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Committee on the Human Rights of Parliamentarians

Report on the mission to the Philippines

22 - 24 May 2017

PHI08 - Leila de Lima

Executive summary

Senator Leila de Lima served as Chairperson of the Commission on Human Rights of the Philippines from May 2008 until June 2010. In that capacity 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, where then Mr. Duterte had long been mayor, and concluded that Mr. Duterte, now President of the Philippines, was behind the DDS.

In 2010, Ms. de Lima was appointed Secretary of Justice. She resigned from this position in October 2015 to focus on her campaign to gain a seat in the Senate in the elections of May 2016, in which she was successful. In August 2016, as Chair of the Senate Committee on Justice and Human Rights, Senator de Lima initiated an inquiry into the killings of thousands of alleged drug users and drug dealers alleged to have taken place since President Duterte took office in June 2016.

Senator de Lima was arrested and detained on 24 February 2017 on the basis of accusations that she had received drug money to finance her senatorial campaign. The charges were brought in the wake of an inquiry by the House of Representatives into drug trading in New Bilibid Prison and Senator de Lima's responsibility in that regard when she was Secretary of Justice. The House inquiry was launched one week after she initiated her inquiry in the Senate into the extrajudicial killings.

A delegation of the IPU Committee on the Human Rights of Parliamentarians conducted a mission to the Philippines in May 2017 to gain a better understanding of Senator de Lima's situation. On the basis of the information gathered, the delegation believes that the steps taken against Senator de Lima come in response to her vocal opposition to President Duterte's war on drugs, including her denunciation of his alleged responsibility for the extrajudicial killings. The delegation is deeply concerned about the public campaign of vilification by the highest state authorities against Senator de Lima portraying her as an "immoral woman" and as guilty, even though a trial has yet to commence.

The delegation believes that there is no evidence to justify the criminal cases against Senator de Lima. It therefore calls on the relevant authorities to release her immediately and to seriously consider abandoning the legal proceedings should serious evidence not rapidly be forthcoming. Pending such release, the delegation calls on the relevant authorities to allow her to participate in the work of the Senate, in particular to vote on critical pieces of legislation. Should the criminal cases against Senator de Lima proceed, the delegation recommends that an IPU trial observer should monitor and report on respect for fair trial standards.

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List of abbreviations

CHR: Commission on Human Rights
DDS: Davao Death Squad
DDB: Dangerous Drugs Board
BuCor: Bureau of Corrections
DoJ: Department of Justice
SoJ: Secretary of Justice
PNP: Philippine National Police
NBP: New Bilibid Prison
NBI: National Bureau of Investigation

A. Origin and conduct of the mission

1 Origin of the mission

1. The Committee on the Human Rights of Parliamentarians (hereinafter the Committee) first examined the case of Senator de Lima in October 2016 and declared it admissible, without pronouncing on the merits. At the 136th IPU Assembly (Dhaka, April 2017) the Committee examined the case again, this time in light of Senator de Lima's then recent arrest and detention and the criminal charges brought against her. Following those serious developments the Committee proposed, during an exchange of views with the President of the Senate in Dhaka, that a mission to the Philippines be conducted with a view to gathering first-hand information on her situation from the parliamentary, government and judicial authorities, Senator de Lima herself, her lawyers and staff as well as third parties. The President of the Senate expressed his support for such a mission and undertook to facilitate its speedy organization.

2 Conduct of the mission

2. Following consultations, it was agreed that the mission would take place from 22 to 24 May 2017 and be composed of the Committee President, Ms. Fawzia Koofi, Committee member Mr. A.B.M. Fazle Karim Chowdhury and Mr. Rogier Huizenga, IPU Human Rights Programme Manager.

3. The delegation sincerely thanks the Filipino authorities for their cooperation and the spirit of dialogue displayed, in particular the President of the Senate and his staff, who ensured the smooth conduct of the mission, including a visit to Senator de Lima in detention.

4. The delegation met with the following parliamentary, government and judicial authorities, members of parliament, members of political parties, diplomats, representatives of international organisations and civil society, and other interested parties:

- Senate:
 - Mr. Aquilino "Koko" Pimentel III, President of the Senate
 - Mr. Richard J. Gordon, Senator, Chair, Committee on Justice and Human Rights; Chair, Blue Ribbon Committee and Committee on Government Corporations and Public Enterprises
 - Mr. Vicente C. Sotto II, Senator, Majority Leader
 - Mr. Panfilo M. Lacson, Senator
 - Mr. Franklin Drilon, Senator
 - Ms. Risa Hontiveros, Senator
 - Mr. Antonio Trillanes IV, Senator
 - Mr. Rafael P. Albert, Chief of Staff, Office of Senator Hontiveros
- House of Representatives:
 - Mr. Pantaleon D. Alvarez, Speaker of the House
 - Mr. Rodolfo C. Fariñas, Member, Majority Leader
 - Mr. Reynaldo Umali, Chair, Justice Committee
 - Mr. Gary C. Alejano, Member, representing Magadalo Party-list
- Judicial authorities - Department of Justice
 - Mr. Reynante B. Orceo, Undersecretary
 - Mr. Peter Ong, Senior State Prosecutor
- Philippine National Police
 - General Ramon. C. Apolinario, Deputy Chief for Administration
 - Mr. Gregorio R. Pimentel, Director for Intelligence
 - Mr. Philip Gil M. Phillipps, Director, Headquarters Support Service
 - Mr. Eric Serapin G. Reyes, Deputy Director for Investigation and Detective Management
 - Mr. Manolo N. Ozaeta, Director of Legal Service

