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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 214 (107-9) G/SO 214 (33-27)
PHL 6/2011

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/5, 15/21 and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the killings of Mr. **Arpe Belayong**, the director of the human rights organisation Linundigan, his nephew, Mr. **Solte San-ogan**, and **the situation of its members** who have gone into hiding.

Linundigan is an organisation which works for the rights of indigenous peoples and their culture, as well as self-determination through education, event organising, lobbying and networking. The organisation operates in the villages of Sinakongan, Agsabo, Kinamaybay, Bakingking, Maasin and San Jose, located in the municipality of Esperanza, in the province of Agusan del Sur. Linundigan has recently been active in opposing the entry of logging and mining operations in the land of the Higaonon.

According to the information received:

On 30 June 2011, it is reported that Mr. Arpe Belayong, and his nephew Mr. Solte San-ogan, were killed allegedly at the hands of the paramilitary group, Salakawan. It is alleged that two of Mr. Belayong's minor children were also injured after the attack and currently they are being treated for their bullet wounds. Recently, Mr. Belayong had reportedly been particularly active in opposing the entry of logging and mining operations in the land of the Higaonon.

On 11 October 2011, it is reported that members of the organisation Linundigan allegedly went into hiding as they faced imminent risks of being attacked by the paramilitary forces following the killing of Mr. Belayong.

It is further reported that in the last week of August 2011, about 23 individuals from the area, including the family members of the aforementioned human rights defenders, left their homes and went into hiding as they feared for their safety at the hands of the paramilitary group.

It is alleged that the paramilitary group remains in the community creating fear amongst the local people.

Concern is expressed regarding the killings of Mr. Belayong and his nephew, Mr. Solte San-ogan. Further concern is expressed for the physical and psychological safety of the members of Linundigan and their family members particularly in light of the current situation which has led them to fear for their safety. Concern is expressed that the aforementioned acts may be directly linked to the activities of Mr. Belayong and other members of Linundigan in defence of human rights and in particular the rights of indigenous peoples in Agusan del Sur.

Without expressing at this stage an opinion on the facts of this case, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. We would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights (ICCPR), which the Philippines ratified on 23 October 1986, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). Additionally in its General Comment No. 31, the Human Rights Committee has observed that "...the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights 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 entities. ... As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as summary and arbitrary killings (article 6)." (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions"

(OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this includes the obligation “to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions.”

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of association with others...”.

Furthermore, we would like to draw your Excellency’s Government’s attention to Human Rights Council resolution 15/21, in which the Council “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely ... including persons espousing minority or dissenting views or beliefs ... seeking to exercise or to promote these rights” (OP1).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

We would also like to bring to the attention of your Excellency’s Government article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Regarding the allegations received indicating that the perpetrators of the violations reported are non-State actors, we would like to call to the attention of your Excellency's Government the Human Rights Council Resolution A/HRC/RES/13/13 of 15 April de 2010, which recognizes “the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence,

and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all” as well as to adopt the necessary measures to prevent such acts. In this Resolution the Human Rights Council also “urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity.”

Furthermore, the Special Rapporteur on the situation of human rights defenders, in her report to the General Assembly A/65/223 of 4 August 2010, stated that “the responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfil human rights, including those of human rights defenders. (...).” The Special Rapporteur argued that the State’s obligation to protect “first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State’s responsibility. Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment.”

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the members of Linundigan and their families are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the members of Linundigan and their families in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of this case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the family of Mr. Arpe Belayong and his nephew, Mr. Solte San-ogan.
6. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders