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Joint Stakeholders' Submission from:

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Members of the NGO Coalition

Dominicans for Justice and Peace (Order of Preachers) represents the Dominican Order at the United Nations (UN). It is a non-profit NGO, with the UN ESOCOC Status since 2002. Through an active presence at the UN and regular participation in UN reviews, Dominicans for Justice and Peace is dedicated to the promotion and protection of human rights for all, which is an integral element of the Dominican Order's mission. laurence.blattmer@un.op.org

Franciscans International is a faith-based International Non-Governmental Organisation (INGO) with General Consultative Status with the United Nations Economic and Social Council (ECOSOC). It was founded in 1982 to bring the concerns of the most vulnerable to the United Nations. FI relies on the expertise and first-hand information of Franciscans and other partners working at the local level around the world to advocate at the United Nations for structural changes addressing the root causes of injustice. b.tjahjono@franciscansinternational.org

Maderazo, Valerio and Partners is a Philippine-based general service private law firm composed of lawyers deeply engaged in human rights work and advocacy. Attorneys Mario Maderazo and Donatello Justiniani represent the firm in this report as counsels who provided legal consultations to communities on environmental and human rights issues, in partnership with local and church-based organisations. memaderazo2012@gmail.com

Dominican Family in the Philippines for Justice and Peace and Care for Creation (DFJPCC) is the Dominican network in the Philippines engaged in raising awareness on justice and peace issues, advocating for the protection of human rights and monitoring the implementation by the Philippines of its human rights obligations. It is working in close connection with affected local communities and victims of human rights violations. vcalvo88@yahoo.com

Save Zambales Kalikasan Movement (SZKM) is a coalition of fisherfolks, farmers, resort owners and concerned citizens in the province of Zambales in the Philippines. It seeks to preserve and protect Zambales's natural resources, forests and seas, as well as promoting human rights. faalipao@ust.edu.ph

Task Force Detainees for the Philippines (TFDP) is a Philippines-based non-profit, national human rights organization working on documenting human rights violations, assisting the victims and their families in their material and legal needs, and conducting human rights education work. ecamistad@yahoo.com

Conference of Major Superiors of the Philippines (CMSP) is the Conference of Men and Women Catholic religious congregations in the Philippines. The members are composed of 362 religious institutes, societies of apostolic life, secular institutes out of 453 religious and secular institutes in the Philippines, representing 80 percent of the total institutes present in the country. buenaftoots@yahoo.com.ph

Swiss Catholic Lenten Fund (Fastenaktion) is a Catholic relief organisation in Switzerland, which stands up for disadvantaged people, for a more just world and overcoming hunger and poverty. It promotes social, cultural, economic and individual changes towards a sustainable way of life, with partner organisations in Africa, Asia, Latin America and Switzerland. jeppesen@fastenopfer.ch

Philippines Movement for Climate Justice (PMCJ) works to advance the notion of climate justice as a solution to the climate crisis the world is facing today. It was formed to lead the joint struggles, campaigns, and actions that would put forward the urgent demands for climate and comprehensive social, economic, and political transformation in the country. The movement consists of 150 national networks, alliances, and local organisations representing basic sectors, grassroot communities, the marginalised and the most vulnerable. ecamistad@yahoo.com

Dreikönigsaktion, Hilfswerk der Katholischen Jungschar (DKA Austria) or the Catholic Children's Movement, is a church-based development cooperation agency campaigning for a decent life for all and for freedom from exploitation and poverty for all people. Based on Catholic social teachings and human rights, DKA Austria has been supporting people in Africa, Asia, Latin America and Oceania. Clara.Handler@dka.at

I. INTRODUCTION

1. This report is a submission of the above-mentioned organisations to the fourth cycle of the UPR of the Philippines. It focuses on three main human rights issues: environmental protection and human rights; the extrajudicial killings in the context of the war on drugs campaign; and the protection of human rights defenders (HRDs). The information for this submission is based on the documentation work of the members of the coalition of submitting NGOs, publicly available information and interviews with the victims and family of victims.

II. ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS¹

A. General legal framework

2. Overtime, protecting the environment has become synonymous to and diametrically interwoven into the protection of human rights. Without a healthy environment, the enjoyment of a wide range of other human rights, such as, the rights to life, health, food, water etc, are not possible.²
3. In 8 October 2021, the UN Human Rights Council (HRC) adopted the Resolution 48/13³ which recognized the “Human Right to a Clean, Healthy and Sustainable Environment”. It called on States to not only protect this right but to recognize the public’s “rights to seek, receive and impart information” and to effectively participate in environmental decision-making. It also urged States to provide effective remedies for environmental-related concerns⁴ while reiterating the obligations of businesses to respect human rights including the security of environmental human rights defenders.⁵ The Philippines was among the nations that voted for the resolution.⁶
4. In the Philippines, the right to a healthy environment is mirrored in its Constitution, national laws and jurisprudence. The Constitution provides that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature”⁷ while Executive Order No 192 declares that it is the state’s duty to protect, enhance and ensure the sustainable use and conservation of the country's natural resources for current and future generations. It is also the policy of the state to assess the social and

¹ Three recommendations were addressed to the Philippines during its UPR in 2017 regarding environmental protection and human rights - Report of the Working Group on the Universal Periodic Review - Philippines, A/HRC/36/12, 18 July 2017, recommendations by Singapore (para 133.68), Haiti (para 133.71), Qatar (para 133.73). The three recommendations were supported by the Government of the Philippines: Responses to recommendations

² Human Rights Council holds interactive dialogue with Special Rapporteurs on the environment and on adequate housing | OHCHR

³ A/HRC/RES/48/13, 8 October 2021

⁴ A/HRC/RES/48/13, 8 October 2021, preamble

⁵ A/HRC/RES/48/13, 8 October 2021, preamble

⁶ A/HRC/RES/48/13, 8 October 2021

⁷ Article II, Sec. 16, 1987 Philippine Constitution

environmental implications of using its natural resources.⁸ This policy is articulated further in the 1987 Administrative Code.⁹

5. The 1991 Local Government Code (LGC) provides the obligation to conduct consultations with all concerned parties and get their prior approval before any project can be implemented¹⁰ For its part, the Philippine Clean Air Act provides for the right to participate in decision-making processes, the right to be consulted as well as the right to remedy.¹¹
6. The constitutional right of the people to a balanced and healthful ecology has been interpreted and further developed in a number of jurisprudence in the Philippines. In a landmark case in 1993, the Supreme Court elaborated that this right is as equally important as any of the civil and political right under the Constitution and that this right, together with the right to health, are “basic rights [that] need not even be written in the Constitution for they are assumed to exist from the inception of humankind”.¹² The fact that it is mentioned in the Constitution only lays emphasis on its continuing importance and imposes on the State a solemn obligation to preserve and advance this right. Natural resources are owned by the State, hence, their exploration, development and utilisation are subject to state regulations.¹³ Access to such resources, as provided in national legislation, should protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.¹⁴

⁸ Executive Order No 192 (10 June 1987)

⁹ Title XIV, Book IV of the Administrative Code of 1987

¹⁰ Section 2 (c), 26 and 27, Local Government Code of 1991, RA 7160

Section 2(c): It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions. Section 26: It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27: No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the Sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

¹¹ Philippine Clean Air Act, RA 8749, Section 4: (a) The right to breathe clean air; (b) The right to utilize and enjoy all natural resources according to the principles of sustainable development; (c) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process; (d) The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health; (e) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances; (f) The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act; (g) The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and (h) The right to bring action in court for compensation of personal health damages resulting from the adverse environmental and public health impact of a project or activity.