- Commission on Human Rights of the Philippines
 - Mr. Jose Luis Martin C. Gascon, Chair
 - Ms. Karen Gomez-Dumpit, Commissioner
 - Ms. Gwendolyn Pimentel-Gana, Commissioner
 - Mr. Roberto Eugenio T. Cadiz
- Office of Senator de Lima
 - Mr. Phillip D. Sawali, Chief of Staff
 - Ms. Dahlia Salamat, Director IV
 - Ms. Raissa M. Sibolboro, Executive Assistant
- Legal counsel to Senator de Lima
 - Mr. Jose Manuel Diokno, Chair of the Free Legal Assistance Group (FLAG)
- United Nations
 - Ms. Lotta Sylwander, UNICEF Country Representative, UN Resident Coordinator *ad interim*
- European Union - Representatives to the Philippines
 - Mr. Mattias Lentz, Deputy Head of Mission, European Union Delegation to the Philippines
 - Ms. Carmela Barcia-Bustelo, Deputy Head of Mission, Embassy of Spain
 - Mr. Jan Vytopil, Counsellor, Deputy Head of Mission, Embassy of the Czech Republic
 - Mr. Michael Hasper, Deputy Head of Mission, Embassy of Germany
 - Mr. Spyros Pagkratis, Deputy Head of Mission, Embassy of Greece
 - Mr. Laurent Legodec, Deputy Head of Mission, Embassy of France
 - Mr. Fabio Schina, Deputy Head of Mission, Embassy of Italy
 - Mr. Lennart Jansson, Deputy Head of Mission, Embassy of Sweden
 - Ms. Joy Anne Icayan, Human Rights Officer, Embassy of the United Kingdom
 - Mr. Jérôme Rivière, First Secretary, European Union Delegation
 - Mr. Thomas Ubels, Intern, Embassy of The Netherlands
- NGOs / Others
 - Mr. Jean Enriquez, Executive Director, Coalition Against Trafficking in Women - Asia Pacific
 - Ms. Nymia Pimentel-Simbulan, Vice Chancellor for Academic Affairs, University of the Philippines
 - Mr. Ellecer Ebro Carlos, Spokesperson, iDEFEND (In Defence of Human Rights and Dignity Movement); Campaign and Public Advocacy Officer, PAHRA (Philippines Alliance of Human Rights Advocates)
 - Mr. Raymond Palad, Lawyer of Jad Dera, co-accused with Senator de Lima

B. Outline of the case and concerns of the Committee and the Governing Council

5. Senator De Lima served as Chair of the Commission on Human Rights (CHR) of the Philippines from May 2008 until June 2010, when she was appointed as Secretary of Justice (SoJ). She resigned from this position in October 2015 to focus on her candidacy for a seat in the Senate of the Philippines in the parliamentary elections of May 2016, in which she was successful.

6. The fight against extrajudicial killings has been a lifelong cause for Senator de Lima. On March 2009, as Chair of the CHR, she led a series of investigations into alleged extrajudicial killings linked to the so-called Davao Death Squad (DDS) in Davao City, where then Mr. Duterte had long been mayor. According to the complainant, the former mayor, now President of the Philippines, was reportedly behind the DDS. The investigation became a seed of antagonism and animosity between the Senator and Mr. Duterte. Since Mr. Duterte took office as President, Senator de Lima has been very vocal in her opposition to the widely reported summary executions and vigilante-style killings of drug suspects occurring in the wake of his war on drugs. She has expressed concern that the extrajudicial killings taking place today follow similar patterns, in terms of the perpetrators, victims and methods, to those that took place in Davao. In August 2016, as Chair of the Senate Committee on Justice and Human Rights, Senator de Lima initiated an inquiry into the alleged extrajudicial killings since President Duterte took office in June 2016.

7. However, as the Senate inquiry was being initiated, the House of Representatives decided to launch an inquiry into drug trafficking that took place in the New Bilibid Prison (NBP) during Senator de Lima's tenure as SoJ. The report of that inquiry formed the basis of a number of complaints which led the Department of Justice (DoJ) to press charges against Senator de Lima for conspiracy in drug trading. Senator de Lima was arrested and detained on 24 February 2017 on the basis of accusations that she had received drug money to finance her senatorial campaign.

8. In a decision adopted in April 2017, the IPU Committee and the Governing Council expressed deep concern about Senator de Lima's arrest, detention and the accusations levelled against her. They were also concerned about the fact that legal proceedings on the substance of accusations appeared to be going ahead, even though very important preliminary questions had yet to be resolved. They therefore called on the relevant authorities to ensure full respect for Senator de Lima's right to a fair trial that took due account of all the facts and relevant legal provisions. Likewise, they were concerned about the allegation that Senator de Lima had been dismissed as chair and member of the Senate Committee on Justice and Human Rights for political reasons and that the report of the House of Representatives was not completed in line with the applicable rules and did not take due account of important evidence.

C. Information gathered during the mission

1. Observations on the overall human rights situation

- **General observations**

9. The discussions placed strong emphasis on the current general backlash against human rights in the Philippines, and concerns were expressed about widely reported extrajudicial killings. At the time of the mission, the Philippines Parliament was debating a reduction of the age of criminal responsibility from 15 to 9 years. Moreover, efforts were under way to discuss the reinstatement of the death penalty, abolished 15 years previously, despite the Philippines' ratification of the second Optional Protocol to the International Covenant on Civil and Political Rights.

- **Extrajudicial killings**

10. The members of the CHR of the Philippines told the delegation that the scale and pace of the extrajudicial killings was unprecedented, with 30 to 40 people killed every day. They and others pointed out that it was mostly poor people who were killed or otherwise affected by the killings, as in the cases of family members who lacked the power or the financial resources to have the bodies of their loved ones returned. Until the end of January 2017, the police had provided regular statistics on the number of people killed, apparently in an effort to show the effectiveness of the war on drugs. However, in light of the mounting allegations of extrajudicial killings, the police had decided not to provide such data any longer, several interlocutors stated, out of fear that it could be used as a basis to investigate those killings. Mr. Peter Ong, Senior State Prosecutor and officer responsible at the DoJ for cases of alleged extrajudicial killings, told the delegation that it was often very difficult to determine who was behind the killings and whether the culprits were really the police or gangs.

11. Senators Gordon, Lacson and Sotto II told the delegation that some 45,000 police operations had taken place during the current administration, leading to around 54,000 arrests. Some 3,000 (alleged) suspects died in these operations, the vast majority of them (around 2,700) after fighting back. Thirty-eight police officers had been killed as a result of the operations. It was also mentioned that high numbers of reported extrajudicial killings had always plagued Filipino society, so that it was not something exclusive to the current administration.

12. The CHR told the delegation that it was conducting its own investigation into the alleged extrajudicial killings. The media had reported some 8,000 cases, of which the CHR had been investigating, through a special task force, 646 cases at the time of the mission. The Commissioners stated that the CHR primarily relied on others, including journalists, to document the killings.

13. The delegation was told that one third of the killings were presented as lawful police operations involving a reported exchange of gunfire between police and alleged drug users and/or pushers. The members of the CHR emphasized, however, that this did not mean that the killings had been lawful. In fact, the SOCO ("Scene of the Crime Operatives") reports submitted by the Philippine National Police (PNP) often failed to shed light on the circumstances of supposed encounters between police officers and drug suspects that ended up in alleged shootouts and the killing of suspects. In this respect, the Commissioners emphasized that the police were bound by the PNP Operations Guidelines and that killing a suspect was only permissible in very specific, limited circumstances. They stated that it had always been the practice to bring before the courts cases in which police officers had killed and then invoked self-defence; that was no longer done.

14. According to the Commissioners, by supporting a "shoot to kill" policy, the President had created an environment conducive to extrajudicial killings. Several cited in this regard the exceptional case of the killing in detention, on 5 November 2016, of Mr. Rolando Espinosa. President Duterte had reportedly stated in public that the police officers had "done a good job". They were not only pardoned but subsequently promoted.

