
Advance Edited Version

Distr.: General
14 June 2022

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 14/2022 concerning Teresita Naul (Philippines)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights of the United Nations. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 11 August 2021 the Working Group transmitted to the Government of the Philippines a communication concerning Teresita Naul. The Government replied to the communication on 6 September 2021. The State is party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Teresita Naul is a national of the Philippines and was born on 16 August 1957. She usually resides in the Municipality of Opol, Province of Misamis Oriental, the Philippines.

5. The source reports that Ms. Naul is a member of the Secretariat of the Union of Peoples' Lawyers in Mindanao, Cagayan de Oro Chapter, and a member of the national council of Karapatan. Her work largely involves providing aid to alleged political prisoners and victims of human rights violations. After graduating from college, she moved to Cagayan de Oro and worked for Task Force Detainees of the Philippines, a non-governmental organization, where she organized calls for the release of alleged political detainees and of persecuted members of marginalized sectors.

6. According to the source, Ms. Naul was arrested on 15 March 2020, in the Province of Lanao del Sur, on the southern island of Mindanao. She had reportedly left a family member's house in Barangay San Manuel, Lala, Lanao del Norte, while a warrant of arrest was being served. Ms. Naul was then arrested in a nearby rice field by officials of the Fourth Infantry Division and the Second Mechanized Infantry Brigade, Mechanized Infantry Division of the Philippine Army, of the Criminal Investigation and Detection Group of the Philippine National Police and of Police Regional Office 10. The officials showed a warrant issued by Regional Trial Court, Branch 7, in Bayugan City, Agusan del Sur.

7. According to the information received, Ms. Naul was arrested on charges of "destructive arson" (article No. 320 of the Revised Penal Code of the Philippines (criminal case No. 6524)), "kidnapping and serious illegal detention" (article No. 267 of the Code (criminal cases No. 6525 and No. 6527)) and "robbery with violence against or intimidation of persons" (article No. 195 of the Code (criminal case No. 6526)), all with no fixed bail, issued by the Regional Trial Court, Branch 7, Bayugan City, Agusan del Sur.

8. The source submits that the charges were brought on the basis of a complaint lodged by officials of the Municipal Police Station in Sibagat and another individual whose identity remains uncertain, as no documentation was provided to Ms. Naul about the complaint. The source notes that, according to credible sources, that individual is a relative of an alleged victim of kidnapping and serious illegal detention (criminal case No. 6527), who is believed to be a member of the Citizen Armed Force Geographical Unit. The source specifies that the Unit is an irregular auxiliary force of the Armed Forces of the Philippines.

9. The source explains that the charges were brought in May 2019 in connection with a military offensive that was allegedly conducted by the New People's Army, an armed rebel group, against the Philippine Army. The incident took place at around 3 a.m. on 19 December 2018, at the patrol base located in New Tubigon, Sibagat, Agusan del Sur. Ms. Naul was accused, along with other individuals, of allegedly having attacked and burned the patrol base and of having abducted members of the Civilian Armed Forces Geographical Unit Active Auxiliary.

10. According to the source, the court order stated that all the accused had allegedly deliberately, feloniously and forcibly entered the patrol base located in New Tubigon by destroying the wooden perimeter fence, and that while inside, the suspects had pointed their firearms of unknown calibre at the victims and threatened them and had unlawfully taken government-issued firearms against the will of the victims. When all the victims, including 2 Philippine Army soldiers and 12 on-duty members of the Civilian Armed Forces Geographical Unit Active Auxiliary, had been neutralized, they were taken as hostages. Thereafter, all suspects intentionally burned the patrol base, which caused damage totalling 100,000 pesos. All the victims were then forcibly taken to the mountainous area of Agusan del Sur.

11. The source submits that the above-mentioned charges were fabricated and that evidence is available demonstrating that on that day, Ms. Naul was in another part of the country.

12. The source reports that on the day of her arrest, Ms. Naul was transferred to Cagayan de Oro City, where she was temporarily held in one of the detention cells of the Criminal

Investigation and Detection Group, which is the primary investigative arm of the Philippine National Police, at Camp Evangelista in Cagayan de Oro, where the Fourth Infantry Division of the Philippine Army is stationed

13. On 17 May 2020, Ms. Naul was transferred to the provincial detention and rehabilitation centre of Agusan del Sur, which is located in the Municipality of Prosperidad, where she remains detained. The forces holding the detainee in custody were reported to be the Provincial Correctional and Security Management Office, Agusan del Sur.

14. It is reported that Ms. Naul is being detained under the initial arrest warrant issued by the Regional Trial Court; the Court, however, set no fixed bail. The source specifies that Ms. Naul has not yet been brought before a court to answer criminal charges, and faces continued detention until her arraignment.

15. The source states that on 10 July 2020, an omnibus motion for reconsideration of the judicial finding of probable cause, seeking to quash the warrant of arrest with urgent motion to defer the implementation thereof, was filed on behalf of Ms. Naul before Regional Trial Court, Branch 7, in Bayugan City, Agusan del Sur. The motion is still pending resolution.

16. Subsequently, on 10 March 2021, a supplemental manifestation in support of the previously filed omnibus motion was filed before the same court. The supplemental manifestation contained as an attachment a report of the Commission on Human Rights of the Philippines, in which, the source states, the Commission found that Ms. Naul's right to protection of her reputation and honour was violated by reason of her being "red-tagged" (the practice of blacklisting individuals or organizations critical or not supportive of government policy and actions).

17. The source also reports that prisons have become a hotspot for the coronavirus disease (COVID-19), and that Ms. Naul remains detained in overcrowded and unsanitary conditions that put her life at imminent risk. She suffers from asthma and has a heart condition.

18. The source submits that the detention of Ms. Naul is arbitrary and falls into categories I, II, III and V of the Working Group. It argues that her arrest and detention lacked sufficient evidence, were a direct consequence of her work as a human rights defender and were procedurally flawed.

