

INDEPENDENT COMMISSION TO
ADDRESS MEDIA AND ACTIVIST KILLINGS
Created under Administrative Order No. 157 (s. 2006)

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INTRODUCTION

There is no shirking the fact that people, almost all of them activists or militants, have been killed. There is no denying the reality that militant citizens have been liquidated. The numbers vary. Task Force Usig of the Philippine National Police listed down one hundred eleven (111) killings, which has since increased to one hundred thirty six (136). Amnesty International, in its official website, mentions 244 victims. The group Karapatan is said to have counted at least 724 killings. Unfortunately, none of the so-called activist/militant groups, be they outright communist or satellite groups, came forward if only to inform the Commission of the numbers of their members who have become victims of extrajudicial killings. Be this as it may, the number, whether at a low of 111 according to Task Force Usig, or a high of 724 of Karapatan, is one too many.

It is said by those who would justify these killings that the victims are enemies of the State. Verily, one's attention may be called to the screams in death of the victims of the Communist Party of the Philippines, its armed group the New People's Army ("NPA"), and its front organizations. Surely, ever present is the only too human feeling of wanting to see one's enemies and oppressors bite the dust, so to speak, struck down on the quick based on one's own personal concept of justice or on the military's unilateral assessment that they are enemies of the State.

This may well be so, but it should be carefully noted that the victims, of which this Commission is concerned, were all non-combatants. They were not killed in armed clashes or engagements with the military. They were killed, it is said, by motorcycle-riding hooded killers in assassination manner.

Government agencies hardly need reminding that in a democratic and civilized state such as ours, one must uphold and observe the rule of law, the principles of justice, and the system and rules of how it is dispensed – from investigation to arrest, to inquest, and to trial. The system may be far from perfect, giving rise to the temptation to take short-cuts. But precisely, short-cuts are in defiance of the system of impartial justice. The rules must be observed at all times.

This is the very reason why President Gloria Macapagal-Arroyo, understandably alarmed by these killings, created this Commission to get to the bottom of why these extrajudicial or extralegal killings are happening and who probably are responsible therefor.

It is regrettable that the militant groups which should be most interested in seeing justice done, forthwith tagged the Commission as not independent in composition. They refused to heed invitations of the Commission to appear – not necessarily with witnesses to the killing, for they may have none (or if there were witnesses, we could not in conscience force them to testify if they were fearful of their safety), but if only to inform the Commission of their own body-count of victims as well as to give their reasons why they believe that the military is responsible for the killings.

Nevertheless, this Commission gathered what information it could find from different sources. It became apparent early on that the number of killings, whether according to Karapatan or Task Force Usig, is one too many.

A. *Factual backdrop*

In the wake of a disturbing wave of unexplained killings of civilian activists and media personnel, President Gloria Macapagal Arroyo issued Administrative Order No. 157 entitled “Creating an Independent Commission to Address Media and Activist Killings.” The Commission was given the task to prioritize and focus investigation of media and activist killings and thereafter to submit recommendations to the President on policies and actions, including prosecution and legislative proposals, if any, aimed at eradicating the root causes of the extrajudicial killings and breaking such cycle of violence. Necessarily, the

Commission's first and foremost task was to determine the root cause of the said killings, and if possible, the persons or interest group responsible therefor.

The Commission was not created to solve the killings, or any of them, by pinpointing the actual gunmen involved. Neither will the Commission prosecute who it believes are the persons behind such killings. Those tasks, which would take years and an army of investigators and prosecutors to finish, would be best left to the regularly constituted law enforcement authorities and the Department of Justice.

B. Procedure

It was decided by the Commission that the most effective way of gathering the necessary information about the extrajudicial killings was to conduct public hearings at which evidence would be presented and resource persons and witnesses testify. The General Counsel, under the auspices of the Commission, would be responsible for gathering, sorting, and presenting the evidence and witnesses at the hearings.

Faced with a number of potential witnesses and resource persons, the Commission planned to invite resource persons or witnesses from the various activist or militant groups, families of victims, as well as the police and military authorities.

The Commission intended to present, as its first set of witnesses, the families of the two students of the University of the Philippines who had then recently disappeared in Hagonoy, Bulacan, and were feared to be the latest victims of extrajudicial killings. Unfortunately, despite invitations sent to the said families through the good offices of Commissioner Nelia Gonzalez and other officials of the University of the Philippines, they declined to appear, seemingly upon the urging of Karapatan. Likewise, despite the numerous invitations extended by the Commission, Karapatan and other activist or militant groups refused to cooperate, and rather questioned the Commission's independence.

Since the Commission essentially relied on the voluntary cooperation of witnesses and resource persons, there was nothing the Commission could do about the reluctance of the activist groups to join the investigation, except perhaps by demonstrating its independence, probity, and integrity in the hearings to be held and in its eventual report.

In the meantime, due to the lack of other witnesses and resource persons from the activist and militant groups, the Commission opted to call the police and military authorities to provide their own information on the extrajudicial killings.

The Commission first called the Philippine National Police, which sent Gen. Avelino Razon, Deputy Director of the PNP, together with his retinue. Gen. Razon is likewise the head of Task Force Usig, which was created to investigate, solve, and otherwise handle the same extrajudicial killings, and it was in his capacity as such head that he appeared before the Commission. The Commission was likewise informed that Task Force Usig was instructed by the President herself to cooperate fully with the Commission. Gen. Razon presented a comprehensive report on the activities of Task Force Usig and their views and opinions on the suspects behind the killings.

Thereafter, the Commission called on the Armed Forces of the Philippines, which was represented by the Chief of Staff Gen. Hermogenes Esperon, who gave a brief report or statement on the killings, and answered various questions propounded by the Commission. The next witness was Retired Gen. Jovito S. Palparan, Jr., who was confronted for his image and reputation as the prime suspect behind the extrajudicial killings.

The Commission then extended an invitation to the Commission on Human Rights, which was represented by Chairperson Purificacion Quisumbing.

Thereafter, the Commission held hearings in Bacolod, Negros Occidental, and in Davao City on the alleged killings of peasants and non-governmental organization workers suspected to be perpetrated by hired goons of landowners. The Commission noted that these killings are within its mandate to look into, considering that the victims were farmers or peasant activists.

I. UNDISPUTED FACTS

From the proceedings, it became plain that certain matters and facts were well-nigh undisputed. Although not necessarily proven in such a manner that would be binding in a court of law, these facts are nevertheless accepted as such by all concerned and, therefore, may be presumed to be true.

The first undisputed fact is that there indeed have been extralegal killings, and that the victims were almost entirely members of activist groups or were media personnel. The numbers of victims and the theories behind their deaths vary between the versions of the PNP and the military, on one hand, and Karapatan and Amnesty International, on the other. However, it is undisputed that there were killings.

More importantly, it is also undisputed that there was a rise in the number of killings to an extent sufficient to alarm activist groups, non-governmental organizations, the PNP, and, in fact, the President herself. Similarly expressing concern was the international community, especially the European Union. The military and police authorities likewise agree with the activist groups that there was even a rise in the extrajudicial killings of activists and militants between 2001 and 2006 as compared to a similar period prior thereto.

Likewise without dispute is the manner of the killings. From the reports of Task Force Usig, victims were generally unarmed, alone, or in small groups, and were gunned down by two or more masked or hooded assailants, oftentimes riding motorcycles. The assailants usually surprised the victims in public places or their homes, and made quick getaways. It is undisputed that the killings subject of the investigation did not occur during military engagements or firefights. These were assassination or ambush type killings, professional hits carried out quickly and with the assailants escaping with impunity.

It is also undisputed that the PNP has not made much headway in solving these killings. Out of the 111 killings of activists acknowledged by the PNP, only 37 had been forwarded to the proper prosecutor's office for preliminary

investigation or filed in court. Obviously, the reason for this poor score was the refusal of Karapatan and its allied groups to come forward and cooperate. Lastly, it is clear that the rise in killings of such activists whom the military brands as enemies of the state was to such an extent that it could not possibly be attributed to a simple increase in the crime rate. In fact, the circumstances clearly show that such killings of activists and media personnel is pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims, invariably activists and media personnel. The military establishment itself acknowledges this, by attributing the rise in killings to a “purge” of ranks by the CPP-NPA.

II. PRESENTATION OF WITNESSES/ RESOURCE PERSONS

A. Task Force Usig; PNP Deputy Director Gen. Avelino I. Razon, Jr.

1. Introduction

Task Force Usig (TFU) was created, upon instructions of President Gloria Macapagal-Arroyo, by Secretary Ronaldo V. Puno of the Department of Interior and Local Government, to investigate the media and political killings.

2. Statistics on killed activists and newsmen/media men¹.

TFU reported that from the 2001 to 2006, the total number of slain/party list members reached 111 while the total number of media men killed for the same period reached 26. TFU’s statistics are much lower than the figures reported by Karapatan and Amnesty International for the same period. According to Karapatan, there was a total of 724 killings while Amnesty International claims that there was a total of 244 killings. Gen. Razon could not explain the difference in the figures because according to him, Karapatan and Amnesty International have refused to meet with TFU. An updated report of TFU as of 23 November 2006 shows an increased total of 115 cases of killings of

¹ See also *Update on Task Force Usig* as of September 12, 2006, p. 8, submitted by Gen. Razon to the Commission on September 12, 2006,

activists or militants. Out of this total, 46 cases are already “filed in court” and the remaining 69 are still under “extensive investigation and case build-up.”

2.1 Out of the 111 extrajudicial militant killings, 37 criminal complaints have been filed, while 74 cases are still under investigation. The low number of cases filed is allegedly due to: (1) lack of witnesses; (2) absence of sufficient evidence; and (3) the pendency of preliminary investigation. Gen. Razon further added that there is lack of confidence in the impartiality of police, fear of reprisal by other elements of society, and lack of interest of the victims’ families.

2.2 Of the total of 26 media persons killed, twenty one (21) cases have been filed while five (5) are still under investigation. When asked to explain the substantial difference in the efficiency of the investigation on media men killings *vis-à-vis* militant persons, Gen. Razon said that in the case of media personnel, there are more witnesses and the police have received more cooperation from the media.

3. Cases solved

Gen. Razon stated that the PNP deems a case solved in line with a NAPOLCOM Resolution stating that a “case is solved” when a suspect has been identified and charges have been filed before the prosecutor or the court, without prejudice to further investigation. However, Gen. Razon clarified that it is not an international definition.

In truth, the “solution efficiency” of 29% is even deceptive or misleading. As stated in TFU’s updated report “Out of the total 45 cases filed in court, the PNP has filed 5 cases with 8 arrested suspects who are all in jail; filed 25 cases under preliminary investigation, filed 1 case with surrendered suspect, while the suspects for the remaining 15 incidents are still at large and are subject of manhunt operations.” It is not, therefore, entirely accurate that 45 cases have already been filed in court since “25 cases [are] under preliminary investigation.” Thus, only 20 cases have actually been filed in court; 25 cases are only under preliminary investigation. These cases may yet be dismissed for lack of probable cause. Of the 20 cases filed in court, the accused or suspects have been arrested in only (6) cases. It cannot then be accurately said that the accused in the 27 cases

have been brought to justice. Indeed, with respect to the 78 cases still under “extensive investigation,” it is even doubtful whether the perpetrators can even be identified.

When asked for the meaning of the term of “under extensive investigation,” Gen. Razon said in each case, regular case conferences are held, more men are assigned to investigate and the organization of special teams such as TFU. Upon inquiry, he replied that TFU receives a monthly budget of P300,000.00. As an incentive, each member of the unit receives P5,000.00 for every suspect captured or case solved.

Gen. Razon further testified that the PNP has not been successful in investigating the killings of militants because the CPP/NPA has terrorized the witnesses.

4. Reason for political killings.

Gen. Razon admitted that TFU still cannot explain the reason for the increase in political killings. Thus, TFU fell short of its objective to “establish who is responsible for the killings” and to determine whether there is a pattern of serialized killings victimizing leftist activist and journalist.”²

4.1 Gen. Razon refused to attribute the upsurge of political killings to the President’s declaration of an all out war against the communist insurgents.

4.2 But he was quick to say that their records show that the killings are the result of CPP/NPA” own purging because of “financial opportunism.”

Gen. Razon admitted that he agrees with the statement of Gen. Palparan that organizations such as Karapatan and Bayan Muna are “fronts” of the CPP-NPA, and that unless “we stop fooling ourselves that they are not fronts, we will not be able to solve the insurgency problem.” He further asserted that the NDF and Bayan Muna provide support, money, resources, and legal assistance to the CPP/NPA.

² Id. on p. 18

However, when asked by Chairman Melo whether TFU has data on whom among those killed were finance officers, Gen. Razon could point to only two victims who were allegedly involved in financial operations.

5. TFU did not investigate Gen. Palparan, nor was he asked to account for his statements.

5.1 Notwithstanding the widespread reports that Gen. Palparan had been suspected of being involved in the extrajudicial killing of leftist activists, TFU never summoned Gen. Palparan for questioning or investigation. Gen. Razon made it clear that Gen. Palparan is not under the jurisdiction of the PNP or Task Force Usig. Moreover, he stated that there was still no basis/evidence to summon or investigate a personality such as Gen. Palparan. The PNP needs to operate within the law. Hence, it needs evidence before it can investigate officers.

Atty. Vinluan pointed out, however, that the purpose of investigation is precisely to gather evidence. PNP does not need evidence before it can investigate Gen. Palparan

5.2 Gen. Razon testified that TFU did not ask the Deputy Ombudsman for the Military to look into the alleged violations of Gen. Palparan and the military. However, he supposedly asked the head of the AFP to look into the participation of the military in the killings. Atty. Vinluan asked for copies of such letter-request.

6. Command responsibility

TFU did not investigate higher-ranking military officials. Gen. Razon claimed that the PNP cannot go further than the suspect. If the Sergeant remains silent or refuses or fails to point to the involvement of a superior officer, the PNP cannot go higher.

TFU pointed out that military operations are beyond the scope of the TFU. Since the military conducts its own operations. TFU investigated only four military personnel.

7. Personal opinion

When asked by Chairman Melo whether he would have summoned Gen. Palparan if the latter were under his command, Gen. Razon replied that he would have immediately called Gen. Palparan “to explain why there was an apparent increase in the incident[s] in the areas where he was assigned.”³ But Gen. Razon also said that Gen. Palparan will not incriminate himself.

8. Recommendations of TFU

To conclude his testimony, General Razon made the following recommendations for the successful investigation and prevention of future killings:

- 8.1 Closer collaboration of law enforcement/prosecution without sacrificing their impartiality;
- 8.2 Faster issuance of warrants of arrests;
- 8.3 Expedite conduct of preliminary investigations;
- 8.4 Strengthen Witness Protection Program, increase budget to provide economic opportunities for families.

B. AFP Chief of Staff Gen. Hermogenes Esperon:

1. Opening Statement: AFP Policy and Practice

Gen. Esperon sternly declared that the AFP does not condone or employ summary executions as a matter of policy and practice. Neither does it tolerate abuses, crimes, or summary executions. The AFP is a professional institution, which does not engage in summary executions. The AFP, in fact, operates on the

³ TSN, September 12, 2006, p. 30-31

basis of the Constitution and thus holds the value of human life to the highest degree. Several publications⁴ have been made to educate AFP's soldiers:

- a. AFP Standing Rules of Engagement
- b. Protection of Non-Combatants in the Philippines
- c. The Philippine Army Soldiers' Handbook on Human Rights and International Humanitarian Law
- d. Primer on the Comprehensive Agreement on the Restrict for Human Rights and International Humanitarian Law
- e. Rules of Behavior on Combat
- f. Love of Country/Pagmamahal sa Bayan
- g. Code of Ethics

Gen. Esperon further said that it is unfair to link the AFP to all political killings just because the political inclination of the victims is toward the left. He stated that the AFP has been stereotyped as the perpetrator of the extra-judicial killings of journalists and militants. Subjecting the AFP to a trial by publicity is a *modus-operandi* by the CPP-NPA.⁵

However, Gen. Esperon refused to categorically state that the AFP has absolutely nothing to do with the killings of activists, as such statement might be too presumptuous.⁶

2. Reaction to Gen. Jovito Palparan's Statement "Bayan, Karapatan, Anak ng Bayan are all front organizations of the CPP-NPA with Bayan Muna as the umbrella organization".

Gen. Esperon agreed that there is truth to the said statement. He claimed that the CPP-NPA uses as a shield the National Democratic Front (NDF), which is an aggrupation of legal organizations that are infiltrated with members of the CPP-NPA. For example, *Bayan Muna*, while being a legal organization has elements that are also members of the CPP-NPA. These members are conveniently hiding under a legal organization to serve the ends of the CPP. Therefore, these organizations become the front organizations of the armed struggle of the NPA. What is meant by the term "front organizations" is that many members of the legal organization are identified members of the NPA. These members, who are identified with the CPP-NPA, are fooling these (legal)

⁴ Gen. Esperon furnished the Commission with copies of the enumerated publications.

⁵ *TSN*, September 14, 2006, pp. 6-7

⁶ *TSN*, September 18, 2006, p. 3.

organizations to be the umbrella of the CPP-NPA and work ultimately, wittingly or unwittingly, for the cause of the CPP-NPA.

