EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES
EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES

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Opening Remarks and Statement of Purpose*

Prof. Sedfrey M. Candelaria**

Today is a very important opening of a series of sessions that will address a very fundamental problem more particularly on the realm of human rights in this country. We are addressing a phenomenon called extralegal killings coupled with enforced disappearances, which has gained prominence internationally in terms of the impact on both domestic and international human rights monitoring. It has reached the level in fact of the United Nations, as you will note, through a report by no less than a very respectable human rights scholar, Professor Philip Alston. It also strikes at the very core of the peace process in this country, one that we have been living with for some time. It is a matter that cannot just be addressed from both the political and military perspective. What we have prepared to do is to provide you with a framework

* Delivered at the Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues: Extralegal Killings and Enforced Disappearances (Seventh Judicial Region, Batch 1) held on August 7–8, 2008, at the Marco Polo Plaza Cebu, Cebu City. Transcribed.

** Professor Sedfrey M. Candelaria heads the Research, Publications and Linkages Office of the Philippine Judicial Academy (PHILJA) and chairs its Department of Special Areas of Concern.

He is also Associate Dean for Student Affairs and Professor of Law at the Ateneo Law School, where he teaches Constitutional Law, Public International Law, Indigenous Peoples and the Law,
that would help you understand how to deal with a phenomenon which seemed to have been beyond control. Developments have come about more recently, engaging government agencies to once and for all put a clamp on these killings. Their efforts may not have been fully successful in terms of stopping the killings, but the trend has compelled us to understand how to deal with it in the future. The Judiciary has been very much at the forefront for the last two years on this, principally because of the very important call of the Supreme Court to address the different components of the justice system and the other stakeholders in our society. It took the Extrajudicial Summit to, once and for all, address this concern in a most constructive way and to be able to engage government agencies that are at the forefront of the anti-insurgency campaign. The summit also enabled the court to actually find ways and means to network with different stakeholders. It is only

Children’s Rights, and International Economic Law, as well as Head of the Indigenous Peoples’ Rights Unit (Katutubo) and Director of the Child Rights Unit (Adhikain Para sa Karapatang Pambata) of the Ateneo Human Rights Center.

A Commonwealth Judicial Education Institute (CJEI) Fellow in Dalhousie University, Halifax, Canada, he obtained his Master of Laws degree at the University of British Columbia, Vancouver, Canada. He has authored several articles on human rights, refugees, children’s rights, debt crisis, international humanitarian law, rights of indigenous peoples and adoption, and edited and conducted researches for UNICEF on the Convention on the Rights of the Child and Juvenile Justice.

He is a Member of the GRP Negotiating Panel for talks with the Communist Party of the Philippines/National Democratic Front/New People’s Army and currently Legal Adviser to the GRP Negotiating Panel for talks with the Moro Islamic Liberation Front.
by linking the courts with other agencies of government and civil society that we are able to address the issue through a multi-pronged approach.

We will provide you today, first, with a situationer, on what the phenomenon is all about and, second, with an understanding of the difficulty in addressing the so-called extrajudicial killings or extralegal killings and enforced disappearances. You will be given a situationer on who the victims and the alleged perpetrators are and what methods of attack are employed to carry out the acts of killing or enforced disappearance. While the phenomenon may actually account for murder, for example, there would still be serious problems during the prosecution and trial. Trying to bring the perpetrators before the courts is not an easy task. Our prosecutors would understand that, including our Philippine National Police (PNP), represented here by very important officials who have been in the forefront of human rights advocacy.

We are also providing you with a framework on the legal methods by which we will be able to address the concerns from the ground. The legal frameworks provided for this two-day session are on Human Rights and International Humanitarian Law. It is most appropriate that we have no less than the chairperson of the Commission on Human Rights delivering a message this morning that would hopefully help us address these pressing issues. Humanitarian law may not be familiar terrain to most of our judges but it needs to be introduced because the nature of the killings and disappearances eventually involve the issue of insurgency which will have serious consequences if, for example, the threshold of obligations are reached in a humanitarian law concept. We will also provide you with a background on this, including command responsibility, which is material in addressing the issue against the alleged perpetrators. How far up do you go
when an alleged killing is committed by the elements of the Armed Forces of the Philippines (AFP) or other state actors? Do you go as far as the Office of the President? Do you go as far as the Office of the AFP Chief? These need to be addressed as we look at legal precedents alongside.

Finally, we will introduce you to the rules that the Supreme Court had adopted, the writs of amparo and habeas data. These writs are now familiar for quite a number of you who may have encountered these in separate fora, but we will try to use these again within the context of having to solve hypotheticals during the latter part of our sessions.

We have also invited different components of the justice system to help us grapple with some of the traumatic issues that may arise. Hopefully this dialogue will give us a better picture on how the courts can now work with the other pillars of the justice system that will be able to give assistance in regard to cases brought before them. We are hopeful that this process will better equip our judges and court personnel in addressing this phenomenon. We hope that this is our way of saying that the peace process also requires our individual participation if we want to make a contribution to the development of this country.
Combating Extralegal Killings and Enforced Disappearances*

Justice Ameurfina A. Melencio Herrera (ret.)**

Today, the seminar-workshops on Extralegal Killings, on the Writ of Amparo and the Writ of Habeas Data graduate from special focus programs to one of the core programs of the Academy. Starting with the third judicial region, we hope to have at least a year-long series on the subjects for our judges nationwide in skills-building formats, aimed at assisting all of them in addressing the spate of extralegal killings and enforced disappearances. These seminar-workshops can now be considered as career enhancement programs.


** Madame Justice Herrera was appointed Chancellor of the Philippine Judicial Academy in March 1996, four years after her retirement from the Supreme Court where, as Senior Associate Justice, she rendered distinguished service from 1979 to 1992. The second woman to be appointed to the High Court, she would have been the first woman Chief Justice, had not unforeseen circumstances intervened. She has been hailed as a “shining apostle in the legal profession” for her impeccable intellectual credentials, integrity, morality and righteousness. She is an indisputable role model for women all over the world, an inspiration and symbol of distinction and eminence. Her name “Ameurfina,” representing America, Europe and Filipinas,
For enabling us to jumpstart the series, we deeply thank the Australian Government and Australian Agency for International fittingly confirms the merging of the best of both worlds in her personal life and profession.

Described as the illustrious granddaughter of the President of the First Philippine Republic, General Emilio Aguinaldo, Mme. Justice Herrera cut a fulfilling and fruitful career on the Bench from the then Court of First Instance of Baler, Quezon, to the highest court of the land. She rendered landmark decisions as Justice of the Supreme Court and was the indefatigable Chairperson of the Court’s Second Division. She also chaired the House of Representatives Electoral Tribunal until she retired in 1992. She is a forerunner in bar reforms and is the recipient of numerous awards both here and abroad.

Under her innovative leadership, the Academy introduced Court-Annexed Mediation (CAM), Appellate Court Mediation (ACM), Mobile Court-Annexed Mediation (MCAM) and Judicial Dispute Resolution (JDR), the latter in partnership with the National Judicial Institute of Canada. All these have since successfully resulted in the decongestion of court dockets and speedier resolution of disputes.

During her incumbency, PHILJA received international recognition as one of the world leaders in judicial education, being also involved in international organizations such as the Asia Pacific Judicial Educators’ Forum (APJEF) and the International Organization for Judicial Training (IOJT). Justice Herrera was Chairperson of APJEF’s Executive Committee and IOJT’s Deputy Regional President Australasia region.

Development (AusAID), represented here today by Mr. Matthew Harrison, Third Secretary of the Australian Embassy. Both the Writs of Amparo and Habeas Data are a “boon to democracy and good governance.” They are novel to our judges and even to our educators, hence, the skills-building methodologies to complement the more traditional approaches.

The seminars will likewise be multi-sectoral in participation as the occurrences deserve the highest concern of all stakeholders in the criminal justice system, from prevention, investigation, prosecution, judging, to enforcement. This approach will also help bring about a more synergistic response to the problem, and can more effectively combat the impunity that has characterized this phenomenon in our country. Already, we have noted a dramatic drop in extralegal killings in 2007, an indicator of initial success. We will continue to build on this development and we trust that with our combined efforts, the problem in our country shall have been solved. Statistics of the Office of the Court Administrator–Court Management Office (OCA-CMO) as of January 2008 show 10 Amparo petitions pending in the Court of Appeals, and four pending cases in the Regional Trial Courts of Quezon City, Calamba City, and Iloilo City. The Department of Justice’s (DOJ) Task Force on Extrajudicial Killings also reports 20 extrajudicial killings cases (usually murder) now in the prosecutors’ offices throughout the country, with 66 cases now pending in court.

She is her own light despite the long shadow cast by her grandfather, the first Philippine President Emilio Aguinaldo; her father, Ambassador Jose P. Melencio, and her husband, U.P. Chancellor, Dr. Florentino B. Herrera, Jr. Yet, she is the guardian of the legacy of her lineage as she brings forth into full flowering, through her actuations and court adjudications, the justice that heroes dream of and the freedom that martyrs die for.”
We are tackling the novel writs not only as rules *per se* but also in relation to Human Rights. Actually, Human Rights is not an alien topic to the Academy because since its inception, it has included topics on human rights and on economic, social and political rights, either in its stand-alone programs or as part of its career enhancement programs.

May we then bid you all a very warm welcome to a seminar-workshop curriculum that has been carefully designed by the best minds that are. Your concentration on the lessons at hand in order to derive the best possible outcome from the session objectives, is expected. Your commitment to protecting the life, liberty, security and privacy of our peoples, and their right to truth, is enjoined. Your resolve to settle criminal cases related to extralegal killings and disappearances before you with dispatch, armed with lessons learned from these educational programs, and supplemented by your own creative measures and life-long learning attitudes, is desired, considering that these cases involve the most brazen violations of human rights.

Welcome again and happy learning!
The Philippine Judicial Academy, along with our Commission on Human Rights (CHR), and other partners, like the United States Agency for International Development (USAID) and The Asia Foundation (TAF) welcome all of you to this Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues with particular focus on extralegal killings and enforced disappearances. The issues of extralegal killings and enforced disappearances are crimes of impunity and have gained a permanent place on the front pages of our daily newspapers. As dismaying as the reports normally are, there is some good news to share. Within this decade, from the time the crimes of impunity peaked...
in 2005 and 2006, incidents of the same nature have dropped sharply in 2007, and such downward trend continues into 2008. It appears that the public clamor, international pressure, and the measures taken by the government have made a noticeable impact on the incidence of these ghastly crimes that have stopped our


Chairperson De Lima is a member of the Supreme Court Subcommittee on Election Rules which proposed new rules of procedure in election contests before the courts of general and limited jurisdiction involving elective municipal and barangay officials.

Chairperson De Lima has attended several seminars and trainings abroad and locally. She is a regular lecturer and resource person on election-related issues.

Chairperson De Lima is affiliated with different organizations in different capacities: Co-founder, Lambda Rho Sigma Sorority of San Beda College of Law; Founding Member, Association of Law Journal Editors of the Philippines (ALJEP) (1984 to date); President, City Federation of Kabataang Barangays of Iriga City (1976–1980); Member, LAWASIA (2006 to date); Akson Demokratiko (1985); Philippine Association of Law Professors (PALP) (1988 to date); Integrated Bar of the Philippines (Camarines Sur Chapter) (1986 to date); ASEAN Parliamentarian Organization (APO) (1979–1980); Batasang Bayan (Youth Sectoral Representative representing the Bicol Region) (1976–1978); Sangguniang Panglungsod of Iriga City (KB Representative) (1976–1978).
people, especially the leftists, the media, students, labor and militant
groups. The good news continues because now, we have in place
the rules on the writs of amparo and habeas data, products of
judicial activism initiated by the courageous Supreme Court. This
seminar is part and parcel of this unrelenting drive of the Supreme
Court to ensure that every corner of the country is armed and
equipped to carry on the battle against crimes of impunity. We
add to the good news because Cebu and Region VII as a whole,
according to the recorded complaints reported to the Commission
on Human Rights, have a very low incidence of such crimes.
Forty-four out of 624 victims of extralegal killings come from
Cebu, comprising 7 percent of all reported cases to the
Commission within the period 2001 to 2008.

Meanwhile, three out of 257 victims of enforced
disappearances are from Region VII, representing just over 1 percent
of all such cases. Again, this is based on the Commission’s records.
Indeed, the Cebu region appears to be one of the least prone to
crimes of impunity, at least according to what is being reported
to us. Yet even with positive trends in our nation’s campaign to
eliminate crimes of impunity, there is just not enough to call for
a celebration. We have simply not done enough. Yes, the number
of incidents is falling, and this is a very promising development.
However, to families who have actually lost one of their own,
either to extralegal killings or enforced disappearances, how small
must the number be? How few must the incidents be in order to
say we have succeeded in putting an end to this rash of crimes of
impunity? How many, for those who have lost a loved one? One
loved one lost, one husband’s life lost, one wife’s body decimated
by torture, one daughter’s freedom deprived arbitrarily, one son’s
whereabouts held in secret, is one victim too many? Is there any
of you here today who could approach the families of those who
have been victimized by crimes of impunity and ask them if that
one lost life of a loved one is acceptable statistics. How many then is acceptable? I ask you again. Zero may be the answer, but the number zero is too succinct to negotiate. The mere fact that crimes of impunity continue, reduced as they may be, is only the beginning of the bad news. Records of the Commission show that there are 22 reported cases of alleged extralegal killings and no cases of enforced disappearances in Region VII since 2005. However, Cebu media, particularly the Sun Star Daily, has counted 181 vigilante killings from December 2001 until mid-June of this year. Of these 181 killings, how many include the ones reported to the CHR? How many are simple cases of murder? And how many are within the purview of extralegal killings? We do not know that.

The dictionary definition of vigilante is “a member of a volunteer committee organized to suppress and punish crimes summarily as when the processes of law are viewed as inadequate or broadly, a self-appointed doer or dispenser of justice.” This describes the vigilantes rampant in Cebu no differently from rebel groups, unlawful armed groups, and the Communist Party of the Philippines/New People’s Army (CPP/NPA) who are frequently listed as respondents together with the elements of the military and police in crimes of impunity. Lawfully, no one’s life may be taken with the abolition of the death penalty especially since the Philippine Government had already signed the Optional Protocol to the International Covenant in Civil and Political Rights and the Optional Protocol to the Convention Against Torture or OPCAT. While the right to protection against extralegal killings and enforced disappearances already exists or is protected in the international covenant in civil and political rights to which we are a party, the absence of a legal definition within our law – our own law that delimits the scope of extralegal killings, leaves us to speculate the real extent of extralegal killings and enforced
disappearances here in Cebu. Is it 22 incidents or 181? The difference is staggering. At 181 alleged incidents since December 2004, Cebu would be easily catapulted to the ignominious status of being the gravitational center of extralegal killings in the country, if we go by the 181 statistics under the so-called vigilante killings. To compound matters, the application of the very rules promulgated by the Supreme Court invoked by victimized families has led to successive denials of amparo and habeas corpus petitions.

You must have read that the Court of Appeals had only partially granted the petitions of Edita Burgos for her son Jonas. The allegations and evidences presented therein were declared to be insufficient to prove that the military indeed abducted Jonas. Next, the petition of Francis Saez who is a member of the party list organization Anakpawis and an alleged witness to the abduction and murder of Eden Marcellana and Eddie Gumanoy who were victims, too, of crimes of impunity, was dismissed altogether. Saez’s case was junked on its failure to conform to the rules on making allegations. There was nothing presented to even suggest a threat to violate his right to life, liberty, or security to warrant any relief from the Court of Appeals. Finally, the petition of Lorena Santos, in behalf of her detained mother and missing father, was also denied. The court held that Santos had miserably failed to support her allegations about her parents as well as her claim that she, herself, had been under threat. It might seem too early to declare that the rules on amparo are flawed; what is apparent is that the prosecution of these cases leaves much to be desired, which is a gross understatement.

During the seminar-workshop of the Second Judicial Region identical to the one we have today, Chief Justice Reynato S. Puno declared and I quote:
It is a fervent hope that with these three writs, habeas corpus, amparo and habeas data, we have enough legal arsenal to combat this stubborn problem of extralegal killings and enforced disappearances. Just as a chain is only as strong as its weakest link, so we must ensure that each stakeholder is playing its part and playing it well lest efforts coming from other sectors be rendered inutile.

At this point, the prosecution of these cases and the consolidation of witnesses and evidence do not meet the standards of proof to bring out any success in court. The weakest link in the chain seems to be ourselves who are present today. We who are engaged in the prosecution, or are directly involved in the same, have failed. The campaign against crimes of impunity has yet to achieve a real victory. None of the high profile cases in Region VII have been solved. The murders of Victor Olaybar in Danao, Bohol; Cesar Kyanko, Allan Villacencio, Harry Flores, and Noel Batikin, all from Cebu, have never been successfully prosecuted.

As Professor Philip Alston had observed, the measures taken by the Philippine Government to address these crimes are encouraging. But as of the moment, there have been zero convictions. Again, the number zero haunts us. Zero convictions. It is a staggering number that must serve as a reminder that no number of laws, fora, or international treaties will deter the commission of extralegal killings or enforced disappearances, if no one whether from government, or security forces, vigilante groups, or other unlawful armed bands, will be held accountable in the courts of law.

The reason you are all here today has been predetermined. It is pursuant to the Supreme Court’s directive to properly train and equip every stakeholder in our quest to end crimes of impunity. The urgency behind your participation today, however,
is ever evolving. This is in the light of what seems to be the most devastating setbacks—our failure to successfully prosecute and obtain justice as criminally illustrated by recent dismissals of habeas corpus and amparo petitions and the impeded torrent of vigilante killings in Region VII. That your presence today is even more unbelievably significant than ever before imagined. This seminar is not a respite from the office; it is work. It is gravely serious work that could mean the difference in the lives of someone who may have been or will be victimized by acts of impunity.

You, the honorable judges, public prosecutors, human rights advocates, the military, police, and legal practitioners, you yourselves must detest these crimes and privilege work to bring the perpetrators to justice. You must all be stakeholders in the promotion and advocacy of human rights. Judges must employ a surgical and moderated sense of judicial activism to creatively and effectively carry out the spirit and letter of the rules on the writs of amparo and habeas corpus. Moreover, courts must expedite the resolution of cases involving these crimes. The police must improve in their procedures on investigation and gathering of evidence to prevent dismissal of complaints on the grounds of insufficient and improperly procured evidence. The members of the armed forces must abide with the chain of command and at all levels of the Philippine National Police (PNP) hierarchy faithfully protect their mandate to protect the Filipino people and prevent human rights abuses from within and outside their realms.