19. In relation to category I, the source specifies that there is no legal basis for the detention of Ms. Naul. The charges under which she is detained stem from a military offensive allegedly conducted by the New People's Army, an armed rebel group, against the Philippine Army. However, according to the source, the complaints failed to establish the positive identities of Ms. Naul and 22 other individuals indicted in the same case as being the perpetrators of, or participating in, the crimes committed at 3 a.m. on 19 December 2018.

20. The source adds that Ms. Naul and the other 22 individuals indicted in the case submitted proof of their respective activities and locations at the time of the crime. Records show that on 19 December 2018, Ms. Naul was brought to St. Ignatius Hospital in Cagayan de Oro City to undergo laboratory examinations to determine the causes of the bronchitis and asthma that she was experiencing at the time. On 20 December 2018, Ms. Naul was brought to Polymedic General Hospital for further medical testing. The source states that the evidence, her hospital records, has been rejected by the prosecution.

21. In relation to category II, the source argues that the current deprivation of liberty of Ms. Naul results from the exercise of universally recognized human rights, in particular the rights to freedom of opinion, expression and association.

22. The source recalls that freedom of opinion and expression and of association are fundamental human rights enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, to which the Philippines is a State party. The source submits that the Government must respect, protect and fulfil the right to hold and express opinions, including those that are not in accordance with its official policy, as well as to manifest personal convictions at odds with its official ideology, under the *jus cogens* of customary international law.

23. The source notes that the Human Rights Committee, in its general comment No. 34 (2011) on the freedoms of opinion and expression, stated that restrictive measures on freedom

of expression must not be overbroad, and that they must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument among those which might achieve their protective function; and they must be proportionate to the interest to be protected. The Committee notes that the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.

24. The source submits that Ms. Naul has been deprived of her liberty as a result of politically motivated charges brought against her. The charges clearly appear to be retaliation for her human rights work, constituting a violation of her right to equality before the law. The source reiterates that while the police claim that she is a member of the New People's Army and could, as such, have participated in the attack on the military in Agusan del Sur in December 2018, there is evidence proving that she was in another part of the country on that day.

25. The source states that Ms. Naul is among numerous human rights defenders who have been identified by the Government as part of a practice of red-tagging. In the case of Ms. Naul, she was reportedly accused of being a member of a front group for the armed wing of the Communist party.

26. According to the source, the Government has not only failed in its duty to take the measures necessary to prevent and halt discrimination against Ms. Naul on the basis of her status as human rights defender, but has also actively participated in those arbitrary actions by the misusing the criminal justice system through the practice of red-tagging.

27. The source recalls that a number of government-controlled media outlets reported that Ms. Naul was involved in a progressive human rights group believed to be a front organization for the Communist Party of the Philippines. The source claims that the existence of such reports further indicates that Ms. Naul's arrest and subsequent detention form part of a broader attack on independent civil society and human rights defenders in the Philippines, and on Karapatan in particular. The source notes that, in response to similar accusations, the organization was cited numerous times in the report of the Secretary-General on reprisals dated 25 September 2020.²

28. The source submits that Ms. Naul's arrest and detention based on her status as a member of Karapatan constitutes an unlawful restriction of freedom of association, in violation of article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant.

29. In relation to category III, the source submits that Ms. Naul has been denied her fundamental right to a fair trial, which is guaranteed by article 10 of the Universal Declaration of Human Rights and articles 14 and 16 of the Covenant.

30. The source specifies that, in the present case, international norms relating to the right to a fair trial have not been totally or partially observed. The source recalls that Ms. Naul was not officially provided with copies of the complaints, as required by domestic law. She was made aware of the cases brought against her only informally.

31. Moreover, the source states that Ms. Naul and the 22 others indicted in the same case were not named in the original complaint, but they were subpoenaed by the prosecutor despite that omission. The name of Ms. Naul was later included in the supplemental complaints that were filed by the alleged victims of kidnapping. Nonetheless, as with the original complaint, Ms. Naul was not officially furnished a copy of the supplemental complaints. The source submits that the failure to provide Ms. Naul with access to the relevant documentation was contrary to national law.

32. It is recalled by the source that the complaints failed to establish positive identification of Ms. Naul and the other 22 individuals as being the perpetrators of, or participating in, the crimes committed at 3 a.m. on 19 December 2018. The evidence that Ms. Naul has provided – hospital records proving that on 19 December 2018, she was brought to St. Ignatius Hospital in Cagayan de Oro City to undergo laboratory examinations and that on 20

² A/HRC/45/36, annex II.

December 2018, she was brought to Polymedic General Hospital for further medical testing – has been rejected by the prosecution.

33. In relation to category V, the source submits that while the deprivation of liberty of Ms. Naul has resulted from the active violation of civil and political rights, there is a strong presumption that it also constitutes a violation of international law on the grounds of discrimination based on political or other views. The source submits that, in particular, Ms. Naul is being discriminated against on the basis of her status as a human rights defender and in violation of her rights to equality before the law and to equal protection of the law under article 26 of the Covenant.

Response from the Government

34. On 11 August 2021, the Working Group transmitted the allegations from the source to the Government of the Philippines under its regular communications procedure. The Working Group requested the Government to provide, by 12 October 2021, detailed information about Teresita Naul and to clarify the legal provisions justifying her continued detention, as well as its compatibility with the obligations of the Philippines under international human rights law, and in particular with regard to the treaties ratified by the State.

35. On 6 September 2021, the Government submitted its response, in which it informed the Working Group that, based on the information received on 16 August 2021, the trial court had quashed the criminal information against Ms. Naul for its failure to establish her participation in the crimes she allegedly committed. As a result, Ms. Naul had already been released from detention, rendering moot the request and arguments of the Working Group.

