



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS, GENEVA

NV-EPG-266-2017

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the letter dated 29 August 2017 from Ms. Beatriz Balbin, Chief of the OHCHR Special Procedures Branch, on the joint communication with reference number OL PHL 11/2017 from the Special Procedures mandate holders, namely, 1) Ms. Koumbou Boly Barry, Special Rapporteur on the Rights to Education, 2) Ms. Agnes Callamard, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and 3) Mr. Dainius Puras, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, has the honor to convey the response of the Philippine Government to the joint communication as follows:

- OL PHL 11/2017 referred to the information received by the Special Procedures mandate holders on drug testing in the Philippines, particularly pertaining to "Memorandum Order No. 64, which calls for and allows random and mandatory drug testing at higher education institutions in the Philippines, as well as other measures affecting primary and secondary education institutions, which will act as barriers to the enjoyment of the rights to education and health of students, including children".
- The State affirms that the implementation of the (a) Comprehensive Dangerous Drugs Act of 2002; (b) Dangerous Drugs Board Regulation Nos. 6 (s.2003) and 3 (s.2009); and, (c) Memorandum Order No. 64, are in line with the right of everyone, especially children, to enjoy the highest attainable standard of physical and mental health.

The aforementioned legislation and issuances are consistent with the policy of the State to safeguard the well-being of its citizenry, particularly from the harmful effects of dangerous drugs on their physical and mental well-being, and the integrity of its territory.

- Furthermore, in *Social Justice Society v. Dangerous Drugs Board*¹, the Supreme Court of the Philippines (SC), citing *Vernonia School District 47J v. Acton*, 515 U.S 646 (1995), stated that school children are most vulnerable to the physical, psychological, and addictive effects of drugs. Maturing nervous systems of the young are more critically impaired by intoxicants and are more inclined to drug dependency. Their recovery is also at a depressingly low rate.

Guided by the same US jurisprudence, the SC upheld the constitutionality of the Comprehensive Dangerous Drugs Act of 2002 or Republic Act Number

¹ General Register No. 157870, *Social Justice Society v. Dangerous Drugs Board and PDEA*, 03 November 2008.

9165, which requires mandatory, random and suspicion-less drug testing of students, as it serves “as a measure to stamp out illegal drugs in deleterious effects of dangerous drugs.”² The SC added that, “until a more effective method is conceptualized and put in motion, random drug testing of students in secondary and tertiary student population, doubtless a legitimate concern of the government, are to be promoted and protected.”³

- As to the issuance of Memorandum Order No. 64 of the Commission on Higher Education (CHED) and the Department of Education’s (DepEd) Order No. 40, it has to be made clear that these are not in any way connected with the police’s former anti-illegal drugs operation⁴. Also, it has to be emphasized that the said issuances were not made without careful study by the concerned implementing agencies. CHED Chairperson Patricia Licuanan and DepEd Secretary Leonor Briones have both agreed that the adoption of these policies is needed to help ensure a drug-free environment for all students.
- The Philippines also affirms its responsibility as a sovereign State to adopt policies that will benefit its peoples and protect them from the scourge of illegal drugs.
- The State regards as baseless and malicious the UNSRs’ unfounded fears on the alleged threats to the enjoyment of the right to health and the right to education as a result of the adoption of drug testing policies of CHED and DepEd. As previously mentioned, these policies have been adopted to ensure a safe and drug-free academic setting.
- Furthermore, the Philippine Government wishes to register its concern and seek clarity on the significance of the involvement of Dr. Agnes Callamard, UNSR for extrajudicial, summary or arbitrary executions, in the joint communication as none of the issues raised, are covered by her mandate⁵.

Her act constitutes a clear violation of the Code of Conduct for Special Procedures mandate holders of the Human Rights Council⁶, which provides that focus shall be made “exclusively on the implementation of their mandate, constantly keeping in mind the fundamental obligations of truthfulness, loyalty, and independence pertaining to their mandate.” It is therefore not legitimate

² Ibid.

³ Ibid.

⁴ Memorandum from the President dated 10 October 2017, which orders PDEA as the sole agency, in charge of the Government campaign against illegal drugs.

⁵ Pursuant to Human Rights Council (HRC) Resolution No 35/15, Dr. Callamard’s mandate requires her to perform only the following functions: (a) to continue to examine situations of extrajudicial, summary or arbitrary executions in all circumstances and for whatever reason, and to submit his or her findings on an annual basis, together with conclusions and recommendations, to the Human Rights Council and the General Assembly, and to draw the attention of the Council to serious situations of extrajudicial, summary or arbitrary executions that warrant immediate attention or where early action might prevent further deterioration; (c) to respond effectively to information that comes before him or her, (d) to enhance further his or her dialogue with Governments, as well as to follow up on recommendations made in reports after visits to particular countries; (e) to continue to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto; and, to apply a gender perspective in his or her work.

⁶ Paragraph d of Article 3.

for her as UNSR to be biased about the situation in the Philippines, to the point that she is already acting beyond her mandate.

- Lastly, as a member of the Human Rights Council and a UN member state, the Philippines would like to register its concern that other areas of more serious situations relevant to Ms. Callamard's mandate be given the same attention as she gives to issues relating to the Philippines.

It is the Philippines' sincere hope that she gives as much attention to the other pleas for help around the world in keeping with her mandate.

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 18 October 2017



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Copy furnished:

Ms. Beatriz Balbin

Chief

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