

Preliminary Findings of the fact finding mission to the Philippines, March 18th, 2019

Purpose of Mission

The main purpose of the international Delegation of lawyers was to gather data on the reported targeting of lawyers, prosecutors, judges, and paralegals in the exercise of their profession, to monitor the State's compliance with the UN Basic Principles on the Role of Lawyers and to monitor international accountability in relation to those standards.

Composition

The Delegation was organized by the International Association of Democratic Lawyers (IADL), International Association of Lawyers (UIA) and Day of the Endangered Lawyer Foundation (DELF).

Participating organizations included Confederation of Lawyers in Asia and the Pacific (COLAP), National Lawyers Guild (NLG) of the US, Progress Lawyers Network (PLN) of Belgium, Italian Democratic Lawyers, Japan Lawyers International Solidarity Association (JALISA), and MINBYUN-Lawyers for a Democratic Society of Korea.

The delegation was also endorsed by Haldane Society of Socialist Lawyers of UK, Dutch Lawyers for Lawyers, European Lawyers for World Human Rights and Democracy (ELDH), European Democratic Lawyers (AED), Hellenic Union of Progressive Lawyers (HUPL) of Greece, Dutch League for Human Rights, the International Association of Peoples' Lawyers (IAPL) and Italian National Bar (INB).

Methodology

From March 14 to March 17, 2019, we held interviews and conferences in Metro Manila and Iloilo with several interviewees coming from different provinces around the country. These meetings included government and non-governmental offices, professionals, victims and families of victims. This included the Department of Justice, National Bureau of Investigation, Quezon City Prosecutors League, the Commission on Human Rights, the Integrated Bar of the Philippines, Philippine Judges Association, Manlaban and Karapatan. We attempted to meet with the Philippine National Police and the Armed Forces of the Philippines but up until the time we concluded our schedule they did not give us an audience. We also asked to meet with the Supreme Court but the Chief Justice designated the PJA president to represent the court. We closely reviewed 13 incidents of reported attacks on legal professionals.

Findings

Killings

It has been reported to us that at least 37 members of the legal profession have been killed in the exercise of their duties since the current administration took office in June 2016. The latest victim, Mindanaoan Attorney Rex Jasper Lopez was killed on the eve our mission in Tagum City. We also learned of the killing of two paralegals of human rights lawyers and have reason to believe that number is higher.

War on Drugs

As a result of President Duterte's "war on drugs," listing people on drug lists has become a common practice. From what we learned there are no criteria nor minimum evidence required to be named on these lists and names are frequently made public. This has extended to lawyers who have been labeled drug protectors because of their defense of those accused of drug crimes. The consequence of being on this list is to be discredited, exposed, and subject to a high probability of being killed.

Red Tagging

In *Zarate vs. Aquino III*, a dissenting Supreme Court Associate Justice defined red-baiting as: *"the act of labelling, branding, naming and accusing individuals and/ or organizations of being left-leaning, subversives, communists or terrorists (used as) a strategy...by State agents, particularly law enforcement agencies and the military, against those perceived to be 'threats' or 'enemies of the State'."*

We learned that lawyers in the Philippines have been red-tagged for defending human rights, defending political dissidents, and defending victims of human rights violations. The consequences of red-tagging have been harassment, surveillance, loss of employment and killing. While the practice of red-tagging existed before, it has increased dramatically under the current administration.

While members of our Delegation were in Iloilo a poster appeared nearby, while they were meeting, red tagging lawyers and human rights workers. In this case, the targeted were also tagged as belonging to a "terrorist syndicate", an accusation that is highly alarming.

Criminalization of Lawyers and Human Rights Defenders

We have also become aware of the use of fabricated criminal charges to pressure, harass, discredit and intimidate lawyers. We have learned that this is a prevalent practice and is commonly orchestrated by police and armed forces, the same actors who are charged with investigating these crimes.

