

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
PHL 2/2015

22 May 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and continued pre-trial detention of Mr. **Scott McMahon**, a United States citizen.

According to the information received:

On 25 August 2010, it is reported that a subpoena was issued summoning Mr. McMahon to answer questions in a preliminary investigation, allegedly based solely on allegations of rape made by Ms. [REDACTED]. Mr. McMahon did not receive the subpoena, and the company in charge of administrating the subdivision where he lived has certified that no attempt to deliver the subpoena to Mr. McMahon was made between August and September 2010.

On 7 April 2011, Mr. McMahon first learned of Ms. [REDACTED]'s rape allegations when he appeared in court for a hearing in an unrelated case against Ms. [REDACTED]. Ms. [REDACTED] reportedly arrived at the court with television news cameras, the police and an arrest warrant. Mr. McMahon was arrested in front of the cameras and immediately taken to Muntinlupa City Jail where he has been detained since.

Not long after his arrest, a friend of Ms. [REDACTED] visited Mr. McMahon in jail and told him that Ms. [REDACTED] wanted 5 million pesos (approximately \$125,000 U.S. Dollars) for the charges in the unrelated case to be dropped in exchange for her dropping the rape charges. Ms. [REDACTED]'s friend allegedly approached Mr. McMahon's fiancée nine times between August and November 2011, requesting money in exchange for dropping the charges. All demands for payment were

rejected by Mr. McMahon and eventually Ms. [REDACTED] and her friend stopped making these demands.

In November 2014, Mr. McMahon's first bail hearing was held. During the hearing, the prosecution offered a single witness in support of the alleged violation. In addition, the prosecutor chose not to attend multiple hearings. Also, the trial judge in Mr. McMahon's bail hearings had a stroke part-way through the proceedings. Instead of transferring the case to another judge, the court opted to allow the judge to hear the case on a part-time basis. Throughout the proceedings, Mr. McMahon was limited to a single witness per day and restricted to 20 minutes of time to testify in the hearing. Additionally, Mr. McMahon's hearings were spread out by a minimum of a week. At the conclusion of the bail hearings, the judge determined that there was strong evidence of guilt and allegedly neglected to consider any of the defence's evidence in the case.

In addition, it is reported that the conditions within Muntinlupa City Jail where Mr. McMahon is detained have negatively impacted Mr. McMahon's health. He is currently detained in a maximum security section of the prison in which there are four cells connected by a short hallway. The entire area is only 82 square meters, yet it houses on average between 210 and 250 prisoners. Mr. McMahon's cell has only 1 toilet for approximately 50 inmates. The prison system does not provide even basic hygiene necessities like soap or medical treatment without a court order.

Throughout Mr. McMahon's detention, he has witnessed numerous inmates die from illnesses and other conditions, exacerbated by malnutrition, small food rations and lack of access to clean water. Witnessing the slow deterioration and death of so many fellow prisoners has added to the already significant psychological distress of Mr. McMahon.

We express concern that Mr. McMahon's arrest and detention, as well as the subsequent legal proceedings, appear to be in violation of the rights not to be subjected to arbitrary arrest or detention, to be tried within a reasonable time, and to a fair hearing before a competent, independent and impartial tribunal. We are also seriously concerned about the physical and mental integrity of Mr. McMahon, in particular in light of the length of his pre-trial detention, and the conditions of detention in the prison where he has been held for more than 4 years.

In this context, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the judicial proceedings to review the legality of the detention of Mr. McMahon, and explain how they are compatible with the right to liberty and security of the person as enshrined, inter alia, in article 9 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information on the reasons for the delay in trying Mr. McMahon, and explain how they are compatible with the right to be tried without undue delay, as enshrined, inter alia, in article 14 of the International Covenant on Civil and Political Rights.
4. Please provide any information regarding safeguards undertaken to ensure the physical and psychological well-being of Mr. McMahon while he remains in pre-trial detention.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The above allegations appear to be in contravention of the right not to be deprived arbitrarily of liberty, the right to a trial within a reasonable time, and to a fair and public hearing before a competent, independent and impartial tribunal established by law, as set forth in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and article 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986.

In addition, we would like to refer to Principle 2 of the Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, which states that the judiciary must decide matters before them impartially, on the basis of facts, and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the Philippines acceded on 18 June 1986.

In this context, the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment, and we would like to remind your Excellency's Government of Rules 9 through 15 and 20(1) of the Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), which, inter alia, provide for appropriate accommodation, minimum cubic content of air and floor space, lightning and ventilation, requirements to be met regarding the personal hygiene of prisoners, as well as food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.