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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extreme poverty and human rights, pursuant to General Assembly resolution 60/251 and Human Rights Council resolution 17/13.

In this context, I would like to bring to your Excellency's Government's attention information I have received regarding alleged evictions and confiscation of property of more than 350 vendors from Rizal Park (commonly known as Luneta Park) in Manila.

According to the information received:

Vendors have been selling food and refreshments for many years inside Luneta Park. Many have been vendors there for 15-30 years, and under a 2004 agreement with the Department of Tourism they were allowed to sell their goods in the park.

In 2010, when a new Director of the National Parks Development Committee (NPDC) took office, a longstanding policy of cooperation and consultation with the Luneta Park vendors was reversed. In November 2010, the Director of the NPDC ordered a new policy of demolition of the vending zones and eviction of vendors from the park. There was no consultation or negotiation with the vendors regarding this new policy. In the first quarter of 2011, NPDC threatened to demolish the vendors' stalls if they did not freely leave these areas. The vendors did not follow the order to leave because there had been no talks or concrete plans announced for alternative locations or livelihoods for the vendors.

Subsequently, a meeting between the vendors and NPDC took place, during which the NPDC stated that vendors affected by the policy would be relocated to a better place, stating they did not want Luneta Park to be like a market.

On May 2011, the vendors were relocated to different parts of the park, with their agreement. However NPDC then set up replacement vending spaces in the spots they had vacated, contrary to their stated policy of not using the park for market purposes. These spaces were leased to larger traders and businessmen (at a rate

unaffordable for the small vendors) who are now competing for the business of the relocated small vendors. Moreover, the relocated vendors were compelled to pay an unaffordable level of rent for their inferior spaces.

In February 2012, after not receiving information or being consulted for some time, the vendors were informed that the DPDC was to evict all small vendors inside Luneta Park. According to reports received, on 6 February 2012, 15 vendors were forcibly evicted by the Department of Public Services of the City of Manila; they resisted and staged a protest in front of the Department of Tourism. On 15 February 2012, another forcible eviction took place and the goods and materials of the vendors were confiscated.

I am also informed that on 22 March 2012, officers from the Department of Social Welfare and Development encouraged the vendors to immediately vacate their vending places, and apply for work as street sweepers instead. However, vendors were informed that this work would only last for three months. The vendors were again threatened with eviction for 26 March 2012.

Reportedly, on 27 March 2012, more than 20 members of the Department of Public Safety arrived at the vending area and confiscated all the goods and equipment of the vendors. Allegedly, the DPS personnel used threats of violence, punched a pregnant vendor and harassed the vendors. When the vendors went to the office of the DPS to reclaim their goods, they were turned away and again threatened with violence. Eventually, according to information received, the goods were returned after an intervention was sought from the Office of the Mayor. According to information received, on 26 April 2012 six additional vendors were evicted from the Park by the Department of Public Service of the City of Manila and their goods and equipment confiscated.

I am informed that additional evictions and confiscations of merchandise and other property took place on 10, 12 and 27 June 2012. Reportedly, the vendors were requested by NPDC officials to apply for a Park Permit, in order to be allowed to continue selling their merchandise in the Park. The Park Permit costs 100 Peso per day, which is unaffordable for the vendors. According to reports received, the vendors were threatened by NPDC officials that if they do not apply for the Park Permit they will be arrested and their merchandise confiscated.

Reportedly, more than 350 vendors have been affected by this new 'zero vending policy' of the NPDC.

According to information received, in July 2012 the vendors filed a complaint with the Office of the Ombudsman against several officials of the NPDC.

Concerns have been raised that the enforcement of the above-mentioned policies and actions by local authorities will have a disproportionate impact on the vendors and their families who mostly live in poverty, impeding their enjoyment of various human

rights including the right to an adequate standard of living, the right to work, the right to non-discrimination and the right to liberty and security of person.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, the following:

Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the Philippines is a party (ratified 7 June 1974), states that "the States Parties to present Covenant 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".

Article 6.1 of the ICESCR recognizes the right to work, "which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right". Article 7 recognizes the right of everyone to the enjoyment of "just and favourable conditions of work" which ensure, inter alia, a "decent living for themselves and their families" and "safe and healthy working conditions".

Article 2.2 of the ICESCR recognizes the obligation of States parties to guarantee that the rights enunciated in the Covenant "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

General Comment 18 of the Committee on Economic, Social and Cultural Rights clearly states that the right to work as enshrined in the ICESCR includes "the right not to be deprived of work unfairly" (para 4). It also notes that those who work in the informal economy generally do so because of their lack of access to the formal economy and their need to survive (para. 10). [Vending in public places is part of the informal economy, a means for the poorest and most vulnerable to earn money to support their families and their livelihoods.] When States impose bans, onerous licences or strict restrictions on street vendors, they severely undermine the rights of persons living in poverty to make a living.

In General Comment 18, the Committee on Economic, Social and Cultural Rights also outlined States' immediate obligations in relation to the right to work, such as the obligation to "guarantee" that it will be exercised "without discrimination of any kind" (para. 19). In addition, "[t]he obligation to respect the right to work requires States parties to refrain from interfering directly or indirectly with the enjoyment of that right" (para. 22).

