

Mandates of the Special Rapporteur on the rights of persons with disabilities; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE:
AL PHL 9/2018

5 October 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 35/6 and 35/15, respectively.

In this connection, we would like to bring to the attention of Your Excellency's Government information we have received concerning the alleged extrajudicial killing of three individuals within the context of anti-drug operations in the Philippines.

Thus far, similar concerns in connection with allegations relating to multiples violations of the right to life in the context of the Government's anti-drug campaigns and operations have been expressed in six previous occasions by UN Special Procedures experts, namely:

1) On 17 August 2016, case PHL 2/2016 (joint communication of 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). Regrettably, no Government's reply has yet been submitted to the communication and we look forward to receiving a substantive one soon;

2) On 3 February 2017, case PHL 1/2017 of 3 February 2017 (communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions). The reply received simply rejected the allegations raised in the communication without providing a reasoning and without addressing their substance;

3) On 28 February 2017, case PHL 3/2017 (communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions). Regrettably, no Government's reply has yet been submitted to the communication and we look forward to receiving a substantive one soon;

4) On 14 June 2017, case PHL 7/2017 (communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions). The reply received thus far was an acknowledgment of receipt of the letter. We therefore look forward to receiving a substantive response from the Government to the allegations raised in the communication soon;

5) On 19 June 2017, case PHL 6/2017 (communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions). A reply to the communication was received;

6) On 1 June 2018, case PHL 7/2018 (communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions). Regrettably, no Government's reply has yet been submitted to the communication and we look forward to receiving a substantive one soon.

According to the additional information received:

Case of John Jezreel "JJ" David

Mr. John Jezreel "JJ" David went missing on 19 January 2017 while he was on his way from his job as a room attendant at Pasay City Inn. His supervisor last saw him riding his Yamaha Mio motorcycle with a fellow room attendant on that day.

On 20 January 2017, operatives of the Philippine National Police (PNP) Station 11 in Binondo, Manila, detained both Mr. David and his co-worker as a result of a buy-bust operation on the corner of Delpan and Lara Streets, in Manila.

In the morning of 21 January 2017, Mr. David's family learned from neighbors that two policemen went to their neighborhood and looked for the families of two room attendants who rode a Yamaha Mio motorcycle. Mr. David's family went to Station 11 and several other police stations searching for him. They eventually found Mr. David's body in the Cruz Funeral Parlor.

Employees of the funeral parlor told Mr. David's family that police investigators ordered them to recover the bodies of Mr. David, his colleague and third man from Justice Jose Abad Santos Memorial Hospital.

Following the death of the three men, four police officers, Mr. Joel Pelayo, Mr. Ponciano Barnedo, Mr. Osmond Pring, and Mr. Eduardo Lacson filed an affidavit of complaint against them with the Office of the City Prosecutor of Manila. The complaint stated that the men violated the Comprehensive Dangerous Drugs Act. As a result, the prosecutor issued subpoenas for the already deceased men and their relatives.

Criminal and administrative charges were filed against the police officers concerned with the Office of the Ombudsman. No information is available on the outcome.

Case of Bernabe Sabangan

On 15 May 2017, at around 23:00, Mr. Sabangan's sister, her husband and her children went to the second floor of their house and left Mr. Sabangan and his friend downstairs. A few minutes later, Mr. Sabangan's sister heard someone

outside shouting: “Tingnan niyo kung may tao sa taas” (“Check if there are people upstairs”). Two men with guns then came to the second floor of the house and forced Mr. Sabangan’s sister, her husband and their children to go downstairs and leave the house.

While leaving the house, Mr. Sabangan’s sister saw her brother handcuffed, lying on the ground and pleading for his life while a firearm was pointed at him. After she and her family exited the house, she heard successive gunshots. The police did not leave and remained in their house for nearly 30 minutes after the incident and took some valuables. They also confiscated a motorcycle that belonged to the husband of Mr. Sabangan’s sister.

According to the police a friend of Mr. Sabangan, who was in the house with him, fired at them, and they shot him and Mr. Sabangan in self-defense.

Case of Djastin Lopez

On 18 May 2017, at around 18:35, along the railroad tracks at Pilar Street near the corner of Hermosa Street Tondo Manila, operatives of the Special Drugs Enforcement Unit, Police Station 7, Manila Police District, led by Mr. Jojo Salanguit, carried out a police operation that resulted in the killing of Mr. Djastin Lopez.

Mr. Lopez died from multiple gunshot wounds on the spot. Mr. Lopez, also known as Tirek, suffered from epilepsy. A witness saw him and two others in the area chased by policemen at around 18:00. A policeman intersected Mr. Lopez and pushed him to the ground.

