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Visite aux Philippines

Rapport de la Rapporteuse spéciale sur la promotion et la protection du droit à la liberté d'opinion et d'expression, Irene Khan*, **

Résumé

La Rapporteuse spéciale sur la promotion et la protection du droit à la liberté d'opinion et d'expression, Irene Khan, s'est rendue aux Philippines du 23 janvier au 2 février 2024, dans le cadre d'une visite officielle. Dans le présent rapport, elle met en lumière le dynamisme de la société civile et la diversité du paysage médiatique philippin, ainsi que les menaces et difficultés majeures connexes. Elle est consciente des mesures que le Gouvernement a prises depuis son entrée en fonction en juin 2022, mais elle les juge insuffisantes et engage donc le Gouvernement à réformer sur le fond les lois, les politiques publiques et les institutions nationales afin de renforcer la liberté d'expression, de mettre fin aux actes d'intimidation et de harcèlement, aux menaces et aux agressions dont font l'objet les journalistes, les défenseurs des droits de l'homme et les acteurs de la société civile, de libérer d'urgence les personnes en détention prolongée et de veiller à ce que les auteurs des actes susmentionnés soient traduits en justice dans les plus brefs délais.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.

** La version originale du présent rapport a été soumise aux services de conférence après la date prévue pour que l'information la plus récente puisse y figurer.

Annexe

Rapport de la Rapporteuse spéciale sur la promotion et la protection du droit à la liberté d'opinion et d'expression, Irene Khan, sur sa visite aux Philippines

I. Introduction

1. The Special Rapporteur on the promotion and protection of freedom of opinion and expression, Irene Khan, visited the Philippines from 23 January to 2 February 2024. The visit was carried out at the invitation of the Government, pursuant to Human Rights Council resolution 52/9. The main purpose of the visit was to assess the state of freedom of opinion and expression in the Philippines in the light of international human rights norms and standards.

2. During her visit, the Special Rapporteur met with the Executive Secretary and other senior officials in the Office of the President, the Presidential Task Force on Media Security, the Presidential Human Rights Committee and representatives of the Presidential Communications Office, the Department of Justice, the Department of the Interior and Local Government, the Department of Foreign Affairs, the National Task Force to End Local Communist Armed Conflict and the Anti-Terrorism Council. She was received by the Chief Justice, the Senior Associate Justice and four associate justices representing the committees of the Supreme Court. She also met with members of the House of Representatives, including the Chair of the Justice Committee and members of the House Human Rights Committee, with the Chair and members of the Commission on Human Rights of the Philippines, with representatives of the National Privacy Commission and the National Commission on Indigenous Peoples and with officials of the Philippine Information Agency, the Philippine News Agency and the Philippine Broadcasting Service.

3. The Special Rapporteur held meetings in Metro Manila, Baguio, Cebu City and Tacloban City. She met with local government officials, including members of local councils, prosecutors and judges in Baguio and the Governor and senior police officials in Cebu City. She also had the honour of giving a lecture at the Ateneo de Manila University School of Law.

4. The Special Rapporteur is grateful to the Government for inviting her to undertake the visit and for facilitating the meetings with government representatives. She extends her appreciation to all the officials with whom she met for their detailed presentations and insights and for responding to her requests for information.

5. The Special Rapporteur also met with representatives of a wide range of civil society organizations, human rights defenders, journalists and media workers, members of Indigenous communities and academics, youth groups, artists and lawyers. She received over 175 written submissions from civil society actors ahead of her visit and during her meetings. She would like to thank them warmly for sharing candidly their hopes, fears, concerns and challenges regarding freedom of opinion and expression in the Philippines.

6. In response to a request from the Special Rapporteur, the authorities permitted her to visit three pretrial detainees in Tacloban City Jail: journalist Frenchie Mae Cumpio and human rights advocates Mariel Domequil and Alexander Philip Abinguna. The Special Rapporteur was the first international visitor allowed to meet with the detainees since their arrest in February 2020. She is deeply disappointed that the three individuals, who were in their early twenties when they were arrested, have languished in detention for more than four years. Their trials are ongoing and the Government has failed to respond to the communication sent by the Special Rapporteur on 27 September 2024.[1]

[1] See communication PHL 5/2024. All communications cited in the present report are available from available from https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

7. Along with the submissions mentioned above, the Special Rapporteur received 347 individual complaints alleging unlawful killings, attacks, threats and other serious violations of human rights. After cross-checking and carefully analysing the cases, she wrote to the Government regarding 27 that were emblematic.[2] While acknowledging with thanks the Government's response, the Special Rapporteur reiterates the concerns stated in her letter, noting that the majority of them remain unaddressed.

8. During her visit, the Special Rapporteur also met with members of the international community, including the Resident Coordinator, the United Nations country team and staff working for the United Nations Joint Programme on Human Rights. The Special Rapporteur thanks the Resident Coordinator and his team and the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their support prior to and during the visit.

II. Background

9. The Special Rapporteur notes the efforts of the administration of the President, Ferdinand Marcos Jr., to set a new tone in its public discourse with civil society, the media and the United Nations human rights system. In contrast to the former President, Rodrigo Duterte, and his officials, who had publicly disparaged and threatened his critics, media workers and civil society actors, the current administration has adopted a more open and tolerant approach.

