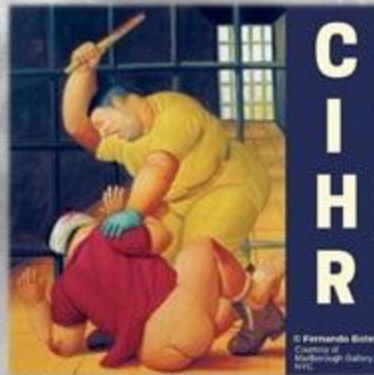


The Closing of Civic Space in the Philippines



SUBMISSION TO THE OHCHR FOR HRC REPORT 41/2

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Cover Photo

Statue of Jose Rizal, Rizal Memorial Park, Cooper River Park, New Jersey.

José Protasio Rizal Mercado y Alonso Realonda was an inspiration to the Filipino people in the late 1880's and 1890's for leading the Propaganda Movement. He did not live to see the liberation of the Philippines from colonial rule, as he was tried and executed two years beforehand for the act of sedition. His martyrdom further sparked outrage against Spanish rule in the country and would ultimately answer the question as to whether or not there was any alternative to independence for colonial Filipinos. His legacy is a testament to the transformational potential enabled and sustained by a vibrant and diverse civic space.

THE CLOSING OF CIVIC SPACE IN THE PHILIPPINES

Introduction

The Center for International Human Rights (CIHR), a research and training center established in 2001 at the John Jay College of Criminal Justice of the City University of New York, is submitting this report on the human rights situation in the Philippines.¹ This report is in response to the invitation for an objective assessment of the situation of human rights in the Philippines as mandated under resolution 41/2 adopted by the Human Rights Council on 11 July 2019.²

The report focuses on the shrinking democratic and civil society space in the Philippines. Specifically, it provides an analysis of the national security situation and the resulting patterns of human rights violations, intimidation, persecution of, or violence against members of civil society, human rights defenders, journalists, lawyers, as well as restrictions on the freedoms of opinion and expression, peaceful assembly and association in the country. This report was prepared by CIHR's faculty director, affiliated faculty, graduate and undergraduate students between September 2019 and January 2020 and was a result of interviews with human rights experts and members of civil society in the Philippines and an analysis of government documents, news articles and published reports of human rights organizations on the situation of human rights in the country.³

The report is organized as follows: ***First***, it offers an overview of the national security landscape and critically examines the consequences of the Philippine Government's security policies and counterinsurgency projects for the democratic and civil society space, human rights, rule of law and access to justice in the country. Specifically, the report dissects key aspects of the main counter-terrorism legislative and policy initiatives, and highlights state practices that label human rights defenders, human rights lawyers, and members of civil society as "communists" or "terrorists." In addition, it addresses the failure of the state to prevent or attenuate ongoing extrajudicial assassinations, surveillance, threats, harassment, illegal arrests and political vilification of human rights defenders and members of civil society arising from these practices. ***Second***, it examines certification and licensing requirements that have adverse effects on the

¹ For more information about the CIHR, please visit: <https://www.jjay.cuny.edu/center-international-human-rights>

² United Nations General Assembly, Human Rights Council. *Promotion and Protection of Human Rights in the Philippines*. A/HRC/RES/41/2, 17 July, 2019.

³ This report was prepared by Dr. George Andreopoulos, Dr. Nerve Macaspac, Efim Galkin, Ray Hilker, Amid Alhyani and Jennifer Hirst.

activities of civil society actors. **Third**, it documents and examines direct state actions that curtail the freedoms of opinion and expression, specifically through the intimidation, harassment and extrajudicial killings of journalists and the growing concerns about the closing of civic space and loss of freedoms due to government interference in digital communications. Such interference is primarily manifested through the use of social media “trolls” in spreading misinformation and cyberattacks of progressive media organizations. **Finally**, the report provides specific recommendations to the United Nations Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR) Michelle Bachelet, and the Philippine government in addressing the shrinking democratic and civil society space in the Philippines.

I. The national security landscape and civic space in the Philippines

Any account of the closing of civic space and the attacks on human rights advocates/defenders must begin with the counterinsurgency campaign and its interface with the complex global terror/counterterror environment. In response to the attacks of September 11, addressing domestic and international terrorism became a priority issue for the international community. The United Nations Security Council took the lead in this effort with the adoption of Security Council Resolution 1373, which called for comprehensive state action to prevent and suppress terrorist acts.⁴ In response to the call for action mandated by UNSCR 1373, governments adopted sweeping counterterrorism laws.⁵ However in many instances, as it has been well-documented, authorities have used these laws, often characterized by overly vague and restrictive provisions, and the follow-up measures, as pretexts for curtailing the operations of civil society actors. Such measures include the arbitrary detention of activists, verbal discrediting that labels advocates as ‘terrorists,’ ‘communists/subversives,’ or ‘criminals,’ “or public vilification through media campaigns or online trolling from non-state actors.”⁶ Of particular concern in this context is the persistent vagueness in the definition of terrorism. As the most recent global survey of UNSCR 1373 prepared by the United Nations Counterterrorism Committee noted, “One core issue that remains a major matter of concern...is the question of the legal definition of terrorist acts...in several States, in various regions...terrorism charges

⁴ United Nations Security Council Resolution 1373, S/RES/1373, 28 September 2001.

