

REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES

JULY, 2020

I. BACKGROUND AND NATURE OF THE INQUIRY

“*Human rights defender* (HRD) is a term used to describe people who, individually or with others, act to promote or protect human rights.”¹ HRDs include all those who “seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights.”²

The Declaration on Human Rights Defenders,³ in characterizing HRDs, refer to all “individuals, groups and associations... contributing to... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”⁴

Proposed domestic legislation defines HRDs in a similar manner, further expanding it to state that the “main or substantial work and advocacy [of HRDs] is to promote the respect for, foster knowledge of, and protect any forms of human rights and

¹ UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, No. 29, available at: <https://www.refworld.org/docid/479477470.html> [last accessed on 1 March 2020].

² *Id.*

³ UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. Doc. No. A/Res/53/144 (8 March 1999), available at <https://ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (last accessed on 1 March 2020) [hereinafter Declaration on Human Rights Defenders].

⁴ *Id.* ¶ 4.

fundamental freedoms”⁵ at the “local, national, regional, and international levels.”⁶

There are thus no specific guidelines that identify who HRDs are, rather, they are defined by the work that they do. HRDs engage in duties, whether for profit or *pro bono*, that aim to, among others, investigate and report on violations of human rights; provide support to ensure the fulfillment of international treaty obligations; lobby for legislative or judicial reforms; mobilize and shape public opinion on human rights; or secure accountability for human rights violations. HRDs include members of civic organizations, journalists, lawyers, representatives of marginalized sectors, members of the academe, government officials, and all others who engage in activities for the fulfillment of basic human rights.

Due to the nature of their work, HRDs worldwide are frequent victims of human rights violations themselves. Many are subjected to extrajudicial killings, enforced disappearances, arbitrary detention, threats, harassment, and restrictions on their freedoms of expression, association and assembly.⁷ In the Philippines, there are similar allegations that HRDs are targeted and subjected to abuses, particularly by government agents.

This Inquiry was launched by the Commission on Human Rights (Commission) to ascertain the current situation impacting

⁵ An Act Defining Certain Rights Of Human Rights Defenders And Providing Penalties For Violations Thereof In Implementation Of The 1998 U.N. Declaration On The Rights And Responsibility Of Individuals, Groups And Organs Of Society To Promote And Protect Universally-Recognized Human Rights Or Otherwise Known As The Un Declaration On Human Rights Defenders, H.B. No. 1617, 17th Congress, 1st Reg. Sess. (2016).

⁶ An Act to Promote and Protect the Rights of Human Rights Defenders, S.B. No. 179, 18th Congress, 1st Reg. Sess (2019).

⁷ UN OHCHR Fact Sheet No. 29 , *supra* note 1, p. 19.

the work, safety, and security of HRDs in the country. The decision to launch this Inquiry was prompted by letters received from individuals and organizations containing allegations of human rights violations attributed to State officials.⁸ The Commission also took cognizance of reports coming out in various media concerning attacks against the civil, political, economic, social, and cultural rights of certain groups and individuals and those who defend them. These allegations were similarly echoed in complaints received by the Commission's regional offices.⁹

NATURE OF THE INQUIRY

The severity of the allegations concerning government attempts to silence and intimidate HRDs, and the domestic and international impacts of such violations warranted the conduct of no less than a national public inquiry.

Thus, pursuant to its Constitutional mandates to investigate all forms of human rights violations and to monitor State compliance with international treaty obligations, the Commission *en banc* issued Resolution No. CHR- V- AM 2019-095 dated 30 April 2019 resolving to undertake an inquiry on the current situation of HRDs in the Philippines. Accordingly, the Commission carried out this Inquiry on September 9 to 12, 2019 at the Session Hall of the CHR Central Office.

⁸ Commission on Human Rights En Banc Resolution No. CHR- V- AM 2019-095.

⁹ Commission on Human Rights Citizen's Help and Action Division Memoranda: CHAD-M-26C19-00309, CHAD-M-13C19-00234, CHAD-M-17F19-00561, CHAD-M-13C19-00237, CHAD-M-26C19-00304, CHAD-M13C19,00233.

Fact-finding in nature, the Inquiry was designed to determine the veracity of the contentions against State organs and dispose of the issues regarding these alleged human rights violations. The proceedings were transparent, open to the public, and streamed live over the internet. As a dialogic proceeding rather than an adversarial trial, participation was voluntary. Invitations were sent to all the parties several weeks before the scheduled hearings and no summonses legally obliging parties to attend were issued. The Commission invited resource persons - HRDs, foreign and domestic civic organizations, government officials, and other stakeholders - to narrate their experiences, opinions, and observations on the issue.

Due process and the principles of fair play were observed during the public hearings. The resource persons testified under oath based on their personal knowledge, and were questioned by panel members to determine the legitimacy of their statements. Attendees were allowed to seek clarifications from the resource persons and the members of the Commission. Affidavits, sworn statements, presentations, petitions, and other documentary evidence were marked accordingly and made available to all.

The following resource persons testified during the first day of the Inquiry proceedings:

- 1) Former Senate President Aquilino Pimentel, Jr.⁺, a known human rights lawyer and one of the leading oppositionists of the late dictator Ferdinand Marcos, talked about the general situation of HRDs in the country;
- 2) Representative Carlos Isagani T. Zarate of Bayan Muna

Party-list, presented the salient points of the Human Rights Defender Bill he authored and filed during the 17th Congress, and again during the 18th Congress;

- 3) Atty. Neri Colmenares, Chairperson of the National Union of People's Lawyers and known human rights activist, asserted that the extra judicial killings of HRDs are State-sponsored. He also illustrated other forms of violence against HRDs and why current laws are insufficient to remedy such abuses;
- 4) Atty. Phillip Sawali, Chief of Staff of Senator Leila de Lima, presented the historical background and circumstances surrounding the arrest and continued harassment of former CHR Commissioner and current Senator de Lima. He opined that the case of Senator de Lima stems from President Duterte's political vendetta;
- 5) Ma. May Cano, representing Bishop Pablo Virgilio S. David, D.D., read the statement of the bishop providing suggestions on how to address criminality, particularly those related to illegal drugs, vis-à-vis the conduct of police operations;
- 6) Cristina Palabay, Secretary-General of Karapatan, a human rights activist group, testified regarding the various threats, harassment, or vilification and subsequent violence or killings experienced by their members, as well as the climate of impunity in the country;
- 7) Rose Trajano, Secretary-General of the Philippine Alliance of Human Rights Advocates, shared their views on current laws that seem to cause the shrinking of civic

space for civil society organizations and human rights defenders;

- 8) Judy Pasimio, representing Ellecer Carlos, Spokesperson of In Defense of Human Rights and Dignity Movement (iDefend), testified regarding the abuses committed against HRDs particularly those involved in indigenous peoples' and environmental rights. She also presented stories of vulnerabilities particular to women HRDs;
- 9) Atty. Rey Ola-a, Head of Legal Office, National Security Council (NSC), representing Gen. Hermogenes C. Esperon Jr. (Ret.), National Security Adviser and NSC Director General, reiterated that the organization has no policy of red-tagging, that extra-judicial killings are abhorrent to law, that all individuals have the right to equal protection of the law, and that the government considers HRDs as allies;
- 10) Atty. Benny Agus Prima, Human Rights Defenders Programme Officer of the Asian Forum for Human Rights Development (Forum – Asia) narrated the various cases the organization recorded reflecting actual instances of human rights violations committed against Filipino HRDs;

On the second day of the Inquiry proceedings, the following resource persons were present:

- 1) Atty. Edre U. Olalia, President of the National Union of Peoples' Lawyers (NUPL) narrated various attacks on lawyers and members of the legal profession engaged in

- defending human rights;
- 2) Danilo Ramos, Chairperson of Kilusang Magbubukid ng Pilipinas, testified regarding assaults on their member farmers and other agricultural workers - particularly in relation to Executive Order 70 signed by President Duterte; Republic Act 11203 or the Rice Trade Liberalization Act; and the declaration of martial law in Mindanao;
 - 3) Renato Reyes, Jr., Secretary-General of Bayan, an umbrella organization of unions, peasant organizations, youth, and women's groups discussed the effects of the breakdown of peace talks between the government and the Communist Party of the Philippines – New People's Army (CPP-NPA) on the exercise of rights of various unions and civil organizations;
 - 4) Joanna Cariño, Co-Chairperson of Sandugo Movement of Moro and Indigenous Peoples for Self-Determination, spoke of the human rights violations against *Lumads* and other indigenous people and their representatives;
 - 5) Louise Lee, the mother of Chinese – American journalist Brandon Lee, testified regarding the red-tagging, threatening and shooting of her son in relation to his volunteer work for the Ifugao Peasants' Movement and his campaigns against corporations exploiting peasants and farmers;
 - 6) Eleanor de Guzman, Secretary for Human Rights of Kilusang Mayo Uno (KMU), narrated various instances of violations of workers' freedoms of association and of peaceful assembly;

- 7) Gertrudes AR. Libang, Vice-Chairperson of Gabriela, representing Joms Salvador, Secretary -General of Gabriela, recounted some of the threats, abuses, and killings committed against women HRDs, and described their vulnerabilities on account of their gender;
- 8) Daisy Arago, Executive Director of Center for Trade Union and Human Rights, testified regarding human rights violations against HRDs in the labor sector as well as abuses against trade union members and officers;
- 9) Leon Dulce, National Coordinator of Kalikasan People's Network for the Environment spoke of the dangers and abuses faced by environmental rights defenders;
- 10) Rommel Linatoc, Program Secretary for Christian Unity and Ecumenical Relations of the National Council of Churches in the Philippines (NCCP), discussed the killings, threats, vilification and attacks against churches and church-related organizations and individuals in relation to their human rights work;
- 11) Chris Ablon, National Programme Coordinator of Iglesia Filipina Independiente (IFI), spoke of IFI's engagement in the advancement and protection of human rights; and the alleged red-tagging, trumped-up charges, threats, vilification and killings that resulted from these activities;
- 12) Raymond Basilio, Secretary-General of ACT – Teachers' Party-List, a progressive organization representing teachers and other education workers, testified regarding the profiling, surveilling, red-tagging, and harassment experienced by its members;

The third day of the Inquiry proceedings was allotted to the testimonies of the following resource persons:

- 1) Elsa Compuesto, a nun of the Missionary Sisters of Mary, presented the Rural Missionaries of the Philippines' statement on the intensifying attacks against rural missionaries, and narrated various circumstances of abuses;
- 2) Theresa McEvoy, Program Manager and Legal Counsel of International Service for Human Rights (ISHR), an international non-governmental organization focused on the promotion and protection of rights of HRDs globally, presented various concerns of the international community regarding the situation of HRDs in the Philippines;
- 3) Manuel R. Baclagon of Confederation for Unity Recognition and Advancement of Government Employees (COURAGE), narrated the threats, harassments, and abuses experienced by some of its members;
- 4) Raymund Villanueva, Deputy Secretary-General of the National Union of Journalists of the Philippines (NUJP) enumerated the list of recently murdered journalists, recounted the harassment and threats experienced by members of the press and media outlets, and the proliferation of "troll armies" and online attacks on HRDs;
- 5) Robie Halip, a member of the Kankanaey indigenous group from Cordillera delivered the statement of Tebtebba Indigenous Peoples' International Centre for

Policy Research and Education on the violations against the individual and collective rights of indigenous people including killings, harassments, red-tagging, and vilification resulting from, among other, their fight for ancestral land rights;

- 6) Edita Burgos, the mother of missing activist Jonas Joseph Burgos and chairperson of the Free Jonas Burgos Movement, spoke of her personal experience of red-tagging in relation to the airing of “Portraits of Mosquito Press,” a documentary on the Marcos dictatorship. She also intervened on behalf of unnamed private individuals advocating for human rights but who do not have the mechanisms and resources to defend themselves;
- 7) Jose Enrique Africa, Executive Director of IBON Foundation, a non-governmental research, education and advocacy organization, testified on the red-tagging and vilification of the foundation, the false criminal cases filed against two of its members, and the rampant weaponization of the law;
- 8) Michael Beltran, Public Information Officer of urban poor group Kalipunan ng Damayang Mahihirap (KADAMAY), enumerated several incidents of conflict between their members and the military/ police;
- 9) Renee Co, Executive Vice-President of Kabataan Party List, and Raoul Manuel, President of the National Union of Students of the Philippines, jointly testified regarding attacks on youth sector advocates including social media harassment; red-tagging and surveilling of students; and

military presence in campuses;

The fourth and final day of the Inquiry was devoted to the testimonies of the following government agencies and their representatives:

- 1) Brigadier General Raymundo R. Acorda, Chief of the Armed Forces of the Philippines (AFP) Human Rights Office, representing both the AFP and the Department of National Defense (DND), categorically stated that there is no campaign against HRDs. He enumerated AFP efforts in the promotion of human rights, and assured the Commission that the “defense and military establishments do not sanction any and all forms of human rights violations, red-tagging or red-baiting, enforced or involuntary disappearances, extrajudicial killing, torture and the like.”¹⁰ Acorda also lamented the demonization of the AFP and Philippine National Police (PNP) and denied the occurrence of the alleged “Negros Massacre.” He further stated that HRDs must “fairly advocate rights-based and civil liberties protection without discrimination”¹¹ and politicization.
- 2) Colonel Alessandro C. Abella, then PNP Human Rights Affairs Office Director and now Director of PNP Women and Children Protection Center, narrated that “the PNP Human Rights Development Program, which has been institutionalized since 2007, implement[s] various policies, projects, and mechanisms to protect human

¹⁰ Exhibit “2”, Statement of Brigadier General Raymundo R. Acorda.

¹¹ *Id.*

rights”¹² and “educates and trains police personnel so they can provide HRDs with greater access to police support services.”¹³ He vehemently denied that there is a PNP policy on red-tagging and emphasized that the police only file cases based on evidence. He also reiterated the visitorial powers of the CHR over all PNP custodial facilities.

- 3) Atty. Benjamin G. Gaspi, Acting Director for Internal Affairs Service of the Philippine Drug Enforcement Agency (PDEA) testified that “drug law enforcers of the nation are duty-bound to protect. Taking human life is not the intent of the anti-drug operations.”¹⁴ He maintained that the “incidences of death are results of violent actions of drug pushers against law enforcers during lawful arrests.”¹⁵
- 4) Atty. Melanie F. Albores, Legal Officer of the National Intelligence Coordinating Agency (NICA), denied that the government and other State agents are involved in the red-tagging of individuals. She further testified regarding statements made by former members of the CPP-NPA on the groups’ human rights violations;
- 5) AFP Judge Advocate General Serme L. Ayuyao was sworn in and participated during interpellation. He maintained that the security forces respect Constitutional rights and only apprehend criminals or violators of

¹² CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 321.

