**SUBMISSION TO THE SPECIAL RAPPORTEUR**

**Re: the Call for Submissions on Safeguarding Independence of Judicial Systems**

**Attacks on Attorneys, Judges, Prosecutors and Paralegals**

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**Introduction**

That the legal profession can and does contribute to the development and maintenance of the rule of law and therefore to a democratic polity is a generally accepted, although abstract, concept.

The international community has recognized the importance of lawyers in adopting the UN Basic Principles on the Role of Lawyers.[[1]](#footnote-1)

In reality the role of lawyers is complicated and contradictory. The law and its institutions are a site of struggle.

 Judges, prosecutors, attorneys and community justice workers or paralegals, are involved in struggle as are state institutions, the political class, powerful corporations, and other institutions of civil society. The concrete function of some legal professionals is therefore not always simply to support democratic values and the rule of law.[[2]](#footnote-2)

That struggle takes place within a particular social formation, largely in today’s world, capitalist, and while liberal democracy has held sway in much of the world, authoritarian regimes are numerous today.

In every social formation the scales of justice are very clearly weighted in favor of the state, its institutions and the dominant class, with race, religion and gender also important factors in the struggle.

In general, largely because of the inculcation of hegemonic ideology, normalization of one’s unequal position in the society and the capacity for state repression and/or co-option, commitment to the social formation is a limiting factor in the independence of lawyers including most importantly perhaps judges who, theoretically, are the guardians of the rule of law. Consider: ”As followers of natural law and citizens of a nominally egalitarian society, we tend to resist the concept of class struggle. I believe we resist it at our peril…we in fact have a dominant class in spite of our principles to the contrary, that in operation if not in intention it is an oppressor class, that we of the legal and academic professions belong to it by occupation, mindset and lifestyle, that its oppressive position is powerfully supported by manny of our legal institutions, and that if we ignore the situation we cannot avoid responsibility for it.”[[3]](#footnote-3)

[And see attached, Boehringer, G.H, Independence of the Judiciary in Capitalist “Democracies”: Contradictions, Ideology and Hegemony”]

**A Primary Barrier to Fulfilling a Lawyer’s Professional Duty**

My submission is focused on the most fundamental challenge and barrier to the legal professionals and community justice workers in any country: the threat of murderous attacks. Part of the struggle over law- and justice - is the willingness of some actors to try to eliminate legal professionals-even community justice workers- from the fray.

As Cameron has written “ One of the tools that authoritarian governments now use with greater frequency to restrict and pressure members of civil society and opposition figures is to target the lawyers who represent them in the legal system…The rational…is simple…once a regime manages to sideline principled attorneys…independent judges…access to legitimate representation dwindles and the rule of law becomes fundamentally compromised”.[[4]](#footnote-4)

She further notes the dimensions of the current threat: “The trend is clear: lawyers are under attack because of their work, and they need better protections to sustain the viability of justice systems. In a 2022 report, former UN Special Rapporteur on the independence of judges and lawyers Diego Garcia-Sayan noted” a global increase in practices that undermine, limit, restrict and hinder the practice of law”. He also has reported that in the decade from 2010 to 2020 more than 2,500 lawyers were killed, detained or kidnapped around the world”.[[5]](#footnote-5)

**The attacks in the Philippines**

The primary focus of my research in the Philippines over the past 15 years has been the murderous attacks on judges, prosecutors, attorneys and community justice workers/paralegals and the negative impact they have on the victim and others suffering harm from such assaults.[ See my paper attached: “Judges killed under Duterte: Threats to the Rule of Law”]

In 2021 I submitted two reports, still very relevant, to the Philippine Supreme Court: 1) “The Never Ending Wrong: Judges and Prosecutors killed in the Philippines (2001-2021), and 2) “Patterns in the Killing of Lawyers: the Case of Attorney Rex Fernandez”. [Both attached]

It is clear from global research by the IAPL Monitoring Committee on Attacks on Lawyers, under the direction of my Co-Chair Prof. Stuart Russell, there are different patterns of challenges to independence of legal professionals. There are many ways of erecting barriers to fulfilling the duties of lawyers in different countries.[[6]](#footnote-6) [See attached paper “Report of the International Association of People’s Lawyers Monitoring Committee on Attacks on Lawyers” listing 136 countries]

**Murderous Attacks on Lawyers in the Philippines**

In researching the nearly two decades 1972-2000 we could find only 18 lawyers killed, including 1 Judge and no prosecutors. [See attached paper “Lawyers Murderously Attacked From Marcos to Marcos”]

That there were so few deaths under former President Marcos Sr and three successors, does not mean there were no other sanctions on lawyers. There was detention without trial often with torture, in particular under Marcos Sr. Other forms of threat, harassment and intimidation were used and continue to be used in the present.[[7]](#footnote-7)

The numbers of attacks increased sharply in 2001. Vice President Gloria Macapagal Arroyo became President in what was a political coup and became increasingly divisive and unpopular. She apparently stole the election of 2004 after promising not to stand for election. She led a government that sought to enrich itself through corrupt dealings and did little if anything for the masses. She gave the military and police a free rein to maintain “law and order”.[[8]](#footnote-8)

Since 2021 there have been at least **41 murderous attacks on Judges**, **35 were killed**.