Listen to your resource speakers and lecturers like the lives of your own families are at stake. What comes after that of tremendous importance is what you will do. On Monday morning, when you return to your respective offices and everyday that comes after that, remind yourselves over and over, one life lost to extralegal
killing or enforced disappearance is one life too many. Make it your mantra, your oath. “One life is one too many.”

May this workshop be instrumental to your professional growth and to your personal journey in joining the ranks of our countrymen who have never forgotten the cause of lives lost to injustice, the price of the freedom we enjoy, and the vigilance that we must always keep. May this workshop be instrumental in your conscription into combat against crimes of impunity. Together, all links to the same chain, all men and women drafted to the order of battle against extralegal killings and enforced disappearances, let us answer the zeros that taunt us, the urgencies that beckon us, the perpetrators that laugh at us, to families of victims that beseech us, and make our most authoritative stand against crimes of impunity. May today and tomorrow be very fruitful days for all of you.

*Maraming salamat.*
The Task is Not Yet Done*

*Chief Justice Reynato S. Puno**

Just over the weekend, the Philippine Star reported that a body of a man, believed to be a victim of summary execution, was found hogtied and dumped along Calle Uno in Barangay 81, Caloocan City North, before dawn. The victim was described as about 30 to 36 years old, 5’4” tall, wearing denim pants and a yellow t-shirt. The victim also had a tribal tattoo on his right leg. His hands and legs were bound to his neck by a length of electrical cord, his mouth gagged with a towel and covered with packing tape, and his chest bore stab wounds. I would like to think the news report is the best justification for this seminar.


** Chief Justice Reynato S. Puno was appointed the 22nd Chief Justice of the Philippines by then President Gloria M. Arroyo on December 7, 2006. He is also the concurrent chair of the SC First Division and ex officio Chair of the Judicial and Bar Council (JBC) and the Presidential Electoral Tribunal (PET).

Prior to his appointment to the High Court in 1993 by President Fidel V. Ramos, he served as: Associate Justice of the Intermediate Appellate Court and the Court of Appeals (CA), Deputy Minister of Justice, acting Chairman of the Board of Pardons and Parole, Solicitor in the OSG (1971), Assistant Solicitor General in 1974, and City Judge of Quezon City. He holds the distinction of being the youngest appointee to the CA at the age of 40 in 1980.
The writs of amparo and habeas data have been promulgated by the Court in September 2007 and January 2008, respectively, to arrest the rising threat to our basic rights to life, liberty, and

As Chief Justice, he chairs the Court’s First Division, the Court Systems Journal Committee, and the Supreme Court Committee that digests the Court’s decisions for distribution to members of the Judiciary. He also heads the Committee on Revision of the Rules of Court that drafted the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, among many others.

Chief Justice Puno obtained his Bachelor of Science Degree in Jurisprudence and his Bachelor of Laws Degree from the University of the Philippines in 1962. He served as Editor in Chief of The Philippine Collegian. He pursued his post-graduate studies in the United States on a full scholarship. He obtained his Master of Comparative Laws degree at the Southern Methodist University, Dallas, Texas, with high distinction and as class valedictorian; his Master of Laws at the University of California, Berkeley; and completed all the academic requirements for the degree of Doctor of Juridical Science at the University of Illinois, Champaign, Urbana. In 2005, he became the first Filipino to receive the Distinguished Global Alumnus Award from the Dedman School of Law, Southern Methodist University, Dallas, Texas. He has been conferred honorary doctorates by five of our universities and by the Hannam University, South Korea.

While a post-graduate student, Chief Justice Puno received five American Jurisprudence Prize for Excellence awards given by the Lawyers Cooperative Publishing Co. of New York and the Bancroft Whitney Publishing Co. of California.

In 1962, he started professional practice at the Gerardo Roxas and Sarmiento Law Office as Assistant Attorney. Upon his
security. These two writs complement the existing writ of habeas corpus long provided for in our laws. It is our fervent hope that with these three writs, we have enough legal arsenal to combat return from the United States in 1969, he joined his brother, the late Judge Isaac S. Puno, Jr., in law practice.

On August 1, 1986, Chief Justice Puno was reappointed to the Court of Appeals. In 1993, then President Fidel V. Ramos appointed him as Associate Justice of the Supreme Court. He was Chair of its Second Division.

He served as Bar Examiner in Criminal Law in 1970, Mercantile Law in 1989, and Taxation in 1993. He was also a Lecturer of the UP Law Center, Institute of Judicial Administration, and a Professor of Law at the Far Eastern University from 1969 to 1973. He now lectures at the Philippine Judicial Academy (PHILJA).

Among Chief Justice Puno’s most prestigious awards are: Ten Outstanding Young Men Award (TOYM), Araw ng Maynila Award as Outstanding Jurist, UP’s Most Outstanding Law Alumnus, Grand Cross of Rizal from the Order of the Knights of Rizal, Grand Lodge Gold Medal from the Grand Lodge of Free and Accepted Masons of the Philippines, and Centennial Awardee in the field of law given by the United Methodist Church on the occasion of its 100th anniversary.

The Chief Justice is active in civic and church activities as a lay preacher of the United Methodist Church and Chairman of the Administrative Council of the Puno Memorial United Methodist Church.

Chief Justice Puno was married to the former Supreme Court Clerk of Court Atty. Luzviminda D. Puno with whom he has three children.
this stubborn problem of extralegal killings and enforced disappearances.

Indeed, our gains in this problematic area cannot be understressed. Statistics show that by the end of the first quarter of 2008, the Supreme Court has already issued a total of 24 writs of amparo, out of the 27 petitions filed. Similarly, the High Court has already issued three writs of the newly promulgated habeas data and has directed the Court of Appeals to try and hear them. These numbers are suffused with significance: first, they show the people’s increasing awareness of the new remedies; and second, they show the people’s returning faith to our justice system.

Equally important, we can now feel the heightened consciousness of our people on the sanctity of human rights, particularly on the part of our law enforcers. I have received information that there have been marked changes in the way our law enforcers investigate extralegal killings and enforced disappearances. There is now a conscious effort to hew to higher standards of investigation to solve these crimes. With an enlightened and empowered citizenry, and more effective law enforcement, there is reason to hope that this problem that has marred our legal landscape will soon blow away.

Be that as it may, these successes are but initial steps. Justice done remains the best deterrent to any and all crimes: only when the liable are made to account for their actions can we close the book on the problem. And this ultimate goal of punishing the guilty requires the seamless efforts of all sectors in the criminal justice system. Just last week, the European Union (EU), during the two-day 2008 Philippine Development Forum in Clark Field, Pampanga, lauded the “significant decrease” in the cases of unexplained killings and enforced disappearances in the Philippines.
In the same breath, it noted with concern that to date, in no case have the perpetrators been made accountable.

The challenge is how to make the writs of amparo and habeas data work, how to translate their vague promise to visible reality. Laws that protect life are lifeless unless they are enforced. We need to assure victims they can bet their shirt on our legal mechanism. Government and the NGOs need to hold their hands and give them the assurance that justice will be administered with fairness, with effectiveness, with speed, and at a cost they could afford. A bungled investigation, a half-hearted prosecution, a slow-footed Judge, a high cost of litigation will dry up the fervor of victims to rely on our system of justice.

By all means, we have to grapple with these problems: inefficient investigators, deficient evidence-gathering techniques and equipment, lack of prosecutors and lawyers of the Public Attorney’s Office, reluctance of families of the victims and witnesses to report the commission of a crime and testify in court, failure of some courts to conduct continuous trial, complexity of the rules governing trials and appeals, lack of funding and incomplete implementation of the Witness Protection Program, and the lack of resources of the victims to survive the expenses of our turtle pace of justice. Much work remains cut out for each and everyone of us.

Just as a chain is only as strong as its weakest link, so must we ensure that each stakeholder is playing its part and playing it well lest efforts coming from other sectors be rendered inutile. The critical factors of cooperation and coordination among the key players in the justice sector will be addressed by this multi-sectoral and skills-building seminar-workshop. This significant seminar will enhance our knowledge of the constitutional and international law bases of human rights; it will give us a peep into developments
on International Humanitarian Law; and it will sharpen our perception of the problems involved in the prosecution of human rights violation. By the end of this two-day activity, we all hope we will be walking away refreshed by a new spirit, strengthened by a new resolve to protect the human rights of our people, less with our lips but more with our lives.

Allow me to take this opportunity to thank the Philippine Judicial Academy, an indispensable ally in the success of the initiatives taken by the Court in the protection of our people’s rights. The Academy has played a crucial role in providing the necessary teeth to the High Court’s Rules, extending education and training beyond our judges, justices, and Court personnel to other players outside the judiciary. I would also like to thank the American Bar Association–Rule of Law Initiative (ABA-ROLI), together with the United States Agency for International Development (USAID), and the Commission on Human Rights (CHR) for co-hosting this seminar.

Let me formally open this seminar-workshop with words of encouragement from the revered Justice William O. Douglas:

As nightfall does not come at once, neither does oppression. In both instances, there’s a twilight where everything remains seemingly unchanged, and it is in such twilight that we must be aware of change in the air, however slight, lest we become unwitting victims of the darkness.

We have seen the darkness, and we are slowly easing into the light. Together, let us work to drive away the pall of darkness cast over our human rights by extralegal killings and enforced disappearances. Sooner or later, our work will bear its fruits for, of all kinds of rights, human rights have an eternal resilience. Humans may be killed but human rights are beyond murder. Let us, therefore, be buoyed by the thought that there is no way to lose the battle for
human rights. For we know that they who have attempted to bury human rights all ended up in the graveyard instead. That is not a prophesy; that is history.

A pleasant morning to all.
Good morning again, Your Honors and dear friends. I would like to make a presentation by way of a situationer on a report which has been done more than a year ago. The report is culled out from the records of the government monitoring committee. Let me explain a little bit where the report is coming from.

I sit in a committee called the Government of the Republic of the Philippines–Monitoring Committee (GRP-MC) that was created as a result of an agreement between the government and the Communist Party of the Philippines/New People’s Army/National Democratic Front (CPP/NPA/NDF). It is a committee that is part of a commitment under the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL). We have been involved in the peace process or peace negotiations since 1995 with the CPP/NPA/NDF, and one of the four agreements that was agreed on or stipulated during the Hague Declaration was the Comprehensive Agreement on Human Rights and International Humanitarian Law. The next agreement supposed to be the
subject of negotiation is on socioeconomic reform; the third would have been political and constitutional reform; and then the last stage would have been the end of hostilities by the NPA. We stopped at CAHRIHL because there were disruptions in the talks and, for more than two years now, we have been on what you would call an impasse mode. Nonetheless, it is the phenomenon on extralegal killings or enforced disappearances, that we have to look into because of the matters presented to us affecting the insurgency issue. We will explain to you in the report why it is an important aspect to be addressed in the course of peace negotiations. The idea behind the comprehensive agreement on human rights and international humanitarian law with the CPP–NPA–NDF was that you have two parties sitting together for a peace process, wanting to lower if not eradicate, the level of violence on the ground. It was intended to test whether or not both parties are willing to once and for all end the armed conflict in this country. One way of doing it is by setting standards on how parties would behave during the peace negotiations. CAHRIHL was in place precisely to monitor what is going on, on the ground.

When the cases of extralegal killings or enforced disappearances began to rise, the attention of both the Philippine community and the international community was called by a report circulated by Karapatan.

On the following page is a matrix of the respective reports of various groups monitoring the phenomenon of extralegal killings or enforced disappearances.
Inventory of the Number of Victims and Incidents of Alleged Political Killings as Reported by Various Groups
Covering the Period February 1, 2001–October 21, 2006

<table>
<thead>
<tr>
<th>REPORTING GROUP</th>
<th>TOTAL NUMBER OF INCIDENTS</th>
<th>TOTAL NUMBER OF VICTIMS</th>
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<td>GRP Monitoring Committee</td>
<td>184</td>
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<tr>
<td>PNP/Task Force Uslig</td>
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<td>118</td>
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<tr>
<td>Amnesty International</td>
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<td>50</td>
</tr>
<tr>
<td>Task Force Detainees of the Philippines</td>
<td>-</td>
<td>89</td>
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</table>

Source: GRP-Monitoring Committee

As early as about August 2006, the number 725 was flagged by Karapatan. They said that from 2001 to about 2006, the time frame when we did a thorough analysis of the information, 725 people were reported to have been killed by extrajudicial execution. Now that we are using the term extralegal killings, it is not without a purpose that I think the Supreme Court finally adopted the term extralegal, because now the term extralegal killings expands the concept. It will mean not just those committed by state forces, but even those committed by non-state actors. Even the NPAs, the Moro Islamic Liberation Front (MILF), Moro National Liberation Front (MNLF), and all other rebel groups, who are non-state actors and who also commit killings of this nature, would be subsumed in that whole framework of having engaged in extralegal killings. That expands the parameters by which it could be addressed. On one hand, it is good because now we look at the whole frame of what extralegal killings in this country mean. CHR Chair Leila De Lima mentioned other kinds of killings that occur, in ways that are not brought before the courts, and people getting killed by vigilantes, for example. The figure 725
that was flagged by Karapatan was a good start for us to look at our own record.

If there are complaints of human rights violations against government forces under the framework of CAHRIHL, the NDF would course those to the Monitoring Committee. If the violations are by the NPAs, then the government will now course the complaints to the NDF. When it is the government that is the subject of complaints, for example, for killings and other human rights violations, it is coursed through the appropriate agencies of the government. It will have to be passed on to the chair or Director Lina Sarmiento’s office, at that time Task Force Usig, or to the AFP or to the DOJ. On the other hand, in a situation like this where you are negotiating with the rebel groups, we can only trust that if there are complaints against the NPAs, they will do their part. But of course their system is not part of the formal system of this country, so that is in a way an asymmetrical relationship reversed.

This is where the whole problem begins for us when you now have a system of killings committed by both sides. But we have decided to look at what we had received by way of complaints. And so, with regard to the 725 that Karapatan cited as the number of extralegal killings cases, the Monitoring Committee on the other hand had 240 actual complaints registered out of the 725, which became our basis to look at the different parameters, indicators, and variables. Task Force Usig at that time, had begun its work with 118; Amnesty International (AI), an international organization monitoring human rights violations in different parts of the world, had 50, at the time; and Task Force Detainees, a local NGO, had 89. After 2006, there was a downtrend, and I think this is borne out by the figures from the different groups.
Extralegal killings may not have been stopped but for sure there is a downtrend.

The next frame outlines the commonality in the list of victims.

**Commonality in the Lists of Victims of Alleged Political Killings Reported by Specific Groups**

Covering the Period February 1, 2001–October 31, 2006

* Reports on 528 victims with insufficient data were referred by the PNP to its Regional Units for verification. Another 92 victims were considered outside of “political killings” and as such were excluded (involving 2 media; 9 government officials; 22 from the Bicutan siege; 28 without group affiliation and 31 not related to political killings)
Looking at the next frame, are we able to identify common victims from the different monitors that we have listed thus far? There would be commonalities between two or three records but not across as a whole. This may be explained of course by the so-called system of monitoring and data gathering. At the onset, we have said, it may be 725, it may be 240, it may be 118; but as emphasized in the message of Chair De Lima, the numbers are not really what matter in the end. It is every single life lost or every person missing that will matter to us. The trend also is quite disturbing, of course, and I think with regard to the figure 725, Karapatan’s figure later on will show that there are killings that are sometimes outside the mainstream leftist organizations. There was the Bicutan siege that was counted in the 725, including other political killings victimizing media, and government officials.
### Victims of Alleged Political Killings by Year/Province/Region

Covering the Period February 24, 2001–October 31, 2006

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<td>North Cotabato</td>
<td>4</td>
<td></td>
<td>3</td>
<td>7</td>
<td></td>
<td></td>
<td>2.9%</td>
<td>7</td>
<td>2.9%</td>
<td></td>
</tr>
<tr>
<td>XIII</td>
<td>Agusan del Norte</td>
<td>5</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.1%</td>
<td>14</td>
<td>5.8%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Agusan del Sur</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td>2.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Surigao del Sur</td>
<td>2</td>
<td>2</td>
<td>4</td>
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<td></td>
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<td></td>
<td>Benguet</td>
<td>1</td>
<td>1</td>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td>0.8%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Abra</td>
<td>1</td>
<td>1</td>
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<td></td>
<td>0.8%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kalinga</td>
<td>1</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td>0.4%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NCR</td>
<td>1</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td>0.4%</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Metro Manila</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>ARMM</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.4%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL NO. OF VICTIMS</td>
<td>22</td>
<td>36</td>
<td>39</td>
<td>12</td>
<td>70</td>
<td>61</td>
<td>240</td>
<td>100.0%</td>
<td>240</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source: GRP-Monitoring Committee
The frame on the previous page is an attempt to do our own mapping of the killings to determine the trend. The way I usually do a mapping here is to relate it with the name of a person who has been popularly identified with this phenomenon. I am referring to Gen. Jovito Palparan. Why is this so? Because in the Melo Commission Report he was one of those who left some traces wherever he had been posted on a command, a fact which the media has publicized quite extensively. Quite interesting if you look at his assignments. Where was Gen. Palparan initially assigned? He was Brigadier Commander of the Second Infantry Division in Mindoro during the period May 2001 to April 2003. Note that at that time there were some very significant killings of people belonging to the militant and left wing groups. Then he moved to the Eighth Infantry Division in Eastern Visayas from February 2005 to August 2005 and you see a trend there; in Leyte you have 10 registered killings. Then he moved to the Seventh Infantry Division in Central Luzon from September 2005 to September 2006 when the highest registered killings for that period were registered in Bulacan, Nueva Ecija and Tarlac. If you are familiar with the insurgency in this country, Eastern Visayas, including Bicol Region, Mindoro at one time, and Central Luzon, were flash point areas. Today it is Davao and Compostela Valley though Masbate continues to be problematic; but there are very clear areas where activism is prevalent.

Viewing the trend again in a different way, let us look at the peaks which I want to relate to the absence of formal peace negotiations between the parties. I have been able to sit in the negotiations since 1995. We had a CAHRIHL signed in August 1998 when President Joseph Ejercito Estrada assumed the presidency. We had a period of assumption of negotiations which finally broke down, I think, when the government decided to enter into a visiting forces agreement with the United States, which
was one of the objections by the CPP-NPA-NDF in the course of the negotiations; so they decided to suspend negotiations.

