

Name: Tanggol Bayi Philippines and Karapatan Alliance for the Advancement of People's Rights in the Philippines

Country: Philippines

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1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.
- b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.
- c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

The Philippines has no specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders, especially in line with the United Nations Declaration on the protection, promotion and realization of the rights of human rights defenders. We are likewise not aware of any legal or administrative safeguards put in place to prevent legal action against and/or prosecution of HRDs for undertaking their legitimate work.

The lack of such legal framework for rights protection and safeguards of HRDs are one of the institutional and systemic weaknesses of the Philippine government. This has especially been more pronounced because of the prevalent violation of the rights of human rights defenders and the use of legal actions, including the filing of trumped up criminal charges, to threaten, harass, intimidate, coerce, suppress or stifle, vilify or silence HRDs.

HRDs of Karapatan however cite the Bill of Rights and the Role and Rights of People's Organizations of the 1987 Philippine Constitution, the Hernandez Doctrine, and the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in many cases of rights violations against them.

Among the salient provisions in the 1987 Constitution are as follows:

- The right to life, liberty and property
- The right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.
- The privacy of communications and correspondence
- The right to freedom of speech, expression, of the press, and to peaceably assemble
- The right to freedom of religion

- The right to travel and liberty of abode
- The right to information on matters of public interest and concern
- The right to form associations, unions, organizations
- The right to free access to courts and all judicial processes irrespective of class
- Miranda rights
- The rights against torture, force, violence, threat and intimidation
- The right to compensation of victims of torture and similar practices
- The right to due process of the law
- The right to a speedy disposition of their cases before all government bodies
- No person shall be detained solely by reason of his political beliefs and aspirations
- The right against involuntary servitude, cruel, degrading or inhuman treatment

The full text can be accessed through this link:

<http://www.chanrobles.com/philsupremelaw1.htm>

The legal jurisprudence of the Hernandez Doctrine refers to the case against patriot Amado Hernandez in the People vs. Hernandez (July 1956) and as further elaborated in the case of People vs. Geronimo (Oct. 1956). These decisions are in accordance with the generally accepted legal principles that all actions undertaken in pursuit of a political objective are considered a **Single Political Offense**. For example, when a citizen gets involved in a political movement and participates in armed struggles to overthrow the existing government or ruling system, all of her/his actions in the pursuit of the political objective shall be assumed under the charge of REBELLION which is political offense. She/he should not be arrested, charged, prosecuted, jailed or sentenced for other alleged illegal acts such as illegal possession of firearms, murder, kidnapping, arson or any addition to rebellion. She/he should be treated as - **“PRISONER OF CONSCIENCE or BELIEF”** and not as ordinary criminal.

Additional information on the Hernandez Doctrine:

http://www.lawphil.net/judjuris/juri1964/may1964/gr_I-6025_1964.html

http://en.wikipedia.org/wiki/People_v._Hernandez

The full text of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law can be accessed through

<http://www.grpmc.gov.ph/documents/CARHRIHL.pdf>.

1. It is lamentable that the rights enshrined in these significant jurisprudence, laws and agreement are being wantonly violated, especially that of human rights defenders. It is for this reason that many of the victims of extrajudicial killings, torture, enforced disappearances and other rights abuses, as well as many of the 363 political prisoners in the country are human rights defenders.

Contrary to the well-established doctrine on political offenses, hundreds of cases of individuals who are supposed to be or are suspected to be performing acts in pursuit of their political beliefs are charged with common crimes like murder, kidnapping, illegal

possession of firearms or explosives etc. instead of rebellion. A case in point is the illegal arrest and torture of an artist and journalist (Ericson Acosta of Samar) who was then conducting research on the human rights situation.

AS per Karapatan's documentation, out of 360 political prisoners as of August 2011, at least 303 (84.17 %) of them have been charged with common crimes while only 15 of them (4.17 %) have been charged with rebellion. A number of these cases include those of the detained consultants of the rebel group National Democratic Front of the Philippines (NDFP) which the Philippine government is obliged to have released on legal and political grounds.