¹² *Oposa vs. Factoran*, GR No 101083, 30 July 1993

¹³ Article XII, Section 2, 1987 Philippine Constitution

¹⁴ Article XIII, Section 1, 1987 Philippine Constitution

7. The Philippines has also acknowledged the principle of free, prior and informed consent (FPIC) for indigenous peoples through the Republic Act No. 8371 in 1997.¹⁵

B. National regulatory framework on mining activities

8. In the Philippines, mining of minerals is governed by the Mining Act of 1995. Executive Order No. 79 provides for the implementing rules and covers all metallic minerals.¹⁶ The rules apply to all stages of mining and provide for full and strict implementation of environmental standards with appropriate sanctions.
9. With regards to dredging activities of heavily-silted river channels, they are regulated by the Administrative Order No. 2020-07.¹⁷ Among the provisions is the mandate that all holders of dredging clearances shall comply with laws and regulations on environmental protection and the conduct of an Environmental Impact Assessment (EIA).¹⁸ After a positive review of the EIA, an Environmental Compliance Certificate (ECC) is issued, certifying that a proposed project will not have significant negative impacts on the environment.¹⁹ Part of the process in securing an ECC requires that the public be engaged in assessing the environmental impacts of a project.²⁰ Thus, the EIA process includes information, education and communication campaigns.
10. As for off-shore mining, Memorandum Circular 2020-008 was issued on 14 October 2020 and provides that it “shall be conducted in a manner that will not adversely affect biodiversity, the safety of navigation at sea, and other marine activities”.²¹ It also clarifies the obligations of the permittee/contractor/permit holder in terms of environmental protection, mine safety and health and social development.²² Notwithstanding, off-shore black sand mining is poorly regulated in the Philippines. The Mining Act of 1995 is insufficient to address the peculiarities of the

¹⁵ The Republic Act No 8371 on “ AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES “ was adopted in 1997 it is also known as IPRA Law. The full text is available at <https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/>

¹⁶ President of the Philippines, Executive Order No. 79, s. 2012, 6 July 2012, Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources, <https://www.officialgazette.gov.ph/2012/07/06/executive-order-no-79-s-2012/>

¹⁷ Department of Environment and Natural Resources (DENR) Administrative Order No. 2020-07, 27 February 2020, Rationalizing dredging activities in heavily-silted river channels pursuant to the DENR-DPWH-DILG-DOTR Joint Memorandum Circular no. 1 series of 2019, [DENR DAO 2020-07] https://mgb.gov.ph/images/Latest_Policy_Issuances/DAO-2020-07_FOR_PUBLICATION.pdf

¹⁸ DENR DAO 2020-07, IV , Sec. 1.

¹⁹ Section 3(d), Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System (P.D. No 1586), DENR Administrative Order No. 30-03, [June 30, 2003]

²⁰ See <https://emb.gov.ph/flowchart-for-the-processing-of-ecc-applications/>

²¹ Section 3, art. 3.1, Mines and Geosciences Bureau, Memorandum Circular No. 2020-008, 14 October 2020, Revised guidelines on off-shore mining, <http://databaseportal.mgb.gov.ph/mgb-public/api/attachments/download?key=nkWbhYa7qvxr0dzChGPCUFVaJqatFXXqwYXDZBvCtrH1xpjDeZCMj0s6BFU2aS5m>

²² Section 5, Mines and Geosciences Bureau, Memorandum Circular No. 2020-008, 14 October 2020, Revised guidelines on off-shore mining, <http://databaseportal.mgb.gov.ph/mgb-public/api/attachments/download?key=nkWbhYa7qvxr0dzChGPCUFVaJqatFXXqwYXDZBvCtrH1xpjDeZCMj0s6BFU2aS5m>

operations. In 2016, Senator Leila de Lima filed Senate Bill 960²³ to seek a ban on black sand mining on the basis of the studies made by environmental groups. To date, this bill has not been enacted.

11. Despite the body of laws on environmental protection and human rights in the Philippines, its effective realisation was problematic in the past years. Mining operations in the country, such as black sand mining, river dredging and copper mining, have caused various human rights violations and environmental degradation.
12. The following section examines the substantive and procedural human rights impacted by the mining of black sand, copper and gold, amounting to a failure from the Government of the Philippines (GoP) to implement its UPR recommendations on environmental protection and human rights.

C. Black Sand Mining and river dredging in Zambales

Background

13. Areas such as the coast and beaches of the municipality of San Narciso in the province of Zambales are experiencing a sudden surge in construction activities to facilitate the mining of black sand at the mouth of the Alusiis River by the company AGN Trading. The sand²⁴ has tremendous value for the concrete, construction, industrial and highway engineering industries and is exported to Singapore and China. In order to allow ships and barges to collect and deliver the mined sand, construction of a jetty port at the mouth of the adjacent Alusiis River was approved on 14 March 2021. Since April 2021, AGN Trading started dredging the Alusiis River. Construction of an access road to the jetty port, which crosses and disrupts the flow of the Alusiis River, was initiated on 8 December 2021. Fisherfolks, farmers, resort owners and church-based organisations in San Narciso and neighbouring municipalities are opposing the river dredging and black sand mining operations. Both activities have become a major concern in view of its negative impacts on the environment and human rights of the affected coastal communities.
14. The offshore exploitation of black sand in the Philippines has already paved the way for coastal erosion, flooding, changes in water flows, increased intensity of tropical storms, dying rivers, diminished harvests, higher salinity in ground water and arable land, loss of marine life and loss of revenues for sustainable farming communities, the tourism industry and conservation groups. The dredging of black sand in rivers also gives rise to a plethora of environmental and human rights concerns, including redirecting rivers and destroying marine ecosystems.

²³ 17th Congress of the Republic of the Philippines, Senate, Senate Bill No. 960 introduced by Senator Leila M. de Lima. 1 August 2016, An Act Prohibiting Black Sand Mining in the Philippines Providing Penalties Therefor, and for Other Purposes, http://www.bantaykita.ph/uploads/2/9/9/2/29922649/de_lima_bill.pdf

²⁴ Sand is the second most extracted substance after water and is the foremost solicited solid substance, mainly due to a construction boom worldwide. It accounts for nearly 85 percent of global mining operations (<https://foreignpolicy.com/2022/02/02/sand-mining-environment-climate-crisis-dredging-mafia/>) and 43% of carbon dioxide emissions (https://www.bworldonline.com/de-lima-files-resolution-to-investigate-black-sand-mining-in-lingayen-gulf/#:~:text=De%20Lima%20cited%20a%202016,cessation%20of%20the%20mining%20activities,)), which is exacerbating climate change. The Philippines is no stranger to this conundrum. As an archipelago of 7,640 islands, its sand has become highly prized at home and abroad.