The determination and capacity to make such attacks is underlined by the two attacks on Judge Nataniel Pattingalan. Having survived the first attack he sought , and was granted, a transfer to another jurisdiction where it was believed he would be safe(r). Nevertheless he was killed at the second attempt.

Because of their position at the top of the judicial hierarchy we should note that Supreme Court Chief Justice Artemio Panganiban was a survivor of 2 acid attacks on his vehicle; and Chief Justice Romeo Callejo Sr. received a black funeral wreath at his home, a death threat/warning.

Since 2001 there have been at least **31 murderous attacks on Prosecutors, 24 were killed.**

Since 2001 there have been at least **167** **murderous attacks on Attoneys, 145 were killed.**

**Thus in 239 attacks, 204 lawyers killed since 2001.**

That is nearly 1 murderous attack each month for 22 years, enough to be a serious challenge to independence.

The Philippines became, and remains, one of the most dangerous countries in the world for lawyers.

**What is to be done?**

**ON PROTECTION** **and DEFENCE**

It has long been recognized that lawyers in the Philippines are at great risk. With at least 239 murderous attacks on lawyers since 2001, in which 204 were killed, the Philippines has for years remained one of the most dangerous countries in the world for lawyers.

 Since at least the Arroyo Presidency, Judges have sought more and better provisions for their safety, usually to be armed, especially during election periods. The position of the PNP has been “if you receive death threats, notify us and we will provide you with police escorts.” At one point the Supreme Court instituted a Security program, under which *inter alia* lawyers could apply for a loan to purchase a firearm. For years Judges, in some instances, hired their own security officers. And in at least one instance we have found a Judge did arm himself with a firearm sadly with fatal consequences to himself, as detailed below (Judge Hassan).above.

In recent years, a number of measures for protecting lawyers have been considered and, in the case of the attackers’ riding-in-tandem *modus operandi*, Senator Gordon’s determination to try to substantially mitigate the danger has paid off in the passage of legislation. After some years of delay the idea of a Marshall’s Service to protect Judges, modelled on the USA Federal agency, has been established. But the murderous attacks continue.

From the above it can be seen that having armed security, formal or coincidental, resulted in:

2 Judges/Prosecutors lives saved

 reduced consequential harm: 2 passengers lives saved

3 Judges killed

1 Prosecutor killed

4 Prosecutors wounded

1. perpetrators dead

 1 perpetrator arrested

 1 Attorney and his colleagues charged for various firearms offences

**ISSUES ARISING FROM THE RESEARCH**

**A pattern of Impunity**

In a country where almost 6,700 “drug suspects” have been killed by police officers according to the police, while others report the number is at least 30,000, it is surprising that less than a handful of police have been convicted of such a killing.

It is not surprising, given such a failure of the institutions of the state-law enforcement, prosecutorial and judicial- that the same pattern of impunity exists when we examine attacks on judges.

In eight cases there were no perpetrators arrested. These involved 5 cases drug-related. In two other cases, the judges had found the case mounted by the prosecution for the murder of AFP soldiers insufficient to find (1) the alleged Communist/NPA defendant, and (2) the Human rights activists, guilty. In another, a political bombing case, no arrest was made, while the police denied it was political apparently because it would have reflected poorly on their efficiency.

In four cases where the attacker became known, leading to one conviction, they were low hanging fruit, or what I have referred to elsewhere as “sitting duck” cases.

In the two cases where the perpetrator was identified and arrested (no trial as yet) these were personal grudge cases and it was not difficult to investigate. In one case the Mastermind was caught on CCTV, the last person to have seen the victim; in the other the perpetrator was a neighbor in a land dispute with the victim’s family.

In another case the suspect killed the judge and committed suicide on the spot.

In the one case where the Mastermind was convicted, he was under suspicion of corruptly deciding drug cases. The victim was the man who was auditing his work and had reported the wrongful behavior.

