



Individual submission to the United Nations Universal Periodic Review

LAWYERS FOR LAWYERS

Republic of the Philippines

41<sup>st</sup> session of the Working Group on the UPR

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**Presented by:**

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**A. Introduction**

1. Lawyers for Lawyers (“**L4L**”) submits this report on the state of human rights in the Republic of the Philippines (“**Philippines**”), particularly focusing on the legal profession, with recommendations for the 41<sup>st</sup> session of the Universal Periodic Review (“**UPR**”) Working Group in the United Nations Human Rights Council (“**HRC**”) in November 2022.
2. L4L is an independent and non-political foundation based in the Netherlands, established in 1986 and merely funded by donations from lawyers. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

**B. Executive summary**

3. This submission highlights L4L’s key concerns regarding the Philippines’ compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the United Nations Basic Principles on the Role of Lawyers<sup>i</sup> (“**Basic Principles**”) and other international rights instruments,<sup>ii</sup> focusing on the following issues:
  - (a) Attacks on lawyers, including extrajudicial killings (section D)
  - (b) Red-tagging (section E)
  - (c) The Anti-terrorism Act (section F)
  - (d) Culture of impunity and inadequate criminal investigation (section G)

**C. Normative and institutional framework**

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, can carry out their professional duties independently and free from political pressure. This is recognized in, inter alia, the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“**ICCPR**”).
5. On June 22, 2017, the HRC passed a resolution condemning “the [worldwide] increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation, and interference in the discharge of their professional functions.” The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable.”<sup>iii</sup>

6. In order to fulfil its task of promoting and ensuring the proper role of lawyers, the Philippines must respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to ensure that all persons have effective access to independent legal assistance.<sup>iv</sup>
7. During the third UPR cycle in 2017,<sup>v</sup> the Philippines noted several recommendations, stating these could essentially be supported, but not guaranteed and committed to. It declared its intention to strive to implement those recommendations. These called upon the Philippines, inter alia, to stop the targeting of human rights defenders,<sup>vi</sup> effectively investigate crimes against human rights defenders<sup>vii</sup> and better protect human rights defenders.<sup>viii</sup>
8. Despite these intentions, reports gathered by L4L – including information from various lawyers in the Philippines – indicate implementation of these recommendations has failed to happen. Consequently, lawyers encounter serious difficulties in safely and independently carrying out their professional duties. Attacks on lawyers, impunity for perpetrators, red-tagging and an anti-terror law undermine the proper functioning of the judicial system, including the right to a fair trial and effective access to justice.

**D. Attacks on lawyers - extrajudicial killings**

9. According to article 16 of the Basic Principles, the Philippines should ensure lawyers are able to perform their profession without intimidation, hindrance, harassment, or improper inference and shall not suffer or be threatened with sanctions for any action taken in accordance with recognized professional duties, standards, and ethics. Furthermore, article 17 of the Basic Principles states that “where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.
10. During the UPR of 2017, the Philippines received many recommendations that called upon the Philippines, inter alia, to stop the targeting of human rights defenders,<sup>ix</sup> effectively investigate crimes against human rights defenders<sup>x</sup> and better protect human rights defenders.<sup>xi</sup> However, as of today, the extrajudicial killings of lawyers continue unabated. Lawyers in the Philippines are also subject to (death) threats, intimidation, and other acts of harassment.
11. Most killings and attacks of lawyers took place as a result of discharging professional duties or are believed to be otherwise work-related. The killings take place in the context of the Philippine Government’s continued counterinsurgency program and the so called ‘war on drugs’.<sup>xii</sup> Lawyers who represent clients accused of terrorist or drug-related crimes, government critics such as journalists, political opposition leaders and human rights defenders are particularly at risk. Besides this, lawyers have also faced reprisals when representing clients in high-profile cases impacting established interests, such as land reform, or when taking part in public discussion regarding human rights.<sup>xiii</sup>

i. Killing of Benjamin Ramos

Benjamin Ramos represented victims of human rights abuses on a pro bono basis, was a founder of the National Union of People’s Lawyers (NUPL) and the Secretary General

of its chapter in Negros Occidental Province. After having been labelled as a ‘personality of the underground armed movement’ by the Philippine police in April 2018, he was publicly shot by two unidentified men on the 6<sup>th</sup> of November of that same year.<sup>xiv</sup>

