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Philippines

PHI/08 – Leila de Lima

Decision adopted unanimously by the IPU Governing Council at its 200th session (Dhaka, 5 April 2017)

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Ms. Leila de Lima, a member of the Senate of the Philippines, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Considering the letter dated 23 January 2017 from the President of the Senate and the information he provided at the hearing with the Committee on 3 April 2017,

Considering the following information on file:

- Ms. de Lima served as Chairperson of the Philippine Commission on Human Rights from May 2008 until June 2010, when she was appointed as the Philippine Secretary of Justice. She resigned from this position in October 2015 to focus on her candidacy for a seat in the Senate in the parliamentary elections of May 2016, which bid was successful;
- Senator de Lima has been a lifelong advocate of the fight against extrajudicial killings. On March 2009, as the then Chairperson of the Commission on Human Rights, she led a series of investigations into a number of alleged extrajudicial killings linked to the so-called Davao Death Squad (DDS) in Davao City, run by the then Mayor Duterte. According to the complainant, the then mayor and now President of the Philippines was reportedly behind the DDS. The investigation became a seed of antagonism and animosity between the senator and the future president of the country;
- On 13 July 2016, Senator de Lima, as Chair of the Senate Committee on Justice and Human Rights, filed and initiated the proposed *Senate Resolution No. 9*, opening an inquiry into the alleged summary killings of thousands of suspected drug users and drug dealers since President Duterte took office in June 2016 and launched his war on drugs;
- Public hearings for the inquiry started on 22 August 2016 and were highlighted by the testimony of a self-confessed hitman and member of the DDS, Mr. Edgar Matobato, who had implicated President Duterte in some of the extrajudicial killings in Davao City. According to the President of the Senate, however, Mr. Matobato's hearing revealed several inconsistencies in his testimony;
- The President of the Senate stated that several observations made by other senators pointed to Senator de Lima's predisposition to conduct the hearing in a manner not best reflecting the objectiveness and neutrality expected of an impartial arbiter. Accordingly, on 19 September 2016, a motion was approved in the Senate to declare vacant the chair and membership of the Committee on Justice and Human Rights. According to the President of the Senate, this was done strictly in keeping with

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the Senate Rules of Procedure; such decisions are taken regularly as part of the political process and the motion was not in any way meted out to sanction her inquiry. The complainant nevertheless claims that the Senate ousted Senator de Lima as chair in an apparent reprisal for her inquiry;

- According to the complainant, subsequent to Senator de Lima's ousting as chair, the committee adopted its report (known as "the Gordon Report", in reference to the new chair of the inquiry) in an unorthodox manner, as no meeting was convened to discuss the draft report. Senator de Lima produced a "dissenting report" in December 2016, as she considered that the inquiry had failed on several grounds, notably on its refusal to allow the testimonies of witnesses of extrajudicial killings to be heard before the Commission on Human Rights, on its premature termination and on its failure to take due account of the testimonies of Mr. Matobato, among others. Senator de Lima said, "Due to the premature and abrupt termination of the Senate investigation, no comprehensive, in-depth gathering and assessment of the evidence was done by the Committee. Instead, what came out was a virtual whitewash designed to absolve the national leadership as led by the President";
- The complainant states that Senator de Lima's concerns about extrajudicial killings are well documented and refers to a number of reports, including one from Human Rights Watch, entitled *Licence to Kill: Philippine Police Killings in Duterte's War on Drugs*, of March 2017. According to this report, President Duterte's "war on drugs" has produced a campaign of unlawful killings by Philippine national police personnel and unidentified "vigilantes", which has resulted in the deaths of more than 7,000 suspected drug users and dealers since 1 July 2016. In addition, the report states that President Duterte's public endorsement of the campaign implicates him and other senior figures in possible incitement to violence, instigation of murder and responsibility for crimes against humanity. The report exposes the falsehood of official police reports that invariably assert self-defence to justify unlawful police killings. In fact, police routinely carry out extrajudicial killings of drug suspects and then cover up those crimes. In several instances investigated by Human Rights Watch, suspects in police custody were later found dead and classified by police as "found bodies", casting doubt on government assertions that most killings have been committed by vigilantes or rival drug gangs. The United Nations Committee on Economic, Social and Cultural Rights, in reviewing the Philippines' implementation of the provisions of its International Covenant, concluded on 7 October 2016 that "it is deeply concerned that declarations made by high-ranking officials in the context of the "war on drugs" may be seen to encourage and legitimize violence against drug users, including extrajudicial killings" and observed that "the number of extrajudicial killings of drug suspects has drastically increased in recent months [...]";
- The complainant also points to another report by Human Rights Watch of 2009, entitled *You Can Die Any Time: Death Squad Killings in Mindanao*. It details the involvement of police and local government officials in targeted death squad killings in Davao City during President Duterte's time as mayor. Moreover, Human Rights Watch's 2014 report, entitled *One Shot to the Head: Death Squad Killings in Tagum City, Philippines*, documents police involvement in what appeared to be a copycat policy of extrajudicial killings in a city nearby, Davao City. The President of the Senate points out that, on 29 March 2012, the Office of the Ombudsman sanctioned 21 high-ranking officers of the Philippine national police (PNP) following the unabated killings in Davao City in recent years attributed to the alleged DDS. The Office of the Ombudsman closed its investigation on a complaint filed against President Duterte for his alleged involvement in the "killings attributed or attributable to the DDS" during his time as Mayor of Davao City, there being no evidence to support the involvement of (the then) Mayor Duterte and the local officials of Davao City in the said acts. According to the President of the Senate, under the Philippine Government set-up, there are other government agencies better equipped than the Senate to find out whether the "police and local government unit (LGU) officials are involved in targeted killings";
- On 11 August 2016, or almost a month after Senator de Lima filed her Senate resolution and inquiry, President Duterte stated, in reference to Senator de Lima, in a media interview in Davao City, "one day soon I will have to destroy her in public". The interview in Davao City was followed by at least 22 public occasions (as of 28 November 2016) on which President

