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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Preliminary note on the visit of the Special Rapporteur on extrajudicial,
summary or arbitrary executions, Philip Alston,
to the Philippines (12-21 February 2007) ****

* Reissued for technical reasons.

** The note was submitted late in order to reflect the most recent information. It is being circulated in the language of submission only.

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I. INTRODUCTION

1. I visited the Philippines at the invitation of the Government from 12 to 21 February 2007. I met with key government officials, including the President, the Executive Secretary, the National Security Adviser, the Secretaries for Defence and Justice, members of Congress, the Chief Justice, the Chief of Staff of the Armed Forces of the Philippines (AFP), the Chair of the Human Rights Commission, and the Ombudsman. Approximately half of my mission was devoted to meetings with representatives of civil society, in Manila, Baguio and Davao. Pending the submission of my final report to the Human Rights Council, this interim report provides a brief overview of my activities and identifies some of the issues which are of the most concern to me. Comments provided by the Government on a draft of this report are acknowledged with appreciation.

2. The Government cooperated in the organization and conduct of my mission in an exemplary fashion. As I indicated in my departing press conference, the fact of the invitation itself reflected a clear recognition of the gravity of the problem, a willingness to permit outside scrutiny, and a very welcome preparedness to engage on the issues. Civil society was equally engaged and I received very detailed and systematic information which contributed enormously to the success of the mission.

II. PRINCIPAL CONCERNS AND GOVERNMENT RESPONSES

3. In a nutshell, my visit was prompted by reports of a large number of extrajudicial killings, especially of leftist activists and journalists, over the past six years or so. While the estimates vary from 100 to 800 or more, I concluded that it is not productive to play the numbers game and seek to confirm any definitive number. No one disputes that large numbers have been killed. Especially problematic is the fact that the impact has been to intimidate vast numbers of civil society actors, to send a message of vulnerability to all but the most well connected, and to severely undermine political discourse.

4. In considering how to respond to the problem, it is not helpful to dwell unduly at this stage on the reluctance of the military, the police and some key ministers to come to terms with the reality and seriousness of the problem. Suffice it to note that the Government itself was sufficiently motivated to appoint both a high-level independent commission to investigate the problem (the Melo Commission) and a national-level police task force (with military cooperation) to investigate alleged killings promptly and bring prosecutions (Task Force Usig). In recent months, the Government has ordered a range of initiatives, including:

- The Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) have been requested to draft an updated document on Command Responsibility;
- The Department of Justice (DOJ), DND, and the Commission on Human Rights (CHR) have been asked to constitute a Joint Fact-Finding body in relation to the alleged involvement of military personnel in the killings, and to charge and prosecute those responsible;

- The DOJ has been asked to broaden and enhance the Witness Protection Program (WPP);
- The Chief Justice of the Supreme Court has announced the creation of 99 Special Courts to try those accused of killings of a political or ideological nature;
- The Department of Foreign Affairs (DFA) has formally requested assistance from the European Union and others to provide funds in response to the killings;[†]
- An additional 25 million pesos (US\$ 510,000) has been provided to the CHR to enable it to better address the problem; and
- The Presidential Human Rights Committee (as distinct from the CHR) has been rejuvenated.

5. The fact that there has been such a strong institutional response at the national level is initially encouraging. This in turn has been mirrored by the deep concerns expressed by a diverse range of actors within the international community. Taken together, these responses attest to the high saliency of the issue and the urgent need to identify measures which might help to end the spate of killings. The remainder of this interim report is devoted to that challenge.

III. THE ROAD AHEAD

6. The consequences of a failure to end extrajudicial killings in the Philippines will be dire. Efforts to resolve the various insurgencies will be set back significantly. Incentives to opposition groups to head for the hills rather than seek to engage in democratic politics will be enhanced, and international support for the Government will be undermined. A multifaceted and convincing governmental response is thus urgent.

7. In essence, the problem must be tackled at two different, but complementary, levels. At one level there is indeed a need for more staff, more resources, and more specialist expertise, a better witness-protection programme, and the strengthening of key institutions. The recent Government actions noted above have gone a considerable way in that direction. But such steps are premised almost entirely on the assumption that the key interventions required concern resources and expertise. The hope seems to be that if there can be better investigators, more forensic capacity, more focused judicial action, and more sustained action by the joint military/police task force, the problems will be resolved. But the strong risk is that these measures will treat only some of the symptoms of the crisis, and will fail to address meaningfully two of the most important underlying causes of a great many of the killings.

