

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances; 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 and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

26 January 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Enforced or Involuntary Disappearances; 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 and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 45/3, 43/4, 41/12 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged enforced disappearance of human rights defender and peasant leader, Mr. Steve Abua**.

Mr. Steve Abua is a peasant leader and human rights defender, who advocates for land rights and denounces human rights violations against peasant communities and national minorities, particularly the Aytas and Dumagats in Central Luzon. He held several capacity building seminars and training seminars to empower communities to know their rights and actively campaign for them.

Mr. Abua had been involved in reaching out to members of peasant communities and other organisations in the area of Bataan and Pampanga, regarding their alleged membership of the New People's Army (NPA), and their forced surrendering from the NPA to the army. This is reportedly in accordance with a program of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC), created by President Mr. Rodrigo Duterte under Executive Order No. 70 (2018), which serves "to institutionalize the whole-of-nation approach to end the alleged insurgency by the end of his term in 2022, by strengthening the counter-insurgency programme with a comprehensive socio-economic development component."¹ The stated aim of the NTF-ELCAC is "inclusive and sustainable peace and economic vitality in hundreds of communities still vulnerable to, or under the grip of, the NPA's influence."²

According to the information received:

Mr. Abua had been reaching out and offering support to members of peasant communities and other organisations in the area throughout 2021, following the reportedly forced surrendering of these communities to the army, due to their alleged involvement in the NPA. Such forced surrendering is reportedly in accordance with a program of the NTF-ELCAC, under Executive Order No. 70 (2018). On 8 March and 9 June 2021, members of organisations in Bagac

¹ [A/HRC/44/22 - E - A/HRC/44/22 -Desktop \(undocs.org\)](#)

² [A/HRC/44/22 - E - A/HRC/44/22 -Desktop \(undocs.org\)](#)

and Hermosa, Bataan were allegedly forced to surrender to the army.

Mr. Abua was reportedly last seen on 6 November 2021. The following day, persons associated with Mr. Abua received a video call via Facebook, showing Mr. Abua blindfolded and handcuffed. The callers reportedly told them that if they went to the authorities, they would never see Mr. Abua again. The caller also reportedly told them to help them convince Mr. Abua to cooperate with the Government. There is reason to believe that the callers are from State forces, as they allegedly repeatedly mentioned Mr. Abua's cooperation with the Government in text messages and further calls, following the initial call on 7 November 2021. The callers allegedly accused Mr. Abua of being an NPA member and claimed to be trying to help return Mr. Abua to the so-called "fold of the law" ("*magbagong buhay*").

The persons associated with Mr. Abua reported Mr. Abua's disappearance to the authorities and were accompanied by a local organisation on 9 and 10 November 2021 to the areas where Mr. Abua was reportedly last seen and where he could have been brought by potential captors. Unfortunately, they were not able to locate Mr. Abua and were reportedly followed by an unknown vehicle throughout their search. The individuals in the vehicles also allegedly approached the persons that had been questioned about Mr. Abua's whereabouts by those associated with him and the local organisation.

The persons associated with Mr. Abua then filed an official missing persons' report at the Lubao Municipal Police Station and Dinalupihan Municipal Police Station. The Lubao Municipal Police Station has allegedly been contacting the persons associated with Mr. Abua, asking for their personal details such as their address and Government issued ID. However, there has been no update regarding the investigation into Mr. Abua's alleged enforced disappearance or the steps that might have been undertaken to search for him and establish his fate and whereabouts.

On 22 and 23 November 2021, persons associated with Mr. Abua and the local organisation went to several military and police camps, detention facilities and hospitals in search of Mr. Abua. The personnel at said institutions reportedly denied having Mr. Abua in their custody. Although the institutions were issued a petition regarding "the presence or absence and/or information on the whereabouts of such disappeared person," which is required under Section 8 of Republic Act No. 10353, otherwise known as the Anti-Enforced or Involuntary Disappearance Act of 2012, the personnel refused to show the petitioners all the facilities inside the military camps, police stations and offices.

On 22 November 2021, persons associated with Mr. Abua and the local organisation sought the assistance of the Commission on Human Rights Regional Office 3 in San Fernando City, Pampanga. The persons associated with Mr. Abua submitted a Complaint-Affidavit stating the circumstances of Mr. Abua's enforced disappearance and their communications with his alleged captors.

