

Philippines

**Human Rights Committee Consideration of the 5th Periodic Report of the Philippines**

**Submission on the list of issues by the Lawyers for Lawyers Foundation**

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## I Introduction

### *Submitting Party*

1. Lawyers for Lawyers ('**L4L**') is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, L4L has special consultative status with ECOSOC since 2013.<sup>1</sup>
2. L4L promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.<sup>2</sup> In so doing, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights ('**ICCPR**')<sup>3</sup> and the Basic Principles on the Role of Lawyers ('**Basic Principles**').<sup>4</sup>

### *Concerning*

3. In May 2019, the Philippines submitted its fifth periodic report on its implementation of the ICCPR.<sup>5</sup> At its 128<sup>th</sup> session, the Human Rights Committee ('**the Committee**') will adopt a List of Issues on the Philippines ('**State party**'). L4L welcomes the opportunity to contribute to the List of Issues on the State party in preparation for its fifth periodic review by the Committee. Our submission will focus on the situation of lawyers in the State party, particularly the obstacles to the independent exercise of their profession and grave violations committed against them.
4. The Integrated Bar of the Philippines ('**IBP**')<sup>6</sup> is the official organization for all Philippine lawyers. Membership of the IBP is mandatory. In addition to attorneys, members of the IBP also include other legal professionals, including judges and prosecutors. The IBP is a member of the International Bar Association.

### *Methodology*

5. L4L has been closely following the situation of lawyers in the State party for over 20 years. The information for this submission is collected through ongoing desk-research, interviews and engagement with and reports from Filipino lawyers and other local and international stakeholders.

<sup>1</sup> For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>

<sup>2</sup> For more information visit our website: <https://lawyersforlawyers.org/en/about-us/what-we-do/>

<sup>3</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('**ICCPR**').

<sup>4</sup> Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('**Basic Principles**').

<sup>5</sup> Fifth Period Report Submitted by the Philippines under Article 40 of the Convention, 31 May 2019, CCPR/C/PHL/5.

<sup>6</sup> For more information on the IBP visit their website: <http://www.ibp.ph/about.html>.

## II Substantive Part – Implementation of the ICCPR and related issues

### *Issues of concern and suggested questions to State party*

6. In this submission, L4L sets out its concerns with regard to the State party's failure to comply with article 14 of the ICCPR. Based on this provision, the State party is required to uphold the right to equality before courts and tribunals as well as the right to a fair trial, which encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.<sup>7</sup>
7. Adherence to the Basic Principles is considered a fundamental pre-condition for the adequate protection of the human rights and fundamental freedoms to which all persons are entitled.<sup>8</sup> In its task of promoting and ensuring the proper role of lawyers, the State party should respect and take into account the Basic Principles within the framework of its national legislation and practice.<sup>9</sup>
8. Consequently, it is the State party's duty under the ICCPR to respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or be threatened with sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
9. The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and that they are not be identified with their clients or their clients' causes. In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.<sup>10</sup> The Basic Principles affirm that lawyers, like other citizens, are entitled to freedom of expression and assembly.
10. According to our information, however, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR.
11. This submission highlights the following issues that give rise to L4L's concerns:
  - A. Interference with the independence of the legal profession
  - B. Practice of labelling of lawyers and lawyers' organizations
  - C. Surveillance of lawyers and lawyers' groups
  - D. Culture of impunity

<sup>7</sup> Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that "*lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.*" See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular article 12.

<sup>8</sup> Basic Principles, preamble, paragraph 9.

<sup>9</sup> Basic Principles, preamble, paragraph 11.

<sup>10</sup> Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to "*meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.*"<sup>10</sup> See also Principle 22 of the Basic Principles.

12. As a result, the lawyers' professional rights and privileges are violated systematically. This impairs their ability to provide effective legal representation, make lawyers increasingly wary of working on sensitive cases, and consequently severely undermine the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all person.
13. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroaches upon other rights that lawyers, like other citizens, are entitled to, including the rights to effective remedy (article 2), life (article 6), security of person (article 9), privacy and unlawful attacks on a person's honour and reputation (article 17), and freedom of expression (article 19).
14. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, L4L would like to recommend the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

