

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right to food; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Vice-Chair on Communications of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 25/2, 22/9, 24/5, 24/9, 26/12, 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 violent dispersal of protestors, mainly indigenous Lumad farmers and their supporters in Kidapawan City, North Cotabato on 1 April 2016, who were calling for food assistance in the context of the severe drought attributed to the El Niño phenomenon**. In particular, we are concerned about reports of the alleged use of excessive force, extrajudicial killings of two persons, arbitrary arrests and charging of individuals taking part in the protest. We are also writing to inquire about the Government's efforts to ensure a comprehensive and equitable famine relief response in view of the ongoing dry spell, as both national and local government institutions have reportedly failed to adequately prepare and respond to the ongoing and worsening food crisis.

According to the information received:

Famine relief response

For several months, five provinces in the Philippines, including the Province of North Cotabato, have been experiencing severe drought. The drought is attributed to the El Niño phenomenon, which is likely associated with climate change, bringing about warmer than average temperatures and prolonged dry conditions. These weather conditions have led to the destruction of crop harvests and death of livestock, thereby gravely endangering the food supply and subsistence of poor rural households in affected areas.

The most affected communities are those who depend on agriculture as their primary source of livelihood, including landless and marginal farmers, tenants, and farm workers, many of whom belong to the indigenous Lumad peoples. These farmers reportedly live in situations of extreme poverty, confronting low prices for most agricultural products, and the drought has further aggravated their already tenuous existence.

Information received indicates that as of beginning of April 2016, crop losses from the dry spell in North Cotabato amounted to PhP 989 million. It is reported that at least 50,000 hectares of rice and corn farms were destroyed by rising temperatures, endangering the only source of income for more than 25,000 farmers. By the first quarter of 2016, the first reports of emaciated cattle and animal slaughter emerged, a sign that the drought was turning to famine.

The Government of the Philippines reportedly recognized the potential consequences of the dry spell as early as late last year, with the Department of Budget Management announcing in December 2015 that PhP 19.2 billion was allocated to address the effects of the El Nino. On 20 January 2016, the Provincial Board of North Cotabato issued Resolution no. 014 declaring the Province under a state of emergency, stating that the drought had already damaged 27,558.55 hectares of agricultural land, with the value of crop damages placed at PhP 238,017,916. Under the state of emergency, the Provincial Government is given the authority to allocate 5% of its internal revenue allocation as emergency funds, which effectively meant that PhP 321 million were at their disposal to address the consequences of the worsening drought. However, whilst food for work assistance programs may have been implemented at the city levels, a comprehensive anti-famine response to ensure equitable access to food aid at the level of the Provincial Government allegedly did not occur.

It would appear that cumbersome rules governing access and distribution of food stocks, with central control over localized food stockpiles, may have caused delays in ensuring the necessary food aid. As conditions worsened, various organizations began planning collective action to seek Government assistance and relief from hunger.

Protests calling for food assistance

On 28 March 2016, protesters mainly consisting of indigenous farmers and supporters from North Cotabato and Bukidnon provinces began to gather peacefully at the Davao-Cotabato national road in Kidapawan City, near the National Food Authority Office and the Spottswood Methodist Center. They included individuals belonging to farmers' organizations led by Kilusang Magbubukid ng Pilipinas (KMP) and the Apo Sandawa Lumadnong Panaghiusa sa Cotabato (ASLPC). Their demands included the delivery of 15,000 bags of rice to the rally site; subsidies for seeds, fertilizer and pesticides and other farm implements; an increase in the farmgate prices of agricultural crops; and the immediate pull-out of military troops in North Cotabato towns and the disbandment of paramilitary groups in the area. There were attempts to implement a dialogue between representatives of the protestors and the Government, with the assistance of the local Catholic diocese. A meeting with the Governor of North Cotabato allegedly took place on 30 March, with protesters presenting their demands. However, it appears that the negotiations did not succeed and were cut short, with divergent reasons given by both parties for their failure.

Reportedly, some of the indigenous peoples who participated in the demonstration had been displaced from their territories by military operations. Others who remained in their territories were not able to practice their own means of subsistence in a sustained manner because their rights to own, use, develop and control their lands, territories and resources have not been recognised through the provision of ancestral domain and land titles and through effective support for the implementation of their ancestral domain sustainable development plans and programs (ADSDPP).

By 30 March 2016, the number of protesters had reached 6,000 and a barricade had been set up by the protesters to block the national highway. Police and special action forces began arriving at the location. It is alleged that announcements were made urging individuals to return home, claiming that rice supplies had been delivered to their municipalities, and threatening to arrest the protesters. In the morning of 1 April, it is reported that national police personnel began an operation to clear the highway of protesters, supported by the Special Weapons and Tactics (SWAT) personnel armed with M-14 assault rifles. At approximately 9 a.m., an announcement was made by the police ordering the crowd to disperse. Soon afterwards, the police and SWAT teams reportedly started pushing through the crowds using batons and truncheons to disperse the protesters, supported by water cannons. It is understood that a few dozen protesters then retaliated by throwing rocks and using sticks against the police. At this stage, it is alleged that shots were fired by the SWAT team members positioned atop fire trucks and later from the ground. Reports indicate that between 41 and 82 shots were fired.