On 7 December 2021, persons associated with Mr. Abua filed a Writ of Habeas Corpus at the Court of Appeals of Manila. On 17 December 2021, the

Court issued a preliminary citation ordering the respondents, who are several Philippine army and air force officials, to show cause why the Writ should not be issued. As of the time of writing, there is no reply from the respondents.

Without prejudging the accuracy of these allegations, we express serious concern in response to the continued allegations of arrests and enforced disappearances of human rights defenders in the Philippines. We are seriously concerned by the information which would indicate that Mr. Abua has been targeted in response to his legitimate exercise of the right to freedom of expression, as well as the right to freedom of association. Should these allegations be confirmed, they would be in violation of Articles 6, 7, 9, 16, 17, 19, and 22, read alone and in conjunction with Article 2.3, of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which guarantee the right to life, the prohibition of torture, the right to liberty and security of the person, the right to be recognized everywhere as a person before the law, as well as the rights to privacy, freedom of opinion and expression and freedom of association, and the right to an effective remedy. Moreover, if these allegations are confirmed, they would also entail a violation of Article 7, read along and in conjunction with Article 2.3, of the ICCPR, with regard to the relatives of Mr. Abua and other individuals who suffered direct harm as a result of his enforced disappearance.

We are also deeply concerned regarding the implementation of NTF-ELCAC, created through Executive Order No. 70 (2018), and its effect on human rights defenders, members of civil society and civil society organisations, through associating them as alleged fronts of CPP-NPA, which have been declared as “terrorists” by President Mr. Rodrigo Duterte. Labelling individuals and groups belonging to the civil society sector as terrorists has been a persistent and powerful threat to civil society and freedom of expression in the Philippines.³ In this connection, we are concerned that Mr. Abua’s disappearance may be related to his alleged membership to groups designated as “terrorists” by the authorities of your Excellency’s Government.

In line with the foregoing, we reiterate here the concerns expressed in the letter OL PHL 4/2020 sent to your Excellency’s Government on 29 June 2020, especially regarding the designation of individuals and civil society and humanitarian organizations as “terrorists” in the context of ongoing discrimination directed at religious and other minorities, human rights defenders and political opponents. We kindly remind that compliance with human rights treaties and standards are complementary and mutually reinforcing goals for effective counter-terrorism measures. We acknowledge your Excellency’s Government’s reply of 27 August 2020.

Concerns regarding the implementation of the NTF-ELCAC have been raised by civil society, due to the alleged use of the policy to justify threats and intimidation of individuals, including human rights defenders, and organisations striving for the improvement of human rights and the welfare of marginalized, disadvantaged and vulnerable sectors of the Philippine society. Concerns regarding the implementation of Executive Order No. 70 have also been raised in the Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General on the situation of human rights in the Philippines (A/HRC/44/22) concerning “mobilizing the administration, from the

³ [A/HRC/44/22 - E - A/HRC/44/22 -Desktop \(undocs.org\)](#)

national to local levels, against suspected communist sympathizers, and further sowing suspicions and divisions in communities.”⁴ We therefore reiterate our call to your Excellency’s Government to review Executive Order No. 70 and its implementation, in order to ensure its compliance with the rule of law and international human rights norms and standards, and that political and socioeconomic grievances are tackled through meaningful, participatory consultation.

Furthermore, since 2007, various United Nations human rights mechanisms have raised concerns about alleged violations against human rights defenders, including enforced disappearances. We therefore once again kindly remind your Excellency’s Government that it is obliged, constitutionally and under the international conventions ratified by the Philippines to establish an enabling environment for the exercise of freedom of association and expression, free from any forms of intimidation, and to take concrete steps to prevent threats, harassment and attacks against any individuals, including human rights defenders. We have continued to receive concerning information that, rather than improving, the situation for human rights defenders in the Philippines continues to deteriorate. We reiterate our call to your Excellency’s Government to take urgent and effective steps to ensure the safety and security of human rights defenders in the Philippines, and to create a safe and enabling environment for them to carry out their peaceful and legitimate human rights activities.

