

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention

Ref.: AL PHL 4/2022
(Please use this reference in your reply)

14 November 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 44/5 and 51/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the reported death in custody of Mr. Johairie Dagalangit, apparently as a result of acts of violence he was subjected to during his detention.

According to the information received:

On 25 September 2022, Mr. Johairie Dagalangit, 25 years old, [REDACTED], and resident of [REDACTED], was brought to the [REDACTED] municipal police station [REDACTED] following a motorcycle accident, involving [REDACTED], that he had had in the morning of that day.

After the accident, Mr. Johairie Dagalangit reported to the [REDACTED] ([REDACTED], [REDACTED]). The [REDACTED] called Mr. Dagalangit's uncle, informed him about the situation and asked [REDACTED] to hand over Mr. Dagalangit to the [REDACTED].

Mr. Dagalangit's [REDACTED] gave consent, presuming that his nephew would be safer [REDACTED], while [REDACTED] would be working on reaching an amicable settlement following the motorcycle accident.

Accordingly, Mr. Dagalangit was handed over [REDACTED] and brought [REDACTED].

When informed of what had happened, [REDACTED] Mr. Dagalangit immediately went to [REDACTED]. He saw the police vehicle arriving at the [REDACTED] with [REDACTED] and [REDACTED] on board. He also saw [REDACTED], unscathed.

On 26 September 2022, at approximately 6:30 a.m., two officers [REDACTED] went to the house of Mr. Dagalangit's [REDACTED] and brought him to the [REDACTED]. Along the way, they told [REDACTED] that Mr. Dagalangit had a nightmare and died in his cell.

After learning about his death, his [REDACTED] also went to [REDACTED] to recover the body. They were told to not take photos because it was not allowed. They saw many bruises and wounds on different parts of Mr. Dagalangit's body.

Later during the day, they brought Mr. Dagalangit's body [REDACTED] to clean it before burial and observed that Mr. Dagalangit's genitals bore marks indicating that that he had been subjected to violent acts.

Before Mr. Dagalangit's body was buried, [REDACTED] visited his home. They examined Mr. Dagalangit's body and took pictures.

The national Commission on Human Rights, in coordination with the [REDACTED] Human Rights Commission, opened an investigation into the case and the investigation is currently ongoing.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern at the reported death of Mr. Johairie Dagalangit, apparently as a result of acts of violence while in the custody [REDACTED]. If confirmed, these allegations would amount to a violation of the right to life, as set forth in Article 3 of the Universal Declaration of Human Rights (UDHR) and in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines in 1986. They could also be in violation of the right to be protected from torture or cruel, inhuman or degrading treatment or punishment, guaranteed in Article 5 of the UDHR, Article 7 of the ICCPR and Article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, also ratified by the Philippines in 1986; and the right to not be subjected to arbitrary arrest or detention, protected in Articles 9 of the UDHR and the ICCPR.

We stress that persons deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person, as set out in Article 10 of the ICCPR. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide States with important and detailed guidelines for protecting and fulfilling the human rights of persons deprived of their liberty¹.

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 detailed information about the causes and circumstances of the death in police custody of Mr. Dagalangit, who was 25 and in good health when he entered the police station.
3. Please explain why following his death, when Mr. Dagalangit was still in the police station, his body bore marks of acts of violence in several places.

¹ https://www.un.org/en/events/mandeladay/mandela_rules.shtml

4. Please explain why following his transfer home for the burial ceremony, his relatives also observed marks of acts of violence, including to his genitals – marks which were photographed by [REDACTED]
5. Given the evidence of acts of violence that may amount to torture, perpetrated against Mr. Dagalangit in police custody, the relevant authorities are under the obligation, under the criminal code of the Philippines and article 12 of the Convention against torture to conduct and independent and impartial investigation into these acts, to determine the causes and circumstances of his death in custody, and the responsibilities, direct and supervisory for such a death. In this respect, please provide detailed information about any official police, judicial and forensic investigation that was ordered into the cause and circumstances of the death of Mr. Dagalangit, as well as the findings of such an investigation. Please indicate whether the investigation was conducted taking due regard to the methodology and procedures provided by the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
6. Please provide detailed information on all the circumstances of Mr. Johairie Dagalangit's deprivation of liberty and please explain whether such deprivation of liberty was consistent with the obligations that the Government of the Philippines has under international law, particularly in relation to protecting the right to personal liberty and security.
7. Please provide detailed information about the judicial proceeding that may have been initiated against the acts and responsibilities that led to the death in police custody of Mr. Dagalangit; and whether any reparation to is relatives is being considered.

