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Written statement* submitted by the Association for Progressive Communications (APC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 August 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Human rights in digital environments in the Philippines

The Association for Progressive Communications and the Foundation for Media Alternatives (FMA), a non-governmental organisation based in the Philippines, would like to call the attention of the Human Rights Council (HRC) to concerns relating to the Philippines' Universal Periodic Review (UPR) during the 27th session of the Working Group on the UPR. APC and FMA welcome the participation of the Government of the Philippines (GPH) in the UPR despite an earlier attempt to defer from the process. While we also welcome member states' recommendations on extrajudicial killings (EJKs), the death penalty and the minimum age of criminal responsibility, we note that many pressing human rights issues in the Philippines were still left unaddressed. Moreover, the National Report as well as the statement delivered by the GPH, represented by Senator Alan Peter Cayetano, failed to portray an accurate picture of the current state of human rights in the country.

The National Report¹ submitted by the GPH said that the government is committed to “promote, protect and fulfill the rights of our citizens, especially the poor, the marginalised and the vulnerable, and social justice shall be pursued, even as the rule of law shall prevail at all times.” The report also states, “Human rights must work to uplift human dignity.” Ironically, these statements are negated by the current situation in the country.

State of human rights in the Philippines

Since the Philippines UPR in May 2017, the human rights situation in the country has worsened. The number of deaths resulting from the current administration's relentless war on drugs continues to increase, and many of those killed come from the poor and vulnerable sectors of society – the same sectors that the GPH vowed to protect. Suspected drug users and pushers are killed daily, but the deaths are no longer being reported by the Philippine National Police (PNP) in their official “real numbers” list.² Likewise, many of the deaths are classified by the PNP as extrajudicial, vigilante-style or unexplained.

The president of the Philippines has threatened to abolish the Commission on Human Rights (CHR), the body recognised as a National Human Rights Institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.³ Realising that the CHR was created under the 1987 Constitution and thus cannot be abolished unless through a constitutional process, the president said it was a joke. Whether said in a jest or not, the pronouncements of the president are “sacred” and considered as official statements. The chiefs of the Armed Forces of the Philippines and the PNP echoed the president's call to abolish the CHR, and the Speaker of the House of Representatives Pantaleon Alvarez is mulling a zero budget for the agency, which would effectively paralyse its work.

Rape jokes that undermine women's dignity continue to be a staple of the president's speeches. During a visit to soldiers fighting the war in Marawi, the president said “in jest” that soldiers can rape up to three women and that he will own responsibility for the said act. Again in July, the president said he will congratulate a rapist who can carry out the rape of a beauty pageant winner, while condemning the rape of children. These pronouncements set a bad example, and in fact, some women of Marawi have reported having been threatened with rape by Philippine soldiers, who have become emboldened by the remarks of the president.⁴

Much of the culture of violence propagated by the war on drugs and gender insensitivity through rape jokes that devalue the dignity of women also spill into the realm of digital and communication rights. Since the beginning of the Duterte administration, reports of online gender-based violence have increased. This is despite the fact that the Philippines ranks

¹ See http://lib.ohchr.org/HRBodies/UPR/Documents/Session27/PH/A_HRC_WG.6_27_PHL_1_Philippines_E_AdvanceUneditedVersion.docx

² See http://www.pnp.gov.ph/images/2017News/realnumbers/rn_731.pdf

³ Statement made by President Duterte during the press conference following his 2nd State of the Nation Address held on 24 July 2017.

⁴ See <http://www.gmanetwork.com/news/news/nation/615667/encouraged-by-duterte-rape-joke-soldiers-threatening-women-with-rape-in-marawi/story/>

high in the gender equality index and the country's ratification of the Convention on the Elimination of all Forms of Discrimination against Women, which has been translated into the Magna Carta of Women.

Human rights online

In his opening statement during the UPR, Senator Cayetano mentioned the internet and social media, but only in the context of their potential to spread misinformation. This is telling of how the Philippine government sees freedom of expression in digital spaces as a destabilising threat rather than a fundamental right. This attitude is also reflected in the numerous attempts by the Duterte government to suppress freedom of expression online and offline. In early 2017, House of Representatives Speaker Pantaleon Alvarez filed House Bill No. 5021 (Social Media Regulation Act of 2017), seeking to crack down on fake social media accounts by requiring every user to register and have their identity verified.⁵ There is no factual evidence that this kind of regulation would address incivility and misinformation online, and it is likely to create a chilling effect among social media users.