3. Presentation entitled “Knowing the Enemy”

Gen. Esperon confirmed the existence of an AFP Briefing presentation entitled “Knowing the Enemy” which explicitly accuses progressive leftist organizations of being front organizations of the CPP-NPA.

4. AFP considers the CPP-NPA as “enemy of the state”

The CPP-NPA is treated as an enemy of the state because the Philippines is a democratic state. The CPP-NPA wants to supplant our democratic way of life with a communist ideology.⁷

However, Gen. Esperon was quick to clarify that it does not follow that the AFP similarly treats some left-wing organizations (which are considered front organizations of the CPP-NPA) as enemies of the state because these are legal organizations and serve a function in a democratic way of life. He added that Gen. Palparan’s statement that Congressmen Satur Ocampo and Teddy Casiño are “enemies of the state” might have been prompted by the fact that the former was a known member of the CPP.⁸

5. Reaction to Gen. Palparan’s statement, “Even though they are in government, as Congress representatives, no matter what appearance they take, they are still enemies of the State”, as reported in the Philippine Daily Inquirer, May 16, 2006 issue.

Gen. Esperon said he has not been given a manuscript that contained the said statement. He added that there could be truth to the matter in light of a narration made by a certain Mr. Piedad, a former NPA Commander and a witness to the mass graves in Inupakan, Leyte. According to Mr. Piedad, the orders for the mass killings came from NPA personalities which are known in the filed as Ka Gres, Joma Sison, Ka Louie and Ka Satur. In another incident at

⁷ TSN, September 14, 2006, p. 11

⁸ *Id* at p. 12

Aurora, a letter was uncovered which mentions the name “Ka Satur” as responsible for the purchase of Five Million Pesos (₱5,000,000.00) worth of explosives. Though the real identity of “Ka Satur” is unknown, it seems to be a popular name in the underground. Thus, this could be the basis for Gen. Palparan’s statements.⁹

6. Local Communist Movement (LCM)- Influenced versus LCM-Infiltrated (as based on an AFP lecture)

Indicators of an LCM-Influenced organization:

1. created or established by the CPP-NPA-NDF and other factions of the LCM;
2. under the influence of a national democratic underground mass organization of the CPP or its counterpart in the reactionist faction;
3. adapts the NDF twelve point program of the actions and similar programs of the other LCM faction;
4. actively involved in multi-sectoral rallies, wherein issues raised are beyond the traditional interest of the particular society it represents;
5. radical and violent in the conduct of mass protest action.

A sectoral organization is classified as a LCM-Infiltrated if it satisfies any two of the following indicators:

1. Not categorized as LCM-Influenced but is actively involved in party-list activities;
2. Under the influence of a national democratic underground mass organization of the CPP or its counterpart in the reactionist faction;
3. its aims, objectives, policies and/or pronouncements are similar to the political lines expounded by the LCM;
4. Activities are similar or complimentary to those of the LCM;
5. Maintains a close relationship with suspected LCM personalities and/or organizations.

Gen. Esperon denied knowing the source of the lecture. However, he said that those are ways that could be used in classifying organizations. The structure of the CPP-NPA-NDF is as follows: The CPP is the brain; the NPA is the armed group; and the NDF is the shield. The NDF is composed of legal organizations that may have been infiltrated by the CPP and NPA.

⁹ *Id.* at p. 13.

7. President Arroyo's order to wage an all-out war against the CPP-NPA as a cause for the rise in activist killings

Gen. Esperon explained that an "all-out war" means waging a holistic war. The strength of the military will bear down upon the enemy and at the same time, the various government agencies should also contribute in solving the root causes of insurgency such as poverty and injustice. The rise of activist killings has nothing to do with the marching orders of the President.

The AFP is currently deploying forces to address the armed threat. At the same time, it is also implementing projects, called Kalayaan Barangay Program, which brings in small-scale development to 600 barangays nationwide. The program involves infrastructure development, day care, etc.

8. One of the basic strategies of the total war is to neutralize the leadership of the Communist Terrorist Movement (CTM) or the Local Communist Movement (LCM)

Gen. Esperon explained that the AFP aims to neutralize the leaders of the guerilla front, who are *bona fide* members of the NPA as evidenced by captured documents.¹⁰

9. Foreign Support for CPP-NPA

Gen. Esperon manifested that the AFP has "captured" several documents which prove that the CPP-NPA had been receiving support from foreign organizations. Further, the purpose of Jose Maria Sison and Luis Jalandoni for being out of the country is to get support from outside the country for the local communist movement.¹¹

Gen. Esperon reported, however, that since the CPP-NPA has been classified as a foreign terrorist organization by the United States and the European Union, much of their foreign funding has dried up.

¹⁰ *Id.* at pp. 30-31.

¹¹ *Id.* at p. 31.

10. Investigating encounters between the AFP and the CPP-NPA

When asked if the AFP has investigated killings during combat encounters, Gen. Esperon mentioned that all encounters are treated as a scene of crime and is conducted by the scene of crime operations (“SOCO”), which is a joint undertaking of the AFP and the PNP. However, it has no formal organization. Under Executive Order No. 546, the PNP has become an equal partner in counter-insurgency.

11. Procedure for complaints filed

When asked about the AFP’s investigations into killings, General Esperon stated that before an investigation can commence, a complaint must first be filed. From the years 2000 to 2006, a total of 770 complaints were investigated. Complaints come from the Commission on Human Rights, the victims themselves, foreign or non-governmental organizations, the Department of Foreign Affairs, or the joint-monitoring committee. Thereafter, the report of the investigation will be submitted to the General Headquarters.¹²

However, Gen. Esperon added that although the AFP entertains the complaints filed, it is the PNP which is the rightful or correct agency to proceed with the criminal investigation, with the AFP simply cooperating with the PNP by giving inputs and making its personnel available for investigation.

12. List of NPA victims¹³

To emphasize his point that the CPP-NPA is the party to blame for the activist and media killings, General Esperon stated that AFP records show that a total of 1,227 persons have been liquidated by the NPA. Out of the 1,227, 384 were AFP and PNP officers or personnel while 843 were civilians. Interestingly, in the list of liquidated civilians, eight (8) of them were also known to be members of the group Karapatan.¹⁴

¹² *Id.* at pp. 34-35.

¹³ A list of the victims was furnished the Commission.

¹⁴ *TSN*, September 14, 2006, pp. 36-37.

13. Report of Task Force Usig

In the Report, a total of 111 militants were slain, six of whom were slain by military elements (2 military, 1 CAFGU, 3 military assets) and 10 other cases were allegedly linked to the military. However, these cases have not been referred to the AFP for investigation.¹⁵

Gen. Esperon relayed his conversation with Gen. Razon wherein the latter mentioned that 15 cases were perpetrated by the NPA.

14. "Ang Tala"

"*Ang Tala*" is an official publication of the AFP which is published by the Civil Relations Service. The magazine may contain articles that do not reflect the official position of the AFP.

Gen. Esperon admitted having heard about the 2002 article written by Col. John Bonatus which claimed that the NDF formed *Bayan Muna* and that its growing influence in the electoral and parliamentary arena is a national security problem. However, he said that he could not comment thereon as he has not read it.

15. AFP Investigation of Gen. Jovito Palparan

It was noted that there was an increase in activist killings in the areas where Gen. Palparan was assigned. Thus, it earned him the moniker "Butcher" or "Berdugo."¹⁶

Gen. Esperon said that an internal investigation was conducted by the AFP. However, no formal investigation was conducted since no formal complaints were filed against Gen. Palparan. The internal investigations conducted were informal in nature and thus, no records were kept.¹⁷

¹⁵ The Commission formally referred the cases to the AFP for investigation. *TSN*, September 18, 2006, pp. 5-6.

¹⁶*Id.* at p. 12.

¹⁷*Id.* at pp. 14, 17 & 19.

Moreover, when the reports came out in the media, Task Force Usig was already organized. Thus, the AFP deemed it more appropriate to let the task force conduct any investigation lest the AFP be accused of whitewashing the matter.¹⁸

Additionally, Gen. Esperon said that to investigate Gen. Palparan during the time when he was neutralizing the NPA would have been counter-productive.¹⁹ Although Gen. Esperon admitted that the AFP has the power and authority to investigate if any of its officers has violated certain rules and regulations, such investigation may, however, muddle or obstruct any on-going operation. Gen. Esperon added that the AFP has confidence in the duly constituted investigative body.²⁰

Atty. Vinluan mentioned an incident in Mindoro wherein Eden Marcellana and Eddie Gumanoy were abducted by 20 men believed to be members of the military and military assets. Gen. Esperon could not say whether an investigation was conducted on the matter, reasoning that he was stationed in Basilan at the time the incident happened.

16. Reaction on the following statements made by Gen. Palparan:

General Esperon was asked for his reaction to General Palparan's public image and statements appearing in media reports, among which were as follows:

Potential vigilante style actions by anti-communist elements outside the military organization cannot be stopped completely and the killing of activists are necessary incident to conflict.

I cannot order my soldiers to kill, it's their judgment call, they can do it on their own.

I encourage people victimized by communist rebels to get even.

The killings are being attributed to me but I did not kill them, I just inspire the trigger men.

Their (three student doing research work outside Manila) disappearance is good for us but as to who abducted them we don't know.

¹⁸ *Id* at p. 17.

¹⁹ *Id* at p. 20.

²⁰ *Id* at pp. 21-22.

Gen. Esperon refused to answer any question in relation to Gen. Palparan's statements, reasoning that Gen. Palparan himself should be the one to answer the same.

Chairman Melo asked Gen. Esperon if it occurred to him to call Gen. Palparan to explain his statements. Gen. Esperon related that he called Gen. Palparan regarding the three (3) students who disappeared. Gen. Palparan denied any involvement and expressed his willingness to submit to any investigation by the Task Force Usig. Gen. Esperon added that he recalled calling Gen. Palparan about a statement (he forgot which) and the latter said he was misquoted by the newspaper. Gen. Esperon advised him to be careful with his statements.²¹

Gen. Esperon said that assuming the above-statements were true, those "are not right words that should come from an officer." He added that the statements, if true, do not reflect well on the AFP, but it does not mean that the military should be blamed for the killings.²²

It appears that the AFP did not investigate Gen. Palparan on the matter on the ground that no formal complaint was lodged.

17. Command Responsibility

When asked about his concept of command responsibility, General Esperon stated that it means that a commander is responsible for what his men do or fail to do in terms of accomplishing the mission. It does not include criminal liability of the superior if his men or subordinates commit an illegal act that is criminal in nature. Only the subordinate should be liable for the criminal act and not the superior commander. The commander is responsible only for acts he authorized.²³

In relation to reported abuses allegedly committed by Gen. Palparan, Gen. Esperon said that these are only accusations and that no complaints were filed. Moreover, he reiterated that the matter is left to be investigated by Task Force Usig and the Commission.

²¹ *TSN*, 18 September 2006, pp. 25-26.

²² *TSN*, 18 September 2006, p. 26.

²³ *Id* at pp. 28-29.

18. Actions that may be undertaken by the AFP to prevent extrajudicial killings

When asked what the AFP is doing to prevent extrajudicial killings, General Esperon simply mentioned that the AFP has its rules on engagement and that the AFP conducts courses which have a module on human rights and there are several publications to reinforce AFP's observance of human rights.

Atty. Vinluan suggested that in order to stop extrajudicial killings, the military should correct the impression that left wing organizations, such as Bayan Muna, Gabriela, and Anak Pawis, are fronts of the CPP-NPA. Gen. Esperon countered that Satur Ocampo should denounce the NPA. By doing so, the AFP will know that previous members of the CPP-NPA have truly severed their relations with the underground.

General Esperon, at this point, presented to the Commission copies of the following books:

- "Breaking Through" by Joel Rocamora -Exhibit "J"
- "Suffer Thy Comrades" by Robert Francis Garcia - Exhibit "K"
- "The Philippine Revolutionary Movement Combining Armed and Legal Struggles" by Luis Jalandoni - Exhibit "L"

19. Coordination with Task force Usig

Gen. Esperon said that AFP's lack of coordination with Task Force Usig is intentional as it did not want to influence the latter's report. Further, coordination between the two bodies might be misconstrued. However, Gen. Esperon added that just the morning he testified, he requested Gen. Razon to furnish the AFP with a report so that it can be used as a basis for its own actions.

He said that is it possible that the evaluation of Task Force Usig may be different from the evaluation of the AFP. However, in the end, it will be the courts which will decide should cases be filed.

20. AFP's goal of beating the NPA by 2010 as reported in the Philippine Star

Gen. Esperon declined to discuss the operational details on how to defeat the NPA. However, he said that AFP will give developmental activities to communities and try to win the hearts and minds of the people similar to the case of Bohol. Gen. Esperon explained that due to the efforts of the military, Bohol is now free of roaming NPAs and has become a tourist spot. He added that the people of Bohol like Gen. Palparan.²⁴

21. Summary/Notable Matters:

- a. The AFP did not conduct any formal investigation of suspects, but admits a rise in reported killings.
- b. General Esperon is convinced that the recent activist and journalist killings were carried out by the CPP-NPA as part of a “purge.” Captured documents supposedly prove this. The full contents or a copy of the documents, however, were not presented to the Commission.
- c. Likewise, General Esperon was firm in his position that the victims were members of the CPP/NPA and that the activist organizations, while legal, are infiltrated by the CPP-NPA. He stated that these organizations are being manipulated by the NPA.
- d. Gen. Esperon admitted receiving reports about Palparan being suspected of conducting extrajudicial killings, being called Berdugo, etc. but he attributed this to propaganda of CPP/NPA.
- e. General Esperon admitted that no formal investigation was conducted by the AFP on General Palparan, simply because no complaint was filed. He mentioned that he merely called General Palparan on his cellphone and did not go beyond the latter’s denials.

C. *Maj. Gen. Jovito S. Palparan:*

²⁴ *Id* at p. 43.

1. Introduction

Maj. Gen. Jovito S. Palparan served in the Armed Forces of the Philippines for thirty-three (33) years before his retirement on September 11, 2006. He was invited by the Commission to shed light on the heightened number of extrajudicial killings of media workers and political activists that transpired in the various posts to which he was assigned including, but not limited to, the following:

Commanding General -	7 th Infantry Division, Central Luzon September 2005 - September 2006
Commanding General -	8 th Infantry Division, Eastern Visayas February 2005 - August 2006
Brigade Commander -	2 nd Infantry Division, Mindoro May 2001 - April 2003

2. Propaganda War

During Gen. Palparan's assignment in Mindoro and Eastern Visayas, the people in the said areas gave him certain disapproving monikers such as "*the Butcher*," "*Berdugo ng Mindoro*" and "*Berdugo ng Samar*" in the context of the rampant extrajudicial executions of left-wing activists during his assignment.

When asked about how he earned these nicknames, Gen. Palparan answered that it was the militants and the CPP-NPA that gave him the nicknames as a part of their so-called "propaganda war." He stressed that even before his arrival in the areas to which he was assigned, there were already many killings of both militants and non-militants. Gen. Palparan further stated that the killings that transpired during his assignment were merely highlighted as a form of black propaganda to discredit his efforts in the area.²⁵

3. Organizations/Party List Representatives as support systems of the CPP-NPA; Enemies of the State

²⁵ TSN, September 26, 2006 pages 4, 29; see also "*Major General Jovito Palparan:- Coming To A Town Near You?*" - Accessible at http://tornandfrayed.typepad.com/tornandfrayed/2005/10/maj_general_jov.html

Gen. Palparan stated that certain Organizations and Party List Representatives act as support systems providing materials and shelter for the CPP-NPA. However, when asked to name these organizations, Gen. Palparan declined to mention them publicly but only agreed to disclose the names of these organizations in a closed-door session.²⁶

When asked about his previous statements accusing party list organizations such as Bayan, Karapatan, Gabriela, and Anak Bayan as front organizations of the CPP-NPA with Bayan Muna as the umbrella organization, Gen. Palparan neither confirmed nor denied having made these statements.²⁷ Upon further questioning, however, Gen. Palparan said that he based this information on video clippings of CPP Chairman Joma Sison naming certain “National Democratic Front Organizations” as the support systems of the CPP NPA.²⁸

Gen. Palparan affirmed his earlier statement made before the Court of Appeals wherein he said that these seemingly legitimate and ordinary organizations are actually enemies of the state. He made an exception, however, with respect to members of these organizations who may not really be enemies of the state but are considered as such due to their membership in these organizations.²⁹

In an interview by Pia Hontiveros and Tony Velasquez on the TV Program “*Top Story*,” Gen. Palparan was asked why he considered organizations like Bayan Muna as fronts for the NPA. In response thereto, Gen. Palparan said “... a lot of the members are actually involved in atrocities and crimes ...” When asked what evidence he had to support this allegation, he said that he had no evidence, but that “*he could feel it.*” At the Commission hearing, however, Gen. Palparan said that there are witnesses who are former members of these organizations that have severed their membership who can attest to this.³⁰ These witnesses or their statements were not presented to the Commission. Gen. Palparan also stressed

²⁶ *Id.* at p. 8.

