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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بمحالات الإعدام خارج نطاق القضاء أو بإجراءات موجزة أو تعسفاً، السيد فيليب أليستون

إضافة\*

البعثة التي قام بها إلى الفلبين

\* يجري تحرير موجز هذا التقرير فقط وتعميمه بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فهو يعمم مع تذييلاته بالصيغة التي ورد بها.

## موجز

لقد جرت على مر السنوات الست الماضية إعدامات كثيرة خارج نطاق القضاء لناشطين يساريين في الفلبين. وقد قضت عمليات القتل هذه على زعماء في المجتمع المدني، من بينهم مدافعون عن حقوق الإنسان ونقابيون ودعاة لإصلاح نظام ملكية الأراضي، وأدت إلى تخويف عدد هائل من العناصر الفاعلة في المجتمع المدني، وإلى تضيق نطاق الخطاب السياسي في البلد. وتبعاً لمن يقوم بعملية العد وكيفية قيامه بها، فإن العدد الكلي لهذه الإعدامات يتراوح من ١٠٠ إلى أكثر من ٨٠٠. واستراتيجية مناهضة التمرد، والتغيرات التي طرأت مؤخراً على أولويات نظام العدالة الجنائية، هي أمور تتسم بأهمية خاصة لفهم سبب استمرار عمليات القتل.

وقد خلص كثيرون في الحكومة إلى أن منظمات عديدة من منظمات المجتمع المدني هي "جبهات" للحزب الشيوعي الفلبيني ولجماعته المسلحة، وهي الجيش الشعبي الجديد. وتمثلت إحدى الاستجابات لذلك في القيام بعمليات مضادة للتمرد أسفرت عن إعدام ناشطين يساريين خارج نطاق القضاء. وفي بعض المناطق تجري ملاحقة زعماء المنظمات اليسارية ملاحقة منهجية من خلال استجواب وتعذيب الأشخاص الذين قد يكونون على علم بأماكن وجود أولئك الزعماء، وكثيراً ما يقتلون بعد شن حملة تشويه للسمعة على المستوى الفردي بهدف بث الخوف في المجتمع المحلي. وحدث تشوه أيضاً في أولويات نظام العدالة الجنائية، وأصبح يركز بدرجة متزايدة على مقاضاة زعماء المجتمع المدني بدلاً من مقاضاة من يقتلوهم.

وتنكر المؤسسة العسكرية إجراء إعدامات عديدة خارج نطاق القضاء كان المتورطون فيها هم جنودها. ويدعي الضباط العسكريون أن كثرة من الإعدامات التي تجري خارج نطاق القضاء، أو تلك الإعدامات قاطبة، قد ارتكبتها في حقيقة الأمر المتمردون الشيوعيون كجزء من عملية تطهير داخلية. والجيش الشعبي الجديد يرتكب فعلاً إعدامات خارج نطاق القضاء، واصفاً إياها في بعض الأحيان بأنها "العدالة الثورية"، ولكن الأدلة التي تشير إلى أنه يقوم حالياً بعملية تطهير على نطاق كبير هي أدلة غير مقنعة إلى حد مدهل. وإصرار المؤسسة العسكرية على صحة "نظرية التطهير" لا يمكن سوى اعتباره محاولة ساحرة للتخلص من المسؤولية.

وقد دُرس أيضاً أثناء الزيارة بعض الحالات الأخرى التي تجري فيها إعدامات خارج نطاق القضاء في الفلبين. إذ يجري قتل صحفيين بوتيرة متزايدة نتيجة لظاهرة الإفلات من العقاب السائدة ونتيجة أيضاً لتركيبة صناعة الإعلام. وتؤدي النزاعات بين الفلاحين وملاك الأراضي، وكذلك الجماعات المسلحة، إلى عمليات قتل في سياق الجهود الرامية إلى الإصلاح الزراعي، وكثيراً ما توفر الشرطة حماية غير كافية للفلاحين المعنيين. وتعمل فرقة إعدام في مدينة دافاو، بحيث يقتل رجالها بشكل روتيني أطفال الشوارع وغيرهم في وضح النهار. وبينما نالت انتهاكات حقوق الإنسان المتعلقة بالنزاعات في مينداناو الغربية وأرخبيل سولو اهتماماً أقل مما نالت انتهاكات حقوق الإنسان المتعلقة بالنزاع مع حركة التمرد الشيوعية، من الواضح حدوث انتهاكات خطيرة فعلاً، ومن اللازم تحسين آليات الرصد.

ويدرس هذا التقرير جميع هذه المشاكل والترتيبات المؤسسية التي أتاحت استمرارها. وهو يجتتم بسلسلة من التوصيات الداعية إلى الإصلاح. وقد أظهرت الحكومة قدرتها على التصدي للمشاكل المتعلقة بحقوق الإنسان بوضوح وحسم. وتبدئ ذلك عندما ألغت الحكومة، عام ٢٠٠٦، عقوبة الإعدام، بحيث أنقذت أرواح ما يربو على ١ ٠٠٠ من المدانين الذين كانوا ينتظرون تنفيذ حكم الإعدام الصادر عليهم. وانتهى بجرة قلم أي احتمال لفرض عقوبة الإعدام على نحو مخالف للقانون الدولي المتعلق بحقوق الإنسان.

والتدابير الكثيرة التي أعلنتها الحكومة للتصدي لمشكلة الإعدامات خارج نطاق القضاء هي تدابير مشجعة. بيد أنها لم تنجح بعد، وما زالت الإعدامات خارج نطاق القضاء مستمرة.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL SUMMARY OR  
ARBITRARY EXECUTIONS, PHILIP ALSTON, ON HIS MISSION TO  
PHILIPPINES (12-21 FEBRUARY 2007)**

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## I. INTRODUCTION

1. Since 2001 the number of politically motivated killings in the Philippines has been high and the death toll has mounted steadily. These killings have eliminated civil society leaders, including human rights defenders, trade unionists, and land reform advocates, as well as many others on the left of the political spectrum. Of particular concern is the fact that those killed appear to have been carefully selected and intentionally targeted. The aim has been to intimidate a much larger number of civil society actors, many of whom have, as a result, been placed on notice that the same fate awaits them if they continue their activism. One of the consequences is that the democratic rights that the people of the Philippines fought so hard to assert are under serious threat.

2. I visited the Philippines from 12 to 21 February 2007 and traveled to Manila, Baguio, and Davao and I spoke with a wide range of actors to clarify responsibility for these killings and to formulate recommendations to bring them to an end. I also looked at selected other issues of unlawful killing, including the use of a death squad in Davao City. I was aware when I arrived that the international community's concern at the wave of killings was seen by some as the outcome of a successful propaganda campaign by leftist activists rather than as a proportionate response to the problem's actual dimensions and causes. I came with an open mind, and I succeeded in speaking candidly and often constructively with a very broad range of interlocutors. The success of my visit owes much to the full cooperation shown to me by the Government and to the active and energetic efforts made by civil society to inform me.

3. I met with key Government officials, including the President, the Cabinet Secretary, the Secretaries of Foreign Affairs, Justice, Defense, and the National Security Adviser. I also spoke with the Chief Justice, the Ombudsman, the Chairperson of the Human Rights Commission, among many others, and with numerous members of the Armed Forces of the Philippines (AFP) and of the Philippines National Police (PNP) in Baguio and Davao as well as Manila. In addition to meetings with many civil society representatives from across the political spectrum, I conducted in-depth interviews with witnesses to 57 incidents involving 96 extrajudicial executions.<sup>1</sup> I also received detailed dossiers regarding 271 extrajudicial executions. As a result I interviewed many more witnesses than any of the previous investigations (See Appendix B).

## II. INTERNATIONAL LEGAL FRAMEWORK

4. The Philippines is party to the International Covenant on Civil and Political Rights (ICCPR), the Geneva Conventions of 1949 and the Second Additional Protocol thereto.<sup>2</sup>

5. All parties to the armed conflicts are bound by customary and conventional international humanitarian law and are subject to the demand of the international community that every organ of society respect and promote human rights. In addition, some of the parties have made other formal commitments to respect human rights.<sup>3</sup> Within this legal framework, both state and non-state actors can commit extrajudicial executions.

## III. HISTORICAL BACKGROUND

6. Human rights abuses are taking place in a context in which the Government faces not only normal law and order challenges but also multiple armed conflicts that have persisted for decades.

7. The Communist Party of the Philippines (CPP) seeks to revolutionize what it characterizes as the Philippines' "semifeudal" society. The CPP controls an armed group, the New People's Army (NPA), and a civil society group, the National Democratic Front (NDF).<sup>4</sup> Founded in 1968, the CPP grew in strength

and popularity during the years of martial law (1972–1981), but the return to democracy in 1986 produced internal divisions culminating in a split between “reaffirmist” and “rejectionist” factions in the early 1990s, with the former left in control of the CPP/NPA/NDF and the latter fragmenting into smaller armed and unarmed groups. Due to its sophisticated political organization, some 7,160 fighters, and an archipelago-wide presence, Government officials consider the CPP/NPA/NDF the “most potent threat” to national security.<sup>5</sup> While the peace process has resulted in several agreements, it is largely inactive today.

8. In western Mindanao and the islands stretching toward Borneo, the Government faces a number of insurgent and terrorist groups. Those with a political agenda seek autonomy or secession for the historically Muslim areas. In 1996, the Government reached a peace agreement with the Moro National Liberation Front (MNLF) and, while hostilities have restarted with some factions of the MNLF, they remain at a relatively low level, and the parties continue to talk.<sup>6</sup> The ceasefire between the Government and the Moro Islamic Liberation Front (MILF) has largely held, and the parties are now actively engaged in peace negotiations.<sup>7</sup> The Government also confronts the Abu Sayyaf Group (ASG), which has been implicated in several major bomb attacks on civilian targets. These groups have many fighters — 700 (MNLF), 11,770 (MILF), and 400 (ASG), respectively — but their distance from the capital and relatively modest aims have limited the extent to which they are considered security threats.<sup>8</sup>

9. The Government has also faced a series of attempted coups d’état, many of them carried out by the same organized groups of officers. The failure to punish and deter such attempts, and the Government’s resulting reliance on the goodwill of military has eroded civilian control of the armed forces.<sup>9</sup>

10. The global context of the “war on terror” has affected the Government’s approach to these security threats. On the one hand, it has shown its willingness to compromise with the MILF in exchange for cooperation against the ASG and foreign terrorists.<sup>10</sup> On the other hand, Government officials have begun referring to the CPP/NPA/NDF as the “Communist Terrorist Movement” (CTM), legitimizing a turn from negotiation to counterinsurgency.

#### **IV. THE KILLING OF LEFTIST ACTIVISTS**

##### **A. Introduction**

11. Over the past six years, there has been a spate of extrajudicial executions of leftist activists, including human rights defenders, trade unionists, land reform advocates, and others.<sup>11</sup> The victims have disproportionately belonged to organizations that are members of Bagong Alyansang Makabayan (Bayan), or the “New Patriotic Alliance”, or that are otherwise associated with the “national democratic” ideology also espoused by the CPP/NPA/NDF.<sup>12</sup> These killings have eliminated civil society leaders, intimidated a vast number of civil society actors, and narrowed the country’s political discourse. Responses to the problem have been framed by lists produced by civil society organizations. The most widely cited list is that of Karapatan, which contains 885 names.<sup>13</sup> Task Force Detainees of the Philippines (TFD-P) has compiled a shorter list, but the different numbers indicate differences in the geographical coverage of their activist networks more often than disagreement about particular cases.<sup>14</sup> Due to a narrow definition of the phenomenon and its uncertainty regarding some cases, Task Force Usig, the PNP group charged with ensuring the effective investigation of these incidents, has a list of 116 cases that it is attempting to resolve.<sup>15</sup>

12. Two policy initiatives are of special importance to understanding why the killings continue. First, the military’s counterinsurgency strategy against the CPP/NPA/NDF increasingly focuses on dismantling civil society organizations that are purported to be “CPP front groups”. Part IV(B) below examines the general approach and its national scope. Part IV(C) looks at the regional variation in how this strategy

has been implemented. Second, as examined in Part X, the criminal justice system has failed to arrest, convict, and imprison those responsible for extrajudicial executions. This is partly due to a distortion of priorities that has law enforcement officials focused on prosecuting civil society leaders rather than their killers.

**B. Counterinsurgency Strategy: A Nationwide Focus on CPP “Front Groups” in Civil Society**

13. Senior Government officials in and out of the military believe that many civil society organizations are fronts for the CPP and that the CPP controls these groups to instrumentalize popular grievances in the service of revolutionary struggle, forge anti-Government alliances, and recruit new party members. While greatly overstated, these views are not entirely baseless. It is the self-professed policy of the CPP to engage in united front politics for the purpose of promoting its views among those who are dissatisfied with the status quo but would be disinclined to join the CPP.<sup>16</sup> Similarly, the CPP has publicly stated that its members engaged in such organizing and mobilization are subject to the principle of democratic centralism and, thus, ultimately to the direction of the Central Committee of the CPP. There is no reason to doubt that the CPP expects those of its members who occupy leadership positions within civil society organizations to promote its strategic priorities. This does not, however, warrant the approach of many officials who characterized alleged front groups as if they were simply branches of the CPP. More objective interlocutors recognized that the term “front” encompasses many gradations of control, some very tenuous, and that in virtually any front organization most members will not belong to the CPP and will likely be unaware of the organization’s relationship to the CPP. Relatively little is known about the extent of the CPP’s influence within civil society organizations, and it would be naïve to assume that the CPP is as powerful as it would like to present itself as being.

14. The rhetoric of many officials moves too quickly from the premise that there are some front organizations to the assertion, usually unsubstantiated, that particular organizations are indeed fronts. During the martial law period, the CPP developed a network of underground civil society groups, which were united under the umbrella of the NDF. These groups remain covert, but their names are a matter of public record. It is not, for example, controversial that the NDF includes, among other groups, the Christians for National Liberation (CNL) and the Revolutionary Council of Trade Unions (RCTU).<sup>17</sup> What is controversial is the thesis of many officials that the organizations associated with Bayan are overt counterparts to covert NDF organizations.<sup>18</sup> When officials claim that “Christians for National Liberation (CNL) . . . controls the Promotion of Church People’s Response (PCPR), whose members man the KARAPATAN Human Rights Alliance” or that “[t]he RCTU controls the leadership of the aboveground militant labor center, Kilusang Mayo Uno (KMU), through a core group composed of party members,” little if any evidence is given.<sup>19</sup> Assertions that the CPP “fielded” such party-list groups as Bayan Muna, Anakpawis, and Gaberiela are similarly vague and speculative.<sup>20</sup> These assertions are based on circumstantial evidence — the personal histories of some leaders, apparent sympathies manifested during the CPP’s split in the early 1990s, the perceived political function of a group’s positions, etc. — read in light of the CPP’s avowed organizational techniques.

15. Membership in the CPP is legal, and has been since 1992 when Congress repealed the Anti-Subversion Act.<sup>21</sup> And nearly all my interlocutors acknowledged the principle that citizens should be permitted to support communist and national democratic ideas. Similarly, the party list system — whereby some members of the House of Representatives are elected nationwide rather than from a particular district — was established by Congress in 1995 for the purpose of encouraging leftist groups to enter the democratic political system.<sup>22</sup> Characterizing such elected Congressional representatives and much of civil society as “enemies” is thus completely inappropriate. Unsurprisingly, it has encouraged abuses.



16. Newspapers routinely carry reports of senior military officials urging that alleged CPP front groups and parties be neutralized. Often, prominent political parties and established civil society groups are named specifically. The public is told that supporting their work or candidates is tantamount to supporting “the enemy”. This practice was openly and adamantly defended by nearly every member of the military with whom I spoke. When I suggested to senior military officials that denunciation of civil society groups should only be done according to law and by the Government, the response was that civilian authorities are in no position to make such statements because they might be assassinated as a result. On another occasion, I asked a senior civilian official whether the Government might issue a directive prohibiting such statements by military officers. He expressed vague sympathy for the idea, but his subordinate — a retired military commander — promptly interjected that such a directive would be “impossible” because “this is a political war”. When political “warfare” is conducted by soldiers rather than civilians, democracy has been superseded by the military.

17. The public vilification of “enemies” is accompanied by operational measures. The most dramatic illustration is the “order of battle” approach adopted systematically by the AFP and, in practice, often by the PNP. In military terms an order of battle is an organizational tool used by military intelligence to list and analyze enemy military units. The AFP adopts an order of battle in relation to the various regions and sub-regions in which it operates. A copy of a leaked document of this type, from 2006, was provided to me, and I am aware of no reason to doubt its authenticity. The document, co-signed by senior military and police officials, calls upon “all members of the intelligence community in the [relevant] region ... to adopt and be guided by this update to enhance a more comprehensive and concerted effort against the CPP/NPA/NDF”. Some 110 pages in length, the document lists hundreds of prominent civil society groups and individuals who have been classified, on the basis of intelligence, as members of organizations which the military deems “illegitimate”. While some officials formalistically deny that being on the order of battle constitutes being classified as an enemy of the state, the widespread understanding even among the political elite is that it constitutes precisely that.<sup>23</sup>

### C. Case Studies

18. Counterinsurgency operations throughout the country reveal a focus as much on the leaders of front groups as on NPA fighters. But there is regional variation in how that strategic focus is implemented.<sup>24</sup> This report focuses on two regions about which I was able to gather extensive evidence. These case studies demonstrate the concrete ways in which a counterinsurgency focus on civil society leads to extrajudicial executions and tempts commanders to make such abuses routine and systematic.

#### 1. Counterinsurgency Strategy in the Cagayan Valley Region (with a focus on Cagayan province)<sup>25</sup>

19. In the Cagayan Valley Region, the AFP’s approach to counterinsurgency starts by sending a detachment to a barangay or sometimes to a somewhat larger area.<sup>26</sup> What happens next varies across municipalities and barangays. In some, the soldiers hold a barangay-wide meeting revealing the treachery of the CPP/NPA/NDF, alleging that various mass organizations are fronts of the CPP/NPA/NDF, and vilifying them. At these meetings, the soldiers collect the names and occupations of the residents and attempt to glean an understanding of the power structure of the community and the political alignments of its members. In others, the soldiers conduct a house-to-house census.

20. The information gathered through the meeting or census is used either to identify NPA fighters and members of leftist civil society organizations or as a starting point for conducting individual interviews to elicit that information. These interviews generally take place at persons’ homes. (In contrast to the interrogations in Nueva Ecija, below, these do not systematically involve torture.) Attempts are generally made to get the persons identified to “surrender”. Some of these are suspected of being NPA

fighters; others belong to civil society organizations or so-called sectoral fronts (of the CPP). The vilification and intimidation of persons who do not “surrender” too often escalates into extrajudicial executions; however, these do not appear fundamental to the strategy.

21. The other use that is made of the information gathered is to recruit or assign residents to a Citizens Armed Forces Geographical Unit (CAFGU) that, it is hoped, will “hold” the barangay once it has been “cleared”.<sup>27</sup> A CAFGU is a paramilitary organization that works closely with the AFP and is subordinate to its command-and-control structure.<sup>28</sup> CAFGU members accompany AFP units on operations and also serve, in effect, as armed informants, permitting the military to pull-back and focus on other barangays.

## **2. Counterinsurgency Strategy in the Central Luzon Region (with a focus on Nueva Ecija province)<sup>29</sup>**

22. In parts of Central Luzon, the leaders of leftist organizations are systematically hunted down. Those who may know their whereabouts may be interrogated and tortured. A campaign of vilification designed to instill fear into the community follows, and the individual is often killed as a result. Such attacks and the attendant fear can lead to the disintegration of organized civil society. One person I met called the result “the peace of the dead”.

