

**Mandates of the Working Group on Arbitrary Detention; 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Working Group on the issue of discrimination against women in law and in practice**

REFERENCE:  
UA PHL 5/2017

27 March 2017

Dear Ms. Almojuela,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/30, 26/12, 25/2, 25/18, 26/7 and 15/23.

In this connection, we would like to bring to the attention of your Government information we have received concerning the alleged intimidation, persecution and threats, as well as the judicial harassment, arrest and detention of Ms. **Leila M. De Lima**, a senator, in connection with her criticism of government policies surrounding the “war on drugs” in the Philippines, including the extrajudicial killing of suspected criminals and drug addicts and the proposal to reinstate the death penalty.

Ms. Leila M. De Lima is currently a senator of the Philippines’ 17th Congress. A lawyer by profession, she has a long-standing reputation as a human rights defender seeking accountability for extrajudicial killings and other cases of gross violations of human rights in the Philippines. Until September 2016, she was the chairperson of the Senate Justice and Human Rights Committee, which investigated extra-judicial killings during the anti-drug campaign. Prior to being a Senator, she was the Philippines Secretary of the Department of Justice. Between 2008 and 2010, she served as Chairperson of the Commission on Human Rights of the Philippines. She has been an outspoken critic of death penalty in the Philippines, and proposed a bill that would increase the period of lifetime imprisonment in the country in lieu of the re-introduction of the death penalty.

The proposed Death Penalty Law was the subject of an urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 21 December 2016 (Case PHL 4/2016), to which no reply from your Government has been received. The alleged extrajudicial executions in the context of the Government’s anti-drug campaign was the subject of an urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental

health sent on 17 August 2016 (Case PHL 2/2016), and two urgent appeals sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 3 February 2017 and 28 February 2017 (Cases PHL 1/2017 and PHL 3/2017). We regret that no replies have been received regarding cases PHL 2/2016 and 3/2017. We thank your Government for the reply received regarding case 1/2017, to which the Special Rapporteur on extrajudicial, summary or arbitrary executions replied on 28 February 2017 (case PHL 3/2017).

According to the information received:

In 2008, Ms. Leila De Lima was appointed as 4<sup>th</sup> Chairperson of the Commission on Human Rights (CHR) of the Philippines.

In 2009, as Chairperson of the Commission on Human Rights, Ms. De Lima initiated an investigation into extra-judicial killings in Davao, including into the alleged involvement of Mr. Rodrigo Duterte, then Mayor of Davao City, with the ‘Davao Death Squad’, accused of carrying out at least 1,000 summary executions.

In 2012, the Commission on Human Rights released a resolution stating that systematic extrajudicial killings had been committed by the ‘Davao Death Squad’, and recommended that the Office of the Ombudsman investigate the “possible administrative and criminal liability” of Mayor Rodrigo Duterte. The Ombudsman did not include Mr. Rodrigo Duterte in its investigation but found several police officers guilty of “neglect of duty” for failing to investigate the killings. The Court of Appeals of Philippines later overturned the convictions.

In 2014, Ms. De Lima, in her capacity as Secretary of the Department of Justice, led an inspection to the New Bilibid Prison, which led to the transfer of 19 prisoners, determined to be ‘drug lords’, to a separate facility.

On 19 May 2016, Ms. De Lima was proclaimed Senator by the Commission of election. On 26 July 2016, Ms. De Lima was elected by the Senate as Chairperson of the Committee on Justice and Human Rights. Soon after, Ms. De Lima filed Senate Resolution No. 09, directing the Senate Committee on Justice and Human Rights to investigate recent cases of extra-judicial killings and summary executions.

On 2 August 2016, Ms. De Lima delivered her first privilege speech at Plenary Session, calling for an end to the extra-judicial killings and urging that investigations be conducted by the Senate into those already committed. She also addressed the humiliating and misogynistic verbal attacks, threats, defamation and allegations directed towards her on social networks and through the media. These attacks were allegedly perpetrated by members of the current administration in

retaliation to her criticism of the Government's drug policy and extra-judicial killings.

On 19 August 2016, Resolution No. 105 was filed seeking an investigation into the proliferation of the drug trade at the New Bilibid Prison while Ms. De Lima was Secretary of the Department of Justice.

On 22 August 2016, the Senate Committee on Justice and Human Rights commenced its inquiry into extra-judicial killings. Ms. De Lima was reportedly subjected to further harassment, intimidation and misogynistic verbal attacks following the commencement of the inquiry. Several high ranking officials allegedly expressed hostility towards her, made malicious remarks regarding the her personal life, and threatened her on numerous occasions. Members of the administration also accused Ms. De Lima of having links to the illicit drug trade.

On 15 September 2016, a witness appeared at the Senate inquiry and testified to the existence of the Davao Death Squad and the involvement of high ranking officials in its operations.