10. The months preceding the January 2024 visit of the Special Rapporteur were marked by several positive human rights developments in the Philippines. In September 2023, Nobel Prize laureate Maria Ressa was acquitted on several tax evasion charges that had been filed against her by the former administration. In November 2023, former Senator Leila de Lima was released on bail after nearly seven years of incarceration on drug-related charges. She was subsequently acquitted of all charges in June 2024. Her detention had previously been declared arbitrary by the Working Group on Arbitrary Detention.[3]

11. In early 2024, the President launched "Bagong Pilipinas", the administration's new brand of governance and leadership, announcing his ambition to advance deep and fundamental transformations in all sectors of society and Government and to foster the State's commitment towards the attainment of comprehensive policy reforms and full economic recovery.[4] More specifically, the President detailed his approach to freedom of expression in a speech made on the occasion of the fiftieth anniversary of the Association of Broadcasters of the Philippines in April 2023, urging all parties to work hard to improve the country's low ranking in the World Press Freedom Index.[5]

12. At the international level, the administration of the current President has shown a greater willingness to engage with the international human rights system than its predecessors. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression was the third special procedure mandate holder to visit the country in the first 18 months of the administration, reflecting a notable shift from the past, with only 10 mandate holders visiting the Philippines over the previous 22 years. Furthermore, in his first address to the General Assembly, the President commended the United Nations Joint Programme on Human Rights as an example of a constructive approach that put people, not politics, at the centre and as providing a model for revitalizing the structures that facilitated solidarity between the United Nations and a sovereign duty bearer.[6] More recently, in March

[2] Ibid.

[3] See A/HRC/WGAD/2018/61.

[4] Official Gazette of the Philippines, Memorandum Circular No. 24, available at https://www.officialgazette.gov.ph/downloads/2023/07jul/20230703-MC-24-FRM.pdf.

[5] Philippine Information Agency, "Speech by President Ferdinand R. Marcos Jr. during the 50th Anniversary of the KBP", 28 April 2023.

[6] Presidential Communications Office, "Statement by President Ferdinand Romualdez Marcos Jr. at the High-Level General Debate of the 77th Session of the United Nations General Assembly", 20 September 2022, available at https://pco.gov.ph/presidential-speech/statement-by-president-ferdinand-romualdez-marcos-jr-at-the-high-level-general-debate-of-the-77th-session-of-the-united-nations-general-assembly.

2025, the arrest and transfer of Mr. Duterte to the International Criminal Court in The Hague marked a bold step towards addressing impunity for past human rights violations in the Philippines.

13. While those actions are positive, they are not enough to make a meaningful difference to the state of freedom of expression in the Philippines. The legal framework governing freedom of expression in the Philippines remains inconsistent with international standards. Critical voices in civil society are still being subjected to threats, vilification and harassment. Arbitrary detention, including prolonged pretrial detention, and the prosecution of journalists, human rights defenders and social activists for legitimate political expression continue in the name of countering terrorism. The Special Rapporteur believes that the Government must embark on more fundamental and sustained reforms to address the deep-rooted human rights problems in the country, many of which are related to the right to freedom of expression. It is only by doing so that it can decisively turn the page on the past and reaffirm the image of the Philippines as a forward-looking, vibrant democracy.

14. The present report contains the key findings of the Special Rapporteur, a discussion of serious concerns and recommendations for the Government's consideration.

III. Legal framework

15. The Philippines ratified the International Covenant on Civil and Political Rights on 23 October 1986. The Covenant protects the rights to freedom of opinion and expression (art. 19), freedom of peaceful assembly (art. 21), freedom of association (art. 22) and public and political participation (art. 25), without any discrimination (arts. 2 and 26).

16. In the light of the history of enforced disappearances, unlawful killings and persistent impunity in the Philippines, the Special Rapporteur encourages the Government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to open discussions for re-accession to the Rome Statute of the International Criminal Court. Both instruments would significantly enhance human rights protection and support the enjoyment of the right to freedom of expression.

17. Article III (Bill of Rights) of the national Constitution guarantees the right to freedom of expression (sect. 4), the right to privacy (sect. 3) and the right to information (sect. 7). Some national laws, however, including several articles of the Penal Code and the Cybercrime Prevention Act, undermine the constitutional protection of freedom of expression.

18. At the time of her visit, the Special Rapporteur was informed that hundreds of bills had been filed in the parliament, many of them covering such human rights issues as anti-discrimination, religious freedom and the protection of human rights defenders, which are relevant to the right to freedom of expression.

19. An important bill is the Human Rights Defenders Protection Act (House Bill No. 77). In line with 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 (Declaration on Human Rights Defenders), the Bill guarantees that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels through peaceful means. The Special Rapporteur believes that the adoption of the bill would affirm the valuable role of human rights defenders, as defined in the Declaration on Human Rights Defenders, and provide them with legal safeguards, enabling them to conduct their human rights work free from intimidation, pressure, violence, reprisals and unreasonable restrictions from State or non-State actors. Adopting House Bill No. 77 would also place the Philippines in a leading position at the regional level, as only one country in Asia – Mongolia – has thus far adopted such a law.

20. In November 2022, the House of Representatives approved the Media Workers' Welfare Act (House Bill No. 454), which provides enhanced protection, security and benefits for those working in the media industry. The Special Rapporteur welcomes the initiative to protect media freedom. She encourages the authorities to conduct broader consultations with

the media sector to assess the likely impact of the bill, particularly on smaller outlets, before its final adoption by the Senate. In the same vein, she encourages the adoption of the Journalist Protection Act (Senate Bill No. 2335).

IV. Main findings

A. Vilification and harassment of and threats to civil society actors

21. A serious threat to civil society in the Philippines is the practice of vilification and harassment, commonly known as "red-tagging", "red-baiting" or "terror-tagging", which consists in the labelling, naming or branding of groups or individuals as supporters, recruiters or members of the New People's Army of the Communist Party of the Philippines. The practice goes back years and has targeted a wide range of human rights defenders, humanitarian workers, journalists, community media workers, students, artists, writers, trade unionists, teachers, young people, priests and nuns, health workers and Indigenous leaders, especially those who are critical of government policies, advocate for human rights accountability and social justice or hold politically progressive views.