23. This practice reflects more than the mere “excesses” of a particular commander. Rather, it is a deliberate strategy in keeping with the overall trajectory of counterinsurgency thinking at the national level. While the prosecution of responsible individuals is essential, such efforts in relation to one or a handful of people will make little overall difference. It is, instead, essential to identify and decisively reject at an institutional level those innovations in counterinsurgency strategy that have resulted in such a high level of political killings. Moreover, it is essential to prevent the replication of this strategy in other regions.

24. There is considerable local variation in counterinsurgency strategy within Central Luzon, and this account draws especially on testimony concerning the province of Nueva Ecija:

(a) The military establishes a detachment of roughly 10 soldiers in a barangay hall or other public building.

(b) These soldiers move about, showing that they are part of the community, playing sports, hearing grievances, and undertaking small development projects.

(c) After a short period, they take a door-to-door census. One explanation of the census is that it is used to determine medical and other basic needs to guide development projects. The better explanation appears to be that the census is for identifying members of civil society organizations and current and former NPA fighters. The private setting encourages some to provide information on others in the community.

(d) The census results allow the detachment to draft a provisional order of battle of civil society leaders and former or suspected NPA fighters. Soldiers make the fact that this has been drafted known to the community.

(e) The soldiers call those on the order of battle to the site of their detachment to be interrogated for information on civil society leaders, NPA fighters, etc. If they do not cooperate, they are tortured.<sup>30</sup> Any names provided are added to the order of battle, and the process repeated. Over a relatively brief time the military develops a fairly detailed understanding of the local structure of leftist civil society.

(f) A “Know Your Enemies” seminar is held and “communist terrorist movement” front organizations are listed.<sup>31</sup> (Sometimes such meetings also precede the census.) Members of what soldiers call the “speakers bureau” tell those assembled about CPP lies, its true aims, and its use of fronts. The purpose of this meeting would appear to be to encourage “surrender” and to lay the groundwork for making killings of civil society members appear justified and legitimate.

(g) Individuals identified as leaders of civil society organizations or NPA fighters are encouraged to “surrender”. In some areas of Central Luzon, such as Tarlac, as well as in the Bohol and Southern Tagalog regions, posters or leaflets vilifying them personally as communist terrorists will be distributed if they resist surrendering. Then their houses are placed under surveillance.<sup>32</sup> If the person flees, his or her house may be burned to the ground. This serves as a signal that refusing to “surrender” is a grave and irreversible choice.

(h) Then such individuals begin to get killed. The connection between organization membership and death is made unambiguous for community members. While I do not fully understand the community-level dynamics, it would appear that one or two such killings will greatly encourage “surrenders”.

(i) Finally, a Barangay Defense System (BDS) is established. Every household in the community is made to contribute members.<sup>33</sup> A BDS is a post that serves as a checkpoint of sorts. At least in Nueva Ecija, each sitio of a barangay has had its own BDS. When strangers or anyone who does not live in the sitio comes in, their name and reason to visit is recorded in a log. The contents of this log are regularly communicated to the barangay captain and the military. I received conflicting reports on whether the BDS are armed. My tentative conclusion would be that the AFP has no general practice of providing the BDS arms, but some BDS arm themselves, and sometimes AFP soldiers may help them to do so.

(j) Once the BDS is established, the military detachment moves on to another barangay. The BDS is expected to “hold” the barangay “cleared” by the military. (It is not that the BDS is expected to literally, physically defend the barangay but that it will provide sufficiently solid intelligence as to make the military’s constant presence unnecessary.)

25. While denying the use of executions or torture, a former military commander confirmed most aspects of this account. He also provided a rationale for this strategy and an alternative explanation of the executions that have followed the deployment of AFP detachments. On his account, when the CPP/NPA/NDF moves into a barangay, it organizes sectoral front organizations (i.e., civil society organizations), and the chair and vice-chair of each sectoral front together comprise the local CPP central committee. In addition to administering the CPP’s work in the barangay, that committee and, in particular its chair, serves as an intelligence service for the NPA, providing it with information on persons who cause problems for the residents (e.g., usurers) and on AFP informants. This intelligence is used by the NPA — or, less often, by a barangay militia organized by the NPA — to intimidate or execute the identified individuals. This account of the CPP/NPA/NDF’s approach to establishing its control at the barangay level was largely confirmed by NDF representatives.<sup>34</sup>

26. One important aspect of this counterinsurgency strategy should be noted. Specific barangays are targeted because they have active civil society organizations, not because such organizations are thought to be proxies for NPA presence. On all accounts, an NPA group will move around quite a few barangays and may or may not even be present when the AFP comes. The evidence I received suggests that the entrance of the AFP into a barangay is generally sufficient to keep the NPA away.<sup>35</sup> The civil society organizations are the targets, because the AFP considers them the political infrastructure of the revolution

and the NPA's intelligence network. Attacking them is designed to blind the NPA and undermine the CPP's political progress.

27. The former commander's explanation of the killings that have accompanied the AFP's presence in a barangay was that residents whose relatives were killed by the NPA take advantage of the new situation to retaliate against members of the local CPP committee who are suspected of having fingered their relatives. This private retaliation explanation is facially plausible; however, it does not align with accounts provided by any witness. It would appear that, at least in the areas from which I interviewed numerous individuals, retaliation against other residents is carried out simply by informing on them to the AFP.

#### **D. The "Purge Theory" of a Military in Denial**

28. The military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated.<sup>36</sup> Some military officers would concede that a few killings might have been perpetrated by rogue elements within the ranks, but they consistently and unequivocally reject the overwhelming evidence regarding the true extent of the problem. Instead, they relentlessly pushed on me the theory that large numbers of leftist activists are turning up dead because they were victims of internal purges within the CPP and NPA. I repeatedly sought evidence from the Government to support this contention. But the evidence presented was strikingly unconvincing.

(a) The military noted that the CPP/NPA/NDF publicly claims responsibility for killing some current and former members. This is true, as anyone can validate by reading the CPP/NPA/NDF's publications online, but irrelevant to the broader theory.

(b) The military noted that the CPP/NPA/NDF has conducted large scale internal purges of members suspected of being government informants. This is a matter of public record — but these events took place roughly 20 years ago.

(c) The list of 1,335 individuals allegedly killed by the NPA was casually adduced as evidence not only that the NPA kills people but as evidence of a purge. However, only 44 of the persons alleged by Karapatan to have been extrajudicially executed were even included in this list, and I was unable to obtain any information from the Government that would indicate that any particular one of these individuals was killed as part of a purge.<sup>37</sup>

(d) I was provided with a document captured from the rebels in May 2006 describing an "Operation Bushfire" in which the rebels would purge CPP/NPA/NDF members who were acting as deep penetration agents for the military and make it look as if the military was responsible.<sup>38</sup> In the absence of strong supporting evidence, which I requested, this document bears all the hallmarks of a fabrication and cannot be taken as evidence of anything other than disinformation.<sup>39</sup>

29. These pieces of evidence do not begin to support the contention that the CPP/NPA/NDF is engaged in a large-scale purge. Indeed, I met no one involved in leftist politics — whether aligned with the CPP, opposed to the CPP, or following an independent course — who believed that such a purge was currently taking place. The military's insistence that the "correct, accurate, and truthful" reason for the recent rise in killings lies in CPP/NPA/NDF purges can only be viewed as a cynical attempt to displace responsibility.<sup>40</sup>

#### **V. KILLINGS BY THE NEW PEOPLE'S ARMY**

30. The Government provided a list of 1,335 individuals, two-thirds of them civilians, allegedly killed by the NPA.<sup>41</sup> Despite numerous requests for any documentation substantiating any of these cases,

virtually none was provided. While I have no reason to doubt that the list represents a good faith accounting, without further documentation it is impossible to confirm its reliability or to evaluate which killings violated the humanitarian law of armed conflict.

31. Discussions with NDF representatives and review of published CPP/NPA/NDF documents did, however, reveal several practices that are inconsistent with international human rights and humanitarian law. First, the CPP/NPA/NDF considers “intelligence personnel” of the AFP, PNP, and paramilitary groups to be legitimate targets for military attack. Some such persons no doubt are combatants or civilians directly participating in hostilities; however, the CPP/NPA/NDF defines the category so broadly as to encompass even casual Government informers, such as peasants who answer when asked by AFP soldiers to identify local CPP members or someone who calls the police when faced with NPA extortion.<sup>42</sup> Killing such individuals violates international law.

32. Second, the CPP/NPA/NDF’s system of “people’s courts” is either deeply flawed or simply a sham. The question whether the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) can be interpreted to affirm the CPP/NPA/NDF’s contention that it has a right to constitute courts and conduct trials is a matter of controversy.<sup>43</sup> However, insofar as the CPP/NPA/NDF does conduct trials, international humanitarian law (IHL) unambiguously requires it to ensure respect for due process rights. One telling due process violation is that, while a people’s court purportedly requires “specification of charges . . . prior to trial”, the CPP/NPA/NDF lacks anything that could reasonably be characterized as a penal code.<sup>44</sup> It is apparent that the CPP/NPA/NDF does impose punishments for both ordinary and counterrevolutionary crimes in areas of the country that it controls. But NDF representatives were unable to provide me with any concrete details on the operation of the people’s court system. This suggests that little or no judicial process is involved. In some cases, the use of people’s courts would appear to amount to little more than an end run around the principle of non-combatant immunity. In other words, it seeks to add a veneer of legality to what would better be termed vigilantism or murder. Failure to respect due process norms constitutes a violation of IHL for the NPA/ CPP/NDF and may constitute a war crime for participating cadres.<sup>45</sup>

33. Third, public statements by CPP/NPA/NDF representatives that opponents owe “blood debts”, have “accountabilities to the people”, or are subject to prosecution before a people’s court, are tantamount to death threats.<sup>46</sup> Issuing such threats under the guise of revolutionary justice is utterly inappropriate and must be decisively repudiated.

## **VI. KILLINGS RELATED TO THE CONFLICTS IN WESTERN MINDANAO**

34. Human rights abuses related to the conflicts in western Mindanao and the Sulu archipelago have received less attention than those related to the conflict with the CPP/NPA/NDF. I did, however, receive various such allegations, and these warrant more attention.<sup>47</sup>

35. I received numerous well-substantiated allegations of extrajudicial executions on Jolo island. Three factors distinguished these from executions in other areas. First, the violence was relatively indiscriminate. The conflict between the Government and the NPA involves precisely targeted violence. Civilians are killed, but seldom by accident. In contrast, on Jolo, persons are abducted or arrested, and sometimes extrajudicially executed, for little or no apparent reason. In addition, military operations involve inherently indiscriminate tactics, such as aerial bombardment, artillery shelling, and helicopter strafing. Second, witnesses live in even more fear than in other parts of the country, and I received information regarding cases that had never been reported to the PNP. Third, responsibility for abuses is often difficult to assign. It is not uncommon for the Government to blame the ASG or MNLF and for victims to blame the AFP. In the absence of effective investigations, the truth is often difficult to determine. Regardless of which group is to blame for particular abuses, it is clear that abuses increase dramatically during major AFP operations against the ASG or MNLF. The CHR has done excellent

reporting work in the Sulu archipelago, and it should improve its capacity to deploy personnel for monitoring and protection as soon as military operations commence.

36. I received fewer allegations of extrajudicial executions in Maguindanao and other areas of western Mindanao. It is possible that there are fewer such abuses. The Government and MILF are engaged in an active peace process and have even cooperated in operations against terrorists. However, the allegations that I did receive, together with the enormous population displacements that have been caused by ongoing fighting, tentatively suggest that the relative absence of reported human rights abuses in this area may not reflect the true situation. Consideration should be given to establishing within the framework of the Government–MILF peace process a mechanism for monitoring and publicly reporting on the human rights situation.<sup>48</sup>

## **VII. KILLINGS RELATED TO AGRARIAN REFORM DISPUTES**

37. Peasants claiming land rights through the Government’s agrarian reform program find themselves implicated in conflicts among the Government, the CPP/NPA/NDF, and large landowners.<sup>49</sup> The Government established the Comprehensive Agrarian Reform Program (CARP) in 1988 to redistribute land to peasants.<sup>50</sup> The CPP/NPA/NDF views CARP as a “divide and rule scheme” to prevent the “genuine land reform of the revolutionary movement”.<sup>51</sup> Landowners generally oppose all redistribution programs, although the possibility of exploiting tensions between Government and CPP/NPA/NDF efforts has sometimes led to alliances of convenience. The options facing peasants are perhaps the most fraught, for even if they support the CPP’s long-term program, they may wish to avail themselves immediately of CARP’s benefits. This choice has, however, been discouraged by the CPP/NPA/NDF as well as by landowners. For their part, local Government officials are often more interested in protecting the holdings of local elites than the lives and land rights of peasants, and PNP protection for peasants attempting to take possession of land that has been awarded to them has often been strikingly inadequate in practice.

## **VIII. KILLINGS OF JOURNALISTS**

38. Journalists are killed with increasing frequency. From 1986 to 2002, the number killed averaged between 2 and 3 per year, depending on how one counts.<sup>52</sup> During 2003-2006, the number killed averaged between 7 and 10. However, while the trends coincide and the two phenomena are often joined in the public mind, the killings of journalists appear to have different causes than the killings of leftist activists. The views of journalists and organizations for the protection of journalists with whom I spoke were that most of these killings had local roots.<sup>53</sup> Some killings had been perpetrated to prevent journalists from exposing information related to the crimes and corruption of powerful individuals. Other killings resulted from local disputes in which the journalists had participated by publicly promoting one side or the other. This problem is exacerbated by the structure of the media industry. Many broadcasters are “block-timers” who purchase airtime and then pay for this airtime and seek a profit by selling advertising. Sometimes they also earn money through so-called “AC/DC” journalism — “attack, collect; defend, collect”. Approximately three quarters of journalists killed are broadcasters, and nearly half of these are block-timers.<sup>54</sup> Needless to say, however questionable the practices of some journalists may be, these do not justify murder. There is a lamentable degree of impunity for murders of journalists.

## **IX. DAVAO: VIGILANTISM OR DEATH SQUAD?**

39. It is a commonplace that a death squad known as the “Davao Death Squad” (DDS) operates in Davao City. However, it has become a polite euphemism to refer vaguely to “vigilante groups” when accounting for the shocking predictability with which criminals, gang members, and street children are extrajudicially executed. One fact points very strongly to the officially-sanctioned character of these killings: No one involved covers his face. The men who warn mothers that their children will be the next

to die unless they make themselves scarce turn up on doorsteps undisguised. The men who gun down or, and this is becoming more common, knife children in the streets almost never cover their faces. In fact, for these killers to wear “bonnets” is so nearly unheard of that the witnesses I interviewed did not think to mention the fact until I asked.<sup>55</sup> None of those with whom I spoke had witnessed such persons covering their faces, and one knowledgeable advocate informed me that they do so in no more than two cases out of one hundred.

40. The mayor is an authoritarian populist who has held office, aside from a brief stint as a congressman, since 1988. His program is simple: to reach a local peace with the CPP/NPA/NDF and to “strike hard” at criminals. When we spoke, he insisted that he controls the army and the police, saying, “The buck stops here.” But, he added, more than once, “I accept no criminal liability.” While repeatedly acknowledging that it was his “full responsibility” that hundreds of murders committed on his watch remained unsolved, he would perfunctorily deny the existence of a death squad and return to the theme that there are no drug laboratories in Davao. The mayor freely acknowledged that he had publicly stated that he would make Davao “dangerous” and “not a very safe place” for criminals, but he insisted that these statements were for public consumption and would have no effect on police conduct: “Police know the law. Police get their training.” The mayor’s positioning is frankly untenable: He dominates the city so thoroughly as to stamp out whole genres of crime, yet he remains powerless in the face of hundreds of murders committed by men without masks in view of witnesses.

41. It is a reality that when the mayor was first elected, the NPA routinely killed policemen. It is also a reality that Davao has a problem with youth gangs. These are primarily *ad hoc* social groups for street children aged 10-25, but use of drugs and involvement in petty crime is common, and violent gang wars do take place. By all accounts, the mayor has managed to largely insulate his city from the armed conflict and to limit the presence of some kinds of criminal activity. These accomplishments appear to have bought acquiescence in the measures he takes, and the public remains relatively ignorant of the human cost of death squad “justice”.

42. The human cost is very high. Since 1998, when civil society organizations began keeping careful records, over 500 people have been killed by the death squad.<sup>56</sup> Up until 2006, these victims were generally shot; since then, stabbings have become more common. I spoke with witnesses and family members of 8 victims and 1 survivor, and I reviewed the case files of an additional 6 victims and 3 survivors. These interviews gave some insights into how these killings take place and the enormous emotional damage they inflict on family and friends.<sup>57</sup> The executions generally respond to suspicions of petty crimes, are preceded by warnings or notifications that clarify their significance, and are carried out publicly and with methodical indifference.

43. How does the death squad operate? The inquiries I made do not provide a complete picture, but they do indicate two starting points for investigation and reform. First, it would appear that the “assets” who identify targeted individuals for the death squad are often suspected criminals who are recruited after being arrested, with an early release as inducement.<sup>58</sup> Second, it would appear that barangay officials are sometimes involved in selecting targets for the death squad, a practice perhaps originating in the role barangay officials have played in naming suspected drug dealers for inclusion in PNP watch lists.<sup>59</sup> Insofar as prison officials and barangay councils help the death squad function, they can be reformed.<sup>60</sup> The intelligence-gathering role played by barangay officials can be limited, and the processing of inmates can be more tightly restricted. To shut the death squad down will, however, ultimately require following the evidence upward to the handlers who task “assets” to provide the location of persons on watch lists and who direct hit men to kill them. If it were not for the fact that the local office of the CHRP denies the existence of a death squad, it should be capable of conducting an effective investigation. There are many witnesses who would provide information anonymously or who would testify were they to receive a credible protection arrangement.<sup>61</sup>

44. Defending the rights of street children may be unpopular, but no one deserves to be stabbed to death for petty crimes. There are already preliminary indications that these practices are being replicated in other parts of Mindanao and in Cebu, and this trend needs to be halted immediately.

## **X. THE CRIMINAL JUSTICE SYSTEM**

### **A. Overview**

45. There is impunity for extrajudicial executions. No one has been convicted in the cases involving leftist activists,<sup>62</sup> and only six cases involving journalists have resulted in convictions.<sup>63</sup> The criminal justice system's failure to obtain convictions and deter future killings should be understood in light of the system's overall structure. Crimes are investigated by two bodies: the PNP, which is organized on a national level but is generally subject to the "operational supervision and control" of local mayors; and the National Bureau of Investigation (NBI), which is centrally controlled.<sup>64</sup> Prosecutors, who are organized in the National Prosecution Service (NPS) of the DOJ, determine whether there is probable cause and then prosecute the cases in the courts.<sup>65</sup> This is the normal process; however, in cases implicating public officials, the Ombudsman should take over the investigation and conduct the prosecution. Cases are tried before the courts, with the Supreme Court both administering the judiciary and providing the highest level of appellate review.<sup>66</sup> Cases against senior Government officials should be prosecuted by the Ombudsman before the Sandiganbayan<sup>67</sup> rather than the ordinary courts, but the Supreme Court still provides the highest level of appellate review. The Inter-Agency Legal Action Group (IALAG) is the latest addition to the system, affecting the operations of the NBI, NPS, and PNP.

### **B. The Inter-Agency Legal Action Group (IALAG) distorts the criminal justice system's priorities**

46. Senior Government officials are attempting to use prosecutions to dismantle the numerous civil society organizations and party list groups that they believe to be fronts for the CPP. While this project is sometimes discussed as if it were a dark conspiracy, it was explained to me openly and directly by numerous officials as the very function of IALAG, which was established in 2006.<sup>68</sup> IALAG is an executive rather than advisory body and, while it includes representatives of various criminal justice, intelligence, and military organs, institutional power and legal authority over its operations is concentrated in the Office of the National Security Adviser.<sup>69</sup> At the national level, IALAG meets at least once every other week, discusses the evidence in particular cases and debates whether it is sufficient to file a criminal complaint. There are also regional and provincial IALAG bodies with a similar structure and role. It has been due to the efforts of IALAG that charges have been brought against a number of leftist lawmakers and persons who had been given immunity guarantees to facilitate peace negotiations with the NDF.

