

Human Security Act: 'Draconian, fascist'

Contributed by Dr. Rainer Werning

The anti-terrorism law is draconian, anti-people, and is very dangerous. Another fundamental point is, it does not cover the acts of terrorism of the State itself which is the worst kind of terrorism.

An interview with Atty. Edre Olalia

Dr. Rainer Werning, lecturer at the Internationale Weiterbildung und Entwicklung of Bad Honnef, Germany, interviewed Filipino lawyer Edre Olalia, on the side of the Permanent People's Tribunal (PPT) Second Session on the Philippines, March 21-25 this year, at The Hague, The Netherlands. Olalia is the President of the International Association of the People's Lawyers (IAPL) and the international officer of the Council for the Defense of Liberties (CODAL). He is also a member of the Public Interest Law Center (PILC) that gives pro-bono counseling to clients from the marginalized sectors in Philippine society. Olalia was in The Hague, The Netherlands as one of the prosecutors of the PPT session on behalf of the plaintiffs of the Filipino people under Hustisya, Desaparecidos, Selda and Bayan.

Dr. Werning recently held a series of lectures about the European legacy in the Philippines at the Ateneo de Manila University, German Club, and University of San Carlos (Cebu). His interview with lawyer Olalia covered President Arroyo's legal powers, the Human Security Act, and the PPT session on the Philippines.

Excerpts of his interview with Atty. Olalia:

Rainer (R): What steps were taken by the Arroyo administration on the legal front to consolidate itself in power?

Olalia (O): The legal infrastructures that would make Gloria M. Arroyo (GMA) consolidate her power as well as perpetuate herself in power are already in place.

These include laws, jurisprudence and executive orders that date back to the regimes of Marcos to Cory Aquino and which the GMA administration used to consolidate its power and the further oppression of the rights of the people.

R: Can you elaborate on which laws or presidential decrees (PDs)?

O: There are several of them. One is this jurisprudence that dates back to 1985. In the Ilagan vs Enrile; Ilagan was a human rights lawyer when he was arrested in 1985 by elements of the Philippine Constabulary-Integrated National Police in Davao City, while Enrile (now Sen. Juan Ponce Enrile) was then the Defense Secretary of Marcos. It was a Habeas Corpus petition, but unfortunately the Supreme Court sustained the doctrine that even if the arrest or detention at the first instance is illegal such as there is no warrant of arrest or there is no probable cause, the illegality of the arrest is cured by the filing of an information or charge. By the simple expedient of filing; "recharge"; we call it ... that makes the remedy of the Habeas Corpus inutile or useless. That is one jurisprudence that remains in effect.

There are many others but, for now, the GMA regime has made several issuances that undermine human rights and at the same time serve to consolidate her power. If you repress the rights of the people, if you keep them silent, then your power becomes stronger. These repressive issuances include the calibrated pre-emptive response or CPR; Executive Order 464; Presidential Proclamation 1017; and, the Human Security Act or the anti-terrorism law.

The CPR order was issued ironically on the very same day that Martial Law was declared 33 years earlier - on September 21, 2005. CPR became a very frightening Executive Order which aggravates an existing law - Batas Pambansa 880 or Public Assembly Act - that was enacted in 1985 or during the Marcos regime precisely to curtail the ever-growing resistance of the people following the assassination of Ninoy Aquino.

Marcos issued BP 880 under the guise of regulating the rights to assembly, but in fact it was an excuse for the police to curtail the rights to assembly and to seek redress for grievances. CPR basically means, that if you don't have permit then we gonna beat you up, it is as simple as that. It gave the police a blanket authority to break up peaceful assemblies or manhandle not only workers and peasants but also church people, even women and children for that matter.

Arroyo tried to justify CPR by saying the country needs peace and order. But she issued it at the height of the impeachment moves against her. It was enforced to respond to the outrage of the people ignited by the defeat of the impeachment (in Congress) by the use of sheer numbers of pro-Arroyo congressmen.

With regard to Executive Order 464, its context is also relevant because laws are not created in a vacuum, they are created as a response to a situation.

Basically, laws perpetuate the interest of the ruling class in a society and are a means of subjugating people. EO 464

was issued in the context of the mounting protests against the GMA government over widespread corruption, bad governance and for its being an illegitimate government. EO 464 mandates that all executive officials cannot appear before Congress in any investigation, in aid of legislation especially those that concern sensitive issues that might be prejudicial to the Arroyo government.

The third, Presidential Proclamation 1017, was issued in February 2006. Under the guise of quelling an alleged rebellion against the Arroyo government - the so-called conspiracy between the left and right - GMA issued 1017 in the context again of a growing mass movement that threatened to oust her in February. She wanted to nip it in the bud by issuing the proclamation that gave her almost absolute power such as giving the military and police blanket authority to commit human rights violations.

