

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Wednesday, February 15, 2017

Office of the President of the Republic of the Philippines
Malacañang Complex
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San Miguel, Manila
1005,
The Philippines

Email: mro@malacanang.gov.ph

Dear President Duterte,

Re: Duty to Investigate murder of VERONICO “Nico” L. DELAMENTE, Mamanwa tribal leader, an active member of the Kahugpungan sa Lumadnong mga Organisasyon (KASALO) - Caraga

Lawyers’ Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote human rights and the rule of law internationally through advocacy, legal research and education. LRWC also campaigns for lawyers and other human rights defenders in danger because of their advocacy. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC joins the Canada-Philippines Solidarity for Human Rights (CPSHR), the Filipino human rights defenders, environmental advocates, people’s organizations, and international rights groups in strongly denouncing the killing of Veronico L. Delamente, Mamanwa tribal leader, an active member of the Kahugpungan sa Lumadnong mga Organisasyon (KASALO)-Caraga.

Delamente was shot by unidentified motorcycle riding assailants last January 20, 2017. Delamente was known for his leadership in the struggle for the rights of the Mamanwa tribe against large scale nickel mining companies operating within their ancestral lands. We send our deepest condolences to the Delamente family as well as the communities and people he worked with.

Background

According to our data, Delamente was the 10th victim of extrajudicial killings in Mindanao since July 2016, following the killing of environmental anti-mining activist Joselito Pasaporte in Compostela Valley Province on October 13, 2016 and the abduction of Davis Mogul and Macky

Mogul, both environmental activists in Palimbang, Sultan Kudarat in early December 2016.

The killing occurs as the third round of peace talks between the Government of the Philippines and the National Democratic Front of the Philippines (NDFP) progresses in Rome, Italy. We call on the Government of the Republic of the Philippines to strictly abide by previously signed agreements in the peace talks especially now that the supplemental guidelines to the Joint Monitoring Committee of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) was signed on the third day of their third round of talks with the NDFP. This agreement should address the long list of human rights violations already being suffered by Lumad and peasants across Mindanao.

CPSHR has demanded justice for Veronico “Nico” Delamante and other victims of extrajudicial killings.

LRWC notes that none perpetrator(s) of the above noted extra-judicial killings have been identified through prosecutions.

Philippines’ International Law Obligations¹

The Philippines must comply with its obligations under international human rights law. The murder of Veronico L. Delamante, triggered the Philippines’ international legal obligations to ensure timely, independent and effective investigations, followed by prosecutions and trials of the suspects identified and punishment of perpetrators in accordance with law. As a member of the United Nations (UN), the Philippines has agreed to respect the rights to life guaranteed by the Universal Declaration of Human Rights (UDHR). As a party to the International Covenant on Civil and Political Rights (ICCPR) the Philippines has accepted the twin legal obligations to protect and ensure the right to life of all persons within its territory and to take effective measures to prevent, punish and remedy violations.

The ICCPR imposes on the Philippines and other State Parties, the duty to investigate violations of the right to life as an integral part of the duty to protect the right to life guaranteed by Article 6.1. The duty to conduct effective investigations that result in the identification and punishment of those responsible for violations is a necessary part of the State duty to protect the right to life. Failure to uphold this duty might require a State to appoint an independent inquiry of investigation.

These twin duties of protection and effective remedy are affirmed by the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)², the Basic Principles on the Role of Lawyers (Basic Principles)³, and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary

¹ The references in this section are taken from various LRWC publications on the Duty to Investigate that can be accessed here <http://www.lrwc.org/library/know-your-rights-index/duty-to-investigate-and-remedy/>

²Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted at the 85th plenary meeting 9 December 1998 and adopted by the U.N. General Assembly 8 March 1999 A/RES/53/144. Article 9.5 specifically requires States to “conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred

³Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana
Duty to Investigate murder of VERONICO “Nico” L. DELAMENTE

Executions.⁴

The UN Human Rights Committee (HR Committee) has affirmed that the ICCPR Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State and/or private actors. Failure to take such measures can constitute violations by the State itself of the ICCPR. The HR Committee stated in General Comment 31:

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁵

The HR Committee has noted that impunity may be “an important contributing element in the recurrence of . . . violations,” and has emphasized that the State obligation to provide an effective remedy pursuant to Article 2(3) of the ICCPR may in appropriate cases require guarantees of non-repetition and changes in relevant laws and practices.⁶ The UN has developed detailed standards for investigation of unlawful killing, including the:

- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (UN Investigation Principles);⁷ and
- UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).⁸

The UN Investigation Principles, adopted by UN ECOSOC and welcomed by the UN General Assembly in 1989, reflect a global consensus on the standards for investigations that include:

- thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions;
- an independent commission of inquiry for those cases in which the established investigative procedures are ineffective because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons;
- protection from violence or intimidation for complainants, witnesses, families, and investigators;

⁴27 August to 7 September 1990. U.N. Doc. A/CONF. 144/28/Rev. 1 at 188. (1990).