¹³ *Id.*

¹⁴ *Id.* at p. 324, also see Exhibit “4”.

¹⁵ *Id.*

Philippine laws with outstanding warrants. He clarified that being labelled a “*rebelde*” or leftist does not make one a criminal unless violations of the law are committed. He further stated that members of the AFP regularly attend lectures to clarify that the belief in communism or membership in left-wing organizations are not crimes. He also elaborated on community-based dialogues, community reintegration, and other human rights activities of the AFP.

Aside from the testimonies of the resource persons, various public statements of State agents were also considered by the Commission. Finally, data from the CHR’s Regional Offices, opinions from the international community, and reports from local civil society were deliberated on as part of the fact-finding procedure.

II. MANDATE OF THE COMMISSION

The Commission is an independent National Human Rights Institution¹⁶ (NHRI) created under the 1987 Philippine Constitution and operationalized by Executive Order No. 163, Series of 1987. Under Article XIII, Section 18 of the Constitution, the Commission is mandated to 1) investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;¹⁷ 2) recommend to Congress effective measures to promote human rights and provide compensation to victims or their

¹⁶ UN General Assembly Resolution 48/134 *Principles relating to the Status of National Institutions (The Paris Principles)*, U.N. Doc. A/RES/48/134 (20 December 1993).

¹⁷ PHIL. CONST. Art. XVII, §18 (1).

families;¹⁸ 3) monitor the Philippine Government's compliance with international treaty obligations on human rights;¹⁹ 4) provide appropriate legal measures for the protection of the human rights of all Filipino citizens and persons within the Philippines, as well as preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;²⁰ and 5) adopt its operational guidelines and rules of procedure.²¹

Sections 1 and 3, Rule 7 of the Commission's Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses²² or its Omnibus Rules of Procedure grant the Commission *en banc* the authority to determine whether or not to conduct a public inquiry into human rights cases of domestic or international implications.

Pursuant to its mandated duty and authority, the Commission *en banc* resolved to conduct this Inquiry to determine the circumstances that impact the legitimate work of HRDs, including their risks and available safety protocols. The Inquiry is intended to expedite the resolution of complaints filed before the Commission for violations of HRD's human rights, and in contemplation of the victims' subsequent filing of corresponding cases in the proper judicial or quasi-judicial body if found to be necessary.

¹⁸ PHIL. CONST. Art. XVII, §18 (6).

¹⁹ PHIL. CONST. Art. XVII, §18 (7).

²⁰ PHIL. CONST. Art. XVII, §18 (3).

²¹ PHIL. CONST. Art. XVII, §18 (2).

²² Commission on Human Rights, Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance, [The Omnibus Rules of Procedure of the Commission on Human Rights] Rule 7, § 1, 3 (April 2012).

The findings of the Inquiry will also establish the factual milieu that will enable the Commission to recommend to Congress policies and preventive mechanisms for upholding the rule of law, providing effective protection to HRDs, and granting redress for human rights infringement.

The Inquiry is also in line with the duty of the Commission to monitor the Government's fulfillment of its international treaty obligations. Relevant to this Inquiry are the commitments under the Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), all of which the Philippines is a signatory to. These treaties impose twin obligations on the Government to take positive actions for the protection and promotion of human rights, and the obligation to refrain from committing any human rights violations. The Commission wishes to ascertain State compliance with such commitments through this Inquiry.

It is hoped that the Inquiry will inform and educate the general public on human rights, the work of HRDs and violations against them, and the corresponding responsibilities of duty bearers – the Government - to prevent the same.

III. FINDINGS

A. HUMAN RIGHTS DEFENDERS ARE GREATLY AT RISK DUE TO INIMICAL ACTS, PRACTICES AND OMISSIONS THAT THREATEN THEIR LIFE, LIBERTY AND SECURITY.

Citing the statement of Atty. Salvador S. Panelo, Chief Legal Counsel of President Rodrigo R. Duterte, Brigadier General Raymundo R. Acorda, Chief of the AFP Human Rights Office, declared that “there is no such thing as war against human rights defenders, there is only a war against hardened criminals, including drug pushers and their protectors.”²³ Yet, the Inquiry proves otherwise. The Commission finds that there is a systematic attack against HRDs across all sectors of civil society. Such attack is characterized by a widespread and similar pattern of abhorrent acts, practices, and omissions that put the life, liberty, and security of HRDs at great risk. These acts largely remain unabated and HRDs are oftentimes left without any remedy to protect themselves.

A statement of the magnitude of this problem was expressed during the Inquiry by Mr. Benny Agus Prima of FORUM-ASIA, a membership-based regional human rights organization operating in 21 countries, when he testified that “the Philippines is one of the deadliest countries in Asia for HRDs to operate in.”²⁴ According to their organization’s data:

²³ Exhibit “2”, Statement of Brigadier General Raymundo R. Acorda.

²⁴ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 75.

xxx HRDs are continuously being targeted for carrying out their peaceful human rights work. Particularly, instances of harassment against HRDs have been increasing under the administration of President Rodrigo Duterte. Between 2017 and 2018, FORUM-ASIA documented at least 59 emblematic cases of attacks, intimidation and harassment against HRDs in the Philippines. Of these cases, 39 or 66 percent the total number of incidents were killings, mostly targeting land and environmental rights defenders and journalists, making the Philippines one of the deadliest countries in Asia for HRDs to operate in. The harassment of HRDs continued in 2019, FORUM-ASIA recorded 22 cases of harassment of HRDs, including 10 cases of killings as of 30 June 2019.²⁵

Through the Inquiry, the real situation of HRDs and the insufferable challenges that they face in the country today were revealed.

To understand this grim reality, the Commission deems it necessary to first identify and discuss the particular, acts, practices,

²⁵Exhibit "L", Letter of John Samuel, Executive Director of FORUM-ASIA, dated 9 September 2019, p.2; Open Letter to the Commission on Human Rights of the Republic of the Philippines on Situation of Human Rights Defenders in the Philippines, 12 December 2019, FORUM-ASIA *available at* <https://www.forum-asia.org/?p=29754> (last accessed 1 May 2020).

and omissions that negatively impact the situation of HRDs and continuously threaten, not only the work that they do, but their very existence.

The Inquiry revealed the following abuses and violations:

1. DISTORTION OF THE CONCEPT OF HUMAN RIGHTS

The work of HRDs is undermined and delegitimized by the intentional distortion of the concept of human rights; when it is twisted to fit the narrative that HRDs are protectors of criminals who, instead of decrying the human rights violations allegedly perpetrated against State security forces and victims of crimes, only choose to advocate for criminals. Atty. Edre Olalia, President of the National Union of People's Lawyers, elaborated on this issue, to wit:

There is this misunderstanding, if not deliberate distortion of the concept of human rights. Who can violate it? Who guarantees it? And what are the remedies? The person in charge distinguished erroneously between human rights and human life. General Pollante would say, "Why can't you also protect the human rights of the soldiers? Why aren't you loyal [to] the policemen or the military personnel?" So, there is this misunderstanding, and worse, a distortion of who guarantees human rights. You very well

know that all states can guarantee human rights. Precisely because the states are the ones in power.

If I kill somebody, it's not a human rights violation in terms of or vis-à-vis the guarantee of the state. It is my criminal responsibility because I killed somebody but it's the duty of the state to put me behind bars and to arrest me and to make sure that the judicial process works. So, the guarantee is not for me. The guarantee is for the state to uphold because it is the state that has the police, the courts, the prisons, the prosecution, and the army. So, there's this distortion or misunderstanding even among our ordinary people that violations of human rights should be protected.²⁶

The Commission observes that the prevalence of this narrative continues even though then PNP Chief and now Senator Ronald "Bato" Dela Rosa had already publicly clarified²⁷ in 2017 that upholding human rights is an obligation of State agents. Aside from ascribing political motives to the work of HRDs which, in itself is irrelevant, the following statement of Brigadier General Acorda given during the Inquiry reflects a misunderstanding of the role of the HRDs in upholding human rights:

²⁶ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019.

²⁷ Priam Nepomuceno, *PNP fully aware of CHR role, mandate: Dela Rosa*, 30 August 2017, PHILIPPINE NEWS AGENCY, available at <https://www.pna.gov.ph/articles/1007951> (last accessed 1 May 2020).

These so-called human rights defenders decry the killings of criminals, but keep quiet on the plight of innocent victims and law-abiding citizens, clearly because of political motives and vested interests.

There is definitely something wrong if these so-called groups portraying themselves to be human rights defenders become sympathetic to criminals killed in the course of legitimate police operations. A human rights defender must protect and preserve the human rights of everybody and not only the rights of a favored few. Rather than politicizing human rights, these groups should fairly advocate rights-based and civil liberties protection without discrimination.²⁸

The foregoing narrative confuses the role of HRDs to promote and protect human rights vis-à-vis the obligation of the government to respect and uphold human rights. It has also given rise to a government-led hate campaign and the painting of HRDs as coddlers of criminals, or even criminals themselves. This not only discredits legitimate human rights issues but also fosters a dangerous environment where people are encouraged to target and treat HRDs as destabilizers and enemies of the government.

²⁸ Exhibits “2” and “2-1”, Statement of Brigadier General Raymundo R. Acorda.

2. PUBLIC VILIFICATION

Public vilification, including profanity-laden tirades by no less than the president, has ceased to shock the senses of the public. But for some HRDs, to be publicly named, shamed and accused by President Rodrigo Roa Duterte is already equivalent to a guilty sentence. None could be more emblematic of this than the case of Senator Leila M. de Lima.

Atty. Phillip Sawali, Chief of Staff of the Senator, narrated that “[i]n August 2016, just barely a month into presidency, Duterte vowed to ‘destroy her in public’ and that ‘she will rot in jail’. From that cue, almost the entire apparatus of government has been turned into a giant machine of oppression against Senator de Lima.”²⁹

The UN Working Group on Arbitrary Detention reported that Senator de Lima, as then Chairperson of the Commission on Human Rights, investigated extrajudicial killings allegedly carried out by the Davao Death Squad in Davao City under the then Mayor, now President, Duterte.³⁰ When she was elected senator, de Lima filed a resolution calling for an investigation into the extrajudicial killings resulting from the President’s war on illegal drugs and announced that she will lead the Senate Committee on Justice and

²⁹ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 28.

³⁰ UN Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20-24 August 2018, para. 5, U.N. Doc. No. A/HRC/WGAD/2018/61 (30 November 2018) *available at* https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_61.pdf (last accessed 1 May 2020).

Human Rights in investigating such. Thereafter, the President told reporters in Davao City that he would destroy her in public and began hurling accusations and sexist insults towards Senator de Lima.³¹ This eventually led to the filing of several criminal cases against the Senator, and her subsequent arrest.

The UN report on the situation of Senator de Lima leads one to surmise that the President's tirades against her is in retaliation for all the investigations which de Lima headed. Unfortunately, it is Senator de Lima's experience that commenced the institutionalization of the use of public vilification as an instrument to silence and carry out reprisals against HRDs.

Other persons and entities engaged in defending human rights or reporting human rights violations experienced similar fates. Prominent examples include Sister Patricia Fox, a longtime resident of the Philippines who actively campaigned for the rights of impoverished farmers in Mindanao, whom the government arrested³² and deported;³³ journalist Maria Ressa and the news site she co-founded, Rappler, which regularly published news of human rights violations by state agents, and against whom a slew of criminal and civil cases have been filed;³⁴ and finally, ABS-CBN, the broadcasting network whose news station has also been reporting on human rights violations, which has just been shut

³¹ *Id.* at para. 10.

³² Jelly Musico, *Duterte takes 'full responsibility' for Aussie nun's arrest*, PHILIPPINE NEWS AGENCY, 18 April 2018, available at <https://www.pna.gov.ph/articles/1032464> (last accessed 1 May 2020).

³³ Ferdinand Patino, *Sister Patricia Fox set to leave PH Nov. 3*, PHILIPPINE NEWS AGENCY, 31 October 2018, available at <https://www.pna.gov.ph/articles/1052717> (last accessed 1 May 2020).

³⁴ Joshua Hammer, *The Journalist vs. the President, With Life on the Line*, THE NEW YORK TIMES, 18 October 2019, available at <https://www.nytimes.com/2019/10/15/magazine/rappler-philippines-maria-ressa.html> (last accessed 1 May 2020).

down by the government.³⁵ All of these occurred after the President publicly vilified and launched tirades against them.

3. RED-TAGGING

“To make it easy for military and paramilitary units to silence or cause untold human rights abuses on vocal dissenters, government agents usually resort to stereotyping or caricaturing individuals.”³⁶ The act of labelling, branding, naming, and accusing individuals and/or organizations of being left-leaning, subversives, communists or terrorists is known as red-tagging or red-baiting.³⁷ Former UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, described it as follows:

xxx “vilification”, “labelling”, or guilt by association. It involves the characterization of most groups on the left of the political spectrum as “front organizations” for armed groups whose aim is to destroy democracy. The result is that a wide range of groups – including human rights advocates, labor union organizers, journalists, teachers unions, women’s groups, indigenous organizations, religious groups, student groups, agrarian reform advocates, and others – are

³⁵ Jason Gutierrez, *Leading Philippine Broadcaster, Target of Duterte’s Ire, Forced Off the Air*, THE NEW YORK TIMES, 5 May 2020, available at <https://www.nytimes.com/2020/05/05/world/asia/philippines-abs-cbn-duterte.html> (last accessed 6 May 2020).

³⁶ Zarate vs. Aquino III, G.R. No. 220028, 10 November 2015, Dissenting Opinion of Justice Leonen.

³⁷ Dr. Nymia Pimentel Simbulan, *Red Baiting: A Tool of Repression, Then and Now*, Observer: A Journal on Threatened Human Rights Defenders in the Philippines, Vol. 3, No. 2, p. 12 available in [https://ipon-philippines.org/wp-content/uploads/ObserverJournal/Observer_Vol.3_Nr.2_Red Baiting.pdf](https://ipon-philippines.org/wp-content/uploads/ObserverJournal/Observer_Vol.3_Nr.2_Red_Baiting.pdf) (last accessed 5 May 2020).

classified as “fronts” and then as “enemies of the State” that are accordingly considered to be legitimate targets. xxx³⁸

Alston observed this phenomenon in the Philippines during his visit in 2007 and recommended that “the Government should immediately direct all military officers to cease making public statements linking political or other civil society groups to those engaged in armed insurgencies. If such characterizations are ever to be made it must be by civilian authorities, on the basis of transparent criteria, and in conformity with the human rights provisions of the Constitution and relevant treaties.” Yet, after more than a decade since Alston’s recommendation, red-tagging or red-baiting still continues to threaten the lives, liberty, and security of HRDs across all sectors.