22. While the practice was particularly rampant, both online and offline, during the administration of Mr. Duterte, it has continued under the current administration at a lower level. Although the Government has sought to reassure the Special Rapporteur that it does not undertake, encourage or condone such practices, there is considerable evidence that red-tagging is being used by the security forces as part of their strategy to counter terrorism. The National Task Force to End Local Communist Armed Conflict, created in December 2018 by the previous administration, appears to be a major instigator of the practice. The military, State security officials, senior government officials and some media outlets have also engaged in red-tagging.

23. It is clear that such vilification is aimed not only at those who are allegedly associated with proscribed or listed organizations, but also at legitimate activists and activities, sowing distrust between the State, communities and civil society. Several international entities, including OHCHR[7] and the High-Level Tripartite Mission of the International Labour Organization (ILO),[8] have expressed concern that the practice hampers legitimate human rights activities, while the Commission on Human Rights has denounced the attempts to trivialize and justify the dangers of red-tagging by the authorities.[9]

24. During her visit, the Special Rapporteur met with dozens of individuals who claimed to have been targets of red-tagging. On the basis of complaints received during the country visit, the Special Rapporteur has communicated with the Government of the Philippines on allegations of vilification, harassment, arbitrary detention, enforced disappearance and the killing of 27 individuals, at least 8 of whom had been publicly subjected to red-tagging before they were murdered.[10]

25. The cases of Ms. Cumpio, Ms. Domequil and Mr. Abinguna, whom the Special Rapporteur visited in the Tacloban detention centre, illustrate the human toll of red-tagging on those who are targeted and the flawed process that leaves them with little recourse. The three young adults, who were involved in community journalism, environmental reporting and humanitarian work, were red-tagged for their civic activism before being arrested and detained for their alleged affiliation with the Communist Party of the Philippines and/or the New People's Army. Their arrests occurred under the previous administration, during which, according to civil society figures, at least 427 activists were red-tagged before being killed.[11]

[7] See A/HRC/51/58.

[8] See ILO, "Report of the High-Level Tripartite Mission, Philippines 23–26 January 2023: conclusions and recommendations".

[9] See Commission on Human Rights of the Philippines, "Statement of the Commission on Human Rights on the attempt to trivialize and justify the dangers of red-tagging", 11 April 2022.

[10] See communication PHL 5/2024.

[11] See Kurt Dela Peña, "Badoy says red-tagging not dangerous but 427 slain activists show otherwise", Inquirer.net, 24 March 2022.

A year after their arrests, they faced new, non-bailable charges related to the possession of firearms, explosives and money, which had allegedly been found on their beds a year before in a search with reportedly no independent witnesses. Now in their mid-twenties, the three individuals have spent almost five years in detention while their cases move at a glacial pace through the courts.

26. The Tacloban cases are emblematic of a wider pattern in cases involving red-tagging, where the pace of judicial procedures is remarkably slow, extending the pretrial detention period to such an extent that it is sometimes equivalent to a conviction. Prolonged pretrial detention, the refusal to grant bail when there is no risk of flight and the extremely slow disposal of cases, especially when trumped-up charges are later dismissed by the judiciary, make a travesty of justice, equating the innocent with the guilty. The lack of any sense of urgency in resolving such cases is also evident in the failure of the Government to respond to the communication sent by the Special Rapporteur on 27 September 2024.[12]

27. As documented in many cases, red-tagging is often followed or accompanied by unlawful surveillance, criminal prosecution, including the filing of trumped-up charges, threats and even killings. Online and offline harassment and threats commonly include gender-based violence in the case of women or lesbian, gay, bisexual, transgender and intersex persons. Red-tagging isolates and antagonizes those who are targeted, putting them in a vulnerable position and possibly increasing their risk of being exploited by others. The vilification is deeply unfair, as there is no effective recourse against false accusations. Several individuals and organizations that have been targeted mentioned to the Special Rapporteur that their complaints to the Ombudsman, the Commission on Human Rights or the courts, made months or even years ago, remained unresolved.

28. More than 450 red-tagging incidents were identified in the first half of 2024 alone, 17 per cent of which targeted young people and 61 per cent of which were attributed to government actors, representing a much larger number of affected persons based on the impact that red-tagging targeting civil society organizations, unions or educational institutions has on the rights and well-being of affiliated members, staff or students.[13] Many of the victims of such vilification are young, articulate women, sometimes coming from or working with marginalized or poor communities with a significant male-dominated military presence.

29. Vilification diminishes academic freedom and the quality of education as well as freedom of expression. Many academics, teachers and students have complained of being labelled as terrorists or communists in order to discredit their research. They have pointed to pressure put on public universities by security agencies to remove certain books from their libraries, which violates the right to information and undermines the institutional autonomy of universities. Increasingly, entire universities and student groups, including student media outlets, are being targeted by red-tagging, exposing thousands of students to the risks associated with the practice, from specific security risks to pressure from families, financial dependence and the loss of career opportunities. Often, young people are reluctant to speak up for fear of retribution and due to widespread frustration regarding the available reporting channels and the lack of accountability and redress. The Government should respect academic freedom, and universities should strive to provide safe spaces for students, academics and teachers to learn, share and debate diverse ideas and views without fear of vilification, threats or harassment.