⁵ According to a database of legislation compiled by the Center for Strategic and International Studies, 101 countries have adopted /revised counter-terrorism legislation, or issued Presidential Decrees on this issue since 2001; *Aligning Security with Civic Space*; https://csis-prod.s3.amazonaws.com/s3fs-public/Matrix_AligningSecurity_Final.pdf?M7izhWzLETVPaLbybV3nql.sz4yYdj38

⁶ Center for Strategic and International Studies, *Counterterrorism Measures and Civil Society. Changing the Will, Finding the Way*. Washington, DC 2018, p. 1.

...have been framed in vague terms, allowing for their misuse against legitimate conduct, such as the expression of political dissent or human rights advocacy...⁷

The rationale that underscores the measures undertaken by the Duterte administration is firmly anchored within an evolving security landscape shaped at the intersection of the counterinsurgency and anti-narcotics campaigns.⁸ More specifically, the country's ongoing counterinsurgency program has enabled the institutionalization of a militarized 'whole-of-nation' approach through Executive Order No. 70 (EO 70). This order provides for the formulation and implementation of a 'National Peace Framework' (NPF) that "will bring inclusive and sustainable peace, and address the root causes of insurgencies, internal disturbances and tensions as well as other armed conflicts and threats to identified areas." To achieve this purpose, EO 70 provides for the creation of a National Task Force to End Local Communist Armed Conflict (NTF-ELCAC).

In this vein, EO 70 reinforces the current counterinsurgency project created by the Armed Forces of the Philippines (AFP), the Development Support and Security Plan Kapayapaan (or DSSP Kapayapaan) that took effect on January 1, 2017. Under DSSP Kapayapaan, the military is called upon to "support civil authorities to reduce the vulnerability of the poor and marginalized against exploitation and alleviate poverty among the most impoverished Filipinos," which involves "the conduct of security operations in support of these infrastructure and development projects, community support activities, close and robust collaboration with LGUs and other government agencies, and continued engagement with all stakeholders"⁹

One key purpose of the DSSP KAPAYAPAAN is to harness nationalist sentiments in order to eliminate public support for the communist insurgency. The AFP's community support programs are required to include "activities in support of information, education, and communication (IEC) and public information campaigns in schools and the communities about patriotism, nationalism, and respect for and unity in cultural diversity."¹⁰ The ultimate goal of this policy, according to the AFP, is to ensure the involvement of Non-Government Organizations (NGOs), Civil Society Organization (CSOs) and Peoples' Organizations (POs) in the national security agenda. Moreover, DSSP Kapayapaan also seeks to coopt academic institutions, specifically state colleges and universities, in counterinsurgency campaigns noting

⁷ *Global Survey of the implementation by Member States of Security Council resolution 1373 (2001)*, S2016/49, 20 January 2016; https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Global-Implementation-Survey-1373_EN.pdf

⁸ The counterinsurgency campaign antedates the anti-narcotics campaign and it constitutes the main determinant in this context.

⁹ Philippines, Department of National Defense, *AFP Development Support and Security Plan "KAPAYAPAAN" 2017-2022*, (Quezon City, General Headquarters of the Armed Forces of the Philippines, 2017), p. 39.

¹⁰ Philippines, DND, *AFP DSSP "KAPAYAPAAN"*, p. 41.

that “the academe contributes to the enhancement of the AFP’s development and security initiatives in terms of capacity-building and advocacy work.”¹¹ EO 70 expands this mandate, transforming it into the Strategic Communication Cluster, which has the AFP and the National Security Council (NSC) working with the official Filipino news agencies and other government agencies to create “public engagement and policy support” for government programs and to “counter [Communist Terrorist Group] CTG propaganda.”¹² Thus, in effect, EO 70 militarizes the very fabric of society, and allows the national security apparatus to dominate not just the government, but governance as a whole.

As EO 70 and DSSSP Kapayapaan took effect, the practice of “red-tagging” human rights defenders, lawyers, activists and critics of the Duterte government became widespread. One case in particular illustrates the breadth of the state’s practice of red-tagging human rights defenders and impact on the work of human rights defenders in the promotion and protection of human rights in the country. On February 21, 2018, the Department of Justice (DOJ) filed a petition before the Manila Regional Trial Court (RTC) to declare 649 individuals, including UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz and at least 30 members of Indigenous Peoples organizations, as “terrorists” under the 2007 Human Security Act (HSA) for their alleged connection with the New People’s Army (NPA), the armed wing of the Communist Party of the Philippines (CPP).¹³ This list was widely criticized as baseless, in violation of due process, and a “virtual hit list.”¹⁴ UN Special Rapporteur Victoria Tauli-Corpuz and other prominent members eventually had their names removed for lack of evidence,¹⁵ and the list was eventually reduced to only eight individuals.¹⁶

State practice of “red-tagging” is not limited to individuals, but also included civil society organizations and international development, humanitarian and philanthropic organizations. On November 2019, in a presentation by the AFP’s Deputy Chief of Staff for Civil Military Operations during the Milipol Asia-Pacific 2019 Conference, the AFP identified a number of prominent Filipino human rights groups including Karapatan, the IBON Foundation, the National Union of People’s Lawyers (NUPL), as well as opposition political parties such as the Gabriela

¹¹ Philippines, DND, *AFP DSSP “KAPAYAPAAN”*, p. 22.

