

**Mandates of the Special Rapporteur on the right to education; 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**

REFERENCE:  
OL PHL 11/2017

29 August 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 26/17, 35/15 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Memorandum Order No. 64, which calls for and allows random and mandatory drug testing at higher education institutions in the Philippines, as well as other measures affecting primary and secondary education institutions which will act as barriers to the enjoyment of the rights to education and health of students, including children.**

The threats to the right to health in the context of the current anti-drug campaign in the Philippines have been the subject of a prior communication dated 17 August 2016 (PHL 2/2016), sent jointly 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. The Special Rapporteurs regret that to date no response to this communication has been received.

According to the information received:

*Background*

In 2002, Republic Act No. 9165 (RA 9165), also known as the Comprehensive Dangerous Drugs Act of 2002, established that students in secondary and tertiary schools in the Philippines are required to undergo random drug testing.<sup>1</sup>

As of 2003, all higher education institutions (HEIs) are mandated to implement the random drug tests set forth in RA 9165, as stipulated by Dangerous Drugs Board (DDB) Regulation No. 6, Series of 2003 (DDB Reg. 6) and Regulation No. 3, Series 2009 (DDB Reg. 3).

The Dangerous Drug Board regulations also establish that if a student at a higher education institution is confirmed positive under a random drug test, the student must then undergo a prescribed intervention program under the supervision of a

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<sup>1</sup> [http://www.lawphil.net/statutes/repacts/ra2002/ra\\_9165\\_2002.html](http://www.lawphil.net/statutes/repacts/ra2002/ra_9165_2002.html)

Department of Health (DOH)-accredited facility or physician, in consultation with the student's parent and in coordination with the drug counselor of the school. Subsequently, if a given student shows no signs of improvement of his or her drug use, the appropriate DOH-accredited facility or physician can then recommend to have the student referred to a facility.

The regulations further state that if a student is tested positive a second time, and refuses to comply with the recommended interventions, the school must proceed in accordance with Section 61 of RA 9165, which stipulates that any person determined to be dependent on "dangerous drugs" shall be "confined for treatment and rehabilitation", after a court hearing finds the person to be a drug dependent.

In May of 2017, the Department of Education announced that it would launch random drug tests of primary, elementary, and high school students later this year.

According to the information received, Philippine drug rehabilitation programs are often coercive, detention-oriented and contrary to international human rights standards.

#### 2017 Memorandum Order No. 64

On 2 August 2017, the Commission on Higher Education of the Republic of the Philippines approved Memorandum Order No. 64, titled "Policies, guidelines and procedures for higher education institutions (HEIs) requiring drug testing of students". The Order enjoins all HEIs to adopt a "strong policy on drug prevention on campus" and reminds all HEIs of the mandatory random drug testing program set forth in RA 9165 and DDB Regs. 3 and 6.

The Order also "strongly encourage[s]" all HEIs to require drug testing as part of the requirements for a student's admission into university. Additionally, the Order allows HEIs to implement mandatory drug testing for its current students, as an exercise of their "academic freedom".

Although the Order requires that HEIs keep results of drug tests confidential, schools are empowered to impose sanctions on students and applicants that test positive, including expulsion.

Memorandum Order No. 64 also allows Local Government Units (LGUs), the Philippine National Police (PNP), or any other law enforcement agency to carry out drug-related operations within school premises, provided they have prior written approval of the school.

We would like to express our concerns about information received indicating threats to the enjoyment of the right to health and the right to education as a result of mandatory drug testing policies in higher education institutes. In this regard, we are particularly concerned with the drug testing of students without their informed consent, and with policies that allow for the involuntary treatment and confinement of drug users,

including students, via court orders. We are further concerned with the announcement by the Department of Education that it will launch random drug tests for students in primary, elementary, and secondary education later this year, most of them children, which might place unnecessary barriers to their enjoyment of the right to health and other related rights.

While we do not wish to prejudge the accuracy of these allegations, the acts as alleged appear to infringe on articles 12 and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines on 7 June 1974, which establish, respectively, the right to the enjoyment of the highest attainable standard of physical and mental health and the right to education. Imposing mandatory drug tests and allowing drug-related operations to take place within educational campuses may also have the effect of putting students at risk of police brutality and extrajudicial killings, in the context of the ongoing “war on drugs” in the country.

