

Mandates of the Special Rapporteur on the right to education and the Special Rapporteur on the rights of indigenous peoples

REFERENCE: AL
PHL 4/2015:

21 September 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 26/17 and 24/9.

In this connection, we would like to bring to the urgent attention of your Excellency's Government information we have received concerning the **alleged closure and disruption of classes in community schools serving mostly indigenous children, in Mindanao, particularly in regions XI and XII, due to both a government directive to close schools and alleged systematic attacks reportedly by state and alleged paramilitary forces on schools (including children, teachers and parents), often in collusion with local authorities.**

According to the information received:

Approximately ten years ago, Lumad indigenous elders in Mindanao, with the support of non-government and church-based organizations, began to build and put into operation schools in their own community, in order to make education available to Lumad indigenous children that were otherwise unable to access public schools. At that time, public schools were built in town centres, far from upland Lumad communities compelling Lumad children to walk for hours every day to attend their classes. Due to these difficulties, Lumad children were increasingly dropping out of school. It was reported that prior to the establishment of the community schools nine out of ten Lumad children in Mindanao had no access to education.

Information received indicates that there are currently one hundred forty six community schools, for the most part located in the provinces of Davao del Norte, Davao Oriental, Surigao del Sur, Agusan del Sur, Compostela Valley and South Cotabato. The community schools provide children with access to formal and non-formal education, including literacy and numeracy programs as well as scientific agriculture that strengthen Lumad childrens' indigenous customs,

culture and traditions. It is reported that the majority of the community schools that have since been established also implement formal education and have been accredited by the Department of Education. These schools however, continue to face challenges: most, if not all, lack sufficient teachers and where teachers are available, they often have to teach several subjects and more than one level.

On 12 May 2015, the Superintendent of the Department of Education of Davao addressed a letter to the Department's Director in Davao del Norte instructing to close at least 24 of these community schools and requesting to build public schools instead "utilizing military personnel as para-teachers". The closure of these schools would affect more than 2,800 Lumad children.

This directive to close the 24 schools is one the last in a series of serious challenges facing community schools. Between 2010 and 2015, eighty-seven of these schools have been reportedly attacked, closed, destroyed or occupied by government forces. Teachers, students and parents are reported to have received various forms of threats and intimidation allegedly committed by government forces or the Armed Forces of the Philippines (AFP), and also by alleged paramilitary groups including Alamara and Bagani.

Reportedly, military and alleged paramilitary groups reportedly enter community schools and classrooms unannounced, including in the presence of children and teachers. They allegedly sleep/encamp in the schools. In order to legitimate these actions, the schools are often portrayed by these groups as New People's Army (NPA) or communist schools, and anyone connected to these schools are then reportedly classified as communists, or member of the NPA.

The military presence in community schools and day care centres in Mindanao also leads to the disruption or suspension of many classes. In particular, at least 33 incidents occurring between 2011 and 2015 have been documented in Davao Oriental, of which 14 have allegedly taken place between January and April 2015 alone. Reported incidents include military encampments within school premises, use of civilians, including children, as shields, as well as threats, harassment and intimidation of parents and teachers. Incidents in Davao Oriental are reportedly perpetrated by the Philippine Army's 67th battalion under the 701st Brigade, in collusion with officials from barangay and line agencies in the municipalities. This year's incidents have allegedly affected about 1,700 students and about 50 teachers and school staff and have resulted in the disruption of community schools' classes and severe obstructions to children's right to access education.

Classes have also been disrupted or suspended in schools in Davao del Norte. Thirteen incidents have allegedly occurred between January and May 2015 alone, in the form of military encampment within school premises and treats, harassment and intimidation among teachers and students mainly in Talaingod and Kepalong. These incidents are reported to affect 1,686 students and 42 teachers in both community and public schools serving mostly indigenous children.

Amongst the many reported incidents in Davao del Norte, of particular concern is the alleged abduction of 12 students of the Salugpongan School in Sitio Dulyan, Brgy Palma Gil reportedly by elements of the 68th Infantry Battalion from 14 to 18 May 2015. Other serious incidents, including alleged arbitrary detention and illegal arrest of students, teachers and parents, have been reportedly perpetrated by the alleged paramilitary group “Alamara” and resulted in the cessation of teaching activities in Sitio Muling, Barangay Kapalong.

Other incidents reported the past year include indiscriminate and successive firing events up to 2-hour length allegedly by Alpha Coy of the 68th Infantry Brigade of the Philippines on a high school at Sitio Nasilaban which is further located very close to a public elementary school. The series of firings in this case resulted in the suspension of classes and threatened the right to life of students and teachers.

The incursion of the military into these schools has reportedly been formally authorized by the Department of Education through its Memorandum of December 2013 (221 of 2013) that allow for military operation in the schools. The Memorandum adopts the Guidelines for the Conduct of AFP Activities Inside or Within the Premises of a School or Hospital (AFP Guidelines). It is reported that although the memorandum and its guidelines purportedly authorize military presence in schools in order to protect the rights of children during armed conflict, the reality is that the military incursions into these community schools do not protect the children, but rather put them at risk.

Moreover, the presence of the military has allegedly not followed the guidelines. To the contrary, the guidelines specifically forbid to occupy schools without a lawful purpose; to target schools or its personnel for propaganda in relation to unlawful purposes or for direct/indirect fires; to target children; to use schools for military purposes, and prevents military personnel to enter schools in battle dress and with firearms displayed, unless it is for a lawful purpose as provided under the guidelines. In addition, the conduct of anti-insurgency information campaigns inside schools is forbidden and school shall not be arbitrarily disrupted, unless there is a clear and imminent danger to the safety of the people therein.