Renato Reyes, Secretary-General of the multi-sectoral organization, Bayan, theorized that the current spate of red-tagging stemmed from the breakdown of the peace talks between the government and the National Democratic Front (NDF) – the negotiating arm of the CPP - NPA. He testified that prior to the breakdown, there was some relative openness to criticisms and discussion of issues between the Government and the group even if positions were adversarial. He recalled that activists would even have dialogues with the President himself. But the situation deteriorated when the peace talks were terminated by the

³⁸UN Human Rights Council, *UN Human Rights Council: Preliminary Note on the Visit of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to the Philippines (12-21 February 2007)*, par. 8, U.N. Doc. No. A/HRC/4/20/Add.3 (22 March 2007) available at <https://www.refworld.org/docid/462390f62.html> (last accessed 5 May 2020).

President, and the CPP-NPA was declared a terrorist organization.³⁹ The implications of this were described by Reyes to be as follows:

x x x The Duterte government believes that the so-called legal fronts should be neutralized because these allegedly provide recruitment and support for the NPA. A wide net is now cast targeting all the centers in the legal democratic movement. The implication is, every act and advocacy undertaken by the so-called legal fronts, are henceforth, considered in the service of armed struggle and the cause of the NPA. Now, that sounds familiar *yung sabi ano “Estudyante sa umaga, NPA sa gabi,”* sounds familiar because these are the very same tactics from the Palparan playbook during the regime of Gloria Macapagal Arroyo. This resulted in a spike in extrajudicial killings and enforced disappearances of hundreds of activists. This counter-insurgency drive targets all forms of resistance and makes no distinction between armed combatants and unarmed activists.

So, in last year’s Red October conspiracy, the rally organizers were branded as destabilizers

³⁹ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, pp. 111-112.

aligned with communist terrorist. School fora, discussions, film showings about Martial Law were described by the AFP as part of the NPA recruitment and destabilization. The massacres of farmers in Sagay, Negros was also absurdly blamed on the NPA - that the NPA killed its own to incite a negative public reaction that would cause the downfall of the Duterte regime. During the most recent Senate hearings of the Committee of Public Order and Safety chaired by Senator dela Rosa, activist student organizations were branded as NPA recruiters implicated in alleged case(s) of missing minors. During the hearings, it was pointed out that protest actions, educational discussions and other school activities were now considered part of the process of NPA recruitment. Teachers allowing their students to join rallies were threatened with sanctions. There were proposals to militarize schools and allow the police to counter the activities of activist groups on campus. The objective of the wide-spread and coordinated red tagging is to delegitimize, isolate and eventually criminalize dissent using instruments such as the anti-terror laws, trumped up charges, and the recent proposal to revive the anti-subversion law to outlaw even the legal and aboveground organizations. The objectives also include mass intimidation of all dissenters and

activists in order to stem the rise of any significant opposition to the regime.

The position of the National Defense Secretary that the legal organizations should first denounce the NPA before the red tagging stops - goes against the fundamental rule that the accuser bears the burden of proof. If we are to allow the logic of [DND Secretary] Delfin Lorenzana, all legal, leftwing organizations are now presumed as fronts of the NPA unless they prove otherwise by denouncing the arm[ed] struggle. This is a very dangerous mindset that has very serious security implications for those tagged as part of the CPP-NPA infrastructure.

The most serious implications of the red tagging of activists and dissenters in the counter insurgency program of the government include extrajudicial killings, illegal arrests, trumped-up charges, illegal surveillance, vilification and the banning or blacklisting of organizations. If the National Task Force had its way, it would seek the elimination of legal democratic organizations based on the erroneous belief that this would end the local armed conflict in the country.⁴⁰

⁴⁰ *Id.* at pp.113-114.

Almost all of the progressive organizations who participated in the Inquiry, namely, KARAPATAN, Bayan Muna, National Union of People's Lawyers, Philippine Alliance of Human Rights Advocates, In Defense of Human Rights and Dignity Movement, Kilusang Magbubukid ng Pilipinas, Bayan, SANDUGO Movement of Moro and Indigenous Peoples for Self Determination, Kilusang Mayo Uno, Gabriela, National Council of Churches in the Philippines, Iglesia Filipina Independiente, Alliance of Concerned Teachers, Rural Missionaries of the Philippines, Confederation for Unity Recognition and Advancement of Government Employees, National Union of Journalists of the Philippines, Tebtebba, IBON Foundation, KADAMAY, Kabataan Party-list, and National Union of Students of the Philippines, have testified to having experienced red-tagging.

The accusations of being fronts of the CCP-NPA-NDF took varied forms, from speeches of the President himself, declarations of high-ranking government officials, videos and PowerPoint presentations shown to schools and local communities, posters in barangay halls, leaflets given out to the public, banners and streamers in public areas, press releases by the State media, posts in official social media accounts of different divisions of the security sector, to individual social media posts of government officials and members of the security sector.

The Commission finds it apt to reiterate its earlier pronouncement that, "while some members of certain organizations may support the armed struggle, it is very likely that

most of the other members recruited into these organizations have no idea on what communism or revolutionary struggle is about, or even that their leaders might be supporting the NPA. Many of them may be devoid of revolutionary ideology, joining movements merely to articulate discontent, or to advance specific advocacies, such as the preservation of ancestral domains, or the implementation of agrarian reform, or improvement in the delivery of justice, health care, education, and other social services. The existence of these groups and the freedom they exercise in articulating issues should be viewed as badges of a vibrant democracy, and not as attacks against the State.”⁴¹ Indeed, “criticizing the government for its gaps in protecting and promoting human rights does not make human rights groups enemies of the state... demanding greater accountability from the government should not be construed as acts to destabilize the administration, but rather as a reminder of its sworn duty to the people.”⁴²

The Inquiry was replete with testimonies about HRDs across all sectors who, prior to being killed, injured, illegally arrested, charged with trumped-up cases, or otherwise put in harm’s way, have first been red-tagged. Illustrative of these are the cases of Brandon Lee, Amelia Pond, and Atty. Ben Ramos.

Brandon Lee, a US citizen married to an Ifugao woman, is a journalist and a volunteer paralegal with the Ifugao Peasant movement. He was shot and gravely wounded in front of their

⁴¹ Commission on Human Rights, *The Haran Report: On Human Rights Violations on the Lumad of Mindanao*, par. 87 (2018).

⁴² Human Rights Bulletin on the Practice of “Red-Tagging” vis-a-vis Martial Law Declaration in Mindanao (CHR Region X, issued on 11 June 2019).

house in Lagawe, Ifugao. According to his mother, Louise Lee, Brandon had previously intimated that he had been red-tagged as an enemy of the State and that his photo was placed in a target list along with his other colleagues.⁴³ Amelia Pond, on the other hand, was a regional coordinator of the Rural Missionaries of the Philippines in Southern Mindanao. She was tagged as a member of the NPA, arrested, then falsely charged with double murder. After languishing in jail for fourteen months, she was acquitted.⁴⁴ Finally, the murder of Atty. Ben Ramos, a prominent human rights lawyer and a founding member of the National Union of People's Lawyers. A few months before his death, Ramos's photograph appeared in several leaflets tagging him as a member of the CPP-NPA along with members of other progressive organizations.

Interestingly, representatives from the Government's security sector categorically deny red-tagging or having a policy of red-tagging HRDs and progressive organizations. Atty. Melanie Albores of the Legal Office of NICA testified that they have received reports that it was actually former members of the CPP-NPA who have put up the banners and streamers that red-tag progressive organizations. She called attention to the senate hearing where former rebels openly affirmed that Bayan Muna, Gabriela, Kabataan, and League of Filipino Students, among others, are actually front organizations of the CPP-NPA. She highlighted that it was the parents of the missing minors during the same inquiry who red-tagged the said organizations and accused them of recruiting their children. She also shared that a group of indigenous

⁴³ *Id.* at p. 141.

⁴⁴ *Id.* at p. 218.

peoples went to the United States to condemn the CPP-NPA and identified the Rural Missionaries of the Philippines, Salugpungan, Mindanao Interfaith Services Foundation Incorporated, Tribal Filipino Program of Surigao del Sur, and others as front organizations of the CPP-NPA. Finally, she showed a 1987 video of CPP-NPA's founding Chairman, Jose Maria Sison naming Bagong Alyansang Makabayan, Kilusang Mayo Uno, Kilusang Magbubukid ng Pilipinas, Gabriela Women's Alliance, League of Filipino Students, Alliance of Concerned Teachers, KADENA, and others as allies in achieving the CPP-NPA's objectives.⁴⁵

Brigadier General Serme Legaspi Ayuyao, Judge Advocate General of the AFP, also clarified that when the armed forces receive reports that an organization is allied with the CPP-NPA, they have an obligation to inform the State and the public.⁴⁶ He claimed that they merely declare in good faith facts that are based on evidence, and that any untoward incident that may occur because of such declaration or of informing the public is an unintended consequence.⁴⁷

In any case, whether it is perpetrated by the government or by third parties and notwithstanding the intentions behind it, it cannot be denied that red-tagging is a matter of serious concern that should not be taken lightly. Aside from its consequent delegitimization of dissent and public stigmatization, it is, more

⁴⁵ *Id.* at p. 325-327.

⁴⁶ *Id.* at p. 337 and 338.

⁴⁷ *Id.* at p. 340.

often than not, a prelude, or even an open invitation for anyone, to commit further atrocities against the person tagged.

The Commission finds that the act itself of red-tagging HRDs constitutes a grave threat to their lives, liberty, and security.

4. PROFILING AND SURVEILLANCE

Once a progressive organization is red-tagged, what usually follows is the profiling and surveilling of its members. Such is done for a variety of reasons, including information gathering, intimidation, harassment and as a warning to others who might also be inclined to join the progressive organization concerned. Raymond Basilio, Secretary-General of ACT testified that their organization had so far documented 34 cases of illegal profiling and 18 incidents of death threats, intimidation, and harassments against their leaders. He alleged that members of the PNP had been profiling ACT members as follows:

Reports of profiling of ACT members by the PNP reached the national and local offices of ACT starting early January 2019, but the first incidents of police officers inquiring into its leaders and members actually began in the last days of 2018. Police officers made rounds in public schools, requesting for lists of ACT members, asking who among the faculty are ACT members, and even inquiring into specific individuals in some incidents.

The orders to conduct the profiling came from top level officials of the PNP, as proven by the leaked confidential memoranda to and from several PNP units, all similarly titled – *Inventory of All Public and Private School Teachers Who are Members of or Aligned with Alliance of Concerned Teachers (ACT)* – and worded – “You are directed to conduct an inventory of all public and private school teachers who are members of or aligned with the ACT...” These secret orders all refer to a memorandum from the PNP’s Directorate for Intelligence with the reference number “DRN DI3C1-1812-2326 dated December 10, 2018” pertaining to the above subject.

PNP’s conduct of profiling were closely followed by surveillance, threats, harassment, and intimidation of ACT’s national and local officers. Several reports include violations committed by the members of the Armed Forces of the Philippines, and persons suspected to be State Agents.

The Philippine government, through the national and several local heads of the PNP and the spokesperson of President Duterte, denied ordering the profiling, but, in the same, breath,

accused ACT of being a “front organization” of the Communist Party of the Philippines and justified intelligence gathering as part of their operations against crime and terrorism suspects. This red tag on ACT Philippines, along with the vilification of other militant people’s organizations, individuals, and critics of the government, continues until the present.

ACT lodged complaints against the Government of the Republic of the Philippines before appropriate bodies concerning the infringement of the rights to association, assembly, and self-organization. It initiated various cases before the Ombudsman, the Court of Appeals, and the Commission on Human Rights. The sworn complaints were supported with affidavits of teachers, school personnel, and local leaders of ACT Philippines attesting to the incidents. It also sought the attention of the National Privacy Commission and plans to initiate proceedings for violation of the Data Privacy Act.

The state-sanctioned, large-scale and wanton profiling, surveillance, grave threats, and intimidation have caused public and private school teachers to fear for their liberty and safety, especially since their unions and organizations are branded, without legal and

factual basis, as “rebels”, “communists”, and “terrorists” – and thus “enemies of the state.” These violations cast a chilling effect among teachers and infringe on their right to form and join unions, along with its attached rights of collective bargaining/negotiation, assembly, and others. These also amount to governmental interference in trade union activities, discrimination and repression due to organization and/or union affiliation and activities.⁴⁸

Hoping for a remedy, ACT filed a Petition for Prohibition with Urgent Prayer for the Issuance of Temporary Restraining Order to enjoin the PNP from continuing with its profiling and surveillance activities. The case was dismissed due to ACT’s failure to include certified true copies of the PNP memoranda ordering the inventory of ACT members and failure to state the specific dates when copies of the PNP memoranda were received by ACT members, among other technicalities.⁴⁹ Meanwhile, PNP chief, General Oscar Albayalde, reportedly said that “the profiling of ACT members has been scrapped, noting that it was a mere part of intelligence efforts for national security after they were tagged by Communist Party of the Philippines (CPP) founding chairman Jose Maria Sison as one of their legal fronts.”⁵⁰ Nonetheless, he warned that he will consider

⁴⁸ *Id.* at pp. 193-194.

⁴⁹ Benjamin Pulta, *CA junks teachers’ group suit vs. PNP ‘profiling’*, PHILIPPINE NEWS AGENCY, 7 February 2019, available at <https://www.pna.gov.ph/articles/1061242> (last accessed 10 May 2020).

⁵⁰ Christopher Lloyd Caliwán, *PNP chief warns of revocation of ACT members’ licenses*, PHILIPPINE NEWS AGENCY, 4 March 2019, available at <https://www.pna.gov.ph/articles/1063578> (last accessed 10 May 2020).

asking the Professional Regulation Commission (PRC) to revoke the licenses of ACT members.⁵¹

Profiling and surveillance activities are not solely suffered by members of red-tagged organizations. Edita Burgos, the mother of *desaparecido* Jonas Burgos, sought to shed light on the plight of individuals embarking on private human rights work or initiatives who are also harassed in this same manner. Burgos requested to testify in the Inquiry about her own experience. She narrated that she was involved in the showing of the film “Portraits of Mosquito Press”, a documentary about the Marcos martial law era, to different universities in different venues. She felt alluded to when Brig. Gen. Antonio Parlade, Jr. told the press that there is an ongoing film showing by CPP members about the dark years of martial law recruiting students and inciting them to rebel against the government. More than the red-tagging, she expressed her concern about being surveilled, to wit:

But I'm not concerned about that, not the red-tagging nor the labeling because it has been happening since the time of martial law, since the family knows the truth, we're not disturbed. However, of late, we have been harassed physically, I have been followed. Before, [when] it was happening after the abduction of my son, it was very frequent. I was able to address this by using humor and by confronting those who

⁵¹ *Id.*

were following me, now they're more discreet but are still very visible. Lately, they would not only be following, they would take the same rides that I would take. I would always take the public transport, and I'm able to spot them because I try to tell that I get off at one station [*sic*], but I get off at the station before that station. And the same person behind me would take the same ticket to that station, but would also get off at the time when I get off. So, there's a way of telling who they are, and I know they are following me. So, it's a kind of harassment.