²⁷ *Id.* at p. 10.

²⁸ *Id.* at p. 9.

²⁹ *Id.* at pp. 8-9.

³⁰ *Id.*

that “a lot of members” and not all members are involved in atrocities and crimes.³¹

4. Gen. Palparan’s Statements implicating specific Party List Organizations

Gen. Palparan was reported to have made the following statements before the media implicating specific Party List Organizations such as Bayan, Karapatan, Gabriela, and Anak Bayan as fronts for the NPA, to wit:

“Even though they are in Government as Party List Representatives, no matter what appearance they take, they are still Enemies of the State.” (May 16, 2006, Philippine Daily Inquirer)³²

“The Party List Members of Congress are doing things to further the revolution, the communist movement... I wish they were not there...” (Interview with Pia Hontiveros and Tony Velasquez -- Top Story)³³

“It is my belief that these members of party list in Congress are providing the day-to-day policies of the rebel movement” (February 3, 2006, French Press Agency)³⁴

When asked to confirm during the Commission hearing whether or not he made these statements before the media, Gen. Palparan only confirmed the statement given in “*Top Story*.” With respect to the others, he simply evaded the issue by saying that he was not sure or that he could not recall making the statements.³⁵ When asked to name which organizations he was referring to as enemies of the state, Gen. Palparan responded “... *I just want to be general, I just don’t want to specify ...*”³⁶

During the latter part of his testimony, however, when he was being questioned by Chief State Prosecutor Zuño, Gen. Palparan specifically named Bayan Muna as a recruitment agency of the CPP NPA in Mindoro, to wit:

... in the course of our operation, there were some reports that that BAYAN MUNA headquarters at the time in Mindoro was used as a

³¹ *Id.* at p. 11.

³² *Id.* at p. 14.

³³ *Id.*

³⁴ *Id.* at pp.14-15.

³⁵ *Id.* at pp. 13-15.

³⁶ *Id.* at p. 13.

*hideout of the armed group. And as I said, a recruitment agency because they recruit young people there as members of some organizations then eventually go up in the mountain. And then, there were those who surrendered to us confirming this...*³⁷

5. Gen. Palparan's view on the repeal of the Anti-Subversion Act

Gen. Palparan reiterated his view that the repeal of the Republic Act No. 1700 (the Anti Subversion Act) was a mistake and called for the reintroduction of legislation that would criminalize membership in the CPP and sympathetic organizations.³⁸ The following statements of Gen. Palparan were reported in connection therewith:

I want communism totally erased.(May 21, 2006, Philippine Star)³⁹

... to wage the ongoing counterinsurgency... – by "neutralizing" not just armed rebels but also a web of alleged front organizations that include leftist political parties, human-rights and women's organizations, even lawyers and members of the clergy. ("Wagging the Buffalo"-September 25, 2006, Newsweek)⁴⁰

When asked about his statements, Gen. Palparan confirmed having uttered them but qualified the term "neutralization" by stating that it does not only pertain to physical elimination and armed confrontation but also by promoting dialogues and courting people to support the AFP.⁴¹

6. Internal Territorial Defense System

In the Newsweek article entitled "*Wagging the Buffalo*," the following was also mentioned:

In the Central Luzon province of Nueva Ecija, Palparan's anti-communist strategy is to engage locals, gather intelligence and identify outside agitators. Small military teams block access to so-called militants representing political parties like Bayan Muna and Akbayan, which Palparan considers "a different face of [communist] political warfare that's not healthy for our democracy." The goal, he says, is to neutralize rebel activities by empowering the "silent majority." To that end, the

³⁷ *Id.* at p. 61.

³⁸ *Id.* at p. 17.

³⁹ *Id.*

⁴⁰ *Id.* at p. 18; See also a copy of the article "*Wagging the Buffalo*"

⁴¹ *Id.* at p. 19.

military is creating village-level militia to keep rebels and activists out after soldiers depart.

When Gen. Palparan was asked about the accuracy of the report, he initially refused to comment on it.⁴² Upon further questioning, however, he qualified some of the points raised therein:

6.1 Empowering the Silent Majority

Gen. Palparan said that the greater majority of the people are usually threatened by a small group of bad elements, the CPP-NPA. The majority should be empowered to “defend themselves if they are attacked or propagandized” even by fighting, if necessary.⁴³

6.2 Village-Level Militia

Gen. Palparan said that the term “village-level militia” is not accurate because according to him, the correct term is “Internal Territorial Defense System” or “Barangay Defense System.” He explained that once the AFP leaves after clearing an area from enemy influence, the residents of that area should be encouraged to organize as a group in order to defend themselves from intruders.⁴⁴

6.3 Correlation between Defense System and escalated killings

In an article entitled “*Palparan: I Encouraged Civilians to Fight Back*” published in the August 22, 2006 issue of Manila Standard Today, Gen. Palparan was reported to have admitted that wherever he was assigned, the killings escalated. When initially asked about the veracity of the article, Gen. Palparan denied the accuracy of the statement. After further questioning, however, he qualified the statement by saying that the killings were already rampant before his arrival. Thereafter, the incidents of killings would increase during the start of his campaign for a period of

⁴² *Id.* at p. 20.

⁴³ *Id.* at p. 21.

⁴⁴ *Id.* at p.22.

about five to six weeks and then afterwards, there is a drastic reduction in the number of killings.⁴⁵

7. Specific inquiries on escalated number of extrajudicial killings during Gen. Palparan's Tours Of Duty

Gen. Palparan was asked to confirm the contents of lists of victims of extrajudicial executions during his tours of duty in Mindoro (35 killings), Eastern Visayas (22 killings) and Central Luzon (75 killings) but he refused to confirm or deny the accuracy of the said lists because he said he did not have any knowledge of these facts. Moreover, Gen. Palparan refused to give credence to the said lists because they were prepared by Karapatan.

8. Collateral Damage; Civilians and Local Officials; Vigilante Killings

During the course of his testimony, Gen. Palparan confirmed making the following statements:

8.1 Civilians Killed in Crossfire

*My order to my soldiers is that, if they are certain that there are armed rebels in the house or yard, shoot them. It will just be too bad if civilians are killed in the process. We are sorry if you are killed in the crossfire.*⁴⁶

9.2 Collateral Damage

*There would be some collateral damage, but it will be short and tolerable. The enemy would blow it up as a massive violation of human rights. But to me, it would just be necessary incidents.*⁴⁷

8.3 Death of Civilians and Local Officials

*Sorry nalang kung may madamay na civilian;... The death of civilians and local officials were 'small sacrifices' brought about by the military's anti-insurgency campaign. – Philippine Daily Inquirer 12 September 2006*⁴⁸

⁴⁵ *Id.* at pp. 25-26.

⁴⁶ *Id.* at p. 30.

⁴⁷ *Id.*

⁴⁸ *Id.* at p. 33.

8.4 Vigilante-Style Actions by Anti-Communist Elements Outside the Military:

*[T]hey cannot be stopped completely ... the killings, I would say are necessary incidents in a conflict because they (referring to the rebels) are violent. It's not necessary that the military alone should be blamed. We are armed, of course, and trained to confront and control violence. But other people whose lives are affected in these areas are also participating ...*⁴⁹

Gen. Palparan, however, denied having made the following statements:

8.5 *I encourage people victimized to get even.*⁵⁰ (Gen. Palparan said that he merely encouraged the people to defend themselves and to fight if necessary.)

8.6 *Nabuo ang alsa masa sa Mindoro nuong dumating ako, kumikilos ang mga ito sa alanganing oras. May sarili silang pagkilos. Hindi na kami makapahinga kung pati lahat ng pagkilos nila ay susubaybayan namin. Nakakatulong naman sila sa paglaban sa NPA gayon din ang mga katulad ng RHB.*

8.7 *The killings are being attributed to me but I did not kill them, I just inspired the triggermen.*

9. Responsibility of soldiers under Gen. Palparan's command

Gen. Palparan denied the media report quoting him to have said: *"I cannot order my soldiers to kill. It's their judgment call. They do it on their own."* He clarified that his correct words were:

*... perhaps maybe, if there are, and if they do that, that's their own responsibility, it's not mine..."*⁵¹

Gen. Palparan, however, admitted uttering the phrase:

*...some soldiers are emotional when their comrades are hurt or killed. There could be soldiers who decide to take the law into their own hands. But that's illegal."*⁵²

⁴⁹ *Id.* at p. 34.

⁵⁰ *Id.* at p. 35.

⁵¹ *Id.* at p. 32.

⁵² *Id.*

From the tenor of Gen. Palparan's answers, **he entertained the possibility that some of his soldiers may have been responsible for the killings although they were not directed by their commander.** However, he stated there is still no proven incident linking any of his soldiers in any of the killings.⁵³

In fact, Gen. Palparan confirmed his statement given before the House of Representatives' Committee on National Defense and Security on May 25, 2005 wherein he said: *"I cannot categorically deny that (referring to the military having special units, not properly identified in bonnets and masks, operating in the middle of the night.)"*⁵⁴ Gen. Palparan, however, also said that if there are facts proving that they (soldiers) are engaged in such activities, he is willing to submit them.⁵⁵ He also denounced any involvement by the AFP in the acts that may have been carried out by individual soldiers.⁵⁶

10. On the killings of Mr. Eddie Gumanoy and Ms. Eden Marcellana

Gen. Palparan denied any involvement in the killing of Ms. Eden Marcellana. She was in the process of objecting to Gen. Palparan's promotion to Brigadier General before the Commission on Appointments.

Gen. Palparan said he was unaware of the police report of the incident stating that military personnel were involved in the abduction and killing of Ms. Marcellana and that there was a witness that identified one of the suspects as a sergeant working as an Intelligence Officer with the 204th Infantry Brigade under Gen. Palparan's command. When questioned further, however, Gen. Palparan contradicted himself and admitted that he had knowledge of the incident because he accompanied the Sergeant to the DOJ to file his counter-affidavit.⁵⁷

Despite knowledge of the involvement of military personnel in the killing of Eden Marcellana, Gen. Palparan did not order the investigation of the military personnel allegedly involved because *"... there were already a number of investigators doing such and I don't have authority at that time ..."*⁵⁸

⁵³ *Id.* at p. 33.

⁵⁴ *Id.* at p. 42.

⁵⁵ *Id.* at p. 43.

⁵⁶ *Id.* at p. 44.

⁵⁷ *Id.* at p. 47.

⁵⁸ *Id.*

11. Investigation by the Committee on Civil, Political and Human Rights of the House of Representatives.

Gen. Palparan refused to comment on the findings and conclusions of the investigation by the Committee on Civil, Political, and Human Rights of the House of Representatives with respect to the human rights violations in the Southern Tagalog Region, particularly in Mindoro, primarily because the said committee includes Representatives Satur Ocampo, Etang Rosales, and Liza Masa who are allegedly biased considering that they had earlier declared Gen. Palparan as their enemy.⁵⁹ Gen. Palparan also refused to confirm the fact that the AFP's defense was that the killings were done by the group called "*Alsa Masa*."⁶⁰

12. Investigation of Gen. Palparan by Presidential Task Force

Gen. Palparan said that he was not investigated by the AFP despite the recommendations of the Committee on Civil, Political, and Human Rights of the House of Representatives. He said that he was only investigated by a Presidential Task Force regarding the killings of Mr. Eddie Gumanoy and Ms. Eden Marcellana.⁶¹ Apparently, the said task force did not hold Gen. Palparan responsible for the killings.

13. Command Responsibility

Gen. Palparan denied the conclusion that he did not discourage soldiers under his command from taking the law into their own hands.⁶² This was inconsistent, however, with his earlier statement wherein he said "*I cannot order my soldiers to kill, it is their judgment call. They do it on their own.*"

With respect to the conclusion that Gen. Palparan did not actually exert efforts to prevent or stop the illegal acts of his soldiers, Gen. Palparan simply responded "*There was no illegal act on my soldiers that anyone could mention.*"

⁵⁹ *Id.* at p. 51.

⁶⁰ *Id.* at p. 52.

⁶¹ *Id.* at p. 53-54.

⁶² *Id.* at p. 54.

When asked whether or not he discouraged vigilante-style killings of activists by people or elements outside the military organization, Gen. Palparan replied *"I could not discourage them because I do not even know them."*⁶³

Gen. Palparan agreed with the concept under the Doctrine of Command Responsibility that *"responsibility for summary executions or disappearance extends beyond the person or persons who actually committed those acts. Anyone with higher authority, who authorized, tolerated or ignored these acts are liable for them."* In connection therewith, however, he said that his failure to investigate his soldiers allegedly responsible for some of the killings does not constitute tolerance of these acts because none of his soldiers (except in two cases) were identified.

When asked about his statement given during a forum in Sulu Hotel on August 21, 2006 *"I am responsible (referring to extra-judicial killings), relatively perhaps,"* **Gen. Palparan said that his actions could have encouraged people to take the law into their own hands.** Gen. Palparan, however, qualified this by saying it was not really intentional on his part.⁶⁴

With respect to failing to take steps at preventing these actions (extrajudicial killings), Gen Palparan stated:

... So if I have, within my capacity to prevent it, I would prevent the same. But in the course of our campaign, I could have encouraged people to do that. So maaaring may responsibility ako doon, on that aspect. But how could I prevent that, we are engaged in this conflict. All my actuations really are designed to defeat the enemy. And in doing so, others might have been encouraged to take actions on their own...

*... whoever did this ... could have been encouraged by my actions and actuations in the course of my campaign, whoever they are. That is why I said relatively. If there are some soldiers, maybe then, I could have been remiss in that aspect. But we are doing our best to keep our soldiers within our mandate.*⁶⁵

14. CPP-NPA Purge Theory

Significantly, however, when asked about CPP/NPA's participation in the political killings, he testified that the killings are not attributable to the alleged

⁶³ *Id.* at p. 55.

⁶⁴ *Id.* at p. 57.

⁶⁵ *Id.* at p. 58.

CPP/NPA purge. “ I don’t charge it to NPA purge.” He also mentioned that he had “to be skeptical on th[ese] report[s].”⁶⁶

D. Information from the Commission on Human Rights

On October 3, 2006, Chairperson Purificacion Quisumbing of the Commission on Human Rights (CHR) appeared as a resource person and invited members of the Commission to the CHR and to look at their statistics. Initially, she verbalized her displeasure with the subpoena issued to the CHR. While she recognized the creation of the Commission by the President, she however, gave two propositions, viz: (1) for the Commission to send its researchers as their records are open, and (2) have a dialogue on mutual concerns, as a matter of courtesy. Chairman Melo excused the CHR Chairperson as she had no personal knowledge or information of the facts which the Commission was interested in looking into, but directed the General Counsel to coordinate with the CHR to secure the said necessary information from the latter’s records.

E. Task Force Mapalad: farmers beneficiaries in Negros Occidental

On November 27, 2006 in Bacolod City, the Commission conducted a probe of killings involving members of Task Force Mapalad (TFM), a group or organization of farmers-beneficiaries in Negros Occidental. TFM President Rodito Angeles presented several witnesses and documents relative to the killings and wounding of TFM members, who are beneficiaries of the agrarian reform programs and redistribution of landholdings in various parts of Negros Occidental. Some 250 TFM allied farmer-beneficiaries (FBs) attended the hearing and brought with them posters and pictures of family members who died in separate incidents. They claimed that landowners and their goons are responsible for the killings and there is lack of support from authorities to arrest suspects and expedite action on the cases they filed which are pending before the courts or prosecution offices.

⁶⁶ *Id.* at p. 72.

Among those presented were witnesses on the murders of land reform beneficiaries Mario Domingo, Teresa Mameng, Wilfredo Cornea, Rico Adeva and Ronilo Vasquez. Testifying in the Ilonggo dialect, Jinifer Tinero stated that on May 17, 2006, armed followers of former landowner Farley Gustilo in Hacienda Cambuktot, La Castellana, killed Mario Domingo who was installed as farmer beneficiary. The case for murder is pending before the Provincial Prosecution Office of Negros Occidental.

Nenita Adeva told the Commission that on April 15, 2006 at around 4:30 p.m., while she and her husband, Rico Adeva, a TFM organizer, were on their way home to Hacienda de Fuego II, Barangay Bagtic, Silay City, three (3) suspects, namely, Ronald Europa, a certain Boy Negro and an unidentified man, members of the Revolutionary Proletarian Army (RPA), shot her husband, Rico Adeva, ten (10) times, hitting him on his body and head. She said that Rico was shot in her presence as she begged for his life. She filed a complaint for murder before the Office of the City Prosecution Office of Silay City.

Lolita Pederiso claimed that on September 3, 2004, security guards of landowner Mario Villanueva led by Juanito Suriaga, destroyed the fence that separated the farmers-beneficiaries in the twenty-one (21) hectares awarded to them under the CARP Law from Villanueva's land. Suddenly, the guards started strafing their houses and the farmers scampered for safety. Early next morning, the body of Teresa Mameng, a leader of the agrarian reform beneficiaries in Hacienda Conchita, Villanueva, Barangay Sag-ang, La Castellana, was discovered at the cornfield near her house. The murder case filed against Suriaga is pending before the Regional Trial Court, Branch 63, La Carlota City.