#### **A. Interference with the independence of the legal profession**

##### *Extrajudicial killings of and attacks against lawyers*

15. In paragraph 14 of its Concluding observations on the fourth periodic report of the State party of 13 November 2012 ('**Concluding observations**'), the Committee expressed its concern at the continued perpetration of extrajudicially killings in the State party and stated that the Philippines "*should take necessary measures to prevent extrajudicial killings*".<sup>11</sup> As of today, however, the extrajudicial killings of lawyers continue unabated. Lawyers in the State party are also subject to (death) threats, intimidation and other acts of harassment. Although the position of lawyers has been problematic for a longer period of time,<sup>12</sup> the issues have intensified since President Duterte took office on 30 June 2016. Between 1 July 2016 and 5 September 2019, at least 44 legal professionals were extrajudicially killed, including 24 practicing lawyers.<sup>13</sup> Eight other legal professionals survived attacks on their life.<sup>14</sup>
16. Most killings and attacks of lawyers took place as a result of discharging professional duties or are believed to be otherwise work-related. They take place in the context of the State party's continued counterinsurgency program and the so called 'war on drugs' that officially began on 1 July 2016. Especially at risk are lawyers representing

<sup>11</sup> Human Rights Committee, Concluding Observations on the Fourth Periodic Report of the Philippines, adopted by the Committee at its 106<sup>th</sup> session (15 October – 2 November 2012), CCPR/C/PHL/CO/4, paragraph 14.

<sup>12</sup> In 2006 and 2008, L4L conducted fact finding missions to look into the killing and harassment of lawyers in the Philippines. The reports are available on L4L's website: <https://lawyersforlawyers.org/factfinding-missies/>. See also the petition initiated by L4L in the context of the Day of the Endangered Lawyer of 24 January 2015: <https://lawyersforlawyers.org/wp-content/uploads/Petition-Day-of-Endangered-Lawyer-2015-1.pdf>

<sup>13</sup> See for complete list L4L's website: <https://lawyersforlawyers.org/wp-content/uploads/2020/01/List-of-lawyers-who-were-killed-in-the-Philippines-since-July-2016fn.pdf>

<sup>14</sup> <https://lawyersforlawyers.org/en/joint-call-by-international-legal-community-protect-filipino-lawyers/>

people accused of terrorist or drug related crimes, or government critics, such as journalists, political opposition leaders, and human rights defenders. Lawyers providing legal representation in high-profile cases impacting established interests, such as land reform or lawyers taking part in public discussion about human rights issues, also face reprisals.<sup>15</sup> This is illustrated by the following examples:

- i. Murder of Atty. Rogelio Bato Jr.  
On 23 August 2016, Atty. Rogelio Bato Jr. was shot dead by unidentified gunmen. Bato was representing Albuera Mayor Rolando Espinosa Sr. and his son Kerwin Espinosa, who was being suspected of drug trafficking and other drugs related activities. Bato has reportedly been confirmed by the Philippine National Police ("PNP") as being on its drugs watch list.<sup>16</sup>
- ii. Murder of Atty. Benjamin Ramos  
On 6 November 2018, Benjamin Ramos was shot and killed by two unidentified men. Ramos was a prominent human rights' lawyer in Negros. He represented victims of human rights abuses on a pro bono basis, including peasants, environmentalists, activists, political prisoners, and victims of enforced disappearances and extrajudicial killings. Before his death, Ramos was representing the families of nine farmers who were killed by unidentified armed men on 18 October 2018, after joining a protest on a sugarcane plantation in Sagay City, Negros Occidental Province and he was dealing with other cases relating to poor clients whose families had reportedly been targeted by the police, soldiers, and death squads associated with the State party's 'war on drugs'. According to our information, Ramos had received numerous death threats before the deadly attack. Ramos was also a founder of the National Union of People's Lawyers ('**NUPL**') and the Secretary General of its Chapter in Negros Occidental Province.<sup>17</sup>
- iii. Murder of Atty. Anthony Trinidad  
On 23 July 2019, Anthony Trinidad was killed in an attack by unidentified motorcycle-riding men in Guihulngan City in Negros Oriental. Prior to being attacked, Trinidad had been receiving death threats in connection to the cases he was handling, some of which are that of political prisoners in the region.<sup>18</sup>

<sup>15</sup> Concerned with the sharp deterioration of the human rights situation, eleven UN human rights experts, in a 7 June 2019 press release, called on the UN Human Rights Council to establish an independent investigation into human rights violations committed in the Philippines. "*Instead of [the Government] sending a strong message that these killings and harassment are unacceptable, there is a rising rhetoric against independent voices in the country and ongoing intimidation and attacks against voices who are critical of the government, including independent media, human rights defenders, lawyers and journalists,*" the experts said. United Nations Human Rights Experts Communication, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24679&LangID=E>.