Right to an adequate standard of living, including adequate food and housing

15. Milkfish is commonly found on the west coast of the Philippine islands, where fishing communities from San Narciso and San Felipe operate. This livelihood has been sustainable for the local fishing communities with earnings of at least PHP 5,000 (96\$) to PHP 13,000 (250\$) per day.²⁵ This situation will however come under threat as a direct result of mining activities on the quality of the water and the marine habitat therein.
16. Indeed, according to environmental and freshwater biologists in the Philippines who are partners with members of the NGO coalition, the construction of the jetty port and its concomitant structures and access roads are causing significant alteration of natural geomorphology and hydrology of Alusiis River.²⁶
17. The on-going operations are affecting the right to an adequate standard of living, including the right to adequate food, of the milkfish gatherers. Indeed, the water quality is degraded and affects marine life making it difficult to access quantitatively and qualitatively adequate food.²⁷ Initial water quality assessment²⁸ in the Alusiis River suggests that the current oxygen levels are low in the waters adjacent to the on-going pier and road constructions in comparison with undisturbed upstream sites.²⁹ Due to the alteration of river's natural flow and increased sedimentation arising from the jetty port's construction, high levels of cloudiness³⁰ were detected on the surface water of Alusiis River's mouth and its coastal area. The cloudiness is caused when water is stirred by the mining company, resulting in the suffocation of fish, dolphins and shellfish; while blocking plants, coral reefs and seagrass beds from getting sunlight. Scientists have already observed that a nearby coral reef lacks many species that require sunlight for photosynthesis. Contour maps clearly illustrate that these cloudy waters currently extend to a radius of 2.5 km from the shore to the surrounding ocean due to the construction of the access road on the Alusiis River.
18. Improper waste management may also impact the quality of the water near the jetty port. Barges and large ships will not only lead to fuel spillages of persistent organic pollutants³¹ in the water but will also introduce potentially invasive species from foreign ports whenever they drain their ballasts upon reaching their destination ports.

²⁵ This matches one of the major goals of the Comprehensive National Fisheries Industry Development Plan 2016–2020 (CNFIDP) in terms of self-reliance and sufficiency in fish supply. The CNFIDP aims to target a 4% annual increase in milkfish production. (Bureau of Fisheries and Aquatic Resources. (2008). The Fisheries Commodity Road Map for Milkfish. Fisheries Policy and Economics Division. Bureau of Fisheries and Aquatic Resources, Philippines. Salayo, N. D., Marte, C. L., Toledo, J. D., Gaitan, A. G., & Agbayani, R. F. (2021). Developing a self-sufficient Philippine milkfish industry through value chain analysis. *Ocean & Coastal Management*, 201:1-12.)

²⁶ Scientists at the College of Science, University of Santo Tomas and the Institute of Environmental Science & Meteorology, University of the Philippines Diliman, 18 March 2022, 'Position Paper'

²⁷ According to the United Nations Special Rapporteur on the right to food, the right to food can be described as follow: "The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear." The right to adequate food, Fact Sheet n°34.

²⁸ Scientists at the College of Science, University of Santo Tomas and the Institute of Environmental Science & Meteorology, University of the Philippines Diliman, 18 March 2022, 'Position Paper'

²⁹ Also known as 'hypoxic water condition', the current dissolved oxygen level ranges from 1.8 to 3.2 mg/L. In comparison, the undisturbed upstream sites have dissolved oxygen levels that range from 5.6 to 7.5 mg/L.

³⁰ Also known as 'turbidity'

³¹ E.g. polycyclic aromatic hydrocarbons

19. Additionally, the current activities impact the right to adequate housing of local communities, especially the habitability aspect.³² In San Narciso, the natural barrier to the sea is hidden in the black sand, which keeps sand particles heavier and more compressed, thus ensuring that seawater maintains a natural threshold when it reaches the coast. With mining activities, scientists have already observed that a new breakwater structure constructed to fortify a wall in preparation for the jetty port has eroded 20 meters from the beach since 2019.³³ Massive coastal erosion and flooding currently plague the neighbouring shorelines of various suburbs in the neighbouring municipality of Botolan. These suburbs' communities that were located several metres from the shore were submerged. In the suburb of Bangan, 160 homes of the fishing community have been engulfed by rising sea levels and the residents of San Narciso anticipate a comparable fate if mining continues unabated in their vicinity.

Rights to seek, receive and impart information, to participate effectively in decision-making processes and to prior approval³⁴

20. In Zambales, a multi-sectoral coalition of residents of the affected municipalities was stunned by the lack of transparency by the Local Government Units (LGU) of San Felipe. According to them, the local chief executive allowed the construction of the jetty port without any legal basis, public hearings, consultations with the communities and environmental or human rights impact assessments.
21. On 7 January 2021, an arbitration meeting between Save Zambales Kalikasan Movement (SZKM) and the company was scheduled by the City Environment & Natural Resources Office (CENRO). SZKM was misled to believe that the CENRO officers were all held up doing field work, while they had in fact secretly joined the mining company to fence off the mining area.
22. By 20 January 2021, the mayors of San Felipe and San Narciso, along with the AGN Trading and the negotiator for mining disputes from the Office of the Governor, scheduled a meeting with the fishermen. It was disparaging and paternalistic, informing the fishing community that if they enabled the company to mine the area, jobs and programmes would be available for the community. The community was given no further options.
23. On 10 March 2021, the chief of San Rafael approved AGN Trading's project. A second approval was issued on 14 April 2021 by the mayor of San Felipe, clearing the way for dredging.³⁵

Access to justice and to effective remedies

24. Letters and complaints from local stakeholders (SZKM) were repeatedly ignored. On numerous occasions, the mining company also disregarded the grievances of the community with the acquiescence of local government executives who were operating in their favour.

³² The right to adequate housing, Fact Sheet n°21 Rev.1

³³ Scientists at the College of Science, University of Santo Tomas and the Institute of Environmental Science & Meteorology, University of the Philippines Diliman, 18 March 2022, 'Position Paper'

³⁴ A/HRC/RES/48/13, 8 October 2021

³⁵ On 28 April 2021 and 24-25 June 2021

25. SZKM requested to see the mayor of San Felipe on 30 June 2021 to ascertain the reasons and legal grounds for building a port and to request for a cessation of all on-going operations until the end of the discussions.³⁶ In July 2021, SZKM sent two additional letters but he refused to see them and to release legal documents pertinent to the case. On 16 July 2021, AGN Trading was seen mining and diverting the Alusiis river.
26. Following a formal complaint³⁷ from the sister of a resort owner in Zambales,³⁸ the company was formally requested on 6 October 2021 to cease all operations as it lacked the required ECC.³⁹
27. Despite this decision, AGN Trading was granted an ECC by the Department of Environment and Natural Resources (DENR) on 24 November 2021. It intensified its mining of the Alusiis river, using the mined sand to build the road to the jetty port. SZKM sent letters denouncing this practice,⁴⁰ to which the DENR responded by issuing a second notice of violation because the on-going activity was not listed in the initial agreement.
28. By 24 January 2022, SZKM wrote an urgent appeal to revoke the permission to build the jetty port. On 28 January 2022, the ruling finally stipulated that the company had to cease and desist from all prior activities and to pay a fine of PhP 50,000.00 for refusing to toe the line of balancing socio-economic growth and environmental protection.⁴¹ As of 10 February 2022, AGN Trading has remained inactive in the area.

D. Tampakan Gold Copper Project

Background

29. The Tampakan Gold Copper Project (TGCP) is a mining project located in the southern part of Mindanao Island. The project seeks to exploit one of the world's largest undeveloped copper-gold deposits. It is estimated that the mine would yield an average of 375,000 tons of copper and 360,000 ounces of gold per annum over 17 years.⁴² The Project is controversial in many respects and it is considered to be potentially harmful to the environment and in violation of human rights. Since the 1990s, the project has faced strong opposition from the indigenous B'laan leaders.
30. The project was covered by the Tampakan Financial or Technical Assistance Agreement-002 (Tampakan-FTAA-002) and was valid for 25 years starting in 1995. It was entered into between the GoP and the Western Mining Corporation (WMC). Sagittarius Mines

³⁶ A copy of SZKM's letter to the mayor was also sent to the DENR's provincial and central offices (Office of Secretary Cimatú, Office of the President, DILG, Philippines Port Authority and the Presidential Anti-Corruption Commission (PACC)).

