

Mandates of the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
IND 5/2014:

25 August 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council decision 25/116, and resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged ban to enter India of Ms. Mary Aileen Diez Bacalso, Secretary General of Asian Federation Against Involuntary Disappearances (AFAD).

According to the information received:

On 17 August 2014, Ms. Mary Aileen Diez Bacalso, a national of the Philippines, was banned to enter India at Mumbai International Airport.

Prior to her trip to India, on 11 August 2014, Ms. Mary Aileen Diez Bacalso submitted her visa application to the Indian embassy in Manila. She was not granted a visa to India but was advised by personnel of the Indian embassy to avail of the visa-on-arrival facility at Mumbai airport which is available to nationals of the Philippines.

On the evening of 17 August 2014, upon arrival at Mumbai airport, Ms. Diez Bacalso was immediately taken to a separate room where some Indian officials were present and her passport was seized. One officer was filling a form for Ms. Diez Bacalso which she later learned was a form for refusal to land. As indicated in the form, the reason for refusal to land was that she was "banned in India". When Ms. Diez Bacalso asked the reason why she was banned in India, the officers replied that she should know the reason referring to her last trip to India in 2009 and indicated that she did something bad then. Subsequently, Ms. Diez

Bacalso was put on a flight back to Manila and her passport was returned to her only when she arrived at Manila.

Prior to this incident, Ms. Diez Bacalso visited India three times, in 2003, 2006 and 2009. During her visits in India, she traveled to Kashmir to meet with families of disappeared persons and held meetings with a member organization of AFAD, which worked on unmarked graves and mass graves in Jammu and Kashmir. She published reports on cases of enforced disappearances in Kashmir and participated in a session on psychological rehabilitation for families of disappeared persons in Kashmir. In 2009, Ms. Diez Bacalso travelled to New Delhi and Kashmir campaigning for the ratification by India of the Convention on the Protection of All Persons from Enforced Disappearance.

This is not the first time that a representative of AFAD is banned to enter India. In 2010, an administrative officer of AFAD, who accompanied Ms. Diez Bacalso in her visit to Kashmir in 2009, was also refused entry into India.

Concern is expressed that Ms. Mary Aileen Diez Bacalso was seemingly refused permission to enter India as a result of her legitimate human rights activities, especially her work on the cases of enforced disappearances in Kashmir. Concern is further expressed at what appears to be reprisal for the legitimate exercise of the right to freedom of expression and association by Ms. Diez Bacalso and her colleagues from AFAD.

In connection to 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.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information on the legal grounds for the ban to enter in India imposed on Ms. Mary Aileen Diez Bacalso.

We would appreciate 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 person responsible of the alleged violations.

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.

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

Article 13 (3) of the Declaration on the Protection of all Persons from Enforced Disappearance, which states that “[s]teps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal”.

We would also like to recall that, in its resolution 7/12, the Human Rights Council urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

We would further 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.