

Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right to education

Ref.: AL PHL 7/2024
(Please use this reference in your reply)

5 November 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the right to education, pursuant to Human Rights Council resolutions 52/4 and 53/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the conviction of nine teachers and defenders of the rights of Lumad indigenous communities in Mindanao**, including Ms. Ma. Eugenia Victoria M. Nolasco, Ms. Nerhaya Flores Talledo, Ms. Ma. Concepcion B. Ibarra, Ms. Maricel Oribawan Andagkit, Mr. Wingwing Mandacawan Dausay, Ms. Nerfa P. Awing, Ms. Marianie Aga, Mr. Marcial D. Rendon, and Ms. Jenevive Sedigo Paraba, as well as four other advocates of the right to education.

Ms. Ma. Eugenia Victoria M. Nolasco is an educator, an environmental defender and an advocate of the rights of indigenous communities in Mindanao. Since May 2018, she is the Executive Director of the Salugpongan Ta'Tanu Igkanogon Community Learning Center (Salugpongan Schools), an educational institution established in 2007 by the indigenous peoples' group Salugpongan Ta'Tanu Igkanogon (Unity in Defense of our Ancestral Lands), with the support of a religious organization. Ms. Nolasco is also a convener of Save Our Schools, a network of children's rights organizations, which has been campaigning for the defense of Salugpongan Schools.

Ms. Nerhaya Flores Talledo, Ms. Ma. Concepcion B. Ibarra, Ms. Maricel O. Andagkit, Mr. Wingwing Mandacawan Dausay, Ms. Nerfa P. Awing, Ms. Marianie Aga, Mr. Marcial D. Rendon, and Ms. Jenevive Sedigo Paraba are volunteer teachers working in Salugpongan Schools. They have been engaged in the preservation of the cultural identity of Lumad communities and in the protection of children's right to education.

The establishment of schools within the Lumad community in Mindanao, including the Salugpongan Schools, has been part of the efforts of Lumad indigenous groups, NGOs and church-based organizations to enable access of Lumad children to their right to education. Lumad schools intend to provide an education that reflects the needs and socio-cultural background of Lumad indigenous communities. The Department of Education of the Government of the Philippines accredited Salugpongan Schools after they were set up, authorizing the educational institution to run 54 community schools in the Davao region of Mindanao.

Salugpongan Schools and other Lumad schools have been facing several challenges throughout the years. These reportedly included delays in releasing permits to operate, attacks on and forcible closure of schools, harassment and intimidation of teachers, students and defenders of indigenous peoples' rights. Concerns regarding the

reported closure of indigenous community schools in Mindanao, the alleged systematic attacks on these schools, as well as the threats and harassment of teachers, parents and students were raised with your Excellency's Government by Special Procedures' mandate holders, including through communication PHL 4/2015. We thank your Excellency's Government for its response dated 7 January 2016. Allegations concerning the human rights situation of Lumad indigenous peoples in Mindanao and the reported harassment, intimidation and acts of violence, including killings, targeting Lumad indigenous communities and defenders of their rights were also addressed in communications PHL 5/2015, PHL 6/2015, PHL 8/2017 and 16/2017. We are thankful for your Excellency's Government's responses to communications PHL 8/2017 (dated 2 August 2017 and 18 August 2017) and 16/2017 (dated 6 April 2018 and 25 November 2020). However, we regret that to date no response has been received to communications PHL 5/2015 and PHL 6/2015.

According to the information received:

Between June and October 2018, military operations in the municipality of Talaingod, in the province of Davao del Norte, reportedly intensified. The military presence in the area allegedly increased and additional checkpoints were established, including close to the houses and schools of indigenous peoples. Furthermore, military forces reportedly started scrutinizing food and medicine supplies more thoroughly. The increased presence of military personnel in the area allegedly led to further violence, harassment and intimidation targeting Lumad indigenous peoples, their schools, and defenders of their rights.

On 25 October 2018, military and paramilitary groups, allegedly including members of the 56th Infantry Battalion of the Armed Forces of the Philippines and the so-called Alamara paramilitary group, demanded teachers to close the Salugpongan School in Nasilaban village and leave the area. Because of safety reasons, in November 2018 teachers transferred to the Salugpongan School in Dulyan, another village in Talaingod. However, the pressure on the school in Dulyan also reportedly increased, as a military presence was established in the area and the delivery of goods to school personnel and students was allegedly hindered.

In November 2018, to respond to the escalation of the situation in Talaingod, in particular in Nasilaban and Dulyan, and seek help from the institutions, Ms. Nolasco, as Executive Director of Salugpongan Schools, sent complaint letters to a number of national and local authorities, including the Department of Education of the Government of the Philippines, the Commission on Human Rights of the Philippines, the Indigenous Peoples Mandatory Representative of Davao del Norte, and local government's units in Talaingod and Davao del Norte. Most of these complaints reportedly remained unaddressed, and no action was taken in support of the indigenous community and defenders of their rights.