We condemn any attempt to build a culture of fear, whether online or offline. Instead, the GPH should commit to making digital spaces free, open and safe for individuals regardless of their background. Proposed legislation that threatens the right to privacy and to freedom of expression, particularly the national ID⁶ and SIM card registration systems and the expansion of legal wiretapping in the Philippines, should be carefully reviewed for their implications on the rights of citizens and deliberated with sufficient public consultation. National security should not be used to justify excessive and unlawful surveillance of citizens. We also urge the GPH to establish oversight and accountability mechanisms over intelligence agencies and other government agencies with surveillance powers.

APC and FMA will continue efforts to advocate for protecting human rights in the Philippines, both online and offline. The GPH has recognised that protecting human rights online is just as important as protecting them offline as a member of the HRC when a number of resolutions on this issue were passed;⁷ however, it is currently implementing policies that run counter to these commitments. A free, open and safe digital environment is indispensable for the general protection and promotion of human dignity and human rights.

Given the above, APC and FMA call on the Human Rights Council, notably the governments involved in making the key recommendations for the Philippines UPR, to urge the GPH to strengthen the role of the CHR by supporting its work and mandate, to recognise the importance of human rights online, and to uphold human dignity. We also call on the GPH to welcome the voices of human rights advocates and the rest of civil society calling for the end of impunity, violence and despotism in the country. We respectfully submit the following specific recommendations for consideration:

On freedom of expression and online libel

1. Review the implementing rules and regulations of the Cybercrime Prevention Act of 2012 and take immediate steps to repeal or amend the law, especially those sections that criminalise online freedom of expression
2. Repeal Section 4(c)4 of RA 10175 on online libel

On freedom of expression and sexual rights

1. Recognise women's rights online and how ICTs can help promote women's agency and empowerment.
2. Repeal Section 4(c)1 of RA 10175 on the cybersex provision and implement and strengthen existing laws that protect women against violence.

On online violence against women

1. Recognise that gender-based violence in whatever form, whether offline or online, is a human rights violation.
2. Strengthen and implement laws that promote respect for, protect and fulfil women's rights offline and online.

⁵ See http://www.congress.gov.ph/legisdocs/basic_17/HB05021.pdf

⁶ See <http://www.fma.ph/?p=1247>

⁷ See HRC/RES/20/8, HRC/RES/26/13, HRC/RES/32/13

3. Review existing laws and policies to see if they are still relevant and adequate in responding to new developments involving ICTs.
4. Ensure women's access to justice by having redress mechanisms in place, including an enabling environment, not just legal, that is able to address issues connected to violence against women (VAW), including technology-based VAW.
5. Build the capacities of judges, prosecutors and law enforcers to ensure that Philippine laws protect and promote human rights in the face of rapidly changing technologies, while at the same time ensuring gender sensitivity in handling cases.
6. In schools, ensure that policies are in place to respond to instances of bullying offline and online and consider the inclusion in school curricula of emerging issues such as cyber bullying and online gender-based violence.
7. Strengthen the role of the Philippine Commission on Women in mainstreaming gender issues, including ICT-related VAW.
8. Ensure that women, including those from the sectors of persons with disabilities (PWDs), indigenous peoples (IPs) and the LGBTQI community, have representation and meaningful participation in policy discussions and decision making.

On children's rights

1. Promote, protect and fulfil the rights of children on the Internet
2. Strengthen mechanisms for the protection of children from harm and abuse, including sexual abuse online.
3. Review Sec. 9 of RA 9775 and ensure that this is not used for collecting data or for mass surveillance.
4. Provide decent jobs and livelihoods, especially to parents, so that they are able to care for and provide for the needs of children.

On privacy rights and the digital environment

1. Ensure that privacy, data collection and surveillance laws do not target, directly or indirectly, marginalised or vulnerable groups, including human rights defenders
 2. Strengthen the role of the National Privacy Commission (NPC) as an independent body to monitor and provide redress for human rights violations concerning the right to privacy.
 3. Ensure that the NPC conducts regular privacy audits on key, if not all, government offices.
 4. Ensure that all government officers found to have contributed to the negligence that caused the COMELEC breach are held liable and accountable.
 5. Ensure that all government agencies comply with the provisions of the Data Privacy Act regarding security and technical measures and recommend necessary action in order to meet minimum standards for protection of personal information.
 6. Ensure that all government authorities permitted to undertake communications surveillance are subject to independent oversight and comply with international transparency standards.
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