

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right to food; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
AL PHL 2/2020

9 June 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right to food; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on extreme poverty and human rights pursuant to Human Rights Council resolutions 35/15, 42/22, 35/6, 32/8, 34/18, 41/12, 42/16, 34/5 and 35/19.

In this connection, we would like to bring to your Excellency's Government information concerning the **alleged use of lethal force by the police in the enforcement of the Enhanced Community Quarantine that was imposed across the Philippines in response to the COVID-19 pandemic, including allegations of a killing committed by unidentified assailants of an activist assisting with the COVID-19 relief efforts.**

We have already raised numerous cases alleging violations of the right to life as the result of excessive use of force by the Philippine National Police and the security forces, namely in communications PHL 2/2016, PHL 1/2017, PHL 3/2017, PHL 7/2017, PHL 7/2018, PHL 9/2018, and PHL 4/2019.

We have similarly brought to your attention instances of alleged killings of human rights activists and defenders, for instance in communications PHL 8/2017, PHL 12/2017, PHL 13/2017, PHL 2/2018, PHL 11/2018, PHL 5/2019, and most recently PHL 7/2019. We are grateful for the responses received to communications PHL 11/2018, PHL 7/2018, PHL 2/2018, PHL 13/2017, PHL 8/2017, PHL 13/2017, PHL 7/2017, PHL 1/2017, PHL 2/2018, and PHL 11/2018. We regret that we have not received responses to the other communications. In spite of these exchanges, it would seem that the pattern of excessive use of force by police and other security elements continues to result, unabated, in numerous extrajudicial, summary or arbitrary executions and killings of persons suspected of drug offences, as well as social, environmental and human rights and activists and community leaders, with little or no accountability and in all impunity. The

cumulative number of deaths resulting from excessive and often unnecessary force by the police seems to depict a pattern of gross and systemic violent deprivation of life. Such lethal violence by police and other security agents against mostly poorest sections of the society seems to have continued throughout the COVID-19 crisis.

According to the information received:

On 16 March 2020, the Government of the Philippines declared a state of emergency and imposed an Enhanced Community Quarantine (ECQ), in response to the COVID-19 pandemic.

Several days later, the Bayanihan to Heal as One Act (Republic Act No. 11469) was enacted. The Act granted the President of the Philippines additional authority to combat the COVID-19 pandemic.

Since the lockdown began, the Philippines National Police arrested over thirty thousand individuals for violating the lockdown. The implementation of lockdown measures had sometimes been violent and led to deaths.

On 1 April 2020, the residents of San Roque village in Quezon City gathered along a portion of a major highway in Metro Manila, upon receiving information that relief aid would be distributed there. Even before the COVID-19 pandemic, the majority of the San Roque village residents were living in poverty, with many of them working as daily-wage laborers in the capital and reportedly earning below the minimum daily wage of 537 Philippine Pesos (approximately 10 US dollars). Most have lost their means of income due to the COVID-19 lockdown and were desperate for help.

Since the relief aid did not arrive, as expected, the residents staged a protest to demand help amid the COVID-19 lockdown from the Quezon City government. Using wooden sticks, police violently dispersed the protesters and arrested at least twenty-one individuals. The individuals were released on 6 April 2020 after posting a bail and reportedly face charges of “unlawful assembly”, “resistance to authority”, “spreading false information”, “non-cooperation in a health emergency” and “impeding road access”. Commenting on the protest, President Duterte accused a group of human rights defenders that advocate for the poor, of inciting the violence. He also suggested to use lethal force against those violating community quarantines and curfews. In a televised national address on 1 April 2020, he said: *“I will not hesitate. My orders are to the police and military, also the barangay, that if there is trouble or the situation arises that people fight and your lives are on the line, shoot them dead. Do you understand? Dead. Instead of causing trouble, I’ll send you to the grave.”*

On 2 April 2020, the very next day after President Duterte’s televised comments, police shot dead a 63-year-old farmer at a checkpoint set up for the purposes of COVID-19 lockdown in the town of Nasipit in Agusan del Norte after he had

been cautioned for not wearing a facemask. Allegedly, the night before the killing, the man had been at the COVID-19 checkpoint, airing grievances, while possibly being drunk. He returned to the checkpoint the next morning and was shot dead. According to the information received, the checkpoint was manned by enough personnel and the farmer could have been accosted using non-lethal means. The police is investigating the incident.

On 3 April 2020, Senator Bong Go, who also serves as personal aide to the President, told the media that he had extra body bags ready for “*drug addicts or peddlers of fake news.*” The statement was made in response to a written request made by a medical center to his office asking for help acquiring body bags for deceased COVID-19 patients.