There was a resumption when President Gloria Macapagal-Arroyo assumed the presidency in 2001. A series of meetings was held from 2001 until about 2004, when peace negotiations were stalled as you know after the 2004 elections due to issues about the election results. It was about that time, between 2004 and 2005, that the CPP-NPA-NDF central committee declared that they would no longer negotiate with the government and would wait for a new coalition government in the hope that that current government would fall. In fact, they had identified some members of the frontline organization to be represented in a coalition government. But it did not happen, and we were left with the suspension of formal peace negotiations.
Number of Incidents of Alleged Political Killings by Month/Year
Covering the Period February 1, 2001–October 31, 2006

Total - 184 incidents

Source: GRP-Monitoring Committee
Unfortunately, it was also during that time that the killings peaked in the absence of formal peace negotiations. It was only somewhat arrested at the time when there was a real clamor for the killing to cease and until the United Nations adopted a process by which Professor Philip Alston as special rapporteur would inquire into the phenomenon. I had mentioned that the high point was when the Supreme Court took the lead once and for all to conduct a summit to address the phenomenon. These are very interesting situationers for us because they allow us to look at the problem beyond the pure prosecutorial aspect. There are underlying peace process issues that need to be addressed if we want to, once and for all, end any form of violence in this country.

**Number of Victims of Alleged Political Killings by Affiliation**

Covering the Period February 1, 2001–October 31, 2006

<table>
<thead>
<tr>
<th>Affiliation</th>
<th>Victims</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANAKBAYAN</td>
<td>1</td>
<td>0.4%</td>
</tr>
<tr>
<td>ANAKPAWIS</td>
<td>15</td>
<td>6.3%</td>
</tr>
<tr>
<td>BAYAN</td>
<td>4</td>
<td>1.7%</td>
</tr>
<tr>
<td>BAYAN MUNA</td>
<td>44</td>
<td>18.3%</td>
</tr>
<tr>
<td>GABRIELA</td>
<td>3</td>
<td>1.3%</td>
</tr>
<tr>
<td>KMP</td>
<td>3</td>
<td>1.3%</td>
</tr>
<tr>
<td>KMU</td>
<td>1</td>
<td>0.4%</td>
</tr>
<tr>
<td>KARAPATAN</td>
<td>7</td>
<td>2.9%</td>
</tr>
<tr>
<td>KASAMA</td>
<td>5</td>
<td>2.1%</td>
</tr>
<tr>
<td>LFS</td>
<td>3</td>
<td>1.3%</td>
</tr>
<tr>
<td>NPA</td>
<td>3</td>
<td>1.3%</td>
</tr>
<tr>
<td>PCPR</td>
<td>1</td>
<td>0.4%</td>
</tr>
<tr>
<td>UCCP</td>
<td>4</td>
<td>1.7%</td>
</tr>
<tr>
<td>Others</td>
<td>19</td>
<td>7.9%</td>
</tr>
<tr>
<td>Unknown</td>
<td>127</td>
<td>52.9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>240</td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Source: GRP-Monitoring Committee
Let me go to the profile of the victims, at least based on our records as shown in the previous frame: Anakbayan, Anakpawis, Bayan Muna, Akbayan, Gabriela, Kilusang Magbubukid ng Pilipinas, Kilusang Mayo Uno, Karapatan, Kasama, League of Filipino Students, NPA, Promotion for Church People’s Response, United Church of Christ in the Philippines, and others. If you look at the profile, some belong to the left wing groups. This is as presented by the Karapatan documents, because we do not have a profile here of those who were killed as far as the government forces are concerned. Government decided to file a set of more than a thousand cases but based on a purging theory inside the NPA. That of course was dismissed by the other side as not within the context of killings which is an issue that the military had tried to raise in the context of monitoring abuses by the NPA.

### Status of the 184 Cases of Alleged Political Killings

Covering the Period February 1, 2001–October 31, 2006

<table>
<thead>
<tr>
<th>STATUS OF THE CASE</th>
<th>NUMBER OF CASES</th>
<th>PERCENTAGE TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under Investigation</td>
<td>63</td>
<td>34%</td>
</tr>
<tr>
<td>Prosecutorial Level</td>
<td>25</td>
<td>14%</td>
</tr>
<tr>
<td>Regional Trial Courts</td>
<td>13</td>
<td>7%</td>
</tr>
<tr>
<td>Dismissed</td>
<td>9</td>
<td>5%</td>
</tr>
<tr>
<td>Under Verification</td>
<td>74</td>
<td>40%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>184</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Source: GRP-Monitoring Committee

At that time we were trying to monitor the cases, we were impressed with Task Force Usig on account of its efficient process in addressing the issues. It has the most current data on the developments. But you will see that one of the basic problems
really is how you get the cases to court. Many are under verification because if you do not have witnesses, you do not know the perpetrators; then it becomes problematic. It may not end up in any court after all or if it did the case may be stalled because of insufficient evidence. Probably the reason why you do not have many of those cases now before you, is simply because there are problems in enforcement, gathering of evidence, and prosecution. Those are things that we have to look into beyond your own concern when it comes to hearing the case.

The Melo Commission Report is a very important milestone as far as the situation on extralegal killings is concerned because it calls the attention of the public to the matter and has some very interesting observations. It makes mention of Palparan, and the anti-insurgency campaign of the government. It also looks at some indicative figures. The Melo Commission Report, however, had a limited time frame to be able to conduct this; but as an indicator—judging from the figures that you will see this morning—there is a trend. Problems had been raised by the Melo Commission in the course of their report. What were some of these problems? I think it will be important for us to see if we want the cases to move up to the level of the courts.

At that time militant groups did not cooperate (e.g., Karapatan). Public hearings were limited to the police and the military. General Esperon and General Palparan were among those who appeared. The cases were selected according to the areas, so we had Bacolod and Davao City farmers. Then the problem of unidentified perpetrators would serve to be a continuing concern. There was also the impression that Gabriela, Bayan Muna, Anakpawis, among others, are front organizations of the CPP/NPA/NDF. To worsen the situation, the AFP decided to file more than a thousand cases as I had mentioned, using the purging
theory, which actually happened in the early 90s inside the movement. But the scope of the killings today would have been really outside the framework of the purging; although the military intelligence officials would argue that some of the killings were actually perpetrated by no less than the NPA. The names of Kintanar and Tabara are among those who have actually been the subject of killings acknowledged by the NPAs. Are these not extralegal killings also? That question has been raised in the course of the insurgency.

I have shown you the Palparan factor and the method of attack. Let me turn to some issues that are quite interesting. The report of Philip Alston states that the majority of the issues that he had identified would show that cases described unidentified hooded men riding on motorcycles. There were many instances that show that method of perpetration of the crime; but then there is no direct evidence, merely circumstantial, linking some elements of the military. In the case of Jonas Burgos, the van used in the crime was identified and was found in the premises of a government compound in Central Luzon. Colonel Lina could validate the information. Apparently, the van was there because it was the subject of an illegal logging case. Then there was the pronouncement on the part of the government at the time that there was no official sanction or policy on liquidation. That would have been confirmed by Philip Alston when he was asked before he left the country after a 10 to 12-day visit. He was asked by the media outright, “Do you think that there was an official sanction or policy?” He said, “No.” But of course subsequent reports might have given the implication that at least there might have been knowledge on the part of higher officials in regard to these killings. Such will require evidence for us to establish, and if we are to grapple with the theory of command responsibility then
we must go down to the realm of understanding the situation in order to approach this kind of phenomenon.

One of the concerns that I think most human rights advocates had raised is the matter of command responsibility where the principle is enunciated in the Yamashita case during the aftermath of the Second World War. The principle states that the commander has a duty to take appropriate measures to prevent abuses on prisoners and civilians by subordinates. Some human rights advocates are asking if we can use this in the context of extralegal killings. When you have only circumstantial evidence but have some indication that you can link this to the military, this would make the acts of the soldiers under their military commander imputable to the latter under certain circumstances. That would be the subject of our legal discussion on the session called state responsibility. I will reserve for a later discussion the matter on state responsibility. Allow me please to end with this presentation by way of a situationer to inform you that as a result of these problems of prosecution and enforcement and even handling of cases, the Supreme Court has decided to adopt the writs of amparo and habeas data precisely to address these matters. Justice Azcuna will explain in our session tomorrow how the writs of amparo and habeas data would be useful for our judges in handling these cases.

Thank you very much.
Comments on the Extralegal Killings Reports from the Government of the Republic of the Philippines and Karapatan*

Chairperson Leila M. De Lima

I am tasked to react or comment on the two reports made from the perspective of the Government of the Republic of the Philippines (GRP) and also from Karapatan. I think it is but apt that we do that comment or that reaction in the light of the role of the Commission on Human Rights (CHR). Under the constitutional scheme of things, the CHR is an independent constitutional office with the primary mandate of promoting, defending, and upholding human rights.

I attended last week the Asia Pacific Forum in Kuala Lumpur, the annual meeting of the Asia Pacific Forum on the National Human Rights Institutions (NHRI), because under the UN setup, commissions on human rights, whether it is called commission, or called centers for human rights are actually National Human Rights Institutions (NHRI). It was made clear that an NHRI is neither a government nor a non-government institution within a particular country. And as exactly envisioned in the Constitution, the CHR is an independent constitutional office, although our

* Delivered at the Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues: Extralegal Killings and Enforced Disappearances (Seventh Judicial Region, Batch 1) held on August 7–8, 2008, at the Marco Polo Plaza Cebu, Cebu City. Transcribed.
survival depends on government because of budgetary and logistical resources. But our role is, basically, to be the conduit between the government’s state forces, on one hand, and the NGOs, civil societies, militant groups, on the other. Now its mandate, as I said, is the promotion and protection of human rights, and number one in the list of our powers and functions under the Constitution is investigative. Investigate *motu proprio* or on complaint of any or all forms of human rights violations involving civil and political rights. Therefore, these cases of extrajudicial or extralegal killings and enforced disappearances definitely fall within our mandate on civil and political rights. We also do investigative monitoring on human rights violations involving economic, social, and cultural rights. Our mandate has been expanded, not by virtue of the Constitution, which only referred to civil and political rights, but on account of the Philippines being a signatory to the International Covenant on Economic, Social and Cultural Rights. Now we do investigative monitoring of violations involving economic, social and cultural rights. We also handle complaints such as in demolition cases, mining operations, IPs, and others. Turning now to the reports, there is a disparity in the figures, basically, a battle of statistics. That was one of the major observations, even by both the Melo Commission and Prof. Philip Alston—a high figure coming from Karapatan and a relatively low figure coming from the government. And I do not think we can ever solve this problem about the figures. What is the correct figure? Even the Commission has different figures, which I mentioned in my opening statement. Definitely not all cases involving extralegal killings and enforced disappearances come to us or are filed with the Commission. The classification, even of what really constitutes extralegal killings, is not also very clear because, as far as the records of the Commission is concerned, we include any and all types of summary executions
or arbitrary deprivation of life including rubout cases. So the profile of the victims as well as the profile of the perpetrators is not very material insofar as our own categorization in the CHR is concerned. That is different if you ask the Supreme Court, whether you ask Karapatan or Task Force Usig. They each have their own priorities as to the categorization or parameters and the categorization of extralegal killings, because we do not have a law yet defining what exactly constitutes extralegal killings or even enforced disappearances, although there are pending bills on the matter.

The CHR, in its investigative mandate, is faced with a lot of constraints, limitations, limited resources and manpower. As much as we can we would like to handle all of these cases, Karapatan would normally come to us but they do not refer all the cases to us. The high profile cases are with us, such as, the Jonas Burgos case, even if it is brought before the Court of Appeals. As you know, the Court of Appeals dismissed the habeas corpus aspect of the case but partially granted the petition on the writ of amparo aspect of the case, by directing both the Armed Forces of the Philippines (AFP), through Gen. Alexander B. Yano and the Philippine National Police (PNP), through PNP Chief Avelino Razon, to still continue and conduct a thorough investigation and find out what really happened to Jonas Burgos. The petition was partially granted because part of the petition of Mrs. Burgos was to ask for the right to inspect any and all military camps without distinction. That was not acceptable to the Court of Appeals because the Rules on the Writ of Amparo say that there should be a verified motion and exact specifications of the camps and the basis for those camps to be inspected.

Talking about inspection, it is different in the Commission, because our constitutional mandate gives us visitorial powers which
is broad enough. This visitorial powers rule over all prisons, jails, or detention facilities, including military camps. We take the view that we can exercise our visitorial powers unannounced, without need for prior notice, advice, or permission from the prison authorities. Impromptu visitation is a deterrent measure to the commission of torture and a big tool for possible location of those who had disappeared. We have so many desaparecidos. We are going to maximize the exercise of visitorial powers and we will continue to investigate pending cases, including that of Jonas Burgos because that case is still very much alive insofar as the records of the Commission is concerned.

There are so many things to be done. They say we have very limited powers, a toothless tiger at that. But if we go by our mandate and in relation to international human rights treaties or instruments, one of the more important powers of the Commission is to monitor government’s compliance with its obligations under these treaties and instruments. There are nine core treaties as of this date. The power to monitor is very powerful, and so is reporting to the appropriate UN body as to the compliance with international obligations, or lack of it, by the government.
Ms. Lovella A. de Castro

The decrease in the number (of extrajudicial killings),
while a cause to congratulate, is likewise a cause to
condemn because it merely shows clearly who are behind
the extrajudicial killings.

Prof. Philip Alston
UN Special Rapporteur on Extrajudicial,
Summary or Arbitrary Execution

Delivered at the Multi-Sectoral and Skills-Building Seminar-
Workshop on Human Rights Issues: Extralegal Killings and
Enforced Disappearances (Seventh Judicial Region, Batch I)
held on August 7–8, 2008, at the Marco Polo Plaza Cebu,
Cebu City. Transcribed.

Ms. Lovella Avaceña de Castro hails from Silang, Cavite. She
was born on February 14, 1974. She finished her Bachelor of
Arts and Sciences major in Political Science at De La Salle
University, Damariñas, Cavite, in 1994.

She started as Project Coordinator at DIRECT, Disaster
Assistance Project, Kidapawan, North Cotabato (1999–2001);
Administrative Officer, Office of Representative Crispin Beltran,
Bayan Muna – House of Representatives (2001–2003);
Documentation Committee Staff – Karapatan, Alliance for the
Advancement of People’s Rights (2003–2005); and presently,
Head of the Documentation Committee of Karapatan, Alliance
for the Advancement of People’s Rights.
I begin with the statement of Prof. Philip Alston which he delivered during a consultation with non-government organizations in Geneva in April of this year.

Karapatan, usually tagged as a leftist organization or a legal front organization, works closely with the victims of human rights

Ms. de Castro has attended several seminars and trainings in different capacities: Treaty Monitoring Bodies Training, International Service for Human Rights, Geneva, Switzerland (November 2007), and Institute for Women’s Theological Studies, South Korea/EWHA University and United Board for Christian Higher Education in Asia (December 2003); Overall Facilitator at the National Training on Documentation, Karapatan (July 2007); Speaker on Documentation Skills at the Human Rights Workshop, World Student Christian Federation–Asia Pacific, Philippines (June 2007); and as Participant at the Women Human Rights Defenders Training on the United Nations System, International Service to Human Rights, Philippines (November 2006), All General Secretary Meeting, World Student Christian Federation–Asia Pacific, Thailand (April 1999), All Women General Secretary Meeting, World Student Christian Federation–Asia Pacific, Singapore (February 1999), Ecological Youth Camp, Christian Conference of Asia–Youth, Malaysia (August 1998), Student Exchange Program, Student Christian Movement–Germany (August 1995), and Christian Conference of Asia–World Student Christian Federation Joint Program, Thailand (April 1995).

Ms. de Castro is affiliated with different organizations: Alliance for the Advancement of People’s Rights, Karapatan from 2005 to present; Ecumenical Movement for Justice and Peace (EMJP) from 2003 to 2005; Bayan Muna (People’s First) from 2001 to 2003; Student Christian Movement of the Philippines from 1993 to 1999; and Chiro Youth Movement of the Philippines from 1990 to present.
violations. Amidst difficulties, Karapatan workers have documented and investigated cases of killings and other human rights violations. Karapatan has gathered sufficient evidence in the form of material documents and testimonies to prove and assert that the spate of extrajudicial killings has been committed with impunity and as a state policy.

**Extrajudicial Killings**

(Annual Totals)

<table>
<thead>
<tr>
<th>Year</th>
<th>Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>99</td>
</tr>
<tr>
<td>2002</td>
<td>118</td>
</tr>
<tr>
<td>2003</td>
<td>123</td>
</tr>
<tr>
<td>2004</td>
<td>83</td>
</tr>
<tr>
<td>2005</td>
<td>187</td>
</tr>
<tr>
<td>2006</td>
<td>210</td>
</tr>
<tr>
<td>2007</td>
<td>70</td>
</tr>
<tr>
<td>2008 (June 30, 2008)</td>
<td>20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>910</strong></td>
</tr>
</tbody>
</table>

Since January 21, 2001 to June 30, 2008, Karapatan has already documented a total of 910 victims of extrajudicial killings. The total number of extrajudicial killings illustrates the broadness of the target. Even human rights lawyers were not spared, including human rights workers and people of the church. The number of children-victims has increased from 61 as of last year to 62 minor victims of extrajudicial killings.

Among the organizations who came under attack, Bayan Muna party list has the most number of victims. One-third of the 401 victims with organizational affiliations belong to Bayan Muna. The Bayan Muna chapter in Southern Tagalog region has the most number of victims – 39 including 13 leaders. Naujan
vice mayor and human rights lawyer Juvy Magsino was also the provincial chairperson of Bayan Muna in Mindoro Oriental when she was killed on February 13, 2004. Two years later, its regional deputy secretary, Noli Capulong was killed on May 27, 2006 in Calamba, Laguna, in Southern Tagalog.

Even human rights workers and church activists were not spared, making up 11 percent of the affiliated victims, eight of them organizational leaders. The Karapatan chapter in the Eastern Visayas region, Katungod Sinirangan Visayas, suffered the most casualties. It lost four of its leaders, namely, Rev. Edison Lapuz, regional chairperson who was gunned down on May 12, 2005, in Sitio Motor, Barangay Crossing, San Isidro, Leyte; Bienvenido Bahado, regional council member who was killed on September 11, 2001, in Eastern Samar; Northern Samar provincial chairperson Rodrigo Katayong who was killed on November 5, 2006, in front of a catholic church in Villareal, Samar; and former Katungod deputy secretary general Jose Maria Qui who was shot dead inside his classroom in the University of Eastern Philippines, Catarman, Northern Samar on January 19, 2007.

