

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL PHL 2/2023
(Please use this reference in your reply)

15 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 44/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the vulnerable situation of lawyers and judges in the Philippines, specifically the killing of Juan Macababbad and the attempted killing of Angelo Karlo Guillen, both human rights lawyers; as well as the surveillance, threats and "red-tagging"¹ of Catherine Salucon, Edre Olalia, and Maria Sol Taule, who are all lawyers and members of the National Union of People's Lawyers ("NUPL").

Angelo Karlo Guillen is a human rights lawyer and Secretary General of NUPL's Panay chapter.

Juan Macababbad was a lawyer and a member and vice-chairperson of the Soccsksargen chapter of the NUPL affiliate Union of Peoples' Lawyers in Mindanao (UPLM).

Edre Olalia is a lawyer and former NUPL President.

Catherine Salucon is an attorney and NUPL Vice President.

Maria Sol Taule is an attorney and NUPL member.

NUPL is an association of human rights lawyers, law students, and paralegals in the Philippines who are united by a commitment to the defense, protection, and promotion of human rights, especially of those experiencing poverty and intersecting discrimination.

According to the information received:

Lawyers and other members of the NUPL have repeatedly been targeted with threats to life, liberty, and security through killings, violent attacks, red-tagging,

¹ This term is explained *infra*.

and surveillance. These acts appear to be directly connected to NUPL members' efforts as legal workers protecting the rights of marginalized communities.

Killings and threats to life

Case of Juan Macababbad

On the afternoon of 15 September 2021, Juan Macababbad was gunned down outside his house by two unidentified gunmen on a motorcycle. He sustained seven gunshot wounds to the head. Responding neighbors rushed Mr. Macababbad to the hospital where he was pronounced dead. Mr. Macababbad had received death threats before his murder that were connected with his human rights legal work. He was a lawyer for political prisoners and Indigenous Peoples and an environmental advocate.

Information received suggests that there have been no concrete developments or progress on the investigation into the killing of Mr. Macababbad, which has been pending for more than a year and a half.

Case of Angelo Karlo Guillen

On 5 March 2021, Angelo Karlo Guillen was stabbed in the head by two unidentified assailants in Iloilo City. Guillen pretended to be dead and was found by paramedics with a screwdriver still embedded in his left temple. His attackers took his bag containing his laptop, external hard drive and case files, but left his phone and wallet behind before fleeing on a motorcycle.

Mr. Guillen, who served as counsel for 16 red-tagged members of an indigenous community, was himself red-tagged and threatened many times prior to this incident. Among Mr. Guillen's clients are workers in Boracay who were allegedly adversely affected by the closure of the island; a group of activists who questioned the constitutionality of the Anti-Terrorism Act, and some of the 16 leaders and members of the Tumandok, the Panay-Bukidnon Indigenous People. Individuals in this group were either arrested or killed during coordinated police operations in Capiz and Iloilo on 30 December 2020 a case which was addressed by Special Procedures mandate-holders on 22 January 2021 (AL PHL 1/2021). We thank you for your reply of 2 February of that same year.

According to reports, as of October 2022, the NUPL had recorded 81 incidents of attacks against 43 member-lawyers since 2019, including two killings. Beyond attacks on NUPL's members, the NUPL had recorded killings of 86 lawyers, judges and prosecutors in the Philippines as well as 262 attacks against legal workers.

Red-tagging

The NUPL and its members, alongside human rights defenders and other organizations, have been repeatedly subjected to red-tagging.

Officials of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) are allegedly central to this enterprise, in which state agents and their allies seek to intimidate those targeted by accusing them of being “communists” or “terrorists”. According to the information received, there has been a persistent campaign of vilification of the NUPL as a “communist terrorist group” and of specific NUPL leaders as being themselves “communists” and “terrorists”.

In response to the repeated instances of red-tagging of the NUPL as a “communist terrorist group” and “communist terrorists”, the NUPL filed a petition for the writ of *amparo* before the Court of Appeals in 2019 and an administrative complaint with the Office of the Ombudsman against former National Security Adviser Hermogenes Esperon and former spokespersons of the NTF-ELCAC [REDACTED] and [REDACTED] [REDACTED] in 2020. The petition for *amparo* was dismissed by the Court of Appeals. This dismissal has been appealed to the Supreme Court. The administrative case has been submitted for resolution.