30. The overall aim of such vilification, harassment, threats and violence is to intimidate and chill expression, suppress legitimate activism, weaken academic freedom and undermine independent journalism, public debate and criticism of State policies. It delegitimizes human rights work, weakens public trust in civic action and makes it difficult for critical voices to influence public opinion. Ultimately, it reduces the free flow and diversity of information and ideas, which are essential for a healthy and dynamic democracy.

[12] See communication PHL 5/2024.

[13] See Ateneo Human Rights Center, “Anti-red-tagging monitoring dashboard”, Anti-Red-Tagging Monitoring Project, available at https://ahrc.org.ph/anti-red-tagging-monitoring-dashboard.

31. Such actions are being justified by the authorities in the name of countering terrorism. The Special Rapporteur appreciates that the Government has a duty to protect its citizens, including by prosecuting those who commit or prepare terrorist crimes. In doing so, however, it should define terrorism precisely, according to resolutions of the United Nations, as acts against civilians committed with the intention of causing death or serious injury. The Government must ensure respect for the rule of law in its strategy to counter terrorism, which should also be in line with international human rights obligations. Reporting critically on State policies, informing the public about the state of the insurgency, documenting or speaking out against human rights violations committed by State authorities, protesting against economic and social injustices that are root causes of violent extremism and working in the community to reduce such injustices are not acts of terrorism or support for terrorists but legitimate activities under international human rights law and the national laws of the Philippines.

32. In May 2024, the Supreme Court issued a ruling in which it declared that red-tagging vilification, labelling and guilt by association threatened a person's right to life, liberty or security, which could justify the issuance of a writ of *amparo*.[14] In December 2024, a Quezon City regional trial court ruled that the red-tagging of a broadcast journalist, Atom Araullo, violated his right to free speech by affecting adversely his reputation and ability to work. It was the first time that red-tagging had been recognized as a harmful act in a civil case. The two rulings showed encouraging leadership by the judiciary to protect freedom of expression.

33. The Special Rapporteur encourages the Government to act firmly to root out vilification and attacks on civil society instigated or carried out by the security forces, which are sowing distrust between the State and a significant part of civil society, and to carry out much-needed policy, legal and institutional reforms. The Government should establish a policy in which it denounces the vilification and harassment of civil society actors and states clearly that it does not carry out, encourage, approve or condone such practices and that it will take stern action against any official found to violate the policy. Such a policy would send a clear message to all State agencies while reassuring civil society and the public about the Government's good intentions.

34. Red-tagging or vilification significantly increases the level of threats and is a form of incitement to violence. There is currently no provision against incitement to violence in the Penal Code of the Philippines. In the view of the Special Rapporteur, the Government should consider strengthening the law to protect against such harm and hold perpetrators to account. Legal reforms are also needed to provide those who have been unfairly targeted with an effective remedy, including an official apology and the deletion of statements denigrating them.

35. It is incumbent upon the Government to ensure that those tasked with ensuring the security of people do not themselves endanger them. In that context, an important issue that must be addressed firmly by the Government is the role played by the National Task Force to End Local Communist Armed Conflict in red-tagging civil society actors, with ruinous effect on their human rights, including the right to freedom of expression. In briefing the Special Rapporteur, the Government noted that, in the light of changed political circumstances, it was considering transforming the task force into a peacebuilding entity. Given the history of the task force, it is doubtful whether an entity that is widely considered to have been a major source of vilification, threats and harassment can transform itself into a credible peacebuilder. For the sake of human rights, including freedom of expression, and peaceful reconciliation and because of the importance of decisively turning the page on past violations, the Government should consider the abolition of the task force.

[14] Supreme Court of the Philippines, *Deduro v. Vinoya*, Case No. 254753, Judgment, 4 July 2023.

B. Safety of journalists and ending impunity

36. The Philippines has long been a dangerous country for journalists. Although the number of serious crimes against journalists has fallen since Mr. Marcos Jr. took office, the situation remains of concern, with four journalists murdered in the first 18 months of the administration: Juan Tumpag Jumalon (DJ Johnny Walker), Cresenciano "Cris" Bunduquin, Percival Mabasa (Percy Lapid) and Renato Blanco. The Government indicated that one of the cases appeared to be unrelated to the victim's profession. The Special Rapporteur is concerned that, except for one case, in which the alleged perpetrator has been identified, the pace of investigation into the crimes has been slow.

37. Impunity encourages attacks on journalists. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), 117 journalists were killed in the Philippines in the past 30 years, of which only 10 cases have been resolved.[15] That figure is in stark contradiction with the numbers provided by the Presidential Task Force on Media Security indicating that, out of a total of 203 reported killings for the period from 1987 to January 2024, 50.25 per cent had been resolved. The significant difference in the statistics stems from the fact that UNESCO[16] and the Government of the Philippines[17] use different methodologies and definitions for "resolved cases". The Special Rapporteur encourages the authorities to follow the UNESCO guidelines so that the situation in the Philippines can be properly compared with the rest of the world and any shortcomings can be addressed transparently and adequately. Playing with statistics is not an effective response to the problem of impunity and will only aggravate the safety of journalists. Prompt, effective, thorough, independent, impartial and transparent investigation, as required under international standards,[18] is all the more critical when the perpetrator is a high-ranking government official – as it was, notably, in the cases of journalists Percival Mabasa[19] and Gerry Ortega.[20]

38. To address threats and harassments against journalists, the Government has set up the Presidential Task Force on Media Security in coordination with other governmental entities, including the Department of Justice, and with non-governmental organizations and media representatives. One of the main initiatives of the task force has been to create a system of "media security vanguards" to be placed in police stations around the country to assist journalists who may face security problems. While it is a fine initiative in principle, in practice it appears not to be functional in all police stations or even known to all stakeholders. When the Special Rapporteur made a random check at the Cebu City police station, the officers did not seem to be aware of the arrangement. The police and the judiciary appear to have limited training or guidance on how to handle attacks on journalists. Equally, on the side of the media, not all journalists or outlets are convinced of the workability of the scheme, as many journalists see law enforcement and security officials to be the source of threats against them and do not trust that they will protect them. Civil society representatives and journalists mentioned to the Special Rapporteur that, in their view, the task force did not have

[15] See UNESCO, Observatory of Killed Journalists, available at https://www.unesco.org/en/safety-journalists/observatory.