<sup>16</sup> <https://www.manilatimes.net/2016/08/25/news/regions/justice-for-girl-killed-with-lawyer/282087/282087/>.

<sup>17</sup> See also L4L's website: <https://lawyersforlawyers.org/lawyer-benjamin-ramos-shot-and-killed/>.

<sup>18</sup> See also L4L's website: <https://lawyersforlawyers.org/letter-on-murder-of-atty-trinidad/>.

## B. The practice of labelling

17. Another reason for L4L's concerns is the so-called labelling or 'red-tagging' of lawyers and lawyers' groups in connection with the clients they are representing and/or the type of cases they are working on. Red-tagging has been described in the State party as the act of publicly branding individuals, organizations or institutions as 'communists', 'leftists', or 'terrorists', regardless of their actual beliefs or affiliations, and is used as a strategy against those who are critical and perceived to be 'enemies' of the State party. Especially lawyers representing persons who are accused of terrorist-, rebellion-, or drugs-related crimes, or who have been critical to the State party's policies or behavior, such as journalists, political opposition leaders, and human rights defenders, are targeted. In the context of the State party's 'war on drugs' and counterinsurgency programs, lawyers who are identified with their clients or their clients' cause, may appear on so-called 'drugs lists' or military 'hit lists' drawn up by local officials, members of the police or of the military, and there is no opportunity to be removed from those lists.
18. Atty. Ramos, for example, was listed in a public poster of so-called personalities of the underground armed movement by the Philippine police in April 2018 and Atty. Trinidad also had been tagged as a supporter of communists rebels on Negros Island. Months before he was killed, Atty. Trinidad's name was said to be included in a 'hit list' of an alleged anti-communist group called Kawasa Guilhulnganon Batok Komunista (KAGUBAK). The practice of labelling is also illustrated by the following examples:
- i. Labelling of Atty. Catherine Dannug-Salucon  
Catherine Dannug-Salucon is one of the founding members of NUPL and has been taking on high profile cases, including the defense of several political detainees as well as cases related to various mass and people's organizations. Dannug-Salucon is reportedly incorporated in the Filipino military's Watch List of so-called 'Communist Terrorist' supporters providing legal services. The Regional Intelligence Division of the Philippine National Police (PNP) has allegedly ordered a background investigation into whether Dannug-Salucon is a 'Red Lawyer'. These issues are particularly concerning in view of the killing of Dannug-Salucon's paralegal William Bugati in 2014.<sup>19</sup>
  - ii. Labelling of Atty. Jobert Pahilga  
Atty. Jobert Pahilga who is based both in Antique province and Metro Manila was threatened by members of the police not to take up human rights and drugs cases. In October 2018, he was warned to be "extra careful". Recently, his name was added in a list prepared by the State-party's Task Force to End the Local Communist Armed Conflict<sup>20</sup> (TF-ELCAC)- Palawan of alleged CPP-NPA-NDF personalities operating in the province. Pahilga represented two organizations - Plorm and Anakpawis - of workers and peasants who

<sup>19</sup> See also L4L's website: <https://lawyersforlawyers.org/wp-content/uploads/Open-letter-President-Aquino-23-4-14.pdf>

<sup>20</sup> Created in December 2018 under Executive Order 70 <https://www.officialgazette.gov.ph/2018/12/04/executive-order-no-70-s-2018/>

are standing up for their land and labour rights. These organizations were also tagged as communist fronts by TF-ELCAC Palawan.<sup>21</sup>

iii. Association Matrix

In April 2019, newspapers received a document titled ‘Association Matrix Between BIKOY and Ellen Tordesillas’. It shows links between alleged communist rebels suspected to purport a plot to oust President Duterte. Among the accused were several lawyers from the NUPL.<sup>22</sup>

19. The practice of labelling – combined with the culture of impunity – has been identified by national and international fact-finding commissions<sup>23</sup> as one of the main root causes of extrajudicial killings in the State party in the past.

**C. Surveillance of lawyers and lawyers groups**

20. In paragraph 15 of its Concluding observations, the Committee expressed its concern at reports that human rights defenders and political dissidents are often subjected to surveillance by law enforcement personnel. The Committee also noted that the State party *‘should take appropriate measures to protect the rights of human rights defenders and political dissidents and ensure that any surveillance programmes for purposes of State security are compatible with article 17 of the Covenant.’*<sup>24</sup>

21. According to our information, lawyers in the State party are still subject to surveillance. In addition, the NUPL reported that its national office ‘has been put on increased surveillance by armed men in civilian clothes’.<sup>25</sup>

**D. Culture of Impunity**

22. In paragraph 14 of its Concluding observations, the Committee stated that the State party should ensure that alleged perpetrators of extrajudicial killings *‘are effectively investigated, prosecuted and, if convicted, punished with appropriate sanctions, and that the victims’ families are adequately compensated’*.