47. The reason that such an *ad hoc* mechanism was established for bringing charges against members of these civil society organizations and party list groups is that they have seldom committed any obvious criminal offence. Congress has never reversed its decision to legalize membership in the CPP or to facilitate the entry of leftist groups into the democratic political system.<sup>70</sup> But the executive branch, through IALAG, has worked resolutely to circumvent the spirit of these legislative decisions and use prosecutions to impede the work of these groups and put in question their right to operate freely.

48. What justification is given for waging this legal offensive? One explanation that I received was that when membership in the CPP was legalized, the expectation was that its members would lay down their arms and participate in the parliamentary struggle. On this interpretation, the CPP has instead sought to pursue simultaneously the armed and parliamentary struggles. Many senior government officials stated unequivocally that they consider the party list groups in Congress as part of the insurgency. It is evidently the case that there are persons in Congress as well as in the hills who adhere to



a “national democratic” ideology, but when I would ask interlocutors in what respect party list members of Congress belonging to the most criticized parties — Bayan Muna, Anakpawis, and Gabriela — had gone beyond expressing sympathy for the armed struggle to actually supporting it, I was repeatedly provided the same unsubstantiated allegation, that these congresspersons provide their “pork barrel” to the NPA.<sup>71</sup> Cases filed against several congresspersons on these grounds have failed. This has not discouraged senior government officials. One insisted that although the publicly available evidence might be inadequate, the charges were amply supported by intelligence information that could not be disclosed. Another informed me simply that warrants had been issued based on probable cause and that he would not stop treating the congresspersons as criminals simply because no conviction had yet been achieved.

49. The central purpose of IALAG is to prosecute and punish members of the CPP and its purported front groups whenever there is any legal basis for doing so. I received no evidence that it was designed or generally functions to plan extrajudicial executions. However, IALAG’s proactive legal strategy requires drawing up lists of individuals who are considered enemies of the state but many of whom will not be reachable by legal process. The temptation to execute such individuals is clear, representatives of the AFP and PNP with the capacity to do so participate in IALAG bodies at all levels, and there is circumstantial evidence that this has sometimes occurred.<sup>72</sup> The most deleterious role played by IALAG bodies may, however, be to encourage prosecutors to act as team players with the AFP and PNP in counterinsurgency operations and to de-prioritize cases involving the deaths of leftist activists.

### **C. The police are reluctant to investigate the military**

50. No one I spoke with questioned the PNP’s authority and duty to investigate crimes allegedly committed by the AFP. However, in practice, it does so in only a perfunctory manner. Plausible explanations for this reticence include fear, a tacit understanding that crimes by the AFP should not be investigated, the personal bonds felt among senior AFP and PNP officers,<sup>73</sup> and the solidarity fostered by current cooperation in counterinsurgency operations.<sup>74</sup>

### **D. Poor cooperation between police and prosecutors impedes the effective gathering of evidence**

51. The current system so discourages cooperation between prosecutors and police that each is tempted to simply blame the other for failing to achieve convictions. Prosecutors rather than judges make the determination whether the evidence provides probable cause for the charges to be brought. During this preliminary hearing, prosecutors are expected to show absolute impartiality. Prosecutors thus perceive themselves unable to guide the police with respect to the testimony and physical evidence that must be obtained to make a case. Even when prosecutors find the evidence presented by the police at the preliminary hearing insufficient, they seldom provide a reasoned explanation for that insufficiency for fear of appearing biased. Police thus lack expert guidance in building cases. While this problem is deeply embedded in the culture of the criminal justice system, changes in the role of the prosecutor could be effected by amending the Rules of Criminal Procedure, which are promulgated by the Supreme Court.<sup>75</sup> The Supreme Court should use this power to require prosecutors to provide reasoned decisions for probable cause determinations and to insist that prosecutors take a more proactive role in the ensuring the proper investigation of criminal cases.

### **E. The witness protection program is inadequate**

52. The absence of witnesses is a key explanation for why extrajudicial executions hardly ever lead to convictions. One expert suggested to me that the absence of witnesses results in 8 out of 10 cases involving extrajudicial killings failing to move from the initial investigation to the actual prosecution

stage. In a relatively poor society, in which there is heavy dependence on community and very limited geographical mobility, witnesses are uniquely vulnerable when the forces accused of killings are all too often those, or are linked to those, who are charged with ensuring their security. The present message is that if you want to preserve your life expectancy, don't act as a witness in a criminal prosecution for killing.

53. The witness protection program is administered by the NPS. This is problematic only because the impartial role prosecutors are expected to play in the early phases of a criminal case can make them loath to propose witness protection. This problem might be remedied by establishing a separate witness protection office independent of the prosecutors but still within the Department of Justice (DOJ).<sup>76</sup> That office would then be free to take a proactive role in providing witness protection.

54. Implementation of the statute establishing the witness protection program is deeply flawed.<sup>77</sup> It would seem to be truly effective in only a very limited number of cases. The rights and benefits mandated by law are too narrowly interpreted in practice to make participation possible for some witnesses.<sup>78</sup> Another widely-cited shortcoming, likely caused by inadequate resources, is that at-risk family members are not admitted into the program, although in theory "any member of his family within the second civil degree of consanguinity or affinity" who is at risk may be admitted.<sup>79</sup> A more fundamental problem is that, even when a witness is available, cases seldom move quickly through the justice system,<sup>80</sup> and when a case fails to prosper, the witness is expelled from the program, although he or she may still be at risk.

#### **F. Limited forensic resources lead to over-reliance on witness testimony**

55. A greater capacity to use physical evidence would allow more cases to go forward without witness testimony. The information that I received from officials was that, while there are some forensic laboratories and experts in Manila, there is very limited access to these resources throughout most of the country.

#### **G. The Ombudsman lacks independence**

56. The Office of the Ombudsman is responsible for investigating and prosecuting crimes and other misconduct committed by public officials.<sup>81</sup> However, the Ombudsman's office has done almost nothing in recent years to investigate the involvement of Government officials in extrajudicial executions. Despite having received a significant number of complaints alleging extrajudicial executions attributed to State agents, no information was provided by the Ombudsman's office indicating that it had undertaken any productive investigations.

57. The Office of the Ombudsman has surrendered its constitutionally-mandated independence from the executive branch. First, it has adopted an untenably narrow interpretation of its jurisdiction, choosing not to initiate an investigation into an extrajudicial execution unless there is already very strong evidence that a public official was responsible in the particular case. Second, the Office of the Ombudsman often operates as a *de facto* subsidiary of the Department of Justice. The NBI conducts most of its investigations. Pursuant to a Memorandum of Agreement between the DOJ and the Office of the Ombudsman, the relevant Regional State Prosecutor and other senior members of DOJ's NPS monitor and oversee the "successful prosecution and speedy disposition of Ombudsman cases". "Deputized prosecutors" from the NPS "have the primary responsibility of prosecuting Ombudsman cases", and prosecutor-investigators from the Office of the Ombudsman "assist, if practicable, the Deputized Prosecutor in the prosecution of the case" and "may, with prior clearance from the Ombudsman or his Deputy, take over the prosecution of the case at any stage".<sup>82</sup> As a practical matter, these arrangements serve to all but completely subordinate the Ombudsman to the DOJ.

58. The Ombudsman insists that her office can take over a case being handled by the DOJ at any time, but it is unclear how the Ombudsman would even be aware that such a measure was necessary given her Office's lack of involvement. One NPS prosecutor at the local level explained that, in his locality, the local representative of the Ombudsman sits in the DOJ office, reviews the work of DOJ prosecutors and passes this on to the Ombudsman in Manila. It is, in his words, a "chummy" relationship, because the person from the Office of the Ombudsman is disinclined to criticize the conduct of what are, in effect, his colleagues.

#### **H. The role of the courts**

59. When most cases stall at the investigation or prosecution stage, it is difficult to evaluate the effectiveness of the judiciary. Two issues specific to the judiciary were, however, raised by my interlocutors. First, trials are routinely delayed and are generally not held on consecutive days, increasing the opportunities for witness intimidation. If fully implemented, the Supreme Court's decision to establish "special courts" for "cases involving killings of political activists and members of the media" should remedy this problem for those cases.<sup>83</sup> Second, witnesses often relocate to avoid retaliation, but judges seldom grant a change of venue on that basis.<sup>84</sup> The judiciary should ensure that docket management and venue decisions facilitate witness participation and protection.

#### **XI. CONGRESS AND THE EXECUTIVE**

60. The executive branch has stymied the legislature's efforts to oversee the execution of laws. Military officers are seldom permitted to appear before Congress other than at budget hearings. A high-ranking government official recounted with genuine puzzlement the efforts of the Committee on Human Rights of the House of Representatives to obtain the testimony of senior military officers. This was considered self-evidently preposterous and was "successfully avoided". Official policy, now in the form of a "memorandum circular" provides that any official requested to "appear before either House of Congress" shall "forward the request . . . to the President through the Executive Secretary" who "shall consider whether the subject matter of the inquiry is in aid of legislation and/or falls within the scope of executive privilege".<sup>85</sup> Some in Congress have acquiesced in this arrangement. The then Chair of the Senate Committee on Justice and Human Rights said that he could not recall having held any hearing relevant to the ongoing extrajudicial killings but maintained that this was not a problem, because killing was already a punishable offence, so there was no need for further legislation.

61. The legislature has also failed to exercise its constitutional authority to block the promotion of military officers implicated in human rights abuse. Appointment as an officer "from the rank of colonel or naval captain" is by the President with the consent of the Commission on Appointments, a body comprising members of the House and Senate.<sup>86</sup> (The AFP controls promotion to lower-ranking posts.) It is also the express policy of the executive branch that soldiers must receive a human rights "clearance" from the CHRP prior to any promotion.<sup>87</sup> Congressmen, military officers, and CHRP staff repeatedly affirmed to me that this is the policy, and that the AFP, the CHRP, and the Commission on Appointments all participate. However, I can only conclude that it is an empty formality. I asked repeatedly, but no one could recall any particular instances in which a promotion had been blocked. To provide more accountability, the CHRP should follow-up on clearance decisions by publicly tracking the subsequent promotion decisions of the AFP and the Commission on Appointments.

#### **XII. COMMISSION ON HUMAN RIGHTS**

62. The Philippines Commission on Human Rights (CHRP) stands out as an oversight mechanism that has safeguarded its independence and mandate. However, more resources must be devoted to ensure the effectiveness of its investigations.

63. The CHRP was established by the Constitution as an independent body charged with investigating human rights violations, providing preventive measures and legal assistance to victims, recommending reforms, and monitoring the Government's compliance with its human rights treaty obligations.<sup>88</sup>

64. In my discussions with CHRP commissioners, CHRP staff, and civil society advocates, they all expressed that the CHRP's highest priority must be to increase its investigative capacity. This requires hiring and training more investigators, devoting greater resources to investigations, and increasing investigators' capacity to make use of physical evidence.<sup>89</sup> With this in mind, I was pleased to learn that in March the Government provided the CHRP significant additional funding.<sup>90</sup>

65. Many advocates and, indeed, many CHRP staff call for the CHRP to be given prosecutorial powers. This is a very tempting proposition: Today, CHRP investigators can submit cases to a prosecutor or ombudsman, but these cases seldom prosper. However, the proposal's risks outweigh its benefits. First, there are already other organs responsible for prosecuting cases, including one (the Ombudsman) that is independent of the executive. To give the CHRP prosecutorial powers would not only be redundant but would compromise a responsibility held solely by the CHRP: to monitor all of these other organs for human rights compliance. Second, while a grant of prosecutorial powers might give the CHRP more teeth, it would also increase the security risks faced by its investigators and witnesses. Today, the CHRP has the potential to publicly and authoritatively reveal the reality of widespread abuse despite the near absence of criminal convictions.

### **XIII. RECOMMENDATIONS**

66. **I am encouraged by the many measures recently taken by the Government,<sup>91</sup> and I have found instructive the many recommendations made in other reports.<sup>92</sup> Based on my own observations, I believe that the following measures are essential.**

67. **Extrajudicial executions must be eliminated from counterinsurgency operations:**

(a) **As Commander-in-Chief of the armed forces, the President must take concrete steps to put an end to those aspects of counterinsurgency operations which have led to the targeting and execution of many individuals working with civil society organizations.**

(b) **The necessary measures should be taken to ensure that the principle of command responsibility, as it is understood in international law, is a basis for criminal liability within the domestic legal order.**

(c) **The Government should immediately direct all military officers to cease making public statements linking political or other civil society groups to those engaged in armed insurgencies. Any such characterizations belong solely within the power of the civilian authorities. They must be based on transparent criteria, and conform with the human rights provisions of the Constitution and relevant treaties.**

(d) **Transparency must be introduced to the "orders of battle", "watch lists", and similar list of individuals and organizations maintained by the AFP, PNP, and other elements of the national security system. While their contents might justifiably be considered secret, which lists exist, their purposes, the criteria for inclusion, and the number of names on each should be made public.**

**68. The use of a death squad in Davao City must end:**

(a) NAPOLCOM should withdraw the mayor of Davao City's powers of supervision and control of PNP units within his jurisdiction and should hold the officers commanding those units accountable for shutting down the death squad.

(b) While particular crimes should be reported, laws and practices in which barangay councils or captains submit names (e.g., of drug pushers) for inclusion on law enforcement watch lists should be abolished.

(c) An independent investigation should be conducted to identify the persons directing the death squad's "assets" and hit men.

**69. Convictions in a significant number of extrajudicial executions must be achieved. Appropriate institutional arrangements exist but they must be more transparent if they are to be effective. Thus:**

(a) CHRP should issue a monthly report listing allegations of extrajudicial executions that it has received together with the current status of its investigations.

(b) Members of the public should be able to submit cases to be overseen by Task Force Usig. If it concludes that a case does not fall within its mandate, it should provide a reasoned explanation in writing.

(c) Task Force Usig should issue a monthly report on the status of all cases it is attempting to resolve.

(d) The Supreme Court should issue a monthly report on the status of all cases before the special courts.

**70. IALAG should be abolished, and the criminal justice system should refocus on investigating and prosecuting those committing extrajudicial executions and other serious crimes.**

**71. The witness protection program should be reformed and fully implemented:**

(a) It should be proactively administered by an office independent of the NPS.

(b) Witness protection should be unstintingly provided to all those who will be put at risk by an individual's testimony.

(c) Individuals should be permitted to remain in the witness protection system for as long as they are at risk, even if a case stalls.

(d) Housing and other benefits provided under the witness protection program should ensure the security and comfort of those protected.

**72. The Supreme Court should take all available measures to ensure the effective prosecution of extrajudicial executions. Among other measures:**

(a) The system of special courts for killings of political activists and members of the media should be fully implemented so as to improve the efficiency of trials, and the judiciary should

take all other measures necessary to facilitate the participation of witnesses, including sympathetic consideration of requested venue changes and docket management decisions that facilitate witness participation and protection.

(b) In conjunction with the executive branch of Government, the Supreme Court should use its constitutional powers over the practice of law to impress upon prosecutors that they have a duty to the public to uphold and protect human rights by acting to ensure the effective investigation of cases and protection of witnesses and that they should provide reasoned decisions for probable cause determinations.

73. Human rights should be safeguarded within the peace processes:

(a) The JMC should meet and fulfill its mandate under the CARHRIHL.

(b) Consideration should be given to establishing a mechanism for monitoring human rights abuses within the framework of the Government – MILF peace process.

74. The Commission on Human Rights (CHRP) should guard its independence and increase its effectiveness:

(a) CHRP should hire and train more investigators and provide them with the resources necessary for effective investigations.

(b) CHRP should increase the resources available for victim assistance to ensure that witnesses are sufficiently secure as to enable the non-judicial clarification of their cases.

(c) To provide more accountability in the AFP promotions process, CHRP should follow-up on its human rights clearance decisions by publicly tracking the subsequent promotion decisions of the AFP and the Commission on Appointments.

(d) CHRP should consider measures to more effectively protect as well as monitor human rights during military operations throughout the country.

75. The Ombudsman's office should begin to fulfill effectively its independent constitutional role in responding to extrajudicial killings plausibly attributed to public officials.

76. The Government should reinstate a policy of facilitating the constitutionally-mandated role of Congressional oversight in relation to the AFP and the PNP, starting by rescinding all directives, memoranda, and orders that impede such oversight.

77. The CPP/NPA/NDF should stop using people's courts that do not comply with human rights and humanitarian law standards and should ensure that lethal force is directed only against combatants and civilians directly participating in hostilities.

78. The CPP/NPA/NDF should repudiate statements that persons owe "blood debts", have "accountabilities to the people", or are subject to prosecution before people's courts.

## Notes

<sup>1</sup> I should note that some of my interlocutors suggested that these witnesses were feeding me propaganda. The issue of extrajudicial executions in the Philippines is undeniably politicized, and those who have witnessed the killing or steps leading up to the killing of leftist activists are not infrequently themselves sympathetic toward the left. I took this concern about bias seriously. However, the existence of a propaganda dimension in accusations that the military is extrajudicially executing leftist activists does not, in itself, destroy the credibility of the information and allegations. I proposed, instead, the need to apply several tests of credibility.

First, is it only NGOs from one part of the political spectrum which are making these allegations? The answer is clearly “no”. Human rights groups in the Philippines range across the entire spectrum in terms of their political sympathies, but I met no groups who challenged the basic fact that large numbers of extrajudicial executions are taking place, even if they disagreed on precise figures.

Second, how compelling is the actual information presented? I found there was considerable variation ranging from submissions which were entirely credible and contextually aware all the way down to some which struck me as superficial and dubious. But the great majority is closer to the top of that spectrum than to the bottom.

Third, has the information proved credible under “cross-examination”? My colleagues and I heard a large number of cases in depth and we probed the stories presented to us in order to ascertain their accuracy and the broader context. We spoke with some witnesses for over an hour, and we reviewed sometimes copious documentation, often including affidavits, firearms identification reports, autopsy reports, and police reports. I developed doubts about a handful of cases but found the vast majority to be highly credible.

Fourth, did the fact that a few of the persons who had been listed by one civil society organizations as victims of extrajudicial executions were actually alive indicate that the allegations were fabricated? Obviously, such mistakes do not enhance an organization’s credibility. However, when the PNP introduced me to two such individuals, I was informed that they had been detained — one for one week and one for three months — and I received conflicting information on how promptly their families had been notified. (At the time of my visit, Task Force Usig had identified two individuals included in Karapatan’s list who were still alive: Renato Bugtong and Edwin Mascariñas. My understanding is that that number has since risen to five. (Letter from the Philippine Mission to the United Nations, dated 23 May 2007.)) Under these circumstances, the misreporting of what appear to have been (happily, temporary) disappearances as extrajudicial executions does very little to discredit the vast number of remaining allegations.

<sup>2</sup> The Philippines ratified the ICCPR on 23 October 1986, ratified the Geneva Conventions of 1949 on 6 October 1952, and acceded to the Second Additional Protocol to the Geneva Conventions of 1949 on 11 December 1986.

<sup>3</sup> On 5 July 1996, the NDF addressed the “NDFP Declaration of Understanding to Apply the Geneva Conventions on 1949 and Protocol I of 1977” to the Swiss Federal Council (the depositary for the Geneva Conventions) and to the International Committee of the Red Cross (ICRC), stating that, “We are the political authority representing the Filipino people and organized political forces that are waging an armed revolutionary struggle for national liberation and democracy, in the exercise of the right to self-determination within the purview of Article 1, paragraph 4, of Protocol I against the

persistent factors and elements of colonial domination and against national oppression. . . .” In its declaration, the NDFP “solemnly declare in good faith to undertake to apply the Geneva Conventions and Protocol I to the armed conflict” and also affirmed that it was “bound by international customary law pertaining to humanitarian principles, norms and rules in armed conflict”. The declaration was signed by representatives of the NDF, CPP, and NPA. Previously, in 1991, the NDF had “formally declare[d] its adherence to international humanitarian law, especially Article 3 common to the Geneva Conventions as well as Protocol II additional to said conventions” (“Declaration of Adherence to International Humanitarian Law” (15 August 1991)).