Nenita Cornea testified that on June 26, 2006 at around 8 p.m., her husband, Wilfredo Cornea, was killed by two (2) goons wearing masks in Hacienda Mulawin-Lanatan in Barangay Poblacion, Sagay City. One of the suspects was identified as Amador Villa and farm land administrator Joseph Lacson was linked to the killing. A complaint for murder against Lacson and Villa was filed before the City Prosecution Office of Sagay City

Leticia Vasquez told the Commission that on February 12, 2001, eight (8) armed goons of Gustilo opened fire at TFM ARBs who were harvesting crops in the twenty-three (23) hectares which they had occupied and cultivated and killed Ronilo Vasquez and wounded three (3) others. A case for Homicide is pending before the Regional Trial Court, Branch 63, La Carlota City.

The other cases presented to the Commission included the following, viz: a) shooting on December 7, 2002 of Jimmy Mameng and Jonathan Pronete, both of Hacienda Conchita Villanueva, La Castellana. A case for frustrated homicide is pending before the Regional Trial Court, Branch 63, La Carlota City; b) wounding of Ronito Boltron on January 5, 2004 in Hacienda Mulawin-Lanatan, Sagay City. A case for frustrated murder is pending before Regional Trial Court, Branch 60, Sagay City; and c) shooting of Edgardo Cauntoy on December 29, 2004 in Hacienda Nelia-Minakalaw in Barangay Rizal and Lopez Jaena by security guards of landowners. Cases for attempted and frustrated murder are pending before the Office of the City Prosecution of Sagay City.

Chairman Melo explained that the Commission is focusing its attention on agrarian-related killings because it is within its mandate to look into any case of violence involving media people, militants and activists and to fast-track the investigation of thereof. Since the victims in these cases are farmer activists, they are within the scope of the Commission's mandate.

The members of the Commission, impressed by the courage and will to seek justice of the farmer-beneficiaries, who are not in any way anti-government, assured them that the Commission will bring their concerns before the appropriate government agencies for the speedy resolution of their cases. For his part, Chief State Prosecutor Zuno, directed the Provincial and City Prosecutors of Negros Occidental to hasten the resolution of the cases involving farmer-beneficiaries.

F. Probe in Davao City

On December 11, 2006, the Commission held a whole-day hearing in Davao City to probe the killing of George and Maricel Vigo, Enrico Cabanit, and

Hernando Baria, who were likewise involved in agrarian reform efforts and the organization of peasant farmers.

1. George and Maricel Vigo

The spouses George and Maricel Vigo were working for People's Kaumahan Foundation, Inc. - a United Nations Development Programme ("UNDP") project partner for the upliftment of internally displaced persons, including peasant farmers. George Vigo likewise had a local AM radio show concerning agrarian reform issues. The spouses Vigo were gunned down in Singao, Kidapawan City, Cotobato by unidentified men on June 19, 2006.

Mr. Venancio Bafilar, a friend of the spouses Vigo testified that before he was gunned down, George Vigo confided to Mr. Bafilar that he had been receiving death threats, and that he was being suspected of authoring, making or otherwise being behind the production of a video recording contained in a certain compact disc. This video recording was of a certain "bloodless" raid conducted by NPA rebels upon the municipal hall and PNP Station of Magpet, Cotobato.

Bafilar mentioned that the spouses Vigo were political supporters of Congresswoman Emmylou Taliño-Santos and her faction, including Angelita Pelonio, who was running for mayor of Magpet against incumbent Efren Piñol. In fact, Maricel Vigo was working in the office of Congresswoman Taliño-Santos. The Taliños are the political enemies of the Piñol faction, which includes Cotobato Governor Emmanuel F. Piñol. Essentially, Bafilar's testimony insinuates that the murder of the spouses Vigo was political in motivation, and that the parties responsible come from the camp of the Piñols.

The spouses Vigo were also in contact with a certain Ka Benjie, a suspected NPA member, whom George Vigo interviewed a number of times in his radio show. The Vigos were also supposedly eyewitnesses when Ka Benjie was summarily executed by the military.

Fr. Peter Geremia, an American priest working for the Tribal Filipino Program of the Diocese of Kidapawan, testified on his knowledge about the deaths of the spouses Vigo. He mentioned that prior to and after the death of the Vigos, he was subjected to surveillance by unidentified armed men. George Vigo also confided to Fr. Geremia that a military asset warned him (George Vigo) that he was in the "listahan" of the military.

After the killing of the Vigos, Fr. Geremia also received written death threats that the killing of the Vigos was a message to him and the Tribal Filipino Program that they would be next. The written threat more or less stated that "whoever supports the NPA, death is what they deserve."

In one incident in Columbio, Cotobato, Fr. Geremia was being followed by some men, one of whom suddenly drew his gun. Upon seeing the gun, Fr. Geremia's companions rushed him inside a store and later asked for help from the house of Columbio Mayor Bermudez. Mayor Bermudez, however, stated that there was nothing he could do because, he said, that the gunmen were military.

Fr. Geremia also testified that in a media presentation by Col. John Bucu of the 40th IB Intelligence Unit, he (Fr. Geremia) was identified as a supporter of the NPA - a fact which Fr. Geremia strongly denies. In fact, Fr. Geremia mentions that after confronting Col. Bucu and clarifying that he was not an NPA supporter, the latter apologized for the false information they received. However, Fr. Geremia was informed that his name and those of his staff are still mentioned in interrogations of suspected NPA's, and that he is still under surveillance, albeit more discreetly.

Fr. Geremia stated that the probable reason why he and his colleagues and staff were suspected of being NPA supporters was their constant monitoring of human rights violations and providing legal assistance to suspects detained by the military. In fact, with their aid, some of these suspects filed counter-charges against military officers, such as Major Ruben Agarcio, Lt. Eduardo Manukan, and Col. Cesar Idio of the 25th IB. Fr. Geremia requested the Commission and the National Bureau of Investigation to look into the threats against him and his staff, and the reason for the surveillance on them.

Apart from their oral testimony, the aforementioned witnesses also presented their written statements together with supporting documents. The affidavits of other witnesses, namely Gregorio Alave, Mary Grace Dingal, and Rea Ligtas, were submitted to the Commission. Due to lack of time, however, they were no longer called to deliver oral testimony.

Gregorio Alave, the younger brother of Maricel Vigo, claimed to have seen a certain Toto Amancio in the scene of the crime a few minutes before the shooting of the Vigos. Amancio is said to be a notorious gun-for-hire connected with powerful local politicians whom Alave did not identify but insinuated to be the Piñols. Despite his information, the Task Force Vigo created by the provincial government to investigate the Vigo killings accused a certain Dionisio “Jek-Jek” Mandanguit as the gunman. Alave, however, claims that this is not possible because Madanguit belonged to the 39th Infantry Battalion of the Philippine Army and was in the company of the CIDG long before the Vigo killing.

2. Enrico Cabanit

Enrico Cabanit was the chairperson of the WADECOR Employees and Agrarian Reform Beneficiaries Association, Inc. (“WEARBAI”) and the Secretary General of Pambansang Ugnayan ng mga Nagsasariling Organisasyon sa Kanayunan (“UNORKA-National”). He was assassinated by an unidentified gunman wearing a bonnet at the public market of Panabo City, Davao Del Norte on April 24, 2006. Wounded in the incident was Daffodil Cabanit, Enrico Cabanit’s daughter.

As witnesses, the Commission called P/Senior Investigator Wilfredo Puerto and PO3 Domingo Ranain, who investigated the Cabanit murder. PSI Puerto is the Intelligence Officer of the Panabo City Police Station, while Ranain is the police investigator on duty for the Cabanit murder. They both claimed that they already “solved” the crime and that it was a certain Enrique Solon who was the gunman. Enrique Solon was supposedly identified post mortem by eyewitnesses, as he had been killed in similar fashion in General Santos City

some days later. Likewise, a certain Benedick Mallorca supposedly overheard Solon drunkenly boasting about killing Cabanit.

However, there are numerous discrepancies and suspicious details regarding the investigation which tended to disprove the police theory, thereby prompting the General Counsel to intensively cross-examine the witnesses. In particular, the following details were suspicious:

- The body of Cabanit was not autopsied before burial, in violation of standard procedure, and despite requests for autopsy by Cabanit's family;
- The supposed eyewitness, Mr. Ryan Catalan, never stated in his affidavit that he saw the face of the assailant. Hence, his identification of Solon's body as the gunman is unreliable.
- Solon's body and face at the time the supposed witnesses identified it were severely swollen (as shown in the submitted picture), that it was virtually impossible to identify him based on his alleged fleeting appearance at the crime scene.
- The police reported that Cabanit was shot with a 9mm handgun three times, and that they recovered 9mm cartridges at the scene of the crime. However, the NBI expert witness stated that, upon his examination, Cabanit sustained only two (2) gunshot wounds and that, due to their diameter, they could not have been caused by a 9mm slug, but only by no less than .45 caliber pistol slugs.
- The police did not bother to bring Daffodil Cabanit to see and identify Solon as the gunman. Daffodil Cabanit is in the best position to see, describe and identify her father's assailant.

After several questions, the police officers stated that the investigation was still ongoing in that they have yet to identify the mastermind for the killing. The Commission inquired as to what steps the police were taking to do so. The police officers stated that they were waiting for further information from their witness, Mr. Benedick Mallorca. The Commission noted that the investigation should not be kept idly waiting for a witness to volunteer information, especially since the case of Cabanit is, according to Task Force Usig's report, "under extensive investigation."

The NBI's Medico-Legal examiner, Dr. Edgar Saballa, testified on his autopsy of Cabanit's body undertaken after its exhumation was ordered by the Commission. He discovered that there were two (2) gunshot wounds and not three (3) as stated in the police report. He also concluded that, based on the entry wounds, the weapon used was a .45 caliber pistol, and definitely not a 9mm pistol as stated in the police report. Unfortunately, no slugs were recovered from Cabanit's body for possible ballistic examination.

Last to testify was Mr. Rodolfo Imson, the local Regional Director of the Department of Agrarian Reform. He testified as to the good character of Cabanit, but that the DAR has no idea who was behind his killing. He, however, mentioned that violence is a constant problem in the implementation of the agrarian reform program, and that he himself has been receiving death threats from unknown parties.

3. Hernando Baria

Hernando Baria was a farmer and officer of a local farmer's group in Iloilo province called the Asao Farmers and Residents Association ("AFRA"). He was shot and killed on July 23, 2005 by policemen during an encounter involving the service of an alleged search warrant.

Hernando Baria's widow, Jovita Baria, testified before the Commission that Balasan town Vice Mayor Susan Bedro is the one behind the killing of her husband. According to her, the killing was motivated by her husband being one of the beneficiaries of agrarian reform implementation over the land owned by Bedro, and because he was one of the instrumental officers of AFRA. Upon prodding, however, she also admitted that her husband possessed an unlicensed firearm and fired the same during the encounter with the police. It also appeared that the police were in possession of a search warrant for the AFRA premises where Baria was staying.

Jovita Baria filed murder charges against the concerned police officers which is now currently pending with the office of the Ombudsman.

G. Presentation of Media groups

On November 21, 2006, the Commission met officers of the National Press Club (“NPC”) to discuss the killing of several media men and their chilling effect on press freedom.

The members of the media believed that they do not have the power to stop, much less control the killing of media men. The NPC officers cited the law enforcement component, including the evidence gathering, investigation, and prosecution systems, as well as political pressure, as the main problems that need to be addressed in order to solve these killings and to prevent future incidents. They stated that firm and effective law enforcement and prosecution are effective deterrents to this kind of killings.

The NPC said that the killing of journalists is most likely related to politicians or moneyed influential persons. Since many law enforcement authorities or policemen are “under the wings” of these politicians or influential persons, it is very difficult for law enforcement authorities to be effective.

The NPC cited the killing or wounding of the following media men and the suspects behind them:

- a. Philip Agustin in Dingalan, Aurora, where the suspect is Mayor Ilarde;
- b. Alberto Ursalino in Malabon City, where the suspect is a certain Jimenez;
- c. Jonathan Abayon in General Santos City, where the suspect is an army technical sergeant;
- d. Pablo Hernandez who received several threats and was stabbed several times but managed to survive. The suspect is a member of the maritime police force.

H. Presentation of United Church of Christ of the Philippines and the National Council of Churches of the Philippines.

On December 22, 2006, officials of the United Church of Christ of the Philippines (“UCCP”) and the National Council of Churches of the Philippines (NCCP”) met with President Gloria Macapagal-Arroyo and Chairman Melo, among others. The UCCP and NCCP reported that 10 clergy and 5 lay workers of church-based programs have become victims of extrajudicial killings. They also mentioned that 8 UCCP members who were also active in people’s organizations were similarly slain. Among those mentioned in the list of slain clergymen is Bishop Alberto B. Ramento of the Iglesia Filipina Independiente whose case has been removed from the list of activist killings and has been classified as one of robbery.

While it is was not clear if these killings are within the Commission’s mandated scope of the inquiry, the same being neither activist nor media related, the Commission nevertheless endorsed these cases to the National Bureau of Investigation, through NBI Director and Commissioner Nestor Mantaring, who undertook to prioritize and expedite the investigation of these cases.

III. CASE STUDIES

A. Profile of Victims

The majority of the victims of the extrajudicial killings were members of the so-called left-wing organizations – primarily Bayan Muna, Anakpawis, Bagong Alyansang Makabayan, Karapatan and KPD (Kilusan para sa Pambansang Demokrasya) and other cause-oriented groups like, for example, Task Force Mapalad and UNORKA (Ugnayan ng mga Nagsasariling Organisasyon sa Kanayunan) working for agrarian reform and other social justice issues.

The Commission was given by Task Force Usig the files relating to fourteen (14) cases of extrajudicial killing of activists or militants which are

supposed to be typical or representative of the cases under investigation by Task Force Usig.

The records of said cases show a common pattern in the methodology of the attacks, the leftist profile of the victims or at least membership in a cause-oriented group, and the lack of progress in the investigation or prosecution of the case.

The attacks in half of the cases were carried out by unidentified men riding on motorcycles and wearing bonnet masks (Sotero Llamas, Jose Doton, Noel Capulong, Victorina Gomez, Paquito Diaz, Elena Mendiola and Enrico Cabanit)

On the leftist profile of the victims: The victims were members of Bayan Muna (Ruben Apolinario, Expedito Albarillo, Sotero Llamas, Noel Capulong, Elena Mendiola, Juanito Mesias, Jose Doton), Anakpawis (Tito Macabitas), and other cause-oriented groups, namely, Kapisanan Para Sa Pambansang Demokrasya (Analiza S. Abanador), Binodgan People's Organization, an active advocate against large-scale mining in Kalinga (Rafael Bangit), Confederation for Unity, Recognition and Advancement of Government Employees, a militant organization fighting for equal rights, better benefits and opportunities in government work places (Paquito Diaz), and UNORCA, an organization active in the implementation of the agrarian reform law (Enrico Cabanit).

The cases have remained unsolved (Ruben Apolinar, Expedito Albarillo, Rafael Bangit, Noel Capulong, Victorina Gomez, Paquito Diaz). In five (5) of the cases, although criminal complaints against the suspects have been filed with the Office of the Public Prosecutor, the identification of the suspects is at best dubious (Annaliza Abanador, Sotero Llamas, Tito Macabitas, Elena Mendiola. With respect to the particular case of Enrico Cabanit, the alleged two eyewitnesses supposedly identified a certain Enrique Solon who, at the time of the identification, was already dead; the identification, to say the least, is highly questionable.

The investigation in many of the cases has met a blank wall (Ruben Apolinar, Expedito Albarillo, Rafael Bangit, Noel Capulong, Victorina Gomez,

Paquito Diaz). With respect to the cases pending preliminary investigation, the suspects are still at large (Annaliza Abanador, Sotero Llamas, Tito Macabitas, Elena Mendiola).

It is only in one case (Jose Doton) where the accused has been arrested but there is no indication in the police file as to the status of the case.

1. Ruben Apolinar

Ruben Apolinar was a Bayan Muna coordinator of San Teodoro, Oriental Mindoro while his wife, Rodriga Apolinar, was a member of the Gabriela. While the spouses were sleeping with their eight-year old daughter at their house in Barangay Ilag, San Teodoro, Oriental Mindoro at about 9:30 p.m. on May 20, 2002, unidentified persons riddled the house with bullets, killing all three. Sixty-three pieces of empty shells of M16 were recovered from the crime scene. The police never came up with any suspect; the case remains unsolved.

2. Annaliza S. Abanador

Annaliza S. Abanador, 35 years old, single, was a militant leader and member of the Kapisanan Para Sa Pambansang Demokrasya (KPD) and former president of BATAS-ACT, a militant group. On May 18, 2006, at about 5:30 p.m., her body was discovered by a co-employee, riddled with multiple gunshot wounds, at the Dakki Sale Center in Balanga, Bataan where she was working as an assistant personnel officer. Four (4) spent shells fired from a .45 calibre pistol and one (1) deformed .45 calibre slug were recovered from the crime scene.

