

ENHANCING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

Paper presented by Sr. Crescencia Lucero, Sfic
Deputy Executive Director
Task Force Detainees of the Philippines

INTRODUCTION

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” (Article 1)

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

*Adopted at the 85th UN plenary meeting
9 December 1998*

From the moment Mr. Benigno Simeon Aquino III started his bid for the presidency until his oath taking into office, the Philippine Online Chronicles has compiled 24 promises from the various sorties Aquino has attended to, promises on specific issues under a paradigm of anti-corruption. During the campaign period, the Philippine human rights community had asked all presidential candidates of their human rights agenda. The Aquino camp had only promised in traditional fashion to incorporate heights agenda in its governance.

True enough, in his inaugural speech he warned on the abuse of power by government officials. This signaled his slogan “Ang matuwid na daan” (the straight path) with war against corruption as the centerpiece of his administration. Viewing some of his pronouncements from the perspective of human rights, one could say at least that there are some possibilities that his administration would champion human rights as a guidepost of his anti-corruption slogan. Below are some broad strokes in his agenda which are Human Rights related:

- Job creation – more on skills development and infrastructure building
- Resumption of peace talks; IDPs
- Reforms in the Judiciary – more on administrative/personnel build-up rather than incorporation of human rights frame into the current criminal justice system
- Education – for competitive advantage; infrastructure
- Health – Philhealth for everyone; infrastructure
- Housing – in-city/on-site relocation
- Agrarian reform – irrigation; infrastructures

All these are packaged under anti-corruption campaign for social services which pre-supposes that internal systems within the government departments are alright and policy-guidelines are adequate.

After one year in office, it is sad to note that the Aquino Administration has:

- NO POLICY STATEMENT ON HUMAN RIGHT
 - No statement on the Human Security Act
 - No statement on legislations pending 14th Congress on EJK, Enforced Disappearance, Right to Information Bill, etc.
- NO MARCHING ORDERS ON CURRENT HUMAN RIGHTS CONCERNS AND ISSUES
- NO CLEAR POLICY ON INTERNATIONAL HR INSTRUMENTS, PROTOCOLS OR MECHANISMS THAT REMAIN PENDING
- NOT A SINGLE WORD ON AGRARIAN REFORM OR SOCIAL JUSTICE

The Aquino administration has not drawn up its human rights agenda. The draft of the 2nd Human Rights Action Plan of the Philippines for 2010-2014 (NHRAPP-2) has not been finalized. There is continuing extra-judicial killings, unsolved/unaddressed enforced disappearances, arrests and torture. With the current human rights environment, IMPUNITY AND DE FACTO IMMUNITY exists. It has failed to provide a clear road map for human rights protection and social dispensation.

However, a window of hope remains: the Philippine Constitution remains clear in its mandate to guarantee full respect of human rights to ensure human dignity. Civil Society Organizations, NGOs, POs and individual citizens must remain vigilant and together consistently engage, assert and defend peoples' rights. In these engagements and assertions as human rights defenders, the UN Declaration on Human Rights Defenders serve as a roadmap:

1. *Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.*
2. *Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.*

1. HUMAN RIGHTS DEFENDERS (HRDs)

Life is always threatened in the conduct of Human Rights promotion and defense particularly in relation to issues or where there is breakdown of peace and order or where there is controversial alignment of power. In those places, HRDs are in constant danger of attack. Second most common danger to HRDs in relation to their work is in forms of harassment. This comes either through psychological intimidation and threat, or through legal forms; e.g. libel or false accusations as one of the Jean or John Does in a pending case in courts or accusation of any criminal offense. The third most common danger to human rights work is the dominant social perception that human rights is actually Left. If the social perception is so then no wonder we are called "enemies of the state".

- To cite, Ms. Rita Melecio, Task Force Detainees of the Philippines worker in Mindanao for more than ten years was trailed by unknown persons while documenting a report of a human rights violation. Previously, Ms. Melecio was tagged as a member of the revolutionary underground and her name appeared in a slide presentation of the military (Know Your Enemies).
- This first half of 2011, leaders and members of people organizations who are also members of HRD-Pilipinas were visited by elements of the military, tagged them as supporters of the New Peoples Army and requested to report to the former.

Clearly, the patterns of harassment and intimidation have not ceased even with the ascension of a president who allegedly is pro-human rights.

2. PROTECTION OF HUMAN RIGHTS DEFENDERS

In coming up with protection mechanism, specific circumstances (particular issues or the condition of the area or of society in general) come as a big factor for consideration – the more dangerous the situation, the more protection is needed. Thus, a good protection mechanism for HRDs must be a combination of various levels at play.

Generally, the first level of protection is the PROTECTION OF PERSON. It does not necessarily mean arming one's self rather one must have a personal appreciation of threats or analysis of situation and come up with proper measures to avoid undue exposure. Example, in entering an area without local guide or have no clear knowledge of the area condition, whether during the day or night, those are factors done on daily basis to ensure one's protection. Don't be so aggressive in making decision – ANALYZE SITUATION.