This phenomenon continues despite the fact that even the testimonial and documentary bases – spurious or otherwise - submitted to the prosecutors show that the alleged acts are obviously in furtherance of one's political beliefs. This practice is rooted in the time of the martial law era. Aside from it being contrary to sound and almost universally-accepted doctrines on the matter, this anomalous filing of charges for common crimes is simply violative of established jurisprudence. This wrong practice also persecutes political offenders or those alleged to have committed acts in pursuit of one's political beliefs; makes a travesty of the rules of evidence; diminishes the political nature of the acts and reduces the respondents to common criminals.

2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.
- b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

By all indications, both the Martial Law decrees/legal instruments and the most recent laws on national security, counter-terrorism and/or public order and safety ARE being used to unduly restrict and repress the rights and scope of activities of human rights defenders. These laws are also being used to infringe on the rights to freedom of expression and opinion.

The following laws, decrees and executive issuances, which are supposedly national security-related are among those which are being utilized to restrict activities and violate the rights of HRDs:

- Presidential orders 66 and 67 as amended , which allows the filing of the charge of illegal possession of firearms, explosives; instead of, or in addition to any political charges which may have been or will be filed against an individual (this has been amended by Republic Acts 8294 but in practice, its not implemented).
- Batas Pambansa 880 which restricts and controls the Right to Free and Peaceful Assembly because of the "no permit, no rally" policy.
- Executive order 272 which lengthens the allowable period of the detention even in the absence of any case filed in court (for those arrested without warrants).

In July 2007, the Human Security Act (HSA) came into effect in the midst of international criticism and public outcries against the massive human rights abuses being perpetrated by the Armed Forces of the Philippines (AFP) under the Gloria

Macapagal-Arroyo regime. Ms. Arroyo signed the HSA into law despite warnings from the Supreme Court that its passage could lead to more violations of human rights. The anti-terrorism law is draconian, anti-people, and is very dangerous. Another fundamental point is, it does not cover the acts of terrorism of the State itself which is the worst kind of terrorism. According to this law, a terrorist act or terrorism is an act or omission that creates an overwhelming fear or a sense of chaos among the general populace with the intention of compelling the government to do an illegal act. That definition has been criticized even by the International Commission of Jurists and the UN Special Rapporteur on Terrorism in Relation to Human Rights, as very vague, very broad as to cover almost anything, especially legitimate protest or dissent and including acts of national liberation movements which under international law must be respected and should not be tagged as terrorism. That is the most fundamental point. There are other features that would support the observation that it is fascist and draconian. For instance, even if one is out on bail, you can be confined to your house, or to your municipality or to your city for an indefinite period. You are incommunicado, you cannot use the phone, you cannot use email you can't use anything at all. Another feature is the authority to look into one's bank accounts on the mere suspicion that you are a terrorist or involved in a terrorist act. That is obviously an invasion of one's privacy on the mere say-so of an executive officer without any judicial sanction.

The third is the proscription of organizations that may be considered terrorist or involved in terrorist acts. That questionable definition creates a lot of problems. If the definition is problematic, then that is dangerous if you designate certain organizations as terrorist or involved in terrorist acts. Obviously that provision was intended to undermine or vilify legitimate national liberation movements like the CPP, NPA and the NDFP and the MILF. Another feature is indefinite detention. It is unprecedented, because normally in crimes in the Philippines ... penalty is according to the gravity of the offense, according to whether there are mitigating or aggravating circumstances. If there are aggravating circumstances, the penalty is higher. But in this case, it is single and indivisible matter, it is life imprisonment which is technically 40 years. Another point is, it is non-probationable, in other words, it does not allow for rehabilitation or for reformation of any person convicted of the act of terrorism.