I'd just like to put this on record because there are more individuals who feel they have to do the right thing to defend their rights and to defend HRDs, but their cases will not be recorded here because we need to have proof, we need to have dates, we need to have pictures. I wish that the committee would also mention that these people using their own initiative, using their own resources have no way of defending themselves and that they should also be taken into consideration when the report is made.⁵²

While the Commission understands that profiling and surveilling are legitimate activities to prevent criminal activities,

⁵² CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 262.

they must be done strictly within the bounds of the law to prevent abuse. They cannot be used to intimidate, harass, repress or prevent the free exercise of fundamental rights. The Commission thus calls on the security sector to be mindful of the provisions of Republic Act No. 10173 or the Data Privacy Act of 2012, as well as to ensure that all profiling and surveillance activities are above board, properly documented and authorized.

5. MILITARIZATION OF GOVERNMENT

On 31 October 2018, the President himself admitted the militarization of government under his administration. He reasoned that he appoints former military officers in civilian positions because they follow his orders promptly, unlike civilians in the bureaucracy who would debate and question their superiors. He also admitted that only a few people with no military backgrounds have remained in his administration.⁵³

Such government policy of having former military officers at the helm of various civilian agencies may further ostracize HRDs and impede their work. There is growing fear among various sectors that legitimate issues and concerns over government policies cannot be raised without being red-tagged, and that availing of government services will become problematic. Judy

⁵³ Alexis Romero, *Duterte admits 'militarization of government'*, THE PHILIPPINE STAR, 2 November 2018, available at <https://www.philstar.com/headlines/2018/11/02/1865212/duterte-admits-militarization-government> (last accessed 10 May 2020); Anna Felicia Bajo, *Militarization of government? Correct, says Duterte*, GMA NEWS, 1 November 2018, available at <https://www.gmanetwork.com/news/news/nation/673203/militarization-of-government-correct-says-duterte/story/> (last accessed 10 May 2020); Ruth Abbey Gita, *Militarization? Correct, says Duterte*, SUNSTAR, 1 November 2018, available at <https://www.sunstar.com.ph/article/177199> (last accessed 10 May 2020).

Pasimio of iDEFEND highlights this particular concern of indigenous peoples:

I would focus on the two [agencies], the DENR, which is now headed by ex-general Secretary Roy Cimatu, and NCIP, [which] is now headed by ex-Colonel Capuyan. We fear that any dialogue with them is actually a way for them to identify who the opposing leaders are in these so-called development projects. Having ex-Colonel Capuyan - branded before as *berdugo* [executioner] - as NCIP chair now is a clear threat to the community leaders. Capuyan, during the time of Arroyo, headed Task Force Dantangan which led to the formation of armed groups like Alamara and Magahat-Bagani. So, now who do we turn to? Even in our communities, this administration has tried to sow division, sowing mistrust by setting up Masa Masid and other vigilante groups.⁵⁴

Pasimio pointed out that retired Colonel Allen Capuyan concurrently holds the executive directorship of the National Task Force to End Local Communist Armed Conflict (NTF – ELCAC) and the chairmanship of the National Commission on Indigenous Peoples (NCIP). She expressed fear that considering the government's position that 80% of the NPA fighters come from

⁵⁴ *Id.* at p. 71.

indigenous peoples, the NCIP – under Col. Capuyan, instead of advancing indigenous peoples’ rights and welfare, would be more focused on launching militaristic anti-insurgency campaigns against them.⁵⁵

The Commission reiterates that while there is no prohibition on the appointment of former military officers to civilian positions, it may do the country well to imbibe the spirit behind the time-honored principle of civilian supremacy⁵⁶ on which our democracy hinges to hold at bay any creeping specter of authoritarianism.

6. WEAPONIZATION OF THE LAW

Another risk that HRDs face is the repeated pattern of weaponization of the law to silence government critics. The criminal justice system is being abused to exact political vendetta and to prosecute perceived opponents of officials in government. Meanwhile, overly-broad security issuances and legislations are used to justify attacks against HRDs and criminalize legitimate human rights work and activities.

The weaponization of the law is best exemplified by the case of Senator Leila de Lima (also discussed in a previous section on vilification). After the President vilified her and vowed to destroy her in public, the whole criminal justice system went into overdrive to silence her and stop her investigation on extrajudicial killings. Atty.

⁵⁵ *Id.* at p. 95.

⁵⁶ PHIL. CONST. Art. II, § 3.

Fhillip Sawali, the Senator's Chief of Staff, testified on this flagrant machination as follows:

A choir of drug felons [was] assembled to testify against de Lima, as Justice Secretary [of] the [Aquino] administration. They were made to testify that she was the protector of illegal drug trade and other illicit activities at the National Bilibid Prison. Then Justice Secretary Vitaliano Aguirre paraded these alleged witnesses and made a "show trial" before a cheering and slut-shaming crowd. With obvious haste, bypassing the constitutional authority of the Office of the Ombudsman, Aguirre proceeded [to form] a panel of investigating prosecutors, who fast tracked the filing in regular criminal courts of non-bailable offenses of drug trading against the Senator.

In record time, despite the voluminous case files submitted to her and the strong objections raised by the Senator and her lawyers, Judge Juanita Guerrero [of Muntinlupa Regional Trial Court Branch 204] issued a non-bailable arrest warrant, followed by two more warrants of the same nature from Judge Amelia Fabros-Corpuz [of Branch 205], and Judge Patricia Manalastas-de Leon [of Branch 206]. Later on, Judge Guerrero, along with three others... inhibited

themselves from further handling the Senator's cases. Meanwhile, the other two judges who issued the non-bailable arrest warrants, Judges Fabros-Corpuz and Manalastas-de Leon, opted for early retirement.

In Senator de Lima's petition at the Supreme Court questioning the validity of Judge Guerrero's arrest warrant, the first one, a majority of nine justices, as opposed to six dissenters, upheld the jurisdiction of the Regional Trial Court. The decision however failed to muster a majority vote on what really is the charge against the Senator. Five of the nine justices said it is illegal drug trading, while three declared it was conspiracy to engage in illegal drug trading with one the 9th justice saying, pronouncing it could be either. Despite this disagreement among the magistrates of the Supreme Court, impinging as it is on Senator de Lima's Constitutional right as an accused to know the nature and cause of accusation against her, the DOJ filed amended information or charge sheets against Senator De Lima in all three Muntinlupa RTC cases, changing the charge from illegal drug trading to conspiracy to engage in illegal drug trade. This happened after more than a year from filing of the cases in February 2017, and without the benefit of new

and re-opened preliminary investigation at the DOJ. Worse, despite the glaring breaches of substantive rights and procedural rules, the judges, all of them, accepted the substituted charges and [kept] Senator de Lima in jail.⁵⁷

It is worthy to note that in August 2018, the Working Group on Arbitrary Detention of the UN Human Rights Council issued an opinion determining that Senator de Lima has been arbitrarily deprived of liberty in contravention of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights⁵⁸ and has since called for her immediate release,⁵⁹ but to no avail.

2018 Time Person of the Year, Maria Ressa, and Rappler Inc., an online news site she co-founded, are also seemingly the latest victims of weaponization of law. In 2016, soon after the presidential elections, Rappler began reporting on the pro-Duterte “troll army” who were manipulating the narrative around the President by releasing its own versions of facts. The news organization likewise started publishing articles highly critical of the Duterte administration particularly on the extrajudicial killings, human rights violations, and the rising death toll due to the administration’s war on drugs.

⁵⁷ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, pp. 28-29.

⁵⁸ UN Human Rights Council, *supra* note 28, ¶ 79.

⁵⁹ *Id.* at ¶ 81.

Soon after, during his 2017 State of the Nation Address, the President declared that if you “pierce the identity [of Rappler]... you will end up [with] American ownership”⁶⁰ - a violation of the Constitutional nationality restrictions on ownership of mass media entities. Six months later, the Securities and Exchange Commission (SEC) found “Rappler Inc., and Rappler Holdings Corporation (RHC), a mass media entity and its alter ego, liable for violating the constitutional and statutory Foreign Equity Restrictions in Mass Media” and ordered the revocation of the certificate of incorporation of Rappler Inc., for being a “mass media entity that sold control to foreigners.”⁶¹ The Court of Appeals upheld the SEC decision, but ordered its re-evaluation given that “the negative foreign control found objectionable by SEC appears to have been permanently removed.”⁶²

Five separate tax evasion charges were also filed against Ressa, Rappler, Inc. and RHC by the Department of Justice. A warrant for Ressa’s arrest was issued in 2018, for which she posted bail and was released. On the same year, a Rappler journalist, Pia Ranada, was banned from entering the entire Malacañang Palace complex.⁶³ In total, Rappler and its staff have faced at least 11 government investigations and court cases. On June 15, 2020, a

⁶⁰ Rodrigo Roa Duterte, President of the Philippines, *2017 State of the Nation Address* (24 July 2017) Transcript available at <https://www.officialgazette.gov.ph/2017/07/24/rodrigo-roa-duterte-second-state-of-the-nation-address-july-24-2017/>, (last accessed on 20 June 2020).

⁶¹ In Re : Rappler, Inc. and Rappler Holdings Corporation, SP Case No. 08-17-001, (SEC 2018) available at http://www.sec.gov.ph/wp-content/uploads/2018/01/2018Decision_RapplerIncandRapplerHoldingsCorp.pdf, (last accessed on 20 June 2020).

⁶² Rappler, Inc and Rappler Holdings Corporation versus Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017, C.A. – G.R. SP No. 154292, (Court of Appeals 2018).

⁶³ Jelly Musico, *Duterte on Rappler Reporter’s Ban : ‘I am Invoking Executive Action’*, PHILIPPINE NEWS AGENCY, 22 February 2018, available at <https://www.pna.gov.ph/articles/1026232>, (last accessed on 28 June 2020).

trial court found Ressa and a former Rappler researcher, Reynaldo Santos Jr., guilty in a cyber libel case⁶⁴ relating to a story published in 2012.

Amal Clooney, counsel to Ressa, views the trial court decision as “a sinister action to silence a journalist for exposing corruption and abuse. This conviction is an affront to the rule of law, a stark warning to the press, and a blow to democracy in the Philippines.”⁶⁵

The convictions of Ressa and Santos, Jr. came barely a month after the cease-and-desist order issued by the National Telecommunications Commission against ABS-CBN Corporation, requiring the network to halt all its radio and television broadcasting operations due to the expiration of the network’s Congressional franchise.⁶⁶ Although several bills have been filed before Congress for the renewal of the franchise, the network failed to obtain a franchise renewal. Prior to this, President Duterte has repeatedly accused the network of unfair reporting, tax evasion, and swindling for allegedly not broadcasting his political ads in 2016.^{67, 68, 69} The

⁶⁴ People of the Philippines v Reynaldo Santos, Jr., Maria Angelita Ressa, and Rappler, Inc., Criminal Case No. R-MNL-19-01141-CR (RTC 2020) (unreported)

⁶⁵ Statement of Doughty Street Chambers on conviction of Maria Ressa, *Amal Clooney and Caoilfhionn Gallagher QC condemn conviction of Maria Ressa in Manila cyberlibel judgment* (15 June 2020) available at <https://www.doughtystreet.co.uk/news/amal-clooney-and-caoilfhionn-gallagher-qc-condemn-conviction-maria-ressa-manila-cyberlibel>, (last accessed on 20 June 2020).

⁶⁶ Raymond Carl dela Cruz, ABS-CBN Ordered to Stop Broadcast After Franchise Lapse, PHILIPPINE NEWS AGENCY, (May 5, 2020) available at <https://www.pna.gov.ph/articles/1101969>, (last accessed on 25 June 2020).

⁶⁷ Dharel Placido, *Duterte to ‘Object’ to ABS-CBN Franchise Renewal*, ABSCBN.NEWS (8 November 2020) available at <https://news.abs-cbn.com/news/11/08/18/duterte-to-object-to-abs-cbn-franchise-renewal>, (last accessed on 25 June 2020).

⁶⁸ Ted Regencia, *Targeted by Duterte, future of Philippines’ ABS-CBN in Balance*, ALJAZEERA, (4 May 2020) available at <https://www.aljazeera.com/news/2020/05/targeted-duterte-fate-philippines-abs-cbn-balance-200503114347460.html>, (last accessed on 25 June 2020).

⁶⁹ Aika Rey, *Bong Go: It’s Those Anti-Duterte Ads on ABS-CBN that Got the Boss’ Goat*, RAPPLER (24 February 2020) available at <https://www.rappler.com/nation/252558-bong-go-on-anti-duterte-ads-abs-cbn-senate-hearing>, (last accessed on 25 June 2020).

President also previously proclaimed "*Itong ABS, mag-expire ang contract ninyo. Magrenew kayo, ewan ko lang kung may mangyari diyari. Kung ako sa inyo, ipagbili 'nyo na 'yan.*"⁷⁰

Sectors within the media have expressed concern that the conviction of Ressa and Santos Jr., together with the cases filed against Rappler, Inc. and RHC, and the shutting down of ABS-CBN Corporation exhibit a growing pattern of weaponization of the law to repress independent media. Although denied by the government, "[t]he message to other journalists and independent voices is clear: Keep quiet, or you'll be next."⁷¹

The Inquiry also revealed that numerous trumped-up charges have been filed against HRDs across all sectors. Among those which were proven false and dismissed are the cases of Atty. Katherine Panguban, Ireneo Udarbe, and Rachel Mariano.

Atty. Katherine Panguban of the National Union of People's Lawyers was falsely charged with kidnapping when she assisted a survivor-minor in the Sagay massacre.⁷² Ireneo Udarbe of the peasant group Kilusang Magbubukid ng Pilipinas was travelling when he was forcibly taken by State forces and brought to the office of the PNP Criminal Investigation and Detention Group. After some time, he was returned to the place where he was forcibly taken and

⁷⁰ Rodrigo Roa Duterte, President of the Philippines, Address to earthquake victims at M'lang Town, Cotabato (30 December 2019).

⁷¹ Amal Clooney, *Opinion| Amal Clooney: A Test for Democracy in the Philippines*, THE WASHINGTON POST, 12 June 2020, available at <https://www.washingtonpost.com/opinions/2020/06/12/amal-clooney-test-democracy-philippines/> (last accessed on 20 June 2020).