On 23 June 2021, the first Occidental Mindoro Provincial Mobile Force Company published Facebook a photo bearing the faces of then-NUPL President Edre U. Olalia with a member of civil society and a former representative of a progressive political party. The photo was entitled “National Union of People’s Lawyers of Terrorist” and likewise showed the NUPL logo. It also read: “The NUPL is a group of lawyers established to defend the lies and faults of the terrorist CPP-NPA-NDF (acronym for the Communist Party of the Philippines/New People's Army/National Democratic Front)”.

During a virtual press conference on 5 July 2021, members of the NTF-ELCAC maliciously labelled NUPL member and lawyer Maria Sol G. Taule as a “high-ranking member of the CPP-NPA-NDF.”

On 9 August 2021, flyers bearing the photo of Olalia were posted at a busy street junction leading to the Diliman campus of the University of the Philippines (UP). The poster read “*Tigilan mo na ang pagsisimungaling!! Bistado ka na!!! Itatatwa mo pa ba na ikaw ay kasapi ng teroristang CPP-NPA-NDF??!!!* (Stop lying! You have been exposed! Would you still lie about being a member of CPP-NPA-NDF?).” It featured a photo of Olalia attending a public testimonial for deceased NPA Commander UP Diliman in August 2015. He had been invited to the said event in his capacity as one the Commander’s former lawyers in several criminal cases before the Davao courts.

In the morning of 31 October 2021, [REDACTED] vilified a group of human rights activists, lawyers, and House representatives by labelling them as members of CPP-NPA- NDF. On her official Facebook account, she posted: “Don’t bother wearing a costume, you’re a demon anyway,” addressing the post to include NUPL member and lawyer Maria Sol G. Taule and the rest of the “Communist Monster Gang of the CPP-NPA-NDF which are impediments to the people.”

In a press conference on 10 November 2021, [REDACTED] [REDACTED] and one [REDACTED] [REDACTED] [REDACTED] interviewed NTF-ELCAC Legal Cooperation Cluster

spokesperson [REDACTED] [REDACTED] about the Human Rights Defenders bill supported by the NUPL. In the press conference, the NTF-ELCAC members claimed the passage of such law was unnecessary, unconstitutional, and would only serve the interests of “terrorist organizations such as the CPP-NPA-NDF.” In an article published by the Philippine News Agency (PNA) about the press conference, NUPL was as named as among the “fronts” of the CPP-NPA-NDF that would primarily “benefit” from the Human Rights Defenders bill.

On 25 August 2022, [REDACTED] published on his Facebook account a post maliciously claiming Olalia had an axe to grind against him and [REDACTED] because of the failure of the peace talks in 2018. [REDACTED] alleged that Olalia was a “minion” of the CPP who wanted to manipulate the outcome of the peace negotiations at that time and exclude the Armed Forces of the Philippines from the discussions. In the same Facebook post, [REDACTED] also uploaded a photo of a hand making a rude gesture at a copy of the order issued by the Office of the Ombudsman in the administrative case.

On 7 September 2022, [REDACTED] and [REDACTED] appeared in a press conference aired by SMNI News labelling the NUPL as the “legal operator” of the CPP-NPA-NDFP and accusing its members of working for members of the NPA, and of being linked it with an underground organization purportedly of lawyers called the “Lupon ng mga Manananggol ng Bayan.”

In a press interview on 9 September 2022, [REDACTED] and [REDACTED] discussed the administrative case filed against them with the Ombudsman, with [REDACTED] warning Olalia to quiver in fear and claiming that red-tagging is not a crime and that the cases filed against her have all been thrown out by the courts. [REDACTED] also published a social media post recklessly accusing Olalia of being a CPP-NPA-NDFP “urban operative”.

On 5 September 2022, the NUPL filed its Position Paper in the administrative case before the Office of the Ombudsman, where it emphasized the ongoing nature of the attacks and harassment of the organization and its members by known and suspected state agents, their proxies, enablers and supporters. The filing also emphasized the context of escalating attacks against members of the legal profession.