**Lack of deterrence**

One of the most important factors in protecting legal professionals is the effectiveness of the judicial system. An accepted, well established principle in the discipline of Criminology is that the most effective deterrent to offending is not the severity of sanctions – offenders do not believe they will be caught – but the certainty of conviction. By that measure the Philippine judicial system has been a notable failure for decades. As Prof. John Molo, also an Attorney, commented: “The legal profession is suffering from a silent epidemic, its members stalked by assassins who have stopped being afraid of the Rule of Law… If the members of a powerful profession can be gunned down with impunity, where does that leave the less fortunate?”.[[9]](#footnote-9) Rappler Nov. 24, 2020].

While it is true that under President Arroyo there were numerous murder charges filed against arrested suspects, some trials and a few convictions, that low standard was never met under President Benigno Aquino III, while In the reign of President Duterte the results have been exceedingly poor.

According to a Rappler report, only 5 cases have been brought to the courts, and these are among the small number of cases that do not involve killings by any of the “dark forces” suspected of responsibility for attacks on human rights lawyers and critics of the government.[[10]](#footnote-10) [ See Lian Buan, “Only 5 cases reached the courts in 54 lawyer killings since 2016” Rappler Dec. 1, 2020; see also ibid, “In alarming rise of PH lawyer killings, what is being done?’ Rappler Nov. 25, 2020. And see on EJKs generally, ibid, “DOJ’s task force vs EJKs: Few convicted, most perpetrators cleared” Rappler Sept. 3, 2020).

## **Inadequate Investigations**

Thorough and comprehensive investigations are the *sine qua non* of a judicial system that supports a functioning rule of law. Unfortunately this basic activity has been missing, according to the Report of an International Fact Finding Mission, organized by the Day of the Endangered Lawyer Foundation, Netherlands and including representatives from a number of legal profession groups from Europe and the USA.[[11]](#footnote-11) [See Lian Buan, “International probers: No effective investigation of lawyer killings in PH” Rappler Mar. 8, 2019.]. Why this is so is beyond the scope of this Submission, but there are suspicions, based on past incidents, that police and military operatives have been involved in many cases and that a lack of investigation required is a protective shield for those institutions.

It is interesting that in a number of cases involving human rights paralegals (William Bugatti, Richard Mayumi and Brandon Lee) and NUPL lawyers (e.g. Atty. Criselda Azarcon) in which the first two died and the latter two were survivors, military operatives surveilled, threatened and told them to stop their human rights work. None of those cases, and others similar, resulted in arrests or charges.

* **Prosecutorial decisions**
* There are also concerns that prosecutorial decisions not to prosecute alleged perpetrators because of “insufficient evidence” may have been tainted in cases involving suspects who are police officers (e.g. in the cases of Prosecutor Rogelio Velasco and Atty. Edilberto Golla). These cases are often compared by critics to the ease with which trumped up charges are filed against lawyers and other human rights and environmental rights defenders, labor and other activists and critics of the government.[[12]](#footnote-12) [ See generally Lian Buan, “Lawyers to question before Supreme Court role of prosecutors in EJKs” Rappler Nov. 20, 2017.]

**The President’s role**

President Duterte played a particularly distinctive role in establishing the system of impunity. He ruled by fear to a considerable extent. When he promised to have the backs of those who kill, promised that they will not go to prison, oversaw a system-particularly in the Philippine National Police- that rewards those who obey and punishes those who do not carry out his wishes, we were observing a state provided system of impunity.

Add to that a second segment of the system: the superheated campaign of “red tagging” by the military and the National Task Force to End Local Communist Armed Conflict (NTFELCAC). Thus the attacks on human rights defenders and lawyers critical of or litigating against the government by military operatives are unsurprising. The military perpetrators were simply following the narrative that human rights defenders = communists or are their supporters.

 The role of the President in inspiring human rights violations was a major factor in creating impunity for those who commit such violations, especially those in state forces. His often repeated statements criticising human rights and their supporters, that he would protect those alleged to have violated human rights e.g that he would have their back, that they would not go to prison, “had inspired PNP officers to commit human rights violations”, as admitted by a PNP spokesperson on ABS-CBN TV.[[13]](#footnote-13) (Karen Davila morning show). [See my attached paper *Affidavit to the International People’s Tribunal on the Crimes of the Duterte Regime*, Brussels, Belgium, September 18-19, 2018]

The Philippine Commission on Human Rights found that the “grim reality” of being a human rights defender in the Philippines was that “they faced constant undermining and delegitimization of their work which lead to systematic attacks that place their ‘life, liberty, and security…at great risk”.

According to the report “The President through his pronouncements created a dangerous fiction that it is legitimate to hunt down and commit atrocities against HRDs because they are enemies of the state’ and that his allies and supporters “demonize” human rights work”.[[14]](#footnote-14)

When a President claims that “criminals have no rights” and specifically identifies lawyers with their clients, alleged suspects, it invites attacks on those whose legal professional duty is to protect the accused. Duterte violated the UN Basic Principles on the Role of Lawyers which states unequivocally that lawyers must not be identified with their clients, that governments have a responsibility to protect them and to see that they can perform their professional duties.

