

Criminalization of Human Rights Defenders: Trumped Up Charges

Briefing Paper Presented by

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**Human Rights and Democratisation: Trends and Challenges
under the Aquino Government
Konrad Adenauer Academy, Berlin
June 29 to 30, 2011**

I. Introduction

"When a State cannot meet its obligation to investigate human rights violations and prosecute the perpetrators that it becomes impossible to hold them accountable in law or in fact, a condition of impunity is said to exist."

Mr. Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, could not have been more apt in making such an observation in his report in 2007.

But dare I add that the situation even becomes worse if the justice system, upon which we expect to rely upon to seek justice for human rights violations, is by itself prostituted, abused and made an instrument for the systematic suppression of political dissent.

This was the character of the concerted efforts of the Armed Forces of the Philippines, Philippine National Police, Department of Justice and other government agencies during the

administration of Pres. Gloria Arroyo to file and prosecute cases against legal personalities.

We referred to it as the "legal offensive" not so much of its legality, because it has none, but because of the use of the legal processes for purposes of repression.

In brief, I intend to discuss during this talk and share with this body our insights on these so-called "trumped-up" charges.

II. **The Context of the Legal Offensive**

In 2006, former President Arroyo issued Presidential Proclamation 1017 declaring a state of emergency in the country and arrogating, in a way eerily reminiscent of the late dictator Ferdinand Marcos, legislative powers unto herself. Massive warrantless and invalid arrests were made of political dissenters from all spectrum. This was declared unconstitutional by the Supreme Court in a case filed by Bayan Muna and other groups.

Around this time, the government was at the height of the implementation of its National Internal Security Plan, the so called Operational Plan *Bantay Laya (OBL)* or Freedom Watch. This Internal Security Plan did not distinguish combatants from non-combatants, armed political dissenters from unarmed and legal political dissenters. Thus it resulted to the systematic violation of civil and political rights of countless individuals.

When Bantay Laya ended in 2010, 1207 activists fell victim to extrajudicial killings. Hundreds of activists became *desaparecidos*. Thousands more became victims of systematic

violations of the rights to life, liberty, security and other human rights.

This was the context by which the government pursued its legal offensive, as part and parcel of this internal security plan. It was going to be the epitome of the prostitution of the justice system to pursue a national policy of repression.

III. **The Legal Offensive under IALAG and OBL**

In 2006, then President Arroyo issued an executive order¹ forming an inter-agency ad hoc committee, the *Inter Agency Legal Action Group (IALAG)* at the national, regional and provincial levels. It was headed by the Office of the National Security Adviser and composed of representatives from the various government departments. Its principal task was to "coordinate all national security cases" and which cases were classified as rebellion, sedition and related offenses, and "national interest cases that threaten national security."

Its impact was fittingly pointed out by Prof. Alston when he said that the "most deleterious role played by IALAG bodies may, however, be to encourage prosecutors to act as team players with the AFP and PNP in counterinsurgency operations and not to prioritize cases involving the deaths of leftist activists".²

¹ *Executive Order No. 493 Series of 2006;*

² *Report Of The Special Rapporteur On Extrajudicial Summary Or Arbitrary Executions, Philip Alston, On His Mission To Philippines (12-21 February 2007);* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/130/01/PDF/G0813001.pdf?OpenElement>;

This is the reason for the deluge of trumped-up charges all initiated and pursued as part of a legal offensive against perceived enemies of the state.

Why do we call them as "trumped-up" cases?

A rather peculiar but sinister character in the filing of the cases was the fact that they *falsely* accuse legal personalities of rebellion, murder, arson, robbery and other crimes, committing acts like ambushes of soldiers, burning of buses and heavy equipments.

Consequently, 6 members of the House of Representatives, the equivalent of the *Bundestag* or lower house of Parliament in this country, were accused of rebellion and committing murder, arson and robbery. Leaders and members of peoples' organizations were also similarly charged. Development workers from the civil society and the non-government organizations also figured in different cases.

In Central Visayas alone, at least eight trumped up cases filed against development workers, leaders and members of people's organizations were documented in 2008. Central Visayas is only one of the 17 regions in the Philippines.

In 2006, charges for multiple murder were filed against Vimarie Arcilla, a human rights worker from Karapatan, and Manuel Bentillo, an organizer from Bayan Muna. In 2007, the same Karapatan worker, Miss Arcilla, was charged with kidnapping by the police and the military in Negros Oriental in connection with the rescue made of a witness to a case of a summary execution. The cases were dismissed by the Office of the Provincial Prosecutor.

In 2008, I was charged with two separate cases of murder and frustrated murder before the Office of the Provincial Prosecutor of Negros Oriental by the military and the police through the coordination of the provincial IALAG.

In one case, I was charged with having taken part, armed with an M-16 armalite, in an ambush of a group of soldiers somewhere in Sta. Catalina, Negros Oriental on 8 Sept. 2008.

In the other case, I was also charged with participation in an NPA ambush of another group of soldiers in another place in Sta. Catalina, Negros Oriental on 25 September 2008.

Five other development workers were included as my co-respondents in these cases, including Miss Cristina Munoz, my colleague and co-staff in the office.

So, if you are still wondering what an NPA rebel looks like in person, here I am!

These cases were rightfully dismissed by the Office of the Provincial Prosecutor of Negros Oriental in 2009.

But while we were confident at that time that justice was on our side, we were alarmed by the way the cases were filed. The police and the military were really bent on having us arrested without affording us the right to contest the charges before the prosecutor, and preventing us from doing our work as development workers and human rights defenders.