[16] UNESCO considers that the status of a case regarding the killing of a journalist is considered to be resolved if: (a) the perpetrators of the crime have been brought to justice and convicted by a court of law; (b) the suspected perpetrators of the crime died before a court case could take place or be completed; (c) the judicial process has revealed that the death was not related to the victim's journalistic practice; and (d) the perpetrators have been determined and sentenced but, due to a presidential pardon or amnesty law, they are released before their sentence has been carried out fully. See https://www.unesco.org/en/safety-journalists/observatory/methodology.

[17] The Philippines considers a case of the killing of a journalist to be resolved where there is a resolution by the prosecutor or the court in which the case has been tried, settled or otherwise concluded, including dismissed cases, acquittals and the filing of an affidavit of desistance by family members or witnesses.

[18] See Minnesota Protocol on the Investigation of Potentially Unlawful Death.

[19] See communication PHL 5/2024; and Philippine Information Agency, "Arrest of fugitive Bantag just a matter of time – DOJ", 26 April 2024.

[20] See communication PHL 5/2024; and Geraldford Ticke, "Palawan court issues arrest warrant against ex-governor Reyes", Inquirer.net, 21 July 2023.

the capacity, resources, authority or institutional independence to work effectively to promote the safety of journalists without undue pressure or interference.

39. It is vital to reform fundamentally the Presidential Task Force on Media Security so that it has the necessary institutional independence, capacity and political support to effectively coordinate all relevant agencies to invest adequately in the protection and safety of journalists. A wider and more effective presence of media security vanguards, training and guidance for law enforcement and justice officials to build their knowledge and capacity to ensure the safety of journalists, free legal assistance to journalists and more-rapid response mechanisms to react to complaints of journalists under attack are some of the measures that could help to enhance the protection of journalists and build trust among key stakeholders. In that context, the Special Rapporteur welcomes the discussion of a memorandum of understanding between the task force and the Commission on Human Rights.

40. The Special Rapporteur urges the Government and the relevant entities to continue to strengthen their cooperation with international organizations on the safety of journalists. Soon after the adoption of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, the Philippines became the first country to adopt a national plan of action. The plan has so far included learning exchanges between the media and the military, the training of law enforcement to uphold international standards on freedom of expression and the safety of journalists, carried out by UNESCO, a programme entitled “Alerto Tayo” to set up online groups for law enforcement and the media to highlight and follow up on individual cases and the creation of local citizen press councils.

41. In recent months, the Department of Justice has also taken some measures to enhance the safety of journalists by strengthening the investigation of criminal proceedings. A departmental circular has been adopted to reinforce cooperation between the Philippine National Police and the National Bureau of Investigation to identify perpetrators of threats and violence (Circular No. 20). The circular is also aimed at enhancing collaboration between investigators and prosecutors to ensure the better collection of evidence and higher rates of conviction. In addition, the Government has taken steps to set up an independent forensic institute and has established new rules to mandate autopsies for all suspicious or violent deaths (Circular No. 13) and to speed up proceedings where there is prima facie evidence of reasonable certainty of convictions (Circular No. 16). Other measures taken by the Department of Justice include the elaboration of a witness protection programme and the adoption of a judicial marshals law to protect judges who deal with powerful individuals or politicians.

42. More efforts are needed to provide accountability for the most serious crimes against journalists and civic actors. In 2023, the United Nations High Commissioner for Human Rights found that inadequate investigative capacity and inter-agency cooperation, limited forensic capacity, protracted judicial processes and inadequate support to victims and witnesses were hindering access to justice for victims of human rights violations and abuses.[21] To address those concerns, the authorities intend to amend the operational guidelines of the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (Administrative Order No. 35), which is aimed at investigating unsolved cases of political violence, including killings of human rights defenders and environmental activists. One such amendment will be aimed at strengthening inter-agency coordination, while another will increase the prosecution of cases, including by opening the space for the Commission on Human Rights and civil society organizations to contribute to case development and witness and victim protection. The authorities also intend to create a quick reaction team under the Administrative Order No. 35 mechanism tasked with responding urgently to cases that fall within the scope of its competence. Separately, it announced the adoption of Department of Justice Circular No. 16 establishing a higher burden of proof characterized by a “reasonable certainty of conviction”, which, it is hoped, will provide important safeguards for journalists subjected to frivolous lawsuits.

[21] See A/HRC/51/58.

43. While the Special Rapporteur is encouraged by such promises, she urges the authorities to take specific steps to pursue the reforms, which could contribute not only to ending impunity but also to addressing the practice of self-censorship that has emerged as a result of attacks against journalists and civil society actors in the past decade. Furthermore, such reforms would contribute to strengthening the state of democracy in the country.

44. The Special Rapporteur believes that a dedicated special prosecutor for crimes against journalists and human rights defenders could also be a useful means to address impunity. To uphold its commitment to fighting impunity for serious crimes against journalists, the Government should consider setting up a dedicated mechanism, with adequate resources, appropriate training and stronger coordination with the police, the media and other actors, to investigate cases of violence against journalists.