INDIVIDUAL LEVEL

- Individual precautionary measures: Not to establish pattern; work in teams; no unnecessary exposure.
- Legal status: Work within the bounds of law and with integrity

The second level of protection is offered by your own organization whether local or regional or international. There must be an organized approach to security. Example; entering and coming out from an area, there must be clear steps as to what to do. And, while you are in the community, what should be properly done. Same with the local organization, it must have appreciation of threats and must be able to come up with precautionary steps.

ORGANIZATIONAL LEVEL

- Networking: Strong support system among HR, communities and peoples organizations; strong, consolidated HR Network; concerted actions and mobilization.

- Continuing education: Training and capacity-building formation for HRDs particularly on security and precautionary measures. Heightened awareness and define the risks. Regular conduct of risk analysis as basis for assignment and strengthen legal identity of HRDs.
- Timely documentation, communication and info-dissemination of cases: Provision and maximization of technology for systematic documentation and monitoring, communication and information.
- Provision of insurance benefits: Life, health, accident, travel insurances and fund for HRD security
- Formation of pool of lawyers: Provision of legal services
- Regular dialogue with various stake-holders: Regular consultation and cordial relations with gov't agencies.
- Organizational security policy
- Formation of Quick Response Teams (QRTs)
- Accreditation from govt institutions

The third level of protection is those provided by government. Whatever your view of Government would be, remember that it has the mandate to provide protection whenever necessary. I am talking here of government which is either neutral on issue or having a pro-active attitude on an issue. But in cases when the government is against you, the question is to identify elements within that government that are sympathetic to you or those who are resolved to the cause and mandate of human rights promotion and protection. Usually there are lots of things possible to work out in this case that include information, negotiating access, policy making, etc... This comes in a range of possibilities from small to big concessions.

GOVERNMENTAL LEVEL

- Legislative measures: Enhancement of legislative environment and implementation of HR laws and policies.
- Mainstreaming human rights work: Among executive, judicial, law enforcement and local government units (BHRAC) and schools.
- Prosecution: Bringing perpetrators to the bar of violators.
- Stop vilification of HRDs/orgs.
- Strong political will.

Another level comes from those that exert influence on government and on contending parties. Usually they are the Church, media, international pressure that may be a factor to the security of human rights defenders not only because of their moral or legal position but also because they have access to government beyond ordinary circumstances. Here, we are talking of institutions and not mere specific people. Institutions have specific role in a democratic society. Like

media, it needs to air out the truth and such role has pre-emption to possible threat to HRDs. If it hides this truth, it has violated its role in society.

- INSTITUTIONAL LEVEL
- Sanctuary program: Provision of sanctuary services by churches and congregations.
- Media integrity: Strengthen the role of media.

There is also a certain level when a particular place is under a rebel command or political armed groups hold sway in the area. They also have a role to play if they are not your “enemy”. In some very specific circumstances you need to dialogue with them in terms of their position on issues and to guarantee security of human rights defenders in the area.

- SPECIAL SITUATIONS
- Dialogue with the rebels: Setting agreement with rebels for the protection of HRDs
- Laying down of HR agenda with the warring parties

In all levels of protections, the specific to the need for A STRONG NETWORK is important. Given the concrete condition of our society today, one practical role of a network is to help reorient human rights work to include “all” particularly the protection and promotion of the rights of human rights defenders. Here, organizational vision, mission and programs of each organization must be revisited and aligned at resolving conflict in understanding and practical orientation on human rights and human rights work.

The proper combination of these levels highly depends on the situation of the area/society. In a functioning democracy, everybody has a responsibility to anybody; even ordinary citizen. Thus, protection for HRDs is a responsibility of EVERYBODY.

3. WITNESS PROTECTION PROGRAM (WPP)

Republic Act 6981: An Act Providing for a Witness Protection, Security and Benefit Program and for Other Purposes (*Witness Protection, Security and Benefit Act*)

- Approved on April 24, 1991, during the Eighth Congress
- Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted to the program
- Provided, that:
 - The offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;
 - His testimony can be substantially corroborated in its material points;
 - He or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him

from testifying, or to testify falsely, or evasively, because or on account of his testimony; and

- He is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act.

Rights and benefits of witness under RA 6981

- Reasonable traveling expenses and subsistence allowance while acting as a witness
- Free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness
- Burial benefits of not less than P10,000 if the witness is killed because of his participation in the program
- Free education from primary to college level for the minor or dependent children of a witness who dies or is permanently incapacitated
- Non-removal or demotion in work because of absences due to his being a witness and payment of full salary or wage while acting as witness

Weaknesses of the Witness Protection Program

(Reference: PHILIPPINES: Reforms required immediately to protect witnesses, August 27, 2010, ALRC-CWS-15-10-2010, HUMAN RIGHTS COUNCIL, Fifteenth session, Agenda Item 4

A written statement submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization with general consultative status)

