

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Tuesday, March 28, 2017

H.E. Rodrigo Duterte
President of the Republic, Malacañang Palace,
JP Laurel St., San Miguel,
Manila Philippines
Fax: (+632) 742-1641 / 929-3968
E-mail: op@president.gov.ph;

Dear President Duterte,

Re: Impartial and timely investigation of arrest and detention of Senator de Lima

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote human rights and the rule of law internationally through advocacy, legal research and education. LRWC also campaigns for lawyers and other human rights defenders in danger because of their advocacy. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC joins the International Commission of Jurists, the Global Commission on Drug Policy, Amnesty International, Filipino human rights defenders, environmental advocates, people's organizations, and international rights groups in denouncing the arrest and ongoing detention of Senator Leila De Lima.

Senator De Lima has been a vocal and high-profile critic of your government's "war on drugs" which has resulted in thousands of extrajudicial executions and other human rights violations, of mostly poor, defenceless victims. The arrest and ongoing detention of Senator De Lima appears to be a blatant attempt by the Philippine government to silence criticism of the "war on drugs" and divert attention away from serious human rights violations that continue to result.

Background

On 23 February, the Muntinlupa Regional Trial Court in Metro Manila issued a warrant for the arrest of Senator Leila de Lima. De Lima faces three criminal charges under the *Comprehensive Dangerous Drugs Act* which penalises the "sale, trading, administration, delivery, distribution and transportation of illegal drugs." The charges are based, in part, on accusations by inmates of New Bilibid Prison. However, employees of both the Bureau of Corrections and the Philippine National Police have stated that Department of Justice Secretary Vitaliano Aguirre authorized the provision of material benefits to the inmates – including televisions, cell phones, internet access and air conditioning units – after they provided testimony against de Lima.

If found guilty, de Lima faces a sentence of 12 years to life in prison. De Lima denies all the charges against her, and has maintained that she is a victim of political persecution.

Philippines' International Law Obligations¹

Historically in the Philippines, criminal proceedings against political figures have been based on false accusations rather than evidence properly gathered. While the government has a duty to investigate criminal activity and bring to justice those responsible, they must do so through an independent and impartial process that conforms to international law and standards.

The Philippines must comply with its obligation under international human rights law. Senator De Lima's arrest and detention, triggered the Philippines' international legal obligations to ensure timely, independent and effective investigation and if necessary, trial. As a member of the United Nations (UN), the Philippines has agreed to respect and observe the rights guaranteed by the Universal Declaration of Human Rights (UDHR). Senator De Lima also has the presumptive right to pre-trial release unless and until risks of flight, interference with evidence and/or reoccurrence have been established *and* detention is the only means to address the established risk(s).

As a party to the International Covenant on Civil and Political Rights (ICCPR) the Philippines has accepted the responsibility and obligation to observe the rights guaranteed that the ICCPR imposes on the Philippines and other State Parties. Failure to uphold these duties might require a State to appoint an independent inquiry of investigation. These duties are also affirmed by the UN Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)², the Basic Principles on the Role of Lawyers (Basic Principles)³, and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.⁴

The UN Human Rights Committee (HR Committee) has affirmed that the ICCPR Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State and/or private actors. Failure to take such measures can constitute violations by the State itself of the ICCPR. The HR Committee stated in General Comment 31:

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or

¹ The references in this section are taken from various LRWC publications on the Duty to Investigate that can be accessed here <http://www.lrwc.org/library/know-your-rights-index/duty-to-investigate-and-remedy/>

² 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 plenary meeting 9 December 1998 and adopted by the U.N. General Assembly 8 March 1999 A/RES/53/144. Article 9.5 specifically requires States to "conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred

³ Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana 27 August to 7 September 1990. U.N. Doc. A/CONF. 144/28/Rev. 1 at 188. (1990).

⁴ Impartial and timely investigation of arrest and detention of Senator de Lima

entities.⁵

The ICCPR guarantees and imposes on the Philippines obligations to protect and ensure the rights of Senator De Lima to liberty, freedom from arbitrary arrest and detention (Article 9.1), the presumption of innocence (Article 14.2) and pre-trial release (Article 9.1 and 14.2). Regarding the right to be presumed innocent the HR Committee, in *ICCPR General Comment No. 32*, paragraph 30 states, “According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.” Consistent with the presumption of innocence and the presumption in favour of liberty, the HR Committee further states that “[p]re-trial detention should be an exception and as short as possible.”⁶

Under the ICCPR, Senator De Lima can be detained pending trial if, and only if risks of flight, interference with evidence and/or reoccurrence have been established in court *and* detention is the only means to address the established risk(s). Absent such findings, Senator De Lima is entitled to release.

With regard to the right to pre-trial release the HR Committee, explains that,

The drafting history of article 9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances [footnote omitted]. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.⁷

The UN Investigation Principles, adopted by UN ECOSOC and welcomed by the UN General Assembly in 1989, reflect a global consensus on the standards for investigations.

Recommendations

LWRC calls on the Government of Philippines to ensure:

1. Thorough, competent, impartial and effective investigation of the arrest and detention of Senator De Lima;
2. That Senator De Lima be immediately granted pre-trial release in accordance with the ICCPR;
3. Compliance with all relevant provisions of the UDHR, ICCPR, Declaration on Human Rights Defenders, and Basic Principles of the UN Investigation Principles.
Please advise LRWC of the actions that the Government of Philippines is taking to remedy the arrest and detention of Senator De Lima. LRWC awaits your response.

⁵ HR Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8

⁶ *CCPR General Comment No. 8: Right to liberty and security of persons (Art. 9)*, 30 June 1982, at para. 1, online <<http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/f4253f9572cd4700c12563ed00483bec?Opendocument>>.

⁷ HR Committee: Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, at para. 9.8, reaffirmed, *inter alia*, in Communication No. 1085/2002, *Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Youfsi v. Algeria*, at para. 8.3, and Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*, at para. 6.1.

Sincerely,



Benjamin Levine, Case Monitor for Philippines LRWC

Copied via electronic mail to the following:

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