



General Assembly

Distr.
GENERAL

A/HRC/4/NGO/69
7 March 2007

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**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.

[28 February 2007]

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

Philippines: Lack of security and protection aiding and abetting extra-judicial killings, forced disappearances and impunity for these acts

The lack of security and protection for victims and witnesses is permitting and encouraging extra-judicial executions, torture and disappearances in the Philippines. Cases either do not even reach court, or if filed, fail to lead to prosecutions, often due to a lack of available witnesses. In fact, this problem is compounded by a lack of proper investigations by the police, and even some of the special bodies set up by the government to investigate the widespread killings and disappearances in the country – notably the Melo Commission – have been hampered by a lack of witnesses. Fear abounds in the Philippines and engenders impunity, further abuses, and therefore further fear. How such a country can sit in the United Nations Human Rights Council remains a mystery.

There are no existing mechanisms that persons facing threats or serious risks to their lives can use to seek police protection, either temporary or long-term. Protection is the duty of the police, but this institution is failing to effectively and promptly execute its functions. While the government has been giving assurances that it will bring the perpetrators to justice and protect witnesses, it is failing to move beyond words and establish a system through judicial or legislative means to secure this.

The country's law on Witness Protection, Security and Benefit Act (RA 6981) has been proven ineffective and dysfunctional. The victims, families of the dead and potential witnesses do not know how to make use of this law and system. Even police investigators, public prosecutors, or any quasi-judicial bodies who have authority to make recommendations for the admission of persons under the programme, have little idea about their role in the implementation of the witness protection system. Police investigators are either being negligent about their duties to perform effective investigations, or are tacitly participating in the cycle of political murders and impunity. Without witnesses, prosecutors cannot file or effectively prosecute cases in court. However, the institutions are placing the blame on the witnesses for not coming forwards – even though it may cost them their lives – rather than themselves for not enabling this. The police and prosecutors are failing to facilitate victims and witnesses' access to the programme or providing them with security arrangements to prevent them from harm. Instead, victims and witnesses are verbally attacked and put at fault while they are seeking justice or are refusing to cooperate with the authorities under circumstances lacking any form of security.

The government of the Philippines has failed to implement the recommendations found in the Concluding Observations of the Human Rights Committee, CCPR/CO/79/PHL, 01/12/2003, specifically, recommendation Section 8, which requires the effective investigation and prosecution of perpetrators. By failing to implement its witness protection programme, the government has in effect ensured that it is unable to implement these recommendations. The government programme's implementing agency, the Department of Justice (DoJ), is failing to take proactive measures to "adopt and enforce legislative and other measures to prevent such violations" as provided by the Section 11 of the Committee's recommendations.

The government has also failed to implement the recommendations in Section 6, as it has failed to enact enabling laws on torture and enforced disappearance, and has therefore been denying torture victims and the families of the disappeared the possibility of seeking

justice. The filing of false and fabricated charges based on 'evidence' extracted under torture remains endemic and systematic in the country. Even though the courts have already exonerated some torture victims, the absence of a law criminalising torture is denying them any possibility of redress and justice. This encourages torture and ensures impunity for torturers, as no perpetrators accused of torture have been prosecuted in court. The families of the disappeared have likewise been denied any form of appropriate assistance by the police authorities in searching for their disappeared loved ones. The police do not conduct effective investigations concerning disappearances, even though they do record reports. A special unit to look into extra-judicial killings has been set within the police – Task Force Usig – but its top official has stated that they do not have the mandate to investigate disappearances. They only investigate when there are recoveries of dead bodies, but the purpose of investigation is more concerned with identifying the victims rather than determining the cause of death or the circumstances prior to the recovery, in particular whether the victim was a victim of enforced disappearance. There have been a number of activists who have disappeared, and although their bodies were recovered later, the police investigations have completely failed to determine the circumstances of their disappearance and death.