Reacting to public pressure, the Arroyo administration created the Philippine National Police Task Force Usig in May 2006, which was mandated to investigate the killings or other crimes committed against members of activist groups and the media who were targeted in relation to their work. Given its self-imposed limitations, Task Force Usig subsequently narrowed down the definition of extrajudicial killings. It claims that there are only 116 valid cases of slain militant members since 2001. The Task Force deemed a case solved once it has filed charges against a suspected perpetrator. It does not even matter to the Task Force if suspects have been captured or not, or if the suspects are the real perpetrators or not. While it is yet to get a single perpetrator
sentenced, the Task Force along with the Armed Forces of the Philippines (AFP), has taken extra efforts to discredit Karapatan by labeling it as a front organization of the Communist Party of the Philippines/New Peoples’ Army (CPP/NPA). Task Force Usig claims that Karapatan has evidence in only 10 of the 826 cases of killings.

As to the Camp Bagong Diwa massacre, Task Force Usig claims that the Camp Bagong Diwa detainees killed in the March 15, 2005 siege were Abu Sayyaf members and thus excluded them as victims of extrajudicial killings. Karapatan maintains that the 23 detainees were not Abu Sayyaf members. They were Muslim civilians arrested and illegally detained in 2001, at the height of the military’s campaign against the so-called Abu Sayyaf terrorist group. The 23 had been clients of Karapatan, whose workers had been assisting the detainees’ families in filing petitions for writ of habeas corpus when they were abducted and tortured.

In fact, even the Commission on Human Rights (CHR) in Region X offices filed 32 cases of torture with the Ombudsman for the Military against former Gen. Hermogenes Esperon for the torture suffered by the Muslim suspects when they were rounded up in 2001. Karapatan was with the victims’ families during the police assault on March 14, 2005. It organized a medical and fact-finding mission together with its member organization immediately after the incident. Based on investigations, the police assault was a case of “overkill” or use of excessive force. An interview with the witnesses revealed that many of the detainees killed were still alive even after the clearing operations. Haji Amad Upaw, a 75-year old, bedridden detainee who was suffering from Alzheimer’s Disease survived the attack but was shot later while being transferred to the second floor of the Camp Bagong Diwa Detention Center. He was supposed to have been released way
back in 2001 for humanitarian reasons as part of the peace talks between the government and the National Democratic Front of the Philippines (NDFP). Karapatan findings were later confirmed by the CHR, which conducted their own investigation. A resolution issued by the CHR on March 15, 2006 stated that:

there was no life in danger or there was no real threat of life that can be considered to justify the use of police assault or the use of excessive force.

The CHR resolution corroborated the Karapatan’s findings when it said that:

there were inmates who aside from not having any involvement or participation in the failed escape attempt were summarily executed as they were killed without reason and were not given the chance to defend themselves.

The resolution concluded that human rights violations were committed during the siege. Among the victims excluded by the Task Force Usig from their list were 79 persons classified to have been killed in legitimate encounters.

In almost all of these cases, the AFP had admitted to have carried out the killings because the victims were NPA rebels. In cases in which the victims were unquestionably civilians such as in the case of children, the military claimed that they were killed by the NPAs. In most cases no serious police investigation was conducted. Worse, the police act in connivance with the military to justify the military’s pretext in spite of evidence proving that there was no other armed group present and that the victims were civilians. This was the case of the farmers in Palo, Leyte.

On November 21, 2005, around 15 members of the San Agustin Farmers Beneficiaries Multi-purpose Cooperative (SFBMC) were gathered in a makeshift hut in Barangay San
Agustin, Palo, Leyte, for a *balik-uma* or back to farm activity. Some of the victims were also members of Bayan Muna and Anakpawis. At around 5:00 in the morning, some of the farmers who were preparing breakfast were strafed by men in military uniform and wearing bonnets and ski masks. The farmers shouted at the soldiers to stop firing at them because they were civilians. Their pleas were ignored; instead the military men continued to fire their guns and threw hand grenades at the unarmed farmers. There was no retaliation since not a single member of the SFBMC was armed. When the armed men stopped firing, they approached the hut. The men were wearing military uniforms in full battle gear and were members of the 19<sup>th</sup> Infantry Battalion/Brigade of the Philippine Army. The farmers, many of them wounded, were ordered to lie face down. The soldiers stepped on the farmers’ wounds to force them to admit that they were members of the NPA. Col. Louie Dagoy confirmed that the soldiers were elements of the 19<sup>th</sup> Infantry Brigade, and that the incident was a legitimate encounter. The attack killed nine persons, including the unborn fetus of Alma Bartoline, who was then seven months pregnant. Ten were seriously wounded; 8 arrested, detained and charged with illegal possession of firearms; and, 15 charged with illegal assembly. Not one of the soldiers suffered even a scratch.

Karapatan’s investigation showed that the incident was a massacre of unarmed farmers conducting a legitimate activity. Worse, the witnesses and victims were silenced by charging them with trumped-up cases to justify the attack against them. These findings were later supported by the CHR through its Resolution No. A2004-086, released on March 20, 2006. The resolution states:

The theory that the victims were members of the NPA and other ground movements does not hold water. The victims are legitimate farmers.
The CHR resolution further asserts that the elements of the military committed a blatant and gross violation of the International Humanitarian Law and, in accordance with the provisions of the Revised Penal Code, probably committed multiple murder and multiple frustrated murder.

In the Rizza Concha Suicide, Rizza Concha, a member of a farmers organization in Sogod, Cebu, died on August 24, 2002 from stab wounds on her stomach, chest and neck. The military confiscated the knife allegedly used and declared that she committed suicide. However, the circumstances surrounding her death as well as the injuries on her body could easily refute suicide. She was found in a creek near a well in Barangay Kinabukan. The day before the incident, Rizza’s husband Roel was tortured inside their house by the military elements belonging to the 78th Infantry Brigade headed by Lt. Jonas Sumagaysay. From August 23 to 24, soldiers were forcing Roel to admit that he was a member of the NPA. According to Roel’s testimonies, he last saw Rizza alive when she went out to fetch drinking water for the military who slept in their house. She did not return the second time. While he was being interrogated and tortured by the soldiers, he heard his wife shouting for help from afar but he could not do anything as he was held by the soldiers. He only saw Rizza again in the afternoon of August 24 already inside a coffin. Witnesses testify that they saw soldiers standing around Rizza during the time she was supposedly committing suicide. No embalming or funeral services were available in the area. So, Rizza’s body was buried the following morning. Karapatan, through its regional chapter in Central Visayas, conducted a fact-finding mission in the area and was able to gather evidence disproving the suicide claim. Findings of the mission were made public and charges were filed with the Ombudsman against elements of the 78th Infantry Brigade and Lt. Jonas Sumagaysay. But there was no investigation conducted.
Despite the purely circumstantial evidence against the military. Unfortunately for the victim’s family, the case was dismissed.

In April 2007, the Task Force Usig delisted five persons who were supposed to be in the Karapatan’s list of victims killed but turned out to be very much alive, namely, Edwin Mascariñas, Renato Bugtong, Hilarion Faraon, Daniel Fajardo, and Marites dela Cruz. Karapatan admits its error in listing Mascariñas, Faraon and Bugtong as among those killed but maintains that these three were victims of military abuse. Mascariñas and Bugtong surfaced in 2006 and had been repeatedly presented to the media by the Philippine National Police. However, the Marites dela Cruz in Task Force Usig’s delisting is from Cagayan Valley while the victim in Karapatan’s list was Marites dela Cruz who was killed in Barangay Tala, Orani, Bataan. According to the sworn statement of the victim’s husband, the elements of the 24th Infantry Brigade barged inside their house on February 18, 2006 while he, his wife, and a 7-year old granddaughter were sleeping. He was able to identify the assailants as 2/Lt. Romeo Publiko, Celso dela Peña, and a certain P.A. delos Santos, elements of the said battalion. According to the grandchild, Marites was helping her escape through the window when the military fired several shots at her. Four empty M-16 shells were recovered from the room. Prior to the incident, the couple had been subjected to several harassments by 2/Lt. Romeo Publiko.

Danilo Fajardo, a native of Sapang Putik, San Ildefonso, Bulacan, was killed on February 19, 2006. According to his death certificate, he died of multiple gunshot wounds. The claims of Task Force Usig and the AFP that the spate of extralegal killings is a result of an internal purge within the CPP/NPA is baseless and has not merited any credibility with independent investigators.
or fact-finding groups. Prof. Philip Alston stated in his final report in November 2007 that:

the evidences presented were strikingly unconvincing.

He further said that:

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.

By the year 2003, the extralegal killings in Oplan Bantay Laya (OBL) priority areas were identified in seven regions, namely, Ilocos-Cordillera, Central Luzon, Southern Tagalog, Bicol, Bohol in Central Visayas, CARAGA and Compostela Valley in Southern Mindanao. This signaled the rise in killings in the said areas. In Central Luzon, the killings increased after it was categorized as a priority area.

**Extrajudicial Killings in Central Luzon**
*(January 2001–December 2006)*
138 total killed
The highest toll was recorded in 2005 when Major Gen. Jovito Palparan was deployed as the Commanding Officer of the Seventh Infantry Division before his retirement. Of the 138 total victims killed in six years, 73 had political affiliations including 24 Bayan Muna leaders and members.

In the Southern Mindanao region, there were four victims of extralegal killings in 2001, 15 in 2002, and 17 in 2003. Majority of the 48 victims belonged to organizations most of whom were from Compostela Valley province, also an OBL priority area.

Southern Tagalog suffered the most number of casualties at 162, as massive attacks began in 2001. Even before the OBL was declared as a National Counterinsurgency Policy in 2002, Southern Tagalog was already an experimental field where skimasked military death squads took lives relentlessly. The bloody reign of terror was worse in Mindoro Island where 34 percent of the total victims in the region were slain from 2001 to 2002. Palparan was the commanding officer of Task Force Banahaw in Laguna in 2001 before his deployment as a commander of the 204th Infantry Brigade of the Philippine Army in Mindoro island. In the past six years, a quarter of the total victims in the Southern Tagalog region were killed in Laguna and Mindoro regions from 2001 to 2002 under Palparan's watch. In 2003, Mindoro island was declared free of insurgents.

In its report in 2005, Karapatan pointed out that in almost all of the cases of extralegal killings and enforced disappearances, atrocities were usually preceded by a military-instigated vilification campaign branding the victims in the organizations as communists, terrorists, or enemies of the state. It cited the book, Trinity of War by Retired Lt. Gen. Romeo Dominguez which categorically declared legal organizations as requirement base of the CPP. During the last quarter of the same year, AFP released an intelligence briefing compact disc, entitled Knowing the Enemy, which directly
names organizations like Bayan, Karapatan, Bayan Muna, and other organizations as fronts of the CPP/NPA/NDF. Throughout Philippine history, all counterinsurgency programs aimed to destroy the political infrastructure of the CPP/NPA/NDF since its establishment. But under the OBL, legal democratic organizations are equated with the CPP/NPA/NDF and referred as a “sectoral front organization.” Thus, members and leaders of legitimate people’s organizations, including political parties, were tagged as “leftists” and became targets of military operations.

In 2006, Karapatan got hold of some military internal documents that directly linked the AFP in the killings of political activists. The AFP issued the Target Research Concept directed to all unified commands of the AFP in September 2004. It intended to adopt a distinct system of intelligence work focusing mainly on all sectoral organizations. The directive pointed out:

In view of the foregoing, you are hereby directed to adopt a distinct system of target research focusing mainly on all sectoral organizations in your respective AOR that are known to be actual fronts of the CTM and all other groups with similar inclinations. This system shall be institutionalized and made part of the over-all in-depth data collection and analysis process currently maintained by our commands. Extreme caution, however, should be observed as the objects of this undertaking are mostly legal organizations duly recognized not only by the local community or public at large, but also by the National Government itself.

The same documents were provided Prof. Alston during his visit which he vowed to earnestly study for his final report. Nevertheless, in his pre-statement before he left in February 2007, one of the major findings he acknowledged was the problematic aspect of the counterinsurgency strategy. In the same pre-
statement, the review of the problematic aspects of the counterinsurgency strategy falls only eighth among his recommendations. However, in Prof. Alston's final report, the military's counterinsurgency strategy was one of the two major policy initiatives he considered in analyzing why the killings continue. He went as far as saying that:

the military's counterinsurgency strategy against the CPP/NPA/NDF increasingly focuses on dismantling civil society organizations that are purported to be 'CPP front organizations.'

Based on the documents Karapatan submitted through its chapter in Central Luzon, Prof. Alston made a case study of the counterinsurgency and still strategy in the region. He reiterated Karapatan's position when he said:

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 community follows and an individual is often killed as a result. Such attacks and the attendant of fear can lead to the disintegration of the organized civil society.

He said further:

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 a national level. 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.

Thus, a principal recommendation is the elimination from counterinsurgency operations of extrajudicial executions. Point 67 of his final report pointed out that:
As Commander-in-Chief of the Armed Forces, the president must take concrete steps to put an end to those aspects of the counterinsurgency operations which have led to the targeting and execution of many individuals working with civil society organizations.

However, several months after the release of Prof. Alston’s report the public has yet to hear the Commander-in-Chief at the least acknowledge this recommendation. Worse, in January this year, former Gen. Esperon, who ironically now heads the Office for the Peace Process, states:

to further intensify the counterinsurgency operations, to liquidate insurgents by 2010.

The magnitude of extralegal killings and enforced disappearances and other violent attacks of the Arroyo administration against the Filipino people and organizations reveal the culture of impunity aggravated by the culture of terror, perpetrated by the same people who control the state apparatus. The killings should be viewed in the context of deep socioeconomic crisis of the Philippine society which is reflected in and worsened by sham development projects and anti-people programs of the government. It is the discontent of the Filipino people bearing the brunt of poverty that leads them to the parliament of the streets to seek reforms and social change. Social injustice and fascist rules fanned the flames even more of the almost 40-year-old armed struggle in the country. What the Arroyo administration tries to ignore is the continued cry for justice of the families, friends, and supporters of the victims of extralegal killings and other human rights abuses. As the martyrs and victims continue to increase, so will the ranks of the organized masses who vow to continue to resist this repressive administration.
The Constitutional Framework*

Dean Pacifico A. Agabin, JSD **

First, let me tell you a story about two Supreme Courts. Let us go back to the year 1973, in India where then Prime Minister Indira Gandhi had declared Martial Law and instituted a dictatorial regime. Now, she had control of the Indian parliament that passed a proposed amendment to the Constitution which provided that the Indian Supreme Court should not have the power to review certain pieces of social legislation proposed by the parliament. In other words, the power of the Indian Supreme Court to review acts passed by the parliament on certain areas would be carved out in the Constitution and could be curtailed. So what happened is that somebody addressed the issue of constitutionality of that proposed amendment, and the Supreme Court of India, after deliberating on the proposed amendment, declared that it was

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** Dean Pacifico A. Agabin has handled controversial constitutional law cases before the Supreme Court; however, he remains an academic at heart, and continues to teach at the UP College of Law, from where he graduated in 1960. His career straddles the best of both worlds in the academe and in law practice. After finishing his JSD in Yale in 1965, he returned to start his practice in 1966 as legal counsel of the Malayang Samahan ng mga Magsasaka (MASAKA), a peasants’ union, and of the National Federation of Labor Unions (NAFLU). He later
contrary to the democratic traditions of India and therefore, the amendment was invalidated. So this proposed amendment by the parliament did not push through, but of course later on, one by one, the members of the Indian Supreme Court were either retired or made to resign.

Let us go to the Philippines in the year 1973. I am sure you all remember what happened because President Ferdinand E. Marcos had proposed the 1973 Constitution and it was made to appear that the Citizens Assembly had approved it in the Referendum for the 1973 Constitution. Somebody by the name of Javellana challenged the validity of the purported ratification of the 1973 Constitution. What happened is that our Supreme Court justices discussed and debated the validity of ratification but they ended up with a resolution that there was no further obstacle in the implementation of the 1973 Constitution. So that paved the way for the legalization of Martial Law imposed

joined the law office of Angel Cruz, after which he was appointed to the UP Law Faculty as Assistant Professor in 1969. Thereafter, he became corporate counsel of the UP (1969–1971), Philippine Airlines (PAL) (1971–1980), and National Development Company (1980–1986). He returned to the UP College of Law in 1989 to serve as Dean until 1995. In 1996, he put up a law office with some of his classmates, where he holds office to date. He was also Dean of the College of Law of the Lyceum University, President of the Philippine Association of Law Schools, and Chair of the Civil Liberties Union. He was appointed Professor of PHILJA in 1997.

Aside from supplementing the old Philippine Digest with 17 volumes and the obsolete Philippine Annotated Laws with four volumes, Dean Agabin compiled his essays in a book, *Unconstitutional Essays*, which was chosen as Book of the Year in Law by the Manila Critics Circle in 1997.
by President Marcos and we had to endure 14 years of a dictatorial regime. Of course, the members of our Supreme Court did not suffer the same fate as the members of the Indian Supreme Court.

So when EDSA I Revolution came, the framers of our 1987 Constitution, then suffering from the traumatic experience and belief that President Marcos had crafted the 1987 Constitution, were inclined in favor of human rights. And so we can see from the 1987 Constitution that we have a pro human rights Constitution. We have a Chief Justice explaining for instance, how we came to have a Constitution that is slanted in favor of human rights. Last year, the Supreme Court sponsored a summit on extralegal killings and enforced disappearances where the Chief Justice of the Supreme Court, now Chief Justice Reynato S. Puno, explained how we came to have such a Constitution biased in favor of human rights. Let me quote his words:

The 1987 Constitution is the most pro human rights of our fundamental laws. It ought to be for it was a robust, reactive document to the trivialization of human rights during the authoritarian years, 1972 to 1986. Indeed, it was written by those whose common thread is their bountiful bias in favor of human rights.

The Chief Justice said further:

This pre-eminent prejudice in favor of human rights, induced our constitutional commissioners to reexamine the balance of power among the three great branches of the government—the executive, the legislative and the judiciary. The reexamination easily revealed that under the then existing balance of power, the Executive, through the adept deployment of the commander in chief powers, can [run] roughshod over human rights.
So here, he explains why there is a great temptation on the part of the Presidency to run roughshod over human rights, either in the name of general welfare, perhaps, or public interest, or sometimes of course it is irresistible for a power holder to abstain or to let the law run its course and end his term as President. Whether the acts of the president spring from promotion of the general welfare or promotion of his self-interest, there is a tendency for the Presidency to run roughshod over human rights. And that is probably what the Chief Justice means here. He goes on further and I quote:

It further revealed that a supine legislature can betray the human rights of the people by defaulting to enact appropriate laws, for there is nothing you can do when Congress exercises its power to be powerless. It is for this reason and more, that our Constitutional Commissioners deemed it wise to strengthen the powers of the Judiciary, to give it more muscular strength in dealing with the non-use, misuse and abuse of authority in the government.