12. Although the position of lawyers has been problematic for a long period of time<sup>xv</sup>, the issue has intensified again since President Duterte took office on 30 June 2016.<sup>xvi</sup> The extrajudicial killings have reached a record high since the start of Duterte’s administration. Between the June 30, 2016, and December 31, 2021, a total of 66 lawyers were killed, of whom at least 38 were practicing lawyers.<sup>xvii</sup> During Duterte’s presidency, on average, every month a lawyer has been killed.<sup>xviii</sup> Many others were attacked but survived assassination attempts.<sup>xix</sup>

#### E. Red-tagging

13. According to article 18 of the Basic Principles, lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.<sup>xx</sup> In the Philippines this Basic Principle is being violated by the practice of ‘red-tagging’. This public branding of individuals, organizations, or institutions as ‘communists’, ‘leftists’, or ‘terrorists’, regardless of their actual beliefs or affiliations, is being supported or at least condoned by government agents, and is used as a strategy against those who are critical and perceived to be ‘enemies’ of the government. The High Commissioner for Human Rights reported that “for decades, red-tagging (...) has been a persistent and powerful threat to civil society and freedom of expression”.<sup>xxi</sup>
14. Especially lawyers representing persons who are accused of terrorist-, rebellion-, or drugs-related crimes, or who have been critical of the Philippine Government’s policies or behaviour, such as journalists, political opposition leaders, and human rights defenders, are targeted. Also groups of lawyer are subject to red-tagging, including the NUPL.<sup>xxii</sup> In the context of the Philippine Government’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<sup>xxiii</sup>. Many of the lawyers who were physically attacked, had been red tagged before, as described in the examples above. This is further illustrated by the following examples:

i. The attack on Angelo Karlo Guillen

Guillen is a human rights lawyer based in Iloilo City. From December 2018 onwards, his name and picture appeared on posters throughout Iloilo City alleging he was a communist recruiter. Following three such incidents, Guillen has experienced harassment from people loitering around his house and following him wherever he went. On the 3<sup>rd</sup> of March 2021 this culminated in an attack aimed at his life. Two men attacked him outside his home and stabbed his neck and skull with a screwdriver.<sup>xxiv</sup>

ii. The red-tagging of Czarina Musni

Musni is a human rights lawyer who has been red-tagged. This has led to intimidation and threats. She has had to leave the country due to security concerns.<sup>xxv</sup>

15. The ramifications of red-tagging lawyers include lawyers to be afraid of taking on the prosecution of human rights violations and defense of alleged drug offenders for fear of reprisals by State forces, and that lawyers and law students decline to join certain lawyers' groups or keep a low profile. Furthermore, clients and prospective clients withdraw or distance themselves from lawyers.

#### **F. Anti-Terror Law**

16. The practice of red-tagging is worsened and even institutionalised by the Anti-Terrorism Act ('ATA 2020'). This Act, formally Republic Act No. 11479, was passed through the Philippine Senate in February 2020. It uses a very broad definition of terrorist crimes which can be punished with severe sentences and limits the rights of those who are considered 'terrorists'. Limited rights include that of a fair trial, bail possibilities and freedom of travel.<sup>xxvi</sup> The Act also provides government agents with broad surveillance powers.<sup>xxvii</sup>
17. The Philippines Commission on Human Rights stated that "the over-broad definition of terrorism gives the government unbridled power to determine who are "suspected terrorists" – which may include ordinary citizens, and human rights defenders".<sup>xxviii</sup> By creating the possibility to name them "suspected persons" they may be considered legitimate targets because they are enemies of the State.<sup>xxix</sup>