23. There is no indication, however, that the State party has conducted prompt, full and thorough investigations in response to the attacks and killings of lawyers described above. There are only a few perpetrators identified and prosecuted. To date, none of these perpetrators has been convicted.<sup>26</sup>

24. The effects of impunity are amplified by the expressions of support of violence against lawyers outed by senior officials of the State party. Michelle Bachelet, the United Nations High Commissioner for Human Rights noted that this *‘creates a very real risk*

<sup>21</sup> SUBMISSION TO THE OHCHR FOR HRC REPORT 41/2 BY THE NATIONAL UNION OF PEOPLES’ LAWYERS (PHILIPPINES) 9 DECEMBER 2019

<sup>22</sup> See also L4L’s website: <https://lawyersforlawyers.org/filipino-lawyers-at-risk-by-state-tagging/>.

<sup>23</sup> See footnote 12 above

<sup>24</sup> Idem, paragraph 15.

<sup>25</sup> Submission to the OHCHR for the HRC Report 41/2 by the National Union of Peoples’ Lawyers (Philippines) – 9 December 2019.

<sup>26</sup> United Nations Human Rights Experts Communication, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24679&LangID=E>.

of violence against them.”<sup>27</sup> The following examples sketch the statements of endorsement of violence by government officials:

i. Comments President Duterte

Reportedly, President Duterte actively engaged in the act of ‘red-labelling’ as well as identifying lawyers with their clients and their clients’ clauses.<sup>28</sup> For example, in August 2017, Duterte told the national police not to be discouraged by human rights lawyers and stated that “[i]f they [lawyers] are obstructing justice, you shoot them.”<sup>29</sup>

ii. Comments former police chief of Albuera

After the brutal killing of lawyer Jonah John Ungab – who represented alleged drug offenders – the former police chief of Albuera stated that the Government should “only express condemnation for the killing of lawyers who have done good.”<sup>30</sup>

### III Conclusions and recommended questions

25. According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR. As a result, the lawyers’ professional rights and privileges are violated systematically. This impairs their ability to provide effective legal representation, make lawyers increasingly wary of working on sensitive cases, and consequently severely undermine the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all person.

26. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroaches upon other rights that lawyers, like other citizens, are entitled to, including the rights to effective remedy (article 2), life (article 6), security of person (article 9), privacy and unlawful attacks on a person’s honour and reputation (article 17), and freedom of expression (article 19).

27. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, L4L would like to recommend the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party’s implementation of the ICCPR.

<sup>27</sup> Openings statement by UN High Commissioner for Human Rights Michelle Bachelet, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24724&LangID=E>.

<sup>28</sup> See e.g.: <https://newsinfo.inquirer.net/852028/duterte-warns-drug-lords-lawyers>.

<sup>29</sup> See website NY Times: <https://www.nytimes.com/2018/11/07/world/asia/philippine-lawyer-duterte.html>.

<sup>30</sup> See NY Bar Association, ‘Letter to President Duterte Concerning Attacks on Legal Professionals’, available at: <https://www.nybar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-president-duterte-concerning-attacks-on-legal-professionals>.

**Recommended Questions to State Party**

**Please provide information whether and if so how A.O. No. 35 of 22 October 2012 creating the Inter-Agency Committee (IAC) on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons has led to the prevention, investigation, or prosecution of extra-judicial killings of lawyers, including Attys Bato, Ramos and Trinidad.**

**Please provide information on what (other) measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently and are protected against killings, attacks, threats and identification with their clients or their clients causes.**

**Please respond to persistent reports of harassment, intimidation and pressure on lawyers representing clients in politically sensitive cases, including drugs and land reform cases, or cases related to national security and counterinsurgency, including (death) threats and labelling and red-tagging, such as in the case of lawyers Ramos, Trinidad, Dannug-Salucon and Pahilga.**

**Please provide information on the progress on the investigation into the extrajudicial killings of and attacks against lawyers, including concrete information on its outcome, namely, the prosecutions initiated and the ensuing convictions, the sentences imposed on the perpetrators and the compensation awarded to the victims or their families.**