The police filed charges against the alleged suspects Allan Prado @ Ian and Jose Carabeo @ Toktok, reportedly both members of the CPP-NPA based on the identification of a tricycle driver who supposedly saw the suspects coming out of the Dakki Sale Center. The driver identified the suspects from photographs shown to him by the police.

Based on said identification and without having apprehended the suspects remaining at large, the PNP filed a criminal complaint for murder with the Office of the City Prosecutor of Balanga City, Bataan on May 30, 2006.

3. Expedito Albarillo

Expedito Albarillo and his wife Emmanuela Albarillo were members of Bayan Muna. At about 6 a.m. at Sitio Ibuye, Brgy. Calsapa, San Teodoro, Oriental Mindoro, the spouses, after being hogtied and dragged from their house, were shot to death by eight (8) unidentified men, three of whom were wearing bonnets.

The police report refers to the spouses as “lie-low members of CPP/NPA” and Expedito Albarillo was supposedly linked to the assassination of the late Mayor Oscar Aldaba of San Teodoro.

The PNP obtained the statement of the mother of Expedito Albarillo that she was no longer interested in pursuing the investigation. It would seem that this is the reason why the police has stopped any further investigation.

4. Sotero Llamas

Sotero Llamas joined the CPP/NPA during the martial law regime of President Marcos; he was forced to go underground because he was an active member of the Kabataang Makabayan. After he was captured in May 1995, he was granted amnesty under the Joint Agreement on Security and Immunity Guarantee. He thereafter served as political consultant for the NDF in the peace negotiations between the NDF and the GRP from 1997 to 2004. He also served as political affairs director of the Party List Bayan Muna. In the 2004 elections, he ran for in Albay but lost.

On May 29, 2006, at about 8:30 a.m., while on board a multi-cab which was maneuvering to make a u-turn, three men on board a motorcycle approached the right side of the multi-cab and at close range fired several shots, hitting Llamas once on the head and thrice on the body while the driver sustained one gunshot wound on the right arm. Llamas was pronounced dead upon arrival in the hospital.

Two alleged eyewitnesses, a male pedicab driver and a 19-year old female student, who were not named in the file, supposedly identified one of the gunmen as Edgardo Sevilla, allegedly a member of the Communist Terrorist group operating in the first and second districts of Albay. The two witnesses were supposedly presented before the Office of the Regional State Prosecutor and they affirmed their statements positively identifying Edgardo Sevilla and one Edgar Calag. According to the police, their intelligence report disclosed that Edgardo Sevilla is currently an NPA commander while Edgardo Calag, a discharged Phil. Army special forces member who went AWOL after killing his detachment commander, is "believed to be an NPA member operating in Albay and Sorsogon."

5. Jose Doton

Jose C. Doton was the Secretary General of the Bagong Alyansang Makabayan (Bayan Muna) and President of TIMMAWA (Tignay Ti Mannalon a Mangwayawaya ti Agno). At about 10:30 a.m. on May 16, 2006, while the victim and his brother, Cancio Doton, were on their way home on board a motorcycle, with the victim as backrider, two persons wearing helmets on board a motorcycle who were apparently tailing them fired several shots at them. The victim and his brother fell down. Thereafter, one of the gunmen approached Jose Doton who was lying on the ground and shot him in the head. He was rushed to a hospital but was pronounced dead on arrival. His brother was hit at the back but managed to survive. The incident happened on Anong Road, Sabangan River, Brgy Camanggan, San Nicolas, Pangasinan.

A complaint for murder and frustrated murder has been filed against a certain Joel S. Flores because: (a) the motorcycle supposedly used in the killing is registered in his name; and (b) the .45 calibre pistol found in his possession when subjected to a ballistic examination turned out to be the one used in the shooting.

According to the police report, "the identities of the suspects cannot be established as of this time since there are no witnesses who had surfaced to give an eyewitness account of the incident and that the motives for the killing cannot be established." There is no report on the status of the case filed against Joel S. Flores.

6. Rafael Bangit

On June 8, 2006, at about 3:30 p.m., Rafael Bangit, 45 years old, married, Secretary-General of Binodngan People's Organization and an active advocate against large-scale mining in Kalinga, and Chairman of Bayan-Muna-Kalinga Province, was a passenger in a bus bound for Baguio City from Tabuk, Kalinga. After the bus had a stop-over for dinner in Brgy Quezon, San Isidro, Isabela and, as the passengers were about to board, a person wearing a black bonnet suddenly appeared and shot the victim, including Gloria Casuga, a school principal, who likewise sustained five gunshot wounds.

The person who shot Rafael Bangit was with other armed men who fled on board a Delica van, which had apparently been tailing the bus since it left Tabuk, Kalinga.

There has been no progress whatsoever in the investigation of the case.

7. Noel "Noli" Capulong

Noel "Noli" Capulong, a Bayan Muna Laguna Chapter leader and a member of the United Church of Christ in the Philippines (UCCP) was shot to death on May 27, 2006 at about 6p.m. in Brgy. Parian, Calamba City, by two unidentified suspects riding on a motorcycle. One of the suspects who was the backrider alighted from the motorcycle and shot the victim at close range who was on board an owner-type jeep. The suspects were both wearing bonnets but the gunman supposedly wore the bonnet only as a headgear. As of May 2006, Capulong was the fourth member of the UCCP to be killed.

A criminal complaint for murder is supposed to have been filed against a certain Alfredo Alinsunurin with the City Prosecutor's Office, Calamba City, but the file does not indicate the evidentiary basis for the charge. The respondent is at large.

8. Victorina Gomez

Victorina Gomez, 63 years old, a widow was the barangay captain of Brgy. Parian, Mexico Pampanga. The shooting occurred at about 5:30 p.m. on December 16, 2005, while Ms. Gomez, together with Brgy. Kagawad Romeo Atienza, Brgy Kagawad Reynaldo Macabali, and other persons were walking towards her house after attending a meeting hosted by the 69th Infantry Battalion, Philippine Army held at the Mexico Gymnasium in Mexico, Pampanga. Two unidentified male suspects wearing helmets and riding a motorcycle were responsible for the killing. While one of the suspects kept the engine of the motorcycle running, the other walked towards Ms. Gomez and her companion and shot to death Ms. Gomez and Kagawad Romeo Atienza; Brgy. Kagawad Reynaldo Macabali was seriously wounded. Afterwards, the gunman immediately boarded the motorcycle and the assailants sped away.

The gunman apparently used a cal 9mm machine pistol with a silencer. Recovered from the crime scene were empty shells and deformed slugs from a suspected cal. 9 mm pistol.

There has been no reported progress in the police investigation whatsoever.

9. Tito Macabitas

Tito Macabitas was apparently associated with, if not an active member of, Anak Pawis "and on several occasions had been sighted in several rallies of the leftists here (San Jose City) and in Metro Manila". He was employed as a utility worker or overseer at the Villa Ramos Resort and Hotel which is owned by Dr. Ben Reyes, a known Anak Pawis adviser. The resort is said to be a frequent venue of meetings of Anak Pawis and other leftist groups.

On October 20, 2005, at about 10:10 p.m. while Tito Macabitas and his wife, Eva D. Macabitas, were in their residence at Brgy. Manicla, San Jose City and while they were already in bed, they were awakened by a knock on their bedroom door. Evelyn, a niece of Tito Macabitas, informed the latter that somebody was looking for him. Tito Macabitas decided to go out to check, followed by his wife.. Upon reaching the side of the house of Evelyn, the man looking for Tito Macabitas apparently asked the latter his name because his wife

heard her husband saying that he was Tito Macabitas. At that juncture, the stranger shot Tito Macabitas and also his wife who was hit in the palm of her right hand. The assailant fled in a waiting vehicle (It is not clear whether it was a motorcycle, a car or a jeep; according to the wife "Mayroon pong maingay na motor na nakaparada sa malapit lang sa bahay ni Evelyn". (Affidavit of Eva D. Macabitas).

A criminal complaint for murder and frustrated murder has been filed against a certain Dindo Mendoza and two others (unidentified). Based on the story of one Armand Arce, he was allegedly asked by Dindo Mendoza at about 7 p.m. on October 20, 2005 to join in killing Tito Macabitas who supposedly discovered their extortion racket in collecting money from establishments by pretending to be members of the NPA and had threatened to report them to the authorities. According to Arce, he refused to join and that Dindo Mendoza with two companions left to proceed to Brgy. Maniola that night. Early morning of the following day, Armando Arce allegedly learned that Tito Macabitas had been gunned down.

10. Paquito "Pax" Diaz

Paquito "Pax" Diaz, 42 years old, single and supposedly an AWOL employee of the Department of Agrarian Reform, was shot and killed on July 6, 2006, at about 6 p.m. in Brgy. 54, Esperas Avenue, Tacloban City, by two motorcycle-riding male suspects. The back rider armed with a .45 calibre pistol apparently fitted with a silencer acted as the triggerman who shot the victim twice while the latter was waiting for a friend along Esperas Avenue. The driver of the motorcycle was wearing a helmet while the gunman was sporting a ball cap which partly covered his face.

At the time of his death, Paquito "Pax" Diaz was the Chairperson of the Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE-Eastern Visayas), a militant organization fighting for equal rights, better benefits and opportunities in government work places, and was allied with other progressive groups such as Alliance of Water Concessionaires (ALWAGON), Bayan Muna, Anak Pawis, Gabriela, Anak ng Bayan, Bagong Alyansang Makabayan, and others. The COURAGE under the

leadership of Mr. Diaz was then engaged in a legal battle between the Leyte Metro Water District Employees Association (LMWDEA), an affiliate of COURAGE, and the previous LMWD management under then General Manager Engr. Ranulfo C. Feliciano that was triggered by the alleged dismissal of 26 LMWD employees.

Absolutely no progress has been reported. No witness could even give a description of the perpetrators to provide sufficient basis for a cartographic sketch because the driver of the motorcycle was wearing a helmet while the gunman had a ball cap on which partly covered his face.

11. Elena Mendiola

Elena Mendiola, 54 years old, married and the Secretary-General of Bayan Muna Isabela Chapter was shot six times in the head on May 10, 2006, at about 8 p.m., in Barangay Garit Sur, Echague Isabela, by two male persons wearing black bonnet masks. Killed at the same time was her supposed "live-in" partner, Ricardo "Ric" Balauag, Bayan Muna Chairman, Municipality of Echague. The perpetrators fled on board a motorcycle.

A witness, Bayani Villanueva, gave a supplemental statement dated June 1, 2006 that on May 10, 2006 at around 8 p.m., while on board his motorcycle going to the house of Ruby Corpuz in Barangay Garet Sur, Echague, Isabela to meet with Ricardo Balauag he heard several bursts of gun fire prompting him to seek cover and at that juncture he saw two armed men in black sweaters riding in tandem on a sports-type motorcycle removing their bonnet masks while fleeing towards his direction. As the light of his motorcycle was still on, he was able to identify Renato Busania and Timoteo Corpuz whom he supposedly met on March 2, 2006 after he was told by Ricardo Balauag about the two persons frequenting his house and threatening him with harm if he failed to produce something.

12. Juanito Mesias, Jr.

Juanito Mesias, 28 years old, married and a member of Bayan Muna Kananga Chapter was killed on May 13, 2001 at about 11:30 p.m. at Barangay San

Isidro, Kananga, Leyte. The victim, together with Danilo Gusando and other companions, while riding on their respective motorcycles and campaigning for their candidate, incumbent Mayor Giovanni Ed M. Nepari, was ambushed by the alleged suspects, Omar Sumodlayon, said to be a former NPA member, and Melquiades Sumodlayon. Mesias died on the spot while his companion Danilo Guisando was wounded.

The case for murder and frustrated murder is pending trial before the Regional Trial Court of Ormoc City. The Task Force Usig file on the case given to this Commission does not indicate the underlying evidence in support of the case against the alleged suspects.

13. Enrico Cabanit

Enrico Cabanit, married and secretary-general of the Pambansang Ugnayan ng mga Nagsasariling Local na Organisasyon sa Kanayunan (UNORCA), an organization that is a staunch advocate of agrarian reform and social justice, was killed on April 24, 2006, at about 6-6:30 p.m. near the unloading area of fishcars at the Panabo Premium Market in Panabo City, Davao Norte. Two unidentified persons riding in tandem on a motorcycle with no plate number were responsible. The backrider wearing a white upper basketball garment with his face partially covered with a piece of cloth alighted and shot Enrico Cabanit who, with his daughter Daffodil, was waiting for transportation. Enrico Cabanit died on the spot but Daffodil was only wounded and she survived.

A certain Enrique Solon who was killed in Gen. Santos on May 26, 2006 was identified by two alleged eyewitnesses - Ryan Catalan and Romeo Cabillo - as the gunman who shot and killed Enrico Cabanit.

The identification of Enrique Solon as the gunman and killer of Enrico Cabanit is highly questionable and not credible. The two eyewitnesses, based on their statements, did not really get a good look at the gunman and could not have positively identified him by looking at the cadaver of Enrique Solon whose swollen face, based on the photograph looked markedly different from the face

of the latter when he was alive. (This case is more extensively discussed in connection with the hearing held in Davao City by the Commission).

14. Teresa Mameng

Teresa Mameng, 59 years old, married, a Task Force Mapalad member, was fatally hit by a bullet on 3 September 2004 at about midnight when a group of armed men, with assault rifles, fired without any provocation at a group of shanties occupied by CARP farmer-beneficiaries who were members of Task Force Mapalad at the outskirts of the Villanueva Sugar Plantation located at Hacienda Conchita-Villanueva, Brgy. Sag-ang, La Castellana, Negros Occidental.

Based upon the investigation of the police, a complaint for murder and multiple attempted murder was filed on 6 September 2004 against four members of the Tuguis Security Services, Inc. who were hired by the management of Hacienda Conchita-Villanueva; the complaint was later amended to include Juanito Suriaga, an overseer of the hacienda. (However, on 21 March 2006, the charge of murder was downgraded to homicide per a resolution issued by the Provincial Prosecutor's Office). The case has been dragging on for two years without any significant progress.

B. Methodology of Attacks

The extrajudicial killings of activists were carried out in a great number of cases by unidentified men riding on motorcycles wearing helmets or bonnet masks.

The attackers rode in tandem on their motorcycles, with the backrider getting off to do the shooting. In some of the cases where the attackers killed their victims on foot, they made their escape using motorcycles.

The efficiency and confident manner with which the attacks were undertaken clearly suggest that the killers were well-trained professionals who knew their business well. Many of the attacks were carried out during daytime

and consummated with a limited number of shots hitting their intended target. The families of the victims in many of the cases reported previous death threats or surveillance by suspected military or police personnel.

IV. FINDINGS

From the evidence and presentations received by the Commission, it became apparent early on that the Commission must differentiate its inquiry into the killings of activists from those of media personnel and agrarian reform movement. It appeared that the killings of media personnel are more or less attributable to reprisals for the victims' *exposés* or other media practices. In the media killings, local politicians, warlords, or big business interests are viewed as the parties responsible for the killings, while in agrarian reform related killings, it is suspected that landowners and those opposed to the implementation of land reform are behind the killings. On the other hand, the killings of activists were invariably laid at the doorstep of the military.

The investigation of killings of media personnel by the PNP was notably more successful than that of activist killings. For the media killings, formal complaints have been filed in a great majority of cases. Suspects in the media killings have been named and identified. In activist killings, there have been a measly number of complaints filed with the authorities.

In all, the killings of media personnel have been, more or less, solved, compared to the activist killings and agrarian reform related killings. On the other hand, it is not clear if the agrarian reform related killings have the same etiology as the activist killings. Thus, the Commission hereby sees fit to submit its findings on activist killings independently of that of the media killings and agrarian reform related killings.

MEDIA KILLINGS

It appears that the killing of media personnel has been characterized by the lack of a central or homogenous theory for the motives therefor. Most of the killings have been plausibly attributed to either personal vengeance, local

politics, or commercial concerns. While the media killings are by no means less abhorrent than the activist killings, the fact is that no central theory accusing agents of the government of the systematic assassination of media personnel has been forwarded, not to mention substantiated.

Likewise, the progress or performance of the PNP insofar as the media killings are concerned is much better than that pertaining to activist killings. Task Force Usig has forwarded for prosecution 21 out of the 26 cases of slain media men.

Nonetheless, the increase in the number of slain media men should not go unheeded. The fact is that certain persons or groups have been so bold as to assault and kill media personnel for their own selfish interests. This cannot be condoned. The PNP as well as the prosecution arm of the government should make sure that the perpetrators of these crimes are brought swiftly to justice.

AGRARIAN REFORM RELATED KILLINGS

With the exception of Hernando Baria, the killing of farmers-activists appeared to have followed the same pattern as other activists. In the case of the Vigo spouses, their killing could have been motivated by political reasons or by reason of their perceived ties with the NPA. In the case of Enrico Cabanit, it appears that he was killed for his activities as a peasant farmer leader, and not for affiliation with politicians or with the NPA. In any case, their deaths are equally deplorable and cannot be countenanced. Most of the cases of agrarian related killings have pending investigations or legal action before the proper authorities. Hence, the result of such investigations should shed more light on the persons or interests behind the killings. In this regard, the prosecution and law enforcement authorities concerned should expedite the investigation and prosecution of these crimes. Particular attention should be placed on the investigations being undertaken by the police in the various cases, specifically that of Cabanit, it appearing that the police seemed to have failed to earnestly and properly investigate the same.