This is evident from the fact that Police Officers who filed the case and the soldiers who served as witnesses deliberately gave fictitious addresses as our supposed addresses where we could be served with subpoenae and notices.

Let it be stressed that I only read about my cases in the newspapers.

Had we not been able to answer the charges before the prosecutor, the cases would have been filed, and we would have been incarcerated until now since murder is a non-bailable

offense and resolution of criminal cases in our country takes as much as five years, at least.

Why were we singled out as respondents?

We are not NPA rebels, definitely. We may be critical of the government policies especially in so far as they are detrimental to the people's interests, but we have done our advocacy using legal and legitimate means. And most importantly, we did not commit the acts for which we were being charged.

But then, why would the government embark on such an outrageous proposition?

The answer is simple. The filing of these cases has but one purpose, that is, to keep us from doing our work as development workers.

To the eyes of the government, we are the enemies of the state and therefore should be neutralized. Because we are involved in issues which do not concern our own respective sectors, because we are critical of government policies, we are deemed as such. Even the Catholic Bishops Conference of the Philippines, the United Church of Christ of the Philippines and the Philippine Independent Church were considered as enemies of the state by the Department of National Defense purportedly by virtue of these standards.

Our work as development workers, as human rights defenders, made us legitimate targets for neutralization by the government under its Internal Security Plan OBL. And neutralization comes in many forms; 1) extrajudicial killing 2) enforced disappearances 3) intimidation and harassment and the 4) filing of cases.

The Inter Agency Legal Action Group was abolished by the Arroyo administration in May 2009 through another executive order³ but the legal offensive goes on. Its abolition came not much as a result of an admission of its being an anathema to human rights but was more of an audacious claim that "IALAG has already accomplished its mandate."⁴

From where I stand, and on a personal note, I could say that the cases affect us greatly in ways which could not be measured even by the language of international law.

The idea that the government, with all its vast resources, thinks of me as a criminal and that I should be placed behind bars for the rest of my life, has a chilling effect on me. And I could say that the others facing similar cases felt the same way.

Moreover, the filing of the cases was like a death wish if we are to take into consideration the undeniable fact that there was at that time an ongoing killings of legal personalities like myself.

IV. Prospects under the Aquino administration

To be candid, we harbour hopes that things would dramatically change under the Aquino administration as far as protection and promotion of human rights is concerned.

It is our hope that Pres. Aquino, whose father suffered greatly and was assassinated during the Marcos dictatorship, would take the lead in seeking justice for victims of human

³ *Executive Order No. 808, Series of 2009;*

⁴ *Second Paragraph, E.O. No. 808, Series of 2009;*

rights violations. And that he would use his vast powers as the President and Commander in Chief of the Armed Forces of the Philippines to put a stop to the systematic violation of human rights and the legal offensive.

After all, it was his campaign promise that he would lead the Filipino people towards a "righteous path" that won him the elections in 2010.

However, what is happening now is quite disturbing and worrying.

A year into the present administration and we have yet to see justice for victims of human rights violations. We have yet to see the government leading the prosecution of officers and members of the state security forces responsible for human rights violations. We have yet to see substantial gains in the promotion and protection of human rights under the Aquino administration.

Moreover, the present administration has even continued the prosecution of the trumped-up cases filed by IALAG in the previous administration.

Just last May 2011, we became aware of yet another case of rebellion filed in Negros Oriental. The allegations of the military and the police and the manner by which it was filed are all too familiar in a menacing way.

My colleague in CERNET, Miss Cristina Munoz, was again, allegedly among the NPA rebels who ambushed a group of soldiers last March 16, 2011 in Sta. Catalina, Negros Oriental. Again a wrong address was deliberately provided by the police obviously to keep Miss Munoz from defending herself before the said office.

As it is right now, after virtually admitting the failure of OBL and its failure to respect human rights, the government

is implementing yet a *new* internal security plan termed as *Bayanihan* which started this year. It speaks of protection of human rights as an integral component in the counter-insurgency campaign.

This might be a welcome development especially after having experiences a wanton disregard of human rights under the previous government. At least the military establishment now *formally* recognizes human rights as a valid issue in society.

However, I say this with guarded optimism. If the continued filing of trumped-up charges against legal personalities and development workers; if, the over 20 victims of extra judicial killings under the Aquino government will be deemed as indicators for the current state of human rights in the Philippines, then my friends, we still have a problem.

There is a lot to be done by the Aquino government lest these talks of human rights be reduced to mere lip service.

To reiterate, the Aquino administration must take the lead in ensuring that justice is obtained by the victims of human rights violations, that violators be prosecuted and punished. And finally, it must put a stop in a decisive manner to the systematic violation of human rights in the country including the legal offensive or the filing of trumped-up charges against legal personalities.

V. Our intentions.

From our end in the development work, we intend to persevere and continue our mandate, to bring empowerment to communities.

We intend to utilize the justice system, however limiting, to seek justice for human rights violations. We intend to train, capacitate ourselves and our partners in the communities how to utilize existing civil, administrative and criminal remedies not only for redress of violations of human rights but for its promotion and protection as well.

And might I end, that this activity is very timely and a blessing for the Filipino people as we are able to share with you the situation that we are in right now and perhaps with this sharing, be able to gain your sympathy and support in our quest for justice, for the protection and promotion of human rights of the Filipino people.

Ich danke Ihnen.

Maraming Salamat.