The Government and the NDF signed the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) on 16 March 1998. The agreement affirms prohibitions on “summary executions”, “involuntary disappearances”, “massacres”, “indiscriminate bombardments”, and the targeting of “civilians or those taking no active part in the hostilities[,] persons who have surrendered[, and] those placed *hors de combat* by sickness, wounds, or any other cause” (Part III, Art. 2(4); Part IV, Arts. 2, 3(1), 4(2)). CARHRIHL also provided for the establishment of a Joint Monitoring Committee (JMC) that would be composed of three members chosen by the Government’s negotiating panel and three by the NDF’s negotiating panel. (Part V). The JMC was to “receive complaints of violations of human rights and international humanitarian law and all pertinent information and shall initiate requests or recommendations for the implementation” of CARHRIHL (Part V, Article 3). The members have been chosen, so that there are now Government and NDF “sections” of the JMC, but the JMC itself has never met.

The Government and the MILF entered into the “Agreement on peace between the government of the Republic of the Philippines and the Moro Islamic Liberation Front” on 22 June 2001, agreed to “[t]he observance of international humanitarian law and respect for internationally recognized human rights instruments. . . .” This commitment was further elaborated in article IV of the “Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001” signed on 7 May 2002.

<sup>4</sup> In most contexts, this report will follow the common practice of referring to the CPP/NPA/NDF. However, at least as a formal matter, the CPP, the NDF, and the NPA are distinct organizations with the CPP playing a leadership role.

According to its constitution, the NDF “upholds the program of uniting the democratic classes and special sectors of society for the revolutionary struggle against US imperialism, feudalism and bureaucrat capitalism” (art. IV) and considers that the “Philippine revolution is a national-democratic revolution . . . under the class leadership of the proletariat through the Communist Party of the Philippines (MLMZT)” (art. II). (“Constitution of the Democratic Front of the Philippines” adopted by the NDF National Conference of Representatives, July 1994 (Annex A-2 of *Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977* (NDFP-Nominated Section of the Joint Secretariat of the GRP-NDFP Joint Monitoring Committee (no date)) [*Declaration of Undertaking*].)

In accordance with the “Basic Rules of the New People’s Army” (Annex C of *Declaration of Undertaking*), “The New People’s Army shall always adhere to the leadership of the Communist Part of the Philippines and thus, it must abide with all decisions orders and directives of the National Congress, Central Committee, Political Bureau and the Military Commission of the Party.” (Principle I, Point 1). The Military Commission is an organ of the Central Committee, and is the CPP’s primary point of contact with the NPA. (Principle I, Point 2). However, “All non-regular fighting units like the guerrilla, militia, self-defense and armed city partisans are directly under the local Party committee. Nevertheless, they shall receive direct orders from the Military



Commission or from the military command to link them with the regular mobile forces.” (Principle I, Point 9). The “Basic Rules of the New People’s Army” were issued by the Meeting of the Red Commanders and Fighters (29 March 1969) and approved by the Central Committee of the CPP (13 May 1969). (Note also that article V, section 4 of the “Constitution of the Democratic Front of the Philippines” adopted by the NDF National Conference of Representatives, July 1994 provides that, “The multilateral relations within the NDF respect existing bilateral relations of the allied organizations. The New People’s Army is under the absolute leadership of the Communist Party of the Philippines.” (Annex A-2 of *Declaration of Undertaking*.)

<sup>5</sup> The number of NPA fighters given is an estimate provided by the Government. The CPP/NPA/NDF was described as the “most potent threat” in a briefing given by the Executive Secretary and other senior officials. According to Government records, since 2000, military and law enforcement personnel have been killed by the NPA in every region except the Autonomous Region of Muslim Mindanao (ARMM). However, despite the archipelago-wide reach of the NPA insurgency, major fighting has been far more concentrated, and just 6 of the country’s 17 regions account for over 80% of the casualties: Bicol, CALABARZON, Caraga, Central Luzon, Davao, and Eastern Visayas. (“Reference Materials on Unexplained Killings (January 2007)”.)

<sup>6</sup> The “Peace Agreement” (signed 2 September 1996) was designed to provide for the “final implementation” of the “Tripoli Agreement” (signed 23 December 1976). These agreements were reached with the participation of the Organization of the Islamic Conference (OIC), and its reports clarify the issues of contention. See “Report of the Secretary-General on the Question of Muslims in Southern Philippines” (OIC/33-ICFM/2005/MM/SG/REP.2) (issued June 2006).

<sup>7</sup> The “Agreement for General Cessation of Hostilities” (signed 18 July 1997) broke down in late 2002, but the parties revived the cessation of hostilities on 19 July 2003 and have subsequently made significant progress toward operationalizing the “Agreement on Peace” (signed 22 June 2001).

<sup>8</sup> Statistics on the number of fighters each group commands are estimates provided by the Government. The figure for the MNLF pertains only to those involved in hostilities with Government forces.

<sup>9</sup> The Philippines’ problem with coups d’état and other military adventurism has been analyzed by high-profile fact-finding commissions headed by some of the country’s most prominent jurists, Hilario G. Davide, Jr. (“The Final Report of the Fact-Finding Commission (Pursuant to R.A. No. 6832)” (October 1990)) and Florentino P. Feliciano (“Report of the Fact-Finding Commission” (17 October 2003)).

<sup>10</sup> In a joint communiqué signed 6 May 2002, the Government and the MILF “agreed to the isolation and interdiction of all criminal syndicates and kidnap-for-ransom groups, including so-called ‘lost commands’ operating in Mindanao” and arranged various practical measures to this end, including the formation of “an Ad Hoc Joint Action Group against criminal elements in order to pursue and apprehend such criminal elements”.

<sup>11</sup> The category of “leftist activists” is employed due to its explanatory power. Human rights defenders and trade unionists, along with many other civil society leaders, appear to

be killed due more to their association with leftist groups than to their particular activities. With respect to trade unionists, for instance, I spoke with representatives of both the Federation of Free Workers (FFW) and the Kilusang Mayo Uno (KMU). Both groups claim several hundred thousand members, but while KMU has lost numerous members to extrajudicial executions, FFW has not lost any. The key distinction appears to be that KMU is commonly cited by Government officials as a CPP front group and FFW is not. To clarify, disputes surrounding organizing campaigns and collective bargaining negotiations appear often to be the motivating factor behind decisions to attack workers and organizers, but the likelihood that such an attack will take the extreme form of an extrajudicial execution appears to be far higher if the worker is associated with what is purported to be a CPP front group. In contrast, the killing of journalists is discussed separately, because it appears to constitute a distinct phenomenon.

<sup>12</sup> The list of extrajudicial victims maintained by Karapatan (as of 30 June 2007) provides the political or organizational affiliation of the 390 victims for which they are known. If these are correlated with documents originating in the AFP that list CPP/NPA/NDF front groups, we find that 94% of the victims with known affiliations belonged to alleged front groups.

| Affiliation (*)                   | Characterization in <i>Trinity of War</i> (**) | Linked to CPP in “ <i>Knowing the Enemy</i> ”? (***) | Number of victims |
|-----------------------------------|--|--|-------------------|
| <b>BAYAN MEMBER ORGANIZATIONS</b> |  |  |                   |
| ANAKBAYAN (youths)                | KM-controlled (****)                           | X  | 13                |
| COURAGE (public sector unions)    | MKP-controlled                                 | X  | 3                 |
| KMP (peasants)                    | PKM-controlled                                 | X  | 102               |
| KMU (workers)                     | RCTU-controlled                                | X  | 22                |
| LFS (students)                    | KM-controlled                                  | X  | 5                 |
| PAMALAKAYA (fisherfolk)           | PKM-controlled                                 | X  | 7                 |
| PCPR (church people’s)            | CNL-controlled                                 | X  | 2                 |
| SCMP (student Christians)         | KM-controlled                                  | X  | 1                 |
| BAYAN (unspecified organization)  |  |  | 3                 |
| <b>PARTY LIST GROUPS</b>          |  |  |                   |
| ANAKPAWIS                         | Directly handled by CPP Central Committee      | X  | 48                |
| BAYAN MUNA                        | (same)   | X  | 129               |
| GABRIELA                          | (same)   | X  | 2                 |
| KABATAAN (was Anak ng Bayan)      | (same)   | X  | 2                 |
| SUARA                             | (same)   | X  | 1                 |
| <b>OTHER ORGANIZATIONS</b>        |  |  |                   |
| KADAMAY (urban poor)              | KASAMA-controlled                              | X  | 6                 |

|                                     |   |   |    |
|-------------------------------------|---|---|----|
| KAMASS (local peasant organization) |   |   | 1  |
| KARAPATAN (human rights)            | Staffed by members of the CNL-controlled PCPR | X | 21 |
| KASIMBAYAN (church workers)         |   |   | 1  |
| SELDA (former political prisoners)  |   |   | 1  |
| Others (unspecified)                |   |   | 20 |

(\*) While some victims did have multiple political or organizational affiliations, the version of the list compiled by Karapatan with which I was provided, selected a primary affiliation for each victim, and the numbers given here do not involve double-counting.

(\*\*) Northern Luzon Command, Armed Forces of the Philippines, *Trinity of War, Book III: The Grand Design of the CPP/NPA/NDF* (2005). See especially pages 122-125.

(\*\*\*) “Knowing the Enemy” is a PowerPoint-based briefing given by the AFP.

(\*\*\*\*) CNL, KASAMA, KM, MKP, PKM, and RCTU are all member organizations of the NDF. (*Declaration of Undertaking*, page 77.)

<sup>13</sup> Number from list current as of 30 June 2007. Some comparisons in the report are based on earlier versions of Karapatan’s list, as noted.

<sup>14</sup> According to a Government analysis of the various lists of “alleged political killings” that was current as of 20 December 2006, while Karapatan’s list contained 725 names and TFD-P’s list contained 89 names, only 46 names appeared on both lists. (“Report of the Technical Working Group (TWG) on the Alleged Political Killings (Covering the Period 1 February 2001 – 31 October 2006) as of 20 December 2006”).

<sup>15</sup> In May 2006, the Secretary of the Interior and Local Government ordered the PNP to establish Task Force Usig to investigate and help to resolve the killings of journalists and leftist activists. The figure of 116 cases was accurate as of 2 April 2007 and refers to “slain party list members / militants”; Task Force Usig maintains a separate list of “slain mediamen”. (Letter from the Philippine Mission to the United Nations, dated 23 May 2007.)

Note that the 116 cases that Task Force Usig considers within its remit is not the full number of incidents which human rights groups have alleged to constitute extrajudicial executions. For example, of the 783 such cases enumerated by Karapatan (as of 14 November 2006), Task Force Usig determined that 461 either fell outside of its remit or clearly did not involve a crime, and considers 207 cases still in need of verification. It is worth clarifying that Karapatan has alleged that Government agents — soldiers, police officers, and others — were the perpetrators in many but far from all of the cases that it has recorded. However, this does not explain the extent of the exclusions. I had a lengthy and productive discussion with the members of Task Force Usig regarding the grounds on

which cases were excluded. After my visit, Task Force Usig also forwarded me a large quantity of documentation to substantiate the argument that a number of individuals listed by civil society organizations died in legitimate encounters between the NPA and the AFP or PNP. I ultimately concluded that a comprehensive, case-by-case analysis of the excluded cases could not usefully be undertaken by someone in my position. I continue to believe, however, that there is a need for greater transparency with respect to this aspect of Task Force Usig's work if its efforts are to be fully accepted by all concerned, and I make a recommendation to this end in Part XIII.

<sup>16</sup> The CPP is relatively open regarding its doctrine. A number of these issues are, for example, addressed in "Further strengthen the Communist Party of the Philippines to lead the people's democratic revolution", Message of the Central Committee, CPP, *Ang Bayan* (26 December 2006).

*On the united front:* "Aside from waging armed struggle against the enemy, our Party uses the policy and tactics of the united front. In the main, the united front is for the armed struggle. . . . Both the revolutionary armed struggle and the united front have their respective ways of arousing, organizing and mobilizing the broad masses of the people. The revolutionary armed struggle has made possible solid mass organizing and building organs of political power in the countryside. The united front has aroused, organized and mobilized the people in the entire country in order to facilitate their eventual organization by the Party. Legal united front work has directly helped in the organizational work of legal democratic mass organizations." (pp10–11)

*On democratic centralism:* "In our organizational life, we follow the principle of democratic centralism. The essence of centralism is Marxism-Leninism-Maoism. It guides democracy within our Party and is in turn based on it. The democratic process allows our leading organs to gather facts and ideas from the corresponding organization and to deliberate on them freely in order to arrive at policies and decisions. Individuals and the minority are subject to the will of the majority. The lower organ or organization is subject to the higher organ or organization. The Central Committee is the highest organ, while the Congress is not in session. . . . Our Party organization is of national scale and is deeply rooted among the masses of workers and peasants. The Party branches are in communities, factories, plantations, transport lines, schools and offices. Our Party groups or cells are at various levels of various types of organizations and institutions, progressive or reactionary. We have Party elements and cells even within the military and police forces of the enemy." (p11)

*On recruitment:* "We recruit our Party members from the armed revolutionary movement and the legal democratic mass movement. These have trained and tested so many activists worthy of recruitment into the Party. The intense and widespread armed and legal forms of struggle are providing a continuous flow of fresh highly motivated and militant Party recruits who come from the toiling masses of workers and peasants and the middle social strata and who bring with them rich experience, their closeness to the masses and various types of abilities that are useful for advancing the people's democratic revolution." (p11)

<sup>17</sup> See, e.g., *Declaration of Undertaking*, pages 10, 77.

<sup>18</sup> Some Government officials made this contention in conversations; it can also be found in Northern Luzon Command, Armed Forces of the Philippines, *Trinity of War, Book III: The Grand Design of the CPP/NPA/NDF*, page 77 (2005).

<sup>19</sup> *Trinity of War, Book III*, pages 122, 124. Similar assertions were made routinely in my conversations with Government officials.

<sup>20</sup> *Trinity of War: Book III*, pages 80–81.

<sup>21</sup> The Anti-Subversion Act (Republic Act No. 1700) was enacted in 1957 and was repealed by Republic Act No. 7636, which was signed into law on 22 September 1992.

<sup>22</sup> The Party-List System Act (Republic Act No. 7941) was signed into law on 3 March 1995. The “declaration of policy” included in section 2 of the Act made its purpose explicit:

“The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.”

<sup>23</sup> This exchange between Representative Teodoro Casiño and Representative Joey Salceda, who was acting as the sponsor of a budget bill for the Department of National Defense, provides an illustration of how orders of battle are understood:

REP. CASIÑO. Ano po ang, sino po ang nasasama sa isang order pf battle? [What is, who are included in an order of battle?]

REP. SALCEDA. Enemies of the State.

REP. CASIÑO. Enemies of the State. At ano ang batayan sa paglagay ng isang tao sa order of battle? [And what is the basis for including a person in an order of battle?]

REP. SALCEDA. Those who have committed acts punishable under the Revised Penal Code for the crime of rebellion.

REP. CASIÑO. Mayroon po bang due process na ginagawa ang armed forces bago nila ilagay ang isang tao sa order of battle? [Is there due process conducted by the armed forces before including a person in its order of battle?]

REP. SALCEDA. Evidence based decision-making, Your Honor.

(Transcript of Congressional budget deliberations, March 22, 2006, 4:30pm.)

<sup>24</sup> This regional variation in counterinsurgency strategy likely explains some of the regional variation in how common extrajudicial executions are. Note, for instance, that on a per capita basis, extrajudicial executions are nearly twice as common in Central Luzon as in the Cagayan Valley Region. Such disparities would be even more apparent in a province-level analysis.

| <b>Region</b>                        | <b>Number of extrajudicial executions (**)</b> | <b>Population (***)</b> | <b>Executions per 100,000 population</b> |
|--------------------------------------|--|-------------------------|--|
| Autonomous Region of Muslim Mindanao | 56   | 3,171,100               | 1.8                                      |
| Bicol Region                         | 126  | 5,189,900               | 2.4                                      |
| Cagayan Valley                       | 28   | 3,086,000               | 0.9                                      |
| Caraga                               | 32   | 2,318,200               | 1.4                                      |
| Central Luzon                        | 139  | 9,195,600               | 1.5                                      |
| Central Visayas                      | 20   | 6,357,900               | 0.3                                      |
| Cordillera Administrative Region     | 29   | 1,526,800               | 1.9                                      |
| Davao Region                         | 79   | 4,020,000               | 2.0                                      |
| Eastern Visayas                      | 87   | 4,020,900               | 2.2                                      |
| Ilocos Region                        | 6  | 4,682,700               | 0.1                                      |
| National Capital Region              | 39   | 10,787,300              | 0.4                                      |
| Northern Mindanao                    | 7  | 3,920,600               | 0.2                                      |
| SOCCSKSARGEN                         | 22   | 3,648,300               | 0.6                                      |
| Southern Tagalog (*)                 | 162  | 13,304,900              | 1.2                                      |
| Western Visayas                      | 20   | 6,876,100               | 0.3                                      |
| Zamboanga Peninsula                  | 33   | 3,154,700               | 1.0                                      |

(\*) Southern Tagalog comprises the recently created regions of CALABARZON and MIMAROPA.

(\*\*) These data are from Karapatan's list covering 21 January 2001 to 30 June 2007.

(\*\*\*) The population figures are the official 2005 projections based on the 2000 census.

<sup>25</sup> I interviewed witnesses to four incidents that took place in the Cagayan Valley Region; I also reviewed case files concerning two additional incidents. The facts concerning the case of Nelson Asucena are summarized in Appendix A, paras. 1-16.

<sup>26</sup> A barangay is the smallest governmental unit. (There are over 40,000 barangays in the Philippines.) Informally, a barangay is typically divided into smaller units called either sitios or puroks. A typical barangay will have three to eight sitios.

<sup>27</sup> According to the briefings I received from the Government, the guiding counterinsurgency strategy for the AFP against the NPA is to "clear", "hold", and "support" areas affected by the insurgency.

<sup>28</sup> CAFGUs are also referred to as CAFGU Active Auxiliary (CAA) companies. The Philippines has experimented with a number of forms of militia and paramilitary organization, including, in addition to CAA, Special CAFGU Active Auxiliaries (SCAA), Civilian Volunteer Organizations (CVO), Civilian Home Defense Forces (CHDF), and Barrio Self-Defense Units (BSDU). Officials describe these as "force multipliers" for the AFP. The Barangay Defense Systems

(BDS) that have recently been deployed in Bulacan, Nueva Ecija, and perhaps some other areas, appear to be unique, however, in their involvement of most or all of the population.

<sup>29</sup> I interviewed witnesses to 13 incidents that took place in Central Luzon, including 6 incidents involving extrajudicial execution (of 7 victims), 3 incidents involving disappearances (of 2 victims), one frustrated killing, and three other incidents. I also reviewed case files concerning an additional 21 incidents of extrajudicial execution. The facts concerning one case, that of James Ayunga, are summarized in Appendix A, paras. 17-26.

<sup>30</sup> I received testimony that such forms of torture as forcing people to drink to excess, covering their face with plastic, and punching them in the stomach had been inflicted during these interrogations.

<sup>31</sup> There is a well-known PowerPoint presentation entitled “Knowing the Enemy” that was developed to show to soldiers and includes an explanation of the CPP/NPA/NDF’s overall military and political strategies, a list of purported CPP fronts groups, and a proposal for changes in the AFP’s counterinsurgency strategies. I have viewed this PowerPoint presentation. While PowerPoint is also sometimes used in community meetings, my understanding is that the version shown is a pared down version with a somewhat different focus.

