

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL PHL 6/2023
(Please use this reference in your reply)

6 December 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 52/4, 53/4, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the killing of labour rights defender Mr. Jude Thaddeus Fernandez.

Mr. Jude Thaddeus Fernandez was a labour rights defender and trade unionist, who had worked for decades advocating for the rights, welfare and well-being of workers in the Philippines. He first became involved in activism as a student when the country was under Martial Law. Mr. Fernandez was a member of the Kilusang Mayo Uno (May First Movement) trade union organization which conducts its advocacy through peaceful protests, organizing and strikes, and is affiliated to the International Trade Union Confederation (ITUC). Prior to his killing, Mr. Fernandez had focused on advocating for increased wages for workers in correlation with inflation, as well as campaigning against government corruption and human rights violations.

Concerns regarding the killings of labour rights defenders in the Philippines have been raised in several communications by Special Procedures mandate holders, including most recently in PHL 6/2021. We thank your Excellency's Government for its responses dated 11 January and 19 January 2022, and we recall from the latter the assurance made that "There is zero tolerance for impunity in the ranks of the Philippines law enforcement agencies, and these mechanisms are in place to ensure a climate free from threats to anyone's life, liberty and personal security."¹ We hope that such an assurance will be realized in relation to the detailed information below.

According to information received:

On the afternoon of 29 September 2023, officers from the Criminal Investigation and Detection Group of the Philippine National Police (PNP-CIDG) went to the residence of Mr. Fernandez in Binangonan in Rizal province and reportedly presented an arrest warrant. The officers then shot and killed Mr. Fernandez during the arrest, later claiming that they had done so as he had resisted, despite reports that Mr. Fernandez was unarmed. In the aftermath of the incident however, it was discovered that the arrest warrant did

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36766>

not bear Mr. Fernandez' name, but the name of another individual, and was issued in 2013.

It is reported that no commotion was made before the two gunshots were fired. It was later reported that Mr. Fernandez had died almost immediately after he was shot.

Following the incident, Mr. Fernandez' colleagues began to search in hospitals and morgues in the area to locate Mr. Fernandez's body. They reportedly contacted the Barangay local government unit to assist them in the search. From 29 September - 2 October 2023, this informal search mission comprised of Mr. Fernandez' colleagues and other labour rights defenders tried to locate his remains, based on the information they had received that he had been shot and likely killed by CIDG officers. During this time however, the CIDG reportedly claimed that Mr. Fernandez had not been killed in Binangonan, Rizal on 29 September, but the individual named on the arrest warrant.

On 2 October 2023, colleagues from the informal search team located Mr. Fernandez' remains in a funeral parlour in Binangonan, Rizal. The police initially refused to allow the funeral parlour to release the body of Mr. Fernandez to his relatives, insisting that they provide proof to identify the body. It is believed that his ID card was being withheld by the police. Mr. Fernandez' family were required to show his birth certificate, which proved difficult given that they live in a different province.

Despite eventually providing the requested documentation, in order to retrieve Mr. Fernandez' remains, his family were reportedly given no alternative but to sign an affidavit, which alleged that the remains were those of the individual named in the arrest warrant, not those of Mr. Fernandez. On 7 October 2023, Mr. Fernandez' remains were released to his family, after they signed the affidavit.

On 12 October 2023, the CIDG released a press statement in which it announced that it had carried out a "manhunt operation" for the individual matching the arrest warrant reportedly served to Mr. Fernandez, on 29 September 2023 in Binangonan, Rizal. The CIDG claimed that the individual was a member of the Communist Party of the Philippines (CPP), and that the arrest warrant issued by a court in the province of Tarlac in 2013, was in connection with an alleged murder from that same year. The press release stated that the individual had resisted arrest, allegedly forcing the officers to defend themselves and return fire. The statement lists a number of forms of ID that were reportedly in the individual's possession at the time, some of which included the name of the individual named in the arrest warrant, and others had different names. However, none of the IDs listed in the statement had Mr. Fernandez' name.

At the time of writing, the family and colleagues of Mr. Fernandez have yet to be informed by police or other authorities as to whether a criminal investigation into his killing has been or will be opened. An investigation has reportedly been opened by the Commission on Human Rights.

Without prejudging the accuracy of these allegations, we wish to express our utmost concern in relation to the alleged extrajudicial killing of labour rights defender and trade unionist Mr. Fernandez by officers of the PNP-CIDG, which would appear to be in response to his efforts to advocate for improved conditions and wages for workers in the Philippines and other legitimate human rights activities and the exercise of his rights to freedom of peaceful assembly and association and freedom of expression. We are furthermore concerned by the reported insistence of the PNP-CIDG that the individual killed on 29 September 2023 at Mr. Fernandez' residence was not Mr. Fernandez, despite Mr. Fernandez' family identifying his remains. The allegation that Mr. Fernandez' family were reportedly compelled to sign an affidavit in order to retrieve his remains, attesting to the claim that the remains are ostensibly those of the individual named in the arrest warrant, not those of Mr. Fernandez, is a further point of serious concern. This concern is compounded by the reported inertia of the police to promptly conduct an independent, impartial, thorough, and transparent investigation into the killing of Mr. Fernandez. Such inertia may serve to further support the allegation that Mr. Fernandez was killed by officers of the PNP-CIDG under the false pretense that it was rather the individual named on the arrest warrant who was killed. If true, these allegations would amount to violations of the right to life, right to an effective remedy, right to freedom of association, right to peaceful assembly, right to freedom of expression and right to defend the rights of others.