So from the Presidency, he goes on to the Congress. Of course, we can understand this position of Congress to be indifferent to human rights violations simply because our politicians are elected by the majority, and so they are not in a position to withstand public pressure. And that explains why sometimes, as the Chief Justice says, Congress exercises its power to be powerless, simply because congressmen and senators were elected by the majority. Most of the time, those whose human rights are violated belong to the minority and therefore, the political departments of our government can seldom withstand public opinion. That explains why both the executive and the legislative cannot be depended upon in the long run to defend human rights. So the task has been delegated to the Judiciary because it is the only non-political
department of the three branches of the government. The members of our Judiciary are men of independence and integrity. They enjoy tenure until age of 70, their salaries are fixed, cannot be diminished, and therefore, they are in the best position to withstand adverse public opinion insofar as defense of human rights is concerned. And so the Chief Justice continues and I quote again:

This is the constitutional basis now for the promulgation of the Supreme Court of two important additions to our rules of procedure, the writ of amparo and the writ of habeas data. The foundation is in Article VIII, Section 5(5), of our Constitution which empowers the Supreme Court to:

promulgate rules concerning the protection and enforcement of constitutional rights x x x. 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 Chief Justice continues and he says:

This new role given to the courts, both in developed and developing democracies is not difficult to understand. Heretofore, the protection of human rights has been entrusted to the political branches of the government and not to our electorally accountable officials and to politically dependent judiciaries. Over the years, however, the expectation that human rights could best be protected by the political branches of the government has been diluted.

So you will note that before the 1987 Constitution and our tripartite system of government, the Judiciary is supposed to be
the least dangerous branch. But under the 1987 Constitution, the Judiciary has been strengthened as against the two other main departments of the government, the Executive and Congress. This is found in several provisions of our Constitution, so that the balance of power has been tilted, now in favor of the Judiciary. That is why the honorable judges among you may realize how heavy the responsibility has been vested upon your shoulders because you are now at the forefront in the defense of the individual’s human rights.

Now we have promulgations and issuances from the Supreme Court like the writs of amparo and habeas data, which are of South American origin. They have become part of our legislation in remedial law, not by legislation, but by the rule-making power of the Supreme Court under Article VIII, Section 5(5). Hence, we have profited from the experience of the South American countries where low-intensity conflicts have happened, just like here, between the political right and the political left. The South American countries have made some innovations in their laws for the protection of human rights of the dissenting minorities. And so now we have the writ of amparo and the writ of habeas data.

In the South American countries, almost all of them except Cuba, have adopted the writ of amparo. The writ has several components, first, the *amparo libertad* or the writ of liberty, and this is equivalent to the writ of habeas corpus that we have imported from England and from the United States. All along, we have been having our own version of the writ of amparo, in the sense that we have the writ of habeas corpus. But of course later we found out that the writ of habeas corpus was inadequate to protect human rights. That explains why the Supreme Court had to expand the concept of amparo.
And then we have the \textit{amparo contra leyes} of the \textit{sud Americanos}. This is the power of the Supreme Court and the other branches of the Judiciary to declare a statute passed by Congress invalid or unconstitutional. We have had this power of judicial review even under the 1935 Constitution, so it is not new to us. Our courts have been exercising the power of judicial review since we became independent in 1946.

Then we have \textit{amparo casacion}, this is the power of the Court to review the decisions of the lower courts. Of course, we have had this power to review all along in the rules on regular appeal, Rule 45 of the Rules of Court, and the writ of certiorari in Rule 65. Again, this version of \textit{amparo} is not new to us.

Then they have the \textit{amparo administrativo} or the power of the courts to review the quasi-judicial acts of administrative agencies like the Securities and Exchange Commission (SEC), National Labor Relations Commission (NLRC), and so on. Again, this is not new to us. Our courts have been reviewing the acts and decisions of administrative agencies insofar as they exercise their quasi-judicial functions. Again, we have been having this writ of amparo since 1935.

And then we have \textit{amparo agrario}, or the writ that protects the right of landless peasants and farmers against their landlords. We have a version of this also under our Agricultural Land Reform Law. So this is really nothing new to us. So how did we expand, for instance, the writ of amparo? We did by our experience under the writ of habeas corpus, which as I said has been found to be inadequate. So we expanded the power of the courts to include the most important protection orders where the petitioner may be protected against the harassments by agents of the State.
Then we have witness protection orders, to protect witnesses in cases involving extralegal killings and enforced disappearances. And then we have investigative powers, wherein the court may order a panel of commissioners or panel of investigators to make further investigation on the complaint by a citizen whose human rights to life and liberty have been violated.

And then we have inspection orders where the court may order agencies of the State especially the military and the police to open up their files, offices, safehouses, and records so that the investigations began by the panel of commissioners could be completed. So in that sense, the writ of amparo issued by the court can be made to further expand its powers in order that the life and liberty of an individual may further be protected. So as I have said, the writ therefore is nothing new to us. The other countries have also innovated knowing that in countries which have been colonies of Spain like the South American countries and the Philippines, this writ is very important, simply because the demographic profile of a former colony is such that we have at the very top of our population pyramid a few rich and powerful individuals, and at the base of the pyramid we have the bulk of our population who are mostly poor, illiterate, and ignorant of their rights. And so the courts in the Philippines have to be proactive insofar as the defense of the human rights of all individuals are concerned.

You will note for instance that under our Constitution, there is a provision that no torture, force, violence, threat, intimidation or any other means that vitiate the free will shall be used against the individual. Secret detention places, solitary, *incomunicado* or other forms of detention are prohibited. This is a new provision in our Constitution. This is a product of our traumatic experience under a dictatorial regime, so we have enough safeguards in our
Constitution which need to be implemented either by the rule-making power of the Supreme Court or by legislation from Congress. In the case of extralegal killings and enforced disappearances here, the Supreme Court has been forced to exercise its rule-making power simply because of the apathy and indifference of the legislative branch of our government.

Of course we have this old provision in the writ of liberty which we imported from the United States, the privilege of the writ of habeas corpus which shall not be suspended except in cases of invasion or rebellion when public safety requires it. And of course you very well know that under our 1987 Constitution, the power of the president to declare martial law or even to suspend the privilege of the writ of habeas corpus has been greatly restricted. Congress has been given the power to veto presidential action if it is not in consonance with the Constitution. The president has been required to report to the Congress and there is a period fixed for the suspension of the writ of habeas corpus or for the imposition of a regime of martial law. So we have all of the instruments in the Constitution which are foundations and weapons for the protection of the right of individuals to life and liberty.

Now you will note that under the law of Argentina, *amparo* lies not only against consummated acts and omissions that violate constitutional rights, but also against imminent or threatened rights. While personal liberty lies beyond the *amparo* because that is the province of the writ of habeas corpus, other instances of violations of other constitutional rights are protected. Well, now, when there are rules of the writ of amparo, the issuance of the writ is discretionary. It is a matter of right on the part of the petitioner. In other words, we have followed the jurisprudence of Argentina that the writ is to be issued as a matter of right upon
filing of a petition that on its face makes out the case for liberty or for the safety of an individual.

Under the Constitution of Honduras, the writ of amparo protects not only against the violation of rights guaranteed under the Constitution but also those guaranteed under international law. The Chair of the Commission on Human Rights mentioned that we have ratified not only the Universal Declaration of Human Rights but also the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These are now part of the laws of the land by incorporation under Article II of our Constitution.

Under the Constitution of Guatemala, the writ of habeas corpus protects personal liberty while the writ of amparo protects other fundamental rights from arbitrary state action. The writ of amparo vindicates not only rights that have been transgressed, it also protects against state action that implies a threat, restriction or violation of rights under the Constitution.

**Threats to a Democratic Government**
For the members of the Judiciary, we have here an illustration of the heavy responsibility that has been placed upon your shoulders. Since so much power has been vested upon you, you probably realize that with great power comes great responsibility.

**Preservation of a Democratic System of Government**

In a democratic society such as ours, we are expected to defend the government against all forms of authoritarianism. What are these forms of authoritarianism that we have in our midst? For instance, we have **monarchism**, where there is a very strong and irresistible temptation on the part of whoever becomes president to hold on to power for as long as he can, simply because power corrupts and absolute power corrupts absolutely. So we should not be surprised that someone who wants to be president would want to hold on to power for as long as he can. Every president wants to be a president for life, that is a natural human tendency, but the Judiciary should resist this tendency and enforce the rule of law as found in our Constitution.
Then we have **oligarchism** or government by a few. Well, I think here in the Philippines we have to acknowledge the fact that there is a very strong tendency towards oligarchism because as I had said, in those countries that have been colonized by Spain, the population is really divided into two—the small ruling class at the top of the pyramid and the bulk of the population. There is the tendency for the ruling class at the top to limit the power among themselves, to prevent the sharing and shaping of power by the citizenry which is of course antithetical to a democratic system of government. So in oligarchism we find that very few families here in our country hold economic power. In holding economic power, they also want to capture political power because they would want to utilize political power to accumulate more economic resources in their hands—that again is a natural human tendency. All forms of power are agglutinative or in other words, one form of power tends to acquire other forms. That is why those who hold economic powers in our country are the biggest contributors to political campaigns of favored candidates; and they do this not out of their magnanimity or generosity but because they want to capture political power which they will use to acquire the resources of the country. That is why there has never been any sincere effort on the part of the government to redistribute resources of our country. That explains why some political scientists have observed that in reality we are gearing towards oligarchism rather than towards a wider form of democracy where power is shared and shared by the whole run of our citizenry. So judges are expected to use their power again to obviate this tendency towards oligarchism.

Then we have **militarism** where a segment of our military has attempted a number of times to capture political power. So here is a situation where an ordinary citizen is trying to build a democratic edifice by cementing the bridge and mortars into those
edifices. And then here is a sector of the military trying to undermine this democratic foundation of our government. Again that is another heavy responsibility given to the Judiciary since you are expected to defend the government against attempts of the sector of the military to capture political power illegally. In fact, in the South, the problem has been accentuated by the secessionist moves. This explains why we are having a raging controversy in the South about the Memorandum of Agreement between the Moro Islamic Liberation Front (MILF) and the Government.

We go back to the constitutional foundations of this power of the courts. The other foundation is the expanded definition of judicial power under our present Constitution. You will note that the definition of the judicial power on Article VIII, Section I is two-fold. First we have the traditional definition; it is in the first clause of the second paragraph which says:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable

This is the first aspect of the definition of judicial power. The second is I think the most important aspect, which is duty

x x x to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Now, which do you think is the most important aspect of the judicial power? I venture the opinion that the second aspect of judicial power is much more important than the first. Of course, traditionally, judges are expected to settle disputes on rights which
are legally demandable and enforceable. That holds true for all society whether the society is democratic, or authoritarian, or totalitarian. That is the function of the Judiciary, so it is an important duty. However, it need not be limited to the members of the Judiciary. As you know very well, the Supreme Court has issued a circular and administrative regulation where even private mediators can assist in the settlement of disputes which are civil in nature, or even in criminal cases, minor criminal cases like estafa, libel, damage to properties through reckless imprudence, and so on. These are now required to go through mandatory mediation before they are tried by the courts. In other words, even private individuals can perform the first function of a judiciary. In fact, even religious groups like our brothers in the South, the Muslims, have their own AGAMA Arbitration Council which settles their disputes. The Lumads in the South and in the North have their own elderly council to settle their disputes. So this function of the judiciary is not really that important. It is the second function which is to check grave abuse of discretion on the part of any branch or instrumentality of the government. Why? You will note that even a single judge can now check an abuse on the part of the president or Congress. So even if the act of the president is constitutional or valid, it can still be considered as a grave abuse of discretion. If an action is taken by Congress, even if it is constitutional or valid, it can still be challenged as grave abuse of discretion. Now of course you know very well that this power of the Judiciary is not new, because this is certiorari and prohibition under Rule 65. But of course you recall that under Rule 65, certiorari and prohibition would apply only to acts which are judicial or quasi-judicial in nature. But certiorari and prohibition have been constitutionalized so that they can apply to any act of the Government, of the presidency, or of the legislative branch of government so that we can maintain and sustain our democratic
form of government. So as I said this is a great responsibility among the judges and other pillars of justice like the police, the prosecution, the community, correction, and so on. These are all duties imposed upon you, these are not powers. Note that the phraseology of the Constitution is duty and therefore you can not shirk from it even if you want to. That is why, this is an important foundation for the members of the Judiciary to use in the defense of human life and liberty.

So while the power of review under certiorari is discretionary on the part of the review of courts in Latin America, entitlement to the writ of amparo is considered a human right. This was the old rule before because under the Rules of Court, the equitable remedies are completely discretionary on the part of the court. The court may or may not grant, but now, under the rules promulgated by the Supreme Court, the writ is a matter of right to be issued to the petitioner if he makes out a valid course of action in the petition. That is why in almost all cases, once the petition is filed, almost always the court will issue the writ of amparo.

**Checking Abuse or Misuse of Power**
Going back to the matter of extralegal killings and enforced disappearances, we go back to 2007 where we have a situation illustrated here in this cartoon where the Executive acted like an ostrich, burying its head in the sand. It took the Supreme Court some time to put the heat on the pants of the Executive so that it will listen to the complaints arising not only from the local residency but also from the international diplomatic community. That explains why the Supreme Court had to call a summit on extralegal killings and enforced disappearances utilizing its rule-making power under Article VIII, Section 5(5) of the Constitution.

Checking Abuse of Executive Power

This is a cartoon on the state of denial put up by the Executive branch of government before the Supreme Court acted. Before the summit conference in July 2007, the Executive, the agencies and the writ had denied the existence of widespread killings and abductions.
Going back to the foundations of this power of the judiciary, let us take a look at the Constitution. You know very well that the Constitution is a balance between the power of the State and the rights of the individual, but the Constitution is more precisely geared to protect the rights of an individual because state power can be exercised even without a Constitution. That is why some countries exist even without a written Constitution because exercise of power is natural among social groups under a compact.
It is a function of a Constitution to defend an individual as against the power of the State. All constitutions can be seen to act as balance between the rights of the individual and power of the State. To elaborate, for instance, the Bill of Rights stands between the power of the State consisting of police power, the power of taxation, and the power of eminent domain. On the other side of the balance we have the life, liberty, and the property of the individual. The State tries to get at the life, at the liberty, and property of the individual through its police power, of course to promote general welfare. The State, through its power of taxation, also reaches the property of an individual and even the liberty of an individual through its power to tax. Only death and taxes are inevitable in this life. Similarly, the State’s power of eminent domain tries to get at the property of the individual through public use and which has to pay just compensation. So these are the tensions that exist between State power and individual rights.
In the protection of human life and liberty, the judiciary will have to depend basically on the due process clause of the Constitution which is the common denominator for all of the rights enumerated in Article III of the Constitution. If you study all of the rights enumerated in the Bill of Rights, these are all founded on the concept of due process, which is the supporting idea of fair play. So you recall that the due process clause has two aspects—the substantive aspect and the procedural aspect. The substantive aspect deals with the reasonableness of laws passed by Congress or the acts promulgated by the Executive. In other words, we ask ourselves, is this law reasonable or oppressive? Is this act of the president just or unjust? So the substantive aspect of a due process protects the life, liberty, and the property of the individual insofar as it deals with the reasonableness or the fairness of an action taken by the judiciary, the legislative, and the president. On the other hand, we have the procedural aspect which refers to the steps taken by a court or by an administrative agency.
on depriving an individual of his liberty or of his property and sometimes of his life under the now repealed Heinous Crimes Act. So this is the aspect of the due process clause which all members of the pillars of justice have to observe before they restrain an individual of his liberty, or before they regulate his property or even take away the property. You deal with this aspect of the due process clause in everyday work.

**Constitution of Liberty**

![Constitution of Liberty Diagram]

If we take a step further and look at our Constitution on a higher perspective, we would be able to look at it as a Constitution of liberty and that probably explains why many of us complain that our Constitution is too long or too prolix. But you will note that constitutions of the countries of the world which were promulgated in the late 19th and 20th centuries contain not only the negative but also the positive aspect of liberty. Why is it called negative? Because the rights stated in the Bill of Rights are usually couched in the negative and they command the State not to take any action which would trample upon the rights of an
individual. So the Bill of Rights says that no law shall be passed abridging the freedom of the press, speech, and assembly. No person shall be deprived of life, liberty or property without due process. No unreasonable searches and seizures shall be conducted. No secret *incomunicado* imprisonment, no force, no torture, no violence, and so on. These are all couched in the negative as we read our Bill of Rights. On the other hand, the positive aspect of liberty as contrasted with the negative, commands the state to take action, to be affirmative, and to be active in the promotion of the positive aspects of liberty which are categorized into three—economic, social and cultural. By way of example, **economic** would refer to the right to work, the right to fair wages. **Social** would refer to the right to found a family, to join a political party or association. **Cultural** would include the right to a national language, to a cultural identity or even the right to ancestral domain. Which is more important, the negative or the positive aspect of liberty? I would believe that the positive aspect of liberty is just as important as the negative because the positive aspect of liberty is the foundation of the exercise of negative rights. For instance, if a man has no food on his table, why would he care about the freedom of speech or freedom of assembly? Or if he has no roof over his head, why will he care about the right of suffrage? He will easily sell his right of suffrage for One Thousand Pesos (P1,000). That is why the positive aspect of liberty complements the negative aspect of liberty. So that while the constitutions of countries of the world which were promulgated in the early 18th and early 19th centuries contained only the negative aspects of liberty, constitutions promulgated in the 19th and 20th centuries contained both the negative as well as the positive aspects of liberty. Why? Because of developments which had happened beyond our control, like the scientific and technological revolution where means of communication have been improved. And yet
the ownership of these means of communication have been concentrated in the hands of the few powerful families, or the advent of mass democracy where all citizens regardless of socioeconomic status are supposed to participate intelligently in the political decision making process. But how can they participate in the political decision making process if they do not have information? So the positive aspect of liberty as I have said is the foundation of the negative aspect.

**Right to Life**

1. Right to live with dignity.
2. Right to develop one’s faculties.
3. Right to food, clothing, and shelter.

We have now, for instance, the expanded concept of the right to life which includes not only the right to live but also the right to live with dignity. In other words, sheer animal existence is not a life of dignity. Then came the right to develop one’s faculties or to obtain any education; then the right to food, clothing, and shelter are, of course, basic necessities of life. So the right to life is both a positive as well as negative aspect of liberty.
Right to Liberty

Then the right to liberty has more of its negative aspects than its positive. It means much more than freedom from restraint; it means freedom to contract, freedom to acquire knowledge, freedom to work, and freedom to marry and establish a family. You may think that these are recent expansions and innovations of the right to live, property and liberty; they are not. I culled this from an old case of Rubi v. Provincial Board of Mindoro.\(^1\) Even during the American Colonial Regime, the positive aspect of liberty had already been recognized in our jurisprudence.