<sup>32</sup> Sometimes such surveillance simply involves motorcycles passing through the neighborhood. In other instances, a small detachment of two or three soldiers will establish itself for some days in a makeshift hut or an abandoned house in the immediate vicinity of the surveillance target.

<sup>33</sup> According to a civil society organization that I consulted, at the time of my visit, BDS had been established in four of Nueva Ecija’s municipalities: San Jose City (in 20 of its barangays: Sto. Tomas, Cannawan, Abar 1st, Abar 2nd, Sto. Nino 1st, St. Nino 2nd, Sto. Nino 3rd, Sibut, Palestina, Pinili, Villa Josen, Villa Marina, Culaylay, San Agustin, Kaliwanagan, Kita-Kita, Tayabo, Malasin, Manicla, and Villa Floresta), Lupao Town (in 23 of its barangays: San Isidro, Balbalungao, Parista, Cordero, Namulandayam, Bagong Flores, San Pedro, San Roque, Agupalo Este, Agupalo Weste, Mapangpang, Alalay Chico, Alalay Grande, Talugtog, Maasin, Tienzo Cabangasan, Alo-o, Calsib, Pinggan, Ubboy, Poblacion West, San Antonio South, and San Antonio North), Guimba Town (in 41 of its barangays: Culong, Trialala, Cabarusa, Bunol, Sinalatan, Naglabrahan, Consuelo, Naturanok, Tampac 1, Tampac 2, Tampac 3, Sta. Cruz, Caballero, Mancsac, San Bernardino, San Roque, Bantog, Banitan, Balingog East, Balingog West, Bacayao, Pasong Inchik, Manggang Marikit, Bagong Baryo, Galvan, San Agustin, Yuson, Pacac, Narvacan I, Narvacan II, Lennec, Macamias Cavite, Camiing, Ayos Lomboy, Sta. Ana, Nacababillag, San Marcelino, San Andres I, San Andres II, Balbalino, Sto. Cristo, and Cawayan Bugtong), and Cuyapo Town (in 14 of its barangays: St. Clara, San Antonio, Cacapasan, Rizal, Nagmisahan, Tagtagumbao, Malineg, Sta. Cruz, Bambanaba, Bantog, Piglisan, San Jose, Paitan Norte, and Paitan Sur). In addition, the civil society organization reported that BDS were starting to be setup in Carranglan Town (as of February 2007).

A rough statistical analysis provides further evidence of the relationship between extrajudicial executions and the kind of counterinsurgency operation that culminates in a BDS. Of the 30 extrajudicial executions that Karapatan recorded as having taken place in Nueva Ecija (as of

November 2006), 10 took place in one of the 98 barangays that has a BDS (not counting any established in Carranglan). In the 751 barangays that do not have a BDS, 20 extrajudicial executions have taken place (including 1 in Carranglan). In other words, an execution was 4 times more likely to have occurred in a barangay in which a BDS was ultimately established than in other barangays. (However, of those 20 executions that took place in barangays without a BDS, 9 occurred in the municipality of Pantabangan, suggesting either that other problematic counterinsurgency methods are being used or that the process leading up to the establishment of a BDS has not been completed.)

<sup>34</sup> NDF representatives with whom I spoke said that the CPP/NPA/NDF had established a political infrastructure in approximately 10,000 barangays, 800 municipalities, and more than 70 provinces. When the CPP/NPA/NDF members enter a barangay, they attempt to establish “mass organizations” of peasants, women, workers, etc. These mass organizations belong to the NDF. (Thus, for example, a barangay’s peasant organization would form what might loosely be characterized as a local chapter of the National Association of Peasants (PKM), an NDF member organization.)

They said that in each barangay the CPP/NPA/NDF also attempts to establish a “barrio organizing committee” which will be replaced with a “barrio revolutionary committee” once there are no longer Government informers in the barangay and the CPP/NPA/NDF has consolidated its control. In keeping with this difference in the security situation, organizing committees are secretly elected by representatives of the mass organizations; whereas, revolutionary committees are openly elected by the barangay’s whole population. A committee will typically have 15 members, approximately one-third of whom will belong to the CPP or NPA, one-third to the “basic” mass organizations (of peasants, workers, etc.), and one-third to other organizations (of teachers, professionals, etc.). NDF representatives described these political structures that are established at the barangay level as “embryos of the People’s Democratic Government”. They said that in these barangays Government organs, such as the Barangay Council, are rendered non-functional, although if some Government officials are willing to participate in the “new government”, they can be accommodated. (The intended structure of the CPP/NPA/NDF’s barangay-level political organs can be found in “Guide for Establishing the People’s Democratic Government”, Chapter II.)

NDF representatives also provided some information on the role such political organs play in providing the NPA intelligence and in countering Government intelligence gathering efforts. They said that the mass organizations can generally identify Government informers and other “unreliable” individuals and that they report these to the barangay’s organizing or revolutionary committee. The committee, in turn, provides information about suspected Government informers as well as AFP troop movements to the NPA. (See Part V for information on how suspected informers are dealt with.)

<sup>35</sup> This generalization derives from the testimony of witnesses corroborated by AFP incident data. (See the case studies on Nelson Asucena and James Ayunga in Appendix A, paras. 1-26.)

<sup>36</sup> According to a Government analysis, of the 184 incidents reported to the Joint Monitoring Committee established by CARHRIHL between 1 February 2001 and 31 October 2006, the



alleged perpetrators were the AFP (88 incidents; 48%), the PNP (7 incidents; 4%), CAFGUs (6 incidents; 3%), private individuals (8 incidents; 4%), the Revolutionary Proletarian Army – Alex Boncayo Brigade (RPA-ABB) (1 incident; 1%), and unidentified persons (74 incidents; 40%). (“Report of the Technical Working Group (TWG) on the Alleged Political Killings (Covering the Period 1 February 2001 – 31 October 2006) as of 20 December 2006”).

<sup>37</sup> For a detailed breakdown of the contents of this list, see footnote 41. According to the AFP’s tabulation, 44 persons on Karapatan’s list were in fact killed by the NPA. These individuals are Amante Abelon (Belon), Juanito (Juan Jr.) Aguilar, Emmanuela (Manuela) Albarillo, Expedito (Expedito) Albarillo, Cathy Alcantara, Edrian (Adrian) Alegria, Adolfo Aquino, Rommel Arcilla, Nestor Arinque, Ernesto Atento, Romeo Atienza, Rodante Bautista, Noli Capulong, Florante Collantes, Tirso Cruz, Peter Dangiwan, Pederico (Federico) De Leon, Abner Delan (Dalan), Jose Doton, Renato Espino, Maximo Frivaldo, Francisco Gandula, Victoria (Victorina) Gomez, Eddie Gumanoy, Cris Hugo, Abelardo Ladera, Armando Leabres, Sotero Llamas, Jose Manegdeg, Eden Marcellana, Rolando Mariano, Alejandro (Alejandro) Martinez, Warlito Nagasao, Soetro Nasal, Vicente Olea, Ricardo Ramos, Ireneo Rempello (Rempillo), Francisco Rivera, Teodoro Jr. Segui, Edilfonso (Ildefonso) Serrano, Joaquin (Jake) Soriano, Ave (Abe) Sungit, William cadena, Crisanto Teodoro. Names are from Annex G of “Reference Materials on Unexplained Killings (January 2007)”; these are specified to be accurate as of 12 December 2006. For a subset of these cases, complaints against the NDF have been filed with the JMC. The NDFP Nominated Section of the JMC’s Joint Secretariat has issued a report providing its analysis of these cases. (“The Lies of GRP Officials on Extrajudicial Killings: Study by NDFP MC-JS of Twenty-Three (23) Complaints for Extrajudicial Killings Submitted to the GRP-NDFP Joint Monitoring Committee (JMC) that President Gloria Macapagal Arroyo, Task Force Usig and General Hermogenes Esperon are Blaming on the NDFP” (NDFP Human Rights Committee, 19 February 2007)).

<sup>38</sup> The AFP provided me with a complete copy of the “Operation Bushfire” (“Cleansing Bushfire”) document in Tagalog. (Annex J of “Reference Materials on Unexplained Killings (January 2007)”; first annex to the “AFP Reaction to the Melo Commission’s Initial Report”.) It is purported to be a CPP Central Committee Directive dated 7 April 2006, and translated excerpts were also provided to me during two PowerPoint presentations. The first of these, given by the Executive Secretary on 12 February 2007, included:

“Together with the launching of tactical offensives will be the launching of special operations that will target government agents who manage to infiltrate our ranks. Special operations will be given emphasis in order to clean the bushfire and other legal organizations of government infiltrators.”

The second of these, given by the Secretary of Defense and the Chief of Staff of the AFP on 13 February 2007, included:

“[T]his is the best time to execute this ‘special operations’. The Arroyo government is now in the midst of intensifying its counter-insurgency operations. By executing our ‘special operations’ in conjunction with the heightened COIN efforts of the government,

we could portray the killings of members of our front and legal organizations as acts of the Arroyo government. . . .”

<sup>39</sup> Purportedly, the document was found on a laptop during a raid, making it difficult to authenticate. My understanding is that no further copies are purported to have been found.

<sup>40</sup> On the day that the Melo Commission’s report was publicly released, the Chief of Staff of the AFP, General Hermogenes Esperon, issued a letter signed by himself raising the same arguments that he had presented to me in person, and stating that,

“Following on page 56 of the [Melo Commission’s report] is the declaration that, except for the reason that the killings were perpetrated by the CPP/NPA to purge its ranks, no other plausible explanation has been given for the rise in extrajudicial killings. To be sure, the AFP need not search for any ‘plausible explanation’ because the purges conducted by the CPP/NPA are the correct, accurate and truthful reasons that explain the rise in extrajudicial killings.”

This letter was provided together with a number of annexes in the document “AFP Reaction to the Melo Commission’s Initial Report”.

<sup>41</sup> In my 21 February 2007 statement, I referred to 1,227 individuals alleged to have been killed by the NPA. This was the figure most commonly cited by Government officials, but the most recent data provided by the Government refers to 1,335 individuals and covers the period of 1 January 2000 to 31 January 2007.

The disaggregate data are highly suggestive; however, they did not attempt to clarify key legal issues, such as whether civilians were killed while directly participating in hostilities.

| <b>Alleged NPA killings by victim</b>            |  |
|--|--|
| <b>Victim</b>                                    | <b>Number<br/>(percent of total victims)</b> |
| Military or law enforcement personnel            | 415 (31%)                                    |
| Armed Forces of the Philippines (AFP)            | 97   |
| Philippine National Police (PNP)                 | 139  |
| Citizens Armed Forces Geographical Unit (CAFGU)  | 179  |
| Barangay Tanod                                   | 34   |
| Retired military or law enforcement personnel    | 84 (6%)                                      |
| Government officials                             | 111 (8%)                                     |
| National level                                   | 2  |
| Provincial level                                 | 2  |
| Municipal level                                  | 14   |
| Barangay level                                   | 93   |
| Current or former NPA cadres                     | 75 (6%)                                      |
| Rebel “returnees” or current rebels              | 66   |
| Members of Rejectionist groups                   | 7  |
| Rebolusyonaryong Gerilya ng Arayat (RGA) members | 2  |

|                                 |             |
|---------------------------------|-------------|
| Pastors, ministers, and priests | 2 (<1%)     |
| Businessmen and landlords       | 10 (1%)     |
| Journalists                     | 1 (<1%)     |
| “Ordinary civilians”            | 603 (45%)   |
| Total                           | 1335 (100%) |

For roughly one quarter of the total cases, the AFP was able to impute a motive for the killing.

| <b>Alleged NPA killings by imputed motive</b>   |   |
|---|---|
| <b>Imputed motive</b>                           | <b>Number<br/>(as percent of total victims)</b> |
| Suspected as Government informants or assets    | 184 (55%)                                       |
| Non-compliance to extortion demands             | 18 (5%)   |
| Malversation of funds                           | 12 (4%)   |
| Rebel returnees accused of being traitors       | 55 (16%)  |
| Agaw-armas (to take the victim’s weapon)        | 51 (15%)  |
| Armed Forces of the Philippines (AFP)           | 11  |
| Philippine National Police (PNP)                | 35  |
| Citizens Armed Forces Geographical Unit (CAFGU) | 3   |
| Local officials                                 | 2   |
| “Actively involved in COIN”                     | 12 (4%)   |
| Witnesses in CPP/NPA atrocities                 | 2 (1%)  |
| Land dispute                                    | 2 (1%)  |
| Total   | 336 (100%)                                      |

The data for these tables were taken from Annexes B and D of “Reference Materials on Unexplained Killings (January 2007)”, a document provided by the AFP.

In addition, the Mindanao Indigenous Peoples Conference for Peace and Development (MIPCPD) provided me with a list of 316 persons from the Ata-Manobo-Bagobo, Higaonon, Mamanwa, Mandaya, Manobo, Mansaka, Matigsalog, Subanen, Tagakaolo, and Ubo-Manobo tribes allegedly killed by the NPA since 1983 throughout Mindanao. However, no evidence was provided with respect to the details of any particular case. The Special Rapporteur on the situation of human rights and the fundamental freedoms of indigenous people more extensively investigated the impact of armed conflict on indigenous people during his visit to the Philippines. (E/CN.4/2003/90/Add.3 (5 March 2003), paras. 44-53.)

<sup>42</sup> NDF representatives called my attention to a formal declaration it had made (*Declaration of Undertaking*):

The NDFP regards as legitimate targets of military attacks the units, personnel and facilities belonging to the following:

- a. The Armed Forces of the Philippines
- b. The Philippine National Police
- c. The paramilitary forces; and
- d. The intelligence personnel of the foregoing.

Civil servants of the GRP are not subject to military attack, unless in specific cases they belong to any of the four abovestated categories.

The interpretation given the concept of “intelligence personnel” is quite broad, including ordinary civilians who provide information to Government forces. NDF representatives stated that if there is certainty that someone is a Government informant, then he or she is considered a legitimate military target. If there is doubt as to whether someone is a Government informant, a process of escalating responses is followed: He or she will be approached and given a warning, then he or she will be asked to leave the area, and finally a judicial process will be commenced before a people’s court, perhaps ultimately resulting in arrest and punishment. Generally, however, they said that such people simply leave the area.

When I inquired regarding the alleged killings of persons for being Government officials and for refusing to pay revolutionary taxes, the importance of how “intelligence personnel” is interpreted was further demonstrated. NDF representatives asserted that insofar as Government officials may have been killed, this would have been due to the role that particular Government officials had played in providing Government forces with intelligence information. Similarly, NDF representatives stated that they were unaware of any case in which tax evasion as such had resulted in the NPA killing someone. They explained that tax collection generally involves a negotiation to settle on a mutually agreeable amount. If that negotiation breaks down and the firm or individual refuses to pay taxes, then the NPA might take such actions as the confiscation or destruction of assets. They stated that when some has been killed in connection with tax collection efforts, this has been because he or she tipped off the AFP or PNP with a view to getting CPP or NPA members arrested to avoid making payment.

<sup>43</sup> The CPP/NPA/NDF variously considers itself a “sovereign”, an armed group with “status of belligerency”, and “the political authority representing the Filipino people and organized political forces that are waging an armed revolutionary struggle for national liberation and democracy, in the exercise of the right to self-determination”. (*Declaration of Undertaking*). The CPP/NPA/NDF claims on this basis to have the authority to impose a system of criminal justice. Moreover, it claims that its right to do so is affirmed by the CARHRIHL signed by representatives of the Government and the NDF on 16 March 1998. CARHRIHL, Part III, Article 4 provides that, “The persons liable for violations and abuses of human rights shall be subject to investigation and, if evidence warrants, to prosecution and trial. . . .”

<sup>44</sup> The basic procedure of the people’s courts is provided in the “Guide for Establishing the People’s Democratic Government” (1972), Chapter III, but this does not explain what law the courts apply. Representatives of the NDF claimed that, while the process of codification was ongoing, several existing documents constituted a penal code. These were the “Guide for Establishing the People’s Democratic Government”, “Basic Rules of the New People’s Army” (1969), “Rules in the Investigation and Prosecution of Suspected Enemy Spies” (1989), and the “NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977” (1996). While the “Basic Rules of the New People’s Army” includes a list of offences that are to be punished by expulsion and death when committed by members of the NPA — “treachery, capitulation, abandonment of post, espionage, sabotage, mutiny, inciting for rebellion, murder, theft, rape, arson and severe malversation of people’s funds” (Principle IV, Point 8) — neither this nor any other instrument cited actually defines the elements of any criminal offence.

<sup>45</sup> Article 3(1)(d) common to the Geneva Conventions of 1949; Protocol I, Article 75(4); Rome Statute of the International Criminal Court, Article 8(2)(c)(iv); International Committee of the Red Cross, *Customary International Humanitarian Law*, Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Cambridge University Press, 2005, Rules 100-103, 156.

<sup>46</sup> NDF representatives explained that “accountabilities” to the people cover a range of situations including that a person has caused injury, damage, or death and warrants a warning; that a person has become part of the military structure and a legitimate military target; or that a person has been the subject of a criminal complaint before a people’s court. When it is stated that a person has a “blood debt”, that would generally mean that a complaint had been filed or a warrant of arrest issued. I have no evidence that the CPP/NPA/NDF uses such characterizations as a way of directing or inciting violence against individuals; however, the effect of intimidation that such statements must cause is highly irresponsible. Thus, for instance, Jose Maria Sison stated publicly that two prominent non-CPP leftists, Walden Bello and Etta Rosales, “can talk and write as much as they want against the CPP and other revolutionary forces [and] be sure that these targets of their malice will always respect their right of free speech” but then added that “it is another matter if for example there is a criminal complaint” against either of them and hinted at what basis such a hypothetical criminal complaint might have — “organizing groups dedicated to intelligence and psywar for the imperialists against the patriotic and progressive forces” and “stealing funds from her congressional committee, covering up human rights violations or conniving with Imee Marcos in blocking the indemnification of the winning plaintiffs in the US court judgment against the Marcos estate”, respectively. (Press Statement, 27 December 2004.) In this context, it was hardly unreasonable for Bello and Rosales to wonder whether they might be subjected to the “revolutionary justice” of a “people’s court”. However, when I asked Sison whether there were such criminal complaints, he stated that he had no information that there were such complaints, and members of the NDF Negotiating Panel stated categorically that there were not.

<sup>47</sup> I reviewed case files concerning 45 killings that took place in the Autonomous Region of Muslim Mindanao (ARMM), 8 in the province of Maguindanao and 37 in the province of Sulu. I received a number of less substantiated reports on killings in other parts of the ARMM. I also reviewed case files concerning alleged killings in other areas contemplated for inclusion in the ARMM under the 1976 Tripoli Agreement between the Government and the MNLF: Davao del Sur (4 killings), SOCCSKSARGEN (10), and Zamboanga Peninsula (9). I also interviewed witnesses to 8 extrajudicial executions in these areas, including 3 in Davao del Sur, 3 in Sulu, and 2 in SOCCSKSARGEN.

<sup>48</sup> The International Monitoring Team (IMT) led by Malaysia, with some 60 personnel from several countries, is mandated to “observe and monitor the implementation of cessation of hostilities, as well as the socio-economic development aspects of the agreements signed”, “[t]o conduct field verification to validate any reported violations of any of the cessation of hostilities agreements signed”, and “[t]o report to the [Government] and MILF Peace Panels its findings and assessment of the reported violations”. (“Terms of Reference of the International Monitoring Team (IMT)” (signed 6 September 2004), art. 5.) Earlier attempts to implement the agreement on monitoring made in the “Agreement on Peace” (signed 22 June 2001) recognized that the “cessation of hostilities” and the “socio-economic development” aspects of the agreements include their human rights and humanitarian law commitments. (See, esp., “Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001” (signed 7 May 2002), Article VI). However, as mentioned,

the terms of reference under which the IMT actually deployed in October 2004 did not expressly refer to human rights and humanitarian law.