#### **G. Culture of impunity and inadequate criminal investigations**

18. According to article 17 of the Basic Principles, the Philippines should adequately safeguard lawyers when their security is threatened as a result of discharging their function.
19. The Philippine authorities do not conduct full and thorough investigations in response to the attacks and killings of practicing lawyers, and many cases remain unsolved.<sup>xxx</sup> There is often no effective investigation and accountability for such killings, nor any accountability for the perpetrators of red-tagging. The Philippines has not conducted an independent public inquiry into the pattern of extrajudicial killings.<sup>xxxi</sup>
20. International guidelines for the investigation of suspicious deaths should be followed, such as the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).<sup>xxxii</sup> Suspicious deaths also include those in which the responsibility of a state is suspected, either as a result of its actions or omissions.
21. In a press release on the 7<sup>th</sup> of June 2019, eleven UN human rights experts called on the UN Human Rights Council to establish an independent investigation into human rights violations committed in the Philippines. These experts stated that: "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".<sup>xxxiii</sup>

22. The effects of red-tagging are amplified by the expressions of support of violence against lawyers outed by senior Philippine government officials. The UN High Commissioner for Human Rights has noted that this “creates a very real risk of violence against them”.<sup>xxxiv</sup> The following examples provide an insight into such statements which endorse violence against lawyers:

i. Comments President Duterte

Reportedly, President Duterte actively engaged in the act of red-tagging as well as identifying lawyers with their clients and their clients’ clauses.<sup>xxxv</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>xxxvi</sup>

ii. Comments former police chief of Albuera

After the killing of a lawyer 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>xxxvii</sup>

23. The attacks against, and extra-judicial killing of lawyers, as well as the impunity shielding perpetrators all impair lawyers’ ability to provide effective legal representation. These make them increasingly wary to work on sensitive cases, which consequently undermines the proper functioning of the rule of law and the adequate protection of rights such as the right to a legal remedy or fair trial.

#### H. Recommendations to the Government of the Philippines

- **Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity, including the red-tagging of practising lawyers.**
- **Immediately take measures that effectively guarantee all practicing lawyers’ physical and psychological integrity, their personal security and right to adequate protection measures, privacy and freedom of expression and protection against unlawful attacks on persons’ honour and reputation.**
- **Immediately start legislative efforts to amend the Anti-Terrorism Act of 2020 to conform with international human rights law and standards such as the United Nations Basic Principles on the Role of Lawyers.**
- **Immediately take measures to ensure the prompt, effective, thorough, and independent investigation of all extrajudicial killings and attacks against practicing lawyers, with the aim of identifying those responsible and bringing them to justice in proceedings that respect the international fair trial standards and to condemn all threats and attacks against lawyers publicly and in the strongest terms.**
- **Comply with and create awareness for the core values underlying the legal profession, amongst others by bringing the UN Basic Principles on the Role of Lawyers to the attention of lawyers as well as other stakeholders, especially members of the executive and the military.**

<sup>i</sup> The UN Basic Principles provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly. Source:

<https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

<sup>ii</sup> Examples include Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>iii</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/44/9, 16 July 2020,

<https://digitallibrary.un.org/record/3876533>

<sup>iv</sup> During its 44<sup>th</sup> session (from 30 June – 17 July 2020), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/44/9, 16 July 2020,

<https://digitallibrary.un.org/record/3876533>

<sup>v</sup> Report of the Working Group on the Universal Periodic Review of the Philippines, 18 July 2017. Hereinafter: the “UPR report 2017”, <https://undocs.org/A/HRC/36/12>

<sup>vi</sup> The term 'human rights defenders' encompasses the legal profession. For the relevant recommendation see UPR report 2017, recommendation 133.74.

<sup>vii</sup> See UPR report 2017, recommendations 133.145 and 133.158.

<sup>viii</sup> See UPR report 2017, recommendations 133.173, 133.174, 133.176, 133.177, 133.178, 133.179, 133.180, 133.181 and 133.182.