On 27 November 2018, the Alliance of Concerned Teachers, an organization defending young people's right to education and teachers' rights, condemned the forcible closure of the schools and the cases of harassment and intimidation of students, teachers and community members, and called on the House Committee on Human Rights, a standing committee of the House of

Representatives of the Philippines, to investigate the situation in Talaingod.

On 28 November 2018, paramilitary forces closed the Salugpongan School in Dulyan, forcing students and teachers to evacuate the area. In response to the teachers' call for help, Ms. Nolasco mobilized a so-called "National Solidarity Mission" to assist the students and educators in the evacuation. Members of the solidarity mission had vans at their disposal as they were reportedly supposed to travel to the area the following day, and they agreed to accompany her. After walking for about three hours, the evacuated students and teachers reached Butay village in Talaingod, where the solidarity mission picked them up. The "National Solidarity Mission" and the rescued group, reportedly comprising of a total of 75 individuals, including students, teachers, members of the solidarity mission and human rights defenders, were allegedly subject to an attack on their way to the city of Talaingod, as one of their vans was shot at by individuals on a motorcycle. The group was stopped at a checkpoint in the village of Santo Niño and headed to the police station to report the incident to the police. Police officers reportedly inspected the vans, establishing the presence of minors. The group of 75 people was held at a police station overnight.

On 29 November 2018, eighteen people, including ten teachers and administrators of the Salugpongan Schools and eight members of the solidarity mission, were charged with child abuse, human trafficking, and kidnapping. They were all released on bail on 1 December 2018. Prosecutors later dismissed the charges of human trafficking and kidnapping against the human rights activists because of lack of convincing evidence. The charge of child abuse remained.

On 10 July 2019, the Department of Education Region XI released an order to suspend all 54 Salugpongan Schools, on the basis of a report by a member of the military accusing the educational institution of not adhering to the curriculum of the Department of Education. According to the administrators of Salugpongan Schools, these were fabricated allegations. The educational institution was asked to provide reasons why they should be allowed to continue operating within a short timeframe. Even though the Schools submitted such arguments, on 5 September 2019, the government body requested the closure of all Salugpongan Schools, which was completed before the end of October 2019. Reportedly, the administrators of Salugpongan Schools could not challenge the government's decision because of the Covid-19 lockdown that started in February 2020.

In 2018 and 2019, the government also closed and targeted other Lumad schools, reportedly accusing their teachers and administrators of sympathizing with the New People's Army, the armed wing of the Communist Party of the Philippines. This practice, known as red-tagging, was also used against Ms. Nolasco and other human rights defenders in Davao in 2020, when their faces appeared on a number of posters featuring their pictures and labelling them as "wanted human rights violators". The authors of this attack are unknown. Red-tagging was condemned by international human rights mechanisms (see, in this regard, Special Procedures' communications PHL 1/2021, PHL 1/2023, PHL 2/2023 and PHL 4/2023) as well as the Supreme Court of the Philippines, which described it in a ruling issued on

8 May 2024 as a threat to the right to life, liberty and security of the person.

On 3 July 2024, after almost six years of legal proceedings, the Tagum Regional Trial Court Branch 2 convicted Ms. Ma. Eugenia Victoria M. Nolasco, Ms. Nerhaya Flores Talledo, Ms. Ma. Concepcion B. Ibarra, Ms. Maricel O. Andagkit, Mr. Wingwing Mandacawan Dausay, Ms. Nerfa P. Awing, Ms. Marianie Aga, Mr. Marcial D. Rendon, Ms. Jenevive Sedigo Paraba and four other individuals for violating section 10(a) of article VI of Republic Act 7610, also known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act”. The Court sentenced the indigenous rights defenders to a minimum of four years, nine months and 11 days up to a maximum of six years, eight months and one day of prison. The Court also ordered them to pay, “jointly and severally”, 10,000 Philippine pesos for moral damages and 10,000 Philippine pesos for civil indemnity to each of the 14 minors involved, plus a 6 per cent interest per year from the finality of the Court’s decision until the payment of the full amount.

The Court upheld the argument of the Prosecutor stating that the activists failed to coordinate the rescue operations with law enforcement and government agencies and to obtain the parents’ permission before transporting 14 students of the Salugpongan Schools, thus exposing them to risk and jeopardizing their safety.

In the same sentence, the Court acquitted four other individuals facing the same charges because of lack of proof of guilt beyond reasonable doubt. The eighteenth person who had been accused was discharged in 2023 and became a witness.

On 15 July 2024, the decision of the Court was communicated to the accused indigenous’ rights defenders.