On 19 September 2016, Ms. De Lima was removed as Chair of the Committee on Justice and Human Rights. The Committee's inquiry on extra-judicial killings was terminated on 16 October 2016.

On 20 September 2016, pursuant to Resolution No. 105, the House of Representatives commenced an inquiry into the proliferation of drug syndicates at the New Bilibid Prison during Ms. De Lima's term as Justice Secretary. At the hearing, the residential address and phone numbers of Ms. De Lima were publically disclosed on national television. As a consequence, Ms. De Lima reportedly received death threats and hateful messages.

On 6 October 2016, a number of women politicians submitted a letter of complaint to the Commission on Human Rights. The complaint requested investigation into actions undertaken by members of the House of Representatives relating to the probe on illicit drug trade at the national penitentiary, that may constitute discriminatory acts against Ms. De Lima in accordance with Republic Act No. 9710, or the 'Magna Carta of Women', as well as a number of international human rights treaties which the Philippines has ratified.

On 21 November 2016, the Department of Justice issued a subpoena to Ms. De Lima, which ordered her to obtain copies of various complaints and evidence filed against her.

On 2 December 2016, at a hearing regarding complaints against Ms. De Lima, her legal team filed an Omnibus Motion arguing that the investigation of the case is to be within the exclusive authority and sole jurisdiction of the Office of the Ombudsman. The legal team argued that considering the partiality, bias and lack of objectivity of the Secretary of Justice and the panel of investigating prosecutors, these officials should recuse themselves and refer the cases to the Office of the Ombudsman.

On 21 December 2016, another hearing was conducted in reference to these complaints; however, there was allegedly no written order, transcript or recording made of the proceedings.

On 17 February 2017, the Secretary of Justice announced that charges had been filed against Ms. De Lima, and several other individuals for alleged violations of illegal drug trading punishable under Section 5, in relation to Section 3 (jj), Section 26 (b) and Section 28 of the Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), prohibiting the “sale, trading, administration, dispensation, delivery, distribution and transportation of illegal drugs.”

The charges against Ms. De Lima are based on the findings and conclusions of the Department of Justice Panel contained in a Joint Resolution dated 14 February 2017. The charges are reportedly based on testimony by several detainees at Manila’s New Bilibid prison who allege that Ms. De Lima accepted money from ‘drug lords’ and facilitated a drug-trading operation while she was Secretary of Justice. Following the Senate investigation into extra-judicial killings, various high-ranking officials from the House of Representatives, Department of Justice and the Executive Branch, including from the Department of Justice, have publically denounced Ms. De Lima for her alleged complicity in the illegal drug trade within the Philippines.

On 20 February 2017, Ms. De Lima filed a Motion to Quash, citing the issue of the Muntinlupa Regional Trial Court’s lack of jurisdiction over the offence charged against her and the Department of Justice Panel’s lack of authority over the case. The Motion to Quash was scheduled for hearing on 24 February 2017.

On 23 February 2017, despite the unresolved Motion to Quash, which questioned the jurisdiction of the court and requested the suspension of hearings, the Regional Trial Court Branch 204 issued an order of arrest against Ms. De Lima.

On 24 February 2017, Ms. De Lima presented herself to the arresting officers of the Philippine National Police Criminal Investigation and Detection Group, who served the warrant at the Senate. Her charges are unailable offences under the Dangerous Drugs Act. If convicted, Ms. De Lima could face between 12 years to

life in prison, as legislators only enjoy privilege from arrest for crimes punishable by fewer than six years' imprisonment under the Philippine Constitution.

Ms. De Lima is currently being detained at the Philippine National Police Custodial Center.

Ms. De Lima was due to attend sessions of the 34<sup>th</sup> Human Rights Council as well as the International Film Festival and Forum on Human Rights in Geneva during the month of March 2017.

It should be mentioned, that on 1 March 2017, the Congress House Bill No. 1 (Death Penalty Law) to reinstate the death penalty in the Philippines, which has been heavily criticised by Ms. De Lima, was passed in its second reading in the House of Representatives.

On 7 March 2017, the Bill passed its third and final reading in the House of Representatives before going to the Senate for debate.

Serious concern is expressed at the alleged arbitrary arrest and detention of Ms. De Lima, which may be related to the exercise of her legitimate right to freedom of expression and opinion as well as her legitimate human rights activities, including in her capacity as a Senator. We are concerned that the arrest and detention of Ms. De Lima under drug-related charges may be politically motivated and could constitute a form of reprisal for her criticism of members of the administration, as well as of government policies related to the war on drugs in the Philippines.

Moreover, concern is expressed with regard to the alleged lack of respect for due process and fair trial guarantees, in particular the fundamental principle of the presumption of innocence, in the ongoing judicial process against Ms. De Lima, specifically following public declarations by members of the Executive, including of the Department of Justice. Additional concern is expressed with regard to the life and physical and mental integrity of Ms. De Lima, who is being held in a detention centre under the authority of the same institution she investigated for the alleged extra-judicial killings of prisoners.