ACTIVIST KILLINGS

From the evidence gathered, and after an extensive study of the same, the Commission comes to the conclusion that there is no direct evidence, but only circumstantial evidence, linking some elements in the military to the killings. THERE IS NO OFFICIAL OR SANCTIONED POLICY ON THE PART OF THE MILITARY OR ITS CIVILIAN SUPERIORS TO RESORT TO WHAT OTHER COUNTRIES EUPHEMISTICALLY CALL "ALTERNATIVE PROCEDURES" - MEANING ILLEGAL LIQUIDATIONS. However, there is certainly evidence pointing the finger of suspicion at some elements and personalities in the armed forces, in particular General Palparan, as responsible for an undetermined number of killings, by allowing, tolerating, and even encouraging the killings.

A. THERE IS SOME CIRCUMSTANTIAL EVIDENCE TO SUPPORT THE PROPOSITION THAT SOME ELEMENTS WITHIN OR CONNECTED TO THE MILITARY ARE RESPONSIBLE FOR THE KILLINGS:

No witness came forward to testify that he or she witnessed the military or any military personnel actually participate in any extrajudicial killing. Neither are there in almost all the cases any eyewitnesses to the killings who could actually identify the perpetrators, much more identify them as members of the military.

Quite deplorable is the refusal of the activist groups such as Karapatan, Bayan Muna, etc., to present their evidence before the commission. **If these activist groups were indeed legitimate and not merely NPA fronts, as they have been scornfully tagged, it would have been to their best interest to display the evidence upon which they rely for their conclusion that the military is behind the killings.** In fact, this refusal irresistibly lends itself to the interpretation that they do not have the necessary evidence to prove their allegations against the military. It would not even be unreasonable to say that their recalcitrance only benefits the military's position that they are indeed mere fronts for the CPP-NPA and thus, enemies of the state.

Nevertheless, despite the refusal of the activist groups to cooperate, and regardless of the question of their legitimacy, certain facts, taken together with admissions and statements by the witnesses, lead the Commission to conclude

that there is some circumstantial evidence that a certain group in the military, **certainly not the whole military organization**, is responsible for the killings. To maintain otherwise would be closing one's eyes to reality.

1. Motive

At once, it becomes clear that perhaps a small group in the armed forces may be said to have the motives for the elimination of the civilian activists. In a great majority of the cases of activist killings, the only explanation for the victims' deaths is the fact that they were allegedly rebels, or connected with the CPP/NPA. Apart from a negligible few solved cases, the PNP has not uncovered any other explanation for their killing.

As admitted by Gen. Esperon and Gen. Palparan themselves, the armed forces considers the so-called left wing and some party list organizations, and their members, "**enemies of the state**," who should be "neutralized." They qualify their statement by stating that the word "neutralize" does not necessarily mean killing, but should be taken in the context of their holistic approach to the war on communism - that is, to include socio-civic and other works designed to bring communist rebels back to the fold of the law and thus "neutralize" their threat. Nonetheless, the fact that certain elements in the military would take the more direct approach to "neutralizing" the enemy cannot be discounted. General Palparan, for one, stated that he cannot categorically deny the possibility that some of his men may have been behind some of the killings.

No plausible explanation has been given for the rise in extrajudicial killings, except that the killings were perpetrated by the CPP-NPA pursuant to a purge of its ranks. It is argued that documents have been "captured" detailing this plan of the CPP/NPA, and that there are witnesses to testify to this fact. The documents and witnesses, however, despite request by the Commission, were not presented.

While the PNP stated that some of the victims may have been targeted by the CPP/NPA for alleged "financial opportunism," no clear basis or evidence was presented in that regard. In fact, none of the victims was positively identified as a financial officer of the CPP/NPA. In any case, the overwhelming

majority of the victims were mere students, peasants or laborers, and thus, were highly unlikely to have committed any financial opportunism. Then too, it is surprising if there indeed is an on-going purge among the ranks of the CPP-NPA, why the military has done nothing to promote or encourage such rift. Verily, if your enemies begin to fight among themselves, the result could only be to your benefit.

Moreover, it would be contradictory for the military to consider the “purge” theory while at the same time claim that the victims were enemies of the State. If the CPP-NPA, the avowed enemy of the State, were indeed minded to purge the victims from its ranks, then it would have been in the interest of the military to bring the victims, being possible defectors or informants, to the government’s fold. Enigmatically, the military has continued to classify the victims as “enemies of the state.” This throws the whole “purge” theory out of line and makes it somewhat improbable.

More telling, however, is the fact that **General Palparan himself does not believe in this “purge” theory**, declaring that he had no reason to believe that the killings were perpetrated by the CPP/NPA.

The foregoing leads only to the conclusion that the “purge” theory cannot be accorded credence.

The NPA purge theory being discredited, the only other theory left is that certain elements within or connected to some military officers are responsible for the killings. The victims, according to General Palparan and others, were enemies of the State; hence, their neutralization.

2. Capacity and Opportunity

The suspected group in the military has no doubt the capacity or the means to carry out the killings. In fact, the killings appear to be well organized and the killers adequately equipped. More telling, however, is the fact that, with the CPP-NPA out of the question, **only** a group with certain military capabilities can succeed in carrying out an orchestrated plan of eliminating its admitted enemies.

Too, this group admittedly has all the opportunity to carry out the said killings. Its members roam the countryside free from restrictions, pursuant to their “all-out war” on communism. Their presence in the areas where the killings occurred is undeniable. If there were killing squads or assassins from the NPA roaming in any particular area ready to strike against its former cadres, the military, no doubt, would be one of the first to know.

3. Reaction

Likewise, the reaction of some officers of the armed forces to the rising number of killings lends itself to the inference that they were not much averse to what was happening. Practically nothing was done to prevent or investigate the killings, not even to look into the worsening public opinion and accusations against General Palparan.

4. General Palparan

The rise in killings somehow became more pronounced in areas where General Palparan was assigned. The trend was so unusual that General Palparan was said to have left a trail of blood or bodies in his wake wherever he was assigned. He “earned” the moniker “Berdugo” from activist and media groups for his reputation. General Palparan ascribes his grisly reputation to his enemies, as part of their propaganda campaign to discredit him and to denigrate his excellent performance in implementing the various missions and programs assigned to him by his superiors.

General Palparan, clearly the man in the center of the maelstrom, admits to having uttered statements openly encouraging persons to perform extrajudicial killings against those suspected of being communists, albeit unarmed civilians. Worse, he was reported to have “expressed delight” at the disappearance of at least two persons, mere students, but who were suspected of

being communist or activists.⁶⁷ Among these inculpatory items are the following:

□ Gen. Palparan stated that certain Organizations and Party List Representatives act as support systems providing materials and shelter for the CPP-NPA. ⁶⁸

□ Interviewed by Pia Hontiveros and Tony Velasquez on the TV Program “*Top Story*,” Gen. Palparan, when asked why he considered organizations like Bayan Muna as fronts for the NPA, responded, saying “... a lot of the members are actually involved in atrocities and crimes ...” When asked what evidence he had to support this allegation, he said that he had no evidence, but that “he could feel it.”

□ Referring to certain activist organizations, Gen. Palparan mentioned:

“Even though they are in Government as Party List Representatives, no matter what appearance they take, they are still Enemies of the State.” (May 16, 2006, Philippine Daily Inquirer)⁶⁹

“The Party List Members of Congress are doing things to further the revolution, the communist movement... I wish they were not there...” (Interview with Pia Hontiveros and Tony Velasquez -- Top Story)⁷⁰

“It is my belief that these members of party list in Congress are providing the day-to-day policies of the rebel movement” (February 3, 2006, French Press Agency)⁷¹

“... in the course of our operation, there were some reports that that BAYAN MUNA headquarters at the time in Mindoro was used as a hideout of the armed group. And as I said, a recruitment agency because they recruit young people there as members of some organizations then eventually go up in the mountain. And then, there were those who surrendered to us confirming this...” ⁷²

□ In connection with the repeal of the anti-subversion law, he stated:

“I want communism totally erased.” (May 21, 2006, Philippine Star)⁷³

⁶⁷ “Philippine Communists Call for Resumption of Talks,” Reuter News, July 3, 2006.

⁶⁸ TSN, September 26, 2006, p. 8.

⁶⁹ *Id.* at p. 14.

⁷⁰ *Id.*

⁷¹ *Id.* at pp. 14-15, TSN

⁷² *Id.* at p. 61.

⁷³ *Id.*

"... to wage the ongoing counterinsurgency...— by "neutralizing" not just armed rebels but also a web of alleged front organizations that include leftist political parties, human-rights and women's organizations, even lawyers and members of the clergy." ("Wagging the Buffalo" - September 25, 2006, Newsweek)⁷⁴

"I Encouraged Civilians to Fight Back" (August 22, 2006 issue of Manila Standard Today)

□ Other statements:

"My order to my soldiers is that, if they are certain that there are armed rebels in the house or yard, shoot them. It will just be too bad if civilians are killed in the process. We are sorry if you are killed in the crossfire."⁷⁵

"There would be some collateral damage, but it will be short and tolerable. The enemy would blow it up as a massive violation of human rights. But to me, it would just be necessary incidents."⁷⁶

"Sorry nalang kung may madamay na civilian."; "The death of civilians and local officials were 'small sacrifices' brought about by the military's anti-insurgency campaign." (Philippine Daily Inquirer, September 12, 2006)⁷⁷

"[T]hey cannot be stopped completely ... the killings, I would say are necessary incidents in a conflict because they (referring to the rebels) are violent. It's not necessary that the military alone should be blamed. We are armed, of course, and trained to confront and control violence. But other people whose lives are affected in these areas are also participating ... "⁷⁸

"The killings are being attributed to me but I did not kill them, I just inspired the triggermen."

On being asked if his soldiers are responsible for the killings: "... perhaps maybe, if there are, and if they do that, that's their own responsibility, it's not mine..."⁷⁹

"...some soldiers are emotional when their comrades are hurt or killed. There could be soldiers who decide to take the law into their own hands. But that's illegal."⁸⁰

I cannot categorically deny that (referring to the military having special units not properly identified in bonnets and masks operating in the middle of the night.)"⁸¹

⁷⁴ *Id.* at p. 18.

⁷⁵ *Id.* at p. 30.

⁷⁶ *Id.*

⁷⁷ *Id.* at p. 33.

⁷⁸ *Id.* at p. 34.

⁷⁹ *Id.* at p. 32.

⁸⁰ *Id.*

⁸¹ *Id.* at p. 42.

“I am responsible (referring to extra-judicial killings), relatively perhaps,” Gen. Palparan said that his actions could have encouraged people to take the law into their own hands. He, however, qualified this by saying it was not really intentional on his part.⁸²

“... So if I have, within my capacity to prevent it, I would prevent the same. But in the course of our campaign, I could have encouraged people to do that. So maaaring may responsibility ako doon, on that aspect. But how could I prevent that, we are engaged in this conflict. All my actuations really are designed to defeat the enemy. And in doing so, others might have been encouraged to take actions on their own.”

*“whoever did this ... could have been encouraged by my actions and actuations in the course of my campaign, whoever they are. That is why I said, relatively. If there are some soldiers, maybe then, I could have been remiss in that aspect. But we are doing our best to keep our soldiers within our mandate.”*⁸³

General Palparan’s numerous public statements caught on film or relayed through print media give the overall impression that he is not a bit disturbed by the extrajudicial killings of civilian activists, whom he considers enemies of the state. He admits having uttered statements that may have encouraged the said killings. He also obviously condones these killings, by failing to properly investigate the possibility that his men may have been behind them.

General Palparan’s statements and cavalier attitude towards the killings inevitably reveals that he has no qualms about the killing of those whom he considers his enemies, whether by his order or done by his men independently. He mentions that if his men kill civilians suspected of NPA connections, “it is their call,” obviously meaning that it is up to them to do so. This gives the impression that he may not order the killings, **but neither will he order his men to desist from doing so**. Under the doctrine of command responsibility, General Palparan admitted his guilt of the said crimes when he made this statement. Worse, he admittedly offers encouragement and “inspiration” to those who may have been responsible for the killings.

He also admits to having helped in the creation of so-called “barangay defense forces”, which may or may not be armed, to prevent the entry of

⁸² *Id.* at p. 57.

⁸³ *Id.* at p. 58.

CPP/NPA in such barangays. Such defense forces are equivalent to an unofficial civilian militia. It is well-known that such militia can easily degenerate into a mindless armed mob, where the majority simply lord it over the minority. This is a fertile situation for extrajudicial killings. In this way, General Palparan contributed to the extrajudicial killings by creating ideal situations for their commission and by indirectly encouraging them.

Then too, during a hearing before the Committee on National Defense and Security of the House of Representatives held on May 25, 2005, General Palparan was asked the following questions by the Chairman of the Committee, Congressman Roilo Golez:

“The Chairman: Thank you, Your Honor. May we have your comment on the accusation that you have special teams not properly identified in bonnets or masks operating in the middle of the night?”

“Mr. Palparan: Your Honor, I cannot categorically deny that and also admit that, but our operations ...”

“The Chairman: You do have teams that operate that way?

“Mr. Palparan: I don’t have official policy on that matter.”

The lack of a categorical denial on the part of Gen. Palparan in respect of whether the units under his command “have special teams not properly identified [and] in bonnets or masks operating in the middle of the night” is, as a matter of law, an admission of the existence of such special teams⁸⁴. Obviously, such special teams operating in the middle of the night wearing masks or in bonnets have only one sinister and devious purpose or objective: the extrajudicial elimination of the enemies of whoever formed these teams.

Moreover, it is not disputed that the number of killings rose in the areas where Gen. Palparan was assigned. Gen. Palparan explained that this was due to increased number of operations against the NPA, thus resulting in more encounters and deaths. However, the figures for the increase in number of civilian activists killed **outside** of encounters was not explained. In any case, all

⁸⁴ Section 32, Rule 130, Rules of Court.

other authorities admit that there was indeed a rise in the killings of unarmed activists and media personnel.

However, due to the lack of cooperation from the activist groups, not enough evidence was presented before the Commission to allow it to pinpoint and eventually to recommend prosecution of the persons ultimately responsible for the killings. There is no definite or identifiable person, entity or interest behind the killings. There is likewise no definitive account of the actual number of activist killings. Even Karapatan and Amnesty International have wildly differing figures.

The circumstantial evidence presented before the Commission and the inferences it draws therefrom are probably grossly inadequate to support a criminal conviction, considering the requirement that conviction before a court requires proof beyond reasonable doubt. However, the Commission is not a court of law bridled with the strict rules on admissibility and weight of evidence. Thus, it can proceed with a certain degree of certitude in stating that, in all probability, some elements in the military, among whom is **suspected** to be General Palparan, are responsible for the recent killings of activists. **In any case, further in-depth investigation into the numerous killings, including extensive evidence gathering, is necessary for the successful prosecution of those directly responsible.** In this, the testimony of witnesses and the presentation of evidence from the victims and their families and colleagues would be indispensable.

B. GENERAL PALPARAN AND PERHAPS SOME OF HIS SUPERIOR OFFICERS, MAY BE HELD RESPONSIBLE FOR FAILING TO PREVENT, PUNISH OR CONDEMN THE KILLINGS UNDER THE PRINCIPLE OF COMMAND RESPONSIBILITY.

It being well-nigh obvious that some elements in the military were behind the killings of activists, it becomes equally plain that some ranking officers in the Army (for the Navy, Air Force and Coast Guard are not herein involved), have not performed their function of investigating or preventing the said killings, as well as punishing their perpetrators. Under the doctrine of command

responsibility, one may be held responsible for the killings if he authorized, encouraged, ignored or tolerated the killings.

This failure to act may perhaps be attributed to the misconception of some that command responsibility extends only to acts which a commander orders or authorizes, and not to criminal acts of his subordinates done on their own, although he had knowledge or, had reason to know of, or should have known about the same. Failure to investigate and to punish is just as inculpatory.

1. Command Responsibility defined

Contrary to the apparently inaccurate notion of command responsibility entertained by some officers in the AFP, command responsibility in the modern international law sense is also an *omission* mode of individual criminal liability wherein the superior officer is responsible for crimes committed by his subordinates **for failing to prevent or punish them** (as opposed to crimes he ordered).

The doctrine of “command responsibility” is not unfamiliar, being a guiding principle in military organizations. The doctrine was formalized by the Hague Conventions IV (1907) and X (1907) and applied for the first time by the German Supreme Court in Leipzig after World War I, in the *Trial of Emil Muller*. Muller was sentenced by the Court for failing to prevent the commission of crimes and to punish the perpetrators thereof.