Reports indicate that the red-tagging of legal workers extends to include members of the judiciary of the Philippines. Reports indicate that in September 2022, a trial judge was red-tagged following, and in connection with, a duly rendered judicial decision. The NUPL led the signing of a statement condemning the incident as a ‘direct attack against the judiciary and its officers that is intended to undermine public confidence in the justice system and to harass and intimidate those who choose to act independently to promote the rule of law’. On 27 September 2022, the statement was submitted to the Supreme Court with the signatures of 485 lawyers. Various groups, including law schools and civil society organizations, also issued similar statements. On the same day, Supreme Court issued A.M. No. 22-09-16-SC warning that “those who continue to incite violence through social media and other means which endanger the

lives of judges and their families’, shall be considered in contempt of court and ‘will be dealt with accordingly’.²

Surveillance

NUPL Vice President and attorney Catherine Salucon was the target of numerous instances of surveillance in 2022. These acts are especially concerning since Ms. Salucon experienced similar surveillance in 2014, in advance of the killing of a colleague. Paralegal William Bugatti was killed within hours of a court hearing in which he and Ms. Salucon both participated. In 2018, Ms. Salucon’s petition for the writ of *amparo* and *habeas data* filed in connection with these incidents was granted and subsequently affirmed by the Supreme Court in G.R. No. 221862.³

Without prejudging the accuracy of the information received, we express our serious concern regarding the killing of Mr. Macababbad and the attacks against Mr. Guillen. In this regard, I note with alarm the reports that there has been no progress in the investigation into the killing and attacks and remind your Excellency’s Government of the obligation to protect life, to investigate abuses against individuals and, if appropriate, to prosecute and punish those responsible. We are concerned these attacks occurred allegedly as a result of the legitimate exercise of Mr. Macababbad’s and Mr. Guillen’s professional functions as lawyers.

If confirmed, the reported allegations would be in contravention of the rights of every individual to life and physical integrity, as laid down, inter alia, in article 3 of the Universal Declaration of Human Rights (UDHR), and as guaranteed by article 6 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we are very concerned about the threats to life, liberty, and security that lawyers and other legal workers who are members of the NUPL have experienced also through red-tagging and surveillance. We reiterate our concerns expressed in communication PHL 1/2021 that the practice of red-tagging may have deterring effect on human rights defenders and civil society actors from reporting on human rights violations, contributing to a deterioration of human rights in the Philippines. We remind your Excellency’s Government that the UN High Commissioner warned in 2020 that red-tagging human rights defenders — publicly labeling them as ‘communists’ or ‘terrorists’ — is extremely dangerous and that human rights defenders must be protected from this type of targeting.⁴ The reported abuses are alarming on their own, but they are even more troubling as targeted attacks on legal workers that appear to be aimed at leaving communities without legal assistance. Such acts interfere with the ability of lawyers and paralegals to perform their professional

² <https://sc.judiciary.gov.ph/press-briefer-7/>.

³ <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64019>.

⁴ U.N. High Commissioner for Human Rights, *Situation of human rights in the Philippines*, ¶49, U.N. Doc. A/HRC/44/22 (June 29, 2020), <https://www.ohchr.org/sites/default/files/Documents/Countries/PH/Philippines-HRC44-AEV.pdf>.

functions without intimidation, hindrance, harassment or improper interference. If confirmed, the reported instances of red-tagging would also violate the rule that lawyers should not be identified with their clients or their clients' causes. If confirmed, the persistent practice of red-tagging appears to create a climate in which human rights violations against those who are targeted are accepted or encouraged. When combined with actions that result in death, bodily harm, or false charges, red-tagging can be seen as part of a broader pattern of intimidation against legal workers and attempts to discredit the defense of human rights. The pattern of attacks on lawyers and paralegals is a significant cause for concern and, if confirmed, demands urgent attention from your Excellency's Government. The reports of red-tagging of judges, if confirmed, could amount to direct threats undermining the independence of the judiciary. Red-tagging by government agents, if confirmed, would directly engage the human rights obligations of the Philippines. Red-tagging by private individuals gives rise to the obligation for the Government of the Philippines to act with due diligence to prevent, punish, investigate, and redress harms linked to intimidation and threats against legal workers defending human rights.⁵

