

Philippines

Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-18 April 2008

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

- Under section B, Amnesty International raises concern over shortcomings of legislation to prevent arbitrary arrest and unlawful detention.
- In section C, we describe concerns related to political killings and impunity for human rights violations, unfair trials, conditions of detention of both adults and minors, and torture and ill-treatment.
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of State

Arbitrary arrest and detention

Amnesty International is concerned that provisions of the Revised Penal Code and the Rules on Criminal Procedure could put individuals at risk of arbitrary detention.

In the Philippines, a primary safeguard underpinning the right not to be subjected to arbitrary arrest is the general rule that a person can only be arrested on the basis of a warrant issued by a judge upon a finding of probable cause. This rule allows a judicial officer, independent of the executive arm of government and other law enforcement agencies, to exercise oversight, assess the grounds for an arrest, and maintain a degree of scrutiny over the detention and any subsequent investigations.

However, the safeguards preceding the issue of an arrest warrant are not absolute. These can be circumvented by the overuse, and abuse, of legal provisions that allow arrest without warrant in the specific circumstances where an arrest is effected during, or immediately following, a crime. This is exacerbated by extensive jurisprudence that has interpreted certain crimes, including “rebellion”, as “continuing offences”. Amnesty International is concerned that the use of arrests without a warrant is extensive and that many of these arrests may be arbitrary.

By law, when a suspect is arrested without a warrant, he or she must be taken to the nearest police station or jail and, following a summary inquest procedure, an ‘information’ (prosecution file) must be filed in court within 36 hours. This limited period of police custody can only be extended if the suspect signs a waiver and requests a preliminary investigation before the ‘information’ is filed in court. The time between arrest and filing of an ‘information’ is known as custodial investigation. This is a period during which forced confessions may be sought, which can leave a detainee at risk of torture and ill-treatment.

By law, the prosecutor must determine the lawfulness of the arrest on the basis of the summary inquest, which also provides an opportunity to examine the treatment of the person under arrest. However, it is not clear that prosecutors have the requisite independence, and the process often consists merely of a cursory assessment of evidence on paper and thus becomes a semi-automatic mechanism for the filing of charges. Amnesty International is concerned that the inquest therefore falls short of upholding the right of the defendant to challenge the legality of detention and to be brought promptly before a judge or other judicial officer.

With regard to arbitrary detention, Amnesty International has a number of concerns in relation to provisions contained in the Human Security Act (HSA). Section 26 of the Act places restrictions on freedom of movement of an individual placed under house arrest, even on the basis of weak "evidence of guilt". Amnesty International is concerned that the Act may be used to target the peaceful activities of legal leftist organizations, including by resort to the vaguely worded offence of being "accessory" to the crime of "terrorism". Other concerns relate to mandatory sentences, restrictions on the right to bail and the possibility of detention without warrant, charge or trial for three days, which can be extended. Amnesty International is concerned that the Act could be abused by authorities to pursue arbitrary detention of political opponents. Several cases are pending before the courts challenging the constitutionality of the Act.

C. Promotion and protection of human rights on the ground

Political killings and impunity

In recent years there has been an increase in the number of killings of political and community activists in the Philippines. The targets of such killings are predominantly associated with legal leftist or left-orientated groups, community leaders and journalists. The killings are mostly carried out by unidentified men often wearing face masks, who shoot the victims before escaping on motorcycles. These kinds of killings are rarely the subject of thorough investigations leading to the arrest, prosecution and punishment of those responsible.

Amnesty International is gravely concerned that members of the security forces appear to have been complicit in or have acquiesced to many of the killings. Features common to these killings suggest that the attacks are not an unconnected series of criminal murders, but a pattern of politically-motivated killings, connected to counter-insurgency operations. The attacks tend to be preceded by death threats and surveillance by persons reportedly linked to the security forces, the victims tend to be leftist, and a general lack of investigation and prosecution have shielded the perpetrators from being held to account.

Amnesty International is concerned that the failure to deliver justice to the victims of such killings reflects a reluctance on the part of the government to fulfil its obligation under national and international law to protect the right to life of every individual within its jurisdiction. The organization is also concerned that these killings have played a major role in the break-down of the protracted peace process and an accompanying human rights agreement between the government and the National Democratic Front (which represents the Communist Party of the Philippines and its armed wing, the New People's Army).

