government must make good on its pledges to the Council, notably as part of the UPR review, by going beyond the tactic of forever setting up new task forces and committees, and ensure actual, rapid and effective investigation and prosecution of cases, in line with its international obligations. It should also issue a standing invitation to all Special Procedures, and sign and ratify the International Convention on the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

At present, the government's claiming to be a human rights defender is convincing only the ill-informed.

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