Right to Property

\(^1\) G.R. No. 14078, March 7, 1919, 39 Phil. 660.
Then we have the right to property which includes not only vested rights but also the right to earn a livelihood and the freedom to contract. The right to work, the right to fair wages, and the freedom to enter into contract, are all parts of the right to property because without any property, a man cannot be depended upon to assert his rights. He may not even be able to go to school if he has no property. The positive aspect of liberty is an important compliment to the negative aspect.

Political Rights

With respect to the negative aspect, we have political rights, the due process clause and equal protection, freedom of speech and assembly, right of suffrage, right against detention for political beliefs, freedom of association, and right to information. These are called political rights because these are the foundations of a viable democratic system. Without these political rights, we cannot have a working democracy. For instance, the right to information is necessary because without information, a citizen cannot participate meaningfully in a decision making process. How can a citizen for instance, participate in a debate as to the soundness
or validity of a Memorandum of Agreement entered into between the Government and the Moro Islamic Liberation Front (MILF) if he does not know the contents of that memorandum? Due process and equal protection, these are also important political rights. Freedom of speech and assembly, right of suffrage, these are all guarantees to make sure that our democracy works because without freedom of speech and assembly, without right of suffrage, our democracy would be a farce.

**Civil Rights**

Then we have civil rights. We have for instance, the right against unreasonable searches and seizures, the right to privacy of communication, even the right to silence, the privilege against self-incrimination, and the prohibition of torture, intimidation, violation, and *incomunicado* imprisonment. These are civil rights because these pertain to the rights of a citizen that can be asserted in his relationship with the State. Here is again the listing of civil rights under our Bill of Rights, which includes access to court and the right to compensation. These civil rights previously enumerated would also safeguard the protection and preservation
of a person’s right to life which includes bodily integrity, physical integrity, and security of the person. These are all constitutional foundations of the duty of the courts to protect the life and the liberty of an individual.

Rights of the Accused

Then we have rights of the accused. Again we have due process and equal protection, privilege against self-incrimination, presumption of innocence, guarantee against searches and seizures, right to counsel, right against double jeopardy, right against inhuman punishment and non-imprisonment from debt. How come that the Constitution has been guaranteeing these rights to an accused person? Because the State realizes that if a person is accused of a crime the whole machinery of the State is raised against him. We have the police, the military, the prosecution, the Bureau of Prisons, and even the Department of Justice. These are all raised against a solitary individual, and to give this solitary individual a fighting chance, to prove his innocence, the Constitution guarantees all of these rights to the accused. The
judges among you and the prosecutors too, know and encounter these rights every working day. They all know these rights because they know that these rights are founded to preserve the dignity of the individual. In our constitutional hierarchy of values, it is human dignity that is primal in the Constitution. It is even more supreme than the search for truth, as you can see from the privilege against self-incrimination or the right to silence or the presumption of innocence. These are all rights in the Bill of Rights which are intended to preserve the dignity of the individual. As U.S. Supreme Court Justice Benjamin N. Cardozo has said:

The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders.\(^2\)

And of course, this body of men are the members of the Judiciary. So we have the rights of the accused.

The right to privacy, as one of the civil rights, is safeguarded by this new issuance of the Supreme Court, the writ of habeas data. The right to privacy also consists of two aspects, the right to be left alone and the right not to disclose personal information. It is the right not to disclose personal information and the right to be left alone that are safeguarded by the writ of habeas data. What does the right to privacy entail? The courts have to determine the reasonableness of an individual’s expectation of privacy by using this test: whether by his conduct the individual has exhibited an expectation of privacy and whether this

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expectation is one that society recognizes as reasonable. This is a
test adopted by our Supreme Court in the leading case of *Ople
v. Torres*.3

Right to Privacy
Freedom Against Disclosure of Personal Information

Here is an illustration of how the right to privacy can be
invaded by the State to the consternation of the individual because
as individuals, we have our own secrets to protect. We do not
want other people to know about these. Of course, you know
that privacy is power and so we do not want to be intruded upon
in our secret life by the government. So *habeas data* is a measure
introduced by the Supreme Court to protect an aspect of our
right to privacy. The right to privacy would include again, the

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right against disclosure of one’s personal information and against surveillance and restraint on personal liberty. These are all the constitutional foundation for the protection of human life and liberty.
Fundamental Principles on State Responsibility*

Prof. Sedfrey M. Candelaria

I. INTRODUCTION

We presented to you the constitutional framework to provide you with at least the basis, on a domestic level, on how to identify the relevant constitutional issues that arose or may have arisen from the phenomenon on extralegal killings and enforced disappearances. We have an idea, of course, of our basic rights under the Constitution, but what we presented to you earlier as a problem in the first two reports is the manner by which one may be able to impute responsibility to certain so-called state actors which may constitute your armed forces, or police who are charged allegedly of human rights violations. On the other hand, the responsibility may also be imparted to what you call non-state actors, those who might be in conflict with the existing regime, such as rebel groups, like the New Peoples’ Army (NPA), the Moro Islamic Liberation Front (MILF), and the Moro National Liberation Front (MNLF).

What are their responsibilities under international law? From an international perspective, there are very important developments today that will make us better understand the human

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rights dimension of the phenomenon of extralegal killings and enforced disappearances. In the afternoon, there will be a much deeper treatment of the whole body of human rights law and international humanitarian law, two regimes of laws which find complementary application in the context of armed conflict.

What we needed to emphasize in this seminar was for you to see the context of extralegal killings and enforced disappearances in the manner that government now tries to address the insurgency. The leftists would say that the killings are part of an anti-insurgency campaign. The state, on the other hand, would assert its duty to defend its integrity, sovereignty, and territory. But when the state now pursues these rebel groups, what standards must the state meet in order to ensure that in the course of addressing an insurgency a healthy balance is observed between the exercise of state function and the rights of other actions in the human rights movement? The corollary issue here pertains to the responsibility of those non-state actors like the NPAs who commit atrocities, killings, and extortions, such as, the collection of revolutionary tax, and even the destruction of property. The series of attacks on cell sites of a leading telecommunication company is instructive on this point.

I also want to confirm the situation in Masbate that one of you raised concerning landlords actually using NPAs now to actually even repress certain rights of farmers. In the case of the Bondoc Peninsula in Quezon, the situation there is very much like in Masbate where a landlord refuses to have his properties distributed under the land reform program. A look at the situation of insurgency in the Bondoc Peninsula shows a group of farmers who tried to claim their rights under the Comprehensive Agrarian Reform Program (CARP) were detained in Gumaca, Quezon on account of a set of cases for qualified theft filed by the landlord.
These farmers had been settled there for years and years. We found 26 of them in Gumaca, Quezon.

Let me now proceed to discuss the immediate legal principles governing state responsibility and apply these to the issues at hand.

I shall first provide an overview of the sources of obligations of states under international law then relate this to those capacitated to assume the responsibilities arising from these obligations. The treatment of the fundamental principles of international responsibility will follow then.

**II. Sources of Obligations in International Law**

**A. Treaty**

Treaty law is in place in order for us to enforce our obligations. We committed to promote civil and political rights in this country thus we have to ensure that this is enforced. Treaties are very important sources of obligations. It is a fundamental rule that if I do not sign a treaty, in general, under the Vienna Convention on the Law of Treaties, I am not bound by a treaty. This rule, however, is subject to certain exceptions as when custom is involved.

**B. Custom**

Another source of international obligations are the customary principles of international law, which, even in the absence of treaty consent, a state may still be bound to promote on account of the universally binding character of the obligation. One example is the prohibition to commit genocide. Even if a state may not have been a party to the Genocide Convention, the principles contained therein are viewed by states as customary international
law. The prohibition on piracy and trade in slaves and, of course, respect for fundamental human rights have also been accepted as customary in character. The Universal Declaration of Human Rights (UDHR) while not a treaty has nonetheless been applied by states to resolve legal disputes because of the status of the rights contained in the UDHR. Our courts have already applied this on a number of occasions.

C. General Principles of Law

The third source of obligations are the general principles of law. General principles of law arise out of state practice, which means many of the countries in their own municipal legal system share these concepts. A handy guide to remember these principles is by turning to our eight bar subjects, because many principles contained in our municipal legal system are actually shared by many other jurisdictions. The concept of due process discussed by Dean Agabin is a principle that cuts through most systems of laws and jurisdictions. The same is true with human rights principles; we have a Bill of Rights in practically every jurisdiction in the world. It may be called a Charter of Rights and Freedoms in Canada or the Bill of Rights in this country, but the fact is there are consistent rights recognized in every municipal legal system.

D. Decisions of Tribunals

Decisions of national or international tribunals are useful sources of principles which may be applied to resolve international disputes. The case of Velasquez which will be discussed later is a very good reference in understanding the responsibility of state actors in the context of human rights violations; or at least,
establishing the minimum standard that the state should observe in order to comply with such duty.

Having established the sources of obligations of states in international law, allow me to discuss the concept of duty-holders classified as possessed with legal personality to act and bear such responsibility.

III. Persons in International Law

A. State as Subject

Who is a person in international law? For the definition of legal personality, we refer to the Montevideo Convention on what constitutes a state because a state is a principal actor or person or subject. International law is a set of rules that governs the relationships in general among states. It is the equivalent of the civil law concept of who are persons in domestic law—natural persons or juridical persons. Juridical persons may be your corporations or political subdivision, but in international law, we basically talk about State A and State B, and there is a body of rules, and sources of obligations that are applied to them.

B. Non-State

I. Belligerent communities as subject

However, there are new developments in international law as a result of the phenomenon, for example, of belligerency. It is not something new. Even before the Second World War, rules on humanitarian law were already evolving. Our representative here from the Red Cross, of course, would be a very important resource person to give us a perspective on how long the principles of humanitarian law have been applied in many parts of the world.
Belligerent communities and individuals are now recognized as actors who would have certain responsibilities in international law. Insofar as belligerent communities are concerned, we have the Geneva Conventions which apply to sub-state entities who might be in conflict with the component state. The rules of armed conflict will define the respective responsibilities of parties to the conflict.

2. **Individuals as both subject and object**

As far as individuals are concerned, we now say that individuals are not just subjects or objects of international law. An object might be a beneficiary of a convention, for example, a human rights convention. It says that the state must protect persons within its jurisdiction and afford that person all basic rights. A person in relation to that state becomes a beneficiary and to that extent an object and not a subject of international law.

The most important development today is the International Criminal Court (ICC) where you now see former military officers or even civilian leaders, as in the case of an African leader, brought before the ICC in The Hague to face personal responsibility for atrocities committed like human rights violations or war crimes. Before the ICC, the Nuremberg Tribunal, a precedent-setting forum in international law, saw persons who occupy very crucial positions in government like military officers or generals committing atrocities in the field being convicted due to violations of the laws of war. This ICC is distinguished from the International Court of Justice (ICJ). In the ICJ, the tribunal decides cases between states; while in the ICC, the jurisdiction is exercised over persons who are alleged to have committed genocide, war crimes, crimes against humanity, or aggression.
IV. General Principles on State Responsibility
(Articles on State Responsibility)

Let me now proceed to state responsibility as applied to our situation. In the development of international law, there is a body called the International Law Commission (ILC) responsible for codification of international law. One of its recent accomplishments is the codification of the principles of state responsibility, which is one of its long-standing projects, dating as far back as the 50s.

A. Scope

What is the scope of state responsibility? It is concerned with incidence and consequences of illegal acts and the payment of compensation. When a state violates international law, either arising from treaty, custom, or general principles of law, there is a consequence. When a state fails to address extralegal killings and, instead, allow these to continue, there is failure in compliance with an international obligation. As a consequence, a state has to face the international community. A delegation from the Philippines, headed by Executive Secretary Eduardo Ermita, had to go to Geneva to explain why extrajudicial killings or enforced disappearances are happening in this country. So we are subject to international scrutiny and that is something that a state would have to accept being a member of the United Nations.

Compensation, which is a form of restitution, is availed of when there is inability to restore back the property. What about lives? How do you compensate lives in the context of extralegal killings or enforced disappearances? Damages may be availed of to address violations of human rights.
B. Theory

The theory of state responsibility stresses an internationally wrongful act of a state. What is an internationally wrongful act of a state? Is it akin to a criminal act or civil or tort action? One of the problems in international law is similar to a corporation law issue. Can you imprison a corporation, which is an abstract entity represented by persons sitting as members of the board? What about the state, can you imprison it? Perhaps for purposes of compensation, a state may be made to pay but for purposes of acts committed by persons, who would you go after? Who represents the state? A state as we know may be headed by a prime minister or a president but there must be someone to represent the state who may be held liable for a wrongful act, not personally but as a representative.

The Articles on State Responsibility state that there is an internationally wrongful act of a State when:

(a) Conduct consisting of an action or omission is attributable to the State under international law; and

(b) That conduct constitutes a breach of an international obligation of the State.¹

If we are not doing anything or enough to address extralegal killings, that could be an omission on our part. An act or omission is attributable to the state. When you say attribution, there are rules of imputability. If extralegal killings are perpetrated purportedly by certain elements of the military, then how does one proceed? In this case we apply the rules of attribution; that is one of the problems we have raised under our criminal law. Many of the circumstances are circumstantial. The evidence may not be

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sufficient to point directly to Palparan. But you have to establish that correlation in order to apply the rule on attribution. The next crucial question is identifying further other responsible persons. Therefore, going up the military ladder, who else may be held responsible? Does one go as far as the armed forces chief, and, above him, the commander in chief?

The second element states that the conduct constitutes a breach of an international obligation. I already mentioned the sources of obligation; you must be able to point out a treaty, a custom, or general principle of law. That is very easy because most of the killings and enforced disappearances qualify as human rights violations.

**C. Instances**

We have already seen that there is a breach of an obligation because of non-compliance with treaties or an injury to the territory or property of a state, or the person of a diplomat of the state. If I injure a person who is a national of another state indirectly I have injured the state. If I bomb the Embassy of the United States in Kenya, that is a direct responsibility because of the damage caused to the property of a state situated in a foreign territory but covered by the principle of exterritoriality.

**D. Concept of State as Distinguished from Non-State Actor**

Let us now look at non-state actors. Do they have a responsibility in international law? The articles on state responsibility have a very specific provision on the matter. But let us first cite the rule for state actor:
For the purposes of the present Articles, conduct of any State organ having a status under the internal law of that State shall be considered as an act of the State concerned under international law, provided that organ was acting in that capacity on the case and question.\(^2\)

This is the first rule when it comes to state actor to distinguish this from non-state actor. On the other hand, the rule for non-state actor states:

1. The conduct of an organ of an insurrectional movement which is established in the territory of a State or in any other territory under its administration shall not be considered as an act of that State under international law.\(^3\)

Now let us translate this into non-state actors in the Philippines. Let us suppose the NPA, MILF, MNLF and Abu Sayyaf, for example, commit atrocities on the ground. Will that automatically be attributed to the state? What we are told here is that you do not automatically attribute that to the state. In that context, a state has a duty, to protect communities against the incursions and the atrocities that are committed by the insurgents. The state has a duty to protect its citizens. If the insurrectional movement, however, succeeds in acquiring power, then they will have to be made responsible for any atrocities they had committed in the course of their efforts to topple the government because now, they would be the embodiment of the state.

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2. *Id.* Article 5.

3. *Id.* Article 14.
E. Application to Human Rights Issues: Extralegal Killings and Enforced Disappearances

Let us try to look at an international case, *Velasquez Rodriguez v. Honduras*, which was decided by an international body under the Inter-American Convention on Human Rights. The case is instructive in regard to the minimum standard a state must observe in cases of human rights violations.

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

The other paragraph of importance is this:

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

It is not just a formality, but an honest-to-goodness investigation—so there are elements that the state will have to comply with, failing which, then we might say that the state is remiss and may be responsible on that basis.

Another important paragraph states:

177. **In certain circumstances, it may be difficult to investigate acts that violate an individual’s rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.**

An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation.

Now go on further and it says:

Where the acts of private parties that violate the convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.

That at least, would be the obligation of the state. What have we done? What has the government done? When we talk about government in this country we are talking about the government composing of the executive, the legislative and the judicial arm. If we had not done anything since 2006 when the figure of Karapatan was flashed, then we would have been remiss. The international community is saying now that the government has done something. It is another question whether we have done enough and whether we have progressed enough; but steps have actually been taken at the executive, legislative and judicial levels.
We are aware that there are more things that need to be addressed and more action that need to be done. This seminar-workshop could at least contribute to a positive direction in seriously abating cases of extrajudicial killings and enforced disappearances.

Thank you.
I. INTRODUCTION

The session for this morning consists of two parts: human rights and international humanitarian law.

Let me start by distinguishing the two sets of laws. Human rights law will apply in times of peace and in times of war. In times of war, there is a special set of human rights law and that is known as international humanitarian law (IHL). To apply the two sets of laws in a situation which usually happens in a conflict area, let us say a soldier is face to face with a communist rebel and their guns are pointed at each other, human rights will tell the

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soldier or maybe the rebel, if both have studied human rights, “do not shoot,” because the other person has a right to life. “Thou shall not kill,” that is what human rights law will tell the soldier and the rebel. But this is a situation of war or conflict and it is the duty of the soldier not only to enforce peace and order and uphold the rule of law and the democratic government but also to defend himself, and so he may have to shoot the other person as counsel in a number of important cases, including those concerning impeachment, charter change, and executive privilege.

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He presently sits as alternate negotiator for the Philippines in the High Level Panel on the drafting of the Terms of Reference of an ASEAN Human Rights Body. He is also the Chairperson of the Philippine Human Rights Information Center (PhilRights), the Secretary-General of the Working Group for an ASEAN Human Rights Mechanism, a Senior Legal Consultant of the Senate Blue Ribbon Committee, and the Co-Convenor of the Legal Network for Truthful Elections (LENE).

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even if human rights law tells him not to end the life of the other person because he has the right to life. This is when international humanitarian law may apply. It does not look at whether or not the war is legal, that is not the question in international humanitarian law. It seeks to limit the use of force so in that situation, if the soldier has to shoot because in any case he has the license to kill in a combat situation, international humanitarian law will tell him, “Wait, there is a proper way to kill. If you must kill, try to maybe disable first so do not shoot to kill.” Any shoot-to-kill policy is inherently violative not only of human rights law but also of international humanitarian law because international humanitarian law tells us to use proportionate force; so if you must shoot, disable first. Shoot not in the heart or in the head but maybe on the knees in order to disable. Now, if you have to kill not just disable because disabling will not help, then you have to shoot to kill. Otherwise, if you will just disable, you will disable yourself, you might die. Shoot, but use only one bullet. That is what humanitarian law will tell the soldier. If you used two bullets, you have to justify that two bullets were necessary. If you used all the bullets in your magazine, you have to justify why you had to use more than one bullet.

