

Joint Submission to the UN Periodic Review

41st Session of the UPR Working Group, November 2022

State under Review: **Philippines**

Submitted by: Aktionsbündnis Menschenrechte – Philippinen (AMP)

In cooperation with: Amnesty International Germany, Brot für die Welt, International Peace Observers Network (IPON), MISEREOR, Missio Munich, philippinenbüro e.V. im Asienhaus, and the United Evangelical Mission.

Introduction

1. This stakeholder report is a joint submission of the member organizations of the Aktionsbündnis Menschenrechte – Philippinen (AMP – Action Network Human Rights – Philippines). The report highlights key human rights concerns in the Philippines related to the following areas: killings and criminalization of human rights defenders; extrajudicial killings in the context of the so-called war on drugs; impunity; indigenous people's rights; press freedom; and cooperation with special procedures.
2. The AMP was created in 2007 as an initiative of seven major German church-based agencies and human rights organizations to promote advocacy and information work in Germany and the EU regarding the human rights situation in the Philippines. Members of the AMP are Amnesty International Germany, Brot für die Welt, International Peace Observers Network (IPON), MISEREOR, Missio Munich, philippinenbüro e.V. im Asienhaus, and the United Evangelical Mission (UEM). The focus of the network lies on extrajudicial killings, enforced disappearances, and fabricated charges against political activists as well as on the so-called war on drugs under President Rodrigo Duterte. The network cooperates closely with a multitude of Philippine human rights organizations working on local, national as well as international level.
3. This submission is mainly based on information we received from our partner organizations in the Philippines and from publicly available sources. Some cases of human rights violations cited in this report were also documented by AMP through interviews with victims. The pandemic, however, makes it hard for local as well as international organizations to document cases. Travel restrictions and curfews, enforced by the military and often used to restrict the movement of human rights, NGO and church workers, made it difficult to reach communities. Therefore, the numbers of human rights violations documented in this report should be understood as minimum figures. A large number of unreported cases must be assumed.

Killings of Human Rights Defenders

4. In its 2017 Universal Periodic Review the Philippines rejected all recommendations concerning the so-called war on drugs, extrajudicial executions, the death penalty, or protection of human rights defenders.¹ The Philippines, however, remain one of the most dangerous countries for human rights defenders worldwide – a situation that has dramatically worsened under the Duterte administration.² This manifests in a climate of fear, a significant increase in extrajudicial killings, and the resurgence of enforced disappearance, such as the case of development worker Elena Tijamo (see para. 40). Since the Philippines' last UPR in May 2017, at least 279 HRDs have been killed in 205 separate incidents. In the same period, 26 killings of journalists were documented, of which all appear to be work-related.³ For a full list of documented cases, consult the annex to this report.
5. Legislation designed to protect human rights defenders in the Philippines is pending in Congress. In November 2021 a spokesperson of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC), the country's anti-terror body, stated that the proposed bill would be "unnecessary and unconstitutional".⁴ In March 2021, the UN Special Rapporteur on the situation of human rights defenders had called on the Philippine Congress to prioritize passage of the legislation, citing the "extremely serious risks faced by those peacefully defending human rights [...] in the Philippines".⁵
6. Since the last UPR, the government's effort to criminalize its critics has been a major cause of killings of human rights defenders, journalists, and development workers. In this climate, engaging in community

work or making critical comments on social media can be enough to become a target. For example, in 2020, privately organized community pantries surged as a response to the basic need of the population for food amid the pandemic. In April 2020, the NTF-ECLAC vilified the Maginhawa Community Pantry, the first community pantry, online as a “communist terrorist organization”. The community pantry had to temporarily stop its operations, forcedly leaving its community without food supply for the time.⁶