15. The perpetrators in the remaining two thirds of killings were unknown. There was great concern that vigilantes, encouraged by or with the complicity of state authorities, seemed to be primarily responsible for these killings, with a small number resulting from inter-gang rivalry. The delegation was told about so-called "cardboard justice", whereby drug pushers or addicts were killed and dumped by the wayside with a cardboard sign stating that they were drug users or pushers whose way of life should not be followed.

16. The delegation was also told that under Republic Act 10867 of 29 June 2016, entitled the National Bureau of Investigation Reorganization and Modernization Act, the National Bureau of Investigation (NBI) was designated as the main government agency responsible for investigating and filing cases of extrajudicial killings. However, despite this new mandate, several interlocutors told the delegation that the NBI had not undertaken any comprehensive investigation into alleged extrajudicial killings. The delegation was told that the "Bertes case", involving the killings of Mr. Renato and Jaypee Bertes in police custody, had been one of the rare killings to lead to any legal action.

17. The delegation was repeatedly told that witnesses to extrajudicial killings were afraid to step forward, for fear of reprisals. These interlocutors stated that communities were silenced by fear and that those suffering human rights abuses were afraid to testify. The family members of victims of extrajudicial killings feared that any denunciation of their deaths would lead to them being labelled as drug users or pushers and therefore possibly subjected to the same fate. Thanks to increased funding allocated by the Senate, the CHR was intending to expand its witness protection programme, as witnesses of alleged extrajudicial killings feared reprisals while under the wing of the DoJ.

18. The delegation was also repeatedly told of the concerns expressed about the extrajudicial killings by UN Special Rapporteurs on human rights. In their joint statement of 18 August 2016, the UN Special Rapporteur on summary executions and the UN Special Rapporteur on the right to health called on the Philippine authorities to "ensure the right to life and security of every person in the country ... whether they are suspected of engaging in illegal acts or not." Their statement called for drug trafficking offences to be "judged in a court of law, not by gunmen on the streets" and called on the Philippines authorities to adopt with immediate effect the necessary measures to protect all persons from targeted killings and extrajudicial executions. The UN Special Rapporteur on the right to health said that drug dependency should be "treated as a public health issue" and advocated "justice systems that decriminalize drug consumption and possession for personal use as a means to improve health outcomes." In addition, the UN Office on Drugs and Crime (UNODC) has also expressed concern over the rise in killings of suspected drug personalities, stating that this is "not in line with the current provisions of international drug conventions." and adding that "Drug control approaches should be balanced, people-centred and evidence- and rights-based."

- **The drug problem in the Philippines**

19. Mr. Ong, Senior State Prosecutor, stated that there was a real drug problem in the Philippines and that drug pushers were making life very difficult for ordinary people. Several interlocutors, including members of the CHR, highlighted that although there was a drug problem in

the Philippines, the current administration wildly exaggerated its significance in order to justify the “law and order” narrative and focus attention away from more acute and bigger challenges. There were also statistical discrepancies: although the administration had referred to a total of 4 million drug users in the Philippines, the basis for that figure was unclear. Moreover, several interlocutors pointed to the statistics of the Philippines Dangerous Drugs Board (DDB), which estimated the number of drug users in the Philippines to be as high as 6.7 million in 2004, falling significantly by 2012 to as low as 1.3 million, before going up again to 1.8 million in 2015. Even so, only 5 to 10 per cent of this group were considered to be heavy drug users. Several interlocutors said that in light of the current administration’s strong emphasis on the war on drugs, it was important to have public debate about the extent to which drugs were a real problem in the Philippines and to learn from other countries about ways to address drug trafficking and drug use, not only from a criminal but also a health perspective.

- **Hostile atmosphere against critics, human rights defenders and women leaders**

20. The members of the CHR stated that they had been under attack, having been described as “coddlers of the drug lords” as part of the current administration’s attempt to discredit those criticizing the war on drugs. Representatives from civil society, as well as other interlocutors, stated that civil space was increasingly contracting and that human rights defenders were increasingly being threatened and intimidated. In this regard, President Duterte had said publicly that he was not cowed by allegations that he was violating human rights, even threatening human rights advocates critical of his war on drugs with beheading. The delegation was also told that President Duterte had conflated journalists with drug pushers and users, denouncing “corrupt journalists” who “deserved to be killed”.

21. Several interlocutors emphasized the misogynist attitude of the administration, starting with the President himself. The delegation wishes to give prominence to this matter, as it has a direct bearing on the case of Senator de Lima. The members of the CHR seemed to indicate that the Commission might well rule that the President had violated the Philippines’ “Magna Carta of Women” through his sexist remarks. Some pointed out that President Duterte had always been known as a misogynist. Several mentioned in this regard the joke he made in public as mayor of Davao about the gang-rape of an Australian missionary held hostage during the 1989 Davao prison uprising. The delegation was told that since the start of his Presidency, President Duterte had treated prominent women leaders, particularly those who openly criticized him, such as Vice President Robredo and Senator de Lima, with disdain and subjected them to sexist remarks, thus intensifying a culture in which sexual harassment and violence were seen as acceptable. Several interlocutors pointed out that President Duterte’s behaviour was seen as public endorsement of the still very widespread negative treatment and perception of women, as evidenced by the sexist remarks to which Social Welfare and Development Secretary Ms. Judy Taguiwalo was subjected during her confirmation hearing in the Senate on 3 May 2017.

22. The treatment of women also took centre stage in the events surrounding the sex video which went viral and allegedly portrayed Senator de Lima and her former driver, bodyguard and lover, Mr. Dayan, engaging in sexual acts. President Duterte repeatedly referred in public to the video, calling Senator de Lima “immoral” and making constant jokes about her sex life. There were serious attempts in the House of Representatives to show the video as part of the inquiry by its Committee on Justice in the framework of *House Resolution No. 105* (see below). In response, on 30 September 2016, 53 female and 13 male members of the House of Representatives signed a statement describing the presentation of the video as an attempt to shame and demean women and calling for respect for parliamentary decency and courtesy. In the meantime, Senator Hontiveros submitted proposed *Senate Resolution 184* calling for the Senate to consider the proposal to show the sex video in the House to be illegal, a violation of inter-parliamentary courtesy and decency, and an affront to women’s dignity. The Senate adopted the resolution on 4 October 2016. In addition to the highly dubious ethical grounds for showing the video, the delegation was also told that Senator de Lima has strongly denied that she is the woman in the video and has clearly explained why the video is a fake.