C. Media freedom and the right to information

45. The media sector is governed primarily by constitutional safeguards and statutory regulations covering print, broadcast and online platforms. The Constitution limits the ownership and management of mass media to citizens of the Philippines and stipulates that Congress must regulate or prohibit monopolies in commercial mass media (art. XVI). The Special Rapporteur encourages the authorities to consider broadening media ownership, in line with the principle of non-discrimination, while adopting rules to limit the disproportionate influence that a single person or entity may have on the media.

46. According to statistics provided by the Government, some 2,123 private media outlets, broken down into 395 AM radio stations, 1,090 FM radio stations, 546 television stations and around 92 newspapers, operate in the country. Despite those numbers, the damage caused by attacks on the media during the previous administration has led to reduced media pluralism and decreased public trust in independent journalism.

47. The non-renewal in 2020 of the franchise of ABS-CBN, one of the country's largest broadcast television and radio networks, marked a serious setback for media freedom in the Philippines. While ABS-CBN continues to broadcast online and via various agreements, the non-renewal of its franchise has reduced the easy access of Filipinos to pluralistic, independent information. Conversely, it has also led to self-censorship in the media. It is important that the authorities consider reversing that decision to revive the confidence of the media sector.

48. The Special Rapporteur is concerned that the authorities appear to have blocked the websites of alternative online news organizations because of their alleged links to terrorists. In June 2022, the National Telecommunications Commission ordered Internet service providers to block access to the website of Bulatlat.com for its alleged ties to the New People's Army. The blocking of a website is a direct form of censorship. Given the impact on freedom of expression, any such restrictions should strictly meet the three-part test of legality, necessity and proportionality provided for under international human rights law and should be authorized by a court. The Special Rapporteur reiterates that unlawful restrictions have an impact not only on the affected outlets but also on the public's right to information.

49. There is no general law that applies to the media sector as a whole. The sector benefits from self-regulated arrangements at the national and local levels, however. At the national level, the Philippine Press Council under the Philippine Press Institute, which covers the newspaper industry, and the Broadcast Standards Authority of the Association of Broadcasters of the Philippines, which oversees the broadcast industry, establish the codes, guidelines and mechanisms for receiving complaints. While the system of self-regulation is a positive feature of the media sector, the Special Rapporteur received testimonies from individuals and groups who felt that the measures taken by the Association of Broadcasters to address instances of hate speech and incitement to discrimination have sometimes been too mild. The Special Rapporteur believes that the authorities should provide more support to the self-regulating media entities so that they are able to operate effectively, safely and inclusively.

50. Over the past years, the precarious working conditions of the media sector have been aggravated by the steady growth of online news consumption, which has reduced revenue for many outlets. The Special Rapporteur encourages the Government to move forward on the implementation of the Media and Entertainment Workers' Welfare Act (Senate Bill No. 2427) after conducting inclusive and genuine consultations with the media sector. In addition, the Philippine Plan of Action on the Safety of Journalists, developed through multi-stakeholder consultations in partnership with UNESCO, should be strengthened to support better working conditions for journalists, enhance journalism education and research and promote integrity and professionalism. The Special Rapporteur encourages the Government to support the efforts made by the Commission on Human Rights to work towards the implementation of the Plan of Action.

D. Fostering a culture of an open, inclusive and accountable society

51. The Philippines is privileged to have a vibrant, dynamic civil society and media sector, active in all regions and working in different dialects. Over 2,000 private media outlets and more than 60,000 non-governmental organizations are engaged in advocacy.[22] In June 2023, the Government adopted Executive Order No. 31, which institutionalized the Open Government Partnership aimed at enhancing participation, information-sharing, dialogue and transparency on development and other issues of public interest through a multi-stakeholder process that includes civil society. The Special Rapporteur welcomes steps that involve the participation of diverse voices and calls upon the Government to examine opportunities for expanding Open Government Partnership projects to all parts of the country and at all levels of government. Enhancing civil society participation can allow the public authorities to reach out to local communities with which trust may have been undermined. Civil society organizations can build bridges with those communities, contribute to identifying the root causes and drivers of social exclusion and crimes, including terrorism, contribute to channelling discontent meaningfully through peaceful means and play a welcome intermediary role between the State and communities.

52. In July 2024, the United Nations Joint Programme on Human Rights came to an end. It is being succeeded by the Special Committee on Human Rights Coordination, created by Administrative Order No. 22, with the purpose of enhancing mechanisms for the promotion and protection of human rights in the Philippines. It will be composed of members of the Department of Justice, the Department of Foreign Affairs and the Department of the Interior and Local Government and will be co-chaired by the Presidential Human Rights Committee and the Department of Justice.

53. Under Administrative Order No. 22, implementing guidelines may include mechanisms for coordination and consultation with civil society but, regrettably, the order does not guarantee an explicit role for civil society, the Commission on Human Rights or the United Nations. The lack of a guaranteed space for civil society in the new arrangement is a deep disappointment and a major flaw. The Special Rapporteur has raised her concerns about the new policy with the Government, as she is convinced that robust engagement with civil society organizations and other critical stakeholders is necessary to advance policy reforms.[23] The State's affirmation of the critical and legitimate role of human rights defenders, journalists and activists in society is essential to ensure that the voices of those most marginalized are not left out. If the policy is to be successful, the Government must bring civil society to the table as a full partner to work together to build trust and a shared commitment to address the wide range of human rights concerns.