The 1946 *Yamashita* case⁸⁵ is a decision of the US Supreme Court which was appealed from the Philippine Supreme Court, when the Philippines was still a colony of the United States. The US Supreme Court convicted Yamashita as the superior of the Japanese forces which committed unspeakable atrocities throughout the Philippines, acts of violence, cruelty, and murder upon the civilian population and prisoners of war, particularly a large-scale massacre of civilians in Batangas, as well as wholesale pillage and wanton destruction of religious monuments in the country. The US Supreme Court determined that Yamashita possessed the duty as an army commander to control the operations of his troops, and was criminally liable for permitting them to commit such

⁸⁵ 327 U.S. 1 (1946).

despicable acts. Various laws of warfare were cited as basis of such superior responsibility: Articles 1 and 43 of the Regulations annexed to the Fourth Hague Convention of 1907, Article 19 of the Tenth Hague Convention of 1907, and Article 26 of the 1926 Geneva Convention on the wounded and sick. The Court concluded that Yamashita possessed:⁸⁶

...an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals.⁸⁷

In the Medina case,⁸⁸ concerning the infamous My Lai Massacre in Vietnam, it was held by an American Court Martial that a commander will be liable for crimes of his subordinates when he orders a crime committed or knows that a crime is about to be committed, has power to prevent it, and fails to exercise that power.

After the Hague Convention, the first international treaty to comprehensively codify the doctrine of command responsibility is the Additional Protocol I (AP I) of 1977 to the Geneva Conventions of 1949, Article 86(2) of which states that:

... the fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from ...responsibility...if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or about to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 87 obliges a commander to "prevent and, where necessary, to suppress and report to competent authorities" any violation of the Conventions and of AP I. In Article 86(2) for the first time a provision would "explicitly address the knowledge factor of command responsibility."⁸⁹ While the Philippines signed and ratified the Geneva Convention of 1949, it has only signed and has not ratified AP I.

⁸⁶ CASSESSE, ANTONIO, INTERNATIONAL CRIMINAL LAW 203-204 (2003).

⁸⁷ *Id.*, citing the *Yamashita* case.

⁸⁸ *U.S. v. Medina*, 32 C.M.R. 1182 (A.C.M.R. 1973)

⁸⁹ Command Responsibility: The Mens Rea Requirement By Eugenia Levine, *Global Policy Forum* February 2005, at <http://www.globalpolicy.org/intljustice/general/2005/command.htm>

The establishment of the International Criminal Tribunal for Yugoslavia (ICTY) by the United Nations Security Council has led to further international jurisprudence on the doctrine of command responsibility.

Article 7(3) of the ICTY Statute states that the fact that the crimes ‘were committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.’ In *Prosecutor v. Delalic et al* (“the Celebici case”), the ICTY elaborated a threefold requirement for the existence of command responsibility, which has been confirmed by subsequent jurisprudence⁹⁰:

1. the existence of a superior-subordinate relationship;
2. that the superior knew or had reason to know that the criminal act was about to be or had been committed; and
3. that the superior failed to take the reasonable measures to prevent the criminal act or to punish the perpetrator thereof.

The applicable standards of knowledge defined in the second requirement can further be classified as: (a) “Actual knowledge” - which may be established by either direct or indirect evidence; and (b) “Had reason to know” wherein absence of knowledge is not a defense where the accused did not take reasonable steps to acquire such knowledge. Notably, in the case of *Prosecutor v Timohir Blaskic*, (“the Blaskic case”), it was held that ignorance is not a defense where the absence of knowledge is the result of negligence in the discharge of duties.

The latest expression of the doctrine of command responsibility in international law is in Article 28 of the Rome Statute of the ICC which states:

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or

⁹⁰ Confirmed in the later cases of *The Prosecutor v Timohir Blaskic*, Case No. IT-95-14-T, Judgment, Trial Chamber, 3 March 2000 par 294; *The Prosecutor v Zlatko Aleksovski*, Case. No. IT-95-14/1-T, Judgment, Trial Chamber, 25 June 1999, par 69; *The Prosecutor v Dario Kordic and Mario Cerkez*, Case no. IT-95-14/2, Judgment, Trial Chamber, 26 February 2001, par 401; *The Prosecutor v Dragoljub Kunarac and Radomir Kovac*, Case No. IT-96-23, Judgement, Trial Chamber, 22 February 2001, par. 395.

effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 28(a) imposes individual responsibility on military commanders for crimes committed by forces under their effective command and control if they ‘either knew or, owing to the circumstances at the time, **should have known** that the forces were committing or about to commit such crimes.’

Interpreted literally, Article 28(a) adopts the stricter “**should have known**” standard. Notably, the Trial Chamber in *Celebici* strongly suggested that the language of Article 28(a) may reasonably be interpreted to impose an affirmative duty to remain informed of the activities of subordinates. However, given the example afforded by the ICTY’s conflicting interpretations of the knowledge requirement in Article 86(2) of AP I, it cannot be assumed that a literal

interpretation of Article 28(a) will be adopted by the ICC. In fact, the meaning of the phrase 'owing to the circumstances at the time, should have known' in Article 28(a) has already become a point of contention within international law literature. AP I and the Rome Statute, however, have not been ratified by the Philippines, but clearly the international trend is towards their application.

From the long line of international conventions and cases, it can be seen that the doctrine of command responsibility has evolved from its simplistic meaning at the time of the Hague Convention towards the much more stringent concept under the Rome Statute. Hence, in the *Yamashita* case, a commander had the duty to take appropriate steps or measures to prevent abuses on prisoners and civilians by his subordinates. In AP I, a superior is responsible if he fails to take feasible measures to prevent or report violations if he had knowledge or information of the same. In the *Medina* standard, the same responsibility extends to violations or abuses by subordinates **which a commander "should have knowledge" of**, meaning that the commander is now responsible for criminal acts of his subordinates of which he had **actual or constructive knowledge**. In the ICTY Statute and in the cases of *Delalic* and *Blaskic*, the commander is liable if he fails to act when he **"had reason to know"** that offenses would be or have been committed by his subordinates. The Rome Statute adopts the stricter **"should have known"** standard, in which the commander **has an affirmative duty to keep himself informed of the activities of subordinates**. Clearly, the indubitable trend in international law is to place greater and heavier responsibility on those who are in positions of command or control over military and police personnel, the only forces with the most lethal weapons at their disposal.

2. Command Responsibility as Binding Customary International Law

As early as 1949, the Philippine Supreme Court had the occasion to rule that the Hague Convention, including the doctrine of command responsibility, was adopted as a generally accepted principle of international law by the Philippines. In this case, shortly after the end of World War II, Shigenori Kuroda, a Lieutenant General in the Japanese Imperial Army, questioned before the Supreme Court the creation of a military tribunal that tried him for his "command responsibility" in failing to prevent his troops from committing

abuses and atrocities against the Filipino populace during World War II. He claimed that the Hague Convention on Rules and Regulations covering Land Warfare, of which he was accused of violating, among others, was inapplicable since the Philippines was not yet a signatory or party to it when the alleged violations took place.

In ruling against Kuroda's objection, the Supreme Court of the Philippines⁹¹ categorically stated that while the Philippines was indeed not a party or signatory to the Hague Convention at the times in question, it nonetheless embodied generally accepted principles of international law adopted by the 1935 Constitution as part of the law of the land. The Supreme Court, through Chief Justice Moran, stated:

It cannot be denied that the rules and regulations of the Hague and Geneva conventions form part of and are wholly based on the generally accepted principles of international law. In fact, these rules and principles were accepted by the two belligerent nations, the United States and Japan, who were signatories to the two Conventions. **Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them,** for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory.⁹²

Even without *Kuroda*, the doctrine of command responsibility has truly acquired the status of customary international law, and is thus binding on all nations despite the lack of any ratified treaty embodying it, at least insofar as the Philippines is concerned. Its long and universally accepted application since WWI until the present allows this. In fact, based on the jurisprudence of the *ad hoc* international tribunals, and of other international tribunals and national courts, as well as on state practice, no less than the International Committee on the Red Cross ("ICRC"), has pronounced the following as a rule of customary international humanitarian law, in both international and non-international armed conflicts, binding on all States:

Rule 153. Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to

⁹¹ In *Kuroda v. Jalandoni*, G.R. No. L-2662. March 26, 1949; 90 Phil. 70 (1951)

⁹² *Id.*, emphasis supplied.

commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.⁹³

More interestingly, the Philippines, even if not a party to Additional Protocol I to the 1949 Geneva Conventions, is among the states cited by the ICRC whose military manuals, military instructions, and legislation specify the responsibility of commanders for the crimes of their subordinates, confirming that the above rule has crystallized into a norm of customary international humanitarian law.⁹⁴ In truth, the Philippine Armed Forces' own Articles of War recognizes a commander's responsibility for the actions of his subordinates under the general provision that a commander must maintain discipline within his ranks. Thus, Article 97 of the Articles of War states:

General Article. Though not mentioned in articles, all disorders and neglects to the prejudice of good order and discipline and all conduct of a nature to bring discredit upon the military services shall be taken cognizance of by a general or special or summary court martial according to the nature and degree of the offense, and punished at the discretion of such court.

Likewise, the utterance of statements which tend to induce subordinates to misbehave, such as words that would inspire subordinates to commit extrajudicial killings, is categorically punished in times of war under Article 76 of the Articles of War. Furthermore, Article 105 of the Articles of War recognizes the duty of commanding officer to punish men under his command for "minor offenses" and imposes a penalty for his failure to mete out the appropriate penalty when there is enough evidence to warrant such disciplinary measure.

Hence, it is clear that the doctrine of command responsibility in general has been adopted by the Philippines⁹⁵, as a generally accepted principle of international law, and hence, as part of the law of the land. The doctrine's refinements and restatements – AP I and the Rome Statute, while signed by but as of yet lacking ratification by the Philippines, may be considered similarly

⁹³ HENCKAERTS, JEAN-MARIE AND LOUISE DOSWALD BECK, I CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 558 (2005).

⁹⁴ *Id.*, at 559, fn. 45.

⁹⁵ Under the pronouncement in *Kuroda*.

applicable and binding. This was probably put best by Justice Perfecto in his separate opinion in *Yamashita v. Styer*,⁹⁶ where he stated:

The treaties entered into between members of the family of nations are but specific definitions and reinforcements of the general common law of nations, the "unwritten" rules of warfare, which for centuries have limited the method and manner of conducting wars. The common law of nations, by which all states are and must be bound, dictates that warfare shall be carried on only in accordance with basic considerations of humanity and chivalry.

3. International and State Responsibility

While the killings are certainly not attributable to the military organization itself, or the State, but only to individuals or groups acting pursuant to their own interests, this does not mean that the State can sit idly by and refuse to act. Ultimately, the State has the responsibility of protecting its citizens and making sure that their fundamental liberties are respected.

The growing worldwide consensus for state responsibility for non-state acts posits that if the State fails to investigate, prosecute or redress private, non-state acts in violation of fundamental liberties, it is in effect aiding the perpetrators of such violations, for which it could be held responsible under international law. Of note is the ruling of The Inter American Court of Human Rights in *Velasquez-Rodriguez v. Honduras*,⁹⁷ viz:

172. [...] An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of private person or because the person responsible has not been identified) **can lead to international responsibility of the State**, not because of the act itself, but because of the **lack of due diligence to prevent the violation or to respond to it** as required by the Convention.

173. [...] What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed

⁹⁶ 75 Phil. 563, G.R. No. L-129. December 19, 1945.

⁹⁷ Case No. 7920, July 29, 1988; quoted by then Justice, now Chief Justice Reynato S. Puno in *Liberty and Prosperity*, Panel Paper delivered at the National Forum on Liberty and Prosperity, Manila Hotel, August 25, 2006. The Convention referred to therein is the American Convention on Human Rights, or the "Pact of San Jose, Costa Rica."

the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1 (1) of the Convention.

174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

175. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages [...]

177. In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. **The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.** An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.⁹⁸

The Inter-American Court of Human Rights eventually found Honduras, as a state, liable for the prolonged detention and disappearance of a detainee, thereby entitling the victim's family to damages.

The same offenses may also give rise to liability for the commanders for damages under the municipal law of other States. In another case relevant to the Philippine setting, *Maximo Hilao v. Estate of Ferdinand Marcos*⁹⁹ decided by the Ninth Circuit of U.S. Court of Appeals, victims and families of victims of human rights violations during the administration of Pres. Ferdinand Marcos filed a class suit against the estate of the late President seeking damages for human

⁹⁸ *Id.*, emphasis supplied.

⁹⁹ 103 F.2d 767.

rights abuses committed against them or their decedents. The principal defense of the Marcos Estate was that the Estate would only be held liable for “acts actually committed by Ferdinand Marcos”. The U.S. Circuit Court of Appeals rejected this defense under the doctrine of command responsibility, holding that “[A] higher official need not have personally performed or ordered the abuses in order to be held liable” and that “[R]esponsibility for torture, summary execution, or disappearances extends beyond the person who actually committed those acts – anyone with higher authority who authorized, tolerated or knowingly ignored those acts is liable for them.”¹⁰⁰ This shows that responsibility for acts committed in violation of customary international law may be recognized outside the state where they were committed by the international community.

4. Responsibility for killings is limited to individual officers and requires further proof of a wrongful act or omission.

While State responsibility is possible for private acts, there is no basis to hold liable the entire military leadership, or even the entire leadership of one of its branches, under the doctrine of command responsibility. The findings herein do not justify a ruling that each and every high-ranking officer in the military, or the institution itself, should be held liable for the killings.

In any case, **command responsibility should always be coupled with a culpable act or omission. Hence, if it is shown that the officer concerned took the appropriate steps to address the violations of his subordinates, then he cannot be held liable for them under the doctrine of command responsibility.** In all, command responsibility simply requires a measure of diligence and integrity on the part of the commander. He cannot simply let his men run amuck without his control or discipline in the same way that he cannot turn a blind eye to atrocities committed by them. **If diligence in the performance of duty is shown, then the commander cannot be held responsible.**

No evidence was presented to the Commission that, in regard to the activities of General Palparan, he was called upon to account for and to explain

¹⁰⁰ Emphasis and underscoring supplied.

the same by his superiors. Indeed, General Palparan's public statements alone could have provoked disciplinary action against him, not to mention court martial, for violation of the Articles of War. These offenses are serious and cannot simply be brushed aside. It was, thus, more compelling for the proper officers in the AFP leadership at least to investigate the utterances and behavior of General Palparan and the killings behind them. In the same vein, under the doctrine of command responsibility, it was not proper to contend that no action under the circumstances was taken because no complaint had been lodged against Gen. Palparan and/or that anyway, Task Force Usig could very well have called him to account for his actions and words.

Fortunately, the President was, as usual, on top of the situation. She promptly recognized the need for official state action to address what she felt was a disturbing rise in the number of killings of media men and activists. She recognized that she had the duty to address the situation appropriately. She created Task Force Usig to prioritize the investigation of the killings. While Task Force Usig was plagued with difficulties, this at least showed that the government was seriously going to do its duty to address these killings.

In the same vein, the President's creation of this independent Commission is testimony to her commitment to unearth the etiology of these killings and hopefully to prevent further killings, as well as to bring the perpetrators thereof to justice. Sadly, her gesture has been largely misinterpreted by her political opponents as a "whitewash," which, as this report itself will show, is not the case.

V. RECOMMENDATIONS

The Commission's recommendations, which mostly fall within the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the Economic and Social Council of the United Nations on May 24, 1989, are as follows:

A. Political will

With respect to the recent killing of Abra Representative Luis Bersamin, Jr., the President vowed that the perpetrators, mastermind, and all, will be brought to justice. As regards the communist insurgency, the President has ordered the armed forces to crush it within two years.

In the field of extralegal killings, it is urged that the President reiterate in the strongest possible manner her expressions or pronouncements of determination and firm resolve to stop the same. If extrajudicial executions are to be stopped, the political will to do what is right however great the cost must pervade all levels of government so that our beloved country can move towards the greater ideals of democracy and justice; it must start with the President who must pursue the prevention and prosecution of extrajudicial killings with urgency and fervor.

As recommended by Amnesty International, the Government must consistently and at all levels condemn political killings. The President and all the departments of the Government should make clear to all members of the police and military forces that extrajudicial executions will not be countenanced under any circumstances.

B. Investigation

To ensure that all reports and complaints of extrajudicial killings against the military are investigated promptly, impartially, and effectively, the investigation must be conducted by a body or agency independent from the armed forces. This civilian investigative agency should be independent of, and not under the command, control, or influence of the Armed Forces, and it must have control of its own budget. The personnel must be civilian agents well trained in law enforcement and investigative work and equipped with the necessary array of technical devices to enhance their investigative capabilities. They must be authorized to execute warrants and make arrests. They must be provided with an adequate forensic laboratory and other technical services. In the United States, the Army's professional investigative agency is called the Criminal Investigation Division; the Air Force's is called the Office of Special

Investigation; the Navy and Marines are serviced by the Naval Criminal Investigation Service; and for the Coast Guard, the organization is called the Coast Guard Investigation Service. Our armed forces is not so big as to require separate agencies for its services. A single investigating body will be enough. The President should recommend legislation to Congress for the creation of a similar investigation agency to look into and prosecute complaints against military personnel.