2. Inquiry by the Senate Committee on Justice and Human Rights

23. On 13 July 2016, as Chair of the Senate Committee on Justice and Human Rights, Senator de Lima filed Proposed Senate Resolution No. 9 initiating an inquiry into the alleged killings of thousands of suspected drug users and drug dealers since President Duterte took office in June 2016 and launched

his war on drugs. On 12 August 2016, during the organizational meeting of the Senate Committee on Justice and Human Rights, Senator de Lima, in her capacity as Chair, announced that the Committee would conduct the inquiry. Public hearings then started on 22 August 2016 and heard the testimony of a self-confessed hitman and member of the DDS, Mr. Edgar Matobato, who directly implicated President Duterte in extrajudicial killings that had taken place in Davao City when he was mayor.

24. However, because several members of the Committee stated that they felt that Senator de Lima was not proceeding with the necessary objectiveness and neutrality, she was dismissed as Chair in a plenary vote. Senator Gordon told the delegation that Senator de Lima had exceeded her powers during her inquiry by insisting that it considered only evidence pointing to President Duterte's alleged responsibility for the killings when he was mayor of Davao. Senator Gordon stated that the original inquiry had focused only on recent killings, not what might have happened years previously in Davao. According to him, the Committee had shown flexibility by subsequently accepting *Proposed Senate Resolution No. 151* of 19 September 2016, introduced by Senator Trillanes IV, so as to extend the scope of the inquiry to include an examination of this matter. Senator Gordon stated that he had accepted to take over the position of Chair only if Senator de Lima remained a member of the Committee. However, several other interlocutors told the mission that the Senate Committee had ousted Senator de Lima as Chair in apparent reprisal for her inquiry.

25. The members of the CHR told the delegation that only two of its twelve witnesses were able to testify before the Senate Committee as part of its inquiry, since the Senate Committee, once Senator Gordon became the Chair, had decided not to hear the other witnesses scheduled to testify, thereby missing a real opportunity to shed light on the extrajudicial killings.

26. It was also pointed out to the delegation that Senator Gordon, when Chair of the Senate Committee, had accused Senator de Lima of material concealment for supposedly not disclosing that Mr. Matobato had a kidnapping case pending against him. However, the delegation was told by others that the transcripts of the Senate hearings showed that Mr. Matobato himself had mentioned the kidnapping case. Several of the interlocutors close to Senator de Lima stated that senators on the Committee had torn apart every small inconsistency in Mr. Matobato's statements but were quick to discredit the details he provided on how extrajudicial killings had been carried out in Davao City, reportedly upon the orders of then Mayor Duterte.

27. The delegation was also informed how Mr. Lascañas, a senior police officer and reported member of the DDS, first testified against Senator de Lima before the Senate Committee on Justice and Human Rights, then resurfaced and changed his story in February 2017, in testimony before the Senate Committee on Public Order and Dangerous Drugs. Several interlocutors highlighted that Mr. Lascañas had had a change of heart and felt compelled to tell the truth and that subsequently he had gone abroad with his family for security reasons. However, after only one hearing the Chair of the Committee on Public Order and Dangerous Drugs, Senator Lacson, had decided to terminate the investigation, saying he saw no point in continuing. Senators Gordon, Lacson and Sotto II told the delegation that the "spiritual awakening" which had brought Mr. Lascañas to revise his original testimony was not credible and only happened after his request for favourable treatment was turned down.

28. The final report of the inquiry (Joint Committee Report No. 18 entitled "Killings with Impunity: A Time to Act" of the Senate Committees on Justice and Human Rights and on Public Order and Dangerous Drugs) was submitted for approval by the Senate on 7 December 2016. The report concluded that there was no proof of a state-sponsored policy to commit killings to eradicate the illegal drugs trade. The report also concluded that extrajudicial killings in the Philippines have always been frequent and that there is insufficient evidence to prove that the DDS exists. The report highlights the inconsistencies in Mr. Matobato's statements and the fact that he did not complete his testimony at the Senate hearing, where he would have been confronted by statements from Davao police officers that contradicted his. The report also contains a word of caution about the role of the President, concluding that *"The President needs to be mindful of his role as head of State and be careful with his words, lest his imprudent statements be construed as imputable to the State. There may also be accusations of tolerance hurled against him because his overwhelming support to the police, manifested by his colorful language against drug pushers, may be perceived as a condonation of the violations of human rights and due process that the police are committing, in the guise of putting an end to the drug menace."*

29. Senator de Lima said that the report was seriously flawed for a number of reasons, notably the inquiry's refusal to hear the testimonies of the CHR's witnesses to extrajudicial killings, its premature termination and its failure to give adequate weight to the testimony of Senate witness Mr. Edgar Matobato. She stated that, owing to the premature and abrupt termination of the Senate investigation, the Committee had been unable to carry out comprehensive and in-depth gathering and assessment of the evidence.

3. Inquiry by the Committee on Justice of the House of Representatives

30. On 21 July 2016, House Speaker Mr. Pantaleon Alvarez and 10 other members of the House of Representatives filed *House Resolution No. 105* seeking an investigation into the proliferation of the drug trade at the NBP when Senator de Lima was SoJ. The resolution was referred to the House Committee on Justice chaired by Mr. Reynaldo Umali. Several interlocutors pointed out to the delegation that, in an abrupt departure from, and in violation of, the rules on committee hearings at the House of Representatives, it was the SoJ, Mr. Vitaliano N. Aguirre II, who presented the witnesses and directed their questioning. Mr. Aguirre II, with his team of prosecutors, took charge not only of the questioning but of the entire House investigation. Several interlocutors mentioned that Mr. Aguirre II also spoke on numerous occasions before the media, making criminal imputations and offensive remarks against Senator de Lima. Mr. Pantaleon Alvarez, Mr. Rodolfo C. Fariñas (Majority Leader in the House of Representatives) and Mr. Reynaldo Umali told the delegation that there was nothing unusual about the SoJ being involved in a House inquiry, and that it had occurred frequently in the past.

31. On 20 September 2016, the House Committee on Justice began its hearings in connection with *House Resolution No. 105*. Senator de Lima opted not to participate, calling it a "sham inquiry" designed to discredit her because of her vocal opposition to President Duterte. It was stated that hardly anyone dared speak out in defence of Senator de Lima during the inquiry, for fear of reprisals. Testimonies from several drug lords at the NBP alleged that Senator de Lima was a "protector" of drug syndicates and a key personality in the illegal drug trade.

32. The Committee submitted its report to the House of Representatives on 18 October 2016. The Committee concluded that criminal syndicates as well as illegal activities had existed at the NBP long before Senator de Lima became SoJ. It concluded that small-scale illegal drug trading at the NBP began sometime in 2002 when Mr. Peter Co was incarcerated there. The report states that the hierarchy of the correctional system was involved in corrupt activities. In the context of bribery and corrupt practices, prison guards and other correctional officials gave special privileges to inmates which facilitated the proliferation of illegal activities, including drug syndicates and illegal drug trading. The evidence gathered by the Committee supports these findings. The report states, with regard to Senator de Lima, that "the DoJ is encouraged to undertake an in-depth investigation on her role in the proliferation of drug syndicates and illegal drug trading inside NBP during her watch as SoJ."