54. One of the most important achievements of the former United Nations Joint Programme on Human Rights was to break down the barriers between civil society and State representatives, and the United Nations office in the Philippines played a constructive role in that process. There is still much work to be done, however, to build trust and confidence on both sides. The Government should draw upon the experience, capabilities and technical assistance of the United Nations as a trusted partner to help to strengthen its own engagement

[22] See A/HRC/WG.6/41/PHL/1.
[23] See communication PHL 1/2024.

with civil society. As an affirmation of its commitment to human rights and international cooperation and to help to reassure civil society, the Government should invite the United Nations to join as a co-convenor. As foreseen in Administrative Order No. 22, the Government should also involve the Commission on Human Rights in the multi-stakeholder discussions. As an independent national institution, it is well placed to foster good governance and human rights.

55. Strengthening civil society participation is healthy for a democracy, provides a platform to discuss civil, political, economic and social rights issues, including at the grass-roots level, and ensures that decisions are informed by human rights. It is particularly critical in countries in which Indigenous Peoples face barriers to the enjoyment of their right to the improvement of their economic and social conditions. In that context, the Special Rapporteur welcomes the approach of the new leadership of the National Commission on Indigenous Peoples, which intends to revise the free, prior and informed consent guidelines. She also values the open and inclusive approach to civil society of the city council of Baguio, whose members she met with during her visit. The city council regularly engages with civic actors, encourages dialogue among civil society organizations, civilians and the national military academy that operates in the region and has adopted legislation that recognizes the work of human rights defenders, including the Local Ordinance on the Protection of Human Rights Defenders, and responds firmly to instances of intolerance, hate speech or discrimination that may affect them. The national authorities have an interest in looking into such promising approaches as a way forward in other parts of the country.

E. Reforming the legal framework

56. Although freedom of expression is protected by the Constitution, some of the domestic legislation is inconsistent with international standards.

57. Several articles of the Penal Code[24] and the Cybercrime Prevention Act[25] impose imprisonment for the offence of libel. The Cybercrime Prevention Act punishes speech offences in the online space more severely than offline expression, in contradiction with the position of international human rights law that the same rights that apply to offline speech should apply online.

58. The Human Rights Committee has consistently affirmed that defamation laws must be crafted with care to ensure that they comply with article 19 (3) of the International Covenant on Civil and Political Rights, urged States to consider the decriminalization of defamation and affirmed that the application of criminal law should only be countenanced in the most serious of cases and that imprisonment is never an appropriate penalty.[26] The Human Rights Council has called upon States to ensure that defamation and libel laws are not misused, in particular through criminal sanctions, to illegitimately or arbitrarily censor journalists and interfere with their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with States' obligations under international human rights law.[27]

59. During her visit, the Special Rapporteur was informed that two bills had been filed to remove the penalty of imprisonment for libel. She firmly believes that the decriminalization of libel would send a strong signal nationally and internationally of the commitment of the Philippines to strengthen freedom of expression. It would demonstrate that the Government is committed to protecting an open and inclusive space where individuals and groups can debate freely about matters of public interest, while also respecting the principle that politicians and public figures are legitimate objects of public scrutiny, comment and criticism. She urges the Government to support the decriminalization of libel. Criminal libel

[24] Arts. 353–357, 360 and 631.
[25] Chap. II, sect. 4 (c) (4).
[26] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 47.
[27] Ibid., para. 11 (h); and Human Rights Council resolution 51/9.

and laws criminalizing the criticism of State institutions and officials have no place in modern democratic societies.

60. The Special Rapporteur continues to have concerns about several provisions of the Anti-Terrorism Act of 2020 that could penalize speech or have a chilling effect on freedom of expression. While fully recognizing the imperative to protect the population from terrorism, she would like to point out that certain provisions of the act have been criticized by both international mechanisms[28] and the Commission on Human Rights.[29] The Supreme Court declared unconstitutional certain provisions of the Anti-Terrorism Act while upholding others, some of which continue to raise serious human rights concerns. Among those are the possibility for the Anti-Terrorism Council to arrest individuals designated as terrorists without first obtaining a judicial warrant, extended detention without formal charges, possible infringements to the right to privacy because of expanded surveillance and the absence of adequate safeguards for the erroneous application of the law. The Special Rapporteur underscores that judicial oversight is necessary at all phases of the criminal justice process, even in terrorism cases. The act also raises concerns regarding surveillance, which has a chilling effect on the legitimate activities of journalists, human rights defenders and civil society activists and the enjoyment of the right to freedom of expression more broadly.

61. In December 2023, the Supreme Court adopted a set of rules on the Anti-Terrorism Act with a view to clarifying procedural rules and judicial safeguards for the application of the legislation. While the rules constitute a noticeable effort to guarantee the rights of any individual arrested, charged or designated as a terrorist under the Act, several concerning issues with regard to the compatibility of the Act with international human rights law remain, as communicated by the Special Rapporteur to the Government.[30]

62. An important means for building a culture of dialogue and debate is maximizing transparency and access to information. In too many contexts, States impose exemptions to information laws or introduce restrictions that are purported to counter disinformation but, in effect, shield powerful individuals or public officials from scrutiny, even on matters involving public interests.

63. Executive Order No. 2, which operationalizes freedom of information, provides for overly broad or vaguely framed exemptions. Exemptions from disclosure should be provided clearly in the law and narrowly defined and subject to independent oversight. The Special Rapporteur encourages the Government to design, in consultation with civil society, a new law on access to information in line with international human rights standards, which would include maximum disclosure in the public interest. Reviving trust in government decisions and institutions is possible only through access to information, dialogue, listening to grievances and, most importantly, adherence to human rights and the rule of law.