You will probably remember Col. Panfilo V. Villaroel, Jr. who climbed the towers of the Ninoy Aquino International Airport (NAIA) a few years ago and was attacked by a team of Special Weapons and Tactics (SWAT) members who are all experts at targeting people. He did not have the chance to fire but the SWAT team members fired more than 30 bullets, all of which according to the autopsy, entered his body. Now, can you guess which bullet killed him? Is it the 30th, the 29th? The first bullet already killed him. The question is, was it necessary to use all the other 29 bullets? This proportionate use of force is what international humanitarian law tells us—if you have to use force,
the use of force is limited. The means and methods of warfare are limited, otherwise, you do not only violate human rights law but you also violate the international humanitarian law. This is how the two sets of laws are related.

Our discussion will be based on the Constitution which provides:

**Art. II, Sec. 1** – The State values the dignity of every human person and guarantees full respect for human rights.

And then we also have in Article II the Incorporation Clause, where:

**Art. II, Sec. 2** – The Philippines adopts the generally accepted principles of international law as part of the law of the land

And therefore much, if not all, of what we will discuss can be considered part of our laws, as good as the Civil Code, Revised Penal Code, or Labor Code, if they are part of customary international law, generally accepted principles of international law or already part of the treaties which we have ratified. I will focus my discussion on defining human rights, the background of the development of national human rights standards, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. These are the instruments which we can apply in cases involving extralegal killings and enforced disappearances. Then we will focus on the right to life and the duties of the State as regards the right to life, and implementation of these norms and provisions of the instruments.
II. Human Rights Defined

There are many ways and approaches in trying to define human rights; one of the simplest way is to look at the terms one by one. We will begin by looking at the words “human” and “rights.”

Let us start with the word “rights.” When you say you have a right to the clothes or the jewelry you wear, that right is based on a transaction which are most likely purchase, sale, donation, or lease; but without a transaction, you do not have a right. That is an ordinary right.

It is important to make a distinction between ordinary right and human rights. One distinction is in terms of how the right is acquired. Ordinary right is acquired not only by means of a transaction but also by the happening of an event. For example, you crossed a highway to buy a cigarette and you got run over by a tricycle; you will have the right to sue, but without the accident, you have no right. In this case, the right is acquired by means of the happening of an event. But when it comes to human rights, there is no transaction behind it. You do not buy your rights; it is not even given to you. It is yours because you are a human being, it is inherent. Nothing has to happen except that you are born a human being. This is one distinction that human rights are inherent by virtue of our being a human person.

Another distinction is in terms of transferability, you can sell your clothes, your house, your car—you lose the right—but you cannot alienate your human rights. I cannot give you my right to sleep, my right to food or education, or sell my right to life.

In terms of possessing a right, if you cross the street and you got run over by a tricycle, you lose your right leg, right arm, and your right eye. Of course you will claim your right to compensation. You will be asked by a judge, how much will you
ask for losing your right leg, right arm, and right eye? How much will you ask for—P10 Million, P50 Million? It is the same injury or the same human being, but you have different measurements of rights. It depends on who the person is. It is still an ordinary right, because a human right is possessed equally regardless of sex, race, or status in life. It is not because you are a judge that you have a right to education, or freedom of speech more than another ordinary person. Neither is being bigger a guarantee that one will have more right to food. All these rights are possessed equally because we are all human beings. This is another distinction in terms of possessing a right.

In terms of prescriptibility, you can lose an ordinary right. If one does not exercise one’s right to file an action on time then one may lose the right by means of prescription. But in human rights, one cannot lose one’s rights. One may decide not to speak for 50 years, but on the 51st year, no one can stop you. You may not pray for 50 years, but on the 51st year, no one can stop you. These are ways to distinguish ordinary rights from human rights and we are looking at these from the word “right.”

Now let us look at the definition of the word “human.” Here, it is important to look at what our needs are as a human being. We have both body and spirit as a human person and that is the complete view of a human person. As a human being, we have bodily needs, such as, food, clothing, rest, and sex. It is important for us to be able to distinguish needs from wants for purposes of human rights. We also have needs of the spirit, such as, education, love, friendship, prayer, music, camaraderie, and art. For every need there is a corresponding right. If you tell me you need to smile, I will tell you, you have the right to smile. If you need to speak, you have the right to speak. If you tell me it is a need then it is a right. Some needs started as wants. Maybe during the time
of the cave people, they saw clothing as just a want, for there was no need for clothing but now everywhere else you need clothing and it is a human right. So from a want to a need.

Nowadays, everyone has a cellphone. Is a cellphone a want or a need? If someone says, I have the right to a cellphone, will you recognize that right? Maybe at some point in our life, there will be a right to a cellphone, just like when people claim the right to a computer. Some wants can become needs, and, therefore, can become rights. The more we recognize what our needs are, the more rights are recognized. It is important to know what our needs are which is different from our wants because needs can become a basis for our rights.

Now, based from this, there are certain concepts that arise.

I. Concept of Universality

First, is the concept of universality, as long as one is a human being, one has rights. Take for example the right to life and liberty. This set of rights is the same wherever you are. What about cannibals, do they have a right to life or do they recognize the right to life? Cannibals have a right to life because while they might eat you and me, they will not eat their relatives so in a sense they still recognize a right to life. In some Middle Eastern countries or maybe in all, women are not even allowed to show any part of their body. Does it mean they do not have rights?

Have you heard of female genital mutilation (FGM) in Africa? Why is it practiced? For the Filipino men, it is tuli or circumcision. But in the case of FGM, why do they practice this? It is because they do not consider women as having the right to sex or to enjoy sex. You can have sex but you cannot feel anything because the clitoris is mutilated or removed. That is in their culture. Does it mean therefore that rights are not universal? Rights are
still universal but the degree of the sensitivity to rights differs according to culture. That is “cultural relativism.” It does not mean that the rights are not universal. It is still universal except that they can only be realized through cultures, and there are different cultures. That is the problem of cultural relativism but rights remain universal.

2. Concept of Indivisibility

The other principle is the concept of indivisibility. What do we mean when we say that rights are indivisible, interrelated and interdependent? Some rights, especially rights based on the needs of the body, are otherwise called economic rights. Some rights which are based on the needs of the spirit are civil and political rights. That is why there is a classification of rights, such as, civil, political, economic, social, and cultural rights. But just like one cannot separate body from spirit, one cannot separate civil and political rights from economic, social, and cultural rights because the rights are indivisible. Any program of the government or any decision of the court must look at rights and at the human person as a whole and make the rights interrelated, interdependent, and indivisible. In some countries, this is a problem because they divide and separate rights. For example, when Singapore Prime Minister Lee Kuan Yew visited the Philippines 10 years ago during the time of President Fidel V. Ramos, he gave an unsolicited advice to our president. He said, “Mr. President, if you want your country to develop economically, you must forget civil and political rights in the meantime.” That was the advice of President Lee Kuan Yew because that is what they do in Singapore. The people do not enjoy their civil and political rights as much as we do. Now, they have a problem because they became so successful in conditioning the minds of the people that they have reached the point where the ministers do not know anymore what is right
and what is wrong, whether or not they are doing the right thing or whether the program of the government is effective. Why? Because everything is good, the people are not anymore critical of their government. They are now trying to teach their people to be critical, so again the process is reversed by using social engineering, which Singapore is very good at.

That is what happens when you divide rights, and that is the problem of countries like Singapore right now.

3. Non-discrimination

On non-discrimination, we have an equal protection clause, regardless of sex, race, creed, or status in life. What about classifying people? That is allowed as long as the classification is reasonable because in reality we are not equal. Some of us are strong, some are weak, some are men, some are women, some are rich, some are poor, some intelligent, some pretty, some prettier, and so on. That is what the equal protection law seeks to address to make us equal before the law.

4. Concepts of Rights and Obligations

Finally, on the concepts of rights and obligations. For every right, there is a corresponding obligation. You have a right, I have an obligation. I have a right and you have an obligation. So the corresponding obligation is on the other person or entity. Who has the primary obligation when it comes to human rights? You and the state are part of the state machinery. Why the state? Because the state is perhaps the only entity which has the capacity to promote and protect human rights. We have conceded or yielded some of our rights to the state so that the state will in turn promote and protect our rights. The primary obligation is with the state. The secondary obligation is on all of us, particularly the obligation to respect rights and a negative obligation not to
violate the rights of others. Otherwise all the obligations to promote and to protect are vested on the state, as having the primary obligation when it comes to human rights. This is also the thinking behind the international human rights system—it is the state which is signatory and therefore has the primary obligation.

III. BACKGROUND OF THE DEVELOPMENT OF THE INTERNATIONAL HUMAN RIGHTS STANDARDS

It all started during World War II, in Europe in particular. These come to mind: Jews exterminated, Schlindler’s list, holocaust, six million Jews murdered.

I had the chance to visit Auschwitz in Poland. As in Schlinder’s list, all the railroads led to Auschwitz bringing trains of Jews from the ghettos all over Europe with the promise, “We will bring them to paradise.”

They traveled for two weeks in cattle trains and upon reaching what they thought was paradise they were told to assemble in separate groups: “Women and children stay here; men (those who looked fit) stay here; (those who looked weak) we will give you a shower, undress.” They were herded into a big room with one-meter thick walls. Inside the room there were pipes with big holes that looked like showers. Suddenly, there was complete darkness and then instead of water, gas came out of the pipes. After five minutes, there were no more screams. Those who were waiting for their turn in the other room could not hear them. Outside there were bands playing marching songs, so nothing else could be heard. For 15 to 30 minutes, there was screaming, then complete silence. The next room was the crematorium. Then after 30 minutes, ash. Batch after batch arrives and the killing industry continues. They had to kill people in that camp; at least two million were killed.
The lawyers made sure the rules were clear, and engineers made sure the trains would arrive on time. This was an industry, so we were showed around the camp. I saw rooms filled with clothing, bags, crutches, varieties of spectacles, and one big room full of human hair. The prisoners were shaved. Then we were shown some clothes made of human hair. The Germans did not want anything to go to waste. In that camp, as I have said, at least two million were killed. Even if two minutes were devoted to pray for the soul of each, it would take over a hundred years. Hitler was asked: “Why did you do it?” His response: “Doctrine of National Sovereignty. First, you have no business, these are German citizens. Second, again none of your business, this is German territory.” That was how Hitler justified the genocide based on the Doctrine of National Sovereignty. The laws of Nazi Germany at that time did not provide Jews with any right, or if there were rights at all these were the same as the rights of the cockroaches.

Those of us who watched Hotel Rwanda for example, will probably remember the broadcaster telling people, “kill the cockroaches,” because that is how it becomes easy to kill a human being when you dehumanize the person. When we kill a mosquito, we feel satisfaction. When we kill a cockroach, we also feel satisfaction. But when we kill a dog, or when we run over a dog, do we feel satisfied? We feel guilty; but when we kill a human being the more we feel guilty even if the killing is justified. Maybe until the day you die, you will still feel guilty, that is, for killing just one person. What about six million? So in the minds of the soldiers, they were killing insects. The laws of Germany turned the Jews into insects and therefore without rights. The victorious allies, in order to address the situation, came up with two provisions in the UN Charter, Articles 55 and 56, providing that:

**Article 55** – With a view to the creation of conditions of stability and well-being which are necessary for peaceful
and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

**ARTICLE 56** — All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

From that time on human rights has became an international issue. No country can claim anymore that a human rights issue is internal because of the UN Charter, which led to the development of the International Bill of Human Rights. We have Article III as our Bill of Rights but in the international level, the Bill of Rights is composed of three instruments. If you want to study human rights start with the three instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. These instruments are otherwise known as the International Bill of Human Rights.
IV. Standards in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

A. Universal Declaration of Human Rights

Now let us look at the standards in the Universal Declaration of Human Rights (UDHR), adopted on December 10, 1948. These are the standards to right to life, liberty, and security of a person, and this is the language of the Writ of Amparo lifted from the Universal Declaration of Human Rights. There is a prohibition on slavery, servitude, torture, cruel or degrading treatment or punishment on humans. All of these were committed during World War II. Similarly, our own Constitution was amended in reaction to what happened during the Marcos period. The Universal Declaration of Human Rights is also in reaction to what happened during World War II. The Jews were not recognized as persons before the law so there is a right violated. There is the principle of equal protection of the law, which may be the subject of a right to seek an effective remedy for its violation. This is where the judiciary comes in, otherwise known as the right to justice. It says effective remedy, not just any remedy. Another right is the freedom from arbitrary arrest, detention or exile. The right to asylum, for example, exists though it is found only in the Universal Declaration of Human Rights. The right to a nationality, to marry and found a family, and to own property are also found in the Universal Declaration of Human Rights primarily. At that time, why did USSR agree to the UDHR? From USSR’s view, it was a declaration, not binding and merely just recommendatory, so they thought that it was fine to sign. That is the reason why the voting was 48-0 with eight abstentions. The declaration is a mixture of civil, political, economic, social,
and cultural rights. Even those who did not believe in the right to property or the right to an asylum signed. It is for their image internationally, except that from 1948 to around 1976, this was the only instrument internationally which listed what human rights are and, therefore, it acquired the status of customary international law. It, therefore, became binding even for those who are not members of the UN because this is part of international customary law.

**B. International Covenant on Civil and Political Rights**

Now let us look at the International Covenant on Civil and Political Rights (ICCPR). Some standards, particularly the civil and political rights, are found in the Universal Declaration of Human Rights. In the International Covenant on Civil and Political Rights there are further explanations on what the right to life is or many other rights, such as, the rights of an accused. An interesting provision is found which allows for the suspension of the implementation of certain rights when there is a public emergency threatening the life of the nation, which must be declared by Congress. If Congress is not able to make the declaration then the executive department will declare this public emergency. If it is just an attack in Basilan by the MILF, for example, will that constitute a public emergency which threatens the life of the nation? No. If it is an attack on Metro Manila, will it affect the life of the nation? Maybe yes. It must affect the survival of the nation, not just an isolated part.

Certain rights can be suspended, but there are also seven rights which cannot be derogated from even in the most extreme of emergencies. The right to life cannot be suspended, together with non-imprisonment for debt, torture; slavery and servitude; non-retroactivity of penal laws; the right to be recognized as a person before the law; and freedom of religion.
Let us discuss a little about torture. Human rights are gravely violated especially during times of conflict. We are in a global war against terrorism and because of this, even internationally, torture is absolutely prohibited. Certain professors and experts in the United States started discussing the need for torture warrants. We know of arrest warrants or search warrants, but what about torture warrants? They were discussing the reason behind it. They thought maybe if you cut off someone’s fingers or his tongue or other parts of his body, that person would reveal information that would save the lives of 5,000 people, using this as a probable cause to torture. This was the thinking behind the discussion. Of course that was just a discussion, but it shows us how people think when we are in a situation of conflict. Rights are in danger and many of us come from areas where there is conflict and this is what happens. Until now there is no such thing as a torture warrant but it has been discussed seriously in the U.S.

In situations where there are extralegal killings and enforced disappearances, many rights are continuously violated. What are these rights? These are the right to life, liberty and security of a person against arbitrary arrest or detention, torture, cruel, inhuman or degrading treatment or punishment. These are different terms. What may not be called torture can be cruel, inhuman, or degrading treatment or punishment. For example, torture must involve severe pain. If there is no severe pain, for example, not allowing one to sleep, there is absence of severe pain so it can be cruel, inhuman, or degrading treatment or punishment. Another example is when a person identified as a member of the NPA is paraded naked in the street; there is no severe pain but it is degrading treatment or punishment. The right to respect one’s dignity as a human being and other personal rights are violated, including the rights of relatives or the society in general. We have the right to know the truth about the fate of the disappeared
person. In a disappearance case, what happens is that the authorities will not inform you of where a missing person is, and will try to hide this person so the relatives and the rest of society would not know what had happened to this person. In fact, many are saying that losing a person in this manner is one of the greatest human rights violations because you are never at rest including the relatives. You do not know whether to begin or stop mourning because the missing person might still be alive and you want to find out his fate. Imagine if one of your children disappears and you do not know where your child is, you will forever be uneasy, restless, and sleepless.

V. The Right to Life and State Duties

The right to life, liberty, and security of a person are found in very specific provisions in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article III of the UDHR states that:

Everyone has the right to life, liberty and security of person.

It is generally stated in Article 6 of the ICCPR:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The word arbitrary is very prominent. Article 9 of the ICCPR states that:

Everyone has the right to liberty and security of person.

No one shall be subjected to arbitrary arrest or detention.

In our very own due process clause it says that “no person shall be deprived of life, liberty and property without due process.” So it is like the word arbitrary, you can be deprived if it is not arbitrary.
If it is in accordance with due process of law, it is allowed. Now, focusing more on the right to life, this is what we find. It is of course supreme. It cannot be suspended; but, there are situations when we are allowed to end the life of a person, in defense of life or property for example, or in defense of the life of a third person. Note that torture is absolutely prohibited but ending the life of a person is not. To kill is allowed as long as it is not arbitrary. But there can be no reasonable torture. It is absolutely prohibited. It must not be unjust, capricious, and unreasonable.

These are the obligations of the state—to refrain from violating the right to life; to prevent violations and investigate violations of the right to life, enforced disappearances and extralegal killings; to punish offenders; and to provide for remedies. It must be an effective remedy. Sometimes a criminal case may not be an effective remedy so we may include a civil case, an administrative case, compensation, or rehabilitation, all of which are parts of the package which will allow for an effective remedy.

What then, again, based on jurisprudence internationally, are the duties of the state when it comes to extralegal killings and enforced disappearances? These may take the form of observing care in planning, and in conducting an operation and in training personnel. Take for example what happened in Ortigas, when a group of policemen stopped a car and in the process killed some of the passengers. Whether they are kidnappers or carnappers, there was disproportionate use of force employed by the police. In an operation, there must be care in the planning and also in carrying out an operation. There is also a duty to conduct an effective investigation when individuals are killed or when they disappear. This is a positive duty. The state cannot say, “Sorry we do not know what happened. Let us just wait and see what happens. Maybe something will turn up.” There is a positive
duty to do something. Can you say, “NPA ang may kasalanan wala kaming pakialam diyan. Pumunta ka sa bundok kausapin mo ang NPA.” There is a duty to take reasonable measures to protect those whose lives are in danger because of criminal acts of private groups. This is again a duty of the state. The state must also undertake adequate measures to protect the lives of detainees like, for example, what happened in a riot in Muntinlupa which involved members of the Abu Sayyaf a year or two ago. How many people were killed? I think the military or the police used not just handguns but also a lot of force. As a result many detainees were killed. This could be in violation of the duty to take adequate measures to protect the lives of the detainees.