³⁷ 8 July 2021

³⁸ The complaint was sent to the Presidential Complaint Centre.

³⁹ Decision made by the Presidential Complaint Centre. The case is PCC Code no. GE-JCA-07-14-2021-022.

⁴⁰ Numerous letters of protests were sent by SZKM to the DENR, DILG, DPWH and local governments

⁴¹ Presidential Decree 1586: Philippine EIS System was established to facilitate the attainment and maintenance of a rational and orderly balance between socio-economic growth and environmental protection

⁴² Hamm, Brigitte; Schax, Anne and Scheper, Christian. "Human Rights Impact Assessment of the Tampakan Copper-Gold Project", June 2013. Published by Institute for Development and Peace (INEF), commissioned by MISEREOR (German Catholic Bishops' Organization for Development Cooperation) and Fastenopfer (Swiss Catholic Lenten Fund), in collaboration with Bread for All. Available at https://www.humanrights.ch/cms/upload/pdf/130613_Bericht_Glencore_Tampakan.pdf

Incorporated (SMI), later took over the project. After being granted an ECC by the GoP in 2013, the project was then suspended in 2016 following the provincial ban on open-pit mining operations in the province.

31. While the Tampakan-FTAA-002 agreement was supposed to expire on 22 March 2020, it was extended in June 2016.⁴³ The extension was only signed by the Director of the Mines and Geosciences Bureau despite the fact that only the President of the Philippines has the authority to sign the permit in accordance with the provision of the Mining Act of 1995. It was approved without the FPIC of the affected indigenous communities, without the consultation and concurrence with the different LGU's concerned. The ECC was cancelled because it did not comply with the requirements under the law.⁴⁴ Yet, the ECC was later reinstated on 6 May 2019 without any justification.⁴⁵

Right to an adequate standard of living, including adequate food, and right to water

32. In addition to standards agreed upon by the State under international human rights law, the right to water is protected by the Philippines Constitution and several other legislations.⁴⁶ The State is duty bound to ensure the quality of water resources in pursuing economic growth.⁴⁷ Under the FTAA, SMI is given the exclusive and priority rights on the use of water for their activities, while the Water Code of the Philippines is clear on the primacy of domestic use.⁴⁸ The mining area in Tampakan straddles three major watershed areas.⁴⁹ These are major sources of water not only for drinking, but also for irrigation of agricultural lands within the ancestral domain of the indigenous B'laan and for non indigenous communities. The underground potable water and the agri-use groundwater will be directly affected.
33. The Topland Communal Irrigators Association, Inc. (TCIAI) has consistently opposed and rejected the SMI project. They consider that the Tampakan project runs counter to their very existence of TCIAI due to its irreversible and life threatening environmental effects on major watersheds and river systems among others.
34. The site of TGCP encompasses four provinces⁵⁰ that are dependent on agricultural production. The final mining area would cover about 20,000 hectares of agricultural lands, which

⁴³ The expiration of the FTAA-002 for Tampakan Gold and Copper Mining Project was supposed to expire on 23 March 2020. On May 11, 2016, SMI requested for a 12-year extension of the term of FTAA No 02-95-XI. The Philippines Department of Environment and Natural Resources (DENR) granted the request which allows the extension of FTAA-002 to 2032. See more information at https://denr.gov.ph/images/DENR_NEWS_ALERTS_2021/DENR_News_Alerts_April_27_2021_Tuesday_opt.pdf

⁴⁴ Environmental Compliance Certificate (ECC) was cancelled in 14 February 2017 by the then Secretary Gina Lopez for failure of SMI to comply with certain conditions. Among of the failures are as follows: (i) failure to submit proof of compliance permits and clearances required by other government agencies, (ii) failure to resolve pending issues with Department of Agriculture and Department of Agrarian Reform, and (iii) failure to secure favourable endorsement from the local government units.

⁴⁵ [Leave MindaNOW: 'Destructive' Tampakan mine opposed by groups across PH \(atenews.ph\)](#)

⁴⁶ The following are Philippines legislations which are relevant to the right to water: Water Code of the Philippines (Presidential Decree No. 1067), National Integrated Protected Area System (NIPAS) Act (Republic Act No. 7586), Clean Water Act (RA 9275), and Indigenous Peoples Rights Act (IPRA) (RA 8371).

⁴⁷ Section 2, Philippine Clean Water Act of 1994

⁴⁸ IRR of PD 1067 as amended promulgated by National Water Resources Board

⁴⁹ Namely Catisan Allah, Marbel and Padada River Watersheds.

⁵⁰ The Provinces of South Cotabato, Sultan Kudarat, Sarangani and Davao del Sur.

threatens the livelihood and food security of the communities. It will directly and indirectly affect several water catchments in the four provinces.⁵¹ In South Cotabato alone, the TGCP will directly affect the 3,746 hectares of irrigated rice land, producing 31,466,400 kilos of rice per year.⁵²

The principle of free, prior and informed consent

35. In October 2019, the B'laan indigenous leaders sent a letter to the National Commission on Indigenous Peoples (NCIP) asking for the denial of the issuance of Certificate Precondition to SMI due to irregularities in the conduct of the FPIC process.
36. B'laan communities have demanded that the NCIP dismiss the approval and implementation of the consent process required under the FPIC legislation unless an investigation on the human rights violations and killings of the B'laan leaders, elders, women and children between 2009 and 2014 were resolved. However, the NCIP has proceeded with the FPIC process, even using the old FPIC Guidelines of 2006 which were no longer valid due to the amended NCIP FPIC Guidelines of 2012.

E. Recommendations

- Re-examine and amend the Mining Act of 1995 to ensure a more robust protection of human rights and environmental standards in the context of off-shore mining.
- Conduct independent and effective investigations to determine the medium and long-term human rights and environmental impacts of black sand, gold and copper mining and fund research to seek for alternatives to sand mining.
- Take all necessary measures to ensure that current and future development projects are in accordance with national and international human rights and environmental standards.
- Ensure the effective implementation by the concerned businesses of legal decisions related to the protection of the environment and human rights.
- Ensure the respect of the free, prior and informed consent of indigenous communities, in accordance with international human rights standards.

III. EXTRAJUDICIAL KILLINGS IN THE CONTEXT OF THE WAR ON DRUGS CAMPAIGN⁵³

⁵¹ SMI identifies six catchments within the project site of which portions may be subject to direct impact of the mining project: the Altayan, Taplan, Dalul, Mal, Mainit and Manteo catchments. Two major catchments may be indirectly impacted namely where the Mal River merges into the Padada River and where the Altayan/Taplan River connects to the Marbel River. The Dalul, Mainit and Manteo catchments are the minor catchments, which may be indirectly affected. See https://www.humanrights.ch/cms/upload/pdf/130613_Bericht_Glencore_Tampakan.pdf, p.27.

⁵² This is valued at PHP 550,662,000.