Mr. Lopez fell flat on his back, which made him suffer from an epileptic seizure. One of the policemen then began to hit Mr. Lopez. The seizure did not stop and the policeman shot Mr. Lopez several times. Three additional policemen then approached Mr. Lopez and also hit him.

That evening, Mr. Lopez had told his mother that he was going to the railway tracks area. At around 18:00, a relative told her that there were police officers along the railroad track and advised her to call Mr. Lopez in order to tell him to return home immediately. However, her telephone was broken and she could not call. Only few minutes later, she was informed of her son’s death.

She immediately went to the railroad tracks area but was not allowed to approach her son’s body. She spoke to the neighborhood’s councilman, who was also at the scene of the shooting, and who confirmed that Mr. Lopez was killed.

Criminal and administrative charges against the police officers concerned were filed with the Office of the Ombudsman. No information is available on the outcome.

While we do not wish to prejudge the accuracy of the information above, we are extremely concerned that the allegations contained therein appear to be in contravention of the right of every individual to life, as set out in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986. Having ratified the UN Convention on the Rights of Persons with Disabilities, on 15 April 2008, Philippines has undertaken an international and legally binding commitment to protect the inherent right to life of persons with disabilities and take all necessary measures to ensure its effective enjoyment on an equal basis with others.

In this regard, we wish to draw your Excellency's Government's attention to relevant international human rights 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, along with that of precaution, is an arbitrary deprivation of life and therefore illegal. The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), provide an authoritative interpretation of the limits on the conduct of law enforcement forces.

The allegations at hand point to an unnecessary and disproportionate use of force by police officers. It does not seem that any of the killed men attempted to resist, attack the police or others. Furthermore, Mr. Sabangan was handcuffed when he was shot by police. The allegations surrounding Mr. Lopez's killing similarly suggest that the use of force was unnecessary and disproportionate since it is alleged he was having an epileptic seizure at the time he was shot, and thus unable to exercise force against the police. If proven true, these allegations may amount to an arbitrary killing.

Furthermore, international human rights law obliges States to carry out thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions. As explained, on different occasions requests of information on the nature and extent of the investigations into allegations of arbitrary killings perpetrated by police officers in the Philippines, within the context of the war on drugs and others, were sent to Your Excellency's Government. As mentioned, however, thus far, your Excellency's Government has not provided any substantive information or evidence to the relevant mandates, as appropriate, regarding such investigations.

In connection with the above alleged facts and concerns, please also 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 the allegations.

As it is our responsibility, under the mandate 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 comment you may have on the above-mentioned incidents.
2. Please provide information on the status and the full details of any investigation into the killings reported above as well as any other similar killing, including those identified in my previous communications. If investigations into any of the killings have not been initiated, please explain the reasons why, and how this is compatible with the international human rights obligations of the Philippines under the conventions it has ratified.
3. Please provide information on the number of persons killed by law-enforcement personnel, and of law enforcement personnel prosecuted and convicted, or otherwise held accountable, for the killing of individuals during drug operations.
4. Please provide detailed information about the measures taken to effectively protect, and to ensure the safety of civilians during anti-drug and anti-gang operations where reported killings took place.
5. Please provide information about the measures taken to provide human rights-based training programmes and effectively train law enforcement agents on how to protect the right to life and the human rights of persons with disabilities at all stages of criminal pursuit, anti-drug and anti-gang operations, especially persons with intellectual or psychosocial disabilities.

We would appreciate receiving a response within 60 days. 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(s) responsible for the alleged violations.

We are considering to publicly express my concerns in the near future as, in my view, the information reported above appears to be sufficiently reliable to indicate a matter warranting serious attention. We also believe that the wider public should be alerted of the potential human rights implications of these allegations. Any public statement on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Annex Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; and to Article 6 (1) of the International Covenant on Civil and Political Rights which states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

Furthermore, according to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, intentional lethal use of firearms is permitted strictly when it is unavoidable to protect life and necessary to carry out law enforcement duties. Should lethal force be used, restraint must be exercised at all times and damage and injury mitigated. Medical assistance should be provided as soon as possible when necessary.

Additionally, the principle of precaution dictates that the authorities have a duty to plan policing operations in a manner that minimize the risk that its law enforcement

agents may kill or injure members of the public. As stated by the previous holder of the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions: “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” (A/HRC/26/36, 1 April 2014, §63).

Lastly, international human rights law obliges States parties to carry out thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, as set forth in the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) and the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989). The Human Rights Council reiterated this obligation in Resolution 26/12 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” and added that this obligation includes identifying and bringing to justice those responsible; granting adequate compensation to the victim or his family; and taking steps to end impunity and the recurrence of such executions (A/HRC/26/12, Op. 4).