<sup>49</sup> It is not always empirically clear whether a particular extrajudicial execution was related to the victim's participation in agrarian reform programs. This is especially so when the victim was a member of leftist peasant organization as well as other leftist civil society organizations. However, on a relatively narrow interpretation, I interviewed at least 10 witnesses to agrarian-reform related killings.

<sup>50</sup> *Comprehensive Agrarian Reform Law of 1988*, Republic Act No. 6657 (signed into law 10 June 1988); see also Republic Act No. 8532 (signed into law 23 February 1998). These statutes attempt to implement the State's constitutional obligation to "undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof" (Constitution of the Republic of the Philippines (1987), art. XIII, section 4).

<sup>51</sup> Frank Fernandez, Spokesperson, NDF – Negros, "NDF Negros sympathizes with the farm workers of Had Velez-Malaga; condemns the conspiracy of Roberto Cuenca, Arroyo government and the Intengan-Gonzales clerico-fascist clique" (31 March 2007). The CPP/NPA/NDF itself advocates for a more extensive redistribution program following its contemplated victory and uses its clout today to adjust the relative shares received by landowners and sharecroppers: "The current minimum land reform program involves the reduction of land rent and abolition of usury, and the setting up of mutual aid and labor exchange systems among the peasantry. For the last 24 years, the revolutionary movement has carried out this minimum program in ever-widening areas of the countryside. . . . After the nationwide victory of the revolution, it shall be possible to carry out the maximum land reform program, which involves the confiscation of landlord property and the equitable distribution of the land to the landless tillers at no cost to them." ("The 12 Points of the NDF Program", included in *Declaration of Undertaking*, Annex A-1, Part II.)

<sup>52</sup> The records maintained by civil society organizations indicate the following number of journalists killed by year, since 1986:

| Year | Number of Journalists Killed, by Year              |   |  |
|------|--|---|--|
|      | Center for Media Freedom and Responsibility (CMFR) | National Union of Journalists of the Philippines (NUJP) | Committee to Protect Journalists (CPJ) (confirmed cases) |
| 1986 | 2  | 3   |  |
| 1987 | 6  | 6   |  |
| 1988 | 3  | 3   |  |
| 1989 | 2  | 2   |  |
| 1990 | 2  | 2   |  |
| 1991 | 1  | 1   |  |
| 1992 | 3  | 4   | 2  |
| 1993 | 1  | 3   | 1  |
| 1994 | 0  | 0   | 0  |
| 1995 | 0  | 0   | 0  |
| 1996 | 2  | 2   | 1  |
| 1997 | 2  | 3   | 1  |

|      |   |    |   |
|------|---|----|---|
| 1998 | 3 | 4  | 1 |
| 1999 | 1 | 1  | 0 |
| 2000 | 2 | 2  | 2 |
| 2001 | 3 | 4  | 2 |
| 2002 | 2 | 3  | 2 |
| 2003 | 7 | 7  | 5 |
| 2004 | 6 | 13 | 8 |
| 2005 | 7 | 10 | 4 |
| 2006 | 6 | 9  | 3 |
| 2007 | 3 | 4  | 0 |

The table reflects the information provided on the organizations' web sites as of 16 July 2007. (<[www.cmfr.com.ph](http://www.cmfr.com.ph)>; <[www.nujp.org](http://www.nujp.org)>; <[www.cpj.org](http://www.cpj.org)>).

The different numbers for some years are due to differing criteria for assessing whether a particular killing was due to the victim's work as a journalist. Thus NUJP explains that "[i]n cases where it is not clear whether the death was work-related, or when the authorities could not ascertain the motives behind the killing, NUJP shall assume that the killing was work-related, unless future evidence points to the contrary"; whereas, CPJ explains that "[i]f the motives are unclear, but it is possible that a journalist was killed because of his or her work, CPJ classifies the case as 'unconfirmed' and continues to investigate to determine the motive for the murder".

<sup>53</sup> I interviewed witnesses regarding 5 extrajudicial executions of journalists and 1 frustrated extrajudicial execution. I also received case files regarding a further 36 cases of extrajudicial execution.

<sup>54</sup> The relationship between the structure of the media industry and the frequency with which journalists are killed has been extensively studied by civil society organizations. See Abi Wright, "On the Radio, Under the Gun: Behind the Rising Death Toll of Radio Broadcasters in the Philippines", CPJ (15 August 2005); Rachel E. Khan and Nathan J. Lee, "The Danger of Impunity", CMFR (5 September 2005).

<sup>55</sup> In the Philippines, what is often referred to elsewhere as a "ski mask" is called a "bonnet".

<sup>56</sup> Civil society organizations have compiled detailed statistics on extrajudicial executions probably committed by the DDS. These data are gathered primarily by analysing newspaper articles on murders.

| DDS Victims, by Method of Execution, by Year |               |                     |          |       |           |  |
|--|---------------|---------------------|----------|-------|-----------|--|
| Year   | Total Victims | Method of Execution |          |       |           | % victims killed by stabbing (of cases w/known method) |
|  |               | Gunshot             | Stabbing | Other | Not Given |  |
| 1998<br>(from 19 Aug)                        | 2             | 2                   |          |       |           | 0%   |
| 1999   | 16            | 16                  |          |       |           | 0%   |
| 2000   | 11            | 11                  |          |       |           | 0%   |
| 2001   | 29            | 26                  | 3        |       |           | 10%  |
| 2002   | 59            | 36                  | 13       | 7     | 3         | 23%  |
| 2003   | 98            | 91                  | 7        |       |           | 7%   |
| 2004   | 107           | 76                  | 1        |       | 30        | 1%   |

|                  |     |     |    |   |    |     |
|------------------|-----|-----|----|---|----|-----|
| 2005             | 153 | 117 | 9  |   | 28 | 7%  |
| 2006             | 65  | 38  | 26 |   | 1  | 41% |
| 2007<br>(to Feb) | 12  | 7   | 5  |   |    | 42% |
| Total            | 553 | 420 | 65 | 7 | 62 | 13% |

Local advocates said that identifying extrajudicial executions for which the DDS was responsible was made more difficult due to a transition from shooting to stabbing as the favored method of execution. For this reason, they doubted that the decline in recorded cases from 2005 to 2006 was due to a decline in actual cases.

| DDS Victims by Reasons Given for Execution |        |            |
|--|--------|------------|
| Reason                                     | Number | Percentage |
| Drugs                                      | 110    | 20%        |
| Theft                                      | 85     | 15%        |
| Drugs & theft                              | 27     | 5%         |
| Gang                                       | 52     | 9%         |
| Mistaken identity                          | 13     | 2%         |
| Other reasons                              | 72     | 13%        |
| No reason given                            | 194    | 35%        |
| Total                                      | 553    | 100%       |

There are several ways in which advocates assess the probable reason for an execution. The most reliable is when warnings given prior to the execution explained the reason. In many cases, however, advocates relied on newspaper reports that the PNP or other officials had stated that the victim was a “known thief” or the like.

The Davao City office of the PNP provided me with detailed statistics on homicides from 2003 through 2006, including a case-by-case breakdown as well as aggregate statistics. These provide context for understanding the extrajudicial executions and tend to corroborate some elements of the account provided by advocates.

| Number of homicide incidents and number of persons killed, by year |      |      |      |      |
|--|------|------|------|------|
|  | 2003 | 2004 | 2005 | 2006 |
| <b>Number of incidents</b>   | 180  | 225  | 264  | 344  |
| <b>Number of persons killed</b>                                    | 190  | 242  | 277  | 360  |

This means that Davao City’s homicide rate is roughly 17 to 31 per 100,000 population. (According to the 2000 census, Davao City had a population of 1,147,116.) Insofar as advocates’ counts of killings by the DDS are accurate — and they could be low as likely as high — then roughly half of murders are committed by the DDS. (The figure would be 52% for 2003, 44% for 2004, 56% for 2005, and 18% for 2006.)

The data also show that stabbing became a far more common method of murder starting in 2006:



| <b>Number of homicides, by weapon used, by year</b> |             |             |             |             |
|---|-------------|-------------|-------------|-------------|
|   | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| <b>Shooting incidents</b>                           | 123         | 133         | 159         | 126         |
| <b>Stabbing incidents</b>                           | 57          | 92          | 105         | 218         |
| <b>Total incidents</b>                              | 180         | 225         | 264         | 344         |
| <b>% stabbing</b>                                   | 32%         | 41%         | 40%         | 63%         |

Further clarification is provided by looking at the overall homicide case resolution rate, together with the resolution rates for stabbing as compared to shooting cases:

| <b>Homicide case resolution rate, by weapon used, by year</b> |             |             |             |             |
|---|-------------|-------------|-------------|-------------|
|   | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| <b>Shooting incidents</b>                                     | 123         | 133         | 159         | 126         |
| <b>Cases solved (number)</b>                                  | 33          | 24          | 23          | 47          |
| <b>Cases solved (%)</b>                                       | 27%         | 18%         | 14%         | 37%         |
| <b>Stabbing incidents</b>                                     | 57          | 92          | 105         | 218         |
| <b>Cases solved (number)</b>                                  | 42          | 73          | 67          | 98          |
| <b>Cases solved (%)</b>                                       | 74%         | 79%         | 64%         | 45%         |
| <b>Total incidents</b>  | 180         | 225         | 264         | 344         |
| <b>Cases solved (number)</b>                                  | 75          | 97          | 90          | 145         |
| <b>Cases solved (%)</b>                                       | 42%         | 43%         | 34%         | 42%         |

The overall resolution rate for homicide cases has consistently been around 40%. (Note that resolution here refers to the identification of suspects; this provides no information about the conviction rate.)

Also note that, consistent with the analysis of advocates, the police statistics show a sharp increase in the use of knives rather than guns in 2006 (a 108% rise in stabbings and a 21% fall in shootings) along with a sharp decrease in the proportion of stabbing homicides solved by the police (a 30% fall).

<sup>57</sup> A table analyzing some key elements of seven of these cases is included in Appendix A, para. 27.

<sup>58</sup> One person with whom I spoke said that the police asked her son to become an asset after he was arrested. Others had friends or acquaintances who had acted as assets. They appear to invariably be gang members or petty criminals, who are in a position to report the locations of other gang members and criminals. Generally assets appear to provide information to their handlers using cell phone text messages.

<sup>59</sup> In accord with DILG Memorandum Circular No. 98-227 (2 December 1998), some barangays have established Barangay Anti-Drug Abuse Councils (BADACs) for this purpose. According to PNP officials with whom I spoke, the watch lists these groups provide are validated by PNP intelligence officers and the Philippine Drug Enforcement Agency and are then used in buy-bust and other anti-drug operations.

<sup>60</sup> The mayor told me unequivocally that he would welcome investigators to come to his jails, talk with the inmates, and ensure that nothing remiss takes place. The CHRP should fully exercise its

pre-existing right to do so (Constitution of the Republic of the Philippines (1987), art. XIII, section 18(4)), and civil society organizations should consider whether to take the mayor up on his offer.

<sup>61</sup> I spoke with a number of witnesses about why they and others have been so reticent. One recounted that the police came and asked various neighbors whether they had seen the killing. Although the killing had happened in public in the morning and many had seen the perpetrators and their actions, everyone told the police that they had not. The reason was that someone in the neighborhood had described the killer in a previous incident; that night some had come and killed her. In another incident involving a child of the same witness, the police did not even ask for witnesses to come forward. They just gathered up the bullets and left. Another witness with whom I spoke said that the family of one victim did not pursue the case at all, because they knew that the perpetrator was connected to powerful people. He said that even in other cases that he was aware of, no one would testify, both from fear and because the media always reports that the victim was a criminal, and who wants to witness for a criminal? A well-informed individual told me that in Davao City the witnesses that do come forward are nearly invariably from a victim's family; no one else is willing to take the risk.

<sup>62</sup> According to Task Force Usig, of the 116 cases of slain party list members or militants that it considers within its remit, their current status is as follows:

|   |     |
|---|-----|
| Under investigation                             | 66  |
| Case filed - Preliminary investigation          | 25  |
| Case filed – Suspect(s) arrested or surrendered | 6   |
| Case filed – Suspect(s) remain at large         | 19  |
| Case resulted in acquittal(s)                   | 0   |
| Case resulted in conviction(s)                  | 0   |
| Total   | 116 |

The information in this table was accurate as of 2 April 2007. (Letter from the Philippine Mission to the United Nations, dated 23 May 2007.) The Government has more recently informed me that Task Force Usig has now filed 56 cases (or, an additional 6 cases); I do not have a detailed breakdown of their status. The Government also stated that it is “prosecuting fourteen (14) alleged EJK cases” and provided a list thereof. (Letter from the Philippine Mission to the United Nations, dated 18 October 2007.)

There is no reason to assume that a significant proportion of cases in which suspects have been identified will ultimately result in convictions. In multiple instances in which the PNP has “resolved” a case, others following that case have raised serious doubts as to whether the evidence points to the suspect identified. One such instance is the case of Madonna Castillo y Lucban: The police filed charges against an alleged NPA, but others have pointed to allegedly recorded deathbed testimony that her attackers belonged to the AFP. (See the case study on Alice Omengan-Claver and Constancio Claver in Appendix A, paras. 28-54, for more on this case.) Another such instance is the case of Enrico Cabanit. Enrique Solon was identified as the gunman shortly after he was killed by the police. However, numerous factors suggest that this identification is unreliable, and, based on my own interviews and review of the documents, I concur with the view of the Melo Commission that “there are numerous discrepancies and suspicious details regarding the investigation which tended to disprove the police theory”. The Government’s progress in

achieving justice for these killings cannot be measured by anything less than convictions following fair trials.

According to information provided by the AFP, there are 18 cases of murder or frustrated murder implicating AFP members or units, CAFGU members, or “suspected military assets” that have “appeared on the records of TF Usig, available DOJ Resolution, and those reported to the Office of the Provost Marshal General”. (The 18 individuals are implicated in a total of 14 incidents.) The AFP reported the status of these cases as follows:

| Status of Case        | Status of suspects  |           |                  |                           | Total |
|-----------------------|---------------------|-----------|------------------|---------------------------|-------|
|                       | Regular AFP Members | AFP Units | Suspected CAFGUs | Suspected Military Assets |       |
| “Implicated in media” | 1                   | 0         | 0                | 0                         | 1     |
| Under investigation   | 2 (*)               | 2         | 0                | 0                         | 4     |
| Case filed in court   | 3                   | 0         | 0                | 3                         | 6     |
| Dismissed by DOJ      | 5                   | 0         | 0                | 1                         | 6     |
| Settled               | 0                   | 0         | 1 (**)           | 0                         | 1     |
| Acquitted             | 0                   | 0         | 0                | 0                         | 0     |
| Convicted             | 0                   | 0         | 0                | 0                         | 0     |
| <b>Total</b>          | 11                  | 2         | 1                | 4                         | 18    |

(\*) One of these individuals, Cpl Lordger Pastrana, implicated in the killing of Isaias Sta Rosa, is dead.

(\*\*) A case against CAFGU member Perfecto Banlawaon for the murder of Delio Apolinar was “dismissed because it was settled pursuant to Customary Laws and Practice of the Buaya and Salegseg Tribes”.

The information for this table is from “Status of Cases of Regular Members, CAFGUs, Suspected Military Assets and Units of the AFP Implicated/Involved in the Killing of Militants (from 2001 – 8 March 2007)”, AFP Human Rights Office, enclosed in letter from Philippine Mission to the United Nations, dated 23 May 2007.

<sup>63</sup> According to Task Force Usig, of the 26 cases of slain media men that it considers within its remit, their current status is as follows:

|   |           |
|---|-----------|
| Under investigation                             | 5         |
| Case filed - Preliminary investigation          | 1         |
| Case filed – Suspect(s) arrested or surrendered | 12        |
| Case filed – Suspect(s) remain at large         | 6         |
| Case resulted in acquittal(s)                   | 0         |
| Case resulted in conviction(s)                  | 2         |
| <b>Total</b>                                    | <b>26</b> |

The information in this table was accurate as of 2 April 2007. (Letter from the Philippine Mission to the United Nations, dated 23 May 2007.)

The two cases with convictions are those of Edgar Damalerio and Marlene Esperat. For the period from 1986 to the establishment of Task Force Usig, there have also been convictions in two other cases, those of Alberto Berbon and Nesino Paulin Toling. (Rachel E. Khan and Nathan J. Lee, “The Danger of Impunity”, CMFR (5 September 2005).) More recently, the Government has also informed me that convictions have been achieved in two other cases — those of Allan Dizon and Frank Palma — that are not among the 26 being handled by Task Force Usig. (Letter from the Philippine Mission to the United Nations, dated 18 October 2007.)

Note that Task Force Usig reports that of the 45 incidents reported by the National Union of Journalists, 24 were included in the Task Force Usig list of 26, 15 were excluded, and 6 are still in need of verification.

<sup>64</sup> Prior to 1991, the police forces of the Philippines, comprising the Philippine Constabulary and the Integrated National Police, formed a branch of the AFP. However, the 1987 Constitution provided that, “The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law.” (Constitution of the Republic of the Philippines (1987), art. XVI, section 6). To implement this provision, DILG, the PNP, and the National Police Commission (NAPOLCOM) were established by the “Department of the Interior and Local Government Act of 1990” (Republic Act No. 6975) (signed into law 13 December 1990). The PNP and NAPOLCOM are both found within DILG.

The NAPOLCOM is “an agency attached to [DILG]” that exercises “administrative control and operation supervision” over the PNP. (Republic Act No. 6975, sections 13-14 (as amended by Republic Act No. 8551).) The NAPOLCOM comprises a Chairperson, four regular Commissioners, and the Chief of PNP. Of the regular Commissioners, three “shall come from the civilian sector who are neither active nor former members of the police or military” and one “shall come from the law enforcement sector either active or retired”. (Republic Act No. 6975, section 13 (as amended by Republic Act No. 8551).)

While the PNP is a national organization, local executives exercise considerable control over its operations. City and municipal mayors are “deputized” as representatives of the NAPOLCOM, and “exercise operational supervision and control over PNP units in their respective jurisdictions” including the “power to direct, superintend, and oversee the day-to-day functions of police investigation of crime, crime prevention activities, and traffic control in accordance with the rules and regulations promulgated by the [NPC]”. (Republic Act No. 6975, section 51(b) (as amended by Republic Act No. 8551)). However, the Commission on Elections (COMELEC) assumes control during the 30 days before and the 30 days after elections. Moreover, NAPOLCOM may “suspend or withdraw” local control at any time for any of four specified reasons: “[f]requent unauthorized absences”, “[a]buse of authority”, “[p]roviding material support to criminal elements”, or “[e]ngaging in acts inimical to national security or which negate the effectiveness of the peace and

order campaign”. (Republic Act No. 6975, sections 51(b), 52 (as amended by Republic Act No.8551)).

The National Bureau of Investigation (NBI) is another law enforcement body. However, in contrast to the semi-decentralized PNP, the DOJ controls the operations of the National Bureau of Investigation (NBI) throughout the country. (Republic Act No. 157 (signed into law 19 June 1947) (as amended).)

<sup>65</sup> The structure of the NPS was established in Presidential Decree No. 1275, “Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service” (11 April 1978).

<sup>66</sup> Constitution of the Republic of the Philippines (1987), art. VIII.

<sup>67</sup> The Sandiganbayan was provided for in article XIII, section 5 of the 1973 Constitution and maintained under article XI, section 4 of the 1987 Constitution. It has jurisdiction over, *inter alia*, “offenses or felonies whether simple or complexed with other crimes” when committed by senior public officials, including “Philippine Army and Air force colonels, naval captains and all officers of higher rank” and “[o]fficers of the PNP while occupying the position of Provincial Director and those holding the rank of Senior Superintendent or higher” (Presidential Decree No. 1606, sections 4(a)(1)(d)-(e), 4(b) (as amended by Republic Act No. 8249 and previously)).