⁷² CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 103.

given back his previously confiscated bag already containing guns and explosives. He was falsely charged with illegal possession of firearms and explosives.⁷³ Finally, Rachel Mariano, a development worker of the Community Health, Education Services and Training in the Cordillera Region, was imprisoned for more than one year for false charges of murder and frustrated murder filed by the military.⁷⁴

Joanna Cariño, Co-Chairperson of the SANDUGO Movement of Moro and Indigenous Peoples for Self-Determination, opined that trumped-up charges are filed against the leaders of progressive organizations to cripple or deprive them of effective leadership⁷⁵ and dismantle red-tagged progressive organizations. She testified that oftentimes, the names of known HRDs are included in the charge sheets of the AFP after armed encounters with the NPA to fill up the list of John Does and Jane Does.⁷⁶

HRDs would also find themselves charged with criminal activities in far-away provinces they have never entered - as was allegedly the case for several unionists. Eleanor de Guzman, Secretary for Human Rights of Kilusang Mayo Uno, testified that “Maojo Maga, Bob Reyes and Rowena Rosales whose union activities are mainly based in Metro Manila are being implicated in non-bailable criminal charges in a remote town in Agusan del Norte where they all have never gone to, based on perjured testimonies and rogues galleries, and were issued warrants of arrests without

⁷³ *Id.* at p. 109.

⁷⁴ *Id.* at p. 135.

⁷⁵ *Id.*

⁷⁶ *Id.*

any preliminary investigation and notice of summons from the court.”⁷⁷

Many other HRDs suffer under false criminal charges. The Commission notes the various schemes that may be employed to abuse the criminal justice system. This may include the issuance of warrants of arrests from far-flung areas and planting of manufactured evidence on the arrestees; abusing the doctrine of “presumption of regularity in the performance of official duties” in the conduct of arrests, searches and seizures; using perjured witnesses; abusing the use of John Doe warrants; filing of non-bailable charges; and ignoring the political offense doctrine, among others.

Another way laws are weaponized against HRDs is through the use of overly-broad security legislations, regulations and issuances. Executive Order No. 70, Series of 2018 (EO 70) - the directive of President Duterte “Institutionalizing the Whole-of-Nation Approach in Attaining Inclusive and Sustainable Peace, Creating a National Task Force to End Local Communist Armed Conflict, and Directing the Adoption of a National Peace Framework” is one such issuance.

According to Atty. Rey Ola-a of the National Security Council, EO 70 is actually a system of good governance.⁷⁸ Indeed, it seeks to prioritize the delivery of basic services in conflict-affected areas, facilitate societal inclusivity and ensure the active participation of

⁷⁷ *Id.* at p. 145.

⁷⁸ *Id.* at p. 93.

all sectors of society to attain inclusive and sustainable peace.⁷⁹ However, it is a double-edged sword that is sometimes used as a justification by some agencies of the government to attack, repress, vilify and red-tag progressive organizations. Ms. Cariño, thus observed that:

The Whole of Nation Approach is clearly already being implemented, as can be seen in recent policy decisions made by government agencies. The Department of Education (DepEd) ordered the closure of *Lumad* schools. The Department of Social Welfare and Development's (DSWD) relief goods and conditional cash transfers are used to discourage people from joining organizations and activities critical of the government. The Department of Foreign Affairs (DFA) sends lavish junkets to lobby the UN and the European Union to stop funding legitimate organizations on grounds that the funds are being channeled to the NPA.

Strategies of disinformation are used by presidential agencies like the Presidential Communications Operations Office (PCOO), the Office of the Presidential Adviser for the Peace Process (OPAPP), and the National Intelligence

⁷⁹ Office of the President, Institutionalizing the Whole-of-Nation Approach in Attaining Inclusive and Sustainable Peace, Creating a National Task Force to End Local Communist Armed Conflict, and Directing the Adoption of a National Peace Framework, Executive Order No. 70, Series of 2018, Section 1, (4 December 2018).

Coordinating Agency. They red-tag dissenters and conjure fake *Lumad* leaders and fake rebel returnees in order to discredit report(s) of the AFP's human rights violations.⁸⁰

Another regulation prone to misuse is Securities Exchange Memorandum Circular No. 15, Series of 2018 or the "Guidelines for the Protection of SEC Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse." It obliges non-profit organizations to disclose details such as a full list of donors, intended beneficiaries and location of beneficiaries, projects, areas of operation or activity, among others. An incomplete submission will be deemed a failure to comply and can result in the revocation of the organization's registration. The disclosure is used to assess and classify an organization as low risk, medium risk, high risk, or blacklisted. This mandatory disclosure of sensitive information may put the organization's clients and partners at risk. Furthermore, the vague formulation of the assessment classification without any mention of the criteria for each, renders the regulation widely subject to abuse and can be used as a tool to administratively harass organizations, especially those that have been red-tagged by the administration. There is real cause to be wary of harassment since, even not based on this regulation, several progressive organizations had already experienced being falsely publicized by the State media⁸¹ to have revoked registrations. While these

⁸⁰ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 137.

⁸¹ Gigie Arcilla, *Karapatan, 4 other NGOs have revoked SEC registration*, PHILIPPINE NEWS AGENCY, 8 May 2019 available at <https://www.pna.gov.ph/articles/1069216> (last accessed 10 May 2020).

organizations were able to refute the false information, the incident had already blighted their reputation.⁸²

Republic Act No. 11479 or the “Anti- Terrorism Act of 2020” is another law that is prone to misuse. It expands the definition of terrorism to include acts that provoke or intimidate the government. The Commission worries that the over-broad definition of terrorism gives the government unbridled power to determine who are “suspected terrorists” – which may include ordinary citizens and HRDs. The law also allows the *ex parte* designation of organizations as terrorist groups and penalizes recruitment to and membership in such organizations.⁸³ The Commission finds that the law does not have sufficient safeguards against abuse and can be easily used to commit human rights violations.

While mindful of the menace of insurgency and terrorism, the Commission maintains that laws, policies and practices that undermine human rights norms are counterproductive in attaining lasting peace and security. Security legislations must be guarded against vague, imprecise and overly-broad language that can be interpreted to unduly limit fundamental freedoms and obstruct the work of HRDs. They must never exceed the purpose for which they were passed – to strengthen security. Otherwise, when abused, these legislations themselves can become instruments of terror.

⁸² CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 77.

⁸³ An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, Otherwise Known As The “Human Security Act of 2007” , H.B. No. 6875, 18th Congress, 1st Reg. Session. (2020) § 10 and 26, also see S. B. No. 1083.

In the words of the late Senate President Aquilino Pimentel, Jr.,⁸⁴ one of the most respected statesmen and renowned HRD in the country, “government service must maintain law and order not for the well-being of any sector of society, but to enable peace to reign in our country so that our people will enjoy all the fundamental rights due them not only as Filipinos but as human beings.”⁸⁴

7. SHRINKING CIVIC SPACE

“Civic space is the environment that enables civil society to play a role in the political, economic and social life of our societies. Civic space allows individuals and groups to contribute to policy-making that affects their lives, including access to information, engaging in dialogue, expressing dissent or disagreement, and joining together to express their views. An open and pluralistic civic space that guarantees freedom of expression and opinion as well as freedom of assembly and association, is a prerequisite for making development and peace sustainable.”⁸⁵

The Inquiry showed the shrinking civic space and the restrictive environment for HRDs under the present administration. The combination of the distortion of human rights, public vilification, red-tagging, profiling, surveilling, militarization of civilian agencies, and weaponization of the law has shrunk civic space to a level that

⁸⁴ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, pp. 11.

⁸⁵ United Nations Human Rights Office of the High Commissioner, Protecting and Expanding Civic Space, *available at* <https://www.ohchr.org/EN/Issues/CivicSpace/Pages/ProtectingCivicSpace.aspx> (last accessed 15 May 2020).

HRDs across all sectors are left with hardly any breathing room to perform their tasks, or even to legitimately exist.

Atty. Rey Ola-a of the National Security Council assured civil society organizations and HRDs that the Office of the National Security Adviser considers them as partners in national development. To prove this point, he said that even if some organizations and party-lists are allegedly identified with the CPP-NPA, “the government does not ask for disqualification or removal, [nor the] cancellation of their registration with the COMELEC.”⁸⁶ Contrary to this, the NTF - ELCAC itself, filed a petition against the Gabriela Women’s Party for cancellation of its registration under the party-list system with the Commission on Elections on the ground of alleged ties with the CPP-NPA.⁸⁷ This case is still ongoing and is illustrative of how organizations are being prevented from legitimately participating in democratic political processes.

Gertrudes AR. Libang, Vice-Chairperson of Gabriela, testified that when her organization conducted a psycho-social intervention program after the Marawi bombing of May 2017, Gabriela Party-List Representative Arlene D. Brosas was told by the women there that some soldiers had threatened them with rape if they refuse to evacuate. According to Ms. Libang, this happened a few months after the President made his infamous joke that soldiers “can rape three women and he will be accountable for that.” But instead of investigating and acting on Rep. Brosas’ report on the said threats,

⁸⁶ *Id.* at p. 73.

⁸⁷ Ferdinand Patinio, *Gov’t anti-insurgency body asks COMELEC to void Gabriela registration*, PHILIPPINE NEWS AGENCY, 10 May 2020, available at <https://www.pna.gov.ph/articles/1069487> (last accessed 10 May 2020).

Defense Secretary Lorenzana allegedly merely dismissed it, calling the report dubious and propaganda of the enemy. Thereafter, Rep. Brosas became the object of threats of sexual violence by online trolls. Ms. Libang also recalled the President's remark to "shoot women rebels in the vagina" to "render them useless" in a gathering of purported rebel returnees in February 2018. A year later, Cindy Tirado, a wife of a rebel leader, was reportedly tortured and killed by the military. Her private parts destroyed by a bullet. This, Ms. Libang opined, shows the President's contempt for women and can be seen in the way that armies of paid trolls would continuously undertake online media campaigns that target progressive women leaders and civil society personalities with virulent threats of sexual and physical violence.⁸⁸

Raymund Villanueva of the National Union of Journalists of the Philippines (NUJP) testified that journalists whose reports do not sit well with the President and his subalterns also find themselves targeted by internet trolls who would swarm their social media accounts and their private inboxes with insults and threats. Women journalists have it worse with threats of rape. Villanueva further stated that these troll armies and so-called "influencers" allegedly employed by the administration would undermine the credibility of the media by accusing it of churning out "fake news" against the President and his administration. Further, they would accuse journalists of being "*presstitutes*" while churning out their own flood of disinformation. The alternative press also allegedly suffered as cyber-attacks were unleashed against their websites.

⁸⁸ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, pp. 150-151.

Villanueva narrated that from December 2018 to March 2019, the websites of Kodao Productions, Bulatlat/Alipato, Pinoy Weekly, and *AlterMidya* repeatedly crashed due to these relentless attacks. He claims that they sought a dialogue with the Department of Information and Communications Technology (DICT) about this but were ignored.⁸⁹

Legitimate union activities are also reported to be increasingly and dangerously clamped down. Daisy Arago, the Executive Director of the Center for Trade Union and Human Rights (CTUHR), testified that over the last three years, the Philippines consistently landed in the top ten worst countries for workers and trade unionists in the International Trade Union Confederations Global Rights Index. Arago said that their monitoring and documentation show that today's violations against trade unionists and advocates are far more comprehensive, brutal, and systematic than the previous administrations. She pointed out that in August 2018, the President resounded his hatred of unionism. He blamed the labor strikes for factory closures and the decline in foreign investments. He even mentioned that laborers do not go on strike in China. She claimed that the President's hatred for unions and workers' strikes resulted in 45 instances of union-busting from June 30 to December 2018 and 14 violent dispersals by combined forces of the PNP, the military, goons, and company guards. Ms. Arago also narrated that labor leaders and organizers attempting to organize unions are subjected to surveillance activities, harassment, intimidation, and some are even killed. She shared

⁸⁹ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, pp. 230.

that advocates and organizers from Northern Mindanao, for example, are scared to attend hearings before the Department of Labor because the military now sits at these proceedings. She further testified that since February 2019, the militarization of workplaces has become common, and worse, unionists are told to stop their activities and are forced to surrender as rebels.⁹⁰

Even the civic space of the youth is not left unscathed. Renee Co, the National Vice-President of Kabataan Party-List decried the online attacks against youth organizations. She said that they have identified 16 different Facebook pages sharing the same content and perpetrating smear campaigns and misinformation about youth organization activities. She claimed that these Facebook pages are administrated by police offices, and official PNP and NBI Facebook accounts would routinely share to the public the contents of these pages. She said that these Facebook accounts and pages would taunt and vilify the legitimate concerns and issues of the youth and oftentimes produce fake quotes attributed to Kabataan Partly-list Representative Sarah Jane I. Elago. She also flagged surveillance activities in schools. At the University of Santo Tomas, for example, several policemen reportedly stationed themselves near the gate and asked about certain students. This also happened at the University of the Philippines in Diliman where the police would search for certain students in their dormitories.⁹¹ But the worst attack on the youth's civic space is the alleged presence of the military in schools. Raoul Manuel, the President of the National Union of Students of the Philippines, testified that in some areas,

⁹⁰ *Id.* at pp. 168-171.

⁹¹ *Id.* at pp. 277-278.

the military would actually go in and out of campuses. They would reportedly hand-out leaflets or pamphlets vilifying youth organizations and conduct forums and seminars in the guise of drug education or some other legitimate topic but would in fact discuss red-tagged organizations who are claimed to recruit students to join the NPA. Manuel stated that they intimidate and harass students. Some students would even receive death threats via SMS, online, or even at their homes.⁹²

CHR Chairperson Gascon remarked during the Inquiry that “often when the space is shrinking at the national level, many HRDs seek out platforms at the international level.”⁹³ Unfortunately, the crackdown against HRDs have reportedly extended to the international plane. Raymund Villanueva of the NUJP, for example, testified about the “Press Freedom Caravan” in Europe conducted by the Presidential Task Force on Media Security, where Philippine media organizations and outfits were maligned and vilified to seemingly justify the State’s clampdown against press freedom, press organizations and press personalities.⁹⁴ Daisy Argo of CTUHR also shared that Migrante International, a migrants group, reported that the Philippine Liaison Office in Saudi Arabia held forums in different schools tagging different progressive organizations as terrorist groups, including Kilusang Mayo Uno, Anakbayan, Gabriela, Migrante, and Karapatan. These forums caused severe fear among Migrante local chapters especially because terrorism in Saudi Arabia is punishable by death.⁹⁵

⁹² *Id.* at p. 279.

⁹³ *Id.* at p. 241.

⁹⁴ *Id.* at p. 256.

⁹⁵ *Id.* at pp. 172-173.

Proceedings within the UN system were also not spared from attack. In an informal meeting on the occasion of the 41st session of the UN Human Rights Council in Geneva, a Philippine senior diplomat allegedly attacked the Philippine HRDs attending the meeting on the Iceland Resolution on the Promotion and Protection of Human Rights in the Philippines. Rose Trajano, Secretary-General of the Philippine Alliance of Human Rights Advocates, narrated the incident as follows:

It was the second informal deliberation on the Iceland Resolution. The first deliberation happened on Monday. I think that was June 24 or 25, PHRC and four other government agencies were there. [Executive Director of the Presidential Human Rights Committee Secretariat] Catura delivered his 22-minute speech and then walked out. So, *tapos na yung issue ng Pilipinas kasi* they already spoke that they are against the Iceland resolution. Two days after, again, another informal deliberation. The discussion would already be on the content. *Talagang* paragraph per paragraph editing *na* and comment.