36. The Government considers it important to address the points raised in the Working Group's communication, stressing in that regard that neither the Government of the Philippines nor any of its organs violated Ms. Naul's constitutional rights or the established principles of international law.

37. In its response to the communication from the source, the Government considered the issues contained therein (see paras. 38–57 below) and summarized the points the source raised in Ms. Naul's case. In respect of the allegations regarding the legality of Ms. Naul's detention, the Government noted the following:

(a) Her arrest and detention were allegedly based on insufficient evidence and were a direct consequence of her work as a human right defender;

(b) Several alleged procedural irregularities in the conduct of Ms Naul's case were cited as evidence that she was denied her fundamental right to a fair trial;

(c) It is alleged that prisons have become a hotspot for COVID-19 and that Ms. Naul remains detained in overcrowded and unsanitary conditions that put her life at imminent risk, and it is noted that Ms. Naul has filed a request for entitlement to other custodial remedies pending the resolution of her case.

38. The Government emphasizes that Ms. Naul has been charged with the following non-bailable offences: destructive arson (article 320 of the Revised Penal Code), kidnapping and serious illegal detention (article 267 of the Code) and robbery with violence against or intimidation of persons (article 195 of the Code). It submits that Ms. Naul's plea for provisional release should have been addressed to the court having jurisdiction of her case. Under Philippine laws, the temporary release of an accused can be granted only through either bail or recognizance. The Government refers to section 5 of the Recognizance Act of 2012 (Republic Act No. 10389).

39. The Government refers to the right to bail provided under section 7, rule 114 of the Rules of Court, which stipulates that a capital offence or an offence punishable by *reclusion perpetua*, or life imprisonment, is not bailable, regardless of the state of the criminal prosecution. Moreover, under article III (13) of the 1987 Constitution of the Philippines, those charged with such offences, when evidence of guilt is strong, are not entitled to bail before conviction. The Government explains that the determination of whether the evidence of guilt is strong must, however, be made before the trial court where the information was

filed. In addition, in the case of an offence punishable by *reclusion perpetua*, the granting of bail is a matter of discretion on the part of the trial court, and cannot be allowed unless the prosecution has been notified of the hearing. The Government further submits that the indispensability of conducting a hearing with notice to the prosecution has been explained in a number of cases decided by the Supreme Court.³

40. In respect of Ms. Naul's assertion that she has been denied her fundamental right to a fair trial, the Government notes that there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.⁴ The Government submits that the question posed by Ms. Naul should be addressed to the trial court having jurisdiction over her case, as it involves assertions that raise questions of fact, which in practice are addressed to the sound discretion of the court.

41. On the current situation caused by the COVID-19 pandemic, the Government highlights the lockdowns and physical closures of government agencies, including the courts, making it difficult, if not impossible to address and dispose all of the courts' docket with dispatch. Nevertheless, since the start of the pandemic, the Supreme Court has adopted measures not only to decongest detention facilities but also, in the light of the increasing number of COVID-19 cases, to provide the necessary protection and safety to lawyers, judges and litigants.

42. The Government refers to several circulars on COVID-19-related matters, including on the release of qualified persons deprived of liberty, on the electronic filing of criminal complaints and information, and posting of bails, on the conduct of fully remote videoconference hearings, on the online filing of complaints or information and posting of bail due to the rising number of cases of COVID-19 infection and on creating a task force to address the rising number of cases of COVID-19 infection.

43. On the basis of the foregoing, the Government submits that it is clear that Ms. Naul has not been left without any legal recourse in asserting her claims.

44. In respect of Ms. Naul's invocation that she be allowed to be released on the grounds that the unsanitary conditions at jail facilities put her life at imminent risk, the Government submits that such assertion violates the equal protection clause of the 1987 Constitution, as Ms. Naul is attempting to set herself apart by making an unwarranted and impermissible classification. In that regard, the Government refers to article III (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.

45. In supporting its position, the Government likens Ms. Naul's case to the recent case entitled "In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic" (*Almonte et al. v. People of the Philippines*),⁵ wherein the Supreme Court directed the petitioners to file their respective applications for bail in the courts where their criminal case was pending, after treating the petitions as applications for bail or recognizance. Adopting the arguments raised by the respondents therein, the Government argues that, in the present case, the equal protection clause exists to prevent undue favour or privilege. Recognizing the existence of real differences among individuals, the equal protection clause does not demand absolute

³ For example, in *Enrica B. Aguirre and Nenita A. Dela Cruz v. Judge Candido R. Belmonte*, the Supreme Court of the Philippines held that it was an established legal principle that when an offence was punishable by *reclusion perpetua*, the trial court must conduct a hearing in a summary proceeding, to allow the prosecution an opportunity to present, within a reasonable time, all evidence it might desire to produce to prove that the evidence of guilt against the accused was strong, before resolving the issue of bail for the temporary release of the accused (Administrative Matters No. RTJ-93-1052, Resolution, 27 October 1994).

⁴ Supreme Court of the Philippines, *Far Eastern Surety and Insurance Co., Inc. v. People of the Philippines*, General Register No. 170618, Decision, 20 November 2013.

⁵ Supreme Court of the Philippines, General Register No. 252117, Decision, 28 July 2020.

equality. It merely requires that all persons be treated alike, under like circumstances and conditions, both as to the privileges conferred and liabilities enforced.⁶

46. In *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*,⁷ the Court, citing *Ichong v. Hernandez and Sarmiento*,⁸ explained the concept of equal protection: the equal protection of the law clause is against undue favour and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation that is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

47. On the issue of equal protection, the Government concludes that the Constitution does not require absolute equality. It is enough that all persons under like circumstances or conditions are given the same privileges and required to meet the same obligations.⁹ The Government reiterates that the equal protection of the law clause is against undue favour and individual or class privilege, as well as hostile discrimination or the oppression of inequality.¹⁰ To give preference to the petitioners, among all other prisoners languishing in jail for their criminal infractions, is tantamount to giving them preferential treatment or undue favour, and discriminating against all the other prisoners.