¹² Philippines, Davao Regional Development Council, *Supplemental Guidelines on the Midterm Updating of the Davao Regional Development Plan (DRDP) and Results Matrices (RMs) 2017-2022*, (2019), p. 10.

¹³ Observatory for the Protection of Human Rights Defenders, “I’ll kill you along with drug addicts” -- President Duterte’s war on human rights defenders in the Philippines”, *World Organization Against Torture (OMCT)*, February 2019.

¹⁴ Carlos H. Conde, “Philippines Terrorist Petition Virtual Hit List.” *Human Rights Watch*, 8 March 2018; <https://www.hrw.org/news/2018/03/08/philippines-terrorist-petition-virtual-hit-list>

¹⁵ United Nations, Office of the High Commissioner for Human Rights, “The Philippines: UN experts urge further action to remove names on Government’s “terror list””, 20 August 2018;

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23466&LangID=E>

¹⁶ Lian Buan, “DOJ trims terror tag list of Reds from over 656 to 8,” *Rappler*, 18 January 2019; <https://www.rappler.com/nation/221266-doj-terror-tag-list-communists-january-2019>

and Alliance of Concerned Teachers (ACT) Partylists as “communist terrorist front organizations.” This statement of the AFP resulted in a series of police raids of the offices of the pertinent organizations and the arrests of at least 57 human rights defenders and activists.¹⁷ Even civil society organizations advocating for the resumption of the formal peace process between the Government and the National Democratic Front of the Philippines (NDFP), such as the Philippine Ecumenical Platform for Peace, a faith-based peace advocacy network, and Sulong CAHRIHL were not exempt from red-tagging.

In a nutshell, the commitment of the ‘whole-of-nation’ approach to the delivery of basic services in “conflict-affected areas and vulnerable communities” envisages a continuum between military responses, law enforcement measures and social development packages, that is premised on the elimination of distinctions between conflict situations, manifestations of social discontent and anti-social activities. As a result, designations/identities such as ‘combatant,’ ‘civilian’ (conflict situations), and ‘advocate,’ ‘criminal,’ or ‘terrorist’ (in peacetime) are becoming increasingly porous and subsumed under the exigencies of the “maintenance of peace and order.” And it is on this very maintenance of peace and order that the counterinsurgency and anti-narcotics campaigns converge.

Counter-terrorism Legislation and Measures

The starting and central point of reference here is the HSA of 2007 and the proposed revisions to it currently pending before Congress. The HSA contains several problematic provisions and has been repeatedly used by the government to “hail rights defenders to court and subject them to judicial harassment.”¹⁸ The officially-sanctioned hostility encountered by human rights defenders could only be rendered more acute, if some of the proposed revisions were to be adopted. The conflation of terrorist threats with broader issues of public order permeates many of the amendments under consideration.

More specifically, the new tone is set early on in the report on the revised Act submitted to the Senate jointly by the Committees on National Defense and Security, Peace Unification and Reconciliation and Finance on September 30, 2019.¹⁹ The first proposed change is renaming the

¹⁷ Ana P. Santos, “Philippines targets Oxfam, other rights groups, as ‘communist fronts’”, *Deutsche Welle*, 29 November 2019, <https://www.dw.com/en/philippines-targets-oxfam-other-rights-groups-as-communist-fronts/a-51473662>

¹⁸ For more on this, see *Joint Submission of Tanggol Bayi (Defend Women)-Philippines and Karapatan Alliance Philippines for the Preparation by the Human Rights Committee of the List of Issues to be Considered During the Examination of the Fifth Periodic Report of the Philippines, January 2020.*

¹⁹ Eighteenth Congress of the Republic of the Philippines. Senate. Committee Report No. 9 submitted jointly by the Committees on National Defense and Security, Peace, Unification and Reconciliation *and* Finance on September 30, 2019, Senate No. 1083 (hereinafter, Senate No. 1083). All subsequent references to proposed revisions are from this document.

Act from the HSA of 2007 to the “Anti-terrorism Act of 2019” (ATA). What follow are examples of key provisions that can provide pathways for further erosion of the already fragile human rights situation in the country:

- The language on respect for human rights is being considerably diluted. The HSA stipulated that “the exercise of the constitutionally recognized powers of the executive department of the government **shall not prejudice respect for human rights which shall be absolute and protected at all times** (our emphasis).²⁰ This provision is supposed to be removed; what will remain is a much weaker reference to the State’s responsibility to “uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.”²¹ The original reference to human rights points, contra to the reference to basic rights and fundamental liberties, not only to a broader set of rights, but also to rights that are contained in international, not only in domestic, instruments. In addition, the commitment to respect human rights in the original (and to be removed) formulation is characterized as “absolute.”
- The section on material support is overly broad; this is a recurring problem with the counter-terrorism legislation of many countries. It proscribes, among other things, the provision of “training, expert advice, or assistance.”²² Since the only exception is the provision of medicine or religious materials, this proposed amendment would, for example, criminalize the work of a human rights NGO that may want to offer training courses on the obligations of non-state actors under international human rights law.
- The proposed section on the planning, training, preparing and facilitating the commission of a terrorist act is likewise broad. It includes a provision rendering unlawful for any person to engage in “collecting or making documents likely to facilitate the commission of a terrorist act.”²³ It is not clear what type of conduct this provision proscribes. For example, could someone who downloads, collects and shares with friends material from websites of groups designated as ‘terrorist’ be prosecuted for facilitating the commission of a terrorist act? Such provisions violate the fundamental principle of legality.
- One of the most problematic sections of the proposed bill relates to surveillance. The proposed amendments authorize the surveillance of suspects and the interception and recording of communications by military personnel; the HSA of 2007 had confined such authority to law enforcement personnel.²⁴ In addition, there is a noticeable shift in the

²⁰ Senate No. 1083, p. 2.

