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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA Business enterprises (2011) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 214 (89-15)
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31 March 2014

Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/8, 17/4, 16/4, 24/5, 16/5, 17/5, and 23/25.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **a series of killings, attempted killings and death threats against indigenous leaders, peasant leaders and environmental activists in the Philippines.**

Mr. **Sixto V. Bagasala Jr.** was the President of the Local Association of Urban Poor Communities in Malabon City. He worked for the rights of informal settlers to acquire secure, adequate, accessible and affordable housing. He also helped lead efforts for the construction of medium-rise buildings to be financed through the High Density Housing (HDH) Programme of the Social Housing Finance Corporation.

Mr. **Julieto Lauron** was the Chairperson of Kahugpungan sa mga Mag-uuma sa Valencia (KASAMA or Association of Farmers), Vintar Chapter, Valencia City.

Ms. **Nermie Lapatis** is currently the Secretary of Kahugpungan sa mga Mag-uuma sa Valencia (KASAMA or Association of Farmers), Vintar Chapter, Valencia City. Ms. Lapatis has actively campaigned against the entry of a large-scale mining in San Fernando Municipality. She also organized the series of camp-out protests in the province's capitol building in 2012.

Mr. **Marcelo Monterona** was an active member of Indug Kautawan (a Mansaka term for "People Stand Up"). He participated in campaigns against the large-scale, open-pit mining operations of the Apex Mining Company. In 2013, he took part in a barricade of the gates of the mining company in Maco, which paralyzed its operations. Following this protest, the Apex Mining Company reportedly agreed to financially indemnify the victims of Typhoon Bopha/Pablo to the amount of PhP 3.6m, providing 300 sacks of rice and rehabilitating local infrastructure in the damaged communities. Mr. Monterona also campaigned for the removal of the 71st Infantry Battalion from the communities and had criticized the military's aerial bombings in the area.

Mr. **Rolen Langala** was one of the founding members of Indigenous People (IP) group Pangalasag (Indigenous Shield). Mr. Langala's work in Pangalasag focused on organizing peaceful resistance against palm oil plantation in his community. Reportedly, he was one of the key informants for an international fact-finding mission conducted in May 2011 on the history of the plantation operations and their effects on the community by the Asian Peasant Coalition (APC), Kilusang Magbubukid ng Pilipinas (KMP or Philippine Peasant Movement), Pesticide Action Network in Asia and the Pacific (PAN-AP), and the Rural Missionaries of the Philippines (RMP).

Ms. **Elisa Lascoña Tulid** was a leader of the peasant group Samahan ng Magsasaka sa Barangay Tala at Clamflora, in Sitio Kumbenyo, Barangay Tala, San Andrés, Quezon Province. She worked in the agrarian reform sector, and had filed a complaint in 2012 before the Barangay Council against a landlord for allegedly taking crops cultivated by Ms. Lascoña Tulid's family.

Mr. **Gilbert Paborada** was the Chairperson of the Indigenous People (IP) group Pangalasag (Indigenous Shield), a community-based member organization of Kalumbay Regional Lumad organization, which has been active since 2011 in the campaign against the expansion of an oil palm plantation in Opol, Misamis Oriental region. Mr. Paborada was a member of the Higaonon tribespeople and worked leading the local indigenous, community-based organization Pangalasag.

The case of Mr. Sixto V. Bagasala Jr

According to the information received:

On 15 February 2014, after having attended a meeting on social housing for informal settlers, Mr. Sixto V. Bagasala Jr was approached by two armed men at a market near Malabon City. The two men reportedly shot Mr. Bagasala from close

range. Mr. Bagasala died from the wounds that he sustained to his leg, shoulder, chest and head.

It is reported that one of the armed men said “There will be more after you”. Mr. Bagasala had previously received a number of death threats due to his work defending the right to housing.

The cases of Mr. Julieta Lauron and Ms. Nermie Lapatis

According to the information received:

On 5 February 2014, Mr. Julieta Lauron and Ms. Nermie Lapatis were on their way to Valencia City when two unidentified armed men allegedly started shooting at them. The men reportedly wore black jackets, ski masks and rode a red XRM motorcycle. Mr. Lauron died instantaneously from the bullet wounds that he sustained to his head, chest and stomach. Ms. Lapatis sustained several gunshot wounds, but survived the attack.

The case of Mr. Marcelo Monterona

According to the information received:

On 3 January 2014 at around noon, Mr. Marcelo Monterona was reportedly repairing his vehicle in front of his home when two unidentified armed men on a XRM motorcycle approached him. According to reports, one of the men allegedly shot Mr. Monterona in the face, wounding the left side of his mouth. Mr. Monterona reportedly tried to crawl out of the vehicle through the passenger’s side. The unidentified man then allegedly entered the vehicle through the driver’s side and shot Mr. Monterona five more times before driving away. Mr. Monterona reportedly died on his way to the hospital.