⁵³ During the 3rd UPR Cycle, the GoP received no less than 51 recommendations regarding extrajudicial killings out of which only 7 were accepted. 51 recommendations were addressed to the Philippines during its UPR in 2017 regarding extrajudicial killings - Report of the Working Group on the Universal Periodic Review - Philippines, A/HRC/36/12, 18 July 2017, recommendations by France (para 133.13 & 133.102), Germany (para 133.14, 133.109 & 133.174), Ghana (para 133.15, 133.111 & 133.154), Hungary (para 133.16 & 133.113), Latvia (para 133.17), Australia (para 133.43 & 133.152), Perú (para 133.44), Haiti (para 133.47), United States of America

A. National legal framework

37. The protection of the Filipino people from extrajudicial killings finds basis in the right to life in Article III, sec. 1 of the Constitution.⁵⁴ Philippine law lacks an exact definition of the term “extrajudicial killing.” Yet, it is endorsed with the creation of such remedies as in the writ of amparo⁵⁵ and the writ of habeas data.⁵⁶ Both remedies are initiatives of a proactive judiciary. The Philippine Congress seeks to provide alternative preventive solutions in cases of extralegal killings and enforced disappearances.⁵⁷ In instances where extrajudicial killings occur, perpetrators may be charged for violating the Revised Penal Code, under the legal provisions that punish murder or homicide.^{58,59}

B. The War on Drugs campaign

38. On 1 July 2016, President Duterte launched the so-called ‘war on drugs’, aimed at eradicating the use of illegal drugs in the country,⁶⁰ including through the “Double Barrel” project.⁶¹ This

(para 133.48), Lebanon (para 133.53), Zambia (para 133.54 & 133.151), Timor-Leste (para 133.55), Estonia (para 133.59 & 133.173), Ireland (para 133.86), Costa Rica (para 133.100), Spain (para 133.103), Poland (para 133.104), Slovakia (para 133.105), Netherlands (para 133.106), Lithuania (para 133.107), Canada (para 133.108), Chile (para 133.110), Italy (para 133.112), Uruguay (para 133.114), Iceland (para 133.115, 133.118, 133.153 & 133.155), Luxembourg (para 133.116 & 133.141), Norway (para 133.117), Bulgaria (133.119), Botswana (para 133.138), Slovenia (para 133.142), UK (para 133.143), Portugal (para 133.144), Sweden (para 133.145), Czechia (para 133.146), New Zealand (para 133.147), Austria (para 133.148), Switzerland (para 133.149), Sierra Leone (para 133.150). Responses to recommendations: https://www.upr-info.org/sites/default/files/document/philippines/session_27_-_may_2017/response_to_recommendations_philippines_2017.pdf

⁵⁴ Article III, sec. 1 of the Constitution which provides that, “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” by this provision, Philippine law guarantees the judicial presumption of innocence that every accused enjoys, no matter how serious the crime charged may be. Although persons in authority enjoy the presumption of regularity in the performance of official duties, this does not prevail over the presumption of innocence favouring the accused. See also *People v. Metokur Abdula*, GR No. 212192 [21 November 2018]

⁵⁵ See The Rule on the Writ of Amparo, AM No 07-9-12-SC

⁵⁶ See The Rule on the Writ of Habeas Data, AM No 08-1-16-SC

⁵⁷ See the 19 November 2007 Speech of Chief Justice Reynato Puno on the Writ of Habeas Data, available at <https://pnl-law.com/blog/writ-of-habeas-data-by-chief-justice-reynato-puno/>.

⁵⁸ See *People of the Philippines vs. Arnel Oares et al.*, RTC Caloocan Crim Case No. C-102195-102197, available at <https://newsinfo.inquirer.net/1058325/full-text-courts-decision-on-cops-who-killed-kian-delos-santos>.

⁵⁹ The Philippines Congress has also passed the following relevant laws: a) Republic Act No. 9745, the Anti Torture Act; b) Republic Act No. 9851, the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity; and c) Republic Act No. 10353, the Anti-Enforced Disappearance Act.

⁶⁰ President Duterte launched the anti illegal campaign by launching “Double Barrel” project, which was issued by the Chief of the Philippine National Police. Mr. Dela Rosa through Command Memorandum Circular No. 16-2016, available at <https://didm.pnp.gov.ph/images/Command%20Memorandum%20Circulars/CMC%202016-16%20PNP%20ANTI-ILLEGAL%20DRUGS%20CAMPAIGN%20PLAN%20%20PROJECT%20DOUBLE%20BARREL.pdf>

⁶¹ The Project Oplan-Double Barrel or popularly known as Project Tokhang is the policy ordered by President Duterte in his fight against illegal drugs and other forms of criminality in the country. Oplan Double Barrel is a policy by which police personnel knock on the doors of alleged drug users or pushers, asking them to surrender to the police so that they will be monitored for further assessment. For further information, please see Report of the UN High Commissioner for Human Rights, available at A/HRC/44/22, para 15.

campaign has caused widespread, systematic and grave human rights violations, leading to massive extrajudicial executions, mainly among urban poor people,⁶² including children.⁶³ The President and other senior officials publicly made statements to instigate and incite the killings of alleged drug users and peddlers.⁶⁴ There is no transparent or comprehensive data on the number of victims of this war on drugs. However, it is estimated that between 12,000 and 30,000 civilians have been killed.⁶⁵ The GoP provided a much lower estimate of 6,201 persons.⁶⁶

39. Since 2019, the HRC has adopted two resolutions on the situation in the Philippines. Resolution 41/2 from July 2019 requested the UN High Commissioner for Human Rights to present a comprehensive written report on the situation of human rights in the Philippines.⁶⁷ One of the recommendations of the report was on the need to consider options for international accountability measures, in the absence of clear and measurable outcomes from domestic mechanisms.⁶⁸ In October 2020, the HRC adopted Resolution 45/33, requesting the OHCHR to support the Philippines through the UN Joint Programme on Human Rights (UNJP) to

⁶² A series of interviews were conducted by the Dominican Family for Justice, Peace, and Care for Creation (DFJPCC) with 20 families whose family members succumbed to police brutality due to their alleged involvement in drugs. The killings, which are a part of the “war on drugs”, took place between 2016 to 2019 in Navotas City, in the Philippines. The victims were abducted by armed men in uniforms, masks and bonnets, that were provided by the police department. Witnesses have stated that the victims were apprehended after a reconnaissance mission in which the assailants actively sought the victims by name and asked specific questions about them. As the victims begged the armed gunmen to spare their lives, they were abducted from their homes, or on the streets or at work and taken by motorcycle to undisclosed locations. Hours or days later, their lifeless bodies were encountered in cemeteries or under the bridge. Their bodies were riddled with bullets and their heads wrapped in duct tape. Other testimonies allege that the victims were directed by the police to go to certain precincts and were later found dead at the cemetery. The police and those who abet them claim that the killings were lawful because the victims fought back and were in possession of guns and crystal meth, locally known as “shabu”. However, the families of the victims claim that they were not aware of such possession. No autopsies or investigations were conducted and the perpetrators have not been formally identified. Although the witnesses can readily recognise the gun men’s voices and mannerisms, they fear for their own safety and lives.

⁶³ The report of the UN High Commissioner for Human Rights mentioned that between 1 June 2016 and 21 April 2020, the country’s Commission on Human Rights documented the killing of 73 children in the context of the campaign against illegal drugs – 62 male and 11 female. See A/HRC/44/22, para 21.