<sup>68</sup> IALAG was established by Executive Order 493, “Providing for the Creation of the Inter-Agency Legal Action Group (IALAG) for the Coordination of National Security Cases” (17 January 2006). Its stated purpose is “to provide effective and efficient handling and coordination of the investigative and prosecutorial aspects of the fight against threats to national security” (section 1).

<sup>69</sup> IALAG comprises representatives of the Office of the National Security Advisor, DOJ, Department of National Defense, DILG, National Intelligence Coordinating Agency, AFP, PNP, NBI, and “[s]uch other units as may be tasked by the National Security Adviser” (section 3). With respect to oversight, “The IALAG shall report directly and shall be accountable to the National Intelligence Board (NIB) for its objectives and performance” (section 4); the NSA chairs the NIB. The “concerned departments and agencies” are directed to “institute mechanisms and procedures to operationalize the mandate of the IALAG and its subgroups down to the most basic organizational unit in the provincial and regional levels”, states that “[a]ll other government agencies may be called upon or deputized to provide active support and assistance to the IALAG which shall be given priority above other concerns”, and provides that “[t]he IALAG shall closely supervise and monitor operations” (section 5). IALAG’s secretariat is established under the Office of the National Security Adviser, which “may issue IALAG rules to clarify or to carry out provisions of this Executive Order” (section 6).

<sup>70</sup> Some activists and politicians with whom I spoke feared that the Human Security Act of 2007, which was signed into law on 6 March 2007, would be used by the Government to proscribe the CPP. That piece of legislation defines crimes of terrorism (section 3) and conspiracy to commit terrorism (section 4) and provides for the proscription of “[a]ny organization, association, or group

of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand. . . .” (section 17).

<sup>71</sup> Each year, the General Appropriations Act includes funds for each congressional representative to allocate at his or her discretion. These funds are commonly referred to as the representative’s “pork barrel”. The most notable such program is the Priority Development Assistance Fund (PDAF), previously known as the Countryside Development Fund (CDF). In the 2007 budget, PP 11.445 billion (USD 241.302 million), or approximately 1% of the budget, was allocated to the PDAF.

<sup>72</sup> *See, e.g.*, the case of Alice Omengan-Claver and Constancio Claver in Appendix A, paras. 28-54.

<sup>73</sup> Most senior officers in the PNP began their careers when the police still formed part of the AFP, and they attended the Philippine Military Academy (PMA) along with current senior AFP officers. Today, recruits are trained at the Philippine Public Safety College (PPSC), and officers are trained at the Philippine National Police Academy (PNPA). Senior AFP and PNP officers, as well as senior civilian officials, all take courses at the National Defense College.

<sup>74</sup> The bill creating the PNP in 1990 allocated to it the “primary role” in counterinsurgency, giving the AFP a “supportive role” (“Department of the Interior and Local Government Act of 1990” (Republic Act No. 6975) (signed into law 13 December 1990), section 12). These roles were reversed in 1998, which “relieved [DILG and PNP] of the primary responsibility on matters involving the suppression of insurgency” (“Philippine National Police Reform and Reorganizations Act of 1998” (Republic Act No. 8551) (signed into law 25 February 1998), section 3). Most recently, Executive Order No. 546 (14 July 2006) ordered that “[t]he PNP shall support the AFP in combat operations involving the suppression of insurgency and other serious threats to national security” (section 1) and also authorized the PNP “to deputize the barangay tanods as force multipliers in the implementation of the peace and order plan in the area” (section 2). In practice, the PNP typically conducts counterinsurgency operations in urban areas while the AFP does so in rural areas.

<sup>75</sup> *See* Constitution of the Republic of the Philippines (1987), art. VIII, section 5: “The Supreme Court shall have the following powers: . . . Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

The Government has also informed me that the President has recently promulgated an administrative order to “ensure proper coordination and cooperation between the prosecutors and the police”. (Letter from the Philippine Mission to the United Nations, dated 18 October 2007.) That order provides that, in cases falling under the jurisdiction of the special courts established by the Supreme Court to deal with extrajudicial executions (see Part X(H)), that the PNP and NBI are

directed to cooperate with the NPS “by, among other things, consulting with public prosecutors at all stages of the criminal investigation”. (Administrative Order No. 181 (3 July 2007).)

<sup>76</sup> This reform would require DOJ to revise its rules and regulations implementing the “Witness Protection, Security and Benefit Act” (Republic Act No. 6981, signed into law 24 April 1991), but it would not require any legislative amendment.

<sup>77</sup> One worthy proposal that *would* require a statutory amendment is to increase the penalties for harassing witnesses. These are minimal: a fine of not more than 3,000 pesos (USD \$65) or imprisonment of not less than 6 months but not more than 1 year. (Republic Act No. 6981, section 17(e).)

<sup>78</sup> Thus, for the witnesses in one case brought to my attention, the “secure housing facility” promised by law consisted of small rooms in the NBI compound. Implicated officials were not prevented from coming directly to where the witnesses were housed, and other financial and medical benefits provided were inadequate. (For the rights and benefits provided under the witness protection program, see Republic Act No. 6981, section 8.) Most of the witnesses in that case ultimately left the program and recanted their testimony.

<sup>79</sup> Republic Act No. 6981, section 3(c).

<sup>80</sup> This is so notwithstanding the legal provision, Republic Act No. 6981, section 9: “In any case where a Witness admitted into the Program shall testify, the judicial or quasi-judicial body, or investigating authority shall assure a speedy hearing or trial and shall endeavor to finish said proceeding within three (3) months from the filing of the case.”

<sup>81</sup> The Ombudsman has the authority and duty to investigate and prosecute on complaint or by its own initiative “any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient”, to “[d]irect” any public official “to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties”, “[d]irect” public officials to “take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith”, and to “[p]ublicize matters covered by its investigation when circumstances so warrant and with due prudence”. (Constitution of the Republic of the Philippines (1987), art. XI, section 13.) This unit within the Office of the Ombudsman responsible for dealing with extrajudicial executions is headed by the Deputy Ombudsman for the Military and Other Law Enforcement Offices.

<sup>82</sup> Memorandum of Agreement dated 12 November 2004 and signed by Raul M. Gonzalez, Secretary, Department of Justice and Simeon V. Marcelo, Tanodbayan, Office of the Ombudsman.

<sup>83</sup> Chief Justice Reynato Puno informed me of this initiative when we met, and he announced it shortly thereafter. Concretely, the establishment of “special courts” means that particular trial courts are designated either to only hear such cases or to prioritize them in their trial calendars: “The cases referred to herein shall undergo mandatory continuous trial and shall be terminated within sixty (60) days from the commencement of trial. Judgment thereon shall be rendered within thirty (30) days from submission for

decision unless a shorter period is provided by law or otherwise directed by this Court. . . . The Special Courts here designated shall continue to be included in the raffle of cases, criminal and civil, provided that the Executive Judges of the RTCs [Regional Trial Courts] concerned shall exclude the designated Special Courts from such raffle whenever in their judgment the caseload of these courts shall prevent them from conducting the continuous trial of the special cases herein specified. . . . No postponement or continuation of trial shall be allowed except for clearly meritorious reasons. Pleadings or motions found to have been filed for dilatory purposes shall constitute direct contempt and shall be punished accordingly.” (Administrative Order No. 25-2007, “Designation of Special Courts to Hear, Try and Decide Cases Involving Killings of Political Activists and Members of Media” (1 March 2007)).

It should be straightforward to monitor the effectiveness of this arrangement, inasmuch as, “A report on the status of these cases shall be attached to the Monthly Report of Cases submitted every 10th day of the succeeding month to the Statistical Reports Division, Court Management Office, Office of the Court Administrator. Failure to submit such report shall be a ground for withholding of the salaries and allowances of the judge/s and clerk/s of court/branch clerk/s of court/officer/s-in-charge concerned without prejudice to whatever administrative sanction the Supreme Court may impose on them.” (Administrative Order No. 25-2007).

<sup>84</sup> I also interviewed a witness who encountered the same problem in filing a *habeas corpus* petition when her brother was detained in an AFP “safe house” (a euphemism for secret detention facility).

<sup>85</sup> “Guidelines on Appearances of Department Heads and Other Officials of the Executive Department Before Congress” (Memorandum Circular No. 108) (adopted 27 July 2006). Prior to this memorandum circular, there was an executive order, “Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and for other Purposes” (Executive Order No. 464) (adopted 26 September 2005). Portions of that executive order were invalidated by the Supreme Court in *Senate of the Philippines, et al. vs. Eduardo Ermita, et al.*, G.R. No. 169777 (20 April 2006), which held in part that, “The matters which may be a proper subject of legislation and those which may be a proper subject of investigation are one. It follows that the operation of government, being a legitimate subject for legislation, is a proper subject for investigation. . . . [T]he power of inquiry, “with process to enforce it,” is grounded on the necessity of information in the legislative process. If the information possessed by executive officials on the operation of their offices is necessary for wise legislation on that subject, by parity of reasoning, Congress has the right to that information and the power to compel the disclosure thereof.”

<sup>86</sup> Constitution of the Republic of the Philippines (1987), art. 6, section 18; art. 7, section 16.

<sup>87</sup> Pursuant to a 1991 directive from the Executive Secretary to the Chief of Staff of the AFP, persons recommended by the AFP for the promotion “should have no pending case/s for human rights violations filed with the Commission on Human Rights.” Memorandum, 4 April 1991.

<sup>88</sup> Constitution of the Republic of the Philippines (1987), art. XIII.



<sup>89</sup> The CHRP's staff numbers roughly 600, with half in the central office and half in the regional offices, each of which has roughly 30 staff. Only about 10 percent of regional staff work as investigators. There are many examples of how inadequate resources impede investigations. Offices have few vehicles and work under gasoline allowances so strict as to inhibit investigations in rural areas. The CHRP is seldom able to provide victim assistance in excess of a bus fare, limiting its ability to help victims and potential witnesses to relocate. Only the central office has access to doctors for conducting autopsies, and regional offices have essentially no capacity for dealing with physical evidence.

<sup>90</sup> "CHR to set up P25-M forensic center," GMA News TV (3/10/07); Letter from the Philippine Mission to the United Nations, dated 23 May 2007.

<sup>91</sup> These measures include the President's establishment of the Melo Commission (Administrative Order No. 157, "Creating an Independent Commission to Address Media and Activist Killings" (21 August 2006)), the establishment of a Presidential Human Rights Committee (Administrative Order No. 29 (27 January 2007); Administrative Order No. 163 (8 December 2006)), the President's instruction to the Secretaries of Justice and the Department of National Defense to coordinate with the CHRP in constituting a "Joint Fact-Finding body" (Statement of the President, dated 31 January 2007; Memorandum from Executive Secretary Eduardo R. Ermita, dated 31 January 2007), the AFP's establishment of a Human Rights Office in February 2007, the Supreme Court's establishment of special courts, the directive issued by the AFP on command responsibility, the DOJ's measures to strengthen the witness protection program (Memorandum to the President, 19 February 2007), and the Supreme Court Chief Justice's convening of a National Consultative Summit on Extrajudicial Killings and Forced Disappearances in July 2007.

<sup>92</sup> I have read with great interest the analyses of recommendations of several bodies and organizations, including the Melo Commission ("Initial Report" (February 2007)), Amnesty International ("Philippines: Political Killings, Human Rights and the Peace Process" (15 August 2006)), and Human Rights Watch ("Scared Silent: Impunity for Extrajudicial Killings in the Philippines" (June 2007)).

## Appendix A

### INDIVIDUAL CASE STUDIES

#### Nelson Asucena

1. This case illustrates an approach to counterinsurgency used in the Cagayan Valley Region.
2. Nelson Asucena was killed on 13 December 2006 in Barangay San Juan, Rizal, Cagayan, Cagayan Valley region. At roughly ten o'clock that night, he and his family were awakened by barking dogs. Someone called for him to come out. His father stopped him from opening the door, but he replied that it was the voice of Lt. Marcelo Pascua. He opened the door and went outside with a lamp. There were six persons outside — Pascua in a combat uniform and five others in bonnets (i.e., ski masks), black long-sleeved shirts and combat boots. They told him to put out the light or put it back inside. The six men asked to have some food cooked for them. Then the six men changed their minds and said to serve coffee rather than food, because it would be faster. When his mother was about to make coffee, a man called for Nelson to bring out water, but his father did so instead and then went inside to prepare cups for coffee. Then as he was preparing the cups, he had only put two cups on the platter, but the soldiers already called again for Nelson to come and get the water glasses.
3. Nelson went outside. A few seconds later, his family members heard the loading or cocking of a gun. Then they heard him make some sort of exclamation. Then they heard gun shots. His father and mother went outside and saw their son on the ground. The six men were nowhere to be seen.
4. The witness with whom I spoke was uncertain as to the reason for the killing, but other information shared is suggestive.
5. On the morning of November 26, Lt. Pascua had come to the house, looking for Nelson but finding only his mother. She said that he was in the field preparing it to plant corn. She called for him, and he came home. Lt. Pascua asked him to "surrender". He said, "All I have is my bolo and my plow. I am a civilian, youth chairman of the barangay." Lt. Pascua responded, "Then you'd better take care of yourself."
6. Nelson was chairman of the barangay's Youth Council (Sanguniang Kabataan). He was also a member of Anakbayan, a youth organization that is part of the BAYAN coalition. The witness stated Nelson had not been a member of the NPA.
7. The witness said that there is some NPA presence in the area, with NPA fighters sometimes passing through the barangay, but that there had not been any recent encounters between the AFP and NPA. (This is consistent with incident data provided by the AFP. According to AFP records, in the period from 2000 to the present, there have been numerous, serious engagements between the AFP and the NPA to the north of this area (in the municipalities of Gattaran and Lasam) and to its south (in the municipalities of Balbalan and Pinukpuk, Kalinga, Cordillera Administrative Region). These municipalities are, however, some 30 kilometers from Barangay San Juan. The AFP records do not disclose any armed encounters in Barangay San Juan itself, and the last encounter in neighboring Barangay Bural took place in January 2004 (no casualties). More serious and persistent encounters took place in neighboring areas of the municipality of Sto Nino; however, these had become infrequent by

2001. (Source: CD labeled “Reference Materials on Unexplained Killings (Jan 2007)” provided by the AFP with various files contributing to “chronology of [NPA-related] violent incidents” from 2000 to 2006; the data for 2006 appear incomplete.)

8. On November 24, soldiers from the Alpha Company of the 21st Infantry Battalion of the Army had conducted a meeting in the barangay. At the meeting, soldiers explained their program on the insurgency. During the meeting, they conducted a census, gathering the names and nicknames of all who attended. The soldiers asked what the problems in the community were. People answered regarding a health center and the need to fix the roads. The soldiers asked how they could fix the roads when the NPA destroys the machinery. One resident responded that this had happened once, but now they were not around, so why not fix the roads? The soldiers also spoke about how the CPP/NPA/NDF members were deceptive. Nelson’s father stood up and asked why they didn’t arrest them if they were so deceptive. A soldier responded, “How can we arrest them when they are legal organizations?” (I clarified that this was just a question and answer session; there was no PowerPoint presentation.)

9. On November 25, the soldiers took two residents who were former members of the NPA to a military base in Tuao. (The two were released in December, before Christmas.)

10. Other than in the context of the meeting, the witness was unaware of any census having been conducted. However, the houses of the barangay were far apart from each other, so it would be difficult to know for certain. (For context, according to census data, as of 1 May 2000, Barangay San Juan had a population of 408 in 76 households.) I learned from other witnesses that censuses have been conducted by soldiers in some other parts of Cagayan province.

11. Later on, the soldiers assigned some of the residents to a CAFGU. According to information from people still living in the area, nothing has come of this. The persons assigned to the CAFGU have received information that they will be trained, but nothing has happened so far. (If the second hand information received by the witness is accurate, this appears to be fairly unusual; other witnesses, including ones from Cagayan province, referred to individuals volunteering for and then serving in CAFGUs.)

12. After the killing, Nelson’s family immediately requested help from the neighbors and barangay officials. In the morning, barangay officials followed visible foot prints from where the men who killed Nelson had been standing to Barangay Bural, a neighboring barangay in which the soldiers had been staying.

13. Nelson’s father gave a statement to the barangay officials, but he was afraid to talk to the PNP. So the barangay officials took his statement and then relayed it to the police. (According to the AFP, “The killing was reported only on 151100 December 2006 [15 December 2006 at 11:00am] by Brgy Chairman Froilan P Dassil by text message. Reportedly, the PNP unit of Rizal under P/Insp Balisi has invited the parents of the victim to shed light on the matter but they did not cooperate. KARAPATAN kept the couple and advised them to go instead to the Bombo Radyo to air grievances. Additional information disclosed that Charles Valencia, a KARAPATAN lawyer, filed a human rights case against 2LT PASCUA without doing investigation.” (“Status of Cases of Regular Members, CAFGUs, Suspected Military Assets and Units of the AFP Implicated/Involved in the Killing of Militants (from 2001 – 8

March 2007)”, AFP Human Rights Office, enclosed in letter from Philippine Mission to the United Nations, dated 23 May 2007.)

14. Nelson’s father went to the municipality to request a death certificate, but he refused to accept it because it listed the cause of death as malaria. The mayor and colonel were asking where was the medical report on the body. But no medical examination had been carried out, because they could not carry the body to the city. The place where Nelson was killed was near the family’s “field house” (a small hut near their fields as opposed to their real house in the barangay proper). It was a long way to the nearest jeepney stop and getting there would have required traversing a river while it was running high and strong. So they buried him in their backyard.

15. Despite the family’s initial reluctance, they ultimately made complaints to the CHRP, the PNP, and the Regional State Prosecutor in Tuguegarao, the capital city of Cagayan. Without a death certificate, these complaints proved difficult to make, and the witnesses are unaware of any progress in the case. They have requested the CHRP’s assistance in having the body exhumed so that an autopsy can be conducted.

16. The AFP has provided an account of its participation in subsequent investigations:

“On 20 January 2007, a letter signed by Rev Emery V Cadiz of the KARAPATAN-CV Chapter was sent to Rizal Mayor Raul Dela Cruz informing him that the KARAPATAN in coordination with the CHR Office in Region 2 will conduct their investigation on 20-21 January 2007.

“On 19/20 January 2007, a group of people with two foreigners: Emily Totenberg, a U.S. national claiming to be a member of the Green for International Press; and a Japanese who claimed he was a student of UP-Diliman, on board a passenger jeep arrived in Sicalao, Lasam, Cagayan. They are reportedly from KARAPATAN led by an unidentified person who introduced herself as a student of UP who was working on her doctorate degree. They were stopped by elements of 21IB for routine inspection and as the two foreigners could not present their passports, they were advised to go back. It is observed that most of the members of the group were the usual militant persons in the province of Cagayan.

“On 19 and 20 February 2007, the Philippine Daily Inquirer published articles alleging that the group of 2LT MARCELO PASCUA PA was responsible for the killing of Mr. Asucena. . . .“The Commanding Officer reported that the allegations are not true. The unit submitted to CSAFP an initial report and pursuant to a personal inquiry with the CO, 21st IB, presently the unit is willing to get certifications from witnesses that 2LT PASCUA was with some officials and teachers of the barangay during the reported date of the incident. There is no subpoena yet issued by the prosecutor in the area.”

(“Status of Cases of Regular Members, CAFGUs, Suspected Military Assets and Units of the AFP Implicated/Involved in the Killing of Militants (from 2001 – 8 March 2007)”, AFP Human Rights Office, enclosed in letter from Philippine Mission to the United Nations, dated 23 May 2007.)