4. Criminal charges of conspiracy in drug trading against Senator de Lima

• Senator de Lima's role in fighting the drug trade when she was SoJ

33. The delegation was told by several interlocutors that Senator de Lima, when she was SoJ, had done much to fight drug trafficking, including overseeing the prosecution of high-profile drug trafficking and reviewing the functioning of the Bureau of Corrections (BuCor). She was responsible for a series of raids at the NBP which were the most transparent and widely reported operations carried out to combat the illegal drug trade in the NBP. These operations not only brought about closer scrutiny of the drug trade but also created animosity between her and certain high-profile NBD inmates ("the Bilibid 19"), who thereafter brought lawsuits against then Secretary de Lima and others, including a criminal and administrative complaint filed before the Office of the Ombudsman in January 2015, which was subsequently dismissed. Several of these convicts have now been used to support the charges against Senator de Lima.

34. On 15 December 2014, after months of careful preparation and intelligence gathering, then Secretary de Lima personally led an unannounced inspection of the NBP, together with the NBI and other law enforcement agencies, which uncovered and put a stop to the luxurious lifestyle of detained high-profile drug lords. The DoJ raid, known as "Oplan Nomad", was devised and launched to tear down the network of illegal drug operations within the NBP that was reportedly behind the national

narcotics industry, More specifically, “Oplan Nomad” was intended to prevent these inmates from undertaking further illegal activities and to cut them off from their criminal network. As a result of the raid, the SoJ discovered and seized contraband and dismantled inmates’ luxurious “kubols” (huts). Secretary de Lima immediately ordered the transfer of 19 prominent drug inmates to another facility, “Building 14”, and a major reshuffle of custodial personnel in all NBP campuses as well as the drug testing of all guards assigned to the NBP and all other prisons and penal farms. This anti-drug campaign at the NBP eventually culminated in “Oplan Galugad”, which was implemented in other prison facilities. Although the raids on the NBP received widespread attention, they were not the first inspections carried out when Senator de Lima was SoJ. In 2011 alone, almost 700 operations were conducted, during which over 1,000 prohibited items were confiscated.

35. Several interlocutors told the delegation that, in addition to these actions, then Secretary de Lima, as part of the Aquino Administration, had genuinely tried to address the drug problem and that the current administration was not making any serious efforts to apprehend the real masterminds and important drug-lords behind the illegal drug trade, instead focusing on small-scale drug pushers and users.

- **The concrete evidence for the charges against Senator de Lima**

36. The Chair and other members of the CHR expressed their concern about Senator de Lima’s continued detention. In their view, the Senator is the target of trumped-up charges because she used the Senate as a platform to speak truth to power. The Commissioners had visited her on three to four occasions.

37. They were concerned that the evidence against the Senator was not credible as it was based on testimonies from drug convicts who were already in detention when she was SoJ and hence had an axe to grind. These convicts were being rewarded. Several interlocutors also pointed out that no drugs or other evidence had been found which proved that Senator de Lima had received money from drug trafficking.

38. The members of the CHR stated that Senator de Lima was one of the least wealthy senators. The Senator herself stated that she had only decided at the very last moment to run in the senatorial campaign and that, accordingly, it was illogical to claim that she had received drug money to finance her campaign well in advance. Senator de Lima also emphasized that she had always acted above board, had never sought to enrich herself and had refused any significant gifts. Accusations that she was somehow involved in drug trafficking went against everything she stood for and had publicly fought for over many years.

39. According to several interlocutors, as head of the CHR, Senator de Lima had adopted a tough approach when interrogating then Mayor Duterte while in charge of the investigation into extrajudicial killings in Davao; this had created bad blood, for which she was now paying the price. Despite the evidence presented to the CHR at the time, none of the witnesses was willing, for fear of reprisals, to support their statement in court. As a result, with the exception of the punishment of 21 police officers in Davao City by the Ombudsman in 2012, for not having done enough to prevent extrajudicial killings, it has not been possible to take any more significant action to establish accountability.

40. With regard to the charges against Senator de Lima, the interlocutors from the DoJ stated that not only convicts had testified against her but also two former NBI officers. Mr. Ong, who headed the DoJ investigation panel, said he was unaware of the convicts, whom he described as “prosecution witnesses” and not “state witnesses”, having been “promised” anything. On 2 December 2016, Senator de Lima filed a motion opposing Mr. Ong, insisting that he rule first on her objection that the DoJ was not competent to handle this matter. Senator de Lima had been invited to appear before the panel on 9 December 2016, but instead sent a letter stating that her staff would produce documents. Mr. Ong expressed regret, as he had wanted her to respond to the accusations. Mr. Ong asked her in turn to file her evidence, and on 6 January 2017, submitted summons, but her lawyers reportedly refused to submit counter-affidavit. Mr. Ong acknowledged that the Office of the Ombudsman has competence with regard to corruption and bribery cases; for all other criminal matters, it is the criminal justice system. He stated that the DoJ had decided to bring charges against Senator de Lima for conspiracy in illegal drug trading. No charges were pressed against her in two other cases, one of which concerned the alleged confession and torture in the “Espinosa case”.

41. Mr. Ong stated that the NBP raid on 15 December 2014 had given free rein to an inmate, Mr. Jaybee Sebastian, to monopolize the drug trade, as all “competitors” had been removed to another detention facility. He also stated that Senator de Lima had been seen with Mr. Sebastian and that the DoJ was taking an active role in the House investigation. Others, however, emphasized that the only existing evidence was a photo of Senator de Lima with Mr. Sebastian, taken during an event covered by the media which was part of a reform programme inside the NBP, and that, at all times Senator de Lima was accompanied by senior law enforcement officers. The prison logbook has no record of a private visit or a video being made in this connection. The same interlocutors also emphasized to the delegation that Mr. Sebastian’s isolation made it impossible for him to continue trading in drugs as he no longer had access to his contacts. It was also mentioned in this regard that the drug trade was primarily in the hands of Chinese drug lords who later testified against Senator de Lima, and that Mr. Sebastian, who was stabbed in prison, had been forced to testify against Senator de Lima. As his testimony did not fit with the other testimonies, he did not receive immunity.