Finally, as regards the allegations that Ms. Salucon has been the target of numerous instances of surveillance, we would like to respectfully remind your Excellency's Government that the United Nations General Assembly has condemned unlawful or arbitrary surveillance and interception of communications as "highly intrusive acts" that interfere with fundamental human rights.⁶ In addition, we would like to draw your Excellency's attention to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addressing the "Human rights implications of the development, use and transfer of new technologies in the context of counter-terrorism and countering and preventing violent extremism", where she expressed deep concern about the scale of human rights violations posed by the worldwide proliferation and misuse of sophisticated intrusive cybersurveillance technologies originally justified by or intended for counter-terrorism and national security purposes (A/HRC/52/39). The Special Rapporteur also stressed that the impact of surveillance on multiple human rights is considerable and that the right to privacy functions as a gateway right protecting and enabling many other rights and freedoms, and its protection is intimately related to the existence and advancement of a democratic society (A/HRC/52/39). The Experts note that interference in the work of lawyers by means of surveillance undermines the right to fair trial and the right to equality of arms protected under article 14 para 3(b) of the International Covenant on Civil and Political Rights. It also constitutes direct interference in the attorney-client relationship which is protected by international law. We would like to refer your Excellency's Government to General Comment No. 32 of the Human Rights Committee whereby the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt

⁵ UN Human Rights Committee, *General Comment No. 31*, 26 May 2024, CCPR/C/21/Rev.1/Add.13, available at: <https://www.refworld.org/docid/478b26ae2.html>

⁶ A/RES/68/167 and A/RES/71/199.

access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. They should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

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 updates on the investigations into the killing of Mr. Macababba and the attack against Mr. Guillen.
3. Please indicate what measures have been taken to ensure that lawyers and paralegals, especially those who work on human rights issues, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
4. Please explain what steps your Excellency’s Government has taken to ensure the safety, security, and independence of judges, including by combating red-tagging that is aimed at threatening, intimidating, or influencing judges contrary to their legally-protected independence.
5. Please explain what measures your Excellency’s Government has taken to halt the harms linked to red-tagging of lawyers, paralegals, and judges by the authorities in the Philippines.
6. Please explain what measures your Excellency’s Government has taken in the exercise of due diligence in order to prevent, punish, investigate or redress harms linked to the red-tagging of human rights lawyers and paralegals, as well as judges, by private persons.
7. Please provide information regarding any judicial authorization or oversight over the alleged surveillance measures to which Ms. Salucon was subjected.
8. Please provide information in details of how your Excellency’s Government’s counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 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, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

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.

While awaiting a reply, we 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.

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

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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 above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights (UDHR) and articles 6 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which guarantee the right of every individual to life, liberty and security, and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of their life.

The Human Rights Committee in its General Comment No. 31, para. 8, stated that there is a positive obligation on States Parties to ensure the protection of Covenant Rights not only against violations by state agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights. A State Party's act of permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities would give rise to a violation under the ICCPR.⁷ In General Comment No. 35, the Committee emphasized that the right to personal security under article 9 of the ICCPR also obliges State Parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.⁸

In addition, we would like to refer your Excellency's Government to the provisions of the UN Basic Principles on the Role of Lawyers. Under principle 16, governments are required to ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

We would like to refer your Excellency's Government to the provisions of the UN Basic Principles on the Independence of the Judiciary. Under Principle 1, governments are required to guarantee the independence of the judiciary, and it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. Under principle 4, it is provided that "[t]here shall not be any inappropriate or unwarranted interference with the judicial process [...]".

⁷ UN Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13, <https://www.refworld.org/docid/478b26ae2.html>.

⁸ UN Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>.

We would also like to refer your Excellency's Government to article 9, paragraph 3, point (c) of the UN Declaration on Human Rights Defenders, which guarantees the right to provide legal assistance in defending human rights and fundamental freedoms.⁹

We also underscore for your Excellency's government that Article 14 of the ICCPR provides that, '*[i]n the determination of any criminal charge against suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*' As the Human Rights Committee has observed in *General Comment 32*, the operation of a fair hearing requires, *inter alia*, that all parties to a dispute have a real opportunity to contest all arguments and evidence.¹⁰

In respect of surveillance of legal communications we highlight that both the General Assembly and the Human Rights Council have stressed that the right to privacy serves as one of the foundations of democratic societies and, as such, plays an important role in the realization of a host of other rights, including the rights to freedom of opinion and expression, freedom of religion, and free assembly and association.¹¹

Finally, we respectfully remind your Excellency's Government of 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. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law. We would also like to refer to Human Rights Council resolution 22/6, which 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).

⁹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

¹⁰ *General Comment 32*, UN Doc. CCPR/C/GC/32 (23 August 2007), [13].

¹¹ A/RES/71/199; A/RES/73/179; A/HRC/RES/34/7.