

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL PHL 5/2018

8 June 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 37/8, 34/18, 32/32, 31/3 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 filing of a petition by the Philippine Department of Justice proscribing the Communist Party of the Philippines and the New People's Army as "terrorist" organisations, along with the inclusion in the petition of the names of a number of human rights defenders, defining them de facto as "terrorists" in possible reprisal for their engagement with UN human rights mechanisms.

Mr. **Arnold Evangelista** and Mr. **Erlindo Baes** are officers of the Batangas Human Rights Alliance-Karapatan.

Ms. **Beverly Longid** is the current Global Coordinator of the International Indigenous Peoples Movement for Self-Determination and Liberation (IPMSDL), former CPA Chair and current Advisory Council member;

Mr. **Datu Isidro Indao** is a *Matigsalog-Manobo* village chief, council member of the PASAKA Lumad Confederation in Southern Mindanao and an active member of the Parent-Teacher Community Association of the Lumad school run by the Mindanao Interfaith Services Foundation, Inc.;

Mr. **Datu Mandayhon** is a *Talaandig* village chief and member of the PIGYAYONGAAN Lumad organization;

Mr. **Datu Mandayhon Han-ayan** is a *Talaandig* village chief in Malaybalay, Bukid and member of the PIGYAYONGAAN Lumad organization;

Ms. **Elisa Tita Lubi** is a current Karapatan National Executive Committee member at large, former interim Regional Coordinator of the Asia Pacific Forum on Women, Law and Development (APWLD) and founding Vice Chairperson of Gabriela Women's Party. She has been the subject of one previous joint communication sent by special procedures mandate holders on 19 June 2006, case no. PHL 11/2006. We acknowledge your Excellency's Governments reply dated 28 August 2006;

Mr. **Isidro Castillo** is a former Chairperson of the National Federation of Sugar Workers (NFSW);

Ms. **Jeanette Ribaya-Cawiding** is the former Chairperson of CPA-Tongtongan ti Umili and current Regional Coordinator of the Alliance of Concerned Teachers – Cordillera;

Ms. **Joan Carling** is a current Member and Co-Convenor of the Indigenous Peoples Major Group for the Sustainable Development Goals, former Secretary General of the Asian Indigenous Peoples' Pact (AIPP), and former member of the UN Permanent Forum on Indigenous Issues. She has been the subject of two previous joint communications sent by special procedures mandate holders on 23 February 2006, case no. PHL 1/2006 and on 15 November 2006, case no. PHL 32/2006. We acknowledge your Excellency's Governments reply to the communication sent on 15 November 2006 which was received on 6 February 2007;

Ms. **Joanna Cariño** is an *Ibaloi* member of the CPA Advisory Council and Co-Chair of the SANDUGO Movement of Moro and Indigenous Peoples for Self Determination;

Mr. **Jose Molintas** is an *Ibaloi* human rights lawyer, former Asia representative to the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), former CPA Chair and current Advisory Council member;

Ms. **Rogina Navarro Quilop** is an Administrative Officer of the Center for People's Resources and Services (CPRS)-Negros;

Ms. **Romulo Bito-on** is a Regional Coordinator of Makabayan-Negros and member of the Samahan ng Exdetainees Laban sa Detensyon at Aresto (SELDA);

Mr. **Sergio Lumunday** is a *Manobo* and the Tinananon Kulamanon Lumadnong Panaghiusa Secretary General;

Mr. **Sherwin de Vera** is a Regional Coordinator of DEFEND Ilocos, member of the Save the Abra River Movement (STARM) and former Secretary General of the Ilocos Human Rights Alliance-Karapatan;

Ms. **Victoria Tauli Corpuz** is the current United Nations Special Rapporteur on the Rights of Indigenous Peoples, the former chair of the United Nations Permanent

Forum on Indigenous Issues and former Secretary General of the Cordillera People's Alliance (CPA);

Mr. **Windel Bolinget** is the current Chairperson of the CPA and National Co-convenor of KATRIBU National Alliance of Indigenous Peoples in the Philippines. He has been the subject of two previous joint communications sent by special procedures mandate holders on 23 February 2006, case no. PHL 1/2006 and on 15 November 2006, case no. PHL 32/2006. We acknowledge your Excellency's Government's reply to the communication sent on 15 November 2006 which was received on 6 February 2007;

Ms. **Zara Alvarez** is a Research and Advocacy Officer of the Negros Island Health Integrated Program (NIHIP) and former Campaign and Education Director of Karapatan-Negros chapter;

According to new information received:

On 21 February 2018, the Philippine Department of Justice filed a petition through a civil case to a Manila court, proscribing the Communist Party of the Philippines and the New People's Army as "terrorist" organisations under Human Security Act of 2007 (RA9372), also known as the anti-terrorism law. The petition named at least 657 individuals, including the above-mentioned human rights defenders. The list allegedly also contains a number of aliases, making it possible to add others to the list at a later date. The above-mentioned human rights defenders deny any participation in the events listed in the petition.

This petition marked the first use of the anti-terrorism law in targeting multiple human rights defenders. In addition, many of the defenders included on the list had previously interacted with United Nations mechanisms and other international bodies. It has been reported that the safety and security of many of those included in the petition are at risk and that many have already left the Philippines as a result.