7. Historically, one of the major driving forces behind threats to human rights defenders have been conflicts over agrarian land and natural resources including mining projects and related environmental issues. Threats to human rights defenders working in the context of land rights and environmental conflicts continue and are exacerbated by the lifting of the moratorium on new mining contracts by President Duterte’s EO 130, signed on April 14, 2021. Since 2017, in at least 87 separate incidents, activists have been killed in mining and land rights conflicts, often while opposing land-grabbing or demanding the redistribution of land under the Philippines’ Comprehensive Agrarian Reform Program.
8. Those HRDs who are falsely accused by the security forces to be members or supporters of the communist rebels of the New People’s Army (NPA) (so-called “red-tagging”) are particularly threatened. Targeted killings of leftist political activists have a long history in the Philippines, but the systematic vilification gained a new momentum under Duterte, especially after he terminated the peace process with the National Democratic Front of the Philippines (NDFP) in November 2017. A government petition filed in March 2018 listed more than 600 individuals alleged to be NPA members and thus accused them of being terrorists. The list included, amongst many human rights defenders, also then UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz.⁷ Also, on November 6, 2018, Benjamin Ramos, a founding member of the National Union of People’s Lawyers (NUPL), NGO Peace Development Group (PDG), the national farmer-scientist network MASIPAG, and known human rights lawyer was shot dead by unidentified men in Kabankalan City in Negros Occidental, being the 34th lawyer killed under Duterte at the time. Previously, he had received death threats and his picture had been included in a poster of alleged terrorists distributed in Negros in April 2018.⁸
9. On December 4, 2018, President Duterte signed Executive Order No. 70 declaring the whole-of-the-nation approach to end the Communist insurgency and creating the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) as its main implementing body. Ever since, the NTF-ELCAC and its representatives are actively red-tagging human rights defenders and civil society actors as terrorists. For example, Zara Alvarez, a human rights defender, community health worker and teacher, was killed by two unidentified men on motorcycles near her home in Bacolod City on August 17, 2020.⁹ She had just been acquitted of a trumped-up charge against her on March 4, 2020 and had been organizing food distribution programs during the first weeks of the pandemic.¹⁰ For almost two decades, she had closely worked with human rights groups, church-based groups, and was a close partner of the AMP. Zara Alvarez, who was acquitted of murder charges by a court, was nevertheless publicly vilified by NTF-ELCAC members as a terrorist on posthumously on August 30, 2020. So was former peace consultant adviser and Anakpawis party leader Randall Echanis, who was brutally tortured and murdered in his home in Quezon City on August 10, 2020.¹¹
10. A significant number of cases of harassments, vilification, and killings of human rights defenders occur in the context of the government’s counterinsurgency operations. Operations of the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) follow very similar patterns. PNP and AFP oftentimes use judicial search warrants, several of which were issued by the same judge within a short period of time.

They then storm the houses of the targeted individuals late at night or in the early morning to find evidence, which they themselves planted during the search operation. For example, in the incidents known as the Bloody Sunday or Calabarzon Killings on March 7, 2021, 42 search warrants were issued by four judges in only two days. These search warrants then served as basis for the heavy crackdown on civil society representatives which left nine of them dead: in the early morning, several PNP units stormed the homes of Emmanuel “Manny” Assuncion, labor leader and Secretary-General of BAYAN-Cavite, two Indigenous Peoples (IP) rights activists Puroy dela Cruz and Randy “Pulong” dela Cruz, two peasant rights activists Ana Marie “Chai” Lemita-Evangelista and Ariel Evangelista, four housing rights activists Abner Esto and Edward Esto, Melvin Dasigao, and Mark Lee “Makmak” Coros Bacasno and shot them for allegedly offering armed resistance to their arrest.

Recommendations for the State under Review (SuR)

11. Investigate all cases of killings of human rights defenders and journalists without delay and bring all perpetrators to justice.
12. Take all necessary steps to protect human rights defenders and journalists from harassment, violence, and death.
13. Direct the Armed Forces of the Philippines to refrain from making statements that stigmatize human rights defenders, especially statements that suggest that defenders are members of the New Peoples’ Army.
14. Direct the National Task Force to End Local Armed Conflict to end all forms of harassment and vilification of activists, civilians, and human rights defenders
15. Investigate all such cases of public vilification.
16. Pass comprehensive legislation to protect human rights defenders.

Criminalization of Human Rights Defenders

17. The widespread criminalization of human rights defenders, journalists and church people in the Philippines received little attention in previous cycles of the UPR. Security forces, politicians, and private actors such as multinational companies systematically abuse the criminal system to silence those who oppose their interests. While human rights organizations do not systematically record the number of cases of criminalization, it is widely assumed that they significantly increased all over the country under President Duterte.
18. Since July 3, 2020, Republic Act 11479, the new Anti-Terrorism Act (ATA) is in force. Compared to the Human Security Act of 2007, the previous anti-terror law, the ATA is based on an overly broad and vague definition of terrorism. The law is particularly problematic because it undermines the presumption of innocence of those accused under it. For example, the Anti-Terrorism Council (ATC), consisting of Senate members and government representatives, can declare individuals and organizations as “terrorists” without any evidence. Any suspect of terrorism can be imprisoned for up to 24 days without arrest warrant, organizations so-declared can find their bank accounts frozen – with no due process in place to challenge the allegations. 37 petitions of various stakeholders challenged the ATA as unconstitutionally before the

Supreme Court, where two portions of the law were ruled unconstitutional in December 2021. The ATC, prolonged detention of suspects and the broad and vague definition of terrorism remained.¹²