Equal concern is expressed at the chilling effect that the charges brought against Ms. De Lima may have on the legitimate exercise of the right to freedom of expression, particularly by law-makers and other dissenting voices in the Philippines, on important issues of public interest, such as the The Congress House Bill No. 1 (Death Penalty Law). Further concern is expressed that the arrest of Ms. De Lima appears to have taken place in the context of a broader campaign against, and crackdown on, human rights defenders in the country, and particularly those opposing extra-judicial killings and the reintroduction of the death penalty.

Finally, we remain deeply concerned with the proposed Death Penalty Law to reinstate the death penalty in the Philippines. We wish to reiterate the concerns voiced by the Special Rapporteur on summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in a press release issued on 16 March 2017 urging Filipino legislators to reject the Death Penalty Law.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Without expressing, at this stage, an opinion on the facts of the case and on whether the detention of the above-mentioned person is arbitrary or not, we would like to appeal to your Government to take all necessary measures to guarantee Ms. De Lima's right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986.

We moreover appeal to your Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with article 19 of the ICCPR. In this connection, we refer to Human Rights Council resolution 12/16, calling on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; peaceful demonstrations or political activities, including for peace or democracy and expression of opinion and dissent.

In addition, we wish to bring to the attention of your Government article 25 (a) of the ICCPR, which provides for the right to take part in the conduct of public affairs without any discrimination or unreasonable restriction. Furthermore, we would like to remind your Government of article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the Philippines on 5 August 1981 which requires States parties to take all appropriate measures to eliminate discrimination against women in political and public life. We would also like to draw your attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which the Council expressed concern about systemic and structural discrimination and violence faced by women human rights defenders. Also, as highlighted by the Working Group on discrimination against women (A/HRC/23/50), stigmatization, harassment and outright attacks have been used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. In 2012, recognizing the importance of eliminating violence against women in public and political life, the General Assembly, in its resolution 66/130, called for an

environment of zero tolerance for violence against women elected officials and candidates for public office.

Concerning the reported death threats and harassment and the alleged risk to the life and physical security of Ms. De Lima as she is being held in a detention centre under the authority of the same institution she investigated for the alleged extra-judicial killings of prisoners, we wish to recall articles 6 (1) and 9 of the ICCPR, which guarantee the inherent right to life of every individual, which includes the right not to be arbitrarily deprived of life, and the right to liberty and security of person. In General Comment No. 35, the Human Rights Committee recalled that the right to personal security enshrined in article 9 of the ICCPR obliges States parties to take appropriate measures to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. We also wish to draw your Government's attention to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which establish the obligation of States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions (Principle 4).

The Human Rights Committee, in its General Comment 6 (para. 3) referring to article 6 (1) of the ICCPR, has said that it considers that States parties should take measures to prevent arbitrary killing by their own security forces.

Furthermore, we would like to refer to 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, articles 1, 2, 6, 8 and 12 paragraphs 2 and 3.

Finally, we would like to respectfully remind your Government of the Second Optional Protocol to the ICCPR, ratified by the Philippines on 20 November 2007, which requires States parties to prohibit executions and adopt all necessary measures to abolish the death penalty within its jurisdiction.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of Senator Leila de Lima in compliance with international instruments.

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 details on the legal basis for the arrest and detention of Ms. Leila de Lima, as well as the charges brought against her, and explain how these comply with international human rights standards. Please also explain how the presumption of innocence of Ms. De Lima is being guaranteed, especially in the context of the public remarks from members of the executive and legislative branch.
3. Please provide information on the measures taken to guarantee the safety and integrity of Ms. Leila M. De Lima while in detention.
4. Please indicate what measures have been taken to ensure that the exercise of the right to freedom of expression and opinion is respected in the Philippines, including by politicians and dissenting individuals.
5. Please also indicate what measures have been taken to investigate the harassment and misogynistic remarks allegedly made by public officers against Ms. De Lima and what disciplinary or punitive measures would be taken, should the allegations be substantiated?
6. Please indicate what measures have been taken to ensure the protection of human rights defenders, including women human rights defenders in the Philippines, and whether such measures systematically integrate a gender perspective, and ensure that they are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

In view of the serious allegations brought to our attention regarding the risk to the life and physical integrity of Ms. De Lima while in detention, and the alleged politically motivated charges brought against her, we call upon your Government to conduct a fair and independent investigation on the legality of Ms. De Lima's detention and to grant her house arrest while the case is reviewed.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal procedure and the regular procedure

Please accept, Ms. Almojuela, the assurances of our highest consideration.

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Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Agnes Callamard  
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David Kaye  
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