Of course, because the Philippines already talked and walked out, we did not anticipate that

there will be another person from the Philippines who will be coming and attacking *yung* deliberation.

And so, Ambassador [Rosario] Manalo came in and immediately she wanted to talk *agad*, even if the discussion has not started yet. So, Iceland told her, she said, "I would like to speak not as a diplomat but as an independent HRD." Okay so Iceland said, "Okay you can have your talk later after our deliberation." So, *natapos yung* deliberation *ng mga* states and then she immediately raised her hand and started attacking Iceland. *Grabe, grabe talagang* demonized *ang* Iceland, demonized *ang* United Nations. For 10 minutes she has the speech so [*sic*], I do not for a second accept that she is speaking as an individual HRD. I know she's speaking for the government because she has a prepared speech and the speech has the same tone as with the PHRC on day one.

Okay, so for 10 minutes everybody...*ano yung nagtiis?* bear her ranting and then the last sentence she said is, "Before I end. Before I end. Those human rights defenders, the Filipino HRDs who are here in Geneva, who are lobbying. You are traitors! You are treacherous! You are paid!" *Yun po ang nangyari.* Even the

United...UK, *talagang nagsalita* against [her]. The UK expressed their disappointment to Ambassador Manalo. Of course, I cannot, I did not prevent myself, I really retaliated *sa kanya*. I replied. What is so embarrassing is because she was actually using the CEDAW ID. She is with the United Nations at *binanatan niya ang United Nations*.⁹⁶

The Commission reiterates that a shrinking civic space undermines civil society participation, which in turn negatively affects social cohesion and national development. “Allowing voices to be heard, even when they express criticism or unpopular views is key to holding decision-makers to account and to ensure that policies are reviewed, lessons learned, and improvements made.”⁹⁷ Indeed, “progress and civic participation go hand in hand; a confident nation gives citizens a say and a role in the development of their country. Governments on their own do not have all the answers, and it is in their best interest to dismantle barriers to the exercise of public freedoms to make it easier to unleash the creativity and ingenuity of civic activity to produce solutions.”⁹⁸

8. CLIMATE OF IMPUNITY

⁹⁶ *Id.* at p. 91.

⁹⁷ UN Human Rights Council, *Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned*, para. 7, U.N. Doc. No. A/HRC/32/20 (11 April 2016), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/073/52/PDF/G1607352.pdf?OpenElement> (last accessed 10 May 2020).

⁹⁸ *Id.* at para. 82.

One hundred and thirty-four HRDs have reportedly been killed since the beginning of the term of the current administration.⁹⁹ The prevailing climate of impunity in the context of violence against HRDs is largely attributable to the pronouncements of the President. His public statements to the effect that he does not care about human rights,¹⁰⁰ that HRDs should be blamed if the country's drug problem worsens,¹⁰¹ that HRDs should be shot if they are obstructing justice,¹⁰² that he will investigate human rights group for conspiracy,¹⁰³ that lawyers defending drug suspects will be the next target of his war on drugs,¹⁰⁴ that he wishes to kill journalism in the country,¹⁰⁵ and that he will target left-wing groups as they are communist fronts,¹⁰⁶ among others, have put targets on the backs of HRDs. The President through his pronouncements created a dangerous fiction that it is legitimate to hunt down and commit atrocities against HRDs because they are enemies of the State. This is evident not only in the way State security forces and other

⁹⁹ Catherine Gonzales, 134 human rights defenders killed since Duterte assumed office – Lagman, INQUIRER.NET, 5 June 2019, available at <https://newsinfo.inquirer.net/1127091/134-human-rights-defenders-killed-since-duterte-assumed-office-lagman> (last accessed 10 May 2020).

¹⁰⁰ *Rodrigo Duterte: 'I don't care about human rights'*, ALJAZEERA, 8 August 2016, available at <https://www.aljazeera.com/news/2016/08/rodrigo-duterte-human-rights-160806211448623.html> (last accessed 10 May 2020).

¹⁰¹ Marlon Ramos, *Duterte threatens to kill rights activists if drug problem worsens*, INQUIRER.NET, 29 November 2016, available at <https://newsinfo.inquirer.net/848933/duterte-threatens-to-kill-human-rights-activists-if-drug-problem-worsens> (last accessed 10 May 2020).

¹⁰² Oliver Holmes, *Human rights group slams Philippines president Duterte's threat to kill them*, THE GUARDIAN, 17 August 2017, available at <https://www.theguardian.com/world/2017/aug/17/human-rights-watch-philippines-president-duterte-threat> (last accessed 10 May 2020).

¹⁰³ *Id.*

¹⁰⁴ Tetch Torres-Tupas, *IBP: Duterte remark on drug suspects' lawyers 'very dangerous'*, INQUIRER.NET, 9 December 2016, available at <https://newsinfo.inquirer.net/852229/ibp-duterte-remark-on-drug-suspects-lawyers-very-dangerous> (last accessed 10 May 2020).

¹⁰⁵ Rachel A.G. Reyes, *Duterte's wish: 'Kill journalism in this country'*, THE MANILA TIMES, available at <https://www.manilatimes.net/2018/01/23/opinion/analysis/dutertes-wish-kill-journalism-country/375904/> (last accessed 15 May 2020).

¹⁰⁶ Delfin T. Mallari and Frinston Lim, *Duterte says Left-wing groups are next targets*, INQUIRER.NET, 28 January 2018, available at <https://newsinfo.inquirer.net/964165/duterte-says-left-wing-groups-are-next-targets> (last accessed 15 May 2020).

government officials would talk about and treat HRDs, but also in the way ordinary citizens who are extreme supporters of the President would demonize the concept of human rights and HRDs.

The legitimization of violence against HRDs is further made possible by the government's insidious practice of drawing-up lists and matrices of alleged enemies of the state. This practice has been described by the UN Special Representative of the Secretary-General on Human Rights Defenders as follows:

Defenders have found themselves placed on blacklists maintained by State security and intelligence apparatuses. Frequently, the actual existence of such lists is not formally admitted and they do not appear to have any clear status in law, making it difficult for defenders to confirm that they are on a list and to challenge the inclusion of a name, whether their own or someone else's. The criteria used to set up the lists (where precise criteria exist) are opaque and often unknown to the defenders listed. The lack of transparency in the use of such lists and the limited possibility of independent review of the names included in them are such that they are easily used to target HRDs for reasons wholly different from the alleged concern with security or counter-terrorism. The Special Representative has received reports that allege the deliberate leaking of intelligence information

to non-State elements, which has been directly responsible for harm to HRDs at the hands of these elements.¹⁰⁷

Thus, when atrocities are committed against HRDs, the mere assertion that they are included in the drugs list, rebels list, surrenderees list, terrorist lists or any other enemy of the state list, could be enough for investigators to look no further into the case or otherwise make some haphazard conclusion that the atrocity is justified. When others would come to the aid and protection of the victimized HRDs or seek justice for them, these protectors also put themselves at risk of being placed on some list and would undoubtedly suffer some form of repression or reprisal. Ultimately, it becomes a vicious cycle of putting more and more HRDs in harm's way while perpetrators go scot-free.

The Commission would like to believe that the current climate of impunity against HRDs exists not so much because the majority of Filipinos subscribe to the distorted paradigm peddled by the administration, but because of fear. Indeed, if an elected Senator of the republic can be arbitrarily put in jail, it is not unlikely that it could also be done to any official of the government, more so to ordinary citizens. In the same way, the unprecedented spate of killings and the brazenness of their commission are enough to strike fear in the hearts of many, who, like the proverbial ostrich would rather bury their heads in the sand than get involved.

¹⁰⁷ UN General Assembly, *Report submitted by Hina Jilani, Special Representative on Human Rights Defenders*, par. 28, U.N. Doc. No. A/58/380 (18 September 2003) available at <https://undocs.org/A/58/380> (last accessed 15 May 2020).

It is therefore imperative that all these risks and conditions that endanger HRDs' lives, liberty, and security be addressed with utmost immediacy by recognizing and implementing the support and protection guaranteed them by both national and international law.

B. THE GOVERNMENT HAS A DUTY TO PROMOTE AND PROTECT THE RIGHTS OF HUMAN RIGHTS DEFENDERS.

On 9 December 1998, the UN General Assembly adopted Resolution 53/144 or the Declaration on Human Rights Defenders (Declaration).¹⁰⁸ It provides for the protection and support of HRDs in the context of their work, whether done in a professional or personal capacity, alone or in association with others.

In his testimony during the Inquiry, Col. Alessandro Abella of the PNP Human Rights Office mentioned that while the Declaration is not legally binding, the PNP sought to adopt its principles in its Human Rights Development Program.¹⁰⁹ Indeed, while the Declaration is not in itself, a legally binding instrument, it “was adopted by consensus by the General Assembly and therefore represents a very strong commitment by States to implement.”¹¹⁰

¹⁰⁸ Declaration on Human Rights Defenders, *supra* note 3.

¹⁰⁹ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 320.

¹¹⁰ UN OHCHR, Fact Sheet No. 29, *supra* note 1, p. 19.

It should also be emphasized that the duty of states to protect HRDs is not a new obligation created by the Declaration. The Declaration merely reiterates and gives it prominence in such a manner as to make it easier to apply to the practical role and situation of HRDs.¹¹¹ The duty to protect HRDs actually stems from, and is a necessary consequence of, the States' general obligation and primary responsibility to protect all human rights and fundamental freedoms of all persons under its jurisdiction without discrimination as established in Articles 2,¹¹² 9¹¹³ and 12¹¹⁴ of the Universal Declaration on Human Rights (UDHR), and Article 2¹¹⁵ of the International Covenant on Civil and Political Rights (ICCPR).¹¹⁶ Indeed, all of the principles contained in the

¹¹¹ *Id.*

¹¹² 1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice. xxx

¹¹³ 1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of those rights. xxx

¹¹⁴ xxx

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

¹¹⁵ 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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. xxx

¹¹⁶ UN Special Rapporteur on the Situation of Human Rights Defenders, Commentary 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, July 2011, p. 8-9 available at <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf> (last accessed on 1 May 2020).

Declaration are based on long-established human rights standards enshrined in the UDHR, the ICCPR, and the ICESCR, all of which the Philippines is a signatory and party to. Hence, there can be no doubt that the provisions of the Declaration are binding on the Philippine Government and the rights of HRDs rearticulated in the Declaration should be promoted, protected, and upheld.

1. GUARANTEED RIGHTS AND FUNDAMENTAL FREEDOMS OF HUMAN RIGHTS DEFENDERS

The rights of HRDs highlighted in the Declaration may be summed up in the following enumeration of rights: freedom of association, freedom of expression and of the press, to peacefully protest and assemble, to an effective remedy, to access and communicate with international bodies, and to access funding. While the evidence presented during the course of the Inquiry are too general to substantially determine specific violations and pinpoint alleged violators in each of the instances mentioned by the resource persons, the Commission, nonetheless, recognizes that the current situation of HRDs fosters a chilling effect that negatively affects the free of exercise of these rights.

1.1. THE RIGHT TO FREEDOM OF ASSOCIATION

Article 5 (b) of the Declaration acknowledges the right of HRDs “to form, join and participate in non-governmental organizations, associations and groups.” The right to freedom of association is guaranteed under Article 20 of the UDHR, Article 22

of the ICCPR, Article 8 of the ICESCR, and Article III, Section 8 and Article XIII, Section 13 of the Constitution. It “involves the right of individuals to interact and organize among themselves to collectively express, promote, pursue and defend common interests.”¹¹⁷ This right is further strengthened and complemented by the following constitutional provisions on the role and rights of people’s organizations in Article XIII of the Constitution, to wit:

SECTION 15. The State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People’s organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

SECTION 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the

¹¹⁷ UN General Assembly, *supra* note 103, ¶46.

establishment of adequate consultation mechanisms.

The Inquiry revealed that there seems to be an incorrect notion that the freedom of association is already upheld by the mere fact that organizations are allowed to exist. Atty. Rey Ola-a, Head of the Legal Office of the National Security Council, seems to have confirmed this when he made the following statement to the Commission:

xxx As we observed, [some] civil society organizations and/or party-lists present [during the Inquiry] were identified allegedly as linked to the CPP-NPA. [This includes] Bayan Muna and KARAPATAN, but the government does not ask for disqualification or removal, [nor the] cancellation of their registration with the COMELEC. And despite the appearance of the parents, mothers at the Senate hearing complaining about their children, minor[s], Senior High School [students], missing children, who refuse to go home and some, [who] according to them, [were recruited and] allegedly went to the hills, there's no move against disqualifying Bayan Muna or some other organizations allegedly linked to the CPP-NPA despite the fact that there is an existing

Executive Order 274 declaring the CPP-NPA as a terrorist organization xxx.¹¹⁸

This is further supported by NICA's Deputy Director Abelardo Villacorta's assertions that the government tolerates and has not investigated nor terminated the 300,000 government employee members of COURAGE, the 376,000 government employee members of ACT and the 10,000 health worker members of Alliance of Health because of the recognition that not all members adhere to the CPP-NPA-NDF ideology and that some members are unaware that the organization they joined are organizations of the CPP-NPA-NDF.¹¹⁹

While organizations are allowed to exist, the widespread red-tagging of progressive organizations and the consequent harassment and threats to life and security attendant to red-tagging render the free exercise of the right to associate hollow and illusory.

1.2. THE RIGHT TO PEACEFULLY PROTEST AND ASSEMBLE

The right to peacefully protest and assemble is guaranteed under Article 20 (1) of the UDHR, Article 21 of the ICCPR and Article III, Section 4 and Article XIII Section 3 of the Constitution. In the context of HRDs, the Declaration acknowledges the legitimacy of participation in peaceful activities to protest violations of human

¹¹⁸ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 73.

¹¹⁹ *Id.* at pp. 342-343.

rights and recognizes freedom of assembly as a very important element of this right.¹²⁰ Thus, Article 5 of the Declaration states that “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully” While Article 12 (1) of the same provides that “Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.”