<sup>ix</sup> The term 'human rights defenders' encompasses the legal profession. For the relevant recommendation see UPR report 2017, recommendation 133.74.

<sup>x</sup> See UPR report 2017, recommendations 133.145 and 133.158.

<sup>xi</sup> See UPR report 2017, recommendations 133.173, 133.174, 133.176, 133.177, 133.178, 133.179, 133.180, 133.181 and 133.182.

<sup>xii</sup> Tetch Torres-Tupas, IBP: Duterte remark on drug suspects’ lawyers ‘very dangerous’, INQUIRER.NET, 9 December 2016, available at <https://newsinfo.inquirer.net/852229/ibp-duterte-remark-on-drugsuspects-lawyers-very-dangerous> (last accessed 10 May 2020) []

<sup>xiii</sup> In 2006 and 2008 L4L went on a fact-finding mission and came to the conclusion that the Philippines does not do full and thorough investigations in response to the attacks and killings of practicing lawyers.

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>xiv</sup> <https://lawyersforlawyers.org/letter-on-murder-of-atty-trinidad/>

<https://lawyersforlawyers.org/lawyer-benjamin-ramos-shot-and-killed/>

<sup>xv</sup> <https://lawyersforlawyers.org/joint-oral-statement-to-the-human-rights-council-on-the-philippines/>

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/>

<sup>xvi</sup> Amnesty International (2021). Philippines: Surge in killings of lawyers and judges shows justice system “in deadly danger”. Retrieved from: <https://www.amnesty.org/en/latest/news/2021/03/philippines-surge-killings-lawyers/> ; Joint written statement\* submitted by Lawyers’ Rights Watch Canada, Lawyers for Lawyers, International Association of Democratic Lawyers (IADL), nongovernmental organizations in special consultative status, and Asian Legal Resource Centre, non-governmental organization in general consultative status, Human Rights Council, 21 August 2019. A/HRC/42/NGO/7.

<sup>xvii</sup> <https://lawyersforlawyers.org/killings-of-philippine-lawyers-escalate/>

<https://lawyersforlawyers.org/the-philippines-attacks-against-lawyers-further-escalating/>

<https://lawyersforlawyers.org/letter-on-the-killings-of-atty-juan-macababad-atty-rex-fernandez-and-atty-sitti-gilda-mahinay-sapie/>

[The Philippines: On last day of 2021, Cavite prosecutor becomes 66th lawyer killed under Duterte | IAPL Monitoring Committee on Attacks on Lawyers \(wordpress.com\)](https://www.rappler.com/nation/cavite-prosecutor-becomes-66th-lawyer-killed-under-duterte/)

<https://www.rappler.com/nation/cavite-prosecutor-edilberto-mendoza-killed-66th-lawyer-duterte/>