19. For example, the first accused under the ATA were two men from the Indigenous community of the Aetas, Jepoy Garung and Junior Ramos-Urbano. On August 21, 2020, they fled from their community when the 703rd Brigade and 7th Infantry Division of the Armed Forces of the Philippines (AFP) engaged in an armed encounter with the NPA on ancestral land of the Aeta in San Marcelino, Zambales. On their way, they were arrested by AFP soldiers and accused of terrorism and murder and were subsequently tortured. They finally confessed under torture that they were NPA members and were charged under ATA. Both remained imprisoned for almost a year, when they were acquitted of the accusations by Olongapo Regional Trial Court (RTC) on July 19, 2021.¹³
20. So-called “trumped-up” charges constitute a particularly insidious form of criminalization. These fabricated charges are mostly filed to discredit and imprison HRDs. The filing of charges is oftentimes based solely on the testimonies of self-declared former rebels who claim to be able to identify the HRD as a co-perpetrator of a crime. In several instances, however, these witnesses had to admit that their testimonies were based on information provided by the military during cross-examination. Human rights organizations thus assume that they are paid to give false testimony. There is rarely any forensic evidence presented. Despite the spurious nature of the evidence, prosecutors file charges and judges allow trials to proceed without taking exculpatory evidence into account. This is in violation of Article 14 of the United Nations Guidelines on the Role of Prosecutors which states that “prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.”¹⁴ Other reports indicate that prosecutors and judges are pressured into upholding unfounded charges against HRDs. The Philippine government thus violates its duties to protect the independence of the judiciary, an obligation which arises under ICCPR Article 14(1).
21. For example, on August 6, 2020, Cordillera Peoples Alliance (CPA) chairperson Windel Bolinget was charged by the Regional Trial Court in Tagum City, Davao del Norte (Mindanao) for his alleged involvement in the 2018 murder of Garito Malibato, a member of a Lumad indigenous organization. Bolinget advocates for indigenous rights in Northern Luzon and is engaged in campaigns against large-scale mining projects, mega-dams, and other projects that pose a threat to the environment and indigenous ancestral domains. On September 25, 2020, the Court issued an arrest warrant against Bolinget for alleged murder. However, the charges were completely fabricated as Bolinget had never been to Davao del Norte. Fearing extrajudicial execution, he went into hiding. He was included in the 2018’s terrorist list (see para 8) and was red-tagged as a recruiter for NPA through social media and leaflets showing his photo. On January 20, 2021, the Cordillera Police Director issued a “shoot-to-kill” order against Bolinget and on January 15, 2021, the Kalinga provincial police offered a bounty of P100,000 (\$1,956) for any information that would lead to Bolinget’s arrest. On January 21, 2021, Bolinget presented himself before the National Bureau of Investigation in Baguio City. The court dismissed the charge against him on July 27, 2021. Harassment and threats to his life persist.
22. Even manifestly false accusations against HRDs often lead to several years of pretrial detention because defendants are not allowed to post bail and trials drag on for several years. The masterminds behind the false accusations thus take advantage of the dysfunctional justice system, with its protracted trials. If the defendants are accused of crimes for which bail can be denied (e.g., murder), they remain in custody until a verdict is reached. Cases against HRDs are also often systematically sabotaged in order to prolong them,

e.g., when prosecutors or witnesses of the prosecution do not appear in court to give their testimony. The denial of bail and the lengthy trials violate the Philippines' obligations under ICCPR Articles 9(3) and 14(3).

23. Both HRDs and journalists are frequently charged with libel if they report or express critical opinions regarding acts of public officials. In the Philippines, libel is a criminal offence pursuant to Articles 353-362 of the Revised Penal Code.¹⁵ The definition of libel is particularly problematic as Article 354 declares that "every defamatory imputation is presumed to be malicious, even if it be true" which places the burden of proof on the accused. Citing its general comment No. 34 which states that defamation laws should not serve to stifle freedom of expression¹⁶, the UN Human Rights Committee has already held in one case that the criminalization of libel represents a breach of the Philippines' obligations under Article 19(3) of the ICCPR.¹⁷
24. Despite this finding of the UN Human Rights Committee, in 2012 the Philippine Congress enacted the Cybercrime Prevention Act which further criminalizes libel committed through the use of information and communications technology and imposes penalties of up to 12 years of imprisonment.¹⁸ The fact that most newspapers and NGOs publish their articles and statements online makes journalists and human rights defenders particularly vulnerable to be punished for critical statements under this law.

Recommendations for the SuR

25. Amend the Anti-Terrorism Act (ATA) of 2020 to bring Philippine counter-terrorism legislation in compliance with international human rights standards.
26. Repeal all criminal defamation laws, including those set out in Articles 353 to 355, Articles 358 to 362 of the Revised Penal Code, and Section 4(c)(4) of the Cybercrime Prevention Act. The law should be amended so that civil liability proceedings are the sole form of redress for complaints of damage to reputation, as recommended by the UN Special Rapporteur on Freedom of Expression.¹⁹
27. Order the Philippines National Police and the Armed Force of the Philippines to cease filing trumped-up charges against human rights defenders.
28. Ensure that prosecutors and judges do not open trial proceedings in cases of manifestly fabricated charges against human rights defenders.
29. Ensure the independence of judges and prosecutors.