²¹ Senate No. 1083, p. 2.

²² Senate No. 1083, p. 3

²³ Senate No. 1083, p. 8

²⁴ Senate No. 1083, p. 13.

language from groups that could be targeted, to groups and individuals.²⁵ This change is consistent with the long-standing demand of the AFP that a revised HSA should enable authorities to “tag individuals as terrorists based on their own offenses, whether or not they are linked to known terror groups.”²⁶ The inclusion of surveillance by the military and the targeting of individuals irrespective of any group-related activity could enhance the discretionary authority of the military to ‘securitize’ legitimate exercises of fundamental rights, such as the freedom of expression and of association.

- The suggested amendments on detention are equally problematic. The period of detention without judicial warrant is being extended from 3 days to 14 working days.²⁷ Even more troubling is the existence of another amendment to extend this period to 30 days, a measure strongly supported by the AFP.²⁸ Moreover, the requirement provided in HSA for an Official Custodial Logbook is being removed.²⁹ This was an important provision because it mandated that the police, or other law enforcement custodial unit in whose care and control a detainee had been placed, had to keep an official logbook that was supposed to include the following information: (1) the date and exact time of the detainee’s initial admission to the unit; (2) the name(s) and address(es) of the physician(s) who examined the detainee; (3) the date and time of each removal from the cell for interrogation purposes, and the date and time of return to the cell; (4) the name(s) and address(es) of the physician(s) who examined her/him after each interrogation; and (5) and, more importantly, “a summary of the physical and medical findings on the detained person after each ...interrogation.”³⁰ This logbook was considered a public document and “opened to and made available for the inspection and scrutiny of the ...lawyers of the person under custody or any member of his or her family...or his or her physician at any time of the day or night without any form of restriction.”³¹ The importance of this logbook cannot be overstated. It constitutes a potentially important tool of monitoring and control, since it could shed light on abusive conduct against the detainee and expose officers of the custodial unit to prosecution for failing to keep such logbook in proper order, or for tampering in any way, shape or form, with its contents.
- The HSA’s provision on damages for unproven charge of terrorism is being removed. The provision in question stipulated that any person accused of terrorism shall, upon

²⁵ Senate No. 1083, p. 14.

²⁶ JC Gotinga, “Military pushes proposal to amend ‘weak’ anti-terrorism law;” <https://www.rappler.com/nation/237854-military-pushes-proposal-amend-weak-anit-terrorism-law>, August 15, 2019.

²⁷ Senate No. 1083, pp. 25-26.

²⁸ JC Gotinga, “Military pushes proposal to amend ‘weak’ anti-terrorism law.”

²⁹ Senate No. 1083, pp. 30-31

³⁰ Senate No. 1083, p. 30.

³¹ Senate No. 1083, p. 30.

acquittal, “be entitled to the payment of damages in the amount of five hundred thousand pesos...for every day that he or she has been detained...without a warrant.”³² This provision was designed to act as another check to warrantless arrests and detentions since the damages were to be charged against the appropriations of the entity/unit responsible for the filing of the charges.

- Last, but not least, a key concern relates to the upgrading of the Anti-Terrorism Council (ATC) with an enlarged membership (more Cabinet Secretaries on board) and sweeping new powers. Among the key functions of the Council is to “require other government agencies, ...and non-government organizations, private entities and individuals to render assistance to the Council in the performance of its mandate.”³³ This provision can have a chilling effect on the activities of NGOs and other civil society actors, since their advocacy campaigns can be subsumed under the exigency of assisting the ATC in implementing its own agenda. The expanded reach of the ATC is very consistent with the ‘whole-of-nation’ approach referred to earlier, since it enlists public and private sector entities in the overarching goal of maintaining peace and order.³⁴

These concerns are amplified as a result of the adoption of corresponding policies and measures. More specifically, the recently adopted National Action Plan on Preventing and Countering Violent Extremism (NAP P/CVE)³⁵ reinforces some of the most troubling features of the ‘whole-of-nation’ approach. Two key features of NAP P/CVE would be highlighted here.

The first relates to the role of Schools, Colleges and Universities. In one of the ‘convergence matrices’ developed for Learning Institutions, the “inadequate capability of teachers, guidance counselors, school administrators and parents to identify early signs of radicalization among children and students”³⁶ is identified as one of the key factors contributing to the problem. One of the specific interventions proposed to address this challenge is the development of “Early Warning and Early Response (EWER) tools and strategies.”³⁷

The second relates to the role of Social Media Platforms (SMPs). In one of the ‘convergence matrices’ developed for SMPs, the “exposure of individuals to violent extremist community through digital media platforms”³⁸ is identified as one of the main drivers of radicalization. One

³² Senate No. 1083, p. 47.

³³ Senate No. 1083, pp. 54-55.

³⁴ It would be interesting to know whether some of the concerns expressed here about the human rights implications of certain proposed revisions to the HSA were raised by the Counter-Terrorism Committee Executive Directorate (CTED) Delegation during its recent follow-up visit to the Philippines in October 2019.

