

## ANNEX: ASSESSMENT OF SITUATION IN THE PHILIPPINES AGAINST THE OBJECTIVE CRITERIA FOR HRC ACTION

During the thirty-second session (HRC32) of the UN Human Rights Council in June 2016, Ireland delivered a statement<sup>1</sup> on behalf of a cross-regional group of States (building upon a previous joint statement by the Maldives) proposing objective criteria – or “guiding principles” – to “help [the Human Rights Council] decide, in an objective and non-selective manner, when the Council should usefully engage with a concerned State, to prevent, respond to, or address violations and to assist in de-escalation of a situation of concern.” Application of these *objective criteria for HRC action* has been further reaffirmed in cross-regional joint statements delivered by the Netherlands at the 35th session of the Council on behalf of 49 States, and the incoming members pledges delivered by Australia (2018), Fiji (2019) and the Marshall Islands (2020) on behalf of 30 of the 47 current HRC members.

The criteria are useful as indicators not only of the seriousness of the human rights situation in a particular country, but also of the willingness (or lack thereof) of the state concerned to address the challenges faced. Analysis by our organisations, set out below, shows that all of the criteria identified in the joint statement have been partially or fully met in the case of the Philippines.

<p><b>Call for action by the UN SG, HC or another relevant UN organ, body or agency?</b></p>	<p>In her report to HRC44, the High Commissioner urged the HRC to “mandate OHCHR to continue monitoring and documenting the situation of human rights in the Philippines, and to regularly report to the Human Rights Council.” She also recommended that “in the absence of clear and measurable outcomes from domestic mechanisms” a more robust approach is needed, and that the HRC should “consider options for international accountability measures.”<sup>2</sup></p> <p>In her address to the Human Rights Council, the High Commissioner underlined these two recommendations and added she hoped the report would “mark the beginning of the end of impunity for serious human rights violations in the Philippines,” noting that “the families of victims, and the country’s courageous human rights defenders, count on the international community for help to address these ongoing and serious human rights issues – and for the Council to rise up to its prevention mandate.”<sup>3</sup></p>
<p><b>Recommendation for action by a group of Special Procedures?</b></p>	<p>In June, a group of Special Procedures renewed their call for “an on-the-ground independent, impartial investigation” into the human rights situation in the Philippines, “given the scale and seriousness of the human rights violations.”<sup>4</sup> In the joint statement, they noted that the OHCHR report “confirmed [their] findings and warnings issued over the last four years: widespread and systematic killings and arbitrary detention in the context of</p>

<sup>1</sup> <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelands-statements-hrc-32nd-session/preventingrespondingtoandaddressinghumanrightsviolations-jointconcludingstatement/>.

<sup>2</sup> OHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines, 4 June 2020, UN Doc. A/HRC/44/22, para 88.

<sup>3</sup> 44th session of the Human Rights Council: Enhanced interactive dialogue on the situation of human rights in the Philippines, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 30 June 2020, available at : <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26016&LangID=E>.

<sup>4</sup> Philippines: UN human rights experts renew call for an on-the-ground independent, impartial investigation, 25 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25999&LangID=E>.