**James Ayunga**

17. This case illustrates an approach to counterinsurgency used in the Central Luzon Region.

18. James Ayunga was a leader in the Alyansa ng Magbubukid sa Ginang Luzon (AMGL), a local chapter of the Kilusang Magbubukid ng Pilipinas (KMP), a peasant organization that belongs to the BAYAN coalition, and a barangay council member in Barangay Culong, Guimba, Nueva Ecija, Central Luzon. (For context, according to the census data, as of 1 May 2000, Barangay Culong had a population of 1,447 in 322 households.)

19. In June 2006, a military detachment (from the 71st Infantry Battalion of the Army) was established in his barangay. It called a community assembly. At the assembly, soldiers said that they were there to maintain peace and order and asked members of the audience who belonged to the civil society organizations to provide their names, but nobody volunteered. Then the soldiers conducted a door-to-door census, asking the names of inhabitants, their occupations, etc.

20. By July, soldiers had made a list based on the census and started calling everyone on the list to be interrogated, one by one. The first ones called were local members of the KMP. The interrogations would happen in the house rented by the detachment and would involve torture, including punching people in the belly and putting plastic over their heads. Among those who were called were his parents and other relatives who belong to civil society organizations. They were asked where he could be found, because they had information that he was a full-time organizer for AMGL, so he was not then in the barangay. His daughter and son-in-law were afraid for him, because they had been called to the detachment and tortured, so they told him not to return to the village, and then they decided to leave the village as well.

21. Their fears were confirmed by the killing in their village of a barangay council member who had also been a leader of KMP. (Presumably, based on other reports, this was July Vasquez, who was killed on 16 August 2006.) Mr. Vasquez had been called by the soldiers and was interrogated. The interrogation scared him, so he left the area for two weeks. When he returned, the soldiers put up a detachment near his house and killed him that night. The soldiers suspected that he had been with the NPA. (According to the AFP, “On 161900 Aug, three (3) CTs shot to death Brgy Councilman July VASQUEZ in Brgy Culong, Guimba, Nueva Ecija. Reportedly, the CTs were asking him if they could utilize his residence as resting place whenever they pass by, whom he rejected. The victim request to arrange for the establishment of an Army Detachment in their brgy.” (CD labeled “Reference Materials on Unexplained Killings (Jan 2007)” provided by the AFP).)

22. From people who remained in the village, the witness understood that the soldiers spent three days in late August surveilling the family’s (abandoned) house. The soldiers regularly rode around the area on motorcycles dressed in civilian clothes. Despite their civilian dress, the individual soldiers were recognized by neighbors. The soldiers burned down the house on 29 August 2006. This was interpreted as a means of demonstrating the consequences of evading interrogation.

23. On 4 November 2006, a community meeting was called by the soldiers. (I clarified that no pamphlets were used for vilification in this area.) They announced that since Mr. Ayunga would not report, he was “wanted”. They said that if they saw him, they would kill him. The reason they gave was

that he was an NPA commander. They gave as evidence the fact that he was not residing in the village and that he had not shown up to clear his name. (In this area, extended families typically live in a “compound” — a lot with several houses — so it is considered especially suspicious when a family member is missing. The assumption soldiers make is that the person missing is with the NPA.)

24. According to the witness with whom I spoke, in the past, NPA fighters would pass through and be given food and sometimes accommodation. People were afraid of not accommodating NPAs for fear of what would happen. However, since the last quarter of 2003, there have not been any NPAs around. And there have been no encounters whatsoever between the AFP and the NPA in the time since the soldiers set up their detachment in the barangay. (This account is consistent with incident data provided by the AFP. According to AFP records, in the period from 2000 to the present, there has been a high intensity of engagement between the AFP and the NPA to its north (in the municipalities of Cuyapo, Lupao, and Umingan, but especially in Carranglan) and to the southwest (in and around Tarlac City). These areas are 15 to 30 kilometers from Barangay Culong. The closest areas that have seen actual armed encounters between the AFP and NPA are Barangay San Pascual, Sto Domingo, Nueva Ecija (February 2000) and Barangay Gabaldon, Munoz City, Nueva Ecija (July 2003), though neither resulted in casualties. The NPA is also recorded as having stopped a vehicle to free detained NPA members in a neighboring barangay in July 2005. The only incident the AFP records as having occurred in Barangay Culong concerns the killing of July Vasquez, discussed above. (CD labeled “Reference Materials on Unexplained Killings (Jan 2007)” provided by the AFP with various files contributing to “chronology of [NPA-related] violent incidents” from 2000 to 2006; the data for 2006 appear incomplete.))

25. A Barangay Defense System has been setup 10 meters from Mr. Ayunga’s house. The BDS is a converted bus stop, walled in by sand bags stacked five high and painted green, like camouflage. (I was also provided photographs of various BDS posts.) All the people of the barangay are compelled to take part in the BDS, and a schedule is setup. Usually only men have to participate, but if they cannot join, the wife must, and otherwise the children. Participants took an oath but did not receive training. The BDS is armed with confiscated shot guns. Contributions are gathered from every household for coffee and snacks for the people working in the BDS. The witness also provided a great deal of testimony about the setting up and movement of detachments and the conduct of surveillance, some of which is reflected in the main text of this report.

26. Given that he has survived, Task Force Usig has not investigated the case of James Ayunga. It has also excluded the case of July Vasquez from its remit on the grounds that an (unspecified) “other motive” was behind his killing. (Annex E of “Task Force ‘Usig’” document provided by Government.)

### **Victims of the Davao Death Squad**

27. The following table analyzes some key elements of 7 of the cases for which I interviewed witnesses or family members of victims of the Davao Death Squad (DDS). I excluded several cases, either due to inadequate information or because the killings appeared likely to be due to personal grudges.

| Case | Apparent reason for killing   | Prior warnings  | Conduct of the hit men   | Time and location of the killing                      |
|------|---|---|--|---|
| 1    | Mistaken identity   | The mother had been warned that one of her sons' friends should not come over, because he was "on the list".  | Two men on motorcycle, got off and entered house, and shot them (no bonnets) | In house, in the morning                              |
| 2    | Petty theft   | On his radio show, the mayor said that he doubted the victim would live through the week, given the (petty) theft that he had just committed. Earlier, a member of the barangay council had told him to leave Davao and had separately told his mother that she should safe-keep her son because he would be the next killed. | Three men ran after the victim on the street, and shot him (no bonnets)      | On the street, in the morning                         |
| 3    | A murder case against him had been dismissed, but the police still thought he was responsible | The victim's brother was told by a police officer that he (the victim) would be taken.  | While outside, someone put an arm around him and stabbed him. (no bonnet)    | On the street, in the afternoon                       |
| 4    | Not apparent.   | He had not received any warnings personally, but a friend who he was with had previously received a warning from the barangay captain that he should leave because he was a target.   | Two men on motorcycle followed him, got off and stabbed him (no bonnets)     | On the street, in front of a police station, at night |
| 5    | Accused of a petty theft (cell phone)   | Police officer had told mother that he would be killed.   | A man stabbed him to death.<br><br>(I did not clarify whether it is known    | In a public market, in the evening                    |

|   |                      |   | whether the perpetrator was wearing a bonnet.)  |                                 |
|---|----------------------|---|---|---------------------------------|
| 6 | Car washing          | About two weeks before the killing, a man warned the victim to stop car washing, because it was an eyesore. (The victim would wash and watched cars parked at an establishment and then seek payment when the owners returned. His entrepreneurial efforts were sometimes appreciated; sometimes not.) The man said that if he did not stop, they would make an example of him. | A motorcycle carrying a driver and a passenger pulled up next to him while he was working. The passenger got off the motorcycle, walked up to the victim and stabbed him in the chest. (no bonnets) | On the street, in the afternoon |
| 7 | Various petty thefts | Barangay police have warned mother that he will be the next. Police officer warned him that he was on the "order of battle".  | N/A: At the time of my visit, he had not been killed.   | N/A                             |

### **Alice Omengan-Claver and Constancio Clever**

28. These cases illustrate the complexities of the involvement of the PNP and of prosecutors in the Government's counterinsurgency efforts.

29. On 31 July 2006, Alice Omengan-Claver and Dr. Constancio Clever were shot repeatedly; Alice died later that day. Her death and the threats to his life may be best understood in the context of their involvement in the community and of other events that have taken place.

30. Alice had previously been on the staff of the Cordillera Peoples' Alliance in Manila, and was a supporter of Bayan Muna. She was also an officer of the Parent-Teachers-Community Associations of their children's schools. Constancio is a surgeon and family physician. He founded the Community Health Concerns for Kalinga, which setup health programs in 17 barangays of Kalinga. He is the Chairperson of Bayan Muna – Kalinga, the Vice Chairperson of the Cordillera Peoples' Alliance – Kalinga Chapter, Chairman of the Board of the Philippine National Red Cross – Kalinga, a member of the Kalinga Medical Society, and a member of the Philippine Academy of Family Physicians. Despite recent statements by officials, my understanding is that Alice and Constancio have stated that they were never members of the NDF.



31. In March 2006, Pedro Ramos became the new provincial commander of PNP-Kalinga. Prior to the attack on Alice and Constancio, there had been 16 unsolved killings during the time that Ramos held the post.
32. According to one source, the provincial Inter-Agency Legal Action Group (IALAG) met with the participation of security and intelligence agencies but without the participation of the prosecutor.
33. On 8 June 2006, Rafael “Markus” Bangit, Vice Chairperson of Bayan Muna – Kalinga Chapter and a close friend of Alice and Constancio, was killed by unidentified assailants riding in a van in Echague, Isabela Province, Cagayan Valley region. (Echague and Kalinga provinces border each other.)
34. Later that summer, Constancio was being interviewed live over Radio Natin on the Bayan Muna’s views on the charter change issue. While the interview was going on, Alice received a text message reading, stating that “the doctor” does not seem to care about you or the children.
35. Four days prior to the attack, Constancio’s clinic was plastered with anti-NPA leaflets of the sort used by the military to argue that the NPA was conducting a purge.
36. At around 6:45 in the morning of 31 July 2006, Alice and Constancio were driving their daughters to school in Barangay Bulanao, Tabuk City, Kalinga Province, Cordillera Administrative Region. Shortly after dropping off one daughter, a dark-colored van pulled in front of their car, and two armed men fired at its windshield. Alice and Constancio both received multiple gun shot wounds; their daughter was barely scratched. They were rushed to the Kalinga Provincial Hospital in Bulanao. Reportedly, Ramos tried to enter the surgical area, saying that he wanted “just to see whether they are still alive”, but he was prevented from entering. Alice died later that day.
37. At about 7 in the morning, while they were undergoing treatment at the hospital, the radio station DZRH reported that they had both been killed. At 8:06am, Ramos made a radio report to General Raul Gonzales of the Cordillera Regional Police Command that Constancio was a “member of the NDF, Klg Baggas”. At 8:15am, Gonzales was quoted as telling the media that, “Claver is a suspected member of the National Democratic Front”.
38. The van fled in the direction of the Kaliga-Cagayan Valley border and Tuguegarao City. On this road, there are three AFP and PNP checkpoints. The checkpoints were never notified to stop the van. Reportedly, the Assistant Police Director Hoover Coyoy subsequently explained this omission by saying that “we didn’t have load” on the pre-paid mobile phones. One police car did pursue the van, but it was called off.
39. Task Force Usig formed Task Force Bulanao to investigate the incident. The lead unit was the Criminal Investigation and Detection Group (CIDG).
40. After roughly one month, Ramos was recalled to the PNP national headquarters at Camp Crame and replaced as police chief by Col. Damian. One month later, Col. Damian was replaced by Romeo Abaring.

41. On 22 September 2006, Task Force Bulanao filed a case with prosecutor against Police Officer Jessie Caranto, who had been Ramos's bodyguard and driver.
42. On 28 September 2006, police under the command of Capt. Domallig, the chief of a PNP substation, disarmed and detained the CIDG members of Task Force Bulanao for roughly 9 hours. Later, Ramos arrived and ordered the checkpoints be setup to recapture them, though this failed.
43. The witnesses subsequently retracted their statements.
44. The PNP placed Ramos and Caranto on restricted movement for 90 days. (Caranto appears to have been held at the PNP national headquarters at Camp Crame.)
45. The Provincial Prosecutors Office of Kalinga chose to inhibit himself — i.e., disqualify himself from participating in the case — and transferred the case to the Regional Prosecutor's office. On 10 January 2007, the case was dismissed for insufficient evidence.
46. Threats against Constancio continued after the incident.
47. On 2 August 2006, Constancio received a text message, "May clearance ang tangkang pagpatay kay Dr. Claver kaya sabihin sa mga kapamilya na huwag silang magtiwala sa mga kapulisan dyan." (A clearance has been ordered to kill Dr. Claver. Inform the family not to trust the local police.)
48. In the first week of January 2007, members of the Kalinga Medical Society received text messages reading, "Pakisabi kay Dr Claver na mag-ingat dahil hindi siya titigilan, at may plano pang gamitin ang mga bata. Hindi ko na uulitin ang pag-contact sa inyo dahil baka mahalata ako". (Warn Dr. Claver to take care because they will keep going after him. They even are thinking of using the children. I will not contact you anymore because they might get suspicious.)
49. After Radio Natin broadcast an interview with Constancio, the station management received a text message, "Pakisabi po sobrang tapang ni Dr. Claver. At pati kayo, nakikiuto. Ingat lang kayo diyang taga Radio Natin. Kayo ang isusunod naming!" (Tell Dr. Claver that he is too outspoken. And you in Radio Natin are believing him! You better watch out or we'll put you next in our list.)
50. Over the past few months, "leaks" from the AFP to the local media have indicated that Constancio's name has been found in "captured ledger materials" of the NPA recording donations of his.
51. Task Force Usig has decided that the case of Alice Omengan-Claver does not fall within its remit on the grounds that an (unspecified) "other motive" was behind her killing. (Annex E of "Task Force 'Usig'" document provided by Government.)
52. Task Force Usig is overseeing the case of Rafael Bangit. It has reported that the case is "under investigation" and that, "The results of the ballistics/exam comparison done by Crime Lab pointed out that the spent shell and slugs of Cal. 45 recovered from the scene of Castillo in Echague and Bangit in San Isidro, both of Isabela came from the same firearms. This would indicate that the perpetrators in both crimes are the same people." With respect to the case of Madonna Castillo y Lucban, Task Force Usig has reported that she was "[k]illed by Armando Inong @ Justin/Rio & John Doe, member of SYPI SECOM, Central Front, CVRC [i.e., Samahang Yunit Pampropaganda (propaganda unit) 1, South Eastern

Command, Central Front, Cagayan Valley Regional Committee of the NPA]” and that the “[m]otive is purging of party members. The CTs [communist terrorists] believed that victim is already a military informant”. A case against the alleged killer of Castillo was reportedly filed on 24 August 2006. (Annex PRO2 of “Task Force ‘Usig’ Synopsis” document provided by Government.)

53. The report of the NDFP Nominated Section of the JMC’s Joint Secretariat discusses the complaint addressed to the JMC against the NDF for the Castillo case, and argues, *inter alia*, “The news report mentions the death bed declaration of the victim before she succumbed from her wounds, identifying her assailants before media practitioners who got her statement on tape. This can easily be verified by an impartial investigation of the incident. . . . Without taking into account the death bed declaration of the victim that here assailants were members of the 502nd Infantry Brigade of the Philippine Army, the police had closed the investigation.” (“The Lies of GRP Officials on Extrajudicial Killings: Study by NDFP MC-JS of Twenty-Three (23) Complaints for Extrajudicial Killings Submitted to the GRP-NDFP Joint Monitoring Committee (JMC) that President Gloria Macapagal Arroyo, Task Force Usig and General Hermogenes Esperon are Blaming on the NDFP” (NDFP Human Rights Committee, 19 February 2007)).

54. I would consider the cases of Alice Omengan-Claver, Rafael Bangit, and Madonna Castillo y Lucban to all fall within the Task Force Usig’s mandate and to all be in need of further investigation.

## Appendix B

### PROGRAMME OF THE VISIT

1. I visited the Philippines upon the invitation of the Government from 12 to 21 February 2007. Most of my visit was spent in Manila, Baguio, and Davao.
2. I met with President Gloria Macapagal-Arroyo, the Executive Secretary, and members of her cabinet, including the Secretaries of Justice, Defense, and Foreign Affairs. I also met with the Undersecretary of the Department of the Interior and Local Government, the National Security Adviser, the Presidential Adviser on the Peace Process, the Executive Director of the Presidential Human Rights Committee, and the chair and members of the Melo Commission (appointed by the President to investigate “media and activist killings”). In most cases, I also met with members of their staff and of subordinate agencies, of which I can list only a few.
3. From the Philippine National Police (PNP), I met the commander in charge of Task Force Usig, the group overseeing investigation into killings of leftist activists and journalists, the Police Chief Superintendent, the Inspector General (head of the Internal Affairs Service), the Davao District PNP chief, and regional heads of Task Force Usig in Baguio and Davao. From the Department of Justice (DOJ), I met the Chief State Prosecutor, the City Prosecutors of Baguio and Davao, the head of the witness protection program in Baguio, the head of the National Bureau of Investigation (NBI), the head of the NBI in Baguio, and the deputy head of the NBI in Davao. From the Armed Forces of the Philippines (AFP), I met the Chief of Staff, numerous senior staff officers, and local and regional commanders in Baguio and Davao. I also met with the Mayor of Davao, Rodrigo Duterte.
4. I met with key persons from other branches of the Government, including the Chief Justice of the Supreme Court, Reynato Puno, the Chair of the Senate Committee on Justice and Human Rights, Juan Ponce Enrile, and with the Chair and six members of the House Committee on Human Rights. I met with the Chair of the Commission on Human Rights (CHRP), Purificacion Quisumbing, and two other commissioners as well as staff from the regional offices in Baguio and Davao. I met with the Ombudsman, Merceditas Gutierrez, and two deputy Ombudsmen.
5. In terms of the various peace processes, I met with the Presidential Adviser on the Peace Process, his deputy and staff, members of the Government Panel for negotiations with the National Democratic Front (NDF), the secretariat of the NDF-nominated section in the Joint Monitoring Committee (JMC), the Secretary-General and the Vice-Chairman of the Moro National Liberation Front (MNLF), and the head of the secretariat of the Moro Islamic Liberation Front (MILF) Coordinating Committee on the Cessation of Hostilities (CCCH). I also met with the Head of Mission of the International Monitoring Team (IMT). I was regrettably unable to expand my itinerary to accept the invitation of the National Democratic Front (NDF) to meet in Utrecht; however, I spoke by phone with the Chairperson of the NDFP Negotiating panel, Luis Jalandoni, and the NDFP Chief Political Consultant, Jose Maria Sison.
6. I met with numerous members of the diplomatic community.
7. I spoke with members of a large number of civil society organizations representing diverse views. These included organizations associated with both Karapatan and the Philippine Alliance of Human

Rights Advocates (PAHRA), as well as the Free Legal Assistance Group (FLAG), Peace Advocates for Truth, Healing and Justice (PATH), among other human rights organizations. I also spoke with trade unionists, and representatives of organizations devoted to the protection of journalists, and a range of other civil society organizations.

8. I interviewed witnesses to 57 incidents involving 96 extrajudicial executions. (Some witnesses had seen the execution itself; others could attest to prior events, such as threats, or to subsequent responses by law enforcement authorities and others.) I also spoke with witnesses to 12 other incidents that did not involve extrajudicial executions. I received case files regarding a total of 271 extrajudicial executions and a number of other incidents.

9. To all the persons I met with I express my gratitude for the assistance offered. I am indebted to the United Nations Resident Coordinator, Nileema Noble, and the United Nations country team for so capably facilitating my visit. I am also grateful to the civil society representatives who facilitated my interviews with victims and witnesses and who provided copious documentation and reports. I am uncertain of the extent to which individuals and organizations would want attention drawn to the assistance that they provided, and I have accordingly erred on the side of discretion rather than offering credit. Finally, I am most grateful for the full cooperation extended by the Government. I was able to meet with all of the officials with whom I requested meetings, and my many requests for documents were met with prompt and sympathetic consideration.

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