The exercise of this right by HRDs relates to numerous forms of activities “ranging from a meeting inside a private residence to meetings and conferences in public places, demonstrations, vigils, marches, picket lines and other kinds of assemblies, indoors or outdoors, with the aim of promoting and protecting human rights. The assemblies can be organized by an NGO, a trade union, an *ad hoc* group, a social movement, or by individual defenders seeking to raise an issue for debate or protesting against human rights violations of different kinds.”¹²¹

The Commission notes with concern the condemnation and vilification of the presence of HRDs and their organizations in picket lines during strikes and lockouts in labor disputes. It is in the legitimate exercise of the right to protest and assemble that trade unionists and other HRDs may validly stand in solidarity with striking workers even though they themselves are not employees of the company concerned. As long as this right is exercised in a

¹²⁰ UN General Assembly, *supra* note 103, para. 76.

¹²¹ *Id.* at para. 31.

peaceful manner, there should be no cause to disperse on the sole ground that picket lines are participated in by non-employees.

When assemblies turn unruly, the Commission recognizes the government's obligation to maintain order. However, the Commission cautions the government against the use of excessive force to quell disorderly behavior which, oftentimes, escalates into violent confrontations.

1.3. THE RIGHT TO FREEDOM OF EXPRESSION AND OF THE PRESS

Article 19 of the UDHR, Article 19 of the ICCPR, and Article III, Section 4 of the Constitution all guarantee the right of freedom of expression and of the press. For HRDs, this right is rearticulated to encompass three aspects. Thus, Article 6 of the Declaration provides:

Everyone has the right, individually and in association with others;

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

The pattern of silencing HRDs, including journalists, media outfits, and other government critics, through the use of public vilification, red-tagging, weaponization of laws, extra-judicial killings, or even a combination thereof, has significantly eroded the right to freedom of expression and of the press. No less than the Commission has observed this effect when during the Inquiry, Commissioner Roberto T. Cadiz remarked that:

As a matter of fact, even in this Inquiry, we felt that sort of chilling effect on the media, because we did invite Maria Ressa, for example, to come here and share her experience, but the response was that, given their present state, and the many cases that have been filed against them, at this

time they would prefer not to participate in this Inquiry.¹²²

1.4. THE RIGHT TO AN EFFECTIVE REMEDY

The right to an effective remedy is enshrined under Article 8 of the UDHR and Articles 2 (3) and 9 (5) of the ICCPR. As one of the most crucial of rights guaranteed to HRDs, the Declaration outlines the scope of this right in its Article 9 as follows:

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent

¹²² CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 257.

judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the rights, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

Despite the paramount importance of this right, it is also currently among the most elusive for HRDs. The climate of impunity is the foremost stumbling block that prevents HRDs from accessing and being granted effective remedies. It is thus clear to the Commission that the current situation and risks faced by HRDs necessitate the creation of a special protective remedy specifically tailored to the plight of HRDs.

In 2007, the Supreme Court instituted the Writ of Amparo, “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ covers extrajudicial killings, enforced disappearances, or threats thereof.”¹²³ “The Rule on the Writ of Amparo was crafted in an era when extrajudicial killings and involuntary disappearances were on the rise allegedly due to the government’s efforts to defeat an insurgency.”¹²⁴ It was subsequently followed in 2008 by the promulgation of the Rule on the Writ of Habeas Data which provides a judicial remedy for those whose right to privacy is violated or threatened in a manner that affects one’s right to life, liberty and security. Together with the Writ

¹²³ The Rule on the Writ of Amparo, A.M. No. 07-9-12-SC, § 1, (25 September 2007).

¹²⁴ In the Matter of Petition for Writ of Amparo of Vivian A. Sanchez, G.R. No. 242257, 15 October 2019, p. 19 available at <http://sc.judiciary.gov.ph/10742/> (last accessed on 25 June 2020).

of Habeas Corpus, the writs were meant to provide immediate redress for all forms of human rights violations.

However, concerns on the effectiveness of the writs and impartiality of the judiciary have been put to light- with mistrust stemming from the scarcity of the issuance of these writs, and the frequent dismissal of petitions for various human rights violations. The Inquiry revealed that these legal remedies once relied on by HRDs are now insufficient to adequately protect HRDs and address the myriad threats to life, liberty, and security that they face. Christina Palabay, Secretary-General of KARAPATAN, for example, explained the futility of the writs in this way:

x x x Petitions for writ of amparo and habeas corpus, [were] granted by the Supreme Court previously. If I'm correct, it's with the Raymond Manolo case, and with the case of Jonas Burgos, the case of Karen Empeno and Sherlyn Cadapan. x x x While there are pending orders for the State to bring to court these people, to present them in court, [t]hese were simply disregarded by state security force. Mere denial. *Sinasabi lang po nila 'eh wala sa amin eh. Si General Palparan, di naman sila kinuha eh.'* That's it, it stops there and it's really disheartening because their families have gone practically everywhere and they see this remedy of the Supreme Court is there, *ibig sabihin*, it will work for them. But unfortunately, this remedy

has not been quite successful in obtaining the results that they wanted, *yung makita nila yung pamilya*. As far as legal protection for human rights defenders is concerned, there's only one case, if I'm correct Mr. Colmenares, that has been granted. It's the case of Atty. Cathy Salucon a human rights lawyer in Cagayan Valley who has experienced harassment and vilification as well. [We used] the very same template [as Atty. Cathy's] on the cases or the situations that we have outlined – *may separate petition po ang KARAPATAN at Rural Missionaries at Gabriela. May separate petition din po ang NUPL. Pareho naman po ang patterns doon tulad ng nabanggit ko kanina katulad nung kay Atty. Cathy. Pero kami nga po, ang human rights defenders nagtatanong kami, porke't di ba kami abogado kaya hindi kami tinatrato in the same way ng Korte Suprema? Ang hirap naman po kung ganun ang mga tanungan naman, di ba? Because we haven't seen that remedy work for us.*¹²⁵

For Atty. Neri Colmenares, President of the NUPL, part of the problem lies in the perspective of the court on the quantum of evidence necessary to grant the writs. He expounded on this issue as follows:

¹²⁵ *Id.* at 44.

The problem there is that the courts look at a writ of amparo through a prism of criminal law. That is why the highest burden of evidence [is required]. We have argued in so many oral arguments before the Court of Appeals and the Supreme Court [that] the writ of amparo is not a criminal proceeding. Nobody goes to prison in a writ of amparo. It is not a civil case. No one is going to be paying for damages. *Danyos perwisyos*. It's a prerogative writ. It's actually not even an administrative proceeding because no one is ousted from office or terminated. It is a prerogative writ to [find] out the threats to [a] certain person and for the court to issue. So that's why in our petition for example, we have argued very well the pattern that vilification is [a] threat in itself. But the court on looking, "so who is threatening your life?" Of course, we cannot specifically identify who is threatening our lives, so you wouldn't know the finger who will pull the trigger. But the court has to understand that vilification in the Philippines is actually a threat already.

In any case, the Commission is convinced that to properly uphold the right of HRDs to an effective remedy, a new remedy must be created either by legislation or by the Supreme Court, or both, specifically for the purpose of upholding their rights and

providing them protection, taking into account the unique risks and situations they face as HRDs.

1.5. THE RIGHT TO ACCESS AND COMMUNICATE WITH INTERNATIONAL BODIES

The right to access and communicate with international bodies is protected under the right to freedom of expression.¹²⁶ Within the framework of the Declaration, it is recognized under Articles 5 (c) and 9 (4), to wit:

Article 5 (c)

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: xxx

(c) To communication with non-governmental or intergovernmental organizations.

Article 9 (4)

To the same end, and in accordance with applicable international instruments and

¹²⁶ UN Special Rapporteur on the Situation of Human Rights Defenders, *supra* note 113, p. 48.

procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

UN Human Rights Council Resolution 12/2 “calls upon States to ensure adequate protection from intimidation or reprisals for individuals and members of groups who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights, and reaffirms the duty of all States to end impunity for such actions by bringing the perpetrators, including accomplices, to justice in accordance with international standards and by providing an effective remedy for their victims.”¹²⁷

In a 2019 report by the UN Secretary-General and the UN High Commissioner for Human Rights, the Philippines was cited for acts that amount to intimidation and reprisal against HRDs for their engagement with the UN. Among such acts was the inclusion of over 600 individuals labelled as *de facto* terrorists in a case filed by the Department of Justice seeking to proscribe the CPP-NPA as a terrorist group. Included therein were recognized HRDs, indigenous peoples’ representatives, and representatives of

¹²⁷ UN Human Rights Council, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, U.N. Doc. No. A/HRC/RES/12/2 (12 October 2009) available at https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_12_2.pdf (last accessed 1 May 2020).

community-based organizations, a number of which had been long-standing partners of the UN.¹²⁸ Robie Halip, Global Coordinator for the Indigenous Navigator of Tebtebba, gave an account of the experience of HRDs advocating indigenous peoples' rights on this issue as follows:

On February 21 in a case filed by the Department of Justice before the Regional Trial Court, our colleagues in Tebtebba, indigenous peoples human rights defenders were included in the list [namely]:

- Victoria Tauli-Corpuz, currently serving as the United Nations Special Rapporteur on the Rights of Indigenous Peoples and former Chairperson and member of the UN Permanent Forum on Indigenous Issues

- Joan Carling, Co-Convenor of the Indigenous Peoples Major Group on Sustainable Development and former member of the UN Permanent Forum on Indigenous Issues

¹²⁸ UN General Assembly, *Report of the Secretary-General and the United Nations High Commissioner for Human Rights*, Annex II, paras. 81-84, U.N. Doc. No. A/HRC/42/30 (2 August 2019) available at https://www.ohchr.org/Documents/Issues/Reprisals/A_HRC_42_30.pdf (last accessed 1 May 2020).

- Jose Molintas, a human rights lawyer and a former member of the Expert Mechanism on the Rights of Indigenous Peoples
- Windel Bolinget of the Cordillera Peoples Alliance
- Beverly Longid of the Indigenous Peoples Movement for Self-Determination and Liberation

These indigenous leaders have been advocating for the promotion, protection and respect of indigenous peoples rights at the local, national, and international levels. Their names were eventually delisted in the case but the harassment and vilification against them and their organizations are persisting and is putting their lives and security in peril.

In the current campaign being conducted by the NTF-ELCAC around the country, a PowerPoint presentation entitled "*The CPP Availing the UN Systems and International Solidarity Networks for the Advancement of the National Democratic Revolution vis-a-vis IP/ICCs struggle in Mindanao*" shows how the CPP purportedly infiltrated local indigenous people's organizations all the way to the United Nations to supposedly advance its terroristic activities.

The name and photo of Victoria Tauli-Corpuz is also in one of the slides included in the presentation. In the latter portion of this slide presentation is a slide entitled: “Other CPP Personalities who Infiltrated the UN System and Will Support to Implement the Plan” which allegedly shows the names and photographs of prominent Cordilleran Indigenous Peoples namely: Joan Carling, Beverly Longid and Wendel Bolinget. Even after [the dismissal of] their case, theirs names are still being vilified and being put in PowerPoint presentations in a number of committees and meeting[s] of government in relation to the work of NTF-ELCAC.

Further to this, the document of the government on the “*17 Atrocities of the CTG’s Against ICCs/IPs in Mindanao*” states that the 16th atrocity of the CPP-NPA is, “For using the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) in ruining the image of the Philippine Government in the eyes of the world through orchestrating International Solidarity Works and projecting lies contrary to the real situation and issues of the country.” This is the line being broadcasted by the “indigenous peoples” delegation to the United States x x x brought by a representative of the Presidential

Communications Operations Office, acting as part of the NTF-ELCAC, to conduct a campaign they referred to as “Breaking the Silence: Telling the Truth Caravan”. They organized town hall meetings and press conferences across the United States, supposedly to expose the atrocities of the CPP-NPA. The prepared statements read by one of the indigenous representatives in the caravan stated that: “Another track is their exploitation of the United Nation system/ former activist from the indigenous peoples in the Cordillera region and officers of the Cordillera Peoples Alliance and the Tebtebba project themselves as the champion of Indigenous Peoples Rights and IPRA. They were able to present themselves and become part of the UN system becoming first as member of expert mechanisms, non-state representatives in the UN Permanent Forum for Indigenous issues and now UN Rapporteur for Indigenous Peoples - and arbitrarily issues statements against government efforts to address Muslim extremism and Indigenous Peoples radicalization.” This was taken from one of the meetings in the US.

The same indigenous delegation is set to attend the Human Rights Council Meeting in Geneva... and will also be visiting UN offices in Rome.

These ongoing efforts of the government using their own “indigenous leaders” to vilify and discredit the work of indigenous HRDs in the Philippines, who have a long track record in building and strengthening indigenous peoples movement in the country, and in regional and global levels is unacceptable and demonstrates the insincerity of the government in protecting the human rights of indigenous peoples. This serves to cover up the continuing impunity and attacks on legitimate organizations, leaders and movements of indigenous peoples across the country who are genuinely working for the recognition and protection of human rights, for access to justice and for self-determined development. The political killings and disappearances of indigenous leaders and human rights advocates has not been redressed which should be the priority of the government, rather than sending this group of so-called indigenous peoples who are simply serving the narrow interests of the government.

Tebtebba Foundation, an organization founded by Ms. Corpuz, has not been spared from the red-tagging. Partners of Tebtebba in the Cordillera and other parts of the country are affected by this red-tagging of Tebtebba in that the implementation of their activities are

hampered and the security of the leaders of the indigenous leaders are threatened.

We believe that all these actions are aimed to suppress the voices of indigenous peoples in airing out their grievances in various fora including the UN. Where access to remedy is wanting at the country level, regional human rights mechanisms and UN human rights mechanisms have provided a space for redress for many indigenous peoples. The collective engagement of indigenous peoples at the global level with various UN mechanisms, procedures, and agencies have brought about positive policies for indigenous peoples within the UN and surfaced the realities that indigenous peoples are facing on the ground. That of continuing discrimination, expropriation of their lands and resources for projects without their Free, Prior, and Informed Consent (FPIC), massive displacements, and numerous human rights violations including killing of indigenous leaders.¹²⁹

The Commission agrees that the red-tagging and red-baiting of HRDs discredits and delegitimizes the reports and valid concerns sent by human rights organizations to international

¹²⁹ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 233-235.

bodies. Such practices amount to intimidation, discourage engagement with international bodies, and prevent HRDs from accessing assistance and remedies available to them through international human rights mechanisms.

1.6. THE RIGHT TO ACCESS FUNDING

The right to access funding is an inherent element of the right to freedom of association.¹³⁰ The ability of HRDs to carry out their activities rests on their ability to receive funds and utilize them without undue restrictions.¹³¹ Thus, Article 13 of the Declaration states that:

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Rose Trajano, Secretary-General of the Philippine Alliance of Human Rights Advocates (PAHRA), narrated that in February 2019, a top-level government delegation went to Europe and lobbied for the European Union (EU) to stop funding organizations

¹³⁰ UN General Assembly, *Report of the Special Rapporteur on the situation of human rights defenders*, at para. 91, U.N. Doc. No. A/64/226 (4 August 2009) available at <https://undocs.org/A/64/226> (last accessed 1 May 2020).