	<p>the war on drugs, killings and abuses targeting farmers and indigenous peoples, the silencing of independent media, critics and the opposition.”</p>
<p><b>Does the State concerned have an “A status” NHRI? If so, has that institution drawn the attention of the international community to an emerging situation and called for action?</b></p>	<p>The Commission on Human Rights (CHR) of the Philippines (A-Status NHRI) has continued to raise concern and draw the attention of the international community to the situation, for which it has been attacked, including through alleged surveillance and threats against their lives and security, as highlighted in the OHCHR report.</p> <p>During HRC44, CHR Commissioner Karen Gomez Dumpit noted how the “harmful rhetoric of inciting hatred, vilifying legitimate dissent, and incentivizing violence” has allowed impunity to “acutely persist” in the country. The Commissioner reiterated the High Commissioner’s call on the HRC to give the OHCHR the continued mandate to monitor the situation in the country and report progress on the High Commissioner’s recommendations, and “in the absence of timely and measurable outcomes, to consider options for other international accountability measures.”</p>
<p><b>Has the State concerned been willing to recognise that it faces particular human rights challenges and laid down a set of credible actions, including a timetable and benchmarks to measure progress, to respond to the situation?</b></p>	<p>While the Philippine authorities have acknowledged that police and other unknown persons have killed thousands of people in the so-called “war on drugs,”<sup>5</sup> they have refused to accept that the killings are a problem that need to be halted, or to acknowledge that the anti-drug campaign is driving widespread human rights violations.</p> <p>As noted in the OHCHR report to HRC44, despite credible allegations, “there has been near impunity” for the killings with just one case resulting in the conviction of three police officers following public outrage over the killing of 17-year-old Kian delos Santos” (para 26). Addressing HRC44, the High Commissioner noted that the near-total impunity “[indicates] an unwillingness by the State to hold to account perpetrators of extrajudicial killings,” and that “families of the victims, understandably, feel powerless, with the odds firmly stacked against justice.”<sup>6</sup></p> <p>Not only has there been almost no accountability for unlawful killings by police and their associates, but President Duterte has explicitly encouraged police to commit extrajudicial executions and promised them immunity, while implicated police officers have received promotions.<sup>7</sup> The OHCHR noted that “harmful rhetoric from the highest levels of the Government has been pervasive and deeply damaging,” in some cases “[rising] to the level of incitement to violence” (para 77).</p> <p>In his 4<sup>th</sup> State of the Nation Address on 27 July 2020, President Duterte used human rights language to justify the anti-drug campaign and violations seen under his administration, suggesting some human rights should be</p>

<sup>5</sup> <http://newsinfo.inquirer.net/988352/pnp-admits-4251-killed-in-war-on-drugs>.

<sup>6</sup> 44th session of the Human Rights Council: Enhanced interactive dialogue on the situation of human rights in the Philippines, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 30 June 2020, available at : <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26016&LangID=E>.

<sup>7</sup> See for example, <https://www.rappler.com/nation/224501-rise-drug-killings-central-luzon-pnp-says-commanders-hardworking>.

	<p>upheld at the expense of others. The President simultaneously vowed to uphold human rights and later threatened to kill suspected drug offenders, warning that he will be the enemy of criminals who harm the public, saying “bodies will pile up” if they “return to their ways.”<sup>8</sup></p> <p>In this context, the announcement that the Government will launch a domestic investigation into unlawful killings lacks any kind of credibility.</p>
<p><b>Is the State concerned engaging in a meaningful, constructive way with the Council on the situation?</b></p>	<p>The HRC resolution was a result of the failure of the Philippines to engage constructively with the Council in the past and the government has continued to block scrutiny. Following the adoption of Council resolution 41/2 in July 2019, various government officials, including President Duterte, publicly attacked Council members who supported the resolution.<sup>9</sup> The Philippines has refused access to the OHCHR in the fulfilment of the mandate provided by the HRC.</p>
<p><b>Is the State concerned effectively cooperating with HRC Special Procedures, including by allowing country visits?</b></p>	<p>Not one Special Procedures country visit to the Philippines has taken place since President Duterte took power in June 2016, despite 14 outstanding visit requests.<sup>10</sup> In March 2017, the High Commissioner criticised President Duterte’s statements to the Philippine National Police that they should not cooperate with UN Special Procedures or international investigators who may probe human rights violations if they were to visit the Philippines.<sup>11</sup> The Philippines have not answered any communications from the Special Procedures since April 2019.</p> <p>Not only has the Government refused to cooperate with Special Procedures, but on several occasions has threatened or attacked them: In November 2017, the High Commissioner was forced to comment in response to “the repeated insults and threats of physical violence against the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, by the President of the Philippines and his supporters.” Specifically, the President “threatened to slap Ms. Callamard if she investigates him for alleged extrajudicial killings. He made the same threat against her in June 2017 after she criticised the “war on drugs” campaign which has left thousands dead.”<sup>12</sup> Attacks on Ms. Callamard, who notably holds the mandate most relevant to addressing the spate of unlawful killings, have continued.<sup>13</sup></p> <p>The Office was forced to speak out again when, in February 2018, the Department of Justice filed a petition before the Supreme Court that sought to designate human rights defenders, including the UN Special Rapporteur</p>

