

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE: AL  
PHL 5/2014:

26 November 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 25/2, 26/7, 26/12, 25/13, 27/3, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations related to the slow progress of the trial in the case of the "Maguindanao Massacre", the killing of witnesses to the trial, the lack of reparations, including compensation and satisfaction, to the survivors and families of the victims, as well as the restricted access of the media to the trial's hearings and proceedings.**

We previously addressed your Excellency's Government in relation to the "Maguindanao Massacre" in a Joint Allegation Letter dated 30 November 2009 (PHL 11/2009) issued by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A follow-up Joint Allegation Letter was issued on 21 December 2009 (PHL 13/2009) by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences, in relation to allegations of specific and targeted sexual violence against female victims. We took note of your Excellency's Government replies provided in two letters dated 10 December 2009 and 25 January 2010 and explaining the actions taken by various Government institutions and

agencies to investigate and prosecute the alleged perpetrators of the Maguindanao massacre. We reiterate, however, that your Excellency's Government has not provided yet the information requested about the private militia of the family of the Governor of Maguindanao Province, the measures taken to disband the militia, and the relationship between the private militia and government security forces in Maguindanao, as well as about the measures taken to prevent election-related violence (see PHL 7/2010).

A Joint Allegation Letter dated 19 July 2010 (PHL 7/2010) was sent in relation to allegations related to the killing of Mr. Suwaib Upham, who had allegedly agreed to testify in the "Maguindanao massacre" trial. We take note of the response of your Excellency's Government dated 20 October 2010. While indicating that Mr. Upham was not identified as a witness for the prosecution of the "Maguindanao massacre", your Excellency's Government did not respond to the question related to the measures taken to ensure effective protection to the witnesses and members of their families called to participate in the trial.

According to the new information received:

Five years have passed since 23 November 2009, when a convoy of supporters of Mr. Esmael Mangundadatu, Vice-Mayor of Buluan town in Maguindanao province, was abducted by a group of more than 100 gunmen, suspected to be members of a militia at the services of the family of the Governor of Maguindanao province. Some reports indicate that among the abductors were members of the police and the Armed Forces of the Philippines. Reports indicate that at least 57 persons, including 24 women, were killed. Two of the women killed were pregnant. Reports also indicate that 30 local journalists and two media workers were among the 57 victims. Some reports indicate that the abductors tortured the victims before executing them, including subjecting the female victims to sexual violence, including rape and sexual mutilation. The bodies were buried in mass graves on a hilltop in Sitio Masalay, Barangay Salman, in Ampatuan, Maguindanao province.

In a Joint Resolution, dated 5 February 2010, the Department of Justice panel of investigating prosecutors found probable cause for multiple counts of murder against 197 Accused. 57 information reports (charge sheets) for murder corresponding to the then 57 recognized victims were filed against 197 accused. These were all consolidated in Branch 221 of the Regional Trial Court (RTC) of Quezon City, with the case title for all the 57 information reports: "PEOPLE OF THE PHILIPPINES, vs. ANDAL "UNSAY" AMPATUAN, JR. ET AL." Consequently, arrest warrants were issued by the RTC Quezon City. On January 2010, the Maguindanao massacre cases started to be heard before the RTC of Quezon City Branch 221. On 21 September 2012, the 58th information report in the Maguindanao massacre case was filed before the Regional Trial Court of Quezon City.

The trial of the “Maguindanao massacre” cases has been on-going since, but not a single individual case has gone to conclusion.

It is alleged that at least four witnesses have been killed since the trial began, including one witness who was killed on 18 November 2014 in an armed ambush as he traveled to a meeting to give testimony to a prosecutor. Relatives of witnesses have also reported being attacked, threatened, offered bribes, and harassed.

It is reported that, five years after the massacre, no survivors have received any form of reparation or any form of recognition or public apology from the local or national authorities.

It is reported that media coverage of the trial has been banned since mid-2014.

Reports also indicate that killings of journalists have continued in the country. It is alleged that since 2010, eleven journalists have been killed in the Philippines, and that impunity prevails in most of these cases.

Grave concern is expressed in relation to the slow progress of the trial related to the “Maguindanao Massacre” and the lack of reparations, including compensation and satisfaction, to the survivors and families of the victims, curtailing the right to justice, the right to truth, and the right to remedy of the victims and their relatives, as enshrined in the International Covenant on Civil and Political Rights (ICCPR) ratified by the Philippines in 1986. Grave concern is expressed in relation to the killing of witnesses and allegations of attacks, threats, offers of bribes and harassment of relatives of witnesses. Grave concern is also expressed in relation to alleged ban of media coverage of the hearings and proceedings of the trial, in contradiction with the right to freedom of opinion and expression, which include freedom to seek, receive and impart information and ideas of all kinds, as enshrined in article 19 of the ICCPR, and the right to a fair and public hearing as enshrined in article 14 of the ICCPR.