Extrajudicial Killings of Alleged Criminals

30. Since the election of President Duterte in May 2016, extrajudicial killings of alleged drug users and dealers increased dramatically. Duterte already made it clear during the presidential election campaign that extrajudicial killings would be his chosen method to achieve the end drug related crime.²⁰ Now, almost at the end of his six-year presidential term, the Philippine Commission of Human Rights (CHR)²¹ and human rights organizations estimate that at least 27,000 people were killed, overwhelmingly from the poorest strata of the country's population²². This number was supported by a report of the UN High Commissioner for Human Rights on June 29, 2020.²³ According to the police, in most cases the victims had violently

resisted their arrest. So far, however, the police did not provide any evidence that these killings were indeed cases of self-defense and police reports often contain the exact same phrases or serial numbers of guns allegedly used against police officers. Eyewitnesses and survivors state on the contrary, that arms or drugs were planted on the victims as evidence after the execution.

31. In many cases, so-called vigilante groups are responsible for the killings. There are, however, ties between these vigilantes and state agents. At minimum, such actors are supporters of Duterte and his drug policies, carrying out attacks inspired by Duterte's rhetoric. In other cases, the ties between these agents and the state have been more direct. In some cases, perpetrators have been identified as "known police assets", and the ICC refers to evidence that suggests that vigilantes were paid by state security agents, or that they were PNP in civilian clothes to appear as private actors.²⁴ In other cases, police officers appeared to have cleared the area before the vigilantes arrived or intimidated witnesses and survivors after the killing.
32. The extrajudicial killings of suspected drug offenders are clearly linked to President Duterte and his rhetoric of violence and promise of immunity. Duterte issued an explicit shoot-to-kill order against people allegedly involved in the drug trade to the police and repeatedly promised immunity to the police officers should they get indicted, both of which is in blatant contradiction with the Philippines' human rights obligations under international law. Duterte even incited ordinary citizens who knew drug addicts to "go ahead and kill them yourself"²⁵. In a statement, the then SR on summary executions, Agnes Callamard, stated that "directives of this nature are irresponsible in the extreme and amount to incitement to violence and killing, a crime under international law."²⁶ The report of the UN High Commissioner for Human Rights states that this language may be seen by the police as a "permission to kill"²⁷ and that this could represent a violation of the prohibition against arbitrary deprivation of life in article 6 of the ICCPR²⁸.
33. The so-called war on drugs is a war against the civilian population and recently led to the opening of investigations at the International Criminal Court (ICC). The ICC found that "there is a reasonable basis to proceed with an investigation, noting that specific legal element of the crime against humanity of murder under Article 7(1)(a) of the [Rome] Statute has been met with respect to the killings committed throughout the Philippines between 1 July 2016 and 16 March 2019 in the context of the drug campaign, as well as with respect to the killings in the Davao area between 1 November 2011 and 30 June 2016". The ICC furthermore stated it is believable that a "widespread and systematic attack against the civilian population took place [...] within the meaning of Article 7(1) and (2)(a) of the [Rome] Statute".²⁹ Thus, the ICC investigates the killings under Duterte's Presidency as well as during his term as mayor of Davao – where the so-called Davao Death Squad operated as state security forces and vigilante groups do nationwide since Duterte's presidency. This includes the Ophlan Tokhang operations where police officers conduct home visit based on lists of suspected drug users in the late evening or early morning hours, formally to warn them of consequences if they do not stop their drug-related activities. In many cases, these operations end with the killing of the suspect and with planted evidence by police officers to prove they acted in self-defense (note para 30).
34. So far, in only one out of the thousands of cases of killings, the offenders were held accountable. In November 2018, three police officers received prison sentences for the murder of 17-year-old Kian delos Santos in Caloocan. The case had attracted considerable attention, both domestically and internationally, because surveillance camera pictures showed that the police officers had executed the victim. Subsequently, the government used this case to argue that it could conduct independent investigations of fatalities and of punishing illegitimate killings.³⁰ There are, however, no adequate investigations in the

remaining thousands of cases. The government neither shows the capability, nor the will to hold perpetrators accountable. Therefore, the Philippine authorities violate severely international standards, which prescribe mandatory investigations by prosecuting authorities in each case where lethal violence is used.³¹

Recommendations for the SuR

35. Stop the extrajudicial killings of civilians and alleged criminals immediately and ensure that the police comply with international human rights standards regarding the use of force by law enforcement officials.³²
36. Investigate all cases of drug-related extrajudicial killings without delay, including covert police operations and vigilante killings.
37. End the incitement of violence and killings in any kind of speech or announcement.