Denial of Due Process and Access to Justice

All of these circumstances have created a climate of fear preventing lawyers from exercising their profession. Lawyers are fearful of defending people accused of drug crimes or to take on political cases because they fear being killed or criminalized.

State-Sanctioned Violence

Upon review of the data, there are patterns suggesting a connection between the killings and the actions of the PNP and AFP. There are recurrent elements sustaining such connection.

- Several public declarations by President Duterte targeting lawyers. Speaking about his drug war Duterte already stated in August 2016: *"even their lawyers, I will include them"*.
- Before killings have taken place victims are tagged, harassed, surveilled and then killed.
- Modus Operandi
 - masked killers operating on crowded public streets
 - professional, skilled shooters
 - often use of 22 Caliber guns with silencers, one bullet per wound

- on motorbikes
- Lack of sufficient investigation
 - no inventory of the used guns
 - no documented files about the killings linked to the judiciary
 - refusal to hear and protect witnesses
 - reported harassment of witnesses by police or military
- Killings targeting lawyers handling political cases and drug cases
 - Killings often happen in militarized zones
 - Police know what lawyers are assigned on what cases and when and where they have to appear in court.

Culture of Impunity

“If they [lawyers] are obstructing justice, you shoot them” - Duterte, August 2016

We have learned that only a few identified perpetrators have been prosecuted and no masterminds have been found. Furthermore, our assessment showed that on one side there is a denial and minimization of the issue and the other side widespread tolerance of impunity among Department of Justice officials in addition to law enforcement agencies. Duterte’s declarations and almost complete impunity of offenders give police, military and effectively anyone a license to harass and kill.

Conclusions

- Severe human rights violations are being conducted against lawyers and other legal professionals
- There has been a sharp increase in these violations, particularly extrajudicial killings under the Duterte administration.
- There is no structural protection, compensation or remedy for the victims and their families.
- There is a lack of effective oversight of executive bodies and law enforcement agencies, supporting a culture of impunity.
- It is our conclusion that the killings, harassment, surveillance and criminalization of lawyers prevent them from fully and freely exercising their profession.
- The continuous attacks on the legal profession also hamper the integrity of the rule of law, hinder any opposition and democracy as a whole.
- Furthermore, these attacks prevent citizens from gaining access to justice and due process, in violation Article 2, paragraph 3 of the International Convention on Civil and Political Rights and Article 8 of the UN Declaration of Human Rights.
- The extent of such practices creates a culture of fear not only among lawyers but the whole society.

Preliminary Recommendations

In order to stop the extrajudicial killings, threats, and harassment of lawyers, prosecutors and judges we humbly make the following recommendations:

1. President Duterte and his administration should refrain from publicly attacking lawyers and instead publicly condemn all attacks against lawyers, prosecutors, and judges at all levels and in strong terms.

2. The government should put an end to the practice of red-tagging and end public disclosure of drug lists.

3. Immediately engage in protecting the safety of lawyers and legal workers in accordance with UN Basic Principles on the Role of Lawyers. Article 17. "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."

4. In compliance with Article 18 of the UN Principles, "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions." Ensure that public authorities, including prosecutors and judges, understand and accept that extrajudicial killings, harassment, and surveillance is an enormous structural problem and not a risk of being in the legal profession.

5. Immediately engage in helping and assisting the families of the victims with legal support and financial aid, for example through the funding of an independent and national organization to that end.

6. Create and fully support an independent, credible and partial body, i.e. not under the control or the influence of the government, composed of members selected exclusively from nominees from lawyer's organizations, civil society, the church and the like in a transparent way, who are known for their human rights record, independence and integrity;

7. Fully comply with UN Basic Principles on the Role of Lawyers, including ensuring that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

8. Fully implement a framework within which the pattern of extrajudicial killings can be stopped in accordance with the UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985.

9. Ensure that the judicial power is independent of the executive power and that investigation, prosecutions, and sentencing are handled within and by an independent judicial body.