V. Conclusions and recommendations

64. **Since June 2022, the Government has taken some measures to end the horrendous attacks on human rights by the previous administration, especially on freedom of expression, but they have not been enough to turn the page decisively on the past. The Government must embark on more significant legal, policy and institutional changes to demonstrate its commitment to freedom of expression.**

65. **Releasing those unfairly detained or prosecuted and completing the investigation into and prosecution of killings and enforced disappearances, including the cases raised by the Special Rapporteur in her communications, would send a strong signal of the Government's readiness to move away from the past.**

[28] See communication PHL 4/2020.

[29] Commission on Human Rights of the Philippines, "Statement of the Commission on Human Rights on the proposed Anti-Terrorism Act of 202", 5 June 2020, available at https://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-proposed-anti-terrorism-act-of-2020.

[30] See communication PHL 6/2024.

66. **The free flow of information, the monitoring role of civil society and the independent media and safe spaces for debate and discussion are vital for economic growth and good governance and for democracy. The Special Rapporteur believes that by building trust and confidence between the Government and civil society, reforming laws and institutions to promote free, diverse and safe spaces for expression, upholding a robust information regime to counter disinformation and addressing impunity for crimes against journalists, human rights defenders and activists, the Philippines can significantly improve the state of freedom of expression in the country.**

67. **Change is challenging but it can be done with strong political will and leadership.**

68. **With those objectives in mind, the Special Rapporteur offers the following recommendations to the Government of the Philippines.**

A. International mechanisms

69. **The Special Rapporteur recommends that the Government:**

(a) **Ratify relevant international human rights treaties, including the International Convention for the Protection of All Persons from Enforced Disappearance, and restore its past ratification of the Rome Statute of the International Criminal Court;**

(b) **Extend a standing invitation to all special procedure mandate holders;**

(c) **Draw upon the capabilities and technical assistance of the United Nations and, in partnership with civil society, successfully roll out a new human rights programme in the Philippines, co-convened with the United Nations;**

(d) **Seize opportunities for expanding Open Government Partnership projects to all parts of the country and at all levels of government.**

B. National institutions

70. **The Special Rapporteur recommends that the Government:**

(a) **Abolish the National Task Force to End Local Communist Armed Conflict, which was established by the previous administration in a different context. The Government should open an independent, multi-stakeholder process to review the task force and its role in harassment, threats, vilification and red-tagging and other human rights violations and to propose a new, inclusive approach to peacebuilding, with the increased participation of civil society, women's groups and communities, respectful of human rights and better able to address the inequalities and other root causes and drivers of terrorism;**

(b) **Combat impunity vigorously, including by providing the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (Administrative Order No. 35 mechanism) with the necessary resources and support to investigate unsolved cases of political violence;**

(c) **Consider establishing a dedicated special prosecutor for crimes against journalists and human rights defenders;**

(d) **Carry out a fundamental reform of the Presidential Task Force on Media Security so that it is transformed into a stronger, more effective entity to lead and coordinate the Government's strategy to protect journalists and media workers, with full political support, adequate resources, appropriate training and the ability to engage effectively with the police, the media and other relevant actors;**

(e) **Increase the independence, resources and institutional capacity of the National Privacy Commission and ensure that it is consulted when laws affecting privacy are being discussed by lawmakers and to act *ex proprio motu*, not only on the basis of complaints received;**

(f) **Enhance the independence and effectiveness of the Commission on Human Rights, including by adopting the proposed Commission on Human Rights Charter Act (Senate Bill No. 2440), which would allow for essential legal aid services and uphold the human rights principles enshrined in the Constitution;**

(g) **Support the activities of the Commission on Human Rights in relation to its work towards the implementation of the Philippine Plan of Action on the Safety of Journalists and its efforts to define and prevent instances of red-tagging.**

C. National legal framework

71. **The Special Rapporteur recommends that the Government:**

(a) **Decriminalize libel in the Cybercrime Prevention Act of 2012 and other relevant legislation, including articles 353 and 355 of the Penal Code;**

(b) **Review and amend the Anti-Terrorism Act of 2020 to bring it into line with international human rights norms and standards;**

(c) **Develop, in consultation with civil society organizations, and adopt a law on access to information in line with international human rights standards, including maximum disclosure in the public interest;**

(d) **Conduct broader consultations with the media sector to ensure that the Media and Entertainment Workers' Welfare Act takes into account the act's impact on smaller media outlets;**

(e) **Prioritize the adoption of the Human Rights Defenders Protection Act;**

(f) **Adopt an executive order denouncing the practice of red-tagging and set out measures that discourage, disincentivize and discipline those who violate the policy;**

(g) **Ensure that any restrictions on freedom of expression, including the blocking of websites, rigorously meet the three-part test of legality, necessity and proportionality provided for under international human rights law and are authorized by the courts.**

D. Policy reforms

72. **The Special Rapporteur recommends that the Government:**

(a) **Provide individual victims of vilification, such as red-tagging, with adequate and effective support and protection, including in relation to their complaints made to the Ombudsperson, the Commission on Human Rights or the courts;**

(b) **Support self-regulated media systems with a view to ensuring that such groups are able to operate effectively, safely and inclusively;**

(c) **Respect the right of peaceful assembly, with the only limitations those permitted under international human rights law.**

E. Individual cases

73. **The Special Rapporteur recommends that the Government:**

(a) **Review the cases raised by the Special Rapporteur in her communication PHL 5/2024, prioritize the bail applications in long-pending cases and release all individuals in prolonged detention whose charges are still unsubstantiated;**

(b) **Promptly release Ms. Cumpio, Ms. Domequil and Mr. Abinguna and, considering the circumstances of their arrests and the time that they have already spent in detention, dismiss the charges brought against them as manifestly unfounded.**