Impunity

38. The Philippines accepted no general recommendations to fight impunity for severe human rights abuses made during the UPR 2017³³. Impunity remains a major problem in the Philippines. In none of the documented cases have the perpetrators been brought to justice and due to a lack of thorough investigations and of effort on the part of the state apparatus to initiate proper investigations, it is difficult to verify the identities of perpetrators. Moreover, many assassinations were carried out by hired killers obscuring those who are ultimately responsible. The testimonies of eyewitnesses and relatives, however, allow for a provisional delineation of the perpetrators' backgrounds. In the killings of human rights defenders from July 2016 until October 2019, the military was incriminated in over one-third of the cases (79). Of the remaining cases of that period, 17 killings have been blamed on private security guards.³⁴
39. Over the years, the Philippine government created a multitude of bodies and mechanisms to investigate and prosecute cases of severe human rights violations. These include specialized investigation units such as the PNP's Taskforce Usig, investigatory powers vested in the Commission on Human Rights (CHR), the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (IAC) under the Administrative Order 35³⁵, the human rights offices of the PNP and AFP, and lately the engagement in the investigation of extrajudicial killings under the Joint Programme of the UN with the Philippines. However, a study from October 2021 still ranked the Philippines as the country with one of the highest impunity rates worldwide.³⁶ Strikingly, none of the documented cases of killed HRDs since 2017 has led to a conviction of the perpetrators. Furthermore, hundreds of other cases of grave human rights violations also remain unsolved, sometimes stretching back more than a decade. For example, according to the CHR Human Rights Report 2020, no case had led to a conviction through the IAC.³⁷ The report of the UN High Commissioner on human rights on the situation of human rights in the Philippines observes that the work of IAC lacks independency, transparency and powers, and that its work does not cover drug-related killings.³⁸
40. The Philippines did not follow the recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearances (CPED).³⁹ However, in December 2012, the Philippines passed the Anti-Enforced or Involuntary Disappearance Act, making it the first country in Asia to criminalize the practice of enforced disappearances.⁴⁰ The law also prohibits the use of secret detention

facilities and makes provisions for the compensation and restitutions of victims and their relatives. To date, however, no perpetrators of enforced disappearances have been convicted under this law. Whereas the number of new cases of enforced disappearances has declined in the past years, over 2,000 victims remain missing⁴¹. The recent case of the enforced disappearance of Elena Tijamo on June 13, 2020, especially frightens civil society organizations and their members that this malicious practice might return. Elena Tijamo was a coordinator for the NGO Farmers Development Center (FARDEC) in Central Visayas and lived in Bantayan Cebu. She remained forcibly disappeared for one year, and reappeared dead in a hospital in Manila under a false name on August 30, 2021 – far away from her home in Cebu, where she had been abducted.

41. The Commission on Human Rights (CHR), the Philippines' National Human Rights Institution (NHRI), charged with investigating all forms of violations of civil and political human rights, continues to lack political and fiscal independence and prosecutorial power. The Chair of the Commission as well as the highest-ranking Commissioners are appointed by Presidential decree, a fact criticized by the SR on the situation of HRDs.⁴² Furthermore, the work is hampered by a lack of resources. In September 2017, lawmakers tried to disempower the CHR when they voted by majority to approve a P1,000 (\$ 19,9) budget for the CHR for 2018. Finally, the proposal did not pass. The CHR received P695.5 million (\$13.81 million) for 2018 – still a 4.05% cut from its 2017 funding.

Recommendations for the SuR

42. End impunity for extrajudicial killings, enforced disappearances and torture, in particular those perpetrated by security forces, by undertaking thorough investigations and vigorous prosecutions of perpetrators.
43. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances.
44. Embark on a substantial reform of the judicial system to ensure that perpetrators of severe human rights violations are brought to justice and to expedite judicial proceedings of such cases.
45. Expand the funding and effectiveness of the witness protection program to ensure full protection of witnesses before, during and after investigations and trials.

Indigenous Peoples

46. Whereas in the 2012 UPR, the Philippines accepted a recommendation to ensure that mining activities would not negatively affect the rights of indigenous peoples (IPs)⁴³, mining-related human rights violations dramatically increased since 2012. In 2017 UPR, the Philippines did not accept the two recommendations aiming at the protection of ancestral land of indigenous peoples⁴⁴ and to ratify the Indigenous and Tribal Peoples Convention (ILO Convention No. 169)⁴⁵. The Philippines remain one of the most dangerous countries for indigenous people. They are being harassed, vilified as terrorists, and murdered because they defend their right to their ancestral lands, their schools are under attack and vilified as terrorist hub. Or they are caught in the middle of the domestic conflict between the government and the New People's Army (NPA). As, for example, in the case of the two indigenous Aetas, who were the first to be accused under the Anti-Terrorism Act of 2020 in an incidence where they were fleeing from fights on their ancestral land (note para 19).