At the international level, we have this system of promoting and protecting human rights universally and regionally. At the universal level, there is the United Nations, under which is the UN general assembly which created a Human Rights Council. About a month or so ago we sent a delegation to the UN to report before the Human Rights Council on what we have been doing to promote and protect human rights, as part of the UN procedure. When Prof. Philip Alston visited us a year ago, that was part of the UN mechanism. There are also mechanisms based on treaties, such as, the International Covenant on Civil and Political Rights, Economic, Social and Political Rights; elimination of racial discrimination; elimination of discrimination against women; convention against torture; rights of a child, migrant workers, and many more. These are some of the basic instruments. In the ASEAN region, all of the countries in Southeast Asia have signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC). Even Myanmar, Brunei, Vietnam, Laos, and Cambodia have signed CEDAW and CRC. Around the world, only two countries have not signed the CRC. One is
Somalia because it is a failed state. Those who want Somalia to sign do not know where to go because there is no institution where you can go and get the signature; warlords are in command. The other country is the U.S. which thinks it does not need the convention, their laws being perfect.

Regionally, you have the Organization of African Unity which adopted the African Charter on Human and People’s Rights. They have a Commission on Human Rights and a Court on Human Rights. At the Council of Europe, you have the European Convention on Human Rights, with a European Court of Human Rights. The Organization of American States have an Inter-American Convention of Human Rights and an Inter-American Court of Human Rights, including an Inter-American Commission of Human Rights. Africa, Europe, and the Americas have a regional human rights promotion and protection system.

Now, in the Asia Pacific, the largest region of the world where most human rights violations take place, ironically, until now it is without a system of promoting and protecting human rights. There is, however, in Southeast Asia, the possibility of having a human rights body. You must have heard about the ASEAN Charter, which we signed last year. We are hoping the Senate will ratify the ASEAN Charter by the end of this year because by then the heads of states will be meeting in Bangkok, Thailand, to finally adopt the ASEAN Charter. This ASEAN Charter will be like the ASEAN Constitution; it will allow ASEAN legal personality and representation in many of the international bodies, and this is of interest to us. The ASEAN Charter provides for the creation of the ASEAN human rights body. The powers and functions of this body are still to be determined and drafted and, hopefully, it will happen within our lifetime. Depending on what the powers and functions of this body will be, we will have human
rights jurisprudence in Southeast Asia which can then become part of our own national jurisprudence.

At the international level, there is this interesting case of *Velasquez Rodriguez v. Honduras* decided by the Inter-American Court of Human Rights on July 29, 1988, which relates to disappearances and extrajudicial executions around 1981 to 1984 in the State of Honduras. Hundreds of individuals were disappearing, many of whom were activists, leftists, and journalists. No convictions or no investigations were made, but the prime suspects were members of the military because they were the only ones who could use tinted vehicles which were also being used in kidnapping. The firearms used were those issued to the military but they could not be pinpointed just like in our case in Davao. No member of the Davao Death Squad has been caught although many have been killed extralegally by their members. The police have investigated but they have neither charged nor caught anyone. This is similar to the situation in Honduras at that time. Cases were filed through writs of amparo and habeas corpus but witnesses could not be found so the judges could not convict people for lack of evidence. So a case was filed by Velasquez Rodriguez before the Inter-American Court. The court said, “We cannot presume the military did it; there was no investigation.” There is a presumption of state involvement or acquiescence at least in extralegal killings and enforced disappearances.

It was also said that when there is a case of disappearance or extralegal execution, these are the violations—rights to humane treatment, liberty, security and life. It is the duty of the state to prevent violations, to investigate, identify violators, punish and compensate.
So it will be interesting reading to visit the website of the Inter-American Court of Human Rights to get this piece of jurisprudence. In fact, if one visits the websites of the European Court, Inter-American Court, the African Court, and one can enrich the content of decisions with all these international jurisprudence on human rights. Many of these are part of international customary law.
International Humanitarian Law Standards: Extralegal Killings and Enforced Disappearances*

Prof. Herminio Harry L. Roque, Jr. **

I. Introduction

International Humanitarian Law (IHL) and Human Rights Law have similarities, particularly in terms of their objectives, but they are not similar at all. As discussed by Prof. Carlos P. Medina, Jr. in his lecture, Human Rights Law applies during both times of peace and war. International Humanitarian Law, on the other hand, is a *lex specialis*—it is only applicable in times of armed conflict. That is one basic difference between Human Rights Law

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and International Humanitarian Law. Another difference, perhaps, is their origin. Historically, IHL has been existing since ancient times. The best proof for this is the fact that if one examines any major religion, one finds that different religions share a common belief that one must be humane to one’s enemies even when one has already captured them in battle. This belief is embedded in Christianity, Islam, Confucianism, Taoism—they all provide the same belief. Human Rights Law, on the other hand, is fairly new. It came about at the end of World War II precisely because of the perceived weakness of the humanitarian law. Although it seeks to prevent sufferings on the part of human beings caught in armed conflicts, nonetheless the kind of atrocities that happened in WW II still occurred. So there was a thinking then that another legal system should be put in place to further prevent these inhumanities from recurring. That is the second point of distinction—origin. The third point of distinction is the non-derogability of IHL, which means you could never opt to get out of it, whereas in Human Rights Law, some rights, particularly freedom of expression and freedom of the press, may be derogated from in cases of state of national emergency. But not so with the International Humanitarian Law, which is a non-derogable code

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of conduct for all combatants. This is the fourth distinction between IHL and Human Rights Law. IHL does not bind the states alone but binds all combatants, whether one is from the Armed Forces of the Philippines (AFP), the Moro Islamic Liberation Front (MILF) or the New People’s Army (NPA). One evidence that it is non-derogable is the fact that unlike any other human rights international agreement or treaty, the corpus of IHL which is found in the so-called Geneva Conventions remains to be the only treaty of its kind and that it enjoys universal ratification. That is why, although some states will say that human rights is a relative subject to religious beliefs or cultural beliefs, which incidentally I do not agree with, such protestations are never heard against International Humanitarian Law. They may be a communist state, a democratic state, the most despotic state, or even a fundamental state but no state will dare say that IHL is not binding on them. So these are some of the differences between IHL and Human Rights Law.

II. INTERNATIONAL HUMANITARIAN LAW

The general objective of International Humanitarian Law (IHL) is to limit the sufferings of human beings in times of armed conflict. How does this law achieve this? How does this law seek to limit human sufferings? It does so through two modalities. First is by according protection to individuals who are not active participants in the armed conflict. Second is by limiting what is known as the means and methods of warfare.

What does it mean that in order to limit human sufferings the IHL accords protection to individuals who are not actively involved in armed conflict. It means that there are groups of people not taking part in hostilities and have ceased to take part, who must be protected and treated humanely at all times, without
distinction. Who are these groups of people who are entitled to protection? The law provides that we have civilians, humanitarian workers—medical and religious personnel—the wounded, shipwrecked and sick combatants. There are also recognized symbols that must be respected, such as, the “Red Cross,” “Red Crescent,” and other symbols which identify cultural property and civil defense facilities.

Even prisoners of war (POWs) are protected. Is it not strange that POWs are accorded protection? Why? They are actually soldiers, but why do you think they are accorded protection? That is because they have ceased to become active combatants and, therefore, there is now an obligation to accord them protection. What does it mean to say that POWs enjoy protection? It means, do not shoot at them and treat them humanely at all times. This is rather controversial now because of a number of cases that have come out as a result of the Guantanamo Bay detainees. Based on our experience with the Guantanamo Bay detainees, there are at least three U.S. Supreme Court decisions clarifying the status of those whom President George W. Bush have described as enemy combatants. Enemy combatants, according to President Bush, include those who were apprehended allegedly engaged in the battlefields of Afghanistan. He did not recognize them as POWs because according to him, in the first place, the Geneva Convention or the applicable law in the international armed conflict is not applicable to the war against terror. Why did he claim that? The Geneva Convention is applicable to conflicts between states or between a state and a belligerent group in the exercise of their right to self-determination. It is as if he was saying that what happened to us on September 21 is not a war between two states, therefore the Geneva Convention could not apply and neither are the rules applicable to non-international armed conflicts. This is found in what is known as the Additional
Protocol II. Why? According to President Bush, the elements required for local fighters to be recognized under the protection of AP II were also absent. Among others, he claimed that members of the Al Qaeda, the perpetrators of modern day terrorism, do not openly carry arms, do not openly distinguish themselves from the general public, and have not shown capacity to comply with the laws and customs of warfare. President Bush said, therefore, since neither the Geneva Convention nor the AP II was applicable, those apprehended could not enjoy the status of POWs. They were, therefore, enemy combatants and could hence be detained indefinitely, that was exactly what he wanted to do. It should be understood that one of the most important rights of POWs under the Geneva Convention is the right to be released immediately upon the cessation of hostilities. This is because the legal basis for their detention is not because they are criminals but to prevent them from resuming their roles as active combatants. Therefore if there is a cessation of hostilities, POWs must be released promptly unless they are accused of any commission of war crimes in which case there is a basis for their further detention. But in the three cases already decided by the U.S. Supreme Court, the Court said that the writ of habeas corpus lies in favor of the Guantanamo Bay detainees. Why? In the first case of Salim Ahmed Hamdan, the Court said it is not true that the Geneva Convention is not applicable to them. There was a resort to the use of force when the United States physically invaded Afghanistan allegedly to wage war against terror. Having done so, the Geneva Convention became applicable. Although the detainees did not automatically have the right to be classified as POWs, they were nonetheless presumed to have at least the rights and status of POWs until after there was an administrative determination that in fact they were not qualified to possess that POW status. The
writ in the case of *Hamdan*\(^1\) was issued precisely to compel a
determination on what the status of Guantanamo Bay detainees
were. The two other decisions of the U.S. Supreme Court were
actually offshoots of *Hamdan*’s first defeat. After he was defeated
in this first case, President Bush created a U.S. military commission
to determine the status of detainees in Guantanamo Bay, Cuba.
Because its very specialized role is only to determine their status,
he did away with all other rights recognized by all the other military
tribunals in the United States.

For the second time, Mr. Hamdan went back to the Supreme
Court and the Court, addressing the Bush government, said:

> while he may in fact, through an executive order, form or
create a military tribunal for this purpose, he cannot in fact
deprive these individuals of all other rights that are
recognized before any other military tribunals in the United
States.\(^2\)

The third case is a subject appealing to judges. After his second
defeat, President Bush, this time, went to Congress and asked his
partymates to come up with a legislation removing the power of
judicial review insofar as these Guantanamo Bay detainees are
concerned.

Congress complied. For the third time, the Bush administration
went back to the Supreme Court, arguing the terms of *Marbury
v. Madison*,\(^3\) although it was a slim decision (5–4), the majority
still upheld *Marbury v. Madison* and, that is, the Congress
could not limit the exercise of the judicial powers which included

\[\begin{align*}
1. & \text{ *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).} \\
2. & \text{ *Id.* at p. 8.} \\
3. & \text{ 5 U.S. 137 (1803).} 
\end{align*}\]
the power to determine lack of jurisdiction on any branch or instrumentality or part of the government. That was the very recent decision. I transgressed a bit because I thought that would be very interesting to judges. So we now have three protected individuals—civilians, humanitarian workers, and POWs. The last group of protected individuals are the religious leaders. They are accorded protection because they are there to provide spiritual guidance and not to actively take part in the fighting.

The second modality refers to limiting the means and methods of warfare. When we talk of limiting the means of warfare, we are talking of the actual conduct of the hostility. When we are talking of the methods, on the other hand, we are talking of what kinds of weapons one can actually utilize in an armed conflict. Let us first discuss the means of warfare. If there are protected individuals and one is a combatant, how do you implement the rule “Thou shall not target a protected individual.” In aiming at someone, what should one be asking oneself? The question is, “Does my target enjoy protection?” If he does, one should not be aiming his/her gun at the person. This principle is known as the principle of distinction. The most important rule insofar as the limitation on the means of warfare is concerned is that one must always distinguish between valid military targets and those who have protection. Aim and shoot only at those who are valid military targets. Do not shoot at those who have protected status. Further limitations on the means of warfare include, as a non-derogable rule, the fact that one must not make a target out of protected individuals or protected structures, and objects. Let us discuss limiting the methods of warfare. What are some examples of prohibited methods of warfare? What specific weapons are prohibited to be used even in times of war or conflicts. Nuclear bombs, in a fairly recent advisory opinion of the International Court of Justice (ICJ), although there is no international norm
that would prohibit nuclear weapons, are nonetheless prohibited to be used under the International Humanitarian Law or where there is an ongoing armed conflict. Aside from the nuclear bomb, there is the poison gas. In fact, there is a convention where the use of poison gas is prohibited. Why do you think nuclear bombs and poison gases are prohibited? What are they incapable of? These weapons are unable to distinguish targets. When you use these types of weapons, you kill everyone, not just your valid military targets. Furthermore, they cause superfluous injuries and sufferings. Other examples are germ warfare, land mines—anyone could step on them and trigger its explosion and kill others including innocent children—laser-blinding weapons, asphyxiating weapons and so on and so forth.

Now, why then is IHL particularly relevant to the Philippines in the first place. More specifically, what relevance does it have to extralegal killings and enforced disappearances? The IHL governs both international and non-international armed conflict. Under international armed conflicts, one has the status of the combatant and consequently when one is captured in battle, one enjoys the status of a POW. The only substantial difference between the international and non-international armed conflict is the fact that in non-international armed conflict, under AP II, there is no such concept as a combatant or a POW. Consequently, because there is no concept of neither a combatant nor a POW, there is no such thing as immunity from criminal prosecution solely on the basis of your participation in the armed conflict. Under the international armed conflict, if one is a combatant and one plays by the rules, regardless of how many people one has killed in the battle, one does not incur personal criminal liability provided one follows the rules of warfare. But under non-international armed conflict, although there are still the principles of humanity, if one is captured, one cannot claim the status of a POW. Neither
can one claim the immunities of a POW because, as a matter of treaty obligation, states of the world are unwilling to grant their domestic enemies immunity from criminal prosecution. Supposing the AFP captures a confirmed rebel leader who is particularly feared by the military, and because he has no POW status, can he be tortured? No, because remember the prohibition on torture is contained in the human rights law and is therefore applicable in both times of peace and times of war. Can he be prosecuted for rebellion? Yes.

III. Binding Nature of International Humanitarian Law Norms

Now, what is its relevance to our study on extralegal killings and enforced disappearances? In the last summit conducted by the Supreme Court, part of the recommendations that came out from the participants is the need for a law to specifically criminalize extralegal killings and enforced disappearances. My point during that summit was that a law is desirable but even without a domestic law we already have a binding legal system that would deal with extralegal killings and enforced disappearances. When these killings and disappearances occur in areas where there are ongoing non-international armed conflicts, then the legal basis for prosecution would be serious violations of the International Humanitarian Law. The first question is, is it really possible that the norms of the International Humanitarian Law have become binding and have even become criminal in our jurisdiction without a domestic enabling legislation? Let me refer to some relevant jurisprudence.
A. Yamashita and Kuroda

The question raised earlier became precisely the issue in the two cases at the end of World War II, *Yamashita v. Styer* and *Kuroda v. Jalandoni*. Tomoyuki Yamashita was the highest ranking Japanese official at the end of World War II. He arrived in the Philippines less than a year after the loss of the war and in his defense for a criminal prosecution for 151 counts of war crimes, his first defense was that he did not order those atrocities to be committed, as they were in fact prohibited in Japanese military manuals. He added that he did not order the acts as he was far away in Malacañang palace, and did not know that they were targeting civilians, children, women, churches and priests in far away Batangas or even in far away Singapore.

Another line of legal defense by Yamashita is that the prosecution included the killing of POWs as far as Malaysia and Singapore. He argued further that under criminal law, one, there is a principle of *nullum crimen sine lege*, without a law in the Philippines, we cannot be responsible for that and, two, under criminal law, criminal liability is only imposed on principals, accessories, and accomplices. Therefore, he maintained that he cannot fall under either of these classifications.

In his concurring and dissenting opinion, Justice Perfecto opined:

Impelled by irrepressible endeavors aimed towards the ideal, by the unconquerable natural urge for improvement by the unquenchable thirstiness of perfection in orders of life, humanity has been struggling during the last two dozen centuries to develop an international law which could


answer more and more faithfully the demands of right and justice as expressed in principles which, weakly enunciated at first in the rudimentary juristic sense of peoples of antiquity, by the inherent power of their universal appeal to human conscience, at last, were accepted, recognized, and consecrated by all the civilized nations of the world.6

IHL is binding on the Philippines because it is binding on all civilized nations of this planet. Take note that the approach in *Yamashita* did not depend on the incorporation clause. This is akin to the case of *Oposa v. Factoran*7 where the Court said that the duty to protect the environment predated government in fact. So the binding nature of IHL is not even by reason of the incorporation clause, but it being binding on all civilized nations. It was in the case of *Kuroda* where the Court said that it is binding on the Philippines because of the incorporation clause.

In accordance with the generally accepted principle of international law of the present day, including the Hague Convention, the Geneva Convention and significant precedents of international jurisprudence established by the United Nations, all those persons, military or civilian, who have been guilty of planning, preparing or waging a war of aggression and of the commission of crimes and offenses consequential and incidental thereto in violation of the laws and customs of war, of humanity and civilization, are held accountable therefor. Consequently, in the promulgation and enforcement of Executive Order No. 68, the President of the Philippines has acted in conformity with the generally accepted policies of international law which are part of our Constitution.8


8. *Supra* note 5 at 177.
The facts were a bit different in the *Kuroda* case. This time President Manuel A. Roxas issued an executive order for the criminal prosecution of Shigenori Kuroda, another high ranking Japanese officer. The basis, pursuant to the EO, was to prosecute him for grave breaches of the Geneva Convention. That was in 1949; we did not ratify the Geneva Convention until 1951. That time, Kuroda argued that he cannot be held criminally responsible for violating a treaty that has not been even ratified? The court held that it did not matter. Why? Because the Geneva Convention, being merely a statement of customary laws, binds not just parties thereto but binds everyone. If it is purely a treaty-based convention, meaning it is a treaty with a binding effect because states agree to be