On 22 April 2020, a 34-year-old former army corporal with psychosocial disabilities was shot dead by a policeman at a COVID-19 checkpoint in Barangay Pasing Putik, Quezon City. According to videos of the incident, the former army corporal approached the checkpoint manned by a police officer and three police cadets, and yelled at them. The police officer ordered the man to go home because he was violating the lockdown. At some point, the police officer pointed a gun at the man and ordered him to yield. Bystanders asked the officer to leave the man alone due to his mental health condition. The officer allegedly responded “*I don’t care if he’s mentally disturbed, I will kill him*”. The victim followed the orders to yield and raised his arms with his back to the police officer. He then turned around and reached for something in his bag. The police officer claimed that the victim reached for a gun and shot him. The victim was taken to a hospital, where he died several hours later. A gun allegedly belonging to the victim was found at the scene of the killing, but according to the information received, his bag only had a bottle of water and documents proving that he had schizophrenia and a trauma from military service. Both the Philippine Army and the Philippine National Police opened separate investigations into the killing. On 24 April 2020, it was announced that the police officer who shot the soldier was charged with homicide.

On 30 April 2020, a 50-year-old individual was shot dead in his home in Sto. Niño Norte, Arevalo [district], Iloilo City, by several unidentified men. Mr. Jose Reynaldo Porquia (Jory Porquia) was the founding member of Bayan Muna, a party-list in the Philippines, and a human rights defender for twenty years. To assist with relief efforts to the COVID-19 pandemic, he distributed food and other resources in impoverished communities in Iloilo City. Allegedly, members of the Philippine National Police sought to stop Mr. Porquia from continuing his relief work, for unexplained reasons. In the weeks preceding his murder, Mr. Porquia had allegedly been harassed and surveilled by the police. An investigation into the murder is ongoing.

Without prejudging the accuracy of the information above, we continue to express grave concern regarding the use of lethal force by police officers in the context of the

implementation of measures to curb the COVID-19, which appears to be in violation of the principles of necessity, proportionality and precaution¹. Furthermore, we are seriously concerned about the killing a human rights defender supporting COVID-19 relief efforts, particularly as it is alleged that the police may have been complicit to the murder. The murder appears to constitute an attempt to intimidate those conducting peaceful human rights work. We welcome the investigations being initiated into these killings by your Excellency's Government and hope they will result in accountability. We also express our concern over the alleged excessive use of force by the police against peaceful protestors and civil society groups demanding relief aid, as well as against those who violate the lockdown measures, when complying with such measures is extremely difficult in urban, impoverished neighborhoods.

In connection to these allegations, we reiterate our call to draw your Excellency's government's attention to article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which guarantees the right to life and provides that no one shall be arbitrarily deprived of his or her life. The right to life is non-derogable at all times, even in states of emergencies. The right to life is also protected under article 10 of the Convention on the Rights of Persons with Disabilities, ratified by the Philippines on 15 April 2008. 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 is an arbitrary deprivation of life and therefore illegal.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights. We recall that detention for the pure exercise of protected rights would be arbitrary.

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. According to this instrument, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used,

¹ Special Rapporteur on extrajudicial, summary or arbitrary executions, Human Rights Dispatch no. 1: Police use of force and lethal force in a state of emergency:
<https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>

restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

A state of emergency, including the imposition of curfew, may legitimately grant law enforcement officers more powers but that option can never include the power to take life arbitrarily. Under a state of emergency, when law enforcement agencies are resorting to force, they must continue abiding by the principles of necessity, proportionality, precaution, and non-discrimination. We are therefore alarmed to have learned that police used lethal force on an elderly farmer and a former soldier suffering from mental illness. Firstly, the breaking of a curfew should not constitute grounds for excessive use of force by the police and under no circumstances should it lead to the use of lethal force. In the cases at hand, it is further alleged that the killings occurred at COVID-19 checkpoints manned by several police officers, suggesting that they could have used non-lethal means to subdue the two victims. Accordingly, the killings point to violations of the principles of necessity, proportionality, and precaution, thus making them arbitrary on their face.

Additional concern is expressed that a gun may have been planted at the scene of the killing of the former army corporal in a manner similar to incident of killings in the “war-on-drugs” context for which the Special Rapporteur on extrajudicial, summary or arbitrary executions had previously raised concerns. We welcome the news that an investigation has been carried out and that the police officer has been charged appropriately. This may assist in putting an end to such unlawful use of force, provided the investigation is carried out to its full extent and accountability delivered in and by a court of law.

We note however, that to date, there has been almost no accountability for unlawful killings by police and their associates. Despite repeated statements by your Government’s representatives that police killings are under investigation, we are aware of only one conviction for such a killing. The rest have been all *motu proprio* investigations that in some cases have resulted in administrative sanctions.

Families of victims have expressed helplessness in describing their inability to obtain justice for their loved ones, citing the enormous obstacles to filing cases, their continued difficulty of obtaining police or autopsy reports, and their immense fear of retaliation. The resulting climate of total impunity leaves police and others able to commit further extrajudicial killings without consequence.