48. In *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, the Government maintained that there was no substantial difference which set the petitioners (who likewise claimed themselves as political prisoners) apart from all other persons detained in jail. The petitioners were not a unique class that should be treated differently. The petitioners should be treated like all the other prisoners in the entire country, regardless of age, health and status. Like other prisoners, they were under detention because they had violated the law. To give preference to the petitioners' release over the release of all other similarly situated prisoners would give them undue favour and would result in inequality and discrimination.

49. The Government addresses the allegations that Ms. Naul's arrest and detention formed part of a broader attack on independent civil society and human rights defenders in the Philippines, or red-tagging, and on Karapatan in particular, as well as the numerous references contained in the report of the Secretary-General on reprisals.¹¹ In regard to red-tagging and the alleged reprisals against Karapatan, the Government cites extensively the responses provided to the Secretary-General in its report, *The Philippine Human Rights Situationer*.¹² The Government submits that it has exhaustively addressed allegations in respect of Karapatan in its response to draft reports of the Secretary-General on reprisals as well as in the *Situationer*. The Government refers to the Supreme Court verdict dismissing allegations of extrajudicial killings, reprisals, intimidation, threats and red-tagging in the highly publicized case filed by Karapatan, Gabriela National Alliance of Women and the Rural Missionaries of the Philippines.¹³ In that case, the petitioners alleged that officials of the National Task Force to End Local Communist Armed Conflict had viciously red-tagged them as front organizations for the Communist Party of the Philippines-New People's Army-

⁶ Supreme Court of the Philippines, *Himagan v. People of the Philippines*, General Register No. 113811, Decision, 7 October 1994.

⁷ Supreme Court of the Philippines, General Register No. 197676, Decision, 4 February 2014.

⁸ Supreme Court of the Philippines, General Register No. L-7995, Decision, 31 May 1957.

⁹ Supreme Court of the Philippines, *Conrado L. Tiu et al., v. Court of Appeals et al.*, General Register No. 127410, Decision, 20 January 1999.

¹⁰ *Ichong v. Hernandez and Sarmiento*.

¹¹ A/HRC/42/30, annex II, paras. 79–86. See also A/HRC/39/41, paras. 61–62, and annex I, paras. 84–85.

¹² See <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200609-PH-Human-Rights-Situationer.pdf>.

¹³ Court of Appeals, Fourteenth Division, Manila, *Karapatan, et al. v. H.E. Rodrigo Roa Duterte*, Court of Appeals General Register, Special Cases Section No. 00067, Decision, 28 June 2019.

National Democratic Front, which put their life, liberty and security at risk, and the petitioners filed for writs of amparo and data. The Court ruled that there was no substantial evidence to establish the petitioners' allegations.

50. The Government submits that Karapatan presents an emblematic case for the merits of enhancing due diligence among entities of the United Nations when assessing allegations from sources and expecting civil society to observe reasonable standards of accountability for the claims they present before United Nations human rights mechanisms.

51. The Government submits that contrary to allegations of shrinking civic space, Philippine civic space has been expanding with the Government's steadfast advocacy for the empowerment and greater participation of a multiplicity of civil society actors, especially the less-resourced grassroots community-based organizations, rights holders and human rights defenders, to include indigenous peoples, rebel returnees, parents of children recruited into armed combat, rescued child combatants, and the victims of Communist Party of the Philippines-New People's Army-National Democratic Front atrocities and their families.

52. In its note to the Secretary-General dated June 2019, the Government of the Philippines stated that Karapatan was one of the non-governmental organizations that were unlawfully operating in the country, with data from the Securities and Exchange Commission of the Philippines showing that as at 15 April 2019 its corporate existence and registration had been ordered revoked more than 10 years prior to that date, on 25 October 2005, for non-filing of reports.

53. The Government also stated that across different political administrations, including the current one, Karapatan had a long track record of peddling questionable facts and bloated figures concerning cases of deaths and human rights violations in the Philippines.

54. The Government referred to a case in 2006 in which Karapatan called international attention to and raised concerns about an alleged total of 724 extrajudicial killings from the period 2001 to 2006 during the administration of former President Gloria M. Arroyo, where official sources indicated a figure of only 111. An independent domestic body, the Melo Commission, was created to investigate the allegations, verify the cases and establish the facts. The Government submits that Karapatan failed to substantiate its figures and present evidence for its claims before that body, which was duly constituted to take action on such alarming claims. The Melo Commission Report of 22 January 2007 deplored the refusal of Karapatan and its allied groups to come forward and cooperate.

55. The Government further submits it has no policy of red-tagging. It has repeatedly drawn attention to the pattern, by certain sources, of allegations of reprisals, especially before the United Nations, and highlighted the need to take into account the country's political context relating to the activities of the Communist Party of the Philippines-New People's Army-National Democratic Front in examining such allegations.

56. The issue of red-tagging or "red-baiting" was the subject of extensive public hearings conducted by the Committee on National Defense and Security, Peace, Unification and Reconciliation of the Senate of the Philippines on 3 and 24 November and 1 December 2020. The hearings were based on Senate resolution No. 559, dated 28 October 2020, directing an inquiry into the alleged red-tagging or red-baiting of certain celebrities, personalities, institutions and organizations by military officials.