42. Several interlocutors also told the delegation that the two former subordinates of Senator de Lima who had complained against her, both senior officers of the NBI, resented her because she had not appointed them to their desired positions. With regard to Mr. Dayan, who was captured on 22 November 2016 after weeks of hiding and would later appear before the House of Representatives and the Senate during their respective inquiries into the NBP drug trade and the killing of Mayor Espinosa, Senator de Lima and her office contend that his testimony contained glaring inconsistencies. Several interlocutors also underscored that the drug trade at the NBP had existed since 2000 at least, with the direct involvement and/or complicity of guards and higher officials. It was also mentioned that there was a turf war between the NBI and BuCor.

43. Several interlocutors also pointed to the following information regarding (potential) witnesses against Senator de Lima:

44. A confidential memo of 9 December 2016 by Mr. Alvin Lim, head of BuCor’s legal office, stated that SoJ Aguirre II had allowed the eight NBP drug convicts who testified against Senator de Lima during the House inquiry to live in luxury while detained in the Armed Forces of the Philippines Custodial Center. On 17 February 2017, the DoJ dropped the charges of illegal drug trading against five high-profile inmates who had testified against Senator de Lima. Mr. Aguirre II stated in a press conference that this move was justified, because the inmates, namely Mr. Herbert Colanggo, Mr. Engelbert Durano, Mr. Vicente Sy, Mr. Jojo Baligad and Mr. Peter Co, were going to be presented as prosecution witnesses.

45. On 19 July 2016, Marine Lt. Col. Ferdinand Marcelino sent a message to a classmate at the Philippine Military Academy saying he was afraid for his life because he was being pressured to testify against Senator de Lima on the basis of fabricated evidence. On 5 September 2016, Mr. Marcelino sent another message in which he said that pressure against him was mounting and that a previous case against him would be reopened, but that he would never give in. He told his friend, “Please tell Senator Leila to keep faith and be strong”.

46. On 1 September 2016, two former employees at the DoJ, Mr. Jonathan “Jong” Caranto and Ms. Edna “Bogs” Obuyes, were accused by the current SoJ of harbouring millions in their bank accounts on behalf of Senator de Lima. According to credible reports, both individuals were being coerced to accuse Senator de Lima and the accusations have no factual basis. The glaring inconsistencies that were pointed out in these accusations include the use of a nickname and the date of a deposit slip falling on a bank holiday.

47. Ms. Jesusa “Susan” Francisco, a technical staff member at the DoJ, stated in an affidavit that she was being pressured to testify against Senator de Lima. After stating that she had nothing incriminatory to say, she was not presented at the hearing of the House Committee on Justice.

48. On 28 September 2016, Senator de Lima revealed that Mr. Sebastian’s wife had sent a text message to a highly trustworthy person saying that he was being pressured to testify against the Senator. The wife stated that he could no longer withstand the pressure and that Senator de Lima would surely understand it if he eventually gave in, considering that the Senator was innocent anyway.

That same day, a stabbing incident inside Building 14 at the NBP left a drug convict, Mr. Tony Co, dead and three others, namely Mr. Peter Co, Mr. Vicente Sy and Mr. Sebastian, seriously injured. Those three eventually testified against Senator de Lima in the House inquiry into the NBP drug trade.

5. Public vilification of Senator de Lima at the highest state level

49. During the mission, the delegation was repeatedly told that Senator de Lima had been continually vilified in public by prominent Filipino authorities, most notably the President, who several times had publicly stated that she was “an immoral woman” and guilty, and had been complicit in the illegal drug trade when she was SoJ. A wealth of information was provided to the delegation concerning numerous events at which President Duterte made such remarks, which include the following: On 11 August 2016, 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”. On 29 August 2016, President Duterte declared, in urging her to resign, “if I were Senator de Lima, I would hang myself”. President Duterte also said that charges would be filed against Senator de Lima and that she would end up in prison. On 22 March 2017, he publicly referred to her in the following terms: “I am looking for a lady with a very thick face. Approach her and cut her face with a blade, it won’t work. Pour acid on her face, it won’t work. Nothing would work.” On 22 March 2017, he remarked in public that “It’s a good thing she is not walking in Davao, because if it is at night and there is no one else in sight, she will be sorry.” On 10 February 2017, he remarked in reference to Senator de Lima: “For the highest official to be corrupted” and “she was corrupting everybody there in the Justice Department.”

50. On 29 March 2017, at the People’s Day Celebration, President Duterte asked in his public statement how many lovers Senator de Lima had, in alluding to her alleged so-called sex video. On 22 March 2017, he publicly mentioned that it was Senator de Lima’s dog that appeared in this video. On 22 March 2017, he said in public remarks that prison guards should stay away from Senator de Lima because they might end up romantically linked to her, in reference to her affair with former driver and bodyguard, Mr. Dayan. These remarks come in addition to his repeated comments describing her as a “son of a whore”, and on one occasion 22 September 2016, as “son of a whore, if she was my mother, I would shoot her” and remarks that she was “screwing her driver and at the same time screwing the nation”.

51. Several interlocutors said that these remarks were part of a smear campaign orchestrated by the cabinet of President Duterte. They point out that on 18 August 2016, Presidential spokesperson Ernesto Abella, SoJ Aguirre II, Presidential Communications Secretary Martin Andanar and Chief Presidential Legal Counsel Salvador Panelo all issued statements that degraded Senator de Lima. Their statements came a week after President Duterte vowed to destroy a female government official. A month before, the Chief Presidential Legal Counsel and the Solicitor General, Mr. Jose Calida, began accusing Senator de Lima of being out to discredit President Duterte’s war on drugs and stating that the drug trade had proliferated in NBP when she was SoJ. Towards the end of 2016, the Solicitor General heightened his attacks against Senator de Lima, calling her “Public Enemy No. 1”, “high priestess of hypocrisy” and “patron saint of narco-politics”. He also vowed that his office would help the complainants in the cases against Senator de Lima. During the inquiry by the Committee on Justice of the House of Representatives, Senator de Lima’s address and mobile telephone number were publicly released, in blatant violation of her rights. Senator de Lima has been subjected to numerous threatening and harassing text messages containing very foul language.

6. Scope to participate in the work of the Senate

52. Senator de Lima is allowed to file motions and resolutions and to meet frequently with her staff. However, she does not have access to a computer (or the internet), radio nor television. She is not allowed to attend parliamentary sessions or take part in voting procedures for which her physical presence is required. These restrictions limit her ability to perform her parliamentary duties effectively.

