

Mandates of 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 and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/15, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Securities and Exchange Commission's ("SEC") revocation of *Rappler's* certificate of incorporation, effectively rescinding *Rappler's* license to do business and alleged threats including death threats against journalists working for the *Rappler*.**

According to the information received:

Rappler is an online, multimedia news outlet. Since its founding in 2011 it has reported on political, economic, religious, social, and technological news, locally and around the world. It has been registered regularly with the SEC.

Among others, *Rappler* has provided detailed and critical coverage of President Duterte's "war on drugs." Its journalists and photojournalists have been on the frontline of investigative reporting, tracking and documenting alleged extrajudicial killings in the context of the war on drugs, highlighting and proving official and police reports' inconsistencies, and keeping track of the number and identity of those killed by the Police. *Rappler* has also reported on the alleged spread of disinformation over the internet and social media by Government officials and their supporters.

In response to this coverage, Government officials and supporters have allegedly expressly criticized *Rappler*, ranging from an on-line campaign of harassment to physical threats. Reportedly, the CEO, editors, and journalists working for *Rappler* have also received death threats. President Duterte has voiced his disapproval of *Rappler's* coverage. In his State of the Nation address to your Government's Congress on 25 July 2017, President Duterte expressly declared

that he would expose *Rappler*'s 'American ownership,' and suggested that an investigation be launched into *Rappler*'s ownership.

On 1 August 2017, the SEC issued a "Show Cause" order to *Rappler*, claiming that *Rappler* violated article XVI, section 11(1) of the Constitution. This provision of the Constitution requires that the ownership and management of mass media be limited to Filipino citizens and entities only. In the order, the SEC demanded that *Rappler* provide more information refuting this violation.

On 15 January 2018, the SEC publicly released an *en banc* decision revoking *Rappler*'s company registration. The SEC, an agency directed by the President, is responsible for maintaining the company registry, as well as enforcing securities and investment laws.

This ruling is the first SEC ruling ever to induce the closure of a Filipino media company.

The SEC based its decision on the allegation that *Rappler*'s ownership was not entirely Filipino, which accordingly would render *Rappler* in violation of Article XVI, Section 11(1) of the Constitution, restricting ownership and control of media entities.

The SEC has ruled that *Rappler* has violated this provision by receiving funds from two foreign donors, North Base Media and the Omidyar Network, via a Philippine Depository Receipt ("PDR") filed in 25 May 2015, and 2 October 2015. However, this rationale is contradicted by the very nature of PDRs. PDRs are financial instruments whose value is tied to a company's share price and dividends. PDRs do not grant ownership over these shares, or voting rights in the board of the company. PDRs also do not grant powers over the company's management or daily operations.

Indeed, the SEC has implicitly recognized this in the past by allowing Philippine media companies, including *Rappler*, to attract investments using PDRs. Yet, through the SEC's *en banc* decision, *Rappler*'s company registration has been revoked and its ability receive investments through PDRs has been withdrawn, solely under the allegation that its ownership is no longer entirely by Filipinos.

Filipino public officials, journalists, and organizations have denounced the SEC's ruling as a thinly veiled attack on *Rappler*'s reporting, and thus on the freedom of expression.

The Solicitor General also instructed the National Bureau of Investigation to open an investigation into the case of *Rappler*.

Without prejudging the accuracy of these allegations, we are gravely concerned that the SEC has taken steps that are inconsistent with article 19 of the International Covenant on Civil and Political Rights (ICCPR), which the Philippines ratified on 23 October 1986. Article 19 establishes the universal right to freedom of opinion and expression. Article 19(2) provides that “[e]veryone shall have the right to freedom of expression [, which necessarily includes] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,” through any chosen medium. This right includes journalism, political discourse, commentary on one’s own affairs and on public affairs, and discussion of human rights.

Journalistic expression – especially expression about public and political issues between citizens and their government, such as *Rappler’s* coverage – is particularly protected under this framework because of its essential role in ensuring the freedom of opinion and expression among members of any society. The Human Rights Committee has concluded in General Comment 34 that a free, uncensored, and unhindered press “constitutes one of the cornerstones of a democratic society.” States in particular are required to “take all necessary steps to foster the independence of [...] new media and to ensure access of individuals thereto.”

Under Article 19(3), the right to freedom of expression may be restricted only if the restriction is provided by law and necessary and proportionate to protect a legitimate objective. In the context of the SEC’s actions, we are seriously concerned that the steps taken are not to protect a legitimate purpose — such as national security or public order — but rather to target an independent media outlet that engages in reporting and criticism with which the government disagrees. In particular, we are concerned that, by revoking *Rappler’s* company registration, the SEC actively deprives the public, in the Philippines and around the world, from receiving information about the Philippines’ political landscape. The SEC’s decision would also appear to silence an independent news network from seeking, receiving, and imparting information about political and cultural events in the Philippines.

We are very concerned with the impact of the SEC decision on independent reporting on critical public interest issues in the country, including the alleged extrajudicial executions in the content of the war on drugs as well as other alleged arbitrary killings, including those of indigenous and land activists, farmers leaders, trade unionists and human rights defenders. The attempted closure of *Rappler* appears to constitute an attempt to silence and censor critical reporting, including on alleged human rights violations.

We are concerned that the SEC’s decision does not meet the article 19(3) requirements for imposing restrictions on the freedom of expression. Given the widespread reliance on PDRs to generate foreign investment in the Philippines, the SEC’s

decision targeting *Rappler* raises concern that its interpretation of relevant domestic laws is arbitrary. The SEC's decision on its face also seems unlikely to serve any legitimate purpose.

With regards to the allegations that journalists working for the *Rappler* have received threats including death threats, we wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 6(1) of the ICCPR. We would like to recall Paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats."

We are also concerned that the Committee on Constitutional Amendments seeks to amend article III, section 4 of the Constitution, in order to only provide protection for the responsible exercise of free speech in the future.

In view of all of the aforementioned comments, we would like to call on your Excellency's Government to take all steps necessary to conduct a comprehensive review of the SEC's practice and ensure its compliance with international human rights standards.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

It is also our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide clarifications on whether other measures can be taken to ensure that *Rappler* and other journalists and news outlets will be protected under international human rights law and standards, particularly with regard to the right to freedom of opinion and expression.
3. Please provide specific information on the measures taken to ensure journalists can carry out their activities without fear and the systems in place to protect those who receive threats including death threats.

We would appreciate receiving a response as soon as possible. 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 responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Agnes Callamard
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David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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