³⁵ National Security Council, *The National Action Plan on Preventing and Countering Violent Extremism (NAP P/CVE)* (no date; on file with CIHR). The Plan was adopted in the summer of 2019.

³⁶ NAP P/CVE, p. 52.

³⁷ NAP P/CVE, p.52.

³⁸ NAP P/CVE, p. 60.

of the specific interventions in response to this challenge is, once again, the establishment of “a mechanism/early-warning system that will ensure coordination of initiatives of government agencies and CSOs on flagging VE-related content.”³⁹

In both cases, the emphasis on EWER is instructive. On the one hand, it is consistent with an increasing focus on prevention, as opposed to suppression and punishment. On the other hand, it enables the enlisting of civil society organizations in supporting officially determined and sanctioned measures of social control. In fact, few of the proposed interventions outlined in NAP P/CVE so thoroughly encapsulate the synergy between the ‘kinetic’ and ‘soft’ approaches in addressing terrorism, that constitute a key anchor of the NAP P/CVE. To phrase it in another way, EWER encapsulates the symbiosis between focused military and law enforcement operations to combat terrorism and people-centered approaches to the push and pull factors that drive radicalization.⁴⁰

In a nutshell, civic space is increasingly sucked into a vortex whose parameters are shaped by an evolving interplay between EO 70, the proposed ATA and the recently adopted NAP P/CVE.

II. Certification and Licensing of Non-Profit Organizations

The central point of reference here is Executive Order No. 68 (EO 68). EO 68, *Adoption of the National Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) strategy and creation of the National AML/CFT Coordinating Committee*, signed by President Duterte in November 2018, established the National Anti-Money Laundering and Counter-Financing of Terrorism Strategy (NACS). As part of this strategy, a new set of guidelines was published by the Anti-Money Laundering Council (AMLC) in 2018,⁴¹ which requires it to investigate (Section 1.9.1) and file with the Court of Appeals a petition to freeze (Section 1.10.2) against “properties or funds that are in any way related to terrorism or TF;” and “against properties or funds of any person, group of persons, terrorist organization, or association or group of persons, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of terrorism or TF.” It also requires the AMLC to institute civil forfeiture procedures aimed “to confiscate all monetary instruments or properties related to ML/TF or associated unlawful activity” (Section 1.11).

While these measures have been implemented in part due to outside pressure and actually fall short of international best practices in certain areas (there is currently no way to proscribe an

³⁹ NAP P/CVE, p. 60.

⁴⁰ NAP P/CVE, p. 6.

⁴¹ Philippines, Anti-Money Laundering Council, 2018 Implementing Rules and Regulations of Republic Act No. 9160, Otherwise Known as the Anti-Money Laundering Act of 2001, as Amended, (22 November 2018).

individual not part of a terrorist group as a terrorist under UNSCR 1373⁴²- something that is going to be amended as part of the NACS⁴³), there are questions about the seriousness of the government's actual commitment to fighting terrorism, rather than using these regulations to stifle political opposition.

SEC Memorandum Circular 15⁴⁴ extends these AML/CTF regulations to Non-Profit Organizations (NPOs), which are defined as "SEC-registered nonstock corporation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works. NPOs shall include foundations, as well as other SEC-registered nonstock corporations engaged in the abovementioned activities" (Section 1.3.6). It adopts "a risk-based approach in applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs" (Section 2.1). This requires all organizations to file the following information within six months (Sections 4.1, 4.2), which will then be used to determine whether the organization is medium, high risk, or blacklisted outright:

- a) Objectives and purpose of their stated activities;
- b) Identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees;
- c) Nature of operations or projects;
- d) Actual raising or disbursing of funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works";
- e) Contribution;
- f) Fund balance;
- g) Location of operations, which shall include the (i) head office or branches, if any, (ii) location of beneficiaries/projects and (iii) other areas of operation/activity, if any;
- h) Source of funds (as to person);
- i) Source of funds (as to geography);
- j) Intended beneficiaries (as to person);
- k) Intended beneficiaries (as to geography); and
- l) Existing license/accreditation from another government.

"Medium risk" organizations are required to establish internal audit systems, while "high risk" organizations are subject to mandatory SEC audits and must have their officers and trustees

⁴² Asia/Pacific Group on Money Laundering (APG), *Anti-money laundering and counter-terrorist financing measures - Philippines*, Third Round Mutual Evaluation Report, APG, Sydney, p. 6.

⁴³ Philippines, Office of the President, "National Security Strategy 2018", (April, 2018), *Official Gazette*.

⁴⁴ Philippines, Securities and Exchange Commission, Guidelines for the Protection of SEC Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse, Memorandum Circular No. 15 (s. 2018), 7 November 2018.

undergo mandatory background checks (Section 3.1). In addition, the SEC has the power to levy fines or revoke an NPO's registration outright (Sections 12.2, 12.3).