On the part of the PNP, the law that created the National Police Commission (Rep. Act No. 6995) should be amended and strengthened to ensure the thorough and impartial investigation of erring police officers by personnel not under the control of the PNP command.

In the conduct of the investigation of extrajudicial killing of activists, or of any case for that matter, the PNP must be enjoined to ensure that the evidence must be strong and sufficient for conviction. The present policy of the PNP - as confirmed by Police Deputy Director General Avelino Razon, Jr. in his testimony before the Commission - to consider their job done or finished from the moment they have filed the complaint with the office of the public prosecutor has inevitably encouraged sloppy and shoddy investigations; it is not infrequent that police investigators, especially in remote areas, would file a case with the office of the public prosecutor, no matter how inadequate the evidence is, just so they can say that the case has been solved and if it is later dismissed for insufficiency of evidence they blame the prosecutor for incompetence or for being corrupt.

The office of the public prosecutor in each province or city must assign prosecutors to review all complaints filed by the police to evaluate the sufficiency of evidence not only to determine the existence of probable cause but also for conviction. If the reviewing prosecutor is of the opinion that the evidence is insufficient, then he must reject the complaint and return it to the police, indicating what additional evidence is needed. Once a complaint is accepted after such review, it means that there is enough evidence for a successful prosecution. This will avoid finger pointing on who is to blame for the dismissal of a case or acquittal of the accused and, more importantly, compel the police to do a thorough job in the investigation of every case.

If after the lapse of six (6) months from the commission of the extrajudicial killing of an activist or media personality the investigation by PNP has not yielded any positive result, the police personnel in charge must request the NBI to take over the investigation. For this purpose, the NBI must be provided with the necessary funds and allowed to hire additional personnel if necessary.

C. Prosecution

To ensure that those responsible for the extrajudicial execution of activists and media people are brought to justice and that the prosecution is handled with efficiency and dispatch, the Department of Justice (DOJ) must create a special team of competent and well-trained prosecutors to handle the trial of said cases. Also, the DOJ should request the Supreme Court to designate special courts to hear and try said cases and to require the courts so designated to give the highest priority to them, conduct daily hearings, and resolve them within six (6) months.

With respect to pending cases the prosecution of which has not been moving for lack of judges or because of the fault or negligence of the public prosecutor, the Office of the Chief State Prosecutor should make representations with the Office of the Court Administrator to detail judges to the vacant salas, or to designate special prosecutors to take over the prosecution, as the case may be.

As regards killings in areas where witnesses are afraid to testify because of fear of reprisal, steps should be taken to transfer the venue to Manila.

D. Protection of witnesses

As part of the need to ensure the successful prosecution of those responsible for extrajudicial killings, the present Witness Protection Program created under Republic Act. No. 6981 should be enhanced and made more effective so as to guarantee the safety of witnesses to the killings. The existing program is suffering from lack of funds and necessary manpower. The Government must give the highest priority to the improvement, strengthening,

and funding of said program, preferably patterned after the U.S. federal witness protection program.¹⁰¹

The program should also be made available to persons who have received death threats or who are otherwise in danger of extralegal, arbitrary or summary execution.

E. Special law for strict chain-of-command responsibility

The President should propose legislation to require police and military forces and other government officials to maintain strict chain-of-command responsibility with respect to extrajudicial killings and other offenses committed by personnel under their command, control or authority. Such legislation must deal specifically with extralegal, arbitrary, and summary executions and forced “disappearances” and provide appropriate penalties which take into account the gravity of the offense. It should penalize a superior government official, military or otherwise, who encourages, incites, tolerates or ignores, any extrajudicial killing committed by a subordinate. The failure of such a government official to prevent an extrajudicial killing if he had a reasonable opportunity to do so, or his failure to investigate and punish his subordinate, or to otherwise take appropriate action to deter or prevent its commission or punish his erring subordinate should be criminalized. Even “general information” – e.g., media reports – which would place the superior on notice of possible unlawful acts by his subordinate should be sufficient to hold him criminally liable if he failed to investigate and punish his subordinate.

There should be no requirement that a causal relationship be established between a superior’s failure to act and the subordinate’s crime; his liability under the doctrine of command responsibility should be based on his omission to prevent the commission of the offense or to punish the perpetrator.

F. Enhancement of investigative capabilities of the PNP and NBI.

¹⁰¹ See 18 U.S.C.A. section 3521.

The investigative capabilities of the PNP and NBI should be improved and enhanced through the following measures, among others:

- (a) improvement of the forensic laboratories and equipment of the PNP and NBI and further training of forensic technicians;
- (b) establishment of a national automated ballistic information system;
- (c) procurement of a software program for composite sketches of suspects;
- (d) adoption of crime mapping in all police stations and NBI offices; and
- (e) strengthening of the information reward system.

G. Proper orientation and training of security forces.

Perhaps much of the failure of the proper and accountable officers to prevent, investigate, or punish criminal acts by their subordinates stems from a lack of proper understanding and emphasis on the present concept of command responsibility. The AFP should be encouraged and supported to conduct intensive seminars, orientations, or training for mid to high-ranking officers, to make them conscious of the prevailing doctrines of command responsibility, and the ramifications thereof. This will hopefully foster responsibility and accountability among the officers concerned, as well as the men they command.

Understandable is the military's wariness in dealing with the party list organizations. However, unless otherwise declared outside the law by competent authority, these organizations should be treated with fairness and their members should not be unilaterally considered as "enemies of the state."

As suggested in Amnesty International's 14-point Program for the prevention of extra-legal executions: "The prohibition of extra-judicial executions should be reflected in the training of all officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force and in the instructions issued to them. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in an extrajudicial

execution. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extra-judicial execution.”

VI. CONCLUSION

In ancient Sparta, life was dictated by war. In those turbulent times, city states were almost constantly at war – with other neighboring city states and with marauding invaders. Thus, a strong military was absolutely necessary to the survival of the state.

All male Spartan citizens were automatically warriors, and had to train and eventually fight as such. Such militarism gave Sparta its greatness. The valor of its warriors and their unflinching military discipline are legendary, even to this day. They were the strands with which was woven the fabric of Spartan society. Everything revolved around the Spartan warriors. Indeed, it was stated that, unlike other ancient city-states such as Athens or Rome, one can no longer see great temples, palaces or buildings in what was once Sparta, but still the valorous deeds of Spartans are recalled and remain standards of military organizations.

Spartans, as they are legendary now, were probably awe-inspiring then. So great was their military prowess that a mere three hundred of them, reinforced by only a handful of allies, held off the invading Persian hordes at Thermopylae, thus allowing precious time for the rest of the Greek allies to organize a defense. History shows that it pays to have a mighty armed force. The Persians were eventually defeated.

In modern times, the importance of the armed forces cannot be taken lightly. In the Philippines, the lack of a cohesive and disciplined armed force allowed the colonization of the country by Spain. The same reason led the Americans to simply take the country away from Spain, and quell the Filipino resistance. In the early stages of World War II in the Pacific, Japan’s military might overwhelmed its enemies, including the Philippines, though bolstered by American troops and ordnance. Indeed, one of the main reasons for the

colonizers is that the Philippines occupies a strategic military location in this part of the globe.

Today, the importance of the military is not lost upon this Commission. It is absolutely necessary because of the threat to the nation posed by communist insurgency. The Constitution provides that “[t]he Armed Forces of the Philippines is the protector of the people and the State.”¹⁰² The Armed Forces of the Philippines, as protector of the people, is mandated to rid the country of such insurgency. **Verily, the AFP as a whole remains loyal to the Constitution.**

While communist insurgency must be addressed, the fight against it must not be at the expense of the Constitution and the laws of the nation, and it hardly needs emphasizing, not at the expense of innocent civilians. The armed forces is not a state within a state, nor are its members outside the ambit of the Constitution or of the rule of law. Ours is a government of laws, not of men. On the pervading reach of the rule of law, a legal luminary opined thus:

The rule of law is supposed to pervade our legal system....

The rule of law has been considered, in a government like ours, as equivalent to the supremacy of the Constitution. It is generally recognized that the Constitution sets the limits on the powers of government; it prevents arbitrary rule and despotism; it insures government by law, instead of government by will, which is tyranny based on naked force.¹⁰³

In the Philippines, just like in any rule-abiding society, there exists a hierarchy of human positive laws, the highest of which is the Constitution, “being the highest expression of the sovereign will of the Filipino people.”¹⁰⁴ The principle of Constitutional supremacy was explained by an eminent authority in Constitutional law in this wise:

¹⁰² See Section 3, Article II of the Constitution.

¹⁰³ Tolentino, Arturo. *The Rule of Law and our Constitution*, 36 U.S.T. L. REV. 41 [1985]

¹⁰⁴ See *Senate v. Ermita*, G.R.Nos. 169777, 169659, 169660, 169667, 169834, 1711246, 20 April 2006, where the Supreme Court declared:

For the Constitution, being the highest expression of the sovereign will of the Filipino people, must prevail over any issuance of the government that contravenes its mandates.

[The Constitution] is 'the written instrument agreed upon by the people... as the absolute rule of action and decision for all departments and officers of the government... and in opposition to which any act or rule of any department or officer of the government, or even of the people themselves, will be altogether void.' It is, in other words, the supreme written law of the land.¹⁰⁵

"The Philippines," declares the Constitution, "is a democratic and republican State."¹⁰⁶ An essential characteristic of such State is the rule of law, which principle is expressly mentioned in the Constitution's Preamble. According to the previously cited authority, the rule of law "expresses the concept that government officials have only the authority given them by law and defined by law, and that such authority continues only with the consent of the people"¹⁰⁷ Thus, without any hesitation, the Supreme Court in *Callanta v. Office of the Ombudsman*¹⁰⁸ declared that "[i]n our jurisdiction, the rule of law, and not of men, governs," while in *Villavicencio v. Lukban*,¹⁰⁹ it upheld the primacy of law by declaring that "[n]o official, no matter how high, is above the law."

The rationale for this rule of law was probably best expressed by Brandeis in this wise:

In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent omnipresent teacher. For good or ill, it teaches the whole people by example. Crime is contagious. If the government becomes the law breaker, it breeds contempt for the law, it invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of criminal law the end justifies the means would bring terrible retribution.¹¹⁰

In fact, the Supreme Court is not unfamiliar with the present situation. Of particular interest is the case of *Aberca v. Ver*.¹¹¹ In ruling that pre-emptive strikes by the military against suspected communist safehouses violated the civil rights of the victims, and thus made the perpetrators thereof liable for damages, the Supreme Court, through Justice Pedro L. Yap, stated.

¹⁰⁵ Bernas, Joaquin, S.J., *The 1987 Philippine Constitution: A Commentary*, p. xxxiv-v (1996 Ed.); citing Cooley, *Constitutional Limitations* 3 (1868); emphasis supplied.

¹⁰⁶ Section 1, Article II of the Constitution.

¹⁰⁷ Bernas, Joaquin, S.J., *The 1987 Constitution: A Reviewer-Primer*, p. 3 (4th Ed., 2002).

¹⁰⁸ G.R. Nos. 115253-74, 30 January 1998.

¹⁰⁹ 39 Phil. 778 (1919).

¹¹⁰ 1 *Olmstead v. U.S.* 277 U.S. 438; J. Brandeis, dissenting opinion.

¹¹¹ 160 SCRA 590; G.R. No. L-69866. April 15, 1988

Its message is clear; no man may seek to violate those sacred rights with impunity. In times of great upheaval or of social and political stress, when the temptation is strongest to yield – borrowing the words of Chief Justice Claudio Teehankee – to the law of force rather than the force of law, it is necessary to remind ourselves that certain basic rights and liberties are immutable and cannot be sacrificed to the transient needs or imperious demands of the ruling power. The rule of law must prevail, or else liberty will perish. Our commitment to democratic principles and to the rule of law compels us to reject the view which reduces law to nothing but the expression of the will of the predominant power in the community. **"Democracy cannot be a reign of progress, of liberty, of justice, unless the law is respected by him who makes it and by him for whom it is made. Now this respect implies a maximum of faith, a minimum of idealism.** On going to the bottom of the matter, we discover that life demands of us a certain residuum of sentiment which is not derived from reason, but which reason nevertheless controls.

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It may be that the respondents, as members of the Armed Forces of the Philippines, were merely responding to their duty, as they claim, "to prevent or suppress lawless violence, insurrection, rebellion and subversion" in accordance with Proclamation No. 2054 of President Marcos, despite the lifting of martial law on January 27, 1981, and in pursuance of such objective, to **launch preemptive strikes against alleged communist terrorist underground houses.** But this cannot be construed as a blanket license or a roving commission untrammelled by any constitutional restraint, to disregard or transgress upon the rights and liberties of the individual citizen enshrined in and protected by the Constitution. The Constitution remains the supreme law of the land to which all officials, high or low, civilian or military, owe obedience and allegiance at all times.

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Be that as it may, however, the decisive factor in this case, in our view, is the language of Article 32. The law speaks of an officer or employee or person "directly" or "indirectly" responsible for the violation of the constitutional rights and liberties of another. Thus, it is not the actor alone (i.e. the one directly responsible) who must answer for damages under Article 32; **the person indirectly responsible has also to answer for the damages or injury caused to the aggrieved party.**

By this provision, **the principle of accountability of public officials** under the Constitution acquires added meaning and assumes a larger dimension. **No longer may a superior official relax his vigilance or abdicate his duty to supervise his subordinates, secure in the thought that he does not have to answer for the transgressions committed by the latter against the**

constitutionally protected rights and liberties of the citizen. Part of the factors that propelled people power in February 1986 was the widely held perception that the government was callous or indifferent to, if not actually responsible for, the rampant violations of human rights. While it would certainly be too naive to expect that violators of human rights would easily be deterred by the prospect of facing damage suits, it should nonetheless be made clear in no uncertain terms that Article 32 of the Civil Code makes the persons who are directly, as well as indirectly, responsible for the transgression joint tortfeasors.¹¹²

Even assuming that these victims and these “enemies of the state” are indeed guilty of crimes against the nation, **they have not been convicted of the said offenses.** If some military elements indeed had reason to believe that these persons were NPA agents or operatives, then they could have simply instituted the proper criminal actions against them and had them arrested. **By declaring persons enemies of the state, and in effect, adjudging them guilty of crimes, these persons have arrogated unto themselves the power of the courts and of the executive branch of government.** It is as if their judgment is: These people, as enemies of the state, deserve to be slain on sight. This, they cannot do. Such an abuse of power strikes at the very heart of freedom and democracy, which are, ironically, the very bylines and principles these rogue elements invoke in seeking the “neutralization” of these so-called enemies of state.

This Commission is not ignorant or unmindful of the crimes committed by insurgents, nor of the benefits of having a decent military to defend our freedom and way of life. **To be sure, those slain by rebels and insurgents far outnumber the killings attributed by the leftist to the government.** Many of our sons, husbands, and fathers have been slain or injured in encounters with the NPA, or have been assassinated by dreaded hitmen or mowed down in ambushes and other acts of terrorism of the CPP-NPA. Understandable, justified, and commendable, in fact, is the fervor with which the State, through the military, feels the need to avenge these heroes who perished in the defense of the country. However, this should not be at the cost of the freedom we are protecting in the first place.

The military and police authorities are laudable and necessary institutions, whose smooth operation according to the Constitution is absolutely

¹¹² Id., at 601-606; emphasis supplied.

essential to the country's security. **The military should not be allowed to descend to the level of the insurgents and rebels themselves with their lawless, treacherous methodologies.** It is in this light that the whip must be cracked to bring the rogue military elements back in line.

The words of the Supreme Court in *Aberca v. Ver*¹¹³ are *apropos*:

This is not to say that military authorities are restrained from pursuing their assigned task or carrying out their mission with vigor. We have no quarrel with their duty to protect the Republic from its enemies, whether of the left or of the right, or from within or without, seeking to destroy or subvert our democratic institutions and imperil their very existence. What we are merely trying to say is that in carrying out this task and mission, **constitutional and legal safeguards must be observed, otherwise, the very fabric of our faith will start to unravel.** In the battle of competing ideologies, the struggle for the mind is just as vital as the struggle of arms. **The linchpin in that psychological struggle is faith in the rule of law. Once that faith is lost or compromised, the struggle may well be abandoned.**

Some may say that this Commission is quick to place blame on the military, while it hardly considered the past heinous crimes committed by those who would overthrow the government. Some may say that the death or killing of the activists, while illegal, is a blessing for which the military should be commended. Some will even say that the military deserves special treatment owing to their crucial role in containing and defeating insurgency.

Nay, we say. The military must match its strength with restraint, and the only special treatment the military will receive from this Commission, and before any inquiry for that matter, is that it will be judged with more stringent standards. As General Esperon said in regard to the court-martial of some army and marine officers, military justice is harsh and strict. Truly, justice must be stern and exacting on the military because the military has great power, and with great power comes greater responsibility. As the Book of Wisdom states:

THE MIGHTY SHALL BE MIGHTILY PUT TO THE TEST

RESPECTFULLY SUBMITTED.

¹¹³ *Id* at 604; emphasis supplied.

January 22, 2007.

JOSE A. R. MELO
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SUPREME COURT
Chairman

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