



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 22 February 2018

A/TO: His Excellency
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OBJET/SUBJECT: **COMMUNICATION FROM SPECIAL PROCEDURES**

Please find attached a communication sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

We would be grateful if this letter could be transmitted at your earliest convenience to His Excellency Mr. Alan Peter S. Cayetano, Secretary for Foreign Affairs.



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Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
OL PHL 3/2018

22 February 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received **concerning the proposed amendments to Article III of the 1987 Constitution, suggesting the addition of the wording "responsible exercise" to the Bill of Rights' freedom of speech clause.**

According to the information received:

On 16 January 2018, a subcommittee within the House of Representatives proposed to amend Article III of the 1987 Constitution. The Vice Chair-Person of the sub-committee presented the first of several proposals before the House Committee on Constitutional Amendments.

Representative Castro's proposal would make the following amendment to Section 4:

"No law shall be passed abridging the *responsible exercise of the* freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances". (amendments in italics).

The sub-committee's report accompanying this proposal does not explicitly define the phrase "responsible exercise". The report claims that this amendment is necessary to highlight that the right to free speech, along with other rights within

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Mr. Alan Peter S. Cayetano
Secretary for Foreign Affairs

the Bill of Rights, “must be done in good faith and reasonable care”. However, the terms “in good faith” and “reasonable care” have not been further defined either.

Other similar proposals have been submitted to the House Committee on Constitutional Amendments. The Committee is deliberating on all of these variations, and is expected to present a consolidated version of the proposal before the House’s Constituent Assembly once it convenes to amend the Constitution.

The Commission on Human Rights, an independent constitutional office established under Section 18, Article 17 of the Constitution of the Philippines raised concern that these proposals are too vague and potentially allows for the Government’s subjective interpretation of the phrase “responsible exercise”.

While I do not wish to prejudge these allegations, I am gravely concerned that the proposed constitutional amendment is inconsistent with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which the Philippines ratified on 23 October 1986. Article 19(2) provides that “everyone shall have the right to freedom of expression”, including the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers”, through any chosen medium. The ICCPR does not limit the freedom of expression only to information and ideas that are “responsible”. The Human Rights Committee, in General Comment 34, has held that the right to freedom of expression in Article 19(2) “embraces even expression that may be regarded as deeply offensive” to others (CCPR/C/GC34).

Article 19(3) of the ICCPR states that “the exercise of the rights provided for in paragraph 2 carries with it special duties and responsibilities”. The “duties and responsibilities” under article 19(3) appear nowhere else in the Covenant. The preamble, however, recognizes that “the individual, having duties to other individuals and to the community to which he belongs”, is “under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant”.

As stated in my 2016 report to the General Assembly, Article 19(3) “does not identify duties or responsibilities of individuals to the State, but to other individuals and the communities in which they live, an acknowledgment that the only legitimate restrictions are those demonstrably grounded in and necessary for the protection of the rights of other individuals or a specific public interest”. The phrase “duties and responsibilities” therefore “adds nothing to claims for support of a State’s powers of restriction. By no measure does the language prioritize the State over the rights enjoyed by individuals under the Covenant” (A/71/373).

As a result, under Article 19(3) of the ICCPR, all restrictions on freedom of expression, including those established to uphold the duties and responsibilities of rights holders, must be “provided by law” and necessary for the respect of the rights or reputations of others, or for the protection of national security of public order, or of public health or morals. Restrictions are “provided by law” only if they are “formulated with sufficient precision to enable an individual to regulate his or her conduct

accordingly”, “made accessible to the public” and do not “confer unfettered discretion for the restriction of freedom of expression to those charged with its execution” (CCPR/C/GC/34).

I am concerned that the proposed amendment is incompatible with Article 19(3), and in any case inconsistent with the object and purpose of the ICCPR. The proposed addition raises serious legality concerns because “responsible exercise” is not defined with “sufficient precision” and could lead to overbroad restrictions on free expression that confer “unfettered discretion” on those charged with its execution. Moreover, I am concerned that the proposed addition would be interpreted to impose undue restrictions on the ability of media outlets and journalists to seek, receive and disseminate any information concerning political or governmental affairs that your Excellency’s Government considers “irresponsible”.

I am concerned that this threat would further limit the right to seek, receive and impart information in the Philippines. To the extent that the proposed addition of “responsible exercise” seeks to broaden the scope of permissible restrictions beyond those permitted under Article 19(3), I am gravely concerned that this would fundamentally conflict with the language, object and purpose of the ICCPR.

In view of the aforementioned comments, I would like to call on your Excellency’s Government to take all steps necessary to conduct a comprehensive review of the constitutional amendment proposals and ensure their compliance with international human rights law. To this end, particular attention should be paid to the concern expressed by the Commission on Human Rights of the Philippines, and the Commission’s advice should be sought in the review process.

As 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 be grateful for any additional information and any comments you may have on the above-mentioned allegations.

In particular, I would welcome any information with respect to considerations made about how the proposed amendment would conform with the obligations of the Philippines under international human rights law.

I would also welcome any clarifications on whether other measures will be taken to ensure that everyone in the Philippines will be guaranteed the right to freely exercise their right to freedom of expression.

I would appreciate receiving a response as soon as possible.

Finally, I would like to inform you that this communication will be made available to the public and will be posted on the website page of the mandate of the Special Rapporteur on the right to freedom of expression:

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>

Your Excellency's Government's response will be made available on the same website as well as in a report to be presented to the Human Rights Council for its consideration.

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

A handwritten signature in black ink, appearing to read 'D. Kaye', with a stylized flourish at the end.

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