<sup>8</sup> <https://rappler.com/nation/full-text-duterte-sona-speech-2020>

<sup>9</sup> See for example: <https://www.reuters.com/article/us-philippines-drugs-duterte/duterte-mocks-ice-eating-iceland-over-un-vote-on-philippine-war-on-drugs-idUSKCN1U71FM>; <https://globalnation.inquirer.net/177789/locsin-warns-of-far-reaching-consequences-for-nations-in-favor-of-un-resolution>

<sup>10</sup> <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&lang=en>.

<sup>11</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772&LangID=E>

<sup>12</sup> See for example: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22421&LangID=E>

<sup>13</sup> E.g. <https://www.aljazeera.com/news/2018/03/duterte-attacks-rights-officials-callamard-bensouda-180309091927105.html>; <https://www.gmanetwork.com/news/news/nation/740664/palace-questions-callamard-s-credentials-after-remarks-on-covid-19-crisis/story/>.

	<p>on the rights of Indigenous peoples, Ms. Victoria Tauli-Corpuz (a Philippine national that had spoken out against the government, criticizing the displacement of Indigenous peoples during military operations in the south of the country), as “terrorists” under the country’s anti-terrorism law.<sup>14</sup> Ms. Tauli-Corpuz was again singled out and subjected to renewed accusations by the government in March 2019, a move that was also condemned by a group of UN Special Procedures.<sup>15</sup></p>
<p><b>Is the State concerned engaging with OHCHR, including in the field of technical assistance...</b></p>	<p>The authorities have continued to refuse access to the OHCHR. In its report, the OHCHR noted “several exchanges with representatives of the Government of the Philippines, including detailed discussions on 13 and 14 February 2020 in Bangkok, Thailand.” It noted, however, that OHCHR “did not receive permission from the Government to conduct a visit to the Philippines.”<sup>16</sup></p> <p>In response to the OHCHR report released in June 2020, the Government responded that it “cannot commit to [the] full implementation [of the recommendations therein] given the faulty conclusions on which they were premised,” alluding in particular to the concerns raised related to the killings, arbitrary detention, right to health and the crackdown on civic space. These conclusions, the Government confirmed, it “firmly reject(s).”<sup>17</sup></p>
<p><b>... and effective engagement with the UN Human Rights Treaty Bodies?</b></p>	<p>The Philippines has failed to implement recommendations from human rights treaty bodies on extrajudicial killings and associated human rights violations.</p> <p>Concerns were raised about the extrajudicial execution of people suspected of using or selling drugs at the review of the Committee on Economic, Social and Cultural Rights in 2016. During its review, the Committee urged “the State party to put a stop to extrajudicial killings and all forms of violence against drug users; to promptly and thoroughly investigate all reported cases and punish the perpetrators with sanctions commensurate with the gravity of the crime; and to take all measures necessary to ensure that the fight against drug trafficking does not have a discriminatory impact on the poor and marginalized.”<sup>18</sup></p> <p>The Government has not implemented any of the Committee’s other recommendations to credibly investigate the killings “and punish the perpetrators with sanctions commensurate with the gravity of the crime”. To date, police officers have been convicted of murder in just one high-profile case, that of Kian de los Santos, and reported killings by police and</p>

<sup>14</sup> <https://news.un.org/en/story/2018/03/1004622>.

<sup>15</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24538&LangID=E>.

<sup>16</sup> OHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines, 4 June 2020, UN doc. A/HRC/44/22, para 4.

<sup>17</sup> For official government response see <https://pcoo.gov.ph/OPS-content/on-the-ph-governments-comprehensive-reaction-to-the-latest-report-of-the-united-nations-office-of-the-high-commissioner-for-human-rights/>.