The National Commission for Human Rights confirms at least 2 deaths, namely a 30-year old male resident of Kidapawan (allegedly killed while standing beside his home near the protest area) and a 22-year old male farmer from Arakan (reportedly standing within the protest area). While the autopsies have not yet

been released, it is believed their deaths were attributable to gunshots. It is furthermore alleged that approximately 40 protesters sustained injuries, 30 of them gunshot wounds. There are also reports of excessive use of force by the police when arresting protesters, even against those that had already sustained gunshots. For example, a 47-year old farmer from Bukidnon, who was reportedly shot while attempting to flee, sustained blows by police clubs after being handcuffed by the police. A 33-year old man from Magpet, was also reportedly captured by the police as he was trying to flee after he was shot in his foot. He was allegedly beaten and handcuffed, and upon arrival at the hospital, beaten again in the face by the police. It is understood that some police officers were also injured, notably one officer requiring intensive care due to severe head injuries.

During the violent dispersal, it is reported that protesters were arrested without being presented with the necessary warrants or informed of their rights or of the charges pressed against them, and detained at the Kidapawan City Gym and Kidapawan Convention Centre. On April 5, there were 79 people detained, 47 male and 32 female (out of which 3 were reportedly pregnant), including 4 minors and 6 elderly persons. It is reported that many have been charged with “direct assault upon an agent of a person in authority,” including the three pregnant women and the 6 elderly persons, while others were charged with “frustrated homicide.” At least 7 individuals who sustained gunshot wounds and other serious injuries reportedly were placed under hospital arrest. It is alleged that two health workers were arrested and detained for helping the victims. Detainees were reportedly questioned without the presence of legal counsel. Information received indicates that approximately 70 individuals, including the minors, have since been released on bail.

In attempts to flee the violence, many protestors sought sanctuary at the Spottswood Methodist Center. It is understood that the police blocked the entrance of the center from 1 to 5 April, requiring all those entering and exiting the compound to record their identities in a police logbook and to submit to a body search and examination of their belongings. Protestors are allegedly experiencing intimidation and harassment, with some hesitant to return home to their villages in fear of police harassment.

While we do not wish to prejudice the accuracy of these allegations, we express grave concern at the alleged deaths of 2 individuals at the hands of the police forces, as well as the injury of approximately 40 protestors. We express further concern at the alleged arbitrary arrest and detention of the 79 individuals, as well as reports of ongoing harassment of individuals who took part in the protests. We also express concerns at the excessive use of force during the protests by the police. Finally, serious concern is expressed regarding the failure to adequately respond to the worsening food crisis, despite reports that emergency food stockpiles existed.

In connection with the above alleged facts and concerns, 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 comment which you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for the reportedly excessive use of force and use of firearms against the demonstrators and how these are compatible with international human rights law.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the above allegations.
4. Please provide details of the legal grounds for the arrest and detention of protesters, and explain how these measures are compatible with international human rights norms and standards
5. Please provide information about any measures adopted to ensure that the legitimate rights to freedom of peaceful assembly and freedom of expression were respected and that the physical and psychological integrity of the protestors in the aftermath of the demonstration is guaranteed.
6. Please provide information on what preparations were made to protect the agricultural sector from the worsening drought (for example cloud-seeding operations, distribution of drought-tolerant crop varieties, water-saving technologies), as well as preparations to ensure efficient and equitable distribution of food aid for those communities most in need, in compliance with the Philippines' international obligations regarding the right to food.
7. Please provide information whether emergency funds have meanwhile been disbursed and what plans are underway to ensure that sufficient food aid will be distributed to the North Cotabato province and other provinces suffering food shortages as a result of the on-going drought.
8. In her visit to the Philippines, the Special Rapporteur on the right to food identified that climate-related losses continue to be very high for the agricultural sector, recommending the implementation of strategies to minimise loss and damage from climate extremes, for example through intensified crop diversification and the need to control prices as a means of tackling dysfunctional

market dynamics during disasters. We would appreciate receiving any information on whether any such measures are being adopted and implemented.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

We would appreciate receiving a response within 60 days.

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.

José Guevara
First Vice-Chair on behalf of the Working Group on Arbitrary Detention

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw attention of your Excellency's Government to the applicable international human rights norms and standards.

Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which the Philippines ratified on June 7 1974 – stipulates that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" and requires them to "take appropriate steps to ensure the realization of this right."

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, has further defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfill the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to fulfill (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly.

The Committee states that especially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food (E/C.12/1999/5, para. 13). The Committee makes special note of socially vulnerable groups such as landless persons and other particularly impoverished peoples, as segments of the population who may need specific attention from governments through for example, social programmes. Physical accessibility implies that adequate food must be accessible to everyone... victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.

Furthermore, as a State party to the ICESCR the Philippines has an immediate minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights including the right to food (CESCR, General Comment 3, para.10). The obligation to achieve these minimum essential levels is not dispensed with during times of crisis and recovery.

Without expressing at this stage an opinion on facts outlined above and whether detentions of above mentioned individuals are arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of individuals in detention not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) ratified by your Excellency's Government on 23 October 1986.

Moreover, 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 your Excellency's government ratified in 1986.

With regard to the allegations of excessive use of force by police forces during the demonstration, we wish to draw your Excellency's Government's attention to Articles 3 of the UDHR and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

We would also like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provide that law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary.

The Compilation of Practical Recommendations for the proper management of assemblies (A/HRC/31/66) recalls that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality (para. 57). These principles apply to the use of all force, including potentially lethal force.

Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

In addition, we would like to refer to articles 19 and 21 of the ICCPR that guarantee the rights to freedom of opinion and expression and freedom of peaceful assembly, respectively.

Furthermore, we would like to recall Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council “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.”

Finally, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with an affirmative vote of the Philippines, elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. Article 20 sets out that ‘indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities’ and that ‘indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.’ Article 26 affirms that ‘indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ and that ‘indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.’