⁶⁴ Quotes from President Duterte on the ‘war on drugs’: “Hitler massacred three million Jews. Now, there are three million drug addicts. I’d be happy to slaughter them.” [Duterte likens himself to Hitler, pledges to slaughter 3 million addicts - YouTube], “If you know of any addicts, go ahead and kill them yourself as getting their parents to do it would be too painful.” [The Philippines’ Duterte Incites Vigilante Violence | Human Rights Watch (hrw.org)], “Forget the laws on human rights. If I make it to the presidential palace, I will do just what I did as mayor. You drug pushers, ... I’d kill you, ... I’ll dump all of you into Manila Bay, and fatten all the fish there.” [Philippines President Rodrigo Duterte in quotes - BBC News]. “The illegal drugs war will not be sidelined – instead, it will be as relentless and chilling, if you will, as on the day it began.” [Third State of the Nation Address, July 23, 2018], “Even the EU is scolding me ... When I was mayor, that was OK, but it is different now because I am the president. Why would you insult me? It is as if I am your subordinate ... F**k you.” [10 quotes: Philippines president Rodrigo Duterte in his own words (irishtimes.com)]

⁶⁵ See “Situation of the Republic of the Philippines” issued by the Office of the Prosecutor of the International Criminal Court on June 2021, available at https://www.icc-cpi.int/CourtRecords/CR2021_05381.PDF

⁶⁶ Number provided by the Philippines Drug Authorities as 30 September 2021, available at https://pdea.gov.ph/images/REALNUMBERSPH/2021/Nov2021/RealNumbers_Update_as_of_30Sep2021.pdf

⁶⁷ A/HRC/RES/41/2 17 July 2019

⁶⁸ Report of the UN High Commissioner for Human Rights, A/HRC/44/22 (29 June 2020).

provide technical assistance and capacity building.⁶⁹ On 22 July 2021, the UN and the GoP signed an agreement on a three-year UNJP.⁷⁰

40. At the 49th session of the HRC, the Philippines Secretary of Justice, Mr. Menardo Guevarra asserted: “the progress we have thus far achieved rests on the collective effort of the Philippine National Police, the Department of Justice, and other relevant institutions committed to instil respect for human rights and exact accountability for those who violate them.”⁷¹
41. However, the UN High Commissioner for Human Rights remained disturbed by reports of ongoing and severe human rights violations and abuses across the country, including killings by members of the security forces and law enforcement in counter-narcotics and counter-insurgency operations – often in circumstances that indicate that human rights standards have been totally ignored.⁷²
42. Civil society organisations (CSOs) continue to express their serious concern that the UNJP has been instrumentalized by the GoP to please the international community.⁷³ According to the Philippine Alliance of Human Rights Advocates, the aim of Secretary Guverra’s speech was to please international community into believing that the GoP had been serious in exercising due diligence in investigating human rights violations, diverting attention away from the true cause of the mass violations and conceal the magnitude of the atrocities committed against the people.⁷⁴
43. Although there was a decrease in the consumption and circulation of drugs, it came at the heavy price for Filipinos who fear for their own safety and security.⁷⁵ One of the challenges encountered by entities investigating the human rights violations, was the reluctance of witnesses to come forward and testify.⁷⁶
44. The human rights situation is still a matter of concern with no substantial changes on the ground. On the contrary, it has gotten much worse in different ways.⁷⁷ In only one out of thousands of cases of extrajudicial killings related to war on drugs, were the perpetrators held

⁶⁹ A/HRC/RES/45/33, 13 October 2020.

⁷⁰ See information regarding the UN Joint Programme on human rights in the Philippines, available at <https://philippines.un.org/en/166140-phl-un-and-partners-endorse-roadmap-accelerate-implementation-human-rights-joint-programme>

⁷¹ Philippines Statement at the High Level Segment of the 49th Session of the UN Human Rights Council, 01 March 2022, Geneva, Switzerland, Delivered by the Hon. Menardo I. Guevarra Secretary (Minister) of Justice of the Philippines.

⁷² Statement by Michelle Bachelet, 48th session of the HRC, UN High Commissioner for Human Rights, 7 October 2021.

⁷³ Franciscans International statement at the 49th Session of the Human Rights Council, available at https://franciscansinternational.org/fileadmin/media/2022/UN_Sessions/HRC49/HRC49_Item3_Philippines.pdf

⁷⁴ Response of the Philippine Alliance of Human Rights Advocates to the Statements of the Philippine Government in the High Level Segment of the 49th UN Human Rights Council Session.

⁷⁵ See 8 of 10 Pinoys fear dying in drug war, available at <https://www.philstar.com/headlines/2016/12/20/1655209/8-10-pinoys-fear-dying-drug-war>.

⁷⁶ Among the challenges encountered therefore by entities investigating the human rights violations is the reluctance of witnesses too terrified to talk to speak up (See As bodies pile up in Philippines, many fear to talk about Duterte’s war, available at <https://www.reuters.com/article/us-philippines-drugs-idUSKCN11A15P>).

⁷⁷ Joint statement of Asian Forum on Human Rights and Development, available at <https://www.forum-asia.org/?p=36157>. See also the joint statement of Franciscans International at the 44th Session of the UN Human Rights Council on the online and offline attacks and red-tagging against human rights defenders. Available at https://franciscansinternational.org/fileadmin/media/2020/UN_Sessions/HRC44/HRC44_Item2_Philippines_joint_statement.pdf

accountable.⁷⁸ To date, no independent body was established and the victims' relatives remain fearful of reprisals should they cooperate with independent investigations.

45. In September 2021, responding to the allegation of crimes against humanity in the Philippines, the ICC has authorized its Prosecutor to open an investigation into “[a]ny alleged crime within the jurisdiction of the Court, including but not limited to the crime against humanity of murder, committed in the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called 'war on drugs' campaign.”⁷⁹ However, acting on a Deferral Request by the Philippines, the Prosecutor has temporarily suspended the investigation, pending receipt of information on investigations and proceedings by the Philippines, in keeping with the principle of complementarity.⁸⁰

C. Impacts of extrajudicial killings on economic, social and cultural rights of the families of victims

46. Prior to this submission, interviews⁸¹ were conducted with the families of the victims of extrajudicial killings. Most victims were men from disadvantaged socio-economic backgrounds and their deaths have created unparalleled social and economic hardships for their widows and children.
47. According to the families, two out of the twenty victims had no prior involvement with drugs and their deaths were a result of mistaken identity. The other 18 victims were involved in drugs for economic reasons and provided for a significant part of the families' revenues, so their deaths forced the children and elderly in their families to seek for employment in spite of their ages and in spite of the very poor prospects of finding decent work. Some of the children were also forced to drop out of school. In order to provide for the victims' families, some relatives have given material and financial support, while others have asked for loans.
48. With regards to the widows, some became involved in advocacy, while others chose to leave their children with their in-laws and start a new life with a new partner. In one unfortunate incident, the children were taken to the new partner's home; where the son was severely mistreated, while the daughter was sexually assaulted and eventually became a teenage mother.
49. The GoP did not provide economic and psycho-social assistance to the victim's families. After the killings, it took months, even years, for the families to cope. Some families are supported by their neighbours, while others are stigmatised and marginalised. In one case, the neighbour of one of the victims was so traumatised by the carnage that they eventually left the neighbourhood.

⁷⁸ Three police officers, Mr Arnel Oares, Mr Jeremias Pereda, and Mr Jerwin Cruz were found guilty of killing Mr Kian Delos Santos, 17 years old, from Kalookan. Mr Santos was killed as part of President Duterte's campaign on war against drugs. See the statement of the Philippines Commission on Human Rights on the verdict of the three police officers at <https://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-courts-decision-on-the-kian-loyd-delos-santos-case/>

⁷⁹ <https://www.icc-cpi.int/philippines>, viewed 14 March 2022.

⁸⁰ <https://www.icc-cpi.int/Pages/item.aspx?name=pr1628>, viewed 14 March 2022.

