

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
AL/PHL/6/2017

19 June 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolution 26/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the alleged arbitrary killing of four men and injury to another man in the context of the anti-drug campaign implemented by the Government of the Philippines, as well as incidents of harassment against the survivor and relatives of the victims, and criminal charges brought against the survivor of the attack.**

The rapidly rising number of killings by the police or unknown assailants in the context of the current anti-drug campaign has been the subject of three previous communications: Case PHL 2/2016 of 17 August 2016 (sent together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), Case PHL 1/2017 of 3 February 2017, and Case PHL 3/2017 of 28 February 2017. I regret that only one acknowledgement of receipt (in connection to case PHL 1/2017) has so far been received in response to these communications.

Case PHL 3/2017 addressed the alleged arbitrary killings of nine persons, including two children, in the context of the anti-drug campaign implemented by the Government. Among other cases, the communication addressed the killing on 21 August 2016 of MM. Marcelo Daa, Jr., Anthony Commendo, Rhaffy Gabo, and a fourth man, during "Operation Tokhang" carried out by members of the PNP in civilian clothes, in Daa's residence in Group 9, Area B, Payatas, Quezon City. The four men, along with two others, were playing pool and kara-krus in their yard when they saw a group of police in civilian clothes going in their direction.

The four men pleaded with the police not to be killed and said that they would willingly cooperate, to no avail. The four men were killed inside Mr. Daa's property. The house was ransacked after the killing by the PNP who also took the family's cell phones, tablets and jewelries. The police later reported that the victims had exchanged shots with them during operation Oplan Tokhang. Relatives of the victims filed a case against the police.

According to the additional information received:

On 21 August 2016, Mr. **Efren Morillo** was present at Mr. Marcelo Daa Jr's house when the attack and killings mentioned in Case PHL3/2017 took place. Mr. Morillo was attacked and shot by the same men who killed MM. Marcelo Daa, Jr.,

Anthony Commendo, Rhaffy Gabo, and a fourth man. Unlike the others, he was not killed.

The attackers were all in civilian clothes. At least one of the assailants was holding a bayong. Once inside the compound, the men drew short firearms. The man with the bayong drew his firearm from inside. The five men were made to sit side by side on a bench beside the house, and were accused of being involved in illegal drugs, which they vehemently denied.

The gunmen ransacked the house and took jewelry, electronics and other possessions. They then confronted the five victims with a piece of foil and a gun replica. The latter repeatedly protested their innocence. Infuriated, the armed men brought the five men to the back of the house. Three were shot on the spot by the gunmen, while Mr. Morillo and the owner of the house were brought to a makeshift room where they were shot by a man who was later identified as PO3 [REDACTED].

Mr. Daa Jr. died instantly while Mr. Morillo, who was shot in the chest, did not lose consciousness and played dead until he was able to escape by sliding down a nearby ravine.

The events and killings took place in front of dozens of witnesses.

Later that same day, around 4 pm, about ten men and women in police and/or SWAT uniform entered the house. One hour later, another round of gunshots was fired. At 7 pm, crime scene Operatives (SOCO) and members of the media arrived to the house.

One of the armed men reportedly confirmed in a media interview that they were policemen assigned to QCPD Police Station 6 in Bgy. Batasan Hills, Quezon City. He identified himself as P/SI [REDACTED] and the other policemen as PO3 [REDACTED], PO1 [REDACTED], and PO1 [REDACTED]. He further stated that they killed the men in the course of implementing Oplan Tokhang because they had resisted arrest.

Following his escape, Mr. Morillo received first aid at the Montalban Infirmary in Rodriguez, Rizal, and medical treatment at the East Avenue Medical Center (EAMC). During the 10 days of his hospitalization at the EAMC, he was guarded by policemen from the QCPD Police Station 6. He was eventually rescued by the Commission of Human Rights (CHR), and placed under the CHR witness protection program.

Days and months after the incident, the perpetrators who have identified themselves as policemen continue to return to the place of the incident to harass and intimidate the relatives and next of kin of the victims, as well the members of the community that had witnessed the crime. During the wake of one of the victims, unidentified men arrived and asked details about the victim's partner.

Reportedly, the policemen involved in the attacks, including P/SI [REDACTED], PO3 [REDACTED], PO1 [REDACTED], and PO1 [REDACTED], have been re-assigned to the Regional Headquarters Support Unit, and are no longer engaged in police operations. Presumably, they are limited to desk jobs.

Legal proceedings

A. Writ of Amparo and protection order

A Writ of Amparo was granted by the Supreme Court and the Court of Appeals in benefit of Mr. Morillo and the relatives of the other victims. The Supreme Court initially granted a temporary protection order in their favor, along with other reliefs. The Court of Appeals made permanent the protection order, as well as the other reliefs.

B. Criminal case filed against Efren Morillo before the trial court

Mr. Efren Morillo was charged by the policemen of Direct Assault Against an Agent of a Person in Authority, claiming that he and the other four victims shot at the policemen first. There is already a finding of probable cause against Mr. Morillo, who has been charged.

An Omnibus Motion for Reinvestigation and Production of Documents was filed on behalf of Mr. Morillo, asking the Court to reinvestigate the case and reverse the finding of probable cause in light of newly-discovered forensic evidence. The motion also requests the Court to compel the police to produce other evidence in their possession.

C. Criminal Case filed against the policemen and their civilian companions before the Office of the Ombudsman

A criminal case was filed before the Office of the Ombudsman against the policemen and their civilian associates, who are accused of multiple murder, frustrated murder, robbery, planting of evidence and planting of drugs. The case is currently at the stage of preliminary investigation.