47. The Philippines did, however, in the 2017 UPR accept a recommendation to re-examine the Mining Act of 1995 with regards to its environmental provisions and sustainable development practices⁴⁶. An estimated 60 % of the Philippines mineral resources are located within the ancestral domains of the more than 100 distinct tribal groups. Mining projects often cause widespread damage to the environment, for example through the unregulated usage of highly toxic chemicals. The Mining Act of 1995 was not re-examined and still grants mining companies extensive rights to cut timber and to the usage of water which in turn severely compromises the social-economic rights of IP communities, in particular their right to food.⁴⁷ On April 14, 2021, President Duterte even lifted a moratorium on new mines that had been implemented since 2012 (note para 7). This could lead to an increase in mining activities, which could further endanger the rights and lives of indigenous peoples.
48. The Indigenous People's Rights Act (IPRA) of 1997 provides that any company has to consult with and gain consent from indigenous peoples' communities who live in the areas in which they seek to operate.⁴⁸ In reality, however, this requirement of Free, Prior, and Informed Consent (FPIC) is frequently violated.⁴⁹ Yet, the industrial activities in ancestral domains of indigenous people continues to increase.⁵⁰ Indigenous human rights defenders who demand the respect of FPIC and lead community processes on this subject often face harassment, threats, and attacks as a result of their work. The worst case in the recent past is the so-called Tumandok massacre, where nine indigenous rights defenders of the Tumandok indigenous group were killed. They were engaged in the protest against a hydropower project between the villages of Tapaz and Calinog, Panay Island that would completely flood nine villages on ancestral land. According to TUMANDUK, a Tumandok organization, the FPIC was repeatedly violated in the planning phases of the hydropower project. On December 30, 2020, in the early morning, the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) stormed the houses of Roy „Alan“ Giganto, Reynaldo Katipunan, Mario Aguirre, Eliseo Gayas, Maurito Diaz, Artilito Katipunan, Jomar Vidal, Garson Catamin and Rolando Diaz and executed them in or outside their homes.
49. Attacks against independent indigenous schools in Mindanao perpetrated by the military and paramilitary groups intensified under the presidency of Duterte. Since indigenous knowledge and practices are not taught in public schools, religious and nongovernmental groups set up independent local schools whose curricula incorporate the specific cultural traditions of the indigenous group. However, the military and government without any evidence repeatedly accuse the independent indigenous schools of being training institutions for the NPA, which leads to harassments and threats against teachers, students, and administrative personnel. Duterte himself threatened to order the bombing of independent indigenous schools in Mindanao. According to the Philippine advocacy network Save Our Schools, 85 of these schools were temporarily closed between July 2016 und March 2019 because they had been attacked by military or paramilitary forces. In July 2019, the Ministry of Education ordered the shutdown of 55 schools accused of spreading an anti-government ideology.⁵¹ The counterinsurgency whole-of-the-nation approach, as declared in EO 70 (see Para 10), has to be seen as the legal basis for the shutdown of the accused schools.

Recommendation for the SuR

50. Launch thorough and impartial investigations of all killings of indigenous people in which the military, paramilitary groups or mining companies are implicated. Take all necessary steps to ensure that members of indigenous peoples' communities who oppose mining or so-called development projects are protected from violence and harassment.

51. Ensure that the requirement of Free, Prior, and Informed Consent of indigenous peoples' communities is met before mining projects or other so-called development projects receive a license to operate on their ancestral domain.
52. Investigate all incidents of attacks on indigenous peoples' schools, their teachers and students and bring the perpetrators to justice.
53. Ratify the Indigenous and Tribal Peoples Convention (ILO Convention No. 169).

Cooperation with international human rights mechanisms

54. The country received several recommendations to accept a visit by the Special Rapporteur (SR) on extrajudicial executions, to cooperate fully with her mandate,⁵² and generally to grant access to special procedures to the country⁵³ which is denied since 2007. On June 29, 2020, the UN High Commissioner's Office published her report on the human rights situation in the Philippines and concluded that the extrajudicial killings in the Philippines are widespread and systematic.⁵⁴ The same year, the SR on the situation of HRDs, Mary Lawlor, singled out the Philippines as one of the most dangerous countries for human rights defenders worldwide.⁵⁵ Yet, the Philippines oppose a mission of inquiry and continue to deny special procedure mandates access to the country.
55. In February 2018, the International Criminal Court's (ICC) chief prosecutor announced the opening of a preliminary investigation of the killings by police in the context of the war on drugs, citing alleged crimes against humanity. The Philippines reacted with its withdrawal from the ICC on March 17, 2019. Despite the withdrawal, the Court still has jurisdiction to prosecute all crimes committed before the withdrawal date. It commenced an investigation into the situation in the Philippines on September 15, 2021, pursuant to article 15(3) of the Rome Statute.⁵⁶ President Duterte promptly stated that the Philippines would not cooperate with the ICC and not allow prosecutors into the country.⁵⁷ On November 10, 2021, the Philippines filed a deferral request, citing the country's own investigations into drug war killings.

Recommendations for the SuR

56. Fully cooperate and issue a standing invitation to all Special Rapporteurs with thematic mandates and working groups of the UN Human Rights Council, in particular the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial executions, the Working Group on enforced or involuntary disappearances and an investigative mission of inquiry to the country.
57. Fully cooperate with the investigations of the ICC.

