

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

REFERENCE:
AL PHL 12/2018

4 December 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 **charges of tax evasion brought against the news website *Rappler* and its Chief Executive, Ms. Maria Ressa.**

Concerns at death threats against journalists working for *Rappler* and at the revocation of *Rappler's* certificate of incorporation by the Securities and Exchange Commission, were raised in a joint communication by UN Special Procedures on 22 January 2018 (ref. no PHL 1/2018), followed by a public statement. We regret that no response has been received from your Excellency's Government.

Rappler is an online, multimedia news outlet. Since it was founded in 2011 it has reported on global news. It has also provided detailed coverage of President Duterte's "war on drugs". Its journalists have been on the frontline of investigative reporting, and *Rappler* has also reported on the alleged spread of disinformation over the internet and social media by Government officials and their supporters.

According to the new information received:

In July 2018, the Court of Appeals ruled that the Securities and Exchange Commission (SEC) in January erred in its move to revoke *Rappler's* certificate of incorporation, which it said should only be done as a "last resort" for non-compliance issues. In August, *Rappler* filed a motion with the court to fully annul the SEC's revocation order. This motion is still pending.

Early in November 2018, the Department of Justice accused *Rappler* and its Chief Executive, Ms. Ressa of failure to pay taxes on depository receipts in 2015, which reportedly resulted in 162.5 million pesos (approximately USD 3 million) in financial gains.

Between 26 and 28 November 2018, the Department of Justice filed four tax related cases with the Court of Tax Appeals. Among the cases is one for tax evasion filed against *Rappler* and Ms. Ressa. *Rappler* has stated that it is compliant with all Philippine tax laws.

On 29 November 2018, *Rappler* and Ms. Ressa learned that a separate tax evasion case had been filed against them at the Pasig Regional Trial Court on 14 November. This charge claims that *Rappler* failed to supply accurate information in its Value Added Tax return in 2015.

Under Philippine law, tax evasion penalties carry maximum 10 years imprisonment and fines.

I express concern at the charges brought against *Rappler* and its Chief Executive, Ms. Ressa. In light of past measures taken against *Rappler* I am concerned that the charges of tax evasion may constitute an attempt to silence the news outlet's critical reporting. I take note that the criminal prosecution of *Rappler* is not taking place in isolation, but is part of a wider crackdown on dissent and critical expression and against civic space in the Philippines.

I would like to highlight that journalistic expression, especially expression about public and political issues, is particularly protected by the right to freedom of expression as guaranteed by article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986. The Human Rights Committee has concluded that a free, uncensored, and unhindered press “constitutes one of the cornerstones of a democratic society”, and that States are required to “take all necessary steps to foster the independence of [...] new media and to ensure access of individuals thereto” (CCPR/C/GC/34).

Under article 19(3) of the ICCPR, 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. I am concerned that the tax-related charges are taken not to protect a legitimate purpose- but rather to target an independent media outlet that engages in reporting and criticism with which the Government disagrees. In particular, I am concerned that the charges brought against *Rappler* would also deprive the public, both in the Philippines and around the world, from receiving information. Therefore these charges appear to constitute an attempt to silence and censor critical reporting.

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.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention. I 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 detailed information about the factual grounds that have justified the charges brought against *Rappler* and Ms. Ressa.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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.

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

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

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to highlight that journalistic expression, especially expression about public and political issues, is particularly protected by the right to freedom of expression as guaranteed by article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986. The Human Rights Committee has concluded that a free, uncensored, and unhindered press “constitutes one of the cornerstones of a democratic society”, and that States are required to “take all necessary steps to foster the independence of [...] new media and to ensure access of individuals thereto” (CCPR/C/GC/34).

Under article 19(3) of the ICCPR, 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. We are concerned that the tax-related charges are taken not to protect a legitimate purpose- 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 the charges brought against *Rappler* would also deprive the public, both in the Philippines and around the world, from receiving information. Therefore these charges appear to constitute an attempt to silence and censor critical reporting.