Amid reports of ineffective investigations and with the failure of the state to provide an effective witness protection programme, perpetrators are rarely brought to justice. In May 2006, the authorities set up a special police investigative task force, and in August 2006, the President established a Commission of Inquiry, known as the Melo Commission, which released its initial findings in February 2007. Despite these positive initiatives, only a limited number of people have been arrested and only a few cases have been filed in court. No one has been held accountable so far for cases stretching back to 2001.

In July 2007 the Supreme Court held a summit to address the specific issue of political killings, enforced disappearances and the impunity surrounding them. On October 24 2007 the Supreme Court decided to introduce the Rule on the Writ of Amparo, which could be an effective tool to combat disappearances. The *amparo* procedure is being tested on some key disappearance cases and its implementation could be a positive step forward. Amnesty International is concerned, however, that the implementation of the writ of *amparo* is endangered by the issuance by the President of Administrative Order 197, which calls for “legislation for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security”. This may be an attempt by the government to counter *amparo* writs by invoking national security or confidentiality of information.

Detention and the administration of justice

Amnesty International is concerned that criminal suspects are at risk of torture and other ill-treatment during extended periods of “investigative” detention. During such detention, interrogation, often through torture, is aimed specifically at producing self-incriminating statements and the names of accomplices which can then be used as the basis for further arrests.

Despite an array of legislative and procedural safeguards, minors in detention continue to be at risk of physical or sexual abuse and held in poor conditions. Children are at times detained with adults in overcrowded facilities and exposed to abuse from other prisoners. Inhumane prison conditions also affect adult male and female prisoners and incidents of excessive use of force by the authorities have been reported.

Torture and other ill-treatment

Amnesty International is concerned that torture and ill-treatment persist within the criminal justice system and the Armed Forces of the Philippines. Despite government ratification of the Convention against Torture, the revised Penal Code does not penalise the crime of torture, Torture often accompanies abductions of suspected rebels or sympathisers. Police often use torture to extract confessions, when pressured to solve a case quickly or in high profile cases.

D. Identification of achievements, best practice, challenges and constraints

In June 2006, the Congress of the Philippines approved a Bill to repeal the Death Penalty Law, and the President subsequently signed the Bill into law. Amnesty International welcomes this positive development as well as the accession by the Philippines to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. Furthermore Amnesty International welcomes the visit by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to the Philippines in February 2007 and the aforementioned introduction of the Rule on the Writ of Amparo.

However, these are some key challenges that the government must address to uphold its commitment to human rights, including as a member of the Human Rights Council:

- The government must strengthen the provisions of its Criminal Code regulating the safeguards preceding the issue of an arrest warrant and clearly and effectively prohibit arbitrary arrests from taking place; the Human Security Act must be applied in consistency with these safeguards;
- The government must ensure that all reports of unlawful killings are investigated promptly, impartially and effectively, including by strengthening the witness protection program, and that those responsible are brought to justice in trials that meet international standards of fairness;
- The government must condemn all political killings, and prohibit labelling of legal political groups as 'communists'. It must take effective measures to prohibit superior officers from authorising, tacitly encouraging or inciting other persons to carry out unlawful killings, and also ensure that military or police personnel suspected of involvement in political killings are suspended from active duty during investigations;
- Dependants of victims of unlawful killings should be entitled to fair and adequate reparations, including financial compensation;
- The government must support the effective implementation of the Rule on the Writ of Amparo and reinforce its witness protection programme;
- Torture and other ill-treatment must end. All complaints must be investigated promptly, impartially and effectively and suspected perpetrators brought to justice in trials that meet international standards of fairness;
- Effective measures must be taken to ensure prison conditions are consistent with international standards at all stages of detention, with special emphasis on the protection of minors;
- The government must strengthen and ensure the independence of existing accountability mechanisms such as the office of Ombudsman and Congressional oversight to address political killings that have been attributed to public officials;
- The government must renew efforts to comply with the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law.

Amnesty International documents for further reference:

Arbitrary Arrest and Detention

- *Political Killings, Human Rights and the Peace Process*, AI Index: ASA 35/006/2006

Political Killings and Impunity

- Annual Report entry 2006
- Annual report entry 2007
- *Political Killings, Human Rights and the Peace Process*, AI Index: ASA 35/006/2006
- *Philippines: towards ensuring justice and ending political killings*, AI Index: ASA 35/010/2006

Detention and Administration of Justice

- Annual Report entry 2006
- Annual report entry 2007

Torture and ill-treatment

- *Torture persists: appearance and reality within the criminal justice system*, AI Index: ASA 35/001/2003