¹ Responses to Recommendation, Philippines, Third Review, Session 27, responses as of 15.12.2017

² Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor: 'Final warning: death threats and killings of human rights defenders', 24 December 2020, A/HRC/46/35, para 41, 44, 59; Global Witness, 'Last Line of Defence: The industries causing the climate crisis and

attacks against land and environmental defenders’, September 2021, <https://undocs.org/en/A/HRC/46/35f>

³ Center for Media Freedom and Responsibility, ‘Database on the Killing of Journalists in the Philippines since 1986’, <http://cmfr-phil.org/mediakillings/>

⁴ <https://www.pna.gov.ph/articles/1159408>

⁵ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26914&LangID=E>

⁶ Rappler, ‘Maginhawa community pantry temporarily shut down amid red-tagging’, 20 April 2021, <https://www.rappler.com/nation/maginhawa-community-pantry-temporary-shutdown-due-red-tagging-april-20-2021/>

⁷ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23466&LangID=E>

⁸ <https://protect-lawyers.org/en/item/ben-ramos-3/>;
https://eeas.europa.eu/delegations/philippines_en/53502/LOCAL%20STATEMENT%20ON%20THE%20KILLING%20OF%20ATTORNEY%20BENJAMIN%20TARUG%20RAMOS%20ON%206%20NOVEMBER%202018

⁹ Aktionsbündnis Menschenrechte – Philippinen, ‘The case of Zara Reboton Alvarez’, <https://amp.ngo/en/advocacy/individual-cases/the-case-of-zara-reboton-alvarez/>

¹⁰ Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor: ‘Final warning: death threats and killings of human rights defenders’, 24 December 2020, A/HRC/46/35, para 74

¹¹ https://www.facebook.com/permalink.php?story_fbid=311906653581059&id=113896963382030

¹² Philstar, ‘SC leaves Anti-Terrorism Act of 2020 mostly intact’, 9 December 2021, SC leaves Anti-Terrorism Act of 2020 mostly intact, <https://www.philstar.com/headlines/2021/12/09/2146795/sc-leaves-anti-terrorism-act-2020-mostly-intact>

¹³ <https://www.rappler.com/nation/olongapo-trial-court-decision-aetas-charged-anti-terror-law-case/>

¹⁴ United Nations, Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

¹⁵ Republican Act No. 3815, An Act Revising The Penal Code And Other Penal Laws, 8 December 1930, Articles 353-362

¹⁶ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para 47

¹⁷ Human Rights Committee, Communication No. 1815/2008, ‘Adonis vs. The Philippines’, 27 January 2011, CCPR/C/103/D/1815/2008

¹⁸ Republican Act No. 10175, An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression and the Imposition of Penalties Therefor and for Other Purposes, 12 September 2012

¹⁹ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 20 April 2010, A/HRC/14/23 (2010), para. 83.

²⁰ <https://newsinfo.inquirer.net/693373/duterte-confirms-ties-with-davao-death-squad>

²¹ ABS-CBN, ‘CHR chief: Drug war deaths could be as high as 27,000’, December 5, 2018, <https://news.abs-cbn.com/focus/12/05/18/chr-chief-drug-war-deaths-could-be-as-high-as-27000>

²² https://issuu.com/idealsorgph/docs/beyond_the_numbers_pages

²³ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, ‘Situation of human rights in the Philippines Report of the United Nations High Commissioner for Human Rights’, 29 June 2020, A/HRC/44/22, para 22

²⁴ International Criminal Court, Situation in the Republic of the Philippines, 14 June 2021, para 67-71, https://www.icc-cpi.int/CourtRecords/CR2021_05381.PDF

²⁵ The Guardian, ‘Philippines president Rodrigo Duterte urges people to kill drug addicts’, 1 July 2016, <https://www.theguardian.com/world/2016/jul/01/philippines-president-rodrigo-duterte-urges-people-to-kill-drug-addicts>

²⁶ OHCHR Press release, ‘UN experts urge the Philippines to stop unlawful killings of people suspected of drug-related offences’, 18 August 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20388>

²⁷ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, ‘Situation of human rights in the Philippines Report of the United Nations High Commissioner for Human Rights’, 29 June 2020, A/HRC/44/22, paras 18, 77-80

²⁸ Human Rights Committee, general comment No. 36 (2018) on the right to life, para 4, 11

²⁹ International Criminal Court, Press Release, Situation in the Philippines: ICC Pre-Trial Chamber I authorises the opening of an investigation, 15 September 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=PR1610>

³⁰ ABS-CBN News, ‘3 cops found guilty of murder over Kian Delos Santos slay’, 29 November 2019, bit.ly/2DQohnG

³¹ Human Rights Committee, ‘General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right of life’, October 30, 2018, CCPR/C/GC/36, paras 13, 27