Thus, 1017 is akin to an undeclared martial law. But in essence, that is martial law because certain rights were suspended and discretion was given to security forces.

The last one which would complete the legal infrastructure for the perpetuation of GMA's hold to illegitimate power, if I may say so, is the Human Security Act or the Anti-terrorism law.

By the way, the first three were questioned before the Supreme Court and the latter ruled the CPR, EO 464, BP 1017 as unconstitutional. Despite the fact they were declared unconstitutional, in practice, the military or the police are still beating up rallies on the flimsy excuse that these don't have a permit...Likewise,

despite the fact that Proclamation 1017 was declared unconstitutional, Ka Bel (Rep. Crispin Beltran) and Ka Satur (Rep. Satur Ocampo) were arrested separately, people got arrested even without the presidential proclamation, because of other existing repressive laws and jurisprudence I mentioned earlier.

The anti-terrorism law is the icing on the cake really and which would complete the legal infrastructure. To the credit of the protest movement, the anti-terrorism bill took a long time before it was passed into law. It started in 2002, immediately after 9/11. The Philippines is one of the few remaining countries that do not have an anti-terrorism law or national security law in the mold of the Patriot Act or other antiterrorism laws in other countries.

Eventually the anti-terrorism law was enacted by maneuvers, schemes, and with the support of the U.S. The anti-terrorism law is draconian, anti-people, and is very dangerous for many reasons. But basically the most fundamental objection is how it defines a terrorist act. According to this law, a terrorist act or terrorism is an act or omission that creates an overwhelming fear or a sense of chaos among the general populace with the intention of compelling the government to do an illegal act.

That definition has been criticized even by the International Commission of Jurists and the UNSpecial Rapporteur on Terrorism in Relation to Human Rights, as very vague, very broad as to cover almost anything, especially legitimate protest or dissent and including acts of national liberation movements which under international law must be respected and should not be tagged as terrorism. That is the most fundamental point. There are other features that would support the observation that it is fascist and draconian. For instance, even if one is out on bail, you can be confined to your house, or to your municipality or to your city for an indefinite period. You are incommunicado, you cannot use the phone, you cannot use email you can't use anything at all.

Another feature is the authority to look into one's bank accounts on the mere suspicion that you are a terrorist or involved in a terrorist act. That is obviously an invasion of one's privacy on the mere say-so of an executive officer without any judicial sanction.

The third is the proscription of organizations that may be considered terrorist or involved in terrorist acts. That questionable definition creates a lot of problems. If the definition is problematic, then that is dangerous if you designate certain organizations as terrorist or involved in terrorist acts. Obviously that provision was intended to undermine or vilify legitimate national liberation movements like the CPP, NPA and the NDFP and the MILF. Another feature is indefinite detention. It is unprecedented, because normally in crimes in the Philippines...penalty is according to the gravity of the offense, according to whether there are mitigating or aggravating circumstances. If there are aggravating circumstances, the penalty is higher. But in this case, it is single and indivisible matter, it is life imprisonment which is technically 40 years. Another point is, it is non-probationable, in other words, it does not allow for rehabilitation or for reformation of any person convicted of the act of terrorism.

Then there is the ridiculous provision which was intended to appease a lot of opposition to the anti-terrorism law: That anyone who is unjustly detained or arrested will be compensated with half a million pesos for each day of unjust detention. That is ridiculous, because to start with, whose money is going to be used anyway? It is people's money.

Secondly, it is unbelievable that the Philippine government will pay half a million pesos to somebody they have already arrested and tortured. It cannot even pay ten thousand pesos to a victim of human rights violations. And another

fundamental point is, it does not cover the acts of terrorism of the State itself which is the worst kind of terrorism.

R: That was very comprehensive, indeed! What's your comment on Ka Bel's and Ka Satur's case?

O: Ka Bel's and Ka Satur's cases exemplify the kind of absurdity and the lengths by which the Gloria Macapagal Arroyo government can go to silence its critics and to create fear and terror among the people and the protesting activists. As a lawyer, I find it unbelievable that on the basis of false information, false witnesses, conflicting documents submitted by the government, and of ridiculous allegations one can be detained unjustly. In the case of Ka Bel, the witnesses presented were either coerced or coached. They later testified on matters that are in contradiction with each other on facts alone. As regards Ka Satur, there is no case against him but he is in jail right now. He was charged with the multiple murder of several civilians several decades ago, so on the basis alone of the prescriptive period no case can be filed against him anymore.