Duterte was recorded consistently hurling insults and accusations against Senator de Lima. President Duterte declared publicly and repeatedly Senator de Lima's guilt and her alleged complicity in the illegal drug trade in the country when she was Secretary of the Department of Justice during the previous administration, reportedly urging her to resign and saying, "if I were Senator de Lima, I would hang myself". The complainant also states that President Duterte said that charges would be filed against Senator de Lima and that she would end up in prison, and that his remarks show that he has a long-standing grudge against her. The President of the Senate has pointed out that everyone enjoys freedom of expression in the Philippines and that Senator de Lima has herself made some scathing comments about President Duterte, including calling him a "psychopathic serial killer";

- According to the complainant, in concert with the acts and words of the President, on 19 August 2016, the Speaker of the House, Mr. Pantaleon Alvarez, filed *Senate Resolution No. 105*, seeking an investigation into the proliferation of the drug trade at New Bilibid Prison (hereinafter NBP) when Senator de Lima was Secretary of Justice. Soon thereafter, the investigation of the House of Representatives proceeded, through its Committee on Justice. In an abrupt departure from, and in violation of, the rules on committee hearings at the House of Representatives, it was the Secretary of the Department of Justice, Mr. Vitaliano N. Aguirre II, who presented the witnesses and directed the questions put to them. Secretary Aguirre, along with his team of prosecutors, took charge not only of the questioning of the witnesses but of the entire course of the House investigation up until its termination. Testimonies from dozens of inmates at the NBP tagged Senator de Lima as an alleged "protector" of drug syndicates and a supposed key personality in the illegal drug trade in the national jail. Not content with his dominant role in the House inquiry, Secretary Aguirre made accusations and offensive remarks against Senator de Lima on numerous occasions before members of the media;
- Senator de Lima has denied any involvement in drug trafficking in the NBP and points out that it was her who took action on this matter, such as on 15 December 2014 when, in a surprise raid inside the NBP, authorities discovered "VIP treatment" for some high-profile inmates and drug lords. Police also found illegal drugs inside the prison cells. Senator de Lima, then Secretary of Justice, ordered the inspection and was present during the raid. It appears that, under Senator de Lima's watch as Secretary of Justice, the Department of Justice (DoJ) conducted over 30 inspections at the NBP as part of its surprise inspections initiative called "Oplan Galugad";
- On 20 September 2016, the House Committee on Justice began its hearings with regard to *Senate Resolution No. 105*. Senator de Lima reportedly refused to attend the hearings, calling it a "sham inquiry" designed to discredit her because of her vocal opposition to President Duterte. According to the complainant, those who attested to Senator de Lima receiving drug money for her senatorial campaign had been pressured or offered rewards to present false testimony against her. One such witness is Mr. Ronnie Dayan, Senator de Lima's former driver. A complaint for unethical behaviour was reportedly filed with the Senate Committee on Ethics and Privileges against Senator de Lima on 12 December 2016, resulting from the inquiry conducted by the House pursuant to *Senate Resolution No. 105*;
- On 21 November 2016, the DoJ panel of investigating prosecutors issued subpoenas to Senator de Lima in the following cases: (i) NPS No. XVI-INV-16J-00313, entitled Volunteers against Crime and Corruption (VACC), represented by Dante Jimenez versus Senator de Lima et al; (ii) NPS XVI-INV-16J-00315, entitled Reynaldo Esmeralda and Ruel Lasala versus Senator de Lima et al; (iii) NPS XVI-INV-16K-00331, entitled Jaybee Nino Sebastian, represented by his wife, Ms. Roxanne Sebastian, versus Senator de Lima et al; and (iv) NPS XVI-INV-16-K-00336, entitled National Bureau of Investigation (NBI) versus Senator de Lima et al;
- On 2 December 2016, Senator de Lima filed her omnibus motion, arguing that the investigation of the cases was within the exclusive authority and sole jurisdiction of the Office of the Ombudsman and that, considering the partiality, bias and lack of objectivity of the Secretary of Justice and the panel of investigating prosecutors in those cases, these officials should limit themselves to referring the cases to the Office of the Ombudsman;