8. Those causes constitute the second level at which an effective national response is required. The first cause has been variously described as “vilification”,

[†] Press release from the Office of the President, “PGMA fires off several directives to stop extrajudicial killings”, 30 Jan. 2007, at <http://www.op.gov.ph/news.asp?newsid=17122>

“labelling”, or guilt by association. It involves the characterization of most groups on the left of the political spectrum as “front organizations” for armed groups whose aim is to destroy democracy. The result is that a wide range of groups – including human rights advocates, labour union organizers, journalists, teachers unions, women’s groups, indigenous organizations, religious groups, student groups, agrarian reform advocates, and others – are classified as “fronts” and then as “enemies of the State” that are accordingly considered to be legitimate targets. The second cause is the extent to which aspects of the Government’s counter-insurgency strategy encourage or facilitate the extrajudicial killings of activists and other ‘enemies’ in certain circumstances. The final report will elaborate at length on this issue.

A. Orders of battle

9. While these two causes tend to operate separately from one another in many settings, they also come together in various ways. The most dramatic illustration is the “order of battle” approach adopted systematically by the Armed Forces of the Philippines (AFP), and in practice often by the Philippines National Police (PNP). In military terms an order of battle is defined as “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 they operate. 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 (Communist Party of the Philippines/New People’s Army/National Democratic Front)”. The document, some 110 pages in length, lists hundreds of groups and individuals who have been classified, on the basis of intelligence, as members of organizations which the military deems “illegitimate”. Newspapers carry almost daily reports of senior military officials urging that such groups be neutralized and calling upon the populace to recognize that to support their candidates in the upcoming elections would be to support the enemy. This practice was openly and adamantly defended by nearly every member of the military with whom I spoke. When a significant number of individuals killed in incidents implicating the armed forces or police are also listed on an order of battle, it raises serious questions about the appropriateness of this practice. It may be, as I was told, a “political war”, but when such political war is conducted by soldiers rather than civilians, politics too quickly comes to involve guns as well as words. An interim recommendation emerges from this analysis and is outlined below.

B. Restoring accountability at all levels

10. One of the key impediments to the effectiveness of many of the measures announced by the Government in recent weeks is the fact that many of the accountability mechanisms which are invoked as checks on governmental abuses have been rendered ineffectual in dealing with such issues. On paper, they remain strong. In practice, they are of all too little use, and often this is the result of official design. These issues will be examined in detail in my final report but for present purposes it is sufficient to focus upon some key examples of institutional passivity in the face of large numbers of killings.

11. There is a passivity, bordering on an abdication of responsibility, which affects the way in which key institutions and actors approach their responsibilities in relation to such human rights concerns. For example, in discussions with me, the chair of the Senate Committee on Justice and Human Rights insisted that there was no role for Congress because no new legislation was required, given that murder was already a punishable offence. He openly denied that Congress should play any proactive oversight role regarding the executive's execution of the law. He added that military promotions of those widely suspected of human rights violations were no concern of his Committee and had not been held up by the Congressional Commission on Appointments because no witnesses had come forward to object. He had not and did not intend to hold hearings into the widespread problem of extrajudicial killings because it was a matter for the executive, rather than the Congress.

12. The Secretary of Justice, and his colleagues, were perplexed at the proposition that prosecutors, whose role is absolutely central in the Philippines justice system, had some broader responsibility to take steps to uphold respect for human rights. Instead, their role was seen as a passive one. If a file presented to them was insufficient, their role was simply to return it and hope that the police would do better next time. It was not for them to observe or respond to clearly shoddy dossiers designed to ensure that the police could be said to have done their job while at the same time no prosecution would follow. The Government position is that prosecutors must show "total impartiality" and thus they cannot be directed to adapt their methods of work to ensure that everything possible is done to promote respect for human rights. That position seems to me to be highly problematic.

13. The Ombudsman's office, despite the existence of a separate unit designed to investigate precisely the type of killings that have been alleged, has done almost nothing in recent years in this regard. The Government itself acknowledges that, of 44 complaints submitted from 2002 to 2006 alleging extrajudicial executions attributed to State agents, the Ombudsman's office concluded that it was unable to act on even a single case. While such a result in relation to five or even ten cases might be justifiable, when it reaches the level of 44 cases the conclusion must be that the office is failing in its responsibilities. Many explanations were offered for its inactivity, but none were convincing. Moreover, in at least some situations the office operates as a de facto subsidiary of the Department of Justice.

14. Finally, 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". This restrictive approach tends to make congressional oversight meaningless in practice.

IV. INTERIM RECOMMENDATIONS

15. I recommend that:

(a) 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. If such characterizations are ever to be made it must be by civilian authorities, on the basis of transparent criteria, and in conformity with the human rights provisions of the Constitution and relevant treaties;

(b) The Government should commit to restoring the effectiveness of constitutionally mandated accountability arrangements, especially in relation to the role of Congressional oversight;

(c) 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;

(d) The Ombudsman's office should begin to take seriously its independent constitutional role in responding to extrajudicial killings plausibly attributed to public officials;

(e) The Government should provide the Special Rapporteur with a copy of an "order of battle" relating to one of the zones in the country in which significant conflict is currently occurring.