53. On several occasions, Senator de Lima wrote to Senate President Pimentel requesting the necessary Senate action to allow her, at the minimum, to vote in important Senate decision-making processes, in her current status of detainee. She and others pointed out to the delegation that in the past the Senate had adopted resolutions to allow then detained Senator Trillanes IV to participate in Senate proceedings, either by being placed under the custody of the Senate Sergeant-at-Arms, or by

amendment of the Senate Rules to allow him to participate in Senate sessions, hearings and meetings through remote or electronic means. However, the Supreme Court (case of Trillanes v. Pimentel: G.R. No. 179817, June 27, 2008 and case of People v. Jalosjos: G.R. Nos. 132875-76) subsequently denied the possibility that detained members of Congress attend all legislative sessions and hearings or be placed under the custody of the concerned congressional body, for the reason that it would be tantamount to setting them free from jail, completely negating the legal purpose of keeping in detention an accused who is not allowed to post bail. In light of this jurisprudence, Senator de Lima had asked the Senate President for an expression of support for her desire to be granted occasional furlough by the court in charge of her detention, for purposes of voting on crucial legislation on a case-by-case basis. She has pointed out in this regard that courts have granted furloughs in the past to allow detained senators to attend birthdays. She maintains that the reasons for which she seeks furlough are more serious, as it is directly related to her work of representing the 14 million people who voted for her. She points out that despite her detention she remains a Senator and that those who elected her should not be deprived of their voice without any valid legal reason.

54. Several interlocutors pointed out that Senator de Lima's pleas to the Senate President and to the Senate as a whole had fallen on deaf ears and had not been met with the parliamentary solidarity and consideration they deserved. Others, close to President Duterte, were quick to assert that those who would be in favour of allowing Senator de Lima to take part in the work of the Senate had opposed allowing the same flexibility to certain former senators when they were in detention, and that the Senate had no power to impose itself on the courts.

7. Petition of writ of habeas data

55. On 7 November 2016, Senator de Lima filed a petition for writ of habeas data against President Duterte in the Supreme Court, with the request that the Court, inter alia, order President Duterte and any of his representatives to stop obtaining private details about her personal life outside the realm of legitimate public concern and making public statements that malign her as a woman and degrade her dignity as a human being, sexually discriminate against her, describe or publicize her alleged sexual conduct, constitute psychological violence against her and otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest. Senator de Lima has argued that President Duterte's attacks on her are not covered by presidential immunity from suit because they are not the official acts of a President. According to her, the attacks blatantly violate *Republic Act 6713*, entitled the "Code of Conduct and Ethical Standards for Public Officials and Employees", which provides that public officials "shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy ... and public interest." They also blatantly violate *Republic Act 9710*, which prohibits psychological violence perpetrated or condoned by the State and requires that all officials of the State "refrain from discriminating against women and violating their rights". On 8 November 2016, Chief Legal Counsel Mr. Panelo dismissed the habeas data suit as without merit.

8. Ethics complaint and charge of disobedience of summons

56. On 12 December 2016, House Speaker Mr. Alvarez, Mr. Fariñas and Mr. Umali filed before the Senate an ethics complaint against Senator de Lima for her alleged "unethical conduct" when she advised Mr. Dayan not to appear before the inquiry of the Committee on Justice of the House of Representatives. They also filed a case before Metropolitan Trial Court Branch 34, Quezon City, for the crime of disobedience to summons. Senator de Lima, as the accused, was arraigned on 13 March 2017, and refused to enter a plea. At a motion hearing conducted on 19 May 2017, both parties argued as to the existence of probable cause. According to Senator de Lima, the transcript of the hearing in the House of Representatives shows that Mr. Dayan sought the advice of the Senator about this matter, and that she merely expressed the opinion that she deemed it best for Mr. Dayan not to attend the hearing. Mr. Dayan had not been persuaded or coerced by the Senator to go into hiding, since he was already doing so long before he asked for her opinion. According to Senator de Lima, the affidavits of the private complainants (the three senior members of the House of Representatives) show that their statements are based on what was narrated to them by another person. It was not they who received the alleged text message but Mr. Dayan's daughter, and therefore Senator de Lima considers that they merely relied on another person's story, since they themselves did not know

whether or not the story was true. The person best suited to be a witness in this case is the recipient of the alleged text message, but she has not been called.

D. Findings and recommendations

1. The existence of extrajudicial killings

57. The delegation fully understands and supports the need for an effective fight against drugs. The delegation is, however, extremely concerned that this fight is accompanied by serious reports of extrajudicial killings and impunity for the culprits. In response to the observations by some that extrajudicial killings have always occurred in the Philippines, the delegation considers that what is happening in the Philippines today is unprecedented: the lives being lost and the rights being trampled upon, mostly those of poor people, do not seem to matter, as the phenomenon of “cardboard justice” so aptly symbolizes. The delegation believes that this state of affairs should be a matter of public concern to all Filipinos, rich and poor. In addition, the delegation believes that it is critically important for Filipinos to conduct a public debate about the extent to which drugs are a real problem in the Philippines and to hear from other countries about ways to address drug trafficking and drug use, not only from a criminal perspective but also that of health.

58. The delegation believes that the legal framework in place is inadequate to address extrajudicial killings effectively. It therefore calls on the authorities to adopt a law to address the institutional barriers which prevent efficient, independent and impartial investigation of extrajudicial killings by concerned government agencies and, regarding punishment for such killings, to draw on the definition made by former UN Special Rapporteur on summary executions, Mr. Philip Alston. Such legislation should also take account of the provisions of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the 1991 Minnesota Protocol on the Investigation of Potentially Unlawful Death, including the 2016 amendments thereto. This would further help the authorities to ensure that investigations are conducted with due diligence and without delay and are thorough, effective, impartial and independent. Similarly, it is important that the authorities ensure that the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are fully incorporated. Additionally, the authorities should look into what extent Section 6 of Republic Act 9851, “Philippine Act on Crimes against International Humanitarian Law, Genocide, and other Crimes against Humanity”, might be applicable to the current situation. The delegation also recommends that the authorities align the investigative and forensic capacities of Filipino enforcement agencies with internationally accepted standards of law enforcement, and that the DoJ, Philippine National Police, NBI and the Philippine Drug Enforcement Authority comply with the international drug control conventions.

59. Given the seriousness and scale of the reports on extrajudicial killings, the delegation fully supports the idea of setting up an investigation conducted by an independent commission comprising members whose integrity, independence and competence is beyond reproach. The delegation underscores that, for full light to be shed on these killings, it is of the utmost importance that witnesses are and feel adequately protected. The delegation is therefore deeply concerned that witnesses are afraid to come forward. The CHR’s efforts to protect witnesses need to be further strengthened and resourced, as do its general efforts to promote and protect human rights. It is also critically important that the authorities establish a programme enabling the Department of Social Welfare and Development to assist the surviving families of those killed during police operations.

60. The delegation also calls on the authorities to extend an official, unconditional invitation to the current UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Agnès Callamard, to visit the Philippines. In light of the seriousness of the reports about extrajudicial killings and the grave doubts about the capacity and/or will of the relevant institutions to investigate them, the delegation believes that the Special Rapporteur’s visit may provide a unique opportunity to advance the quest for truth and justice.