These regulations have come under severe criticism by human rights groups concerned about the possible chilling effect on civil society organizations.⁴⁵ A group of opposition lawmakers introduced House Resolution 2420 urging the House Committee on People Participation to review the Memorandum, citing, among other things, the SEC's essentially unlimited discretion in determining what constitutes high risk or criteria for blacklisting, and that it grants the government unlimited power to compel disclosure of information from NGOs without a court order.⁴⁶ As noted by the head of the National Union of Journalists of the Philippines (NUJP), an organization that has been rated "high-risk," the SEC doesn't "even have to inform you that you are being investigated."⁴⁷

The SEC guidelines are, indeed, rather unprecedented. The National Risk Assessment of the NPO sector published in October 2018, which has largely guided the creation of the country's subsequent NACS strategy, classifies the risk of terrorism financing as "Low Medium," also indicating that out of the 101,843 registered NPOs, only 27 have been implicated in terrorism financing.⁴⁸ The APG's Mutual Evaluation report on the effectiveness of the implementation of the FATF's Recommendations notes that the AMLC's financial intelligence and financial investigations sections were "critically under-staffed," while mechanisms for information sharing between the financial intelligence unit and law enforcement were under-developed and lacking.⁴⁹ The report also explicitly singles out the fact that the "SEC 2018 NPO Guidelines impose some requirements across all registered NPOs, rather than targeting NPOs vulnerable to TF abuse," which "may discourage or disrupt legitimate NPO activities."⁵⁰ Considering that the Philippines managed to conduct only 277 AML/CTF investigations between 2013 and 2018, which resulted in only five convictions for money laundering and zero convictions for terrorist financing,⁵¹ it is highly dubious that the AMLC or SEC have the capacity to even adequately process the disclosures collected from all 101,843 registered NPOs in a timely manner, much less turn them into actionable financial intelligence.

⁴⁵ Russel Patina, "'Chilling effect': Groups slam new SEC guidelines for nonprofits", *Rappler*, 9 February 2019; <https://www.rappler.com/move-ph/223001-civil-society-groups-statements-sec-new-guidelines-non-profit-organizations>

⁴⁶ Charissa Luci-Atienza, "Makabayan Bloc moves to scrutinize SEC memorandum on NPOs/NGOs", *Manila Bulletin*, 17 January 2019; <https://news.mb.com.ph/2019/01/17/makabayan-bloc-moves-to-scrutinize-sec-memorandum-on-nposngos/>

⁴⁷ Michael Beltran, "Is Duterte Drumming Up a Red Scare in the Philippines?" *The Diplomat*, May 15, 2019; <https://thediplomat.com/2019/05/is-duterte-drumming-up-a-red-scare-in-the-philippines/>

⁴⁸ Philippines, Anti-Money Laundering Council, *Report on the Risk Assessment of the NPO Sector*, (October 2018).

⁴⁹ APG, *AML/CTF financing measures- Philippines*, p. 5.

⁵⁰ APG, *AML/CTF financing measures- Philippines* p. 99.

⁵¹ APG, *AML/CTF financing measures- Philippines*, p. 6.

However, while the Philippines' lack of effectiveness at combatting money laundering and terrorist financing nearly landed it on the FATF blacklist in 2012 and is currently putting it at risk of ending up on the grey list⁵², the government seems more preoccupied with trying to revoke the registrations of human rights NGOs⁵³ and the investigative news site *Rappler*.⁵⁴ In the case of Karapatan, one of the targeted NGOs, the baseless (the organization publicly posted the supposedly revoked registration⁵⁵) judicial harassment of its members has even been cited by the UN Secretary General António Guterres in his 2019 report to the UN Human Rights Council.⁵⁶

III. Curtailment of the freedoms of opinion and expression

The closing of civil society space in the Philippines under the Duterte administration is aggravated by the loss of freedoms of opinion and expression, attacks to press freedom and government intervention and control of social media. In 2018, the International Federation of Journalists named the Philippines as “the deadliest peacetime country for journalists in Southeast Asia.”⁵⁷ Indeed, journalists continue to face vulnerability in the midst of assassinations of media professionals and the failure of the Duterte administration to protect them from threats contributing to the curtailment of press freedom. Moreover, the government’s harassment and intimidation of media organizations, use of social media “trolls” and cyberattacks of the websites of progressive media organizations violate freedoms of opinion and expression and the right to know. It should be noted that these attacks to press freedom and the government’s intervention and control of social media are consistent with the features of the ‘whole-of-nation’ approach. A few cases are highlighted below.

Harassment of media organizations

Rappler, an online news website, has been targeted by the Duterte government for its reporting on the “war on drugs.” President Duterte has criticized the company and its CEO, Maria Ressa, with threats of lawsuits, revoking operational licenses, and shutting down the

⁵² Siegfried Alegado, “Philippine Regulators Seek Tougher Anti-Money Laundering Laws,” *Bloomberg.com*, 3 December 2019; <https://www.bloomberg.com/news/articles/2019-12-03/philippine-regulators-seek-tougher-anti-money-laundering-laws>

⁵³ Gigie Arcilla, “Karapatan, 4 other NGOs have revoked SEC registration”, *Philippine News Agency*, 8 May 2019. <https://www.pna.gov.ph/articles/1069216>

⁵⁴ Doris Dumlao-Abadilla and Pathricia Ann V. Roxas, “SEC orders Rappler to shut down”, *Philippine Daily Inquirer*, 15 January 2018. <https://newsinfo.inquirer.net/960389/breaking-sec-annuls-rapplers-license-to-operate>

⁵⁵ Mike Navallo, “Rights group refutes PH govt’s claim to UN chief”, *ABS-CBN News*, 24 September 2019; <https://news.abs-cbn.com/news/09/24/19/rights-group-refutes-ph-govts-claim-to-un-chief>