- On 9 December 2016, a hearing was set on the omnibus motion. On 12 December 2016, Senator de Lima submitted her reply to the comments/opposition of Attorney Eduardo Bringas, in attendance on behalf of complainants VACC (I.S. No. INV-16J- 00313), together with a “manifestation with motion to first resolve pending incidents and to defer further proceedings”. On 21 December 2016, however, the DoJ panel ruled that the case was declared “submitted for resolution” and that all pending incidents would be resolved together with the merits of the case in one resolution;
- Senator de Lima’s counsel made a verbal request for reconsideration, which was verbally denied. When her counsel enquired if a written order would be issued, the respondent DoJ panel stated that they saw no need for the same and would merely resolve all pending incidents. Given the serious abuse of discretion amounting to lack or excess of jurisdiction on account of an evident lack of investigative authority, institutional bias, manifest partiality and undue haste by which the respondent DoJ panel conducted the preliminary investigation of the four aforementioned cases, Senator de Lima filed a petition for prohibition and certiorari with the Court of Appeals under Rule 65 of the Rules of Court;
- On 17 February 2017, three complaints of illegal drug trading against Senator de Lima were filed with the Muntinlupa Regional Trial Court. The complaints were based on the findings and conclusions of the DoJ panel, contained in a joint resolution dated 14 February 2017. They charge Senator de Lima, Mr. Rafael Ragos and Mr. Ronnie Dayan with illegal drug trading, punishable under section 5, in relation to section 3(jj), section 26(b) and section 28 of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), and were assigned to Judge Juanita Guerrero’s Branch 204. On 20 February 2017, Senator de Lima promptly filed a motion to quash, mainly on the grounds of the court’s lack of jurisdiction over the offence charged against Senator de Lima, the DoJ panel’s lack of authority to file the complaints, the fact that the complaints include more than one offence and that the allegations and the recital of facts, both in the complaints and in the resolution, do not allege the corpus delicti of the charge of violation of Republic Act No. 9165. In the same motion, Senator de Lima also placed on record some of her observations, including that the existing evidence does not justify the filing of the case in court. The motion to quash was scheduled for a hearing on 24 February 2017 and the DoJ panel filed a motion to re-set in order to have the hearing re-scheduled for 3 March 2017;
- On 23 February 2017, the judge issued the disputed order upon which the arrest warrant, dated the same day, was issued. According to the complainant, the judge’s actions were possibly made with undue haste and inordinate interest, since a motion to quash was yet to be resolved and the judge would not have had time to determine the probable cause, given the voluminous records submitted by the prosecution and the likewise voluminous motion to quash filed by Senator de Lima;
- On 24 February 2017, the arrest warrant in question was served on Senator de Lima by CIDG officials. She is currently detained at the PNP custodial centre in Camp Crame, Quezon City, in accordance with the order issued by the respondent judge committing her to the Custodial Service Unit. Later that day, during the hearing fixed to hear the motion to re-set filed by the DoJ panel, the judge defended the issuance of the arrest warrant, despite failing to first consider and resolve the petitioner’s motion to quash by, according to the complainant, making the flawed claim that she had to acquire jurisdiction over the person of the Senator first before she could resolve her motion to quash. Senator de Lima challenged this decision before the Court of Appeals and subsequently the Supreme Court, where the matter is pending,