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 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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the fate and whereabouts of Mr. Steve Abua, and on the actions undertaken to search for him.
3. Please provide information on the measures undertaken to ensure that all involved in the search for, and investigation of Mr. Steve Abua’s enforced disappearance are protected against ill-treatment, intimidation or reprisal. Moreover, please inform on the steps taken to guarantee that persons associated with Mr. Steve Abua are associated with the investigation and regularly informed on any corresponding progress.
4. Please provide information and, where available, the results of any investigations into the alleged enforced disappearance of Mr. Steve Abua, and steps taken to prevent similar enforced disappearances from occurring in the future. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is compatible with the Philippines’s international human rights obligations.

⁴ Para 47 [A/HRC/44/22 - E - A/HRC/44/22 -Desktop \(undocs.org\)](#)

5. Please provide detailed information as to the specific measures that have been put in place to ensure that human rights defenders and other members of civil society in the Philippines can carry out their legitimate work in a safe and enabling environment, without fear of harassment and intimidation from the authorities or any other agent acting on their behalf or with their acquiescence, along with specific information as to steps taken to support and promote the work of human rights defenders, particularly women human rights defenders in the country.

We would appreciate receiving a response within 60 days. Past 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.

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations concerning Mr. Steve Abua for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, the case will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Abua, 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 our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan
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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication. Should the above-mentioned allegations prove to be true, they would appear to be in violation of Articles 6, 7, 9, 16, 17, 19, and 22, read alone and in conjunction with Article 2.3, of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which guarantee the right to life, the prohibition of torture, the right to liberty and security of the person, the right to be recognized everywhere as a person before the law, as well as the rights to privacy, freedom of opinion and expression and freedom of association, and the right to an effective remedy. In this respect, we also refer to General Comment No. 36 (2018) on article 6 of the ICCPR, in particular, paras. 23, 53 and 57-58.

We wish to refer to Article 22 of the ICCPR, which guarantees the right to freedom of association. Article 22 (2) further indicates that no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

In this regard, we would like to recall the provisions of Human Rights Council resolution 24/5 and 15/21 which reminds States of their obligation to fully respect and protect the right of all individuals to associate freely, including on the occasion of elections, including persons professing minority or dissenting opinions or beliefs, and their obligation to ensure that any restrictions on the free exercise of the right to freedom of association are consistent with their obligations under international human rights law.

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “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”. It protects, *inter alia*, political discourse, commentary on one’s own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, General Comment no. 34, para. 11). In its General Comment no.34, the Human Rights Committee emphasized that under no circumstance can an attack on a person because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19 (CCPR/C/GC/34, para. 23). The Committee also made the point that individuals who engage in the gathering and analysis of information on the human rights situation and who publish human rights related reports, are frequently subjected to threats, intimidation and attacks because of their activities (*Ibid*). According to the Committee, all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.

We would also like to refer to Human Rights Council Resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13). Furthermore, Human Rights Council

Resolution 22/6 urges States to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right (OP 4). We remind your Excellency's Government, that Human Rights Council Resolution 22/6 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). We would like to remind your Excellency's Government that, in its resolutions, the Human Rights Council noted its grave concern that "in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law."

We further refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. These resolutions also require that States must ensure that any measure taken to combat terrorism and violent extremism comply with all of their obligations under international law.

Numerous statements by UN human rights mechanisms have highlighted that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in terrorism as defined under national law.

Furthermore, we recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice (A/59/565). Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,

- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism (E/CN.4/2006/98).

Finally, we would like to bring to your attention 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.

Additionally, 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 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, 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.

Furthermore, we draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 9, 10, 11 and 12 relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. We also recall article 17 of the Declaration stipulating that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified.

In accordance with their humanitarian obligations, States should ensure that search efforts are promptly initiated to determine the fate and whereabouts of disappeared persons.⁵

In this respect we also refer to the Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances, which refers, inter alia, to victims' access to investigation and their protection from reprisals (paragraphs 61 to 68).

⁵ Guiding principles for the search for disappeared persons issued by the Committee on Enforced Disappearances, <https://www.ohchr.org/EN/HRBodies/CED/Pages/Guiding-Principles.aspx>