 **RECOMMENDATIONS ON THE WAY FORWARD**

 Governments must ensure that lawyers are able

 to perform all of their professional functions without

intimidation, hindrance, harassment or improper interference.

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their professional functions.

 Lawyers should not be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with their work as lawyers.

Governments shall secure the freedom of expression, belief, association and assembly for lawyers.

Lawyers should have the right to take part in public discussion of all matters, especially concerning the law, politics, the government and the administration, without suffering murderous or other attacks.

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 The Philippine government must ensure the safety of lawyers

 threatened as a result of discharging their functions.

The Philippine government should work with local chapters of the Integrated Bar of the Philippines, all other organizations of the legal profession, and organizations using and defending paralegals (e.g. Karapatan and its affiliates) in order to develop more comprehensive programs for the protection and defence of all legal professionals and paralegals.

While in a number of cases the PNP has announced *ad hoc* Special Task Forces to investigate the attack, there should be Regional Special Task Forces to investigate such attacks.

The Commission on Human Rights should be funded in order to increase its capacity to monitor attacks on lawyers and review the government’s performance in investigating, apprehending perpetrators, and prosecution.

Honest publicity and a commitment to transparency serve the interests of the people. There is considerable scepticism about the data produced about the EJKS in the drug war. That also applies to the killing of lawyers. There is significant difficulty in trying to establish the number of attacks on lawyers. This is reflected in the different numbers produced by non-governmental monitoring groups.

A glaring example that makes the scepticism understandable is the “re-calibration” of the numbers killed in the first 6 months of the “drug war” Having triumphally claimed about 6,000 “drug suspects “ killed, the PNP was forced to reduce that number by about half as a result of publicity about cases in which the police had murdered people entirely unconnected with drugs.

Given the situation in the Philippines today, the authorities must accept an official visit of the Special Rapporteur on the Independence of Judges and lawyers in order to assess the critical situation.

1. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers> [↑](#footnote-ref-1)
2. Boehringer, G. and Russell, S. (2008) “Globalization, Lawyers and the State” (2008) ***Alternative Law Journal***  v. 33:3, 169-72 [↑](#footnote-ref-2)
3. See e.g. Rodes, R. E. “Greatness Thrust Upon Them: Class Biases in American Law” (1983) 28 American J. of Jurisprudence 1-15, at 1. [↑](#footnote-ref-3)
4. Cameron, Jasmine D. “Lawyers under Threat: Highlighting Their Plight” <https://www.justsecurity.org/84880/lawyers-under-threat-highlighting-their-plight/> p.1 Jan. 24, 2023. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. See Boehringer et al in [https://www.cak.cz/assets/komora/dissent-special-issue-attacks-on-lawyers.pdf](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cak.cz%2Fassets%2Fkomora%2Fdissent-special-issue-attacks-on-lawyers.pdf&data=05%7C02%7C%7C9db910c8ff414611a9ae08dc207cddd7%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C638420967899186071%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=AZMtoY0XgKuPs65Vuni7Oy7cpqNB41ymLFLM44atnuw%3D&reserved=0) [↑](#footnote-ref-6)
7. See Orenlichter, D.F. “Lawyers under Siege” <https://journals.sagepub.com/doi/pdf/10.1080/03064228508533956>; see also “Report: The Philippines a Country in Crisis” <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2728&context=facsch_lawrev>

 [↑](#footnote-ref-7)
8. Fuller, K. The Long Crisis: Gloria Macapagal-Arroyo and Philippine Underdevelopment ,Ottawa: Flipside Publishers, 2013 [↑](#footnote-ref-8)
9. Molo, J. ““The silent epidemic stalking Filipino lawyers” [**https://www.rappler.com/voices/thought-leaders/opinion-silent-epidemic-stalking-filipino-lawyers?utm\_medium=Social&utm\_source=Facebook&fbclid=IwAR3JR61i25SZb7P**](https://www.rappler.com/voices/thought-leaders/opinion-silent-epidemic-stalking-filipino-lawyers?utm_medium=Social&utm_source=Facebook&fbclid=IwAR3JR61i25SZb7P) [↑](#footnote-ref-9)
10. Lian Buan [↑](#footnote-ref-10)
11. Ibid [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Karen Davila morning show in which she interviewed a spokesperson for the PNP. [↑](#footnote-ref-13)
14. See Jodesz Gavilan https://www.rappler.com/nation/266216-duterte-dangerous-fiction-against-defenders-chr-report/ [↑](#footnote-ref-14)