In the context of the right to work, the 'core obligation' of the State encompasses "the obligation to ensure non-discrimination and equal protection of employment". Accordingly, these core obligations include, inter alia, at least the requirements to: ensure the right of access to employment, especially for disadvantaged and marginalized

individuals and groups, permitting them to live a life of dignity; and to avoid any measure that results in discrimination and unequal treatment (para. 31).

I would also like to draw the attention of your Excellency's Government to the provisions of article 2.1 of the ICESCR, which states that States parties must ensure the "progressive realization" of all economic, social and cultural rights.

While compliance with the principle of 'progressive realization' depends on the availability of resources in each State Party, this provision also prescribes particular modes of conduct that are compulsory for all States Parties, regardless of their level of development. Therefore, while the 'progressive realization' of economic, social and cultural rights is dependent on the specific circumstances of the State concerned, article 2.1 also imposes obligations that have the same content for all States Parties regardless of their level of development. These obligations considerably limit the discretion of States with regard to the implementation of the ICESCR and require immediate implementation. States Parties are obliged to *take steps* to achieve progressively the full realization of the rights recognized in the ICESCR. This obligation is immediately applicable and is not subject to limitation. Hence, it is not an obligation to take action in the future. States, regardless of their level of development, must take steps immediately to achieve the full realization of the rights enshrined in the ICESCR (General Comment No. 13 para. 43) Moreover, article 2.1 imposes a prohibition of taking deliberately retrogressive measures. As stated by the Committee on Economic, Social and Cultural Rights, 'any deliberately retrogressive measures [...] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.' (General Comment No. 3 para. 9)

According to the Committee on Economic, Social and Cultural Rights there is a strong presumption that deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of human rights standards (General Comments No. 3, para. 9 and No. 4, para. 11) As explained by the Committee on Economic, Social and Cultural Rights, an example of a 'deliberately retrogressive measure' would be a general decline in living conditions, "*directly attributable* to policy and legislative decisions by States Parties, and in the absence of accompanying compensatory measures" (General Comment No. 4 para. 11)

The Committee on Economic, Social and Cultural Rights noted that, in adopting retrogressive measures, States must demonstrate that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the ICESCR, in the context of the full use of the maximum available resources (General Comments No. 3, para. 9, No. 13, para. 45, No. 14, para. 32, No. 15, para. 19, No. 17, para. 27, No. 18, para. 34, No. 19, para. 42 and No. 21, para. 65.)

While states can adopt reasonable regulations on street vending activities, I note that under human rights law in order to limit the enjoyment of rights, such limitations

must comply with numerous safeguards. In line with article 4 of the ICESCR and to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1987/17, annex), limitations of economic, social and cultural rights may only be imposed if they are “determined by law”, “compatible with the nature of these rights”, “solely for the purposes of promoting general welfare” and “necessary in a democratic society”. Permissible limitations must also comply with general principles of human rights law, and must thus be non-discriminatory, reasonable and proportionate. States must not impose more restrictive measures than are required for the achievement of the purpose of the limitation.

I would also like to draw the attention of your Excellency’s Government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined in the above mentioned article 2 of the ICESCR.

In its General Comment 20 (para. 34 and 35), the Committee on Economic, Social and Cultural Rights noted that “economic and social status” is a prohibited ground for discrimination, implied to in the phrase “other status” in article 2 of the ICESCR. Thus, measures which discriminate against individuals because they live in a situation of poverty may amount to a contravention of the principle of non-discrimination.

The Committee also stressed that a discriminatory intent is not a necessary element of discrimination. Therefore, any measure with the purpose or effect of nullifying or impairing the equal enjoyment of human rights constitutes a violation of States’ human rights obligations (General Comment 20 para. 10 and 12).

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
2. What is the rationale behind the removal of small vendors from Luneta Park?
3. What is the legal basis for the eviction of the vendors and the confiscation of their goods?
4. Please provide information to demonstrate that the new policy restricting vendors in the Park has been introduced “after the most careful consideration of all alternatives” and that it is duly justified by reference to the totality of the rights provided for in the ICESCR in the context of the full use of the maximum available resources.
5. What are the legal recourses available to the affected persons to contest these decisions?

6. Has a legal complaint been lodged by or on behalf of the affected community? If so, please provide details and outcomes of these proceedings. Please provide details of the proceedings pending before the Office of the Ombudsman in this case.
7. Please provide details of any alternative employment or training programmes for the Luneta Park vendors.
8. Did public consultations take place (including with potentially affected persons) prior to the adoption of this policy or these alleged evictions? If yes, please give the details, date and outcome of these consultations.
9. Has a human rights impact assessment been carried out regarding this policy? If so, who undertook such assessments and could you please provide the conclusions of the assessments?
10. What is the current situation of the persons affected by the eviction? Were any measures undertaken to avoid worsening the standard of living of the people affected?

I would appreciate a response within sixty days. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

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

Maria Magdalena Sepúlveda Carmona
Special Rapporteur on extreme poverty and human rights