We express serious concern over the use of the above-mentioned petition, which *de facto* labels multiple human rights defenders as "terrorists" and regret that their inclusion in such list may serve to stigmatise their peaceful and legitimate work as harmful to national security, including by disparaging them in the eyes of the public. We also express concern over the vague and broad provisions of the Human Security Act of 2007 and the risk of abuse that such far-reaching legislation may have, including in the criminalisation of human rights defenders and in the limitations to the rights of free assembly and association.

We equally express concern over the labelling of certain individuals included on the list as terrorists, simply by virtue of their being associated with political parties which are labelled as terrorist organisations. We would like to remind your Excellency's Government that the guilt of each person on the terrorist list must be determined on an

individual basis, in line with the applicable legal guarantees and due process, in accordance with a criminal rather than civil procedure.

We further regret that the petition filed by the Department of Justice takes place in the context of a shrinking civic space and a more widespread pattern of threats, harassment and criminalisation against human rights defenders in the Philippines. We would like to note that judicial harassment, especially when carried out by states, can have a chilling effect on the work human rights defenders and organisations and deter them from continuing their valuable work, thereby leading to the deterioration of the human rights situation in the country.

We express grave concern over the fact that, in certain instances, the inclusion of individuals on the list appear to be in reprisal for their cooperation with international bodies, including UN human rights mechanisms. We would like to highlight that many of the above-mentioned individuals are key partners of UN mechanisms and aid invaluablely in the promotion of human rights in the Philippines and elsewhere.

We refer to the public statement, specifically made on the inclusion of the Special Rapporteur Ms. Tauli-Corpuz in the list by Michel Forst, the Special Rapporteur on the situation of human rights defenders, and Catalina Devandas Aguilar, Chairperson of the Coordination Committee of the Special Procedures on 8 March 2018. The statement affirms that the legal petition listing her name is an unacceptable attack against the mandate holder by the Philippines Government, and that the Special Rapporteur is being targeted because of her work defending the rights of indigenous peoples. The statement reminds the Philippine Government of its obligations under the Convention on the Privileges and Immunities of the United Nations of 1946, which sets out that United Nations experts have immunity from legal proceedings of any kind for spoken and written acts undertaken in the course of their mandated work, and calls on the Philippine authorities to immediately drop the unfounded accusations against Ms. Tauli-Corpuz and to ensure her physical safety and that of others listed.

Furthermore, grave concern over the attack against the Special Rapporteur has been expressed across the United Nations systems, including by the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the UN Environment Programme as well as by other actors, including the European Parliament and the International Union for Conservation of Nature (IUCN). Alarm over the inclusion of the Special Rapporteur in the list was also raised by the Committee on the Elimination of Racial Discrimination under its early warning and urgent action procedure, decision 1 (95) on 8 May 2018.

We 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.

In this connection, please refer to the **Reference to International Law Annex** attached to this letter.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the inclusion of the above-mentioned human rights defenders in the petition made by the Department of Justice of the Philippines. Please further explain how the above-mentioned actions are in compliance with the Philippines' obligations under international human rights law.
3. Please provide detailed information on what steps have been taken to ensure that the Human Security Act of 2007 is not used to criminalise human rights defenders for their peaceful and legitimate work, including by ensuring that the law is sufficiently precise to comply with the principle of legality and fair trial guarantees.
4. Please provide information on what steps have been taken to ensure that human rights defenders in the Philippines, and their families, are not subject to acts of reprisals for their interaction with international bodies, including UN mechanisms.
5. Please indicate what measures have been taken to ensure that human rights defenders in the Philippines 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.

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.

We may 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.

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.

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

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

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, ratified by the Philippines on 23 October 1986, which guarantee the rights to liberty and security of person, fair trial guarantees, including the presumption of innocence, freedom of opinion and expression and freedom of association.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10).

In this regard, we would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

We would further like to refer to Human Rights Council resolution 34/5, which notes that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law. The resolution further recognises the urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law. (A/HRC/RES/34/5 pp12)

We would also like to refer to Human Rights Council Resolution 24/24 which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights; and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal; and to Human Rights Council resolution 22/6, which provides for the right to "unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights

Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.

Moreover, Human Rights Council resolution 36/21 reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and treaty bodies, as well as regional human rights mechanisms, bearing in mind that free and unhindered access to and communication with individuals and civil society are indeed indispensable to enable the United Nations and its mechanisms to fulfil their mandates (A/HRC/RES/36/21).

We also refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include the right to life and security, equality and nondiscrimination, all rights that are recognised in the human rights treaties ratified by the Philippines. Article 7 of UNDRIP explicitly provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of persons.

In connection with the above alleged facts and concerns we would like to refer your Excellency’s Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (a, b and c), which states that everyone has the right to meet or assemble peacefully to form, join and participate in non-governmental organisations, associations or groups and to communicate with non-governmental or intergovernmental organisations.
- Article 6 (a, b and c), which provides for the right to seek and disseminate information on all human rights and fundamental freedoms, along with studying, discussing and forming opinions on such.
- Article 9 (4), which states that everyone has the right to unhindered access to, and communication with, international bodies.
- Article 12 (2), which states that the State shall take all necessary measures to protect individuals from any violence, threats, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.