While we do not wish to prejudge the accuracy of this information, we wish to express concern at the alleged closure of at least 24 community-led schools in Mindanao affecting more than 2,800 Lumad indigenous children. We wish to express serious concern at the allegations that these schools are intended to be replaced by public schools with members of the military as “para-teachers”. Furthermore, we would like to express grave concern at the alleged attacks on, as well as reported threats and harassment against teachers, parents and students of, community schools serving mainly indigenous children in Davao Oriental and Davao del Norte, reportedly by state and alleged paramilitary forces, often in collusion with municipal authorities.

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 any comment you may have on the above mentioned allegations.
2. In relation to allegations of attacks, threats and harassment on schools and against teachers, students and parents in Davao Oriental and Davao del Norte reportedly by state and alleged paramilitary forces often in collusion with municipal authorities, please provide the details, and where available the results, of any investigation and judicial or other inquiries which may have been carried out in relation to these events. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information about the measures taken in Philippines' public schools to allow for indigenous groups to enjoy their own culture, traditional practices and language.
4. Please provide information about the support provided by the Department of Education to community schools in Mindanao, particularly in Davao and Caraga regions.
5. Please explain the measures taken by public schools in the Philippines, and particularly in Mindanao, to ensure the implementation of educational measures that protect the child from all forms of violence, including from armed-related attacks.
6. Please describe legislative or other measures that have been put in place to guarantee the realization of the right of everyone to education in conditions of peace and security.

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 person(s) responsible for 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.

Kishore Singh
Special Rapporteur on the right to education

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to draw the attention of your Excellency's Government to article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines on 7 June 1974, which recognizes the right of *everyone* to education and further indicates that primary education shall be compulsory and available free to all. It also states that respect should be provided for the liberty of parents or legal guardians to choose for their children schools which conform to minimum educational standards, other than those established by the public authorities.

In addition, we would like to remind your Excellency's Government of its obligations under articles 28, 29, 30 and 32 of the Convention of the Rights of the Child (CRC), ratified by the Philippines on 21 August 1990. Accordingly, States parties shall take measures to encourage regular attendance at schools and the reduction of drop-out rates (art 28), further agreeing that education shall be directed to, inter alia, the respect for the child's parents, his or her own cultural identity, language and values (art 29) and that children of indigenous origin shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language (art 30).). Article 32 specifically mentions that State Parties have the obligation to prevent any situation that would interfere with children's education.

Moreover, CRC article 19 indicates that all appropriate educational measures, amongst others, shall be undertaken to protect the child from all forms of violence. The Optional Protocol to the CRC on the involvement of children in armed conflict, ratified by the Philippines on 23 August 2003, further specifies that children require special protection and calls for their education to take place in conditions of peace and security. It also condemns the targeting of children as well as the direct attack on places that generally have a significant presence of children, such as schools.

In this connection, we would also like to draw the attention of your Excellency's Government to the United Nations Security Council Resolution 2143 (2014), which express concern at the engagement of armed forces in schools activities, recognizing that it may render schools legitimate targets of attack, thus endangering children's and teacher's safety as well as children's education. It also encourages Governments to consider concrete measures to deter the use of schools by armed forces.

Also, we urge your Excellency's Government to take into account CRC concluding recommendations of 2009 to the Philippines where the Committee recommended your Excellency's Government to "[U]rgently take all necessary measures to ensure that primary education is universal, free of direct or indirect costs and accessible for all

children and pay particular attention to the schooling opportunities in the most remote *barangays* and to the educational needs of children belonging to vulnerable groups, in order to fulfil their right to education.” (CRC/C/PHL/CO/3-4, 22 October 2009.)

We would also like to draw the attention of your Excellency’s Government to articles 14 and 21 of the United Nations Declaration on the Rights of Indigenous Peoples which your Government voted in favour of on 13 September 2007. Article 14 provides indigenous peoples the right to establish and control their educational systems in their own language and in a manner appropriate to their culture, while Article 21 stipulates their right to the improvement of their socio-economic conditions, including in the area of education.

We also refer to Geneva Convention IV, protecting civilians, especially women and children, from the adverse effects of war, and ensuring the safety the respect of the human rights and honour of protected persons and their families, their practice of religion, convictions and practices, culture and customs.

We reiterate the recommendation of the former UN Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, to your Excellency’s Government, in the promotion and protection of the rights of indigenous peoples, to provide and make available to indigenous peoples “to the maximum extent possible”, “adequate basic social services, including housing, education, health, food and drinking water.

Furthermore, we underscore the initial report of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani report¹ which highlights the case of the 700 indigenous peoples at the UCCP Center in Davao. Mr. Beyani reported that the presence of the AFP and Alamara paramilitary groups in indigenous communities continue to create anxiety in their communities.

Finally, we refer your Excellency’s Government to the CERD Concluding Observations on the Philippines from 2009, which urged Your Excellency’s Government to “continue efforts to restore peace in the regions affected by armed conflict, to protect vulnerable groups from human rights violations, notably indigenous peoples and children of ethnic groups, and to ensure that independent and impartial investigations are conducted into all allegations of human rights violations.” (CERD/C/PHL/CO/20) The Committee, recalling a recommendation from July 2008 by the CRC under the Optional Protocol to the CRC on the involvement of children in armed conflict, further recommended the enforcement of the 1997 Indigenous Peoples Rights Act (IPRA) to ensure that indigenous children and children from other ethnic groups are not recruited by armed forces or armed groups (CRC/C/OPAC/PHL/CO/1, para. 19).

¹ Statement of the United Nations Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, on the conclusion of his official visit to the Philippines, 21 to 31 July 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16280&LangID=E#sthash.RXXvRTEb.dpuf>.