⁵ HR Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8

⁶ Ibid, paras 16, 18, available at: <http://www.refworld.org/docid/478b26ae2.html>.

⁷ Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 15 December 1989, see

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>.

⁸ UN Department of Political Affairs, UN Manual on the Effective Prevention and Investigation of ExtraLegal, Arbitrary and Summary Executions, U.N. DOC. E/ST/CSDHA/.12 (1991) (Minnesota Protocol). A revision of the Minnesota Protocol is currently underway in consultation with States, academia, civil society, and other interested parties. See UN Office of the High Commissioner for Human Rights, Revision of the Minnesota Protocol at:<http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>. See the draft revision at:

<http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

- removal from power or control over complainants, witnesses, families or investigators of anyone potentially implicated in extra-legal, summary or arbitrary executions;
- access by families and their legal representatives to any hearing and to all relevant information, and the right to present other evidence;
- a detailed written report on the methods and findings of the investigation, made public within a reasonable time;
- government action to bring to justice persons identified by the investigation as having taken part in extra-legal, arbitrary and summary executions, through prosecutions and trials;
- responsibility of superiors, officers or other public officials for acts committed under their authority if they had a reasonable opportunity to prevent such acts; and
- fair and effective compensation for the families and dependents of victims of extra-legal, arbitrary and summary executions within a reasonable period of time

Minnesota Protocol

The Minnesota Protocol confirms that the purpose of an inquiry or investigation, as set out Subsection III (B), paragraph 9 is to discover the truth about the events leading to the suspicious death of a victim. To fulfil that purpose, those conducting the inquiry shall, at a minimum, seek to:

- (a) identify the victim;
- (b) recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- (c) identify possible witnesses and obtain statements from them concerning the death;
- (d) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- (e) distinguish between natural death, accidental death, suicide and homicide;
- (f) identify and apprehend the person(s) involved in the death;
- (g) bring the suspected perpetrator(s) before a competent court established by law

Independent Commissions of Inquiry

The UN Investigation Principles require an independent commission of inquiry in cases where established investigative procedures are ineffective because of lack of expertise or impartiality, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons. The Minnesota Protocol provides additional guidance, “[i]n cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established. A commission of inquiry may also be necessary where the expertise of the investigators is called into question.”⁹

Conclusion

The Philippines is obliged by its domestic and international law obligations to ensure investigation of the unlawful killing of Veronico L. Delamente, that results in determinations of the causes and particulars of his death, identification of the suspected perpetrators and the prosecution, trial and imposition of the punishment(s) required by law on those convicted of involvement. The investigations to date of the death of Veronico L. Delamente, have been plagued by lack of public confidence and by demonstrations of incompetence. As a result of this

⁹ Ibid, Section D. Commissions of Inquiry

inadequate investigation, the Philippines has a duty to appoint an independent commission of inquiry that complies with the international standards established by the UN Investigation Principles. Where the State is unable to appoint or ensure the operation of a Commission of Inquiry that is domestically and internationally trusted, the duty to investigate is neither abrogated nor abridged. In such a situation, it may be necessary for the Philippines to seek the assistance of the UN. Through investigations, prosecutions, trials and punishment, the Government of Philippines must ensure that justice is served for Veronico L. Delamente.

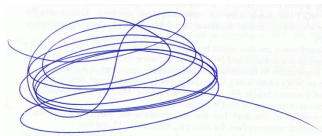
Recommendations

LWRC calls on the Government of Philippines to ensure:

1. Thorough, competent, impartial and effective investigations of the murder of Veronico L. Delamente;
2. Prosecutions and trials of the suspected perpetrators identified by the investigations;
3. Creation, in cooperation with the Human Rights Commission of Philippines, Bar Associations and civil society, of a 'First Response Service' resourced to provide immediate protection to lawyers and other human rights defenders who may be in danger;
4. Compliance with all relevant provisions of the UDHR, ICCPR, Declaration on Human Rights Defenders, Basic Principles, UN Investigation Principles and the Minnesota Protocol.

Please advise LRWC of the actions that the Government of Philippines is taking to remedy the murder of Veronico L. Delamente. LRWC awaits your response.

Sincerely,



Gail Davidson, Executive Director, LRWC

and



Benjamin Levine, Case Monitor for Philippines LRWC

Transmitted via electronic mail to the following:

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