We also note with concern that Mr. Fernandez is reportedly the fourth labour rights defender killed in the Philippines since the International Labour Organization (ILO) conducted a High-Level Tripartite Mission (HLTM) from 23 – 26 January 2023. As authorized by your Excellency's Government, the HLTM was conducted to investigate violations of labour rights, specifically violations of the right to unionize and organize, guaranteed by ILO Convention 87 which was ratified by your Excellency's Government on 29 December 1953. In its conclusions and recommendations, the ILO HLTM emphasizes "the great importance of ensuring full examination and investigation of the outstanding cases of extra-judicial killings (EJK) against trade union leaders and members so as to identify, prosecute and punish the direct perpetrators and any others directing or authorizing these killings and bring an end at once to the climate of impunity".² Amongst others, the ILO HLTM made the following recommendations to your Excellency's Government³:

- Establishment of a single presidentially mandated body to comprehensively identify and address all outstanding cases of alleged labour-related extrajudicial killings and abductions with priority emphasis on criminal investigation and prompt prosecution and accountability;
- Greater coordination and consistency across the varying arms of government to better guard against serious threats to freedom of association, including consideration of a presidentially mandated body to drive and coordinate actions and ensure accountability.

We wish to express concern that despite the ILO HLTM being conducted in response to allegations of human rights violations of labour rights defenders and trade

² Report of the High-Level Tripartite Mission, Philippines 23 – 26 January 2023, Conclusions and recommendations: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_874240.pdf

³ Ibid.

union members, alleged extra-judicial killings of labour rights defenders have reportedly continued unabated, as evidenced by the killing of Mr. Fernandez.

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 and, where available, the results of any investigations into the killing of labour rights defender, Mr. Jude Thaddeus Fernandez and information on whether such investigations have been guided by the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, commonly known as the Minnesota Protocol. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide detailed information as to the warrant which was reportedly served to arrest Mr. Fernandez on 29 September 2023, the factual and legal basis for serving the warrant, and the name listed on the warrant.
4. Please provide detailed information as to the requirement for the family of Mr. Fernandez to sign an affidavit in order to retrieve the remains of Mr. Fernandez.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 2, 6, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which guarantee the rights to life, freedom of opinion and expression and freedom of association without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. These rights are also guaranteed under articles 3, 19 and 20 of the Universal Declaration of Human Rights (UDHR).

In particular, we would like to draw your attention 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 ICCPR, 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.⁴

Furthermore, we recall that an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences.⁵

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing immunity. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates⁶. They should always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

We wish to refer to Articles 19, 21, 22 of the ICCPR and articles 19 and 20 of the UDHR, which guarantee the right to freedom of opinion and expression and the right to freedom peaceful assembly and of association with others, including the right to form and join trade unions. Article 22(2) of the ICCPR further indicates that no

⁴ Human Rights Committee, General comment No.36, Article 6: right to life (CCPR/C/GC/36): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>

⁵ Ibid.

⁶ Ibid.

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 safety (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The Special Rapporteur on the rights to peaceful assembly and association has recommended that States immediately cease all use of excessive and unlawful force, enforced disappearances, torture and other forms of cruel, inhuman or degrading treatment or punishment, including sexual and gender-based violence against and arbitrary detention of those exercising their rights to freedom of peaceful assembly and of association (A/HRC/53/38, para 82). The Special Rapporteur also recommended that States initiate prompt, independent and effective investigations whenever serious allegations of serious human rights violations of the rights of activists and in the context of assemblies are reported, in accordance with the necessary standards, including the Istanbul Protocol and the Minnesota Protocol (A/HRC/53/38, para 82).

Furthermore, we stress that Article 19 of the ICCPR protects, *inter alia*, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, among others.⁷ 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 19.⁸ 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. 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.⁹

We also wish to recall the report A/HRC/46/35 of the Special Rapporteur on the situation of human rights defenders to the Human Rights Council on the subject of killings of and death threats against human rights defenders, in which she recommended that States intensify efforts to prevent excessive use of force by security forces, and emphasized that there is no more direct attack on civil society space than the killing of human rights defenders.¹⁰ The report by the former Special Rapporteur on the situation of human rights defenders to the General Assembly on the subject of impunity for human rights violations committed against human rights defenders, notes with concern that the overwhelming majority of violations – with killings being one of the most prevalent – remain unpunished. The negative impact of such impunity is manifold, as it denies victims access to justice, but also generally weakens the organizational movement the human rights defender was affiliated with, as other individuals are discouraged from participating, as well as detrimentally impacting society itself, as it obstructs access to the truth and prevents measures being taken to avoid the recurrence of these events.¹¹

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

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ A/HRC/46/35

¹¹ A/74/159

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 (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.