- <sup>xviii</sup> LRWC et al, “Philippines: Extrajudicial killing of jurists as part of a pattern of widespread and systematic violations of human rights,” Joint Written Statement to the UN HRC, September 2019, submitted by LRWC, Lawyers for Lawyers, International Association of Democratic Lawyers, and Asian Legal Resource Centre, and endorsed by the Bar Human Rights Committee of England and Wales, IAPL, and Philippines National Union of Peoples’ Lawyers (NUPL), available at: <https://www.lrwc.org/philippines-extrajudicial-killing-of-jurists-written-statement-to-the-hrc/>.
- <sup>xix</sup> Rappler (2021). IBP slams attack on lawyer in anti-terror law petition. Retrieved from: <https://www.rappler.com/nation/integrated-bar-philippines-condemns-attack-lawyer-angelo-karlo-guillen>  
<https://lawyersforlawyers.org/filipino-lawyer-angelo-karlo-guillen-human-rights-is-a-very-dangerous-field/>
- <sup>xx</sup> <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>
- <sup>xxi</sup> A/HRC/44/22. Human Rights Council. Situation of human rights in the Philippines. 29 June 2020, p. 10 and the dissenting Opinion of Associate Justice Leonen in the case of Carlos Isagani Zarate et al., Supreme Court, 10 November 2015, p. 1.
- <sup>xxii</sup> In March 2022, National Taks Force to End Local Communist Armed Conflict (NTF-ELCAC) spokesperson for sectoral concerns and Presidential Communications Undersecretary Lorraine Badoy stated that the NUPL is directly related to the CPP-NPA-NDF, <https://www.pna.gov.ph/articles/1170716>
- <sup>xxiii</sup> Submission on the list of issues by the Lawyers for Lawyers Foundation, 13 January 2020. Human Rights Committee Consideration of the 5th Periodic Report of the Philippines.
- <sup>xxiv</sup> <https://lawyersforlawyers.org/filipino-lawyer-angelo-karlo-guillen-human-rights-is-a-very-dangerous-field/>  
<https://lawyersforlawyers.org/red-tagged-philippine-human-rights-lawyer-stabbed-in-the-head-with-screwdriver/>
- <sup>xxv</sup> International Observatory of Lawyers, ‘Philippines: Human rights lawyers and activist Czarina Musni openly threatened, prosecuted and harassed’. Available at: <https://protect-lawyers.org/en/item/czarina-musni-3/>
- <sup>xxvi</sup> Opinion Amnesty International, <https://www.amnesty.org.ph/campaigns/anti-terrorism-and-hr/>
- <sup>xxvii</sup> ATA 2020, available at: <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200703-RA-11479-RRD.pdf>
- <sup>xxviii</sup> Republic of the Philippines Commission on Human Rights. Report on the Situation of Human Rights Defenders in the Philippines, July 2020, p. 51.
- <sup>xxix</sup> Opening statement by Neri Javier Colmenares on behalf of the NUPL. OPENING STATEMENT on Cluster 4 Issues, During Oral Arguments on the Anti-Terrorism Act of 2020. 2 February 2021. Available at <https://www.facebook.com/187571093682/posts/10158169469333683/?d=n>
- <sup>xxx</sup> Situation of human rights in the Philippines. Report of the United Nations High Commissioner for Human Rights. Human Rights Council 44<sup>th</sup> session. 15 June – 3 July 2020. A/HRC/44/22, para 56; Rappler (2020). Only 5 cases reached the courts in 54 lawyer killings since 2016. Retrieved from: <https://www.rappler.com/newsbreak/in-depth/number-cases-reached-courts-lawyer-killings-since-2016>
- <sup>xxxi</sup> LRWC et al, “Philippines: Extrajudicial killing of jurists as part of a pattern of widespread and systematic violations of human rights,” Joint Written Statement to the UN HRC, September 2019, submitted by LRWC, Lawyers for Lawyers, International Association of Democratic Lawyers, and Asian Legal Resource Centre, and endorsed by the Bar Human Rights Committee of England and Wales, IAPL, and Philippines National Union of Peoples’ Lawyers (NUPL), available at: <https://www.lrwc.org/philippines-extrajudicial-killing-of-jurists-written-statement-to-the-hrc/>.
- <sup>xxxii</sup> United Nations High Commissioner of Human Rights, ‘The Minnesota Protocol on The Investigation of Potentially Unlawful Death (2016). Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>
- <sup>xxxiii</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/>
- <sup>xxxiv</sup> Openings statement by UN High Commissioner for Human Rights at the 41<sup>st</sup> session of the Human Rights Council: <https://www.ohchr.org/en/statements/2019/06/41st-session-human-rights-council?LangID=E&NewsID=24724>
- <sup>xxxv</sup> See: <https://newsinfo.inquirer.net/852028/duterte-warns-drug-lords-lawyers>
- <sup>xxxvi</sup> See: <https://www.nytimes.com/2018/11/07/world/asia/philippine-lawyer-duterte.html>
- <sup>xxxvii</sup> See NY Bar Association, ‘Letter to President Duterte Concerning Attacks on Legal Professionals’, available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-topresident-duterte-concerning-attacks-on-legal-professionals>