Considering that Senator de Lima stands accused of a non-bailable offence and faces between 12 years and life in prison; that under the Philippine Constitution, legislators only enjoy immunity from arrest for crimes punishable by fewer than six years’ imprisonment,

Considering that the President of the Senate states that justice is following its course and that not only former convicts have accused her of involvement in drug-trafficking, but also two former members of the National Bureau of Investigation. He is following her situation very closely and the Secretary General of the Senate and the official in charge of security at the Senate have visited her.

The President of the Senate is looking into her security and intends to visit her as soon as possible. In response to the suggestion by the Committee on the Human Rights of Parliamentarians that it undertake a visit the Philippines in connection with Senator de Lima's case, he has also stated that he would be more than pleased to welcome such a visit,

Considering that, according to the complainant, the smear campaign – which includes threats to release a purported sex video of Senator de Lima and Mr. Dayan and intimidation and accusations against Senator de Lima – is part of an attempt to derail accountability for the appalling death toll resulting from President Duterte's illegal war on drugs. During the House inquiry, Senator de Lima's address and mobile telephone number were also publicly released, a blatant violation of her rights. Senator de Lima was hounded, in particular through almost 2,000 threatening and harassing text messages, containing very foul language. Prior to her arrest, Senator de Lima revealed "heightened security threats" against her, notably "intensified monitoring", including electronic surveillance and physical surveillance by security agents,

Bearing in mind that the Philippines has ratified the International Covenant on Civil and Political Rights and is therefore bound to respect the right to a fair trial,

1. *Thanks* the President of the Senate for his cooperation and the information he provided;
2. *Is deeply concerned* about Senator de Lima's arrest, detention and the accusations levied against her; *fails to understand* how the accusations against her make sense, given that she has been the one taking action against the alleged drug trafficking in NBP; *considers also*, in light of the timing of the accusations, which coincide with the inquiry she launched in the Senate, and the reported public statements made by President Duterte and the Secretary of Justice, that there is serious reason to believe that she is targeted due to her outspoken criticism of the impact of the current government's policies on human rights in the Philippines;
3. *Is deeply concerned* in this regard that the statements made by President Duterte and the Secretary of Justice flout the principle of the presumption of innocence, portraying Senator de Lima as guilty before legal proceedings have even started; *considers* that their statements, first and foremost those of the Head of State, forcibly carry great weight and may put undue pressure on the course of the criminal cases;
4. *Is also concerned* about the fact that the legal proceedings on the substance of accusations appear to be going ahead, even though very important preliminary questions have yet to be resolved; and *calls on* the relevant authorities to ensure full respect for Senator de Lima's right to a fair trial, taking due account of all the facts and relevant legal provisions; *wishes* to receive the official views on this matter; *decides* to send a trial observer to the criminal proceedings should they take place;
5. *Is concerned* about the allegation that Senator de Lima was dismissed as chair and member of the Senate Committee on Justice and Human Rights for political reasons and that its report pursuant to *Senate Resolution No. 9* was not finalized in line with the applicable rules and does not take duly into account important evidence; *wishes* to receive the official views on this matter;
6. *Wishes* to receive further details on the prison conditions of Senator de Lima in the PNP custodial centre;
7. *Understands* that a complaint against Senator de Lima for "unethical behaviour" was reportedly submitted to the Senate; *wishes* to know the exact facts underpinning the complaint and the procedure that will be followed;
8. *Considers* that the issues at hand affecting one of its members should be of great concern to the Senate; *trusts* that it will do everything possible to monitor Senator de Lima's situation closely, including with regard to her right to physical integrity and a fair trial and conditions of detention;

9. *Is pleased* that the President of the Senate would welcome a visit by a delegation of the Committee on the Human Rights of Parliamentarians in order to address the concerns and questions that have arisen in this case; *considers* that it is crucial that this delegation meets with the relevant parliamentary, executive and judicial authorities and Senator de Lima and her lawyers, along with any third party likely to assist it in its work; *requests* the Secretary General to make the necessary arrangements for this visit to take place as soon as possible;
10. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
11. *Requests* the Committee to continue examining this case and to report back to it in due course.