At the time of writing, the convicted defenders are out on bail. Once the Tagum Regional Trial Court Branch 2 notifies the competent Court of Appeal, they have 45 days to file the appeal.

Without prejudging the accuracy of these allegations, we would like to express our deep concern about the conviction of defenders of the rights of Lumad indigenous communities in Mindanao, which resulted from charges that we fear might be linked to their work on the protection of indigenous children’s right to education. We are concerned that the criminalization of their human rights work might set a dangerous precedent and have a chilling effect on the civic space in the Philippines, resulting in the silencing of defenders of indigenous peoples’ rights and deterring individuals from expressing dissent and exercising the right to defend the rights of others.

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 legal and factual basis for the arrest, detention and charges brought against, Ms. Ma. Eugenia Victoria M. Nolasco, Ms. Nerhaya Flores Talledo, Ms. Ma. Concepcion B. Ibarra, Ms. Maricel O. Andagkit, Mr. Wingwing Mandacawan Dausay, Ms. Nerfa P. Awing, Ms. Marianie Aga, Mr. Marcial D. Rendon, Ms. Jenevive Sedigo Paraba and four other individuals, and explain how they are in conformity with the Philippines' obligations under international human rights law.
3. Please provide information on the available remedies that those convicted have at their disposal under the national legal framework and on how your Excellency's Government will facilitate access to those remedies.
4. Please outline the measures your Excellency's Government has put in place to prevent the stigmatization, harassment and criminalization of human rights defenders, in particular defenders of the rights of indigenous peoples, in the Philippines. Please indicate the measures taken to guarantee the establishment of a safe and enabling environment for the exercise of their legitimate work without fear of intimidation or prosecution.

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

Farida Shaheed
Special Rapporteur on the right to education

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Philippines on 23 October 1986, which guarantee the right to liberty and security of person. This right is also guaranteed under article 3 of the Universal Declaration of Human Rights (UDHR). We wish to draw the attention of your Excellency's Government to article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines on 7 June 1974, which recognizes the right of everyone to education and further indicates that primary education shall be compulsory and available free to all.

We would also like to refer to 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 bring to the attention of your Excellency's Government the following provisions:

- article 1, which states that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels;
- article 2, which states that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms;
- article 12, paragraph 2, 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 would like to draw the attention of your Excellency's Government to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which provides in article 7 the individual right to "life, physical and mental integrity, liberty and security of person" and also includes collective rights of indigenous peoples to "live in freedom, peace and security as distinct peoples and... not be subjected to any act of genocide or any other act of violence".

Article 30 of UNDRIP sets out that "Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned." It further provides that: "States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities." Article 10 affirms that indigenous peoples "shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of

return.”

In addition, we would like to remind your Excellency’s Government of its obligations under articles 28, 29, 30 and 32 of the Convention of the Rights of the Child (CRC), ratified by the Philippines on 21 August 1990. Accordingly, States parties shall take measures to encourage regular attendance at schools and the reduction of drop-out rates (art 28), further agreeing that education shall be directed to, inter alia, the respect for the child's parents, his or her own cultural identity, language and values (art 29) and that children of indigenous origin shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language (art 30). Article 32 specifically mentions that State Parties have the obligation to prevent any situation that would interfere with children’s education.

Moreover, CRC article 19 indicates that all appropriate educational measures, amongst others, shall be undertaken to protect the child from all forms of violence. The Optional Protocol to the CRC on the involvement of children in armed conflict, ratified by the Philippines on 23 August 2003, further specifies that children require special protection and calls for their education to take place in conditions of peace and security. It also condemns the targeting of children as well as the direct attack on places that generally have a significant presence of children, such as schools.

In this connection, we would also like to draw the attention of your Excellency’s Government to the United Nations Security Council resolution 2143 (2014), which express concern at the engagement of armed forces in schools activities, recognizing that it may render schools legitimate targets of attack, thus endangering children’s and teacher’s safety as well as children’s education. It also encourages Governments to consider concrete measures to deter the use of schools by armed forces.

Finally, we would like to refer your Excellency’s Government to the 1998 Guiding Principles on Internal Displacement, which establishes that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence, including in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand (principle 6(b)). We would like to particularly draw your attention to principle 9, which states that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.” principle 18.2 and 24-27 moreover identifies rights and guarantees relevant to the protection and assistance of IDPs during displacement as provided by international humanitarian law, such as the right to basic humanitarian assistance e.g., food, medicine, shelter. Internally displaced persons moreover have the right to assistance from competent authorities in voluntary, dignified and safe return, settlement elsewhere or local integration, including help in recovering lost property and possessions. When restitution is not possible, the Guiding Principles call for compensation or just reparation (principles 28-30).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.