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 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. Please explain how the Comprehensive Dangerous Drugs Act of 2002, as well as Dangerous Drugs Board (DDB) Regulations No. 6 (2003) and 3 (2009) and Memorandum Order No. 64 comply with the right to the enjoyment of everyone the highest attainable standard of physical and mental health, as established in international instruments, particularly with regard to the use of mandatory drug tests and involuntary treatment and confinement of students who use drugs.
3. Please provide details on measures taken to ensure that any drug-related operations within educational premises are compatible with the enjoyment of the right to the highest attainable standard of physical and mental health of students, including drug users, in accordance with the Philippines’ international human rights obligations.
4. Please provide details on measures taken to ensure that any drug-related policies within educational premises, including Memorandum Order No. 64, are compatible with and do not infringe upon the right to education as established, inter alia, by article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 28 of the Convention on the Rights of the Child (CRC).

5. Please provide additional information and details on whether the Department of Education's plan to initiate random drug tests of primary, elementary, and high school students later this year will be carried out and, if so, how it will guarantee compatibility with the right to health and right to education as established in international instruments ratified by the Philippines.

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.

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Special Rapporteur on the right to education

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Dainius Pūras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

## **Annex**

### **Reference to international human rights law**

#### *Right to health*

We would like to refer your Excellency's Government to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines on 7 June 1974, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We would also like to draw your attention to Article 2 of the ICESCR, which provides that States must undertake to guarantee that the rights enunciated in the Covenant are exercised without discrimination of any kind. As such, an individual's use of, or dependency on, drugs cannot constitute grounds for curtailing his or her rights.

In this connection, we would like to refer to report A/65/255 by the Special Rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health, which recognizes that the right to health of all people who use drugs – and are dependent on drugs – is applicable irrespective of the fact of their drug use (para. 7). The report highlights that an individual's use of drugs cannot constitute grounds for curtailing his or her rights, irrespective of whether the individual is dependent on drugs or whether the applicable drug control regime allows for imprisonment or other sanctions for drug use (para. 8).

The report further emphasizes that people who use or are dependent on drugs experience violations of their rights under the current international drug control regime (para. 8). In this regard, the report highlights that the “war-on-drugs” approach to drug not only fails to prevent health-related harms of drug use, but also fails to achieve genuine drug control (para. 14-15). This approach also fails to acknowledge the realities of drug use and dependence, including the fact that people invariably continue using drugs irrespective of criminal laws; that drug dependence, as distinct from drug use, is a medical condition requiring appropriate, evidence-based treatment, instead of criminal sanctions; and that punitive drug control regimes actually increase the harms associated with drug use by directing resources towards inappropriate and ineffective methods (para. 15). Similarly, the Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health in the context of the preparations for the United Nations General Assembly on Special Session of Drugs of April 2016 highlights that drug dependence treatment must be voluntary, based on the best available evidence, and inclusive of the views and input of those being treated.

As emphasised by General Assembly Resolution of 19 April 2016 – “Our joint commitment to effectively addressing and countering the world drug problem” – drug programmes, strategies and policies must be implemented in accordance with States' human rights obligations and with a view to promote the protection of and respect for human rights and the dignity of all individuals (A/RES/S-30/1).

With regard to concerns relating to the involuntary treatment and confinement of drug users and mandatory drug testing, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to respect the right to health by, *inter alia*, refraining from applying coercive medical treatments, unless on an exceptional basis for the control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards.

In this regard, we would also like to refer your Excellency's Government to the report by the Special Rapporteur on the right to physical and mental health presented to the General Assembly on the theme of informed consent (A/64/272). The report reaffirms that informed consent is an integral part of the right to health (para. 46) and lists non-consensual testing and as an example of a violation to the right to health (para 76). Further, the report states that treating persons who use drugs as criminals is counterproductive from a right to health perspective. As such, States should change legislation that supports criminalization based on non-consensual testing. Any routine drug or alcohol testing should be consensual to encourage appropriate conditions of counselling and treatment, and implemented in a non-discriminatory, transparent and inclusive way. In this sense, testing and treatment protocols should treat drug dependence like any other health-care condition (para.90). Similarly, the Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health in the context of the preparations for the United Nations General Assembly on Special Session of Drugs of April 2016 emphasizes that the acceptability of drug treatment includes informed consent and the right to refuse treatment.