¹³¹ UN General Assembly, *supra* note 103, ¶77.

associated with the CPP.¹³² This was followed by a formal letter from National Security Adviser and Director General, Hermogenes Esperon, to the EU to immediately cease the funding of groups acting as legal fronts of the CPP-NPA, including the Rural Missionaries of the Philippines, IBON Foundation, ACT, Gabriela, and Karapatan, among others.¹³³ In response, the EU committed to verify and evaluate the documents submitted by Esperon and have an external company audit EU's grants to the concerned non-governmental organizations. The EU pledged that should the allegations be established; it would immediately take full legal action as the CPP-NPA is recognized as a terrorist group by the EU.¹³⁴ Four months after, the EU cleared the suspected legal fronts of the CPP-NPA and declared that no funding from the EU has been spent on any communist activities. EU Ambassador to the Philippines Franz Jessen clarified that "if we were, in any way or form, seen as supporting the CPP, we will be violating EU legislation on terrorists. Therefore, it should be very clear to everybody that we would never do that because we would be going against our institution, our legal framework."¹³⁵

While the organizations involved were eventually cleared, the Commission understands the damage that this incident may have caused to the reputation and even the ability of these organizations

¹³² CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 65.

¹³³ *PH formally requests EU to cease funding CPP-NPA 'fronts'*, PHILIPPINE NEWS AGENCY, 28 March 2019, available at <https://www.pna.gov.ph/articles/1065910> (last accessed 1 May 2020).

¹³⁴ Joyce Ann L. Rocamora, *External firm to audit EU funds allegedly used by CPP-NPA*, PHILIPPINE NEWS AGENCY, 30 March 2019, available at <https://www.pna.gov.ph/articles/1066058> (last accessed 1 May 2020).

¹³⁵ Joyce Ann L. Rocamora, *EU funding for communist activities zero: envoy*, PHILIPPINE NEWS AGENCY, 27 August 2019, available at <https://www.pna.gov.ph/articles/1078795> (last accessed 1 May 2020).

to access funding in the future. Jose Enrique Africa, Executive Director of IBON Foundation, for instance, explained its impact on them as follows:

In terms of our current development partners, we have a reputation with them, we explain ourselves to them, and they've known us for many many years. At least for our current development partners, meaning our funding agencies, they've expressed rock-solid support for us. And we're heartened by that because again, we do what we do, we show it, that's it. No more, no less. I think at least in terms of our development partners, or funding agencies, despite the best efforts of the government – and they're doing a lot of efforts going around the UN, the European Union, they've gone to specific country governments and their development agencies to disparage IBON. Despite all that, for now, we're not feeling anything. But again, I'm also sure they know that, sometimes they can get a gain by sort of planting that seed of doubt because these [are] very conservative governments, conservative agencies. If [we're] not feeling it now, it is quite possible down the line - whether for diplomatic reasons not to cause an uproar or anything - that actually might take an effect. I think even if I'm saying right now, we're not feeling it, we know the government

does not think that short-term. We know that they want to plant seeds of doubt and sort of sow that and reap that in the future. So that's for the development partners. But [what] we can confirm is, IBON has engaged with the government in so many venues over the decades because we're a policy group. We've engaged for example with the National Economic Development Authority and some other line agencies in terms of policy-making. We have felt that we've been shut out of them. Again, we've also heard about internal discussions within these agencies to vilify IBON and that we can confirm, they've stopped reaching out to us. Previously, IBON, for many many years now has been the civil society component of many development effectiveness mechanisms in the government... we've been shut out of that. We've been replaced with groups that have nothing to do with economic policy. So, for us that's a clear indication. Of course, within the Executive, we've been shut out of policy-making circles that we have [previously] been in for many many years. In terms of media, I'm sure they're trying very hard but so far, not. Media, at least for the moment, still reaches out to IBON for our analysis. But I think same with our development partners, I think they want to plant seeds of doubt in the future. Right now, it's not happening but we're

not precluding [that from] being a problem in the future.¹³⁶

2. OBLIGATIONS OF THE GOVERNMENT

The Declaration merely reaffirms the duty and obligation of the Government, as enshrined in the International Bill of Rights and even the 1987 Constitution, to promote and protect human rights without discrimination. Accordingly, the Government has the responsibility to implement and respect all of the provisions in the Declaration. Particularly, Articles 2, 9, 12, 14 and 15 of the Declaration indicate that the Government has the following responsibilities:

- To protect, promote and implement all human rights;
- To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
- To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms;

¹³⁶ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 288.

- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, 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;
- To promote public understanding of civil, political, economic, social and cultural rights;
- To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions; and
- To promote and facilitate the teaching of human rights at all levels of formal education and professional training.¹³⁷

¹³⁷ UN OHCHR, Fact Sheet No. 29, *supra* note 1, p.21.

The Commission acknowledges the steps the State has taken to recognize and protect the rights of HRDs and acknowledge the importance of their work. In particular, the Commission notes the passing of the Human Rights Defenders Bill by the House of Representatives during the 17th Congress, and the institutionalization of the Writs of Amparo and Habeas Data by the Supreme Court. The efforts of the AFP and PNP to protect, promote, and fulfill human rights through continuous training of its personnel on the matter of human rights and HRDs are likewise recognized. However, these efforts are insufficient.

During the Inquiry, Tess McEvoy, Program Manager and Legal Counsel of the International Service for Human Rights had this to say regarding the government's adherence to the Declaration:

The UN Declaration on Human Rights Defenders developed over 20 years ago now sets international standards for the promotion and protection of human rights defenders. Unfortunately, the testimonies presented to you in the last days shows little evidence to suggest there has been willingness by the Philippine Government to embrace international perspectives on the protection of human rights defenders.¹³⁸

¹³⁸ CHR National Inquiry on the Situation of Human Rights Defenders: Transcript, 9-12 September 2019, p. 223.

After a careful study of the testimonies and evidence given by the resource persons during the Inquiry, as well as news articles related to the various issues brought to light, the Commission, agrees with the foregoing observation.

IV. CONCLUSION

The Commission finds that the Government, beyond failing to adopt the Declaration on Human Rights Defenders, purposely engages in acts that frustrate the fulfillment of the rights provided therein.

The role of HRDs in promoting human rights and advocating for change is essential in upholding the fundamental values of a democratic society. Restricting the ability of HRDs and civic society to counter repressive practices is shortsighted and counter-productive to the stability of our democracy. All forms of violence against HRDs must immediately cease.

The Commission reminds the State of its obligation to promote and protect human rights without discrimination. This “includes both negative and positive aspects. On the one hand, States must refrain from violating human rights”¹³⁹ and actively renounce and desist from conducting activities that infringe on basic human rights. “On the other hand, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations

¹³⁹ UN Special Rapporteur on the Situation of Human Rights Defenders, *supra* note 113, p.10.

of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation (A/65/223, para. 34)."¹⁴⁰ The State must immediately investigate attacks on HRDs and hold accountable the perpetrators.

Government witnesses have cautioned this Commission from all too quickly lending the title, “human rights defender” to any organization claiming to be so. The Commission does recognize the possibility that there may be organizations seeking to uphold human rights, some of whose members might be affiliated with larger organizations whose ultimate objective is to subvert the government. This does, indeed, pose a challenge to the government. Under these circumstances, the Commission cautions the Government against the haphazard treatment of all the members of some organizations as members of the CPP/NPA or other terrorist groups. Often, the overwhelming majority of these organizations do not subscribe to violent means and are not even aware of the ideological affiliations of their other members. All they are concerned about are the rights that they seek to protect.

In dealing with so-called “subversive organizations,” which are oftentimes really just progressive ones, the Government does not have the luxury of taking shortcuts or operating outside the legal framework. This, even if its enemies operate outside the confines

¹⁴⁰ *Id.*

of the law. To do so would be to prove its enemies right – that the State is violent and the only way of achieving justice is through counter-violence.

The Commission does not condone violence, whether committed by State or non-State actors. It merely emphasizes the duty of the State to respect the civil and political rights of its citizens, especially as they fight for their economic and social well-being. There is no excuse for the State to commit extra-judicial killings, enforced disappearances, torture, or any other form of human rights violation against any of its citizens, including HRDs.

The Commission equally emphasizes the responsibility of non-State actors to respect the rule of law in their quest for human rights. The Commission notes with extreme disappointment, for example, the action of members of an NGO who illegally occupied a government housing project. While the State is obliged to exert its best efforts to provide adequate housing for all its citizens, no particular group or organization, no matter how deserving they deem their members are, can demand precedence or claim superior entitlement over these units.

V. RECOMMENDATIONS

- 1) Pursuant to the State's obligation to respect, protect and fulfill the human rights of all individuals within its territory and

subject to its jurisdiction, the Commission recommends that the Executive:

- a. Desist from red-tagging and labelling HRDs as terrorists or enemies of the State, and other similar acts, based solely on the fact that such individuals and organizations are HRDs;
- b. Publicly acknowledge the legitimacy of the work of HRDs and seek to actively protect and promote the 'right to defend rights';
- c. Adopt the principles and rights defined in the Declaration on Human Rights Defenders, the Convention for the Protection of All Persons from Enforced Disappearance, and other similar international human rights instruments as part of national policy;
- d. Combat impunity by preventing abuses against HRDs, investigating all allegations of extrajudicial killings of HRDs, and prosecuting and punishing all those guilty of such criminal acts;
- e. Prohibit violations against HRDs including vilifying, surveilling, red-tagging, threatening with reprisals, and other practices that restrict the right to defend;

- f. Order the release of all HRDs arbitrarily detained, including Senator Leila de Lima; conduct a transparent investigation on the circumstances surrounding these illegal detentions; and identify the perpetrators against whom proper charges may be filed;

- g. Effectively guarantee and protect the freedoms of expression, association, and peaceful assembly by:
 - (i) Recognizing the role that civic organizations, journalists and media outfits play in monitoring human rights and the role of HRDs;

 - (ii) Preventing the use of “overly subjective administrative regulations” including licensing and taxation to close or censure media outlets;¹⁴¹

 - (iii) Granting journalists and members of the press full access to information on the promotion of human rights and activities of HRDs;

 - (iv) Dismissing libel and slander cases against journalists and reporters filed in connection with the exercise of their duty to report human rights

¹⁴¹ U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development*, 7th Session of the General Assembly Human Rights Council , A/HRC/7/14, ¶ 21 (Feb. 28, 2020) (by Ambeyi Ligabo).

violations, and avoiding the instigation of other criminal and civil suits as a tool for censorship;

(v) Drafting a code of behavior for the security sector, including guidelines on the conduct of law enforcement officers relative to those exercising their rights to join peaceful assemblies and protests, and on the use of force and firearms to effectively protect those legitimately exercising their basic rights;

(vi) Forming an oversight and reform body tasked with investigating and holding accountable law enforcement officers who, in the course of their operations, commit human rights violations against HRDs;

h. Instituting a culture of respect for human dignity through mandatory trainings and seminars on human rights for all government officers and employees.

2) Pursuant to the State's responsibility to adopt legislative policies that ensure the fulfilment of all human rights and freedoms; and to provide an effective remedy for persons who claim to have been victims of human rights violations, the Commission recommends that the Legislative:

- a. Make violent, oppressive or discriminatory acts committed against HRDs – for the reason of being HRDs or engaging in the work of defending human rights – punishable in the criminal laws of the Philippines;
- b. Enact a national law for the Recognition and Protection of Human Rights Defenders that:
 - (i) Defines who a “human rights defender” is and limits the possibility of the arbitrary exclusion of individuals from being defined as such;
 - (ii) Enumerates the rights and freedoms of HRDs which shall include all rights recognized in the 1987 Philippine Constitution, UDHR, ICCPR, ICESCR, Declaration on Human Rights Defenders, and other similar international treaties and instruments;
 - (iii) Specifies the allowable limitations on the rights of HRDs which shall be restricted to only those prescribed by law, and are necessary and proportionate to fulfil the legitimate aims of law;
 - (iv) Enumerates the obligations of government agencies to effectively protect HRDs;

- (v) Establishes an effective mechanism for the protection of HRDs against violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of their rights or work as an HRD;
 - (vi) Provides redress to HRDs who become victims of human rights violations including the provision of free legal assistance, financial assistance, psychosocial support, access to safehouses and protection personnel, travel and relocation assistance, and other similar measures.
- c. Review and amend existing laws and policies that criminalize or restrict the legitimate work of HRDs, and/or are frequently used to harass and intimidate HRDs, including the recently enacted Republic Act No. 11479 or the Anti-Terrorism Act of 2020;
 - d. Refrain from passing laws purporting to enhance national security or combat terrorism but are inconsistent with internationally recognized human rights principles, or that provide a policy infrastructure for the malicious prosecution of HRDs;
 - e. Criminalize and provide penalties for other acts of intimidation or reprisal - whether physical, mental,

emotional, social, or financial in form – against an HRD on the grounds of his/her status, activities, or work.

3) Pursuant to the State's responsibility to guarantee equality before the law; the presumption of innocence; the right to a fair and public trial by a competent and impartial tribunal; and to be tried without undue delay, the Commission recommends that the Judiciary:

- a. Develop jurisprudence that are in accord with international human rights obligations and adopt the principles espoused in the Declaration on Human Rights Defenders as part of the law of the land. This includes invalidating provisions of the Anti-Terrorism Act of 2020 that are in violation of international human rights law, and deciding the case against Maria Ressa and Rappler researcher, Reynaldo Santos, Jr. in favor of upholding fundamental human rights and freedoms.
- b. Promulgate decisions that interpret domestic laws and resolve controversies in favor of the rights of HRDs;
- c. Implement Rules of Procedure for Human Rights Violation Cases that provide for:
 - (i) Expedited procedural processes that facilitate the immediate disposition of human rights cases;

- (ii) Immediate issuance of protective orders;
- (iii) Limited appeals and allowable motions;
- (iv) A prohibition on delayed promulgation of judgments; and
- (v) An effective mechanism for the execution of judgments.

d. Conduct continuous training and education programs for judges, court attorneys, court officers, and law practitioners about human rights and fundamental freedoms, including those specific to HRDs;

e. Set up a legal aid system for the support and protection of HRDs.

4) Recognizing its role in the promotion, protection and advancement of human rights, the Commission recommends the strengthening of civil society by:

a. Broadening the civic space that allows different human rights organizations to continuously develop and share good practices, and call to light gaps in the protection of HRDs;

- b. Removing administrative hurdles in the formation of legitimate HRD groups, including the disclosure of donors and partners as a requirement for registration or incorporation, NGO accreditations, and other similar barriers;
- c. Avoiding interference in the network building activities of HRDs including their participation in public affairs and access to foreign or domestic funding;
- d. Promoting the self-identification of HRDs and strengthening their knowledge, skills and abilities on how to protect their rights and manage their security.