⁵⁶ Mike Navallo, “Rights group refutes PH govt’s claim to UN chief,” *ABS-CBN News*, 24 September 2019; . <https://news.abs-cbn.com/news/09/24/19/rights-group-refutes-ph-govts-claim-to-un-chief>

⁵⁷ International Federation of Journalists. “Underneath the Autocrats, South East Asia Media Freedom Report 2018.” South East Asia Journalist Unions, December 19, 2018; https://www.ifj.org/fileadmin/user_upload/Underneath_the_Autocrats_-_IFJ_SEAJU_2018_-_SP_HR.pdf

company. On January 15, 2018, the Securities and Exchange Commission (SEC) revoked the license of *Rappler*.⁵⁸ Since then, Ressa has faced multiple legal complaints, including “possible violation of the Constitution and laws” filed by the Department of Justice⁵⁹ and a cyber libel complaint that dated back to a news report published by *Rappler* in 2012.⁶⁰ In total, eleven cases have been filed against *Rappler*, Ressa, and other staff since 2018 by five different federal departments. Upon the suspension of two cases, nine are still pending. *Rappler* and its staff have complied with every subpoena, and, so far, there have been no convictions.⁶¹

Use of social media “trolls”

In 2017, President Duterte openly claimed that he spent at least 10 million pesos on hiring social media “trolls.”⁶² A study conducted by the Computational Propaganda Research Project at the University of Oxford concludes that “many of the so-called ‘keyboard trolls’ hired to spread propaganda for presidential candidate Duterte during the election continue to spread and amplify messages in support of his policies now he’s in power.”⁶³ Meanwhile, Affinio, a social media analytics firm, found that 20 percent of all Twitter accounts that mention Duterte are bots.⁶⁴ Opposition senators have noted anomalies in public relations budgets, where possible allocations for “troll farms” are made, enabling thousands of fake social media accounts to “create impressions that are consistent with the interests of the Duterte administration.”⁶⁵

⁵⁸ Euan McKirdy, “Philippines revokes license of Rappler, news site critical of Duterte administration.” CNN, January 15, 2018; <https://www.cnn.com/2018/01/15/asia/philippines-rappler-sec-license-revoked/index.html>

⁵⁹ Lian Buan, “Aguirre orders NBI to probe Rappler.” *Rappler*, January 17, 2018; <https://www.rappler.com/nation/193884-aguirre-nbi-probe-rappler>

⁶⁰ Lian Buan, “NBI summons Rappler CEO Ressa, reporter over cybercrime complaint.” *Rappler*, January 18, 2018; <https://www.rappler.com/nation/193996-nbi-subpoena-rappler-ceo-ressa-reporter-cybercrime-complaint>

⁶¹ Lian Buan, “Cases vs Maria Ressa, Rappler directors, staff since 2018.” *Rappler*, February 25, 2019; <https://www.rappler.com/nation/223968-list-cases-filed-against-maria-ressa-rappler-reporters>

⁶² Catherine S. Valente, “Duterte on Use of 'Troll' Army: I Have Followers.” *The Manila Times*. The Manila Times Publishing Corp, July 25, 2017; <https://www.manilatimes.net/2017/07/25/news/latest-stories/duterte-on-use-of-troll-army-i-have-followers/340560/340560/>

⁶³ Samantha Bradshaw and Philip N. Howard, “Troops, Trolls and Troublemakers: A Global Inventory of Organized Social Media Manipulation,” University of Oxford, December 2017; <http://comprop.oii.ox.ac.uk/wp-content/uploads/sites/89/2017/07/Troops-Trolls-and-Troublemakers.pdf>

⁶⁴ Sean Williams, “Rodrigo Duterte's Army of Online Trolls.” *The New Republic*, January 4, 2017; <https://newrepublic.com/article/138952/rodrigo-dutertes-army-online-trolls>

⁶⁵ Shawn W. Crispin, “Mission Journal: Duterte Leads Tri-Pronged Attack on Press amid Condemnation of Controversial Policies.” Committee to Protect Journalists, July 5, 2018; <https://cpj.org/x/7352>

Cyberattacks

Progressive media organizations *Bulatlat*, *Altermidya*, and *Pinoy Weekly* and human rights organization *Karapatan* were subjected to large scale cyber attacks that caused their websites to be inaccessible for almost a month between November 2018 and January 2019.⁶⁶ As many as six additional organizations, all either alternative news or human rights websites, have reported cyberattacks as well, sporadically shutting down their sites.⁶⁷ *Karapatan* contends that the cyberattacks to progressive media organizations were “an extension of the Duterte government’s attacks against human rights defenders and against people’s rights.”⁶⁸ *Bulatlat*, *Altermidya*, and *Pinoy Weekly* and *Karapatan* have filed legal complaints against these attacks.⁶⁹

The government’s intervention and control of social media through the use of social media “trolls”, bots and cyberattacks are manifestations of the growing concern around the many threats to free expression in the internet in the country. The Philippines is one of the leading countries with greatest amount of per capita time spent on social media anywhere in the world. Average time of internet use in the country is more than ten hours a day, including more than four hours a day on social media, specifically Facebook.⁷⁰ While the internet has the potential to contribute to democratic processes including a democratic exchange of ideas, the cases

⁶⁶ Cristina Palabay, “KARAPATAN’S OPEN LETTER ON THE RECENT CYBER-ATTACK AGAINST ITS WEBSITE.”