57. The Senate inquiry provided an opportunity for all sides, including the security sector, incumbent and former members of the Makabayan bloc of the House of Representatives, and civil society actors, such as former rebels, to present their information, evidence and accounts and to be heard objectively by the public. The hearings resulted in the adoption, on 10 March 2021, of the 77-page report No. 186 of the Committee on National Defense and Security, Peace, Unification and Reconciliation, in which the Committee comprehensively examined the issue of red-tagging and made recommendations to address it.¹⁴ In the report, the Committee determined that, for the supposed aggrieved parties seeking to avail themselves of remedies to wrongful claims of being associated with the Communist Party of the Philippines-New People's Army-National Democratic Front, sufficient legal remedies were

¹⁴ See <https://legacy.senate.gov.ph/lisdata/3455831378!.pdf>.

already in place. In addition, the Government highlighted judicial remedies to persons whose constitutional rights, particularly the right to liberty, had been violated by State agents. The Government refers to instances in which parties have availed themselves of those remedies.¹⁵

Further submissions from the source

58. On 30 September 2021, the Government's response was transmitted to the source for its further comments. In its reply dated 16 October 2021, the source submits that in June 2021, Regional Trial Court, Branch 7 in Bayugan City, Agusan del Sur quashed the criminal information against Ms. Naul in three¹⁶ out of the four criminal cases filed against her. The decision stated that the warrant issued for her arrest suffered constitutional defects, not to mention that the same facts and circumstances had led the Court to reasonably believe that the accused had not committed the offence alleged in the three cases. The fourth case – criminal case No. 6527 for kidnapping and serious illegal detention,¹⁷ wherein Ms. Naul is one of the accused – is still pending resolution before the same Regional Trial Court, Branch 7, in Bayugan City.

59. Criminal case No. 6527 was filed against Ms. Naul and 544 other individuals on the basis of a separate complaint; however, it contains allegations that are intertwined with those in criminal cases No. 6524, No. 6525 and No. 6526. Case No. 6527 was filed at about the same time as cases No. 6524, No. 6525 and No. 6526 and was also assigned by raffle to Regional Trial Court, Branch 7. The source submits that Ms. Naul, through her lawyers in the Union of Peoples' Lawyers in Mindanao, moved to quash the complaint in both the Office of the Provincial Prosecutor in Agusan del Sur and in Regional Trial Court, Branch 7, even though Ms. Naul was not officially furnished copies of the complaint and other supporting evidence, as required by the Rules on Criminal Procedure.

60. In resolving the motion in May 2020, Regional Trial Court, Branch 7, remanded case No. 6527 to the Office of the Provincial Prosecutor for reinvestigation.¹⁸ On 16 July 2020, Ms. Naul, by counsel, submitted her counter-affidavit and supporting documents to the Office of the Prosecutor, and on the same date, furnished a copy to the Court to refute the charges against her. To date, no result of the reinvestigation from the Office of the Prosecutor has been made available.

61. In July 2020, Ms. Naul, by counsel, filed with Regional Trial Court, Branch 7, a motion to dismiss the case on grounds of violation of the right to due process and right to speedy disposition of cases.¹⁹ The motion has not yet been resolved. According to the source, she remains detained at the provincial detention and rehabilitation centre in the Municipality of Prosperidad, Agusan del Sur.

62. In respect of Ms. Naul's detention, allegedly based on red-tagging and imposed as a consequence of her work as a human rights defender, the source recalls the reports of the Secretary-General on reprisals.²⁰ The United Nations High Commissioner for Human Rights noted that multiple United Nations actors had addressed concerns about red-tagging, or labelling as communists or terrorists, as a tactic used by State and non-State actors to vilify, including in forums of the United Nations, individuals and groups who cooperated with entities of the United Nations system.²¹ Special procedure mandate holders and the spokesperson for the High Commissioner have expressed serious concerns about the red-tagging of civil society and human rights defenders, including members of the Commission on Human Rights of the Philippines.

¹⁵ Ibid.

¹⁶ Criminal cases No. 6524, No. 6525 and No. 6526 (for details, see para. 7 above).

¹⁷ In criminal case No. 6527, according to information filed with Regional Trial Court, Branch 7, it is alleged that on 19 December 2018, in the Municipality of Sibagat, Agusan del Sur, Ms. Naul and her 544 co-accused, "being armed with high-powered firearms" and "by means of force and intimidation", kidnapped and detained Bernabe Baiwasan Salahay, thus depriving him of his liberty.

¹⁸ Regional Trial Court, Branch 7, order dated 21 May 2020.

¹⁹ Dated 28 July 2020 and sent to Regional Trial Court, Branch 7, via registered mail on 4 August 2020.

²⁰ See [A/HRC/42/30](#), [A/HRC/44/22](#) and [A/HRC/45/36](#).

²¹ [A/HRC/45/36](#), annex I, para. 98.

63. The Commission on Human Rights of the Philippines has also denounced the practice as a counter-insurgency policy of the State that targets critics, journalists and union workers, including members of the National Union of Peoples' Lawyers, the Union of Peoples' Lawyers in Mindanao²² and Karapatan.²³

64. In its human rights bulletin issued on 11 June 2019, the Commission on Human Rights in Northern Mindanao declared that the practice of red-tagging or red-baiting was a serious human rights concern.

65. Insofar as Ms. Naul is concerned, on 28 December 2020, the Commission on Human Rights in Northern Mindanao adopted resolution No. CHR-XIII-2020-014713 on the red-tagging of Ms. Naul in violation of the right to protection of honour and reputation. In the resolution, the Commission found that the pleadings filed in court simply enumerated the names of all the accused, Ms. Naul being one of them, without any substantial evidence that the accused were responsible in the attack. There is something untoward in identifying those 500 individuals and generalizing them all as members of the New People's Army absent proof of their participation during the attack. This is a case of red-tagging.

66. The source submits, citing several procedural irregularities in the conduct of her case, that Ms. Naul has allegedly been denied her fundamental right to a fair trial.

67. The mere imputation of a non-bailable offence to a person without probable cause and without opportunity to be heard is already a violation of the right to due process enshrined in the 1987 Constitution, which states 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 (article III (1)).