International human rights law imposes an obligation on the Government to protect the right to life not only against acts committed by State actors, but also those committed by non-State actors, such as vigilante groups, death squads or criminal gangs. It is required to act with due diligence to prevent arbitrary deprivation of life. The standard of due diligence, as applied to the responsibility of preventing arbitrary killing by non-State actors, relies on an assessment of how much the State knew, the risks or likelihood of harms, and the seriousness of harm. **Regrettably, the killing of Mr. Porquia was not the first murder of a human rights defender in the Philippines. We have raised concerns over threats and attacks against human rights defenders**

and critics of the Government numerous times. However, the violence and related killings have not subsided, suggesting that your Excellency's Government continues to disregard in its due diligence obligations to prevent arbitrary deprivation of life committed by non-State actors.

Lastly, we stress the dangers of public, official, shoot-to-kill rhetoric. Such rhetoric "serves only to displace clear legal standards with a vaguely defined license to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat. The rhetoric of shoot-to-kill should never be used by representatives of the Government or other state institutions. It risks conveying the message that clear legal standards have been replaced with a vaguely defined license to kill." (E/CN.4/2006/53, p.3) **We are thus utterly concerned over the statements uttered by President Duterte and his personal aide Senator Bong Go that suggest the use of lethal force against certain individuals and normalize State-sponsored lethal violence and right to kill. As Filipino people turn to the Government during this tragic time for protection against the COVID-19 virus, this is not the time for the country's Chief Executive and his personal aide to make such statements, using their platform to normalize what appear to be a deliberate policy encouraging official murder in disregard of the fundamental right to life.**

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 above mentioned 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 our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments that you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the allegations of individual killings mentioned above. In cases where no inquiry has taken place or if they have been inconclusive, please explain why, and how this is consistent with the international human rights obligations of The Philippines under the Covenants it has ratified.
3. In cases where the alleged perpetrator(s) have been identified, please provide the full details of any prosecutions which have been undertaken. Please provide information on all penal, disciplinary or administrative sanctions that had been imposed, including justification for the length of any imprisonment terms.

4. Please indicate any remedies and financial compensation afforded to the victims' families.
5. Please provide information on measures taken by your Excellency's Government to prohibit any excessive use of force by law enforcement in the context of enforcing the COVID-19 Enhanced Community Quarantine.
6. Please indicate the reasons why Mr. Porquia and other human rights defenders were allegedly discouraged to continue their humanitarian distributions of food and other essential items to poor communities, and why they were subject to police surveillance and harassment.

We may consider to publicly express our concerns in the near future as, in our view, the excessive use of lethal forces resulting in what appear to be further summary or arbitrary killings of poor people by the police in the context of alleged breaches of the COVID-19 lockdown, appears to be part of a well-established gross and systematic pattern over several years of complete disregard of the human life of mostly poor people, as well as those peacefully defending human rights among some of the most disfavored communities of the country. Given the importance of these matters, we would appreciate a response to this communication at your earliest convenience. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's, through this and earlier communications, to clarify the issue/s in question.

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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

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

Michael Fakhri
Special Rapporteur on the right to food

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

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, article 10 of the Convention on the Rights of Persons with Disabilities reaffirms that "every human being has the inherent right to life", and that "State Parties shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others".

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).

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).

We would like to further refer to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines on 7 June 1974, which protects the right to health. While Article 12.2(c) refer to States responsibilities over "the prevention, treatment and control of epidemic, endemic,

occupational and other diseases,” the Committee on Economic, Social and Cultural Rights (E/C.12/2000/4, para 28) has stressed that the limitation of rights for public health reasons (ICESCR Article 4) must be used to protect the rights of individuals, and be in accordance with the law, compatible with human rights, legitimate, and strictly necessary for the promotion of the general welfare of the society. In its statement of April 2020, on COVID-19 (E/C.12/2020/19), the Committee reiterates that limitation measures must be necessary to combat the public health crisis posed by COVID-19; they must be reasonable and proportionate. Emergency measures and powers adopted by States to address the pandemic should not be abused (para 11) and the inherent dignity of all people must be respected and protected. Finally, during COVID-19, access to justice and to effective legal remedies is not a luxury, but an essential element to protect rights, especially of the groups in most vulnerable and marginalized situations (para 12).

We would like to further stress that ICESCR Article 12.2(d) obliges States to create conditions which would assure to all medical service and medical attention in the event of sickness. The Committee has stressed that an important aspect in this endeavor is the improvement and furtherance of participation of the population in the provision of preventive and curative health services (E/C.12/2000/4, para 17). In this connection States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situations in the realization of their right to health (para 62).

In connection with above alleged facts and concerns, we would like to refer to article 9 and 14 of the International Covenant on Civil and Political Rights which guarantees the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal. We wish to highlight that, according to the criteria applied by the Working Group on Arbitrary Detention, deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR is arbitrary.

Article 9 establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge to determine the lawfulness of the detention.

We recall that article 9 (3) of the ICCPR requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Human Rights Committee, General Comment No. 35, para. 38).