<sup>18</sup> E/C.12/PHL/CO/5-6, Committee on Economic, Social and Cultural Rights, Concluding observations on the combined fifth and sixth periodic reports of the Philippines\* 26 October 2016, para 54.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/PHL/CO/5-6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/PHL/CO/5-6&Lang=En).

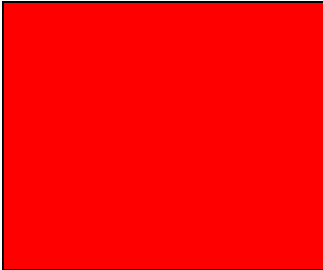
	<p>other unknown gunmen, many of them suspected of having links to the police, continue and have expanded beyond the “war on drugs.”<sup>19</sup></p> <p>The Government did temporarily remove police from anti-drug operations. However, police were later reassigned and those previously involved in deadly police operations were transferred or even promoted to higher positions.</p>
<p><b>Has a relevant regional mechanism or institution identified the situation as requiring the attention of the international community? Is the State concerned cooperating with relevant regional organisations?</b></p>	<p>N/A. The ASEAN Intergovernmental Commission on Human Rights (AICHR) lacks a formal system to receive complaints and does not publicly comment or criticize the human rights situation/violation in an ASEAN member state unless it has the explicit permission from the commissioner of that state to do so. Civil society organisations and parliamentarians from the region have, however, expressed their deep concern about the situation in the Philippines, including the ASEAN Parliamentarians for Human Rights,<sup>20</sup> FORUM-ASIA – a collective of regional NGOS,<sup>21</sup> and the ASEAN Peoples Forum.<sup>22</sup></p>
<p><b>Is the State concerned facilitating or obstructing access and work on the part of humanitarian actors, human rights defenders and the media?</b></p>	<p>The OHCHR report raised significant concern over killings of human rights defenders, journalists and trade unionists and the increased crackdown on civil society and independent media, among other human rights issues. Key points in the report on this matter include:</p> <ul style="list-style-type: none"> <li>- OHCHR “has itself verified the killings of 208 human rights defenders, journalists and trade unionists, including 30 women, between January 2015 and December 2019” (para 50) and is deeply concerned over the “‘red-tagging’ – or labelling individuals and groups as communists or terrorists – [which] has been a persistent and powerful threat to civil society and freedom of expression” (para 49, see also paras 51-52 for examples of the impact of this).</li> <li>- “Police and military visits and raids on NGOs are reportedly used to intimidate civil society, including during the COVID-19 lockdown” (para 54).</li> <li>- “Human rights advocacy is routinely equated with insurgency and the focus diverted to discrediting the messengers rather than examining the substance of the message” (para 83).</li> <li>- “Ongoing threats to freedom of expression, with legal charges and prosecutions being brought against journalists and senior politicians critical of the Government, as well as actions to shut down media outlets.”<sup>1</sup></li> <li>- “OHCHR and various United Nations Special Rapporteurs” have “raised concerns about what appears to be ‘a pattern of intimidation’ of independent news sources” (para 59). The report raises concern</li> </ul>

<sup>19</sup> <https://www.amnesty.org/en/countries/asia-and-the-pacific/philippines/report-philippines/>

<sup>20</sup> <https://aseanmp.org/2017/08/25/release-senator-de-lima-end-extrajudicial-killings-philippines/>

<sup>21</sup> <https://www.forum-asia.org/?p=25920>

<sup>22</sup> [http://www.acsc-apf.org/pages/summary%20ACSC\\_AFP\\_2017.html](http://www.acsc-apf.org/pages/summary%20ACSC_AFP_2017.html)



specifically over the attacks on Rappler and its CEO Maria Ressa, and the recent shutdown of media network ABS-CBN (para 59).

- “Senators Leila de Lima and Risa Hontiveros are among other women officials critical of Government policy who faced reprisals. Senator de Lima has been arbitrarily detained for three years and Senator Hontiveros faces various criminal charges” (para 58).
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<sup>3</sup> OHCHR, Philippines: UN report details widespread human rights violations and persistent impunity, 4 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25924&LangID=E>.