⁸¹ A series of interviews were conducted by the Dominican Family for Justice, Peace, and Care for Creation (DFJPCC) with 20 families whose family members succumbed to police brutality due to their alleged involvement in drugs. The killings which are a part of the “war on drugs”, took place between 2016 to 2019 in Navotas City, in the Philippines.

50. The families of the victims demand justice for what the perpetrators have done to them. They are very much aware of the challenges and difficulties they are facing particularly from the current government.

D. Recommendations

- Investigate all cases of extrajudicial killings related to war on drugs without delay and bring the perpetrators to justice.
- Officially invite the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the Philippines and provide him with full access in line with the United Nations' terms of reference.
- Provide economic, social and psychological support to the families of the victims of extrajudicial executions.
- Facilitate access to justice for victims's families and to effective remedies including truth, guarantee of non repetition and reparation.
- Support the recommendation that the HRC should establish an international accountability mechanism for the Philippines to start the long-overdue independent and transparent investigation into systematic and grave human rights violations.
- Request the lifting of the suspension of the preliminary investigation by the Prosecutor of the ICC and cooperate with the investigation process.

IV. PROTECTION OF HUMAN RIGHTS DEFENDERS⁸²

51. HRDs including indigenous leaders, journalists, lawyers, church-workers and trade unionists,⁸³ continue to be the targets of intimidation, harassment and extrajudicial killings. CSOs, including church-based organisations, work to document practices of reprisals and intimidation. Of particular concern is the practice of "red-tagging" to discredit their human rights work and encourage attacks against them.⁸⁴

A. Intimidation, harassment and killings of human rights defenders including in the Church sector

52. In general, the current government makes it extremely challenging for CSOs to document and to work in an environment that puts their lives in danger. Church-based institutions, in particular, have expressed concerns about the worsening human rights situation since the beginning of Duterte's administration. On 30 January 2017, the Catholic Bishop Conference

⁸² 11 recommendations were addressed to the Philippines during its UPR in 2017 regarding human rights defenders - [Report of the Working Group on the Universal Periodic Review - Philippines](#), A/HRC/36/12, 18 July 2017, recommendations by Slovakia (para 133.74), Denmark (para 133.158), Estonia (para 133.173), Germany (para 133.174), Hungary (para 133.176), Ireland (para 133.177), Luxembourg (para 133.178), Norway (para 133.179), Poland (para 133.180), Ukraine (para 133.181), UK (para 133.182).

⁸³ 48th Session of the UN Human Rights Council, September 2021, Agenda Item 10: Oral Update of the High Commissioner on the Technical Cooperation and Capacity Building in the Philippines Delivered by Fr Angelito Cortez OFM.

⁸⁴ Statement by Michelle Bachelet, 48th session of the Human Rights Council, UN High Commissioner for Human Rights, 7 October 2021.

in the Philippines (CBCP) issued a statement on the situation of extrajudicial killings in the Philippines, linked to the government's campaign on war on drugs.⁸⁵ The CBCP pointed out that the root cause of the drug problem and criminality was due to the extensive poverty, the destruction of the family as well as the corruption of society in the Philippines.

53. On 4 December 2017, a Catholic priest, Fr. Marcelito "Tito" Paez⁸⁶ was killed, which was condemned by the CBCP.⁸⁷ He assisted many community members, particularly small-scale farmers and political prisoners. On the morning of his killing, he helped facilitate the release of a political prisoner from a Canabatuan prison. His killing was allegedly linked to his advocacy work.
54. On 4 November 2018, the GoP ordered Sr. Patricia Fox, an Australian Catholic religious sister, to leave the country due to her participation in the anti-government protests against the war on drugs as well as on the red tagging of critical voices. Sr. Fox had been living in the Philippines for 26 years.
55. In February 2019, Mgr. Pablo David, the then Vice President of the CBCP and the Bishop of Kalookan, admitted that he received multiple death threats from unknown persons.⁸⁸ Mgr. David has been a critic of the war on drugs and the accompanying extrajudicial killings, while working with the families of the victims. The multiple death threats that he received have allegedly been linked to his pastoral work. In addition to being a critic of the government's policies, President Duterte has proceeded to use profanity to describe Mgr. David's mother.
56. Outside of the religious community, there are many more cases of killings and attacks against HRDs. Only some examples are given in this paragraph. On 26 August 2021, human rights lawyer, Mr. Rex Fernandez, 64, was shot dead in an ambush while aboard his car in Cebu City.⁸⁹ Dr. Ma. Natividad Marian "Naty" Castro, 53, was arrested on 18 February 2022 by a composite team of police and military intelligence operatives in her home in San Juan City.⁹⁰ On 24 February 2022, the military said that five alleged New People's Army rebels were killed after a series of encounters with soldiers in Davao de Oro. Two of those killed, however, were teachers at the Lumad schools.⁹¹
57. The false accusations and red-tagging of human rights organisations, including Church-based organisations, take place in public spaces and online. For example, on 7 March 2022, an online article in Manila Times made an allegation that Task Force Detainees of the Philippines

⁸⁵Statement of the Catholic Bishop Conference of the Philippines (CBCP) regarding the human rights situation in the Philippines on the government's policy on war on drugs, available at <https://cbcponline.net/for-i-find-no-pleasure-in-the-death-of-anyone-who-dies-oracle-of-the-lord-god-ezekiel-1832/>

⁸⁶ Fr. Paez was the coordinator of Rural Missionaries of the Philippines in Central Luzon and a former priest of the Guimba parish.

⁸⁷ Statement of the Catholic Bishop Conference of the Philippines (CBCP) regarding the killing of Fr Marcelito Paez, available at <https://cbcponline.net/on-the-brutal-killing-of-rev-fr-marcelito-tito-paez/>

⁸⁸ Information from the Catholic Bishop Conference of the Philippines News, available at <https://cbcnews.net/cbcnews/bishop-david-confirms-getting-death-threats/>

⁸⁹ <https://www.rappler.com/nation/human-rights-lawyer-rex-fernandez-shot-dead-cebu-city/> viewed 23 March 2022.

⁹⁰ <https://newsinfo.inquirer.net/1556783/doctor-who-helped-lumad-set-up-health-centers-arrested> viewed 23 March 2022.

⁹¹ <https://www.rappler.com/nation/lumad-teacher-booc-others-slain-davao-de-oro-military/> viewed 23 March 2022.

(TFDP) was part of the communist front and involved in providing false information.⁹² As a human rights and church-based organisation, TFDP has been very active in denouncing human violations in the Philippines since President Marcos' dictatorship in the 1970's and 1980's. On 22 March 2022, Popular Bookstore and Solidaridad Bookshop⁹³ were vandalised with graffiti. It was a coordinated assault of 'red-tagging' that defaced both bookshops as it occurred on the same day, with the words "NPA" and "Terorista" in red paint on the buildings.⁹⁴

B. Protection of environmental human rights defenders (EHRDs)

58. EHRDs in the Philippines are constantly under the threat of vilification, arbitrary detention, legal harassment, enforced disappearances, torture and extrajudicial killings. In an attempt to shield powerful mining companies, EHRDs have become a usual target for the GoP. This has been achieved by the enactment of several pieces of legislation⁹⁵ under which anyone who gets in the way of big business may be branded as a "terrorist" or a "communist". On 3 December 2017, eight members of the B'laan indigenous community that contested the Tampakan mining project were killed. Other community leaders were listed as insurgents, forcing them to seek refuge at an undisclosed location.

