

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

REFERENCE:
AL PHL 3/2020

9 June 2020

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 **various forms of pressure against ABS-CBN, the country's largest broadcast television and radio network.**

According to the information received:

In February 2020, the Office of the Solicitor-General filed a suit, called *aquo warranto* petition, seeking to nullify the franchise of ABS-CBN, after the President of the Philippines threatened to shut it down, claiming that its reporting was biased against him. In the following days, the chief lawyer of the Government warned against the granting of a provisional extension for the broadcaster's franchise, which some members of Congress had previously requested. It is reported that the various forms of pressure against ABS-CBN may be related to its coverage on the Government's "war on drugs".

On 5 May 2020, the National Telecommunications Commission (NTC) issued a "cease and desist" order against ABS-CBN, after its congressional franchise had expired on the previous day. As a result of the order, the TV and radio services of ABS-CBN stopped airing in the evening. As one of the largest broadcast media companies in the Philippines, the order reportedly deprives millions of Filipinos from accessing information, which is particularly crucial during the current COVID-19 pandemic.

It is also reported that the order was issued only a few weeks after the adoption of the Act No. 11469, enacted in March 2020, which granted additional authority to the President of the Philippines to combat the COVID-19 pandemic, including the ability to punish the "creating, perpetuating or spreading [of] false information" with up to two months in prison, up to P1 million (about USD 20,000) in fines, or both. However, the Act does not strictly define the term "false information."

While I do not wish to prejudge the accuracy of these allegations, I am concerned that the reported order against ABS-CBN does not seem to meet the principles of legality, necessity and proportionality for restrictions to freedom of expression to achieve an intended and legitimate purpose, as set forth in Article 19 (3) of the International

Covenant on Civil and Political Rights. I am also concerned that the order may run against international standards related to the regulation of media broadcaster. In particular, General Comment No. 34 of the Human Rights Committee stressed that “States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3 [...] States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations”.

Further concern is expressed at reports received which indicate that the order may be related to ABS-CBN’s coverage on the “war on drugs”. At the time where the free flow of information is particularly crucial to combat the COVID-19 pandemic, I am seriously concerned that pressure against a major broadcaster undermines an independent and diverse media, in violation of Article 19 of the International Covenant on Civil and Political Rights that protects freedom of expression.

Further concerns are also raised at numerous provisions of the Act No. 11469, which do not strictly define the term “false information” and may in turn result in undue limitations to freedom of expression. In particular, I am concerned that the Act may not only penalize disclosures of Government information in the public interest, but also expose journalists, activists, and academics that merely receive and impart such information to criminal liability.

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.

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 your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify the legal grounds for the order against ABS-CBN, including how these grounds may be compatible with the necessity and proportionality test provided by article 19 (3) of the ICCPR.
3. Has a complaint been lodged by or on behalf of ABS-CBN? If so, please provide the details of such a complaint.
4. Please provide more information about the compatibility of Act No. 11469 with your Excellency’s Government obligations under international human rights law, especially the right to freedom of expression, including the right to seek, receive and impart information.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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, I would like to draw the attention of your Excellency's Government to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, ratified by Philippines on 23 October 1986.

Article 19 of the International Covenant on Civil and Political Rights protects press freedom as it provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

General Comment No. 34 of the Human Rights Committee further stressed that "States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3 [...] States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations".

Concerning the Act No. 11469, I am concerned that numerous provisions may be inconsistent with Philippines' obligations under article 19 of the International Covenant on Civil and Political Rights and may unduly limit freedom of information, including the right to receive, seek and impart information.