Full text of the HSA: http://www.congress.gov.ph/download/ra_13/RA09372.pdf

3. a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

- b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

Several provisions of the country's Revised Penal Code are precisely that – too ambiguous, too broad, too arbitrary, too violative of people's rights as well as the rights of human rights defenders.

Aside of the laws and decrees mentioned above, the improvident use of generic "John/Jane Doe" warrants against activist leaders by many prosecutors who file charges against persons who, apart from being merely identified as "John Does," are not otherwise particularly described to distinguish them or set them apart from other persons. This practice has resulted in instances where the names of persons who are subsequently arrested are substituted in place of "John Does" in indictments even though the evidence extant in the records does not show any substantial identity between the former and the latter.

Thus, warrants of arrests are issued on the basis of affidavits of supposed witnesses without particular descriptions of "John Doe" against those who are invariably leaders/members of legal mass organizations, NGO workers, party list groups and even human rights advocates. In many cases, spurious or coached affidavits, if any, have been manufactured to justify the improper amendment of existing indictments to implead mass activists.

4. a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

- b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

The 1987 Philippine Constitution explicitly recognises the non-profit sector as the extension of "people's power" and enshrines their right to participate on all levels of decision-making.

The following pieces of legislation provide the legal basis for the various types of NPOs/NGOs (note the term NGO is not usually used in the Philippines and the term NPO is more common) recognised in the Philippines:

The Corporation Code of the Philippines provides the legal basis for non-stock, non-profit corporations.

The Cooperative Law of the Philippines and the Cooperative Development Authority Act provide the legal basis for Cooperatives.

The Labor Code of the Philippines for Labor Unions and Federations, and Rural Workers Associations.

The Republic Act 8763 and the Housing Guarantee Act for Homeowners Associations.

Registration is not required per se for the existence of NGOs, but they must obtain a legal personality in order for them to be eligible for opening bank accounts, to enter into contracts, and to raise public funds. NGOs usually obtain their primary registration from any of the following state agencies:

The Securities and Exchange Commission (SEC) for non-stock corporations.

Cooperative Development Authority (CDA) for Cooperatives.

Department of Labor and Employment for Labour Unions and Federations and Rural Workers Associations.

Housing and Land Use Regulatory Board (HLURB) for Homeowners Associations.

Licensing or accreditation from government agencies of local government units may also be required depending on the purposes and activities of the organisation. For more details on this see the NGO Sector and Regulation Review on the Philippines or our 2006 summary of the regulatory system for NGOs in the Philippines.

NGOs are obliged to regularly report and disclose information in relation to their operations. For example, a certificate of donation should be submitted to the donor, and the Bureau of Internal Revenue for each donation received; and the SEC requires that organisations submit audited financial statements and a General Information Sheet annually. The General Information Sheet includes the specific present address of the NPO, telephone and contact numbers, names of officers, trustees and members, their addresses and contributions and number of staff.

5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?
 - b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

We do not know of any sanction for this cases yet.

6. Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

On the contrary, the Human Security Act has been and is being used against human rights defenders. Of late, dubious cases have been filed against an indigenous activist who was illegally arrested (Candule of Zambales) and others (Saldy and Calibayan et. Al. of Agusan del Sur). The former case was dismissed by the trial court but it refused to award damages as mandated by the questioned law. Worse, the present government even wants to perpetuate this dangerous law by proposing amendments to lower the penalty for unwarranted detention that will no doubt even open it up to abuses by State agents.

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?
8. Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

In addition to those mentioned above, we see a dangerous trend with a local government ordinance regulating the conduct of medical and fact-finding missions in a province. The ordinance requires NGOs to acquire written permission from the local government to conduct these activities, as they will be penalized if do not comply with the requirements set forth in the ordinance. This sets a dangerous precedent that restricts activities of human rights defenders in conducting independent documentation, fact-finding and other socio-civic work. It has been used already against the holding of a Karapatan fact-finding mission in a militarized area in the province. We have attached a copy of the ordinance for your information.