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Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Philippines: Reforms required immediately to protect witnesses

The Asian Legal Resource Center (ALRC) welcomes the discussion during the 15th session of the Human Rights Council (HRC) concerning the OHCHR's report on programmes and other measures for the protection of witnesses. The issue of failing witness protection systems is a key element in many Asian countries that permits impunity for State agents accused of grave human rights violations. In this submission, the ALRC will focus on the problems concerning the witness protection systems in the Philippines.

In his report to the Human Rights Council on April 2008, Professor Philip Alston, UN Special Rapporteur on extra-judicial, summary or arbitrary executions, recommended that the Witness Protection Program (WPP) of the government of the Philippines "should be reformed and fully implemented." The ALRC has also informed the HRC in a written submission to the 9th session about the government's failure concerning the WPP's implementation, identifying this failure as the "the prime cause of the lack of witnesses and therefore convictions."

Despite the commitments made by government representatives during the Universal Periodic Review (UPR) to "protect the rights of all its citizens, and observe the Universal Declaration of Human Rights," the government has failed to introduce any effective reforms to the existing law on witness protection to ensure its full implementation and encourage witnesses into coming forward. This is required in order to improve the country's poor conviction rate. The government's failure to urgently implement the needed reforms has led to cases being withdrawn from court and even key witnesses, for example a key witness in the high-profile 2009 massacre of journalists, being killed.

The ALRC would like to draw the Council's attention to the much-needed reforms to the Witness Protection, Security and Benefit Act (Republic Act 6981) that the government still has not performed and urge the Council to take all measures necessary to ensure that the government of the Philippines exhibits the appropriate levels of cooperation with UN experts and mechanisms, notably by implementing the recommendations made by Special Rapporteur Philip Alston and pledges made during the UPR.

No amendment to the existing law: The proposed amendment to the existing "Witness Protection, Security and Benefit Act (RA 6981)", which was declared by Professor Alston in his report as "deeply flawed", is pending in the two houses of Congress, the Philippine Senate and the House of Representatives. According to its official website,¹ the proposed amendment authored by Roilo Golez in the House of Representative, remains "pending with the Committee on Justice since July 27, 2010". The full text of the said proposal for amendment, however, is not available to the public, preventing a public debate on the matter.

Proposed Senate Bill 2081, authored by Senator Francisco Pangilinan, seeks to amend section 4 of RA 6981 to "provide for a separate Witness Protection, Security and Benefit Program for the resource persons and/or witnesses in legislative investigations." There has been no substantial progress concerning this Bill since it was first announced on February 13, 2008. Under the existing law, the screening, approval and implementation of the program is under the absolute control of the Department of Justice (DoJ). In highly political cases involving high-ranking government officials the DoJ lacks the independence and credibility to effectively protect witnesses testifying against government officials or

¹ Golez, Roilo S.: <http://www.congress.gov.ph/members/search.php?congress=15&id=golez-r>

members of the security forces accused of perpetrating crimes. For example, the Solicitor General, who is under the DoJ, also represents the interest of the military and police forces in court cases, and therefore has a conflict of interest in protecting witnesses standing against these forces.

The Senate's decision to increase the budget of the WPP from 84 million Pesos to 114 million Pesos for year 2009 deserves appreciation. However, unless this increase is accompanied by amendments to the budget allocation of the law, there is no guarantee that the WPP, which reportedly maintains only two staffs and borrows staff from the National Prosecution Service (NPS),² also attached to the DoJ, can the WPP be shielded from political interference and control. As of December 2008, a total of around 560 state witnesses were known to have received protection under the program nationwide.

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 programme. 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, which screens witnesses for the program to determine 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.

The killing on June 14, 2010 of Suwaib Upham (nickname Jessie), one of the key witnesses for the prosecution concerning the high-profile Maguindanao massacre illustrates the gross failure by the DoJ in responding to applications requiring urgent response. At the time of his murder, Suwaib was not officially yet under the program. He had been waiting for the DoJ's decision for inclusion in the program since March after submitting the necessary application papers, but the DoJ rejected his application in to April 2010, after a long delay, without giving adequate explanation.

While private prosecutor Harry Roque considered Suwaib, who took part in the killing of 57 people in the November 23 massacre, as being a "strong witness," former DoJ acting secretary Alberto Agra, referred to him as a "killer." Roque reportedly said that Agra "did not give a reason for not taking" him under the programme. Suwaib was killed the day before he was to fly to Metro Manila to re-apply for inclusion in the program after learning about a change of leadership in the DoJ.

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 programme, 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 killing of Suwaib Upham, one of the key witnesses concerning the Maguindanao massacre, can be attributed to the failure to protect his identity and illustrates the lack of accountability in preserving confidential information.

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

² http://www.senate.gov.ph/press_release/2009/0509_escudero2.asp

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. The DoJ Secretary is the final arbiter under the law concerning the implementation of the WPP. In order to avoid being under the control of the DoJ, other bodies, for example the Commission on Human Rights (CHR), have had to develop their own witness protection programmes, notably in this instance to deal with cases involving human rights violations by State-agents.

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. The amount the witness receives, once admitted to the program, is very low compared to the income the person typically had before he/she was admitted to the program. It cannot support their family, especially if the case drags on for years. For example, the witness to the murder of journalist Dennis Cuesta on August 9, 2008, has reportedly struggled to meet the needs of his wife and children, who were also under the program. They are only given 8,000 Pesos (USD 177) allowance a month. He lives with his family in a safe house run by the program but the living costs in the place where they live are very high and they can't find alternative sources of income to meet their needs, including the children's schooling.

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. Concerning the witness in Cuesta's case, all he does all day is "watch television, read books, and worry about the safety of his children," according to a report by the Committee to Protect Journalist (CPJ). Witnesses who suffer from trauma do not have any opportunity to receive professional psychological support or treatment. For many persons being admitted to the program is tantamount to becoming a guarded prisoner.

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. In the massacre case mentioned above, the policemen who wanted to testify against accused policemen in the case were given interim protection by the DoJ.

Under the law, policemen and military are not qualified to be admitted under the programme; 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. In one case, after torture victim Rundren Lao and ten of his companions filed charges against policemen following their arrest on February 2006 in Buquias, Benguet, they were informed of a plot to kill them inside the prison. The prisoner, who admitted having received the 100,000 Pesos (USD2,200) and a knife he would use to kill them, chose to inform the victims of the plot instead. He was willing to cooperate in the investigation to disclose the identities of those who planned the killings on the condition that he would have protection. However, despite having been informed of this, the authorities concerned paid no attention to his request and the identities of those planning the killings were never ascertained.

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. Under the police force's rules, it is the responsibility of the police to give protection to any person that

is being threatened, even if the person is not a witness. If necessary, the police may request/recommend that the DoJ admit the person to the program once a case is filed. Because of the lack of protection for witnesses at the early stage of the process, such as during police investigations, most cases do not progress beyond the initial stages of investigation. For example, this is the case in at least 538 cases of vigilante killings since 1998 in Davao City that the Commission on Human Rights (CHR) had investigated by early 2009. In principle those who are testifying or are about to testify can be admitted into the program. However, witnesses who help the police are often not officially enlisted in the program. The police obtain information from them but do not give them protection. Without binding arrangements between the police and witnesses, the latter are not under any legal obligation to appear in court and often can't be found.