These concerns are particularly salient when referring to children and adolescents. In this regard, we would like to refer your Excellency's Government of General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that the obligation to *protect* the right to health includes, *inter alia*, the duties of States to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents (para. 35).

We would also like to refer your Excellency's Government to General Assembly Resolution of 19 April 2016 – “Our joint commitment to effectively addressing and countering the world drug problem” –, which encourages States to implement age-appropriate practical measures, tailored to the specific needs of children, youth and other vulnerable members of society, in the legislative, administrative, social, economic, cultural and educational sectors, including measures to provide them with opportunities for healthy and self-sustained lives, in order to prevent their abuse of narcotic drugs and psychotropic substances (A/RES/S-30/1).

In light of the above, the report by the Special Rapporteur on the right to physical and mental health presented to the Human Rights Council on the right to health in adolescence (A/HRC/32/32) notes that objectives related to drug prevention cannot justify disproportionate infringements of adolescents' rights, including their rights to privacy, bodily integrity and education (para. 102). The report further emphasizes that

substance dependence treatment for adolescents must be tailored to their specific needs, and that adolescents must not lose their right to be heard when expressing opinions on their own health care and to give consent to treatment. Finally, the report recommends that confidential counselling and information be available without parental consent (para. 103).

### *Right to education*

We would like to refer your Excellency's Government to article 13 of the IESCR, which recognizes the right of everyone to education. In addition, article 28 of the Convention on the Rights of the Child (CRC), ratified by the Philippines on 21 August 1990, recognizes the right of the child to education, with a view to achieving this right progressively and on the basis of equal opportunity.

As such, regarding the use of mandatory drug testing as a requirement for higher level education admissions and the potential expulsion of student drug users or dependents, we would like to again remind your Excellency's Government of Article 2 of the ICESCR, which provides that States must undertake to guarantee that the rights enunciated in the Covenant are exercised without discrimination of any kind. An individual's use of, or dependency on, drugs cannot constitute grounds for curtailing his or her right to access education.

In this regard, the Committee on Economic, Social and Cultural Rights has stated in General Comment No. 13 that educational institutions must be accessible to everyone, without discrimination, within the jurisdiction of the State party (para 6(b)). Accessibility comprises not only physical and economic accessibility but also non-discrimination, as education must be accessible to the most vulnerable groups, in law and fact (para. 6(b)).

In this connection, we would also like to refer your Excellency's Government to the report by the Special Rapporteur on the right to physical and mental health presented to the Human Rights Council on the right to health in adolescence (A/HRC/32/32), which warns States of the perils of the "war on drugs" on adolescents, noting that prevention and education programmes that focus on zero tolerance create an environment where adolescents may be less likely to seek information about harms related to [drug] use (para. 98).

Additionally, with regard to the provision of Memorandum Order No. 64 that allows law enforcement agencies to carry out drug-related operations within school premises, we would like to refer your Excellency's Government to the report by the Special Rapporteur on the right to physical and mental health on his official country visit to Malaysia (A/HRC/29/33/Add.1), which condemns the use of punitive approaches to drug use within schools, particularly the option of inviting and stationing police officers inside educational institutions (para. 104).

Finally, we would like to refer your Excellency's Government to General Assembly Resolution of 19 April 2016 – "Our joint commitment to effectively addressing and countering the world drug problem" –, which highlights that an effective approach to

the prevention of drug abuse requires ensuring *equal access* to education and vocational training, not exclusion from it (para. 1(a)).

*Right to life*

We call on your Excellency's Government to adopt with immediate effect all necessary measures to protect all persons in the Philippines from killings and extrajudicial-executions and to ensure that their right to life and security of person is fully respected, including in the context of the anti-drugs campaign, 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 on 23 October 1986.