68. In its resolution remanding criminal case No. 6527 to the Office of the Prosecutor, Regional Trial Court, Branch 7, noted that Ms. Naul did not receive the subpoena with the attached affidavits of the complainant and those of his witnesses, which would have required her to submit counter-evidence during the preliminary investigation. The non-receipt of the subpoena translated into the absence of an opportunity on the part of Ms. Naul to rebut the accusation against her. In the same resolution, the Court stated that the opportunity to be heard meant that the accused would have the chance to present evidence and arguments before the prosecution that resolved and/or determined whether probable cause existed to engender a well-founded belief that the accused were probably guilty of the offence charged. An opportunity to be heard is indispensable and essential to the administration of due process of law, knowing that it is one of the hallmarks of the due process clause under the Constitution.

69. Finding that Ms. Naul was not afforded her right to due process, the Court remanded the case to the Office of the Provincial Prosecutor for reinvestigation. As noted above, there has as yet been no result of the reinvestigation from the Office.

70. In regard to Ms. Naul's right to a fair and speedy trial,²⁴ the source submits that in criminal case No. 6527, the lapse of more than one year without so much as any comment or resolution of any tenor on the part of the Provincial Prosecutor, despite the presence of the records at his disposal, and in utter disregard of the prescriptive periods allowed under pertinent rules,²⁵ and the lapse of more than two years from the time when the case was first lodged before the Court, amount to an inordinate delay of the proceedings, which thus constitutes a violation of Ms. Naul's constitutional right to a speedy disposition of the case.

71. The source submits that, considering the numerous pleadings filed before the Court and the Office of the Provincial Prosecutor for the dismissal of the charges against Ms. Naul on constitutional grounds, her case could have been dismissed earlier. Ms. Naul could have

²² See <https://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-harassment-of-some-members-of-the-uplm-and-nupl/>.

²³ See <https://www.hrw.org/news/2020/08/25/philippine-rights-group-under-attack>.

²⁴ Article III (16), of the 1987 Constitution states that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

²⁵ National Prosecution Service, *Revised Manual for Prosecutors* (Manila, Department of Justice of the Philippines, 2008).

been released earlier, making space in the highly congested detention facility in Agusan del Sur and thereby contributing to the efforts to prevent the spread of COVID-19 in detention centres.

72. On 8 March 2022, the source informed the Working Group that Ms. Naul had been released on 28 October 2021. The court reportedly held that the affidavits of the complainants were inadequate and that the facts and circumstances led it to believe that the accused had not committed the offences charged.

Discussion

73. The Working Group thanks the source and the Government of the Philippines for their submissions.

74. The Government of the Philippines states that based on the response received on 16 August 2021 from government authorities, the trial court has quashed the criminal information against Ms. Naul due to the Court's failure to establish her participation in the crimes she allegedly committed. As Ms. Naul has already been released from detention, the Government submits that the request and arguments of the Working Group are rendered moot. On that matter, on 8 March 2022, the source reported that Ms. Naul was released on 28 October 2021, pursuant to a court decision on cases No. 6524, No. 6525 and No. 6526, as the facts and circumstances led the Court to believe that the accused had not committed the offences charged. A fourth court case against her is still pending, indicating that Ms. Naul could be subject to further arrest and detention.

75. As a preliminary matter, the Working Group observes that the release of Ms. Naul does not prevent the Working Group from adopting an opinion, as there is no provision in its methods of work that precludes consideration of a case in such circumstances. Indeed, the Working Group considers it necessary to render an opinion given that the allegations relating to Ms. Naul's deprivation of liberty in the Philippines are serious and warrant further attention,²⁶ and that the case concerns the peaceful exercise of fundamental rights in the Philippines.

76. In determining whether the deprivation of liberty of Ms. Naul is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.²⁷

Category I

77. The Working Group will first determine whether it is impossible to invoke any legal basis to justify Ms. Naul's arrest and detention from 15 March 2020 until the time of her release that would render her detention arbitrary under category I.

78. As at the date of the source's submission of 7 July 2021, Ms. Naul had not been brought before a judge. The Government does not rebut that submission. The Working Group recalls that legal safeguards against arbitrary deprivation of liberty as encapsulated in article 9 of the Universal Declaration of Human Rights and article 8 of the Covenant require anyone arrested or detained on a criminal charge to be brought promptly before a judge authorized by law to exercise judicial power. As the Working Group has reiterated in its jurisprudence, and the Human Rights Committee has specified, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.²⁸ Accordingly, the Working Group finds that Ms. Naul's pretrial detention was undertaken in the absence of judicial review of its legality and in

²⁶ See opinions No. 50/2017, para. 53 (c); and No. 55/2018, para. 59.

²⁷ [A/HRC/19/57](#), para. 68.

²⁸ See, for example, opinions No. 6/2017, No. 30/2017, No. 49/2019 and No. 66/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 33.

violation of her right to be brought promptly before a judicial authority under article 9 (3) of the Covenant.²⁹

79. The source submits that the charges upon which Ms. Naul was arrested have no fixed bail. The Working Group understands this to mean Ms. Naul was arrested and charged on the basis of non-bailable offences. The Government confirms that Ms. Naul was charged under non-bailable offences and refers to relevant domestic laws in that regard.

80. The Working Group recalls that it has repeatedly stated in its jurisprudence that, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with the relevant provisions of international law.³⁰ The Working Group, which has previously noted that Philippine law – should it be determined that the charges involve a non-bailable offence – precludes consideration, or reconsideration on a periodic basis, of a detainee’s individual circumstances, reiterates its view that automatic rejection of the applicant’s applications for bail, devoid of any judicial control of the particular circumstances of the person’s detention, is incompatible with the guarantees of article 9 (3) of the Covenant.³¹

81. In accordance with article 9 (3) of the Covenant, pretrial detention should be the exception, rather than the norm, and should be ordered for the shortest period of time possible. Liberty is recognized under article 9 (3) of the Covenant as the core consideration, with detention as an exception thereto. Ms. Naul’s detention – bearing in mind that pretrial detention should be the exception rather than the rule – lacked a legal basis, as it was not based on an individualized determination that it was reasonable and necessary, taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by consideration of alternatives, such as bail, electronic bracelets or other conditions.³² Moreover, international standards require that non-custodial measures be prioritized for women.³³

82. The Human Rights Committee has found that the State party must demonstrate that there were no less invasive means available of achieving the same ends of detention – that is, mitigating the risk of flight, interference with evidence or reoffending – that might arise from release on bail, for example, by the imposition of reporting obligations, sureties or other conditions.³⁴

83. In the light of the above, the Working Group finds that non-bailable offences, which include automatic pretrial detention regimes for certain offences, are inconsistent with the need for individualized assessment, as they preclude consideration of the detainee’s individual circumstances.³⁵ The Working Group thus concludes that Ms. Naul’s pretrial detention was in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) and (3) of the Covenant.