On the second point, assuming those facts are true which they are not, the crime was already erased by the general amnesty issued by Cory Aquino when she came into power, given that the alleged act was committed during the time of Marcos. Moreover, there is no probable cause as the witnesses said unbelievably that they saw Ka Satur's signature written on a piece of paper, a so-called order that directs the New People's Army to kill the civilians. They claimed to remember Ka Satur's signature for three or five seconds, and this was 20 or so years ago.

It was also found out during the Supreme Court hearings that the very same set of skeletons submitted as evidence in Ka Satur's case against a set of people as victims were proven to have been used in a previous case in 1985 against a different set of victims by the same prosecutor, and again if I am not mistaken, in 1995.

Politically, this is very costly to the government. It is ridiculous, it's gonna backfire on them. But the government of Arroyo does not care, really. It is insensitive, it is callous, and arrogant. I just came from Washington, D.C. where Senator Boxer, chair of the U.S. Senate Sub-committee on East Asian and Pacific Affairs on Foreign Relations Committee during a hearing on extra-judicial killings in the Philippines, castigated publicly the Arroyo government for sending military and police officers to the hearing as a subtle intimidation of the witnesses. It backfired.

R: Why did you finally choose the forum of the Permanent People's Tribunal (PPT) – what in particular accounts for its strength?

O: It is a tribunal made up of very prestigious and credible personages whose competence and integrity are beyond reproach. Likewise, it has a historical record of coming up with very competent, credible and comprehensive findings in its area of coverage.

I think the basic question is, why are we here? Why do we have to go all the way here? This is because the traditional local government remedies available in the Philippines – legal, judicial or otherwise - have been proven to be ineffective or even illusory, because they do not bring justice, they do not act concretely on the cry for justice, and even adds to the impunity, for the violations of human rights, in particular of extrajudicial killings. Another strength of the PPT is that, it does not confine itself to the legalist framework. The rules of evidence, in so far as the admission of information, data, reports, analysis is concerned, are more relaxed and welcomed in the spirit of getting the whole picture rather than trying to be technical about it and trying to close the door to information that might help one form a very comprehensive conclusion. That is not to say, however, that the evidence, information and reports that will be taken at the PPT are not credible - at the very least they are credible and verifiable.

Moreover, the PPT looks at the picture in a comprehensive, holistic way. It relates, for instance, human rights violations with the social and political ills in Philippine society and to the greater picture or greater universe of the role of U.S. in other countries in the perpetuation of these violations. This is something that no single legal institution or entity, whether in the Philippines or even in the United Nations, can cover. Thus the limitations of the traditional fora are answered by the PPT.

However, the PPT is not a court of law, its recommendations and findings cannot be enforced legally in terms of punishment or mechanism that is in place. But that apparent drawback is also its strength. Enforcement should not be confined alone in legal terms. Enforcement can be more effective if it comes in the form of international opinion, diplomatic pressure, moral persuasion which are far more effective than the limited legal niceties that the existing local and international remedies purvey. At the PPT, you cannot compel the government to appear. If they appear then they recognize the competence and authority of the PPT and if they don't, then they are hiding something. One way or the other, it helps in enforcing the value of the PPT as a forum that goes beyond the limited local remedies. As a whole, the PPT has its historical and very highly political and important value in terms of addressing the specific question of human rights violations both in the political, economic, social, cultural including the rights of the people to liberation and self-determination.

Note that the first session on the Philippines, the PPT was instrumental in helping create the moral persuasion and the political and diplomatic pressure against the Marcos dictatorship. As regards Gloria Macapagal Arroyo, there will be a

time for reckoning.

R: My last question: What's Oplan Bantay Laya compared to preceding Oplans?

O: Oplan Bantay Laya is the framework and the justification for the military and the police to wreak havoc on the rights of the people. It is supposed to be a counterinsurgency program to defeat the revolutionary movement, but it targets civilians who are suspected supporters and sympathizers of the revolutionary movement. This is contrary to international humanitarian law that protects civilians, especially unarmed individuals. In an armed conflict, you can only go after the combatants. Let us assume, for the sake of argument, that the victims are really communist sympathizers or communists themselves. But the point is, you don't attack people who are unarmed, you don't barge into their dining room and shoot them in front of their children or shoot a target while he is holding his baby or while he is about to go to a midnight mass during Christmas day. You don't do that!

Oplan Bantay Laya is just a continuation of several Oplans before - Katatagan, Oplan Lambat Bitag, etc. But this is more vicious, it's more comprehensive, because it targets specifically unarmed legal democratic activists and progressive individuals. Contributed to Bulatlat, Vol. VII, No. 27, August 12-18, 2007.