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BAGONG ALYANSANG MAKABAYAN

**ALTERNATIVE REPORT ON THE PHILIPPINES SUBMITTED TO THE OFFICE OF
THE HIGH COMMISSIONER ON HUMAN RIGHTS**

For the 41st Session of the Working Group on the Universal Periodic Review in the United Nations Human Rights Council in October 2022, for the 4th Cycle of the UPR on the Philippines

SUBMITTED BY:

Bagong Alyansang Makabayan (New Patriotic Alliance or BAYAN)

Founded in 1985 at the height of the struggle against the US-backed Marcos dictatorship, BAYAN is an umbrella organization of workers' unions, peasant associations, youth, women, indigenous peoples, professionals and other sectors, committed to the struggle for national and social liberation. BAYAN has led human rights campaigns focusing on extra-judicial killings of activists, militarization of communities as well as the plight of political prisoners. BAYAN's previous submission to the UPR focused on economic, social and cultural rights.

Human rights, counter-insurgency and counter-terrorism

The Philippine government to this day has not implemented recommendations of the 3rd cycle of the Universal Periodic Review on the Philippinesⁱ insofar as human rights and counter-terrorism and providing constitutional and legislative framework for upholding human rights are concerned. The Philippines was urged to continue efforts to combat terrorism within the framework of the Constitution, the law and international human rights standards. The Philippines was also called on to ensure the precedence of provisions of international human rights treaties over national laws in cases of conflict.

On November 23, 2017, Philippine President Rodrigo Duterte signed Proclamation 360ⁱⁱ declaring the termination of peace negotiations with the National Democratic Front of the Philippines. On December 5 of the same year, Duterte issued Proclamation 374ⁱⁱⁱ declaring the Communist Party of the Philippines (CPP) and New People's Army (NPA) as designated/identified terrorist organizations under Republic Act 10168.

On December 4, 2018, Duterte signed Executive Order 70^{iv} which created a National Task Force to End Local Communist Armed Conflict headed by the President himself. On July 3, 2020, Duterte signed the Anti-Terror Law^v ("Terror Law") that created the very powerful Anti-Terror Council. That same year, on December 9, 2020, the ATC designated the CPP and NPA as terrorist organizations^{vi}. On April 20, 2021, the ATC, without any due process, designated 19 individuals as terrorists^{vii}. On July 19, 2021, the ATC, again without any due process, formally designated the NDF as a terrorist organization^{viii}. On January 26, 2022, the ATC, again without any due process and public proceedings, designated 16 organizations as terrorists^{ix}.

On January 2021, the Philippine Department of Defense unilaterally terminated a landmark agreement with the University of the Philippines that was sought to prevent the police and military from undertaking operations inside the campus. The UP-DND accord was intended to safeguard academic freedom.

It is no coincidence nor exaggeration that in the years after the termination of the peace talks, the creation of the NTF-ELCAC and the signing of the Anti-Terror Law, rights violations have escalated under the Duterte regime. To destroy the CPP-NPA, Duterte in December 2018 said that the so-called "legal fronts" should also be destroyed^x because these allegedly provide recruitment and support for rebel groups.

Persistent practice of red-tagging and terrorist-labeling of critics

Since the creation of the NTF-ELCAC, the Philippine government has engaged in a campaign of red-tagging critics. Red-tagging pertains to the linking of persons and organizations to the underground armed groups, in order to justify attacks by state forces. While there is no longer a law penalizing membership in the Communist Party of the Philippines, activists who are purportedly linked to the CPP are often slapped with trumped-up charges and are subjected to attacks. The "terror law" provides an additional legal framework to criminalize activism as the organizations targeted by red-tagging are now labeled as "terrorists" and "terrorist supporters" even without any due process or clear, publicly known standards.

The NTF-ELCAC has made the sweeping accusation that legal and unarmed organizations aligned with Bayan are "fronts" of the "terrorist" CPP-NPA-NDF, and are therefore targets of

police and military action. The red-tagging done by the NTF-ELCAC relies mainly on guilt by association and does not provide any due process nor presentation of evidence.

The practice of red-tagging and terrorist-labeling has escalated during the 2022 elections when even the Opposition presidential candidate, the Philippine vice-president herself Ma. Leonor Robredo, was accused by the NTF-ELCAC spokesperson Lorraine Badoy of conspiring with the Central Committee of the CPP^{xi}, simply because legal Left organizations like Bayan Muna and Gabriela Women's Party were supposedly seen at her campaign rallies. Also recently on March 13, 2022, Duterte in a televised speech made reference to an alleged alliance between the legal Opposition and the so-called communists, and that they were out to disrupt the elections^{xiii}.

The practice or red-tagging and terrorist labeling done by the President, the NTF-ELCAC, the police and the military is incompatible with the Constitution and international human rights treaties. UN Special Rapporteur Philip Alston in 2008 described the practice of red-tagging as involving “the characterization of most groups on the left of the political spectrum as”“front organizations” for armed groups whose aim is to destroy democracy.”

“The result is that a wide range of groups – including human rights advocates, labour union organizers, journalists, teachers unions, women’s groups, indigenous organizations, religious groups, student groups, agrarian reform advocates, and others – are classified as “fronts” and then as “enemies of the State” that are accordingly considered to be legitimate targets,” Alston said in his report.

Red-tagging replaces judicial proceedings with military-style psy-ops. The military’s determination of “communist support” and “terrorist support” are made without any clear standards, without admissible evidence and outside what is provided under the law.