Although Section 3 (d) of the Board of claims for victims of unjust imprisonment or detention and victims of violent crimes (RA 7309) provides compensation for victims of torture and violent crimes, the lack of laws defining torture and disappearance are effectively denying the victims such compensation. Families of disappeared victims, who were either later found dead or remain missing, have continue to suffer trauma without being provided with any assistance by the government. They are also not able to seek protection and security, despite the serious risks to their lives that they are facing, because they cannot be classified as witnesses unless they have personal knowledge of the crime. The victims and families of the disappeared are being forced to endure mental stress, and financial and security risks, without any intervention by the State, for lack of a suitable mechanism and of political will. The continued failure of the government to enact enabling laws is leaving victims with no option for domestic remedies and justice.

The lack of protection and security and the absence of enabling laws have deepened the distrust of the victims and families of the dead. Their loss of faith has made them reluctant to consider legal remedies in seeking justice and having the perpetrators prosecuted. The government acknowledges that the need for the protection of witnesses is an utmost priority to ensure the effective prosecution of perpetrators, but has done little to meet this objective. Guarantees concerning the provision of compensation to victims of torture and violent crimes have been given, but the failure to enact enabling laws, as mentioned above, means that these remain empty promises at present.

Despite the gravity of this problem, the government's response to take legislative and all other appropriate measures, in order to reduce the insecurity, remains negligible and unsatisfactory. None of the families of the dead, victims who have survived earlier attempts on their lives, witnesses or persons who have sought intervention by the authorities to improve their security and protection have met with success. Security arrangements are possible for influential persons facing risks, but those who most urgently need such measures, in particular the vulnerable sectors of society - that are the main targets of the killings, disappearances and torture - have not been able to secure assistance. By failing to provide protection to the majority of citizens that are facing serious risks and insecurity, the

government is denying them equal protection under the law and exposing them to further risks.

The principle of effective and impartial investigation as an essential part of the policing system and the delivery of justice is alarmingly absent in most cases in the Philippines. Police investigators whose close colleagues are accused of being involved in attempts to kill activists have been allowed to carry out investigations concerning these cases. Military personnel who are accused of killing activists have instead become sources of information for investigations, rather than the victims and witnesses. The members of the police and military who are accused of having involvement in rights abuses have not been suspended or sanctioned in any other way, or charged, and remain in active service.

The use of forensic methods of investigation, including post-mortems, is also negligible in most cases. These failings have led to the dropping of charges in court for lack of evidence and therefore the inability to effectively prosecute perpetrators. Although the ALRC has repeatedly called for the Philippine National Police (PNP) to effectively and promptly investigate a significant number of cases of extra-judicial killing, disappearance and torture, very few, if any, effective investigations or prosecutions have been launched. In fact, one of the police investigators was defended by his superior concerning his failure to conduct post-mortem examinations on victims of extra-judicial killings, as it was stated that this failure could not be considered as a violation of police procedures.

The government likewise made no mention, despite repeated exchanges of communications with the ALRC, of any plans to improve the methods of police investigation within the country. Often the police have made use of a “lack of evidence” to conveniently excuse themselves from any responsibility concerning cases and to explain their inability to resolve cases. This is evident from the rates of convictions concerning cases in court, which are abysmally low, with none of the cases that have been communicated by the ALRC or its sister-organisation, the Asian Human Rights Commission (AHRC), concerning unabated extra-judicial killings, enforced disappearances and torture, having resulted in such convictions. These practices continue, with new cases reported almost daily, and the government is not taking any credible measures that are required to put a halt to this situation.

Central to the required measures is the provision of security and protection to victims, their families and witnesses, so that they feel safe enough to pursue their cases through the judicial system. Only when impunity begins to be eroded in the Philippines will there be a chance of bringing the human rights crisis there to an end.

Anything less than immediate measures by the government to redress the situation in good faith – which has been absolutely absent thus far – should be viewed as a conscious effort by the authorities, stemming from the highest positions, to continue to dupe the world about its intentions concerning human rights. Should such a State be allowed to continue to seriously undermine the credibility of the Human Rights Council? Can and will the Council do anything about this, or will it plummet down the path of its discredited predecessor?