2. The classification of the crime and questions about jurisdiction

61. The delegation is deeply concerned that the accusations against Senator de Lima were presented as “conspiracy to commit drug trading”, even though it seems much more apt for them to be qualified as “bribery”. The delegation is inclined to believe, also in light of its findings spelt out below, that the qualification of a non-bailable offence was chosen to prevent Senator de Lima’s release.

62. The delegation is surprised that the accusations against Senator de Lima have been channelled through the criminal justice system, rather than through the jurisdiction of the Sandiganbayan [special appellate collegial court set up to combat graft in public office].

63. Section 4 (a) and (b) of Republic Act 8249, “Act Further Defining the Jurisdiction of the Sandiganbayan” state that the Sandiganbayan is competent to deal with “violations of Republic Act 3019, as amended, otherwise known as the Anti-graft and corrupt Practices Act ... where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense” and “other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office”.

64. The delegation reiterates that the accusations against Senator de Lima more aptly qualify as bribery charges. Even if that logic is not followed, the delegation believes that it would make most sense for the Sandiganbayan to exercise jurisdiction to examine most if not all of these charges. Inasmuch as this matter concerns the crimes which Senator de Lima is alleged to have committed when she was still SoJ, the delegation believes that the accusations can be seen as intimately linked to her office, as she allegedly used her powers as SoJ to conspire to take part in drug trading. The delegation therefore calls on the authorities to consider transferring the handling of the accusations to the Sandiganbayan.

3. Absence of evidence against Senator de Lima

65. The delegation is extremely concerned that the relevant authorities have stated that there is “probable cause” for the cases against Senator de Lima to proceed. The delegation points out that in each of the three cases, there are serious questions and doubts about the evidence. There are general concerns about the overreliance on testimonies by convicted drug lords, not only because they are proven criminals, but because these individuals all have an axe to grind with Senator de Lima, who transferred them from their “cubolts” to Building 14, hence putting an end to their luxury life-style. These operations not only brought about closer scrutiny of the drug trade but also created animosity between Senator de Lima and the high-profile NBD inmates (“Bilibid 19”), who thereafter levelled lawsuits against her and others, including a criminal and administrative complaint filed with the Office of the Ombudsman in January 2015, which was subsequently dismissed. In this regard, the delegation fails to understand how these convicts were accepted as “prosecution witnesses” and given privileges under the Witness Protection Programme. The delegation considers that it is plain to see that the privileges under this Programme and the fact that the DoJ decided to dismiss any legal action against these convicts under complaint NPS XVI-INV-16K-00336, which is one of the three cases in which Senator de Lima is also accused, may have served as further incentive for them to testify against her. Moreover, the delegation points out that in several instances the convicts’ testimonies are merely hearsay and do not show direct personal knowledge of the facts related, and that there are important inconsistencies in their statements. As for the alleged drug trading that took place after Senator de Lima resigned as SoJ it is hard to understand what leverage she would have possessed to conduce, let alone force, the drug convicts who testified against her to provide her with drug money. The delegation also points out that the case pending before Branch 205 of the Regional Trial Court in Muntinlupa City seems to have taken no account of the Agents Agreement of 26 February 2016 concerning Mr. Dera, the co-accused in this case, and his oath of loyalty of that same day which establishes that he had been acting as an undercover agent and had never mentioned nor had any transactions with Senator de Lima.

66. As for the elements that constitute conspiracy to commit drug trading, the delegation is concerned that the cases are moving ahead without the drugs or the buyers having been identified or even the delivery of and payment for the drugs having been established. The delegation is also deeply concerned that the criminal accusations against Senator de Lima stem from the affidavits and testimonies of inmates and others who took part in the inquiry of the House Committee on Justice into

the proliferation of drugs at the NBP. The delegation points out that the request for this inquiry was made a week after Senator de Lima proposed to start a senatorial investigation into widespread reports of extrajudicial killings. The delegation is inclined to believe that the investigation pursued by the House clearly targeted Senator de Lima for the purpose of weakening her chances to pursue her own inquiry. It is plain to see that Senator de Lima provoked the ire of President of Duterte when he was still mayor of Davao and that he, as publicly acknowledged, holds a grudge against her. Far from being a simple personal matter, the delegation considers that Senator de Lima's criticism and her inquiry, which could have shed real light on the extrajudicial killings in the Philippines, including on questions of accountability, were considered a nuisance by President Duterte and his allies. The delegation therefore believes that the charges against Senator de Lima have to be seen as an attempt to silence one of President Duterte's most outspoken critics in the war on drugs.

67. The delegation also fails to understand how the accusations against Senator de Lima make sense, given that it was she who took action against the alleged drug trafficking in the NBP. In this regard, the delegation is deeply concerned that the statements made by President Duterte, the current SoJ and other senior officials flout the principle of presumption of innocence and portray Senator de Lima as guilty even before legal proceedings have started. The delegation considers that their statements, first and foremost those of the Head of State, forcibly carried great weight and may put undue pressure on the course of the criminal cases. The delegation points out that even if Senator de Lima made derisive comments about President Duterte, this does not in any way diminish the special responsibility and influence that the highest state officials hold.

68. In the belief that there is no evidence to justify the criminal cases against Senator de Lima, the delegation calls for her immediate release and requests the relevant authorities to consider dropping the charges against her if serious evidence is not rapidly forthcoming. Should the legal cases continue, however, the delegation calls on the relevant authorities to do everything possible to expedite the proceedings and to ensure that due process is followed, with particular regard to Senator de Lima's right to defence and to the proper assessment of evidence presented by the prosecution and counter-arguments made by the defence. The delegation considers it of the utmost importance that an IPU trial observer then monitor and report on respect for due process in the legal proceedings.

4. Sexist comments against Senator de Lima

69. The delegation is deeply concerned about the attacks on Senator de Lima portraying her as an "immoral woman". The delegation deeply regrets the remarks made by the President, leading members of the House of Representatives and others to draw public attention to a sex video purportedly featuring Senator de Lima. The delegation feels compelled to denounce these actions, which it can only see as an effort to diminish her dignity as a woman and her credibility as a Senator and leading politician. The delegation hopes that the Supreme Court will speedily rule on the petition for writ of habeas data which Senator de Lima has filed against President Duterte on these matters.

5. The role of the Senate in resolving the situation of Senator de Lima

70. The delegation believes that its findings should be of particular interest to the Senate. The delegation holds that the Senate has a special responsibility to help ensure that concerns about due process regarding one of its members are effectively addressed. The delegation therefore calls on the Senate, through its President, to do everything possible in this regard and thus help ensure that Senator de Lima can participate again in its work as soon as possible.

Geneva, 27 July 2017