-
- ³² United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- ³³ A/HRC/36/12, paras 133.137 (Croatia), 133.139 (Argentina), 133.141 (Luxembourg), 133.142 (Slovenia), 133.148 (Austria).
- ³⁴ Aktionsbündnis Menschenrechte – Philippinen, ‘Human Rights under Duterte’, 2019, p.15, <https://amp.ngo/en/project/human-rights-in-the-philippines-under-duterte/>
- ³⁵ President of the Philippines, Administrative Order No. 35, s. 2012, Creating The Inter-Agency Committee On Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations Of The Right To Life, Liberty And Security Of Persons, 22 November 2012, <http://www.gov.ph/2012/11/22/administrative-order-no-35-s-2012/>
- ³⁶ Centro De Estudios Sobre Impunidad Y Justicia (CESIJ), ‘Escalas de impunidad en el mundo. Índice Global de Impunidad 2020’, August 2020, <https://www.udlap.mx/cesij/files/indices-globales/0-IGI-2020-UDLAP.pdf>
- ³⁷ Commission on Human Right, ‘Rights During a Pandemic. 2020 Annual Report on the Human Rights Situation in the Philippines’, p. 58 para. 195, <https://chr.gov.ph/wp-content/uploads/2021/08/CHR-V-No.POL2021-006-The-2020-Annual-Report-on-the-Human-Rights-Situation-in-the-Philippines.pdf>
- ³⁸ A/HRC/44/22, paras 6 and 50
- ³⁹ A/HRC/36/12, paras 133.2 (France), 133.3 (Angola, Iraq, Japan, Kenya, Montenegro, Sierra Leone), 133.4 (Uruguay), 133.5 (Portugal)
- ⁴⁰ Republic Act No. 10353, An Act Defining And Penalizing Enforced Or Involuntary Disappearance, 21 December 2012
- ⁴¹ Philstar, ‘UN alarmed over increasing number of enforced disappearances’, 1 September 2015, <http://www.philstar.com/headlines/2015/09/01/1494621/un-alarmed-over-increasing-number-enforced-disappearances>
- ⁴² Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 16 January 2013, A/HRC/22/47, para 51
- ⁴³ A/HRC/21/12, para 129.44 (Mexico)
- ⁴⁴ A/HRC/36/12, para 133.250 (Peru)
- ⁴⁵ A/HRC/36/12, para 133.6 (Guatemala)
- ⁴⁶ A/HRC/36/12, para 133.71 (Haiti)
- ⁴⁷ Republic Act No. 7942, An Act Instituting A New System Of Mineral Resources Exploration, Development, Utilization, And Conservation, 3 March 1995, Sections 72 and 73
- ⁴⁸ Republic Act No. 8371, An Act To Recognize, Protect And Promote The Rights Of Indigenous Cultural Communities/Indigenous Peoples, Creating A National Commission On Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, And For Other Purposes, 29 October 1997, Sections 7b und 7c
- ⁴⁹ Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), ‘Assessing Free and Prior Informed Consent (FPIC) implementation in the Philippines’, April 2013, <https://www.giz.de/de/downloads/giz2013-en-assessing-free-and-prior-informed-consent-fpic-philipinen.pdf>
- ⁵⁰ University of Queensland, Centre for Social Responsibility in Mining: “Lessons from Implementing Free Prior and Informed Consent (FPIC) in the Philippines”, P.40, <https://www.csr.uq.edu.au/media/docs/1406/csr-fpicphilippinesfinalversion.pdf>
- ⁵¹ Aktionsbündnis Menschenrechte – Philippinen, „Human Rights under Duterte“, 2019, p.26, https://amp.ngo/wp-content/uploads/2019/01/AMP-Report-2019_Human-Rights-in-the-Philippines-Under-Duterte.pdf
- ⁵² A/HRC/36/12, paras 133.07, 133.13-17, 133.86, 133.119 (Lithuania, France, Germany, Ghana, Hungary, Latvia, Ireland, Bulgaria)
- ⁵³ A/HRC/36/12, para 131.11 (Peru)
- ⁵⁴ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, ‘Situation of human rights in the Philippines Report of the United Nations High Commissioner for Human Rights’, 29 June 2020, A/HRC/44/22, para 85
- ⁵⁵ Final warning: death threats and killings of human rights defenders. Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, 24 December 2020, A/HRC/46/35, paras 41,44
- ⁵⁶ International Criminal Court, Situation in the Republic of the Philippines, No. ICC-01/21, 15 September 2021, https://www.icc-cpi.int/CourtRecords/CR2021_08044.PDF
- ⁵⁷ Reuters, ‘Philippines refuses to work with ICC ‘war on drugs’ probe’, 16 September 2020, <https://www.reuters.com/world/asia-pacific/philippines-will-not-cooperate-with-icc-probe-war-drugs-spokesperson-2021-09-16/>