84. Moreover, the source submits that on 10 June 2021, the arrest warrant for Ms. Naul was quashed for being null and void by a court. However, the Working Group notes with concern that according to the update provided by the source, Ms. Naul was released from detention only on 28 October 2021, more than four months after that determination by the court. The Working Group is unable to reconcile why Ms. Naul continued to be detained after

²⁹ Opinion No. 81/2020, para. 56.

³⁰ See, for example, opinions No. 46/2011, No. 42/2012, No. 50/2017, No. 79/2017, No. 1/2018, No. 20/2018, No. 37/2018 and No. 50/2018.

³¹ Opinions No. 24/2015, paras. 35–39; and No. 61/2018, paras. 47–48.

³² [A/HRC/19/57](#), paras. 48–58.

³³ Rules 57–66 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). See also deliberation No. 12 ([A/HRC/48/55](#), annex), paras. 7–9.

³⁴ *Baban v. Australia* (CCPR/C/78/D/1014/2001), para. 7.2. See also general comment No. 35 (2014), para. 38, in which the Human Rights Committee stated that courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.

³⁵ Opinion 61/2018, paras. 47–48.

the legal basis for her detention as submitted by the authorities, that is, the arrest warrant, was quashed.

85. Given the discrepancy between the time of the release of Ms. Naul provided by the Government and that provided by the source, and the lack of clarity as to when the charges against her were quashed, the Working Group does not have sufficient information to make a finding on the matter. However, it takes the opportunity to reiterate that maintaining a person in detention after release has been ordered by a court competent to exercise control over the legality of detention is a manifest violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant and renders the detention arbitrary, because it lacks legal basis.³⁶

86. For the reasons outlined above, the Working Group concludes that Ms. Naul's pretrial detention lacks a legal basis and falls under category I.

Category II

87. The source submits that Ms. Naul was deprived of her liberty for exercising her right to freedom of opinion, expression and association. As the source does not substantiate the allegations as to how Ms. Naul was deprived of her liberty for exercising her right to freedom of opinion and expression, the Working Group is unable to address any violations relating to those freedoms.

88. In relation to her right to freedom of association, the source submits that Ms. Naul's arrest and detention based on her status as a member of the national council of Karapatan constitutes an unlawful restriction of freedom of association. The Government, while providing substantial information on its engagement with Karapatan, does not rebut this allegation directly.

89. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights, and to draw public attention to the observance of human rights. As the Working Group has observed, belonging to a human rights organization is simply the legitimate exercise of, among other rights, the right to association.³⁷ Accordingly, it has found arbitrary detention, based on the exercise of freedom of association based on membership in a range of human rights organizations.³⁸ Under article 22 (2) of the Covenant, no restrictions may be placed on freedom of association other than those which are prescribed by law and which are necessary in a democratic society in the interests, of national security or public safety, public order, public health or morals, or the protection of the rights and freedoms of others. There is no indication that those restrictions apply in Ms. Naul's case.

90. The Human Rights Council has specifically called for States to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders.³⁹ In addition, in its general comment No. 25 (1996), the Human Rights Committee noted that the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, was an essential adjunct to the rights protected by article 25 of the Covenant, which sets out the right to participate in public affairs.

91. For the above-mentioned reasons, the Working Group finds that Ms. Naul's rights to freedom of association under article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant as well as her rights under article 7 of the Universal Declaration

³⁶ Opinions No. 3/2010, para. 6; No. 3/2011, para. 20; No. 7/2011, paras. 15–17; No. 9/2011, para. 38; and No. 8/2020, para. 53.

³⁷ Opinion No. 10/1993, para. 5 (h).

³⁸ See, for example, decisions No. 26/1992, para. 6 (h); and No. 10/1993, para. 5 (h); and opinion No. 15/2010, para. 26.

³⁹ Human Rights Council resolution 15/21.

of Human Rights and article 26 of the Covenant have been violated. The Working Group thus considers that Ms. Naul's deprivation of liberty is arbitrary under category II.

Category III

92. The source reported various instances of violations of Ms. Naul's fundamental fair trial rights. The Government responded that those allegations should be addressed to the trial court having jurisdiction over her case, as they involved assertions that raised questions of fact which were practically addressed to the sound discretion of the court. The Working Group does not consider that response to be sufficient, in view of the allegations raised by the source.

93. The source notes the following fair trial violations:

(a) Ms. Naul was not officially provided copies of the complaint against her as required by domestic law but was made aware only informally;

(b) Ms. Naul and the 22 other individuals indicted were not named in the original complaint but were nonetheless subpoenaed by the prosecutor and included in the supplemental complaint filed by the alleged victim of kidnapping;

(c) Moreover, Ms. Naul was not provided with the supplemental complaint, which again violated domestic law.

94. The source also submits that the above-mentioned complaints failed to establish the positive identities of Ms. Naul and the 22 others indicted in the same case as perpetrators of the crimes committed on 19 December 2018 against the Philippine Army. Ms. Naul's hospital records, which were submitted as proof of her alibi, were rejected by the prosecution. According to the source, that evidence would have proved that she was in another part of the country on the day the crimes occurred. On that basis, the source submits that the charges against Ms. Naul are fabricated. The Government has not addressed the issue of alibi directly.