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/or comments you may have on the above-mentioned allegations.
2. Please provide detailed information on the status of investigations and trial in the “Maguindanao massacre” case, indicating any arrests of, charges against and convictions of alleged perpetrators.

3. Please provide information on measures taken in relation to the suspension of duty or relieve of members of the police or the Armed Forces, in relation to their actions or omission related to the “Maguindanao massacre”.

4. Please provide information on reparations measures taken, including compensation and satisfaction, provided to the survivors and families of the victims, or any steps towards an official recognition of responsibility and presentation of an official apology to the victims by the State and/or local authorities.

5. Please provide information on the measures taken to ensure the safety and security of the witnesses of the “Maguindanao massacre”, as well as the survivors and their relatives, and protection from attacks, threats, bribes and harassment.

6. Please provide information on the measures taken to investigate the killing of journalists that have taken place in the Philippines since 2010, as well as the measures taken to promote a safe environment for journalists to perform their work, including by monitoring and reporting attacks against journalists, publicly condemning attacks, and dedicating the resources necessary to investigate and prosecute such attacks.

7. Please provide information on the measures taken to ensure access to the public to the information related to the “Maguindanao massacre” and the on-going trial; please explain in particular why a ban on media coverage of the trial has been imposed.

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 persons responsible for the alleged violations.

It is our intention to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency’s Government to clarify the issue/s in question.

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.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

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Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
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Pablo De Greiff  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-  
recurrence

Rashida Manjoo  
Special Rapporteur on violence against women, its causes and consequences

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would also like to refer your Excellency's Government to article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, according to which any person whose rights or freedoms recognized in the Covenant are violated shall have an effective remedy.

We would like to recall article 3 of the Universal Declaration of Human Rights (UDHR) and article 6(1) of the ICCPR which 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 like to also refer to article 5 of the UDHR, article 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded by the Philippines on 18 June 1986, which prohibit the use of torture in absolute terms. We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the CAT.

We would also like to draw the attention of your Excellency's Government to the two most recent reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. The Special Rapporteur in his last report presented in September 2014 to the Human Rights Committee (A/HRC/27/56) recalled that "States have a duty to investigate and prosecute violations of human rights and humanitarian law which constitute crimes under national or international law. This duty flows from the right to an effective remedy, including the right to truth. Failure to investigate and prosecute such violations gives rise to a separate breach of human rights treaty law". We would also like to refer to his last report to the General Assembly presented in October 2014 (A/69/518), where the Special Rapporteur analyses States' obligations and practice in relation to the right to remedy, including effective reparations, to the victims of serious human rights violations. The report stress that "for a benefit to count as reparation and to be understood as a 'justice' measure, it has to be accompanied by an acknowledgment of responsibility and needs to be linked with other justice initiatives such as truth, criminal prosecutions, and guarantees of non-recurrence. The Special Rapporteur insists that each of these kinds of measure is a matter of legal obligation".

In particular, we wish also to remind your Excellency's Government that, according to the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, 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 in Resolution 26/12 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). 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.”

Moreover, 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 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

We would also like to draw the attention of your Excellency’s Government to article 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, which requires that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given,” and to paragraph 3 (b) of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also known as the Istanbul Protocol, which states that, “alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation.” (General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex).

In this context, we would also like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

We would also like to draw the attention of your Excellency’s Government to article 14 of the CAT, which provides that victims of torture should have the right to redress and adequate compensation. In this regard, we would also like to remind you that paragraph 7e of Human Rights Council Resolution 16/23, which urges States “(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation, and urges

States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken.”

In this regard, we would like to draw your Excellency’s attention to 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.

We would like to recall more specifically Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

Moreover, article 7(c) of the Convention on the Elimination of all Forms of Discrimination against Women explicitly provides for the promotion and protection of women in freely participating in public matters. States agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right to participate in non-governmental organizations and associations concerned with the public and political life of the country. Further, we would like to recall the principle reiterated in Resolution 2005/38 of the Commission on Human Rights which calls on States to facilitate the full, equal and effective participation and free communication of women at all levels of decision making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts. In addition to these specific provisions, women also benefit from the general guarantees contained in the ICCPR, including those relating to freedom from discrimination (art.2), freedom of expression (art. 19), to the right to life and security of the person (art. 6) and to freedom from torture or cruel treatment (art. 7).

We would like to refer your Excellency’s Government to article 14 of the ICCPR, as well as the Human Rights Committee’s interpretation of that article in its General Comment No. 32, according to which all trials in criminal matters or related to a suit at law must in principle be conducted publicly and open to the general public, including members of the media, to ensure the transparency of proceedings.

We also wish to recall article 19 of the ICCPR, which guarantee the right to freedom of opinion and expression, as well as the Resolution 68/163 adopted by the



General Assembly on 18 December 2013, The safety of journalists and the issue of impunity, which “urges Member States to do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies”. The Resolution also calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of the monitoring and reporting of attacks against journalists, publicly condemning attacks; and dedicating the resources necessary to investigate and prosecute such attacks.