The case of Mr. Rolan Langala

According to the information received:

On 1 December 2013 at 1:00 a.m., Mr. Rolan Langala and a colleague were returning home after having attended festivities at the Public Plaza of Barangay Bagocboc, Opol town, when they were reportedly blocked at the exit by two armed men. Mr. Langala was allegedly stabbed and shot twice in the head by the two men. He died from the injuries that he sustained. It is reported that no investigations have been initiated and that no arrest warrants have been issued against the perpetrators.

The case of Ms. Elisa Lascoña Tulid

According to the information received:

On 19 October 2013 at around 2:00 p.m., Ms. Elisa Lascoña Tulid was walking home from Sitio Tamnay with her family, when an armed man blocked their path at Sitio Kumbenyo. The man then allegedly started shooting at them. Ms. Lascoña Tulid was shot several times at short range. She sustained gunshot wounds to the nape, mouth, left eye and left thigh, and died at the scene. Ms. Lascoña Tulid's family members managed to flee the scene and survived the attack. It is alleged that since 2012 Ms. Tulid and her family had been harassed and had received a number of death threats related to an ongoing dispute with their landlord.

The case of Mr. Gilbert Paborada

According to the information received:

In February 2011, Mr. Gilbert Paborada was reportedly threatened at gunpoint by the security guards of a palm oil company. In March 2011, he was reportedly forced to relocate away from his native village of Bagocboc to Puntod due to death threats that he had received. He reportedly continued visiting Bagocboc to lead the peaceful efforts of his community-based indigenous organization Pangalasag against land grabbing in defence of the indigenous community's civil and political rights.

On 3 October 2012 at around 3:00 p.m., Mr. Paborada had just returned from his native village Bagocboc to San Nicolas, Puntod in Cagayan de Oro city. After getting out of a motorela (public tricycle) near his house, two men on a white motorcycle allegedly approached him and fired several shots at him. It is reported that one of the men subsequently approached Mr. Paborada and shot him in the head. Mr. Paborada suffered from five bullet wounds and died at the scene.

Grave concern is expressed at the killings of Mr. Bagasala, Mr. Langala, Mr. Lauron, Mr. Monterona, Mr. Paborada and Ms. Tulid, as well as the attempted killing of Ms. Lapatis. Further grave concern is expressed that these violent attacks might have been linked to their peaceful and legitimate work in defending human rights in the Philippines. Similar concerns are expressed about the physical and psychological integrity of Ms. Lapatis, as well as the colleagues and relatives of the aforementioned victims.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which provides that every individual has the right to life, that this right shall be protected by law and that no person shall be arbitrarily deprived of his or her life. In addition, in its General Comment No. 31, the Human Rights Committee 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 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.

Furthermore, Principle 4 of the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65, states that effective protection through judicial or other means shall be provided to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish violations of the right to life, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. In particular, Principle 9 stipulates that there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, while Principle 18 provides that "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice". We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time, pursuant to principle 20.

We would also like to refer your Excellency's Government to the following provisions of the ICCPR:

- article 19, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice";
- article 21, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others"; and
- article 22 which provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

We would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists

and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Furthermore, 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”.

In this regard, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular to article 12 paras 2 and 3 of the Declaration which provides 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 the attention of your Excellency's Government to the Human Rights Council Resolution A/HRC/RES/13/13 of 15 April 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 paragraphs 28 and 29 of 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 fulfill 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 would also like to bring to your Excellency’s attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency’s Government on 05 October 1981), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

We would also like to draw the attention of your Excellency’s Government to the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

b) “The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;

c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

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:

1. Are the facts alleged in the above summary of the cases accurate?
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken in relation to the killings of Mr. Bagasala Jr, Mr. Langala, Mr. Lauron, Mr. Monterona, Mr. Paborada and Ms. Tulid and the attempted killing of Ms. Lapatis. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate what protective measures are to be taken to ensure the life, physical and psychological integrity of Ms. Lapatis, as well as the colleagues and relatives of the aforementioned victims.
5. Please indicate whether compensation has been granted to the victims or their families.
6. Please indicate which measures have been taken to ensure that human rights defenders, including civil society activists, can operate in a safe and enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or violence of any kind.
7. Please indicate if any inquiries or investigations have been conducted to establish whether any business enterprise, including the ones mentioned in this letter, could have caused or contributed to the deaths of and threats against these human rights defenders? For example, Principle 1 of the Guiding Principles on Business and Human Rights says that: “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”

8. Please indicate if the Government has provided any guidance to business enterprises operating in the Philippines on their expected human rights due diligence process? Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (Guiding Principles 17-21) and it helps to ensure that human rights defenders can operate in a safe and enabling environment, free from restrictions and attacks.

9. Please explain what the Government is doing to implement the UN Guiding Principles on Business and Human Rights?

We would appreciate a response as soon as possible. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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.

Given the seriousness of the allegations, we would like to inform your Excellency's Government that we might consider issuing a press release on the issues contained herein.

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

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