95. In the light of the foregoing, the Working Group find that the violations set out above breach Ms. Naul's due process and fair trial rights under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant.

96. The Working Group concludes that the violations of Ms. Naul's rights to a fair trial are of such gravity as to render her deprivation of liberty arbitrary, falling within category III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

Category V

97. The source submits that Ms. Naul has been deprived of her liberty as a result of politically motivated charges brought against her that are in retaliation for her human rights work and that she is being discriminated against based on her status as a human rights defender. The source states that Ms. Naul is among numerous human rights defenders who have been identified by the Government as part of a practice of red-tagging.

98. The Government denies the allegation that Ms. Naul's arrest and detention formed part of a broader attack on independent civil society and human rights defenders in the Philippines, or red-tagging, and on Karapatan in particular. Additionally, it submits that contrary to allegations of shrinking civic space, Philippine civic space has been expanding with the Government's steadfast advocacy for the empowerment and greater participation of a multiplicity of civil society actors.

99. The Working Group reiterates that it applies a heightened standard of review in cases in which the rights to freedom of movement and residence, freedom of asylum, freedom of thought, conscience and religion, freedom of opinion and expression, peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities are restricted or

in which human rights defenders are involved.⁴⁰ Ms. Naul's role as a human rights defender in the Philippines requires the Working Group to undertake this kind of intense and strict scrutiny. Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.⁴¹

100. Moreover, as established above in respect of category II (see paras. 87–91), Ms. Naul's detention resulted from the peaceful exercise of her fundamental right to association under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention constitutes a violation of international law on the grounds of discrimination based on political or other views.⁴² The Working Group recalls the source's submission that Ms. Naul's work largely involved providing aid to alleged political prisoners and victims of human rights violations, where she organized calls for the release of alleged political detainees and persecuted members of marginalized sectors.⁴³

101. In respect of human rights defenders, the Working Group has recognized the necessity to subject interventions against individuals who may qualify as human rights defenders to particularly intense review.⁴⁴ This heightened standard of review by international bodies is especially appropriate where there is a pattern of harassment by national authorities targeting such individuals.⁴⁵ In the case of Ms. Naul, who was 62 years old at the time of her arrest, it is unclear as to why several units of the police and the army were reportedly involved in her arrest. In that regard, the Working Group recalls that on 15 April 2020, special procedure mandate holders addressed concerns to the Government about alleged killings of two members of Karapatan, raids on offices, arbitrary detention and legal cases against Karapatan secretariat members and staff from May 2019 to March 2020. The mandate holders described a pattern of targeting multiple organizations and individuals, stating that it was believed that all incidents were reprisals for the advocacy work conducted by Karapatan, the Rural Missionaries of the Philippines and Gabriela National Alliance of Women at the national and international levels, including for their work before the Human Rights Council.⁴⁶ The Working Group notes with concern the chilling effects of judicial prosecutions on society, which is furthered by a climate of intimidation that appears to surround the enforcement of those laws.

102. The Working Group thus considers that Ms. Naul's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2, 3 and 26 of the Covenant on the grounds of discrimination based on political or other opinion, as well as on her status as a human rights defender.

103. For the reasons set out above, the Working Group finds that Ms. Naul's deprivation of her liberty was arbitrary according to category V.⁴⁷ The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Concluding remarks

104. The Working Group noted with concern the source's submission that Ms. Naul, who was 62 years of age at the time of her arrest, suffers from asthma and has a heart condition. Considering Ms. Naul's personal condition as well as the general risks posed by COVID-19 to detainees in detention facilities, the Working Group expresses regret that Ms. Naul was

⁴⁰ See, for example, opinions No. 57/2017, para. 46; No. 94/2017, para. 49; No. 3/2018, para. 40; and No. 13/2018, para. 22. See also Declaration on Human Rights Defenders, art. 9 (3).

⁴¹ See Declaration on Human Rights Defenders; and opinion No. 8/2009, para. 18.

⁴² Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

⁴³ See communication PHL 1/2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁴⁴ Opinion No. 62/2012, para. 39.

⁴⁵ Opinion No. 39/2012, para. 43.

⁴⁶ See communication PHL 1/2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁴⁷ See opinions No. 75/2017, No. 79/2017, No. 35/2018, No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

held in overcrowded and unsanitary conditions that put her life at imminent risk. In accordance with article 10 (1) of the Covenant, all persons deprived of their liberty must be treated with humanity and dignity, which would include receiving appropriate medical care.⁴⁸ States should treat detainees over 60 years of age and those with underlying health conditions as vulnerable to COVID-19, refraining from holding them in facilities where the risk to their life is heightened and implementing early release schemes whenever possible.⁴⁹ The Working Group refers the present case to the Independent Expert on the enjoyment of all human rights by older persons.

Disposition

105. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Teresita Naul, being in contravention of articles 2, 7, 9, 10 and 20 of the Universal Declaration of Human Rights and articles 2, 3, 9, 14, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

106. The Working Group urges the Government of the Philippines to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Naul and to take appropriate measures against those responsible for the violation of her rights.

107. The Working Group requests the Government to bring its laws into conformity with the recommendations made in the present opinion and with the commitments made by the Philippines under international human rights law.

108. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders and the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

109. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

110. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Ms. Naul;
- (b) Whether an investigation has been conducted into the violation of Ms. Naul's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Philippines with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

111. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

112. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would

⁴⁸ Opinion No. 26/2017, para. 66.

⁴⁹ Deliberation No. 11 (A/HRC/45/16, annex II), paras. 15–16.

enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

113. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁵⁰

[Adopted on 1 April 2022]

⁵⁰ See Human Rights Council resolution 42/22, paras. 3 and 7.