C. Human Rights Defenders Protection Bill

59. In January 2022, the House of Representatives completed the final reading of the Human Rights Defenders Protection Bill.⁹⁶ However, the current political climate ahead of the general elections will most likely delay the adoption of the bill by the Senate. It must also be noted that, while it is being considered by the Congress, there is stern opposition to the enactment of the bill by a high-ranking officer of the current administration.⁹⁷

60. Facing continuous attacks and intimidations, the HRDs in the Philippines urgently need strong legal protection. The UN Special Rapporteur on the situation of HRDs has urged the Senate of the Philippines to adopt the bill without delay.⁹⁸

⁹² See the online article by Mr Rigoberto Tiglao on 7 March 2022, available at <https://www.manilatimes.net/2022/03/07/opinion/columns/fake-news-on-detentions-tortures-and-killings-under-marcos/1835379>

⁹³ They are two of Manila's oldest independent bookshops.

⁹⁴ <https://www.rappler.com/voices/ispeak/opinion-on-red-tagging-bookshops-popular-solidaridad/> viewed 23 March 2022.

⁹⁵ Executive Order 70, 2007 Human Security Act (led to the declaration that 600 activists were 'terrorists' on 23/2/2018), 2020 Anti-Terrorism Act, 1995 Mining Act

⁹⁶ This is also known as the House Bill No. 10576.

⁹⁷ Statement of Undersecretary Mr Severo Catura, National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) spokesperson for International Affairs, Peace Process and Human Rights Concern. Information available at <https://www.pna.gov.ph/articles/1166171>

⁹⁸ Statement of the UN Special Rapporteur on the situation of human rights defenders urging the Senate to enact the human rights defenders law, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26914&LangID=E>

D. Anti-Terrorism Act of 2020

61. On 3 July 2020, the GoP adopted the Anti-Terrorism Act (ATA) of 2020.⁹⁹ The ATA empowers the establishment of the Anti-Terrorism Council (ATC), which consists of members appointed by the executive. These members can grant extraordinary powers to law enforcement agents and the military for the arrest of any person considered a “terrorist” without first obtaining a judicial warrant.
62. The ATA does not give sufficient definition of the conduct that will expose an individual to criminal liability, contrary to the procedural aspect of the due process clause of the Constitution.¹⁰⁰ The definitions of terrorism and incitement to terrorism in the law are very broad and susceptible to various interpretations.¹⁰¹ The ATA law violates the right to be protected against unreasonable searches and seizures guaranteed in article III, section 2 of the Constitution. The law also violates the right not to be subjected to arbitrary detention. Indeed, the law authorises the detention of a person arrested without a warrant for as long as 14 days, extendible by 10 more days, before being legally charged. The prolonged custody before being charged is inconsistent with article VII, section 18 of the Constitution.¹⁰²
63. On 7 December 2021, the Philippine Supreme Court affirmed the constitutionality of the ATA of 2020,¹⁰³ with exception to some provisions.¹⁰⁴ Motions for reconsideration have been filed to question the decision of the Philippine Supreme Court.¹⁰⁵
64. The UN High Commissioner for Human Rights expressed her view that the law could have a chilling effect on human rights and humanitarian work, hindering support to vulnerable and marginalised communities.¹⁰⁶ Human rights organisations continue to raise their concern that the Anti-Terrorism Act (ATA) of 2020 will be used by the Government to silence HRDs and organisations who wish to foster respect for human rights in the country. In particular, the broad definition of “terrorist” can be used to stifle dissent and curtail the rights to freedom of opinion and expression, to freedom of peaceful assembly and of association.¹⁰⁷

⁹⁹ The complete text of Republic Act 11479 is available at <https://www.miaa.gov.ph/images/stories/Announcements2020/20200811-ra11479.pdf>

¹⁰⁰ Article III, section 1 of the Philippine Constitution

¹⁰¹ De La Salle University College of Law, Statement on the Anti-Terrorism Bill of 2020, 5 June 2020.

¹⁰² Article VII, section 18 limits detention prior to being judicially charged to three days, even when the privilege of the writ of habeas corpus is suspended.

¹⁰³ Calleja v Executive Secretary, G. R. No.252578

¹⁰⁴ The Philippines Supreme Court only declared unconstitutional the following provisions: 1. The phrase in the proviso of Section 4 which states ‘ which are not intended to cause death or serious physical harm to a person, to endanger a person’s life, or to create serious risk to public safety;’ 2. The second mode of designation found in paragraph 2 of section 25; and 3. As a necessary consequence, the corresponding reference/provisions in the implementing Rules and Regulations of Republic Act 11479 relative to the foregoing items. The Supreme Court Decision is available at <https://sc.judiciary.gov.ph/24370/>

¹⁰⁵ <https://newsinfo.inquirer.net/1562474/sc-asked-to-take-an-even-closer-look-at-anti-terrorism-act-of-2020> viewed 24 March 2022.

¹⁰⁶ Statement of the Ms Michele Bachelet, the UN High Commissioner for Human Rights on 30 June 2020, available at <https://www.ohchr.org/en/statements/2020/06/44th-session-human-rights-councilenhanced-interactive-dialogue-situation-human?LangID=E&NewsID=26016>

¹⁰⁷ See the Franciscans Joint Statement at the 44th Session of the Human Rights Council, available at https://franciscansinternational.org/fileadmin/media/2020/UN_Sessions/HRC44/HRC44_Item2_Philippines.pdf

65. The GoP has started to implement ATA. Sixteen organisations¹⁰⁸ considered by authorities as ‘underground groups’ linked to the communist movement in the country have been designated by the ATC as terrorist entities.¹⁰⁹ Their terrorist designation places their financial assets and properties under the control and authority of the Anti-Money Laundering Council.

E. Recommendations

- Take concrete and necessary steps to protect all HRDs from intimidation, harassment, violence, and killing.
- Ensure the signing into law of the Human Rights Defenders Protection Bill without delay.
- Amend the Anti-Terrorism Act of 2020 to conform with international human rights standards.
- Prohibit and penalise the practice of red-tagging, and take steps to fully and immediately protect the right to life and other human rights of those affected by the serious consequences of red-tagging.

¹⁰⁸ Revolutionary Council of Trade Unions (RCTU), Katipunan ng mga Samahang Manggagawa (KASAMA) or Federation of Labor Organizations, Pambansang Katipunan ng mga Magbubukid (PKM) or National Association of Peasants, Malayang Kilusan ng Bagong Kababaihan (MAKIBAKA) or Patriotic Movement of New Women Kabataang Makabayan (KM) or Patriotic Youth, Katipunan ng Gurong Makabayan (KAGUMA) or Association of Patriotic Teachers, Makabayang Samahang Pangkalusugan (MASAPA) or Patriotic Health Association, Liga ng Agham Para sa Bayan (LAB) or League of Scientists for the People, Lupon ng mga Manananggol para sa Bayan (LUMABAN) or Committee of Lawyers for the People, Artista at Manunulat ng Sambayanan (ARMAS) or Artists and Writers for the People, Makabayang Kawaning Pilipino (MKP) or Patriotic Government Employees, Revolutionary Organization of Overseas Filipinos and their Families (COMPATRIOTS), Christians for National Liberation (CNL), Cordillera People’s Democratic Front (CPDF), Moro Resistance Liberation Organization (MRLO), Revolutionary Organization of Lumads (ROL)
<https://www.bulatlat.com/2022/03/21/peasant-youth-activist-arrested-in-quezon-province-charged-with-anti-terror-act/> viewed 24 March 2022.

¹⁰⁹ <https://news.abs-cbn.com/news/02/23/22/anti-terrorism-council-tags-16-more-groups-as-terrorist> viewed 24 March 2022.