

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the rights of indigenous peoples

REFERENCE: AL
PHL 3/2016:

11 November 2016

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 rights to freedom of peaceful assembly and of association and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 25/2, 24/5 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged excessive and indiscriminate use of force by the police against protesters in Manila on 19 October 2016**.

According to the information received:

Background

In October 2016, some 3,000 Moro and indigenous peoples from all over the Philippines travelled to and gathered in Manila for the 2016 edition of the Lakbayan ng Pambansang Minorya (Caravan of National Minorities, hereafter, the "Lakbayan"). This was the third edition of the Lakbayan. The 2016 Lakbayan called for the end of military operations in ancestral lands and the assertion of national sovereignty *vis-a-vis* the United States. A series of activities and protests were conducted as part of the Lakbayan.

Protest in Manila on 19 October 2016 – Initial events

On October 19, 2016, towards 10:00 am, more than 1,000 members of Sandugo – a recently formed alliance – converged on T.M. Kalaw Street in Manila to protest in front of the United States' Embassy in support of President Duterte's "independent foreign policy". When the protesters reached the Museo Pambata, about 50 to 60 police personnel from the Manila Police District allegedly blocked the road. Violence erupted between the police and protesters. Police personnel onboard a firetruck reportedly used water cannons in an attempt to disperse the protesters, who then grabbed the fire hose and confronted the outnumbered police with rocks and red paint.

In parallel, another group of protesters approached the main gate of the United States' Embassy. They were joined by the first group of protesters and the police officers who were previously blocking the road at Museo Pambata. Clashes allegedly continued between protesters and the police. After breaking through the police corridor, protesters wrote "US troops out now" and other slogans on the Embassy's fence with red paint.

After these initial clashes, protesters and the police managed to negotiate an agreement and protesters took some steps back. Thereafter, protesters held a peaceful program for almost two hours.

Protest in Manila on 19 October 2016 – Violent dispersal

When the rally was about to come to an end, a senior police officer arrived on the scene, angrily criticized his men for not arresting anyone and allegedly instructed them to hit the protesters. As protesters were getting ready for an organized dispersal, the senior police officer reportedly ordered the violent dispersal of protesters.

Thereafter, tear gas was fired in the air. The police contingent started approaching protesters. Suddenly, the driver of a police vehicle violently drove back and forth with his van in the middle of the crowd, injuring at least 10 protesters, including women and elderly people. In response, angry protesters allegedly threw placards, mineral water bottles and sticks, among others. At least 30 police officers were reportedly injured.

The police allegedly started arresting protesters violently, including those who were injured and being looked after by a medical team. Five members of the medical team of the Health Action for Human Rights were also arrested.

In a video footage, one police officer can be seen pulling the hair of a Lumad indigenous woman inside a jeepney. The officer allegedly punched the cameraman who recorded the incident.

Drivers of jeepneys carrying protesters, mostly indigenous peoples, hurriedly drove away from the area. However, the police started hitting the jeepneys using their wooden batons as they fled. The police was able to stop one jeepney and then pulled out and beat the driver using wooden batons. The driver fell to the ground and was left unconscious. The passengers, mostly Lumad peasants, were reportedly taken out of the jeepney and were arrested.

In total, 43 protesters were arrested, many of whom were injured either as a result of police dispersal through tear gas, the use of batons, the running over by the police van or through violent arrest. After being taken to the police station, eleven protesters were brought to the Philippine General Hospital and Ospital ng Maynila

and later discharged. The other protesters were released from the police station in the afternoon.

Initial steps taken after the incidents

Following the above-mentioned events, nine police officers allegedly involved in the violent dispersal of the assembly were suspended. The Director General of Police pledged to “swiftly and decisively” investigate the conduct of these police officers.

Multiple charges were reportedly filed in the Office of the Ombudsman against 10 police officers. Charges include attempted murder, grave abuse of authority, serious physical injuries, unlawful arrest, conduct unbecoming of a public officer, gross misconduct, violations of the rights of the accused and the Public Assembly Act, and obstruction of justice.

Serious concern is expressed at the alleged excessive and indiscriminate use of force by the police – especially the use of a police van to drive back and forth into the middle of a crowd – followed by mass arrests of protesters, some of whom were injured. We express concern that these actions are directly related to the exercise of the right to freedom of assembly and freedom of expression.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 the details, and when available the results, of the on-going investigation in the conduct of the police officers involved in the violent dispersal of the assembly as well as the procedure filed in the Office of the Ombudsman.
3. Please provide information on measures taken by the Government to prevent similar events from occurring in the future, including trainings of the police on the proper management of assemblies.

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.

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.

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

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines in 1986, which guarantee the right to freedom of opinion and expression, and the right to freedom of peaceful assembly, respectively. We would in this connection like to highlight that any restrictions to these rights must meet the high threshold established under article 19(3) and article 21. We also make reference to Resolution 12/16 of the Human Rights Council, which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively acts of violence and to bring to justice those responsible to combat impunity.

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 (...), including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others (...) 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.”

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. 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 joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the proper management of assemblies (A/HRC/31/66) highlights that “even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected” (para. 9). In any case, 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 legality, precaution, necessity, proportionality and accountability (para. 50). The use of force should only target individuals using violence or to avert an imminent threat (para. 57).

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the General Assembly in 2007 with an affirmative vote of the Philippines. Article 7 of UNDRIP provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.