The problematic approach is best demonstrated by the Philippine Secretary of Defense who said that for red-tagging to stop, organizations should first denounce the CPP-NPA-NDF. ^{xiii} This goes against the right to be presumed innocent, freedom of thought and the basic tenet that the accuser bears the burden of proof and must present evidence. This dangerous mindset already presumes that mere membership in these Left organizations translates automatically to links with the underground. The refusal to outrightly condemn the communists is construed as sympathizing and supporting them.

The prevalent practice of red-tagging violates the right to due process, freedom of association, the right to security of person, academic freedom, freedom of thought and even the right to life. The practice has serious consequences on the upcoming national and local elections in the Philippines as it creates a chilling effect among voters and negatively impacts their right to campaign and vote for candidates. Red-tagging and terrorist-labelling will have dire effects on the people’s right to suffrage on May 9, 2022.

Abandoning the peace process

The Philippine government has designated the CPP-NPA-NDF and its personnel involved in the peace negotiations as “terrorists” under the new “terror law”. Designation has the immediate effect of freezing the bank assets of persons and organizations. The process of designation has

been described as arbitrary and bereft of due process as it has not been disclosed to the public what were the basis for the terrorist designation and how the Anti-Terror Council deliberated and voted on the matter.

The “terror law” also provides no meaningful administrative recourse to challenge and reverse the terrorist designation. For example, it would be futile to appeal the terrorist designation before the Office of the President who was earlier responsible for declaring the CPP-NPA as terrorist organizations through Proclamation 374. The President is also the chair of the NTF-ELCAC.

It is our view that a liberation movement such as the NDFP which is engaged in peace talks with the government and has entered into several agreements with the Government of the Republic of the Philippines, including a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, cannot be considered a terrorist organization. Groups and personalities being linked to the CPP-NPA-NDF are not automatically terrorists, including personnel who take part in the peace negotiations. The “terrorist designation” appears to be the result of the government’s failure to force the surrender of the NDFP on the negotiating table. This was used by the Philippine government as justification to terminate the peace negotiations and shift to an escalation of the armed conflict.

Recommendations

1. The Philippine government should implement the recommendations made by UN Special Rapporteur on Extrajudicial Killings Philip Alston in 2008 after this visit to the Philippines. Alston clearly stated that: "The Government should immediately direct all military officers to cease making public statements linking political or other civil society groups to those engaged in armed insurgencies. Any such characterizations belong solely within the power of the civilian authorities. They must be based on transparent criteria, and conform with the human rights provisions of the Constitution and relevant treaties."
2. The Philippine government specifically the NTF-ELCAC, the Philippine National Police and other agencies should cease using their official social media pages and sites, as well as state-owned and private media outlets, for the purpose of red-tagging and terrorist-labelling of activists. Military and police personnel as well as other civilian government officials should adhere to the existing Code of Ethical Conduct for public officials and the Anti-Graft Law.
3. The Philippine government must uphold the right to organize, unionize, freedom of association and academic freedom in schools. Legal organizations should not be the subject of harassment, surveillance and vilification.
4. The Philippine government must stop the practice of filing trumped-up charges against activists over the alleged actions or crimes committed by armed groups. The filing of these trumped-up charges are often done en masse, without observing due process including notifying the person accused and without conducting a proper preliminary investigation.
5. The Philippine government should revisit its “Anti-terror Law” which has now been used to label as terrorists a party to the peace negotiations, several peace consultants as well as indigenous peoples^{xiv} and ordinary farmers^{xv}. The law grants vast powers to the ATC and has been exposed as prone to abuse.
6. The Philippine government should resume peace negotiations with the NDFP, along previously signed agreements, including the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law and refrain from labelling liberation movements as “terrorists”. The peace negotiations must address the root causes of the armed

conflict as a necessary condition for the full realization of human rights in the country.

References:

ⁱ Theme: A41 Constitutional and legislative framework

133.22 Ensure the precedence of provisions of international human rights treaties over national laws in cases of conflict (Slovakia);

Theme: B8 Human rights & counter-terrorism

133.75 Continue efforts to combat terrorism, the drug trade and drug use, within the framework of the Constitution, the law and international human rights standards (Iraq);

ⁱⁱ <https://www.officialgazette.gov.ph/2017/11/23/proclamation-no-360-s-2017/>

ⁱⁱⁱ <https://www.officialgazette.gov.ph/2017/12/05/proclamation-no-374-s-2017/>

^{iv} <https://www.officialgazette.gov.ph/2018/12/04/executive-order-no-70-s-2018/>

^v <https://www.nytimes.com/2020/07/03/world/asia/duterte-antiterrorism-law-philippines.html>

^{vi} <https://www.philstar.com/headlines/2020/12/26/2066269/cpp-npa-designated-terrorist-group>

^{vii} <https://www.cnnphilippines.com/news/2021/5/13/Anti-Terrorism-Council-terrorist-list.html>

^{viii} <https://www.pna.gov.ph/articles/1147538>

^{ix} <https://www.pna.gov.ph/articles/1168356>

^x <https://cnnphilippines.com/news/2018/12/23/Rodrigo-Duterte-CPP-NPA-NDFP-destroy-legal-fronts.html>

^{xi} <https://www.ntfelcac.org/post/ntf-elcac-statement-on-robredo-cpp-alliance>

^{xii} <https://newsinfo.inquirer.net/1567786/duterte-claims-communist-conspiracy>

^{xiii} <https://news.abs-cbn.com/news/08/18/19/lorenzana-backs-proposal-to-ban-npa-front-organizations>

^{xiv} <https://www.rappler.com/nation/olongapo-trial-court-decision-aetas-charged-anti-terror-law-case/>

^{xv} <https://www.bulatlat.com/2022/03/21/peasant-youth-activist-arrested-in-quezon-province-charged-with-anti-terror-act/>