After having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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.

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mumba Malila

Vice-Chair of the Working Group on Arbitrary Detention

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 article 6 (1) of the International Covenant on Civil and Political Rights which provides 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".

We wish to stress that the right to life is the supreme right from which no derogation is permitted. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights.

Paragraph 1 of Article 6 of the Covenant provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law. Accordingly, States parties have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life; and must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.

By depriving persons of their liberty, States assume responsibility to care for their lives and bodily integrity. Due to this heightened duty of care, States must take all necessary measures to protect the lives of individuals deprived of their liberty. The adoption of such measures requires the identification of the causes of violence, death and serious injury in custody. This can be done in a comprehensive manner by initiating and conducting investigations into these incidents and collecting and analysing detailed data on them. Adequate investigations pave the way for holding to account individuals responsible for incidents of violence, death and serious injury, while the collection of data contributes to ensuring institutional accountability for these incidents and the factors that contributed to their occurrence².

The importance of recording and examining these incidents is recognized in the Nelson Mandela Rules³, which require the prompt reporting of "any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases"⁴.

The heightened duty of a State to protect the lives of individuals deprived of their liberty by the State in question creates a presumption of State responsibility for deaths in custody that can only be rebutted through a prompt, impartial, thorough and transparent investigation carried out by an independent body⁵.

² See Human Rights in the administration of justice – Report of the United Nations High Commissioner for Human Rights (A/HRC/42/20): https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/20

³ See op. cit., footnote 1

⁴ See Human Rights in the administration of justice, op. cit., footnote 2

⁵ *Ibid.*

In its General Comment No. 36⁶, the Human Rights Committee highlighted that investigations and prosecutions, where appropriate, of potentially unlawful deprivations of life were an important component of the protection of the right to life. Investigations can take various forms: preliminary investigations, non-judicial or administrative investigations and, of course, judicial investigations. Investigations into violence, death and serious injury contribute to the protection of the rights of persons deprived of their liberty and ensure that violations are documented and redressed⁷.

With regard to a death in custody, the purpose of the investigation is to clarify the circumstances surrounding the death, and to contribute to preventing the recurrence of death in custody, reducing trauma and providing an effective remedy to the next of kin and the identification, prosecution and punishment of those responsible. When deaths appear to be of natural causes, an adequate investigation can contribute to dispelling concerns about inadequate health care or foul play, thereby assisting States to address the presumption of responsibility for deaths in detention⁸.

Several resources are available to States to assist them in the implementation of their obligation to investigate deaths in custody. In its general comment No. 36, the Human Rights Committee sets out some of the requirements and objectives of investigations into potential violations of the rights to life, including, for instance, the need for transparency, both with regard to the victim's next of kin and the public.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death⁹ is rooted in the international legal obligations of States to respect and protect life and to investigate unlawful deaths. It specifies that the duty to investigate is triggered when a State agent causes the death of a detainee or when a person dies in custody. The duty entails reporting the event, without delay, "to a judicial or other competent authority that is independent of the detaining authority and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such a death".

In 2013, the International Committee of the Red Cross (ICRC) published its Guidelines for Investigating Deaths in Custody¹⁰, providing States with detailed guidance on the norms and standards to be respected and the methodology to be followed by preliminary, judicial and non-judicial investigations into cases of death in custody.

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol¹¹, provides detailed guidance for investigating cases of alleged torture and reporting such cases to the relevant authorities, setting out the standards for the legal investigation and documenting the physical and psychological effects of torture by medical professionals.

⁶ See Human Rights Committee, General comment no. 36, Article 6: right to life: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNljrLLdefuuQjjN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

⁷ See Human Rights in the administration of justice, op. cit., footnote 2

⁸ *Ibid.*

⁹ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>

¹⁰ <https://www.icrc.org/en/publication/4126-guidelines-investigating-deaths-custody>
<https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>