- The Witness Protection Program (WPP) of the government of the Philippines “should be reformed and fully implemented.” – report to the Human Rights Council of Prof. Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions in April 2008
- Limitations of the law: Under the law a person who is "testifying or about to testify before any judicial or quasi-judicial body" can be admitted in the program. However, under the existing practice, witnesses are only admitted when the case they are testifying in has been filed in court. There is no interim protection mechanism available for persons who are waiting for a decision by the DoJ if the person is qualified to act as a witness. There is also no time limitation for the DoJ to resolve applications for protection under the program. This denies potential witnesses protection at times when they may need it urgently
- In many cases the failure by the government to provide interim protection prior to DoJ approval of applications has been preventing most witnesses from coming forward. It also therefore prevents cases from being filed in court for prosecution even if there are witnesses available, or being dismissed due to a lack of witnesses willing to testify.
- No provisions concerning breaches of confidentiality: Before witnesses are admitted to the program, the law provides for punishments for government employees who breach data confidentiality concerning the identity of the witnesses. The law, however, does not

have any provisions concerning sanctions against persons who are not part of the government and who put witnesses at risk by exposing their identities.

- The WPP is built on political control: The DoJ is under the control and supervision of the executive branch of government. When cases that the DoJ is prosecuting conflict with the interests of the executive and its officials, the implementation of the WPP is detrimentally affected. Any applications that risk undermining the government will likely be rejected.
- Weak support system: Most witnesses are reluctant to testify because of the very poor support system provided by the DoJ, particularly the financial support given to the witnesses' families.
- There is also no support system for recreation and self development for witnesses for them to become productive, alongside the protecting and security aspect of the program.
- Uneven application of the law: The law provides no interim protection for witnesses. However, influential persons who have connections in the government can obtain security and protection.
- Under the law, policemen and military are not qualified to be admitted under the program; however, in cases in which these policemen are testifying against their superiors, who have power and authority over their promotions, assignments and other aspects, it is simply impossible for them to come forward and testify without protection.
- The National Bureau of Investigation (NBI), a special investigating body attached to the DoJ, can provide protection to witnesses, but such protection would have to be paid for by the person being protected. This prevents witnesses and victims' family members from testifying or asking for protection.
- Prisoners who are also witnesses: For a prisoner who wants to testify, the policy on whether or not he can also qualify to enlist in the program is not clear.
- The police's role in protecting witnesses: In practice, while the police encourage witnesses to come forward, they do not take prompt or effective actions to protect them.

4. AMRSP SANCTUARY PROGRAM

The Association of Major Religious Superiors in the Philippines [AMRSP]) Sanctuary Program is a Sanctuary Network for Human Rights Victims, Witnesses and Families whose lives are at risk.

Objectives:

- To provide refuge and protection
- To build a strong and broader network of supporters for the Sanctuary program
- To lobby for the enhancement of the WPP of the government
- To provide legal assistance
- To provide psycho-social assistance and spiritual/moral support.

Results:

- Establishment of an alternative support mechanism with a nationwide network;
- Deeper understanding and appreciation of the program among religious families and their network;
- Accompaniment/journeying presence of religious in court hearing and legislative inquiries;

- Whistleblowers/Truth-tellers were encouraged to come out knowing that they have support mechanism from the AMRSP;
- A significant number of religious congregations are willing to support the program;
- The government has recognized AMRSP when it invited the latter to meetings regarding the Witness Protection Program;
- Public appreciation of the invaluable role of religious in support of the campaign for good governance;
- Survivors/victims have recognized the valuable contribution of AMRSP in providing a safe haven including spiritual and psychosocial support;
- Rebuilding lives/reintegration to the community of the whistleblowers and human rights defenders;
- Financial/material support/sharing of resources were generated among the religious and their network;
- Given courage to survivors/whistleblowers to fight for justice through the filing of cases;
- Whistleblowers encourage and support fellow whistleblowers/truth tellers

CONCLUSION AND RECOMMENDATIONS

- The government's campaign is anchored on anti-corruption. This has resulted to more exposés on corruption, even within the military. This gives us a ray of hope.
- A bothersome note, however, is the lack of a public pronouncement by the President neither on human rights nor on impunity and de facto immunity of perpetrators.
- Reforms must be done in the Philippine justice system;
- People's access to justice and respect for human rights need to be improved;
- Significant legislation in Human Rights Protection
 - Laws on EJK and ED
 - Incorporating International laws and IHL Principles through ratification or adoption of HR conventions, protocols and mechanisms
 - Freedom of Information
- Amend the WPP to provide for better protection measures.
- Strengthen trust and confidence in existing State institutions to guarantee public accountability;
- Strengthen the Commission on Human Rights as a National Mechanism for Protection;
- Ratify the Rome Statute of the International Criminal Court to provide solid foundation to the question of Command responsibility (Art.28, Rome Statute of the ICC)

While there are challenges for the government, the civil society and the AMRSP through its Sanctuary program, continue to play a significant role in the work for support and empowerment of the people for the sake of human rights, justice and peace.