Karapatan, February 18, 2019;

<https://www.karapatan.org/KARAPATAN%E2%80%99S+OPEN+LETTER+ON+THE+RECENT+CYBER-ATTACK+AGAINST+ITS+WEBSITE;>

Janess Ann J. Ellao, “What You Need to Know about the Ongoing Cyber-Attacks vs. Alternative News Bulatlat.”

Bulatlat, February 7, 2019; <https://www.bulatlat.com/2019/02/07/what-you-need-to-know-about-the-ongoing-cyber-attacks-vs-alternative-news-bulatlat/>;

Rhea Padilla. “STATEMENT: Alternative Media Outfits under Attack Fight Back.” *AlterMidya*, October 14, 2019; . <https://www.altermidya.net/statement-alternative-media-outfits-under-attack-fight-back/>;

Pinoy Weekly, “Pinoy Weekly Statement Media Outfits Push for Accountability over Cyber Attacks,” *Pinoy Weekly*, September 9, 2019; <https://www.pinoyweekly.org/2019/09/statement-media-outfits-push-for-accountability-over-cyber-attacks/>

⁶⁷ *Altermidya*. “Overcome Cyber-Martial Law.” *Pinoy Weekly*, March 12, 2019;

<https://www.pinoyweekly.org/2019/03/pooled-editorial-overcome-cyber-martial-law/>

⁶⁸ Cristina Palabay, “KARAPATAN’S OPEN LETTER ON THE RECENT CYBER-ATTACK AGAINST ITS WEBSITE.”

Karapatan, February 18, 2019;

<https://www.karapatan.org/KARAPATAN%E2%80%99S+OPEN+LETTER+ON+THE+RECENT+CYBER-ATTACK+AGAINST+ITS+WEBSITE>

⁶⁹ Rhea Padilla, “STATEMENT: Alternative Media Outfits under Attack Fight Back.” *AlterMidya*, October 14, 2019;

<https://www.altermidya.net/statement-alternative-media-outfits-under-attack-fight-back/>

⁷⁰ Simon Kemp, “Digital 2019: Global Internet Use Accelerates.” *We Are Social*, January 30, 2019;

<https://wearesocial.com/blog/2019/01/digital-2019-global-internet-use-accelerates>

highlighted reveal the direct control exercised by the government aimed at influencing and controlling public discourse and threatening the freedom of opinion and expression.

IV. Conclusions and Recommendations

In conclusion, the closure of civic space in the Philippines is the result of a variety of developments that have unfolded in a national security environment defined by the ‘whole-of-nation’ approach to existing and emerging ‘challenges’ and ‘threats.’ This approach, characterized by the growing interplay between military responses, law enforcement measures and people-centered initiatives, has sought to enlist public and private sector entities and organizations in the overarching quest for the maintenance of social peace and order. This quest has led to the systematic targeting and persecution of human rights defenders, journalists and other civil society actors, and to the rapid erosion of due process rights, as well as severe restrictions on the freedom of opinion and expression.

Therefore, CIHR recommends:

To the United Nations Human Rights Council

- Adopt a resolution to create an independent, impartial and effective investigation into human rights violations in the context of the “war on drugs” and attacks and deaths of human rights defenders, human rights lawyers, and harassment of media professionals and journalists, and to establish the facts and circumstances and take steps toward ensuring justice for the victims and their families.

To the UN Office of the High Commissioner for Human Rights

- Establish a full account of extrajudicial assassinations and attempts, arrests, unlawful detention, enforced disappearance, torture, surveillance and raids of offices of human rights advocates/defenders, as well as the continuing vulnerability of journalists and the growing concerns around government intervention in social media.
- Investigate the components of the ‘whole-of-nation’ approach, proposed amendments of the 2007 Human Security Act, counterinsurgency programs led by the Armed Forces of the Philippines (AFP), Executive Orders, and all government policies and programs that curtail fundamental freedoms, close civil society space, and violate international laws.
- Investigate government policies and practices that aim to discredit human rights organizations and curtail their activities, including certification and registration

requirements and the canvassing of international funders, donors and organizations that support human rights work in the Philippines.

To President Rodrigo Duterte

- Comply strictly with all international legal instruments and provisions that guarantee and protect due process rights and freedoms of opinion and expression, peaceful assembly and association in the Philippines.
- Allow and cooperate with international human rights monitoring and investigating mechanisms, specifically the UN OHCHR, in establishing a full account of the human rights violations in the country. Ensure full compliance with the recommendations to be issued by the Human Rights Committee in the upcoming examination of the Fifth Periodic Report submitted by the Philippines.
- Immediately withdraw all the proposed revisions to the 2007 Human Security Security Act that can adversely affect the protection of human rights, including those relating (a) to the growing role of the military in surveillance, and (b) to detention, and reinstitute the provision on damages for unproven charges of terrorism.
- Immediately revoke Executive Orders No. 68 and 70 and DSSP Kapayapaan, and take adequate measures to evaluate and end all human rights violations committed under the government's counterinsurgency plans.
- Order the AFP, PNP and members of law enforcement agencies to end any conduct, plans or activities connected to the red-tagging and extrajudicial killings of human rights defenders and activists, arbitrary arrests, and other actions that violate international laws.
- Protect journalists and investigate all cases of assassinations, intimidation and harassment of journalists and media organizations in the Philippines.
- Take adequate measures to investigate the government's intervention and control of social media through the use of social media trolls and cyberattacks of media organizations.