Grave concern is expressed at the allegations of excessive use of force at the hands of the police, and deliberate killings of the abovementioned victims. Grave concern is further expressed at the allegations of harassment against the survivor and relatives of the victims, as well as about the criminal charges brought against the survivor of the attack.

While I do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of the right of every individual to life, security, and not to be arbitrarily deprived of his or her life, as set forth in articles 3 of the Universal Declaration of Human Rights (UDHR) and 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines in 1986.

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.

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. I would therefore be grateful for your observations on the following matters related the aforementioned cases:

1. Please provide any additional information and any comment you may have on the above-mentioned cases and allegations.
2. Please provide the full details of any investigations which may have been undertaken concerning the allegations of excessive use of force and extra-judicial killings, and the police's claims of self-defence. Who has undertaken these investigations? Are reports available? What are the findings and outcome?
3. Please inform if the policemen charged with excessive use of force and extra-judicial execution, including P/SI [REDACTED] but also PO3 [REDACTED], PO1 [REDACTED], and PO1 [REDACTED], are still in active service? If so, please indicate the reasons for this decision.
4. Please clarify whether any form of reparation for the surviving victims and relatives of the deceased has been provided or will be provided.
5. Please indicate how many police operations that have resulted in the deaths of those targeted by the operations or of the policemen involved in the operations, have been investigated? Could you provide further details on these investigations, including who has conducted them, and their outcome.
6. Please indicate how many policemen have been suspended or dismissed in response to violations committed in their conduct of drug-related operations? How many cases, if any, have been filed by the Philippine National Police-Internal Affairs Service against these policemen?
7. What are the measures taken at the highest levels of the PNP to ensure that police officers do not use excessive force and do not execute individuals in their custody in the context of the anti-drug campaign? What steps are being taken to ensure that these measures are effectively implemented.

I would appreciate a response within 60 days.

While awaiting a reply, I urge that all necessary measures are taken to halt the execution by police officers of persons suspected of drug offences, to prevent their re-occurrence, and to resort to other means, such as arrest, detention and judicial proceedings, to combat drug trafficking. In the event that the investigations into these incidents support these allegations to be correct, accountability of any person responsible of the alleged violations should be ensured.

I intend to publicly express my concerns in the near future regarding these and other allegations raised in previous communications as, in our view, the information upon which the public statements will be based is sufficiently reliable to indicate a matter warranting the highest and careful attention.

Your 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 my highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and 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 relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

I would like to refer to articles 3 and 6 (1) of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) of which the Philippines is state party, which guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to arbitrary killing by their own security forces. In addition, in its General Comment No. 31, the Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents.

As highlighted in previous letters, it is incumbent upon the state to undertake independent, impartial and prompt investigation in response to all cases of excessive use of force by the police and unlawful deaths. The Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, recall the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. A failure to investigate as per agreed standards, and bring perpetrators of killings to justice could in and of itself constitute a violation of the right to life. This obligation takes on a particularly crucial dimension in cases, such as those above, where it is alleged that the Police is planting evidence to cover its extra-judicial killings.

The continuous loss of life during drug-related operations carried-out by the Philippine National Police is highly concerning. Although law enforcement officials are entitled and indeed sometimes required to use force, they must always do so in strict compliance with the applicable international standards. In this regard, the requirements of necessity, proportionality and precaution are of particular importance.

In this connection, I would like to draw your Excellency's Government's attention to the relevant international principles and norms governing the use of force by law enforcement authorities. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Medical assistance should be provided as soon as possible when necessary.

The *principle of necessity* outlined in Article 3 of the Code of Conduct limits the use of force by law enforcement officials to only that which is “strictly necessary” in order to carry out their duties. Paragraph 4 of the Basic Principles requires that law enforcement officials, as far as possible, apply nonviolent means before resorting to the use of force. Paragraph 9 of the Basic Principles further establishes that intentional lethal use of firearms may only be made when strictly unavoidable to protect life and when less extreme means are insufficient to achieve these objectives. According to this principle, officials shall not use firearms against persons except: i) in self-defence, ii) in defence of others against the imminent threat of death or serious injury, iii) to prevent a particularly serious crime involving grave threat to life, iv) or to arrest a person presenting such a danger.

The *principle of proportionality* permits law enforcement officials to put life at risk only if it is for the purpose of saving or protecting another life. Just as with the principle of necessity, the proportionality principle limits the use of lethal force by police officers to situations where the primary aim must be to save life, rather than merely to protect law and order or to serve other similar interests. Therefore, as was highlighted in the 2011 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/66/330, para. 37), it is not the fact that someone suspected of having committed a crime stands to be arrested as such that justifies the use of firearms but rather the danger that this person poses to life.

The *principle of precaution* requires States to take reasonable precautions to prevent loss of life, wherever necessary in legislation or subordinate law. This includes putting in place appropriate command and control structures; providing for the proper training of law enforcement officials in the use of force, including less lethal techniques; where possible, requiring the issuing of a clear warning before using force; and ensuring medical assistance is available.”¹ The principle of precaution is important because “once a situation arises where the use of force is considered, it is often too late to rescue the situation. Instead, in order to save lives, all possible measures should be taken “upstream” to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as is possible.”²

The State’s use of potentially lethal force during peacetime must take place within a framework of appropriate planning and training, which must be directed at avoiding or minimizing the risk of loss of life during any law enforcement operation.³ It is not enough for a State or its agents to say that they had no choice but to use force if the escalation of that situation could reasonably have been avoided through precautionary measures. Precaution should be seen as a separate requirement for the use of force, and in particular lethal force.⁴

¹ A/HRC/26/36, para 51

² A/HRC/26/36, para. 63

³ A/71/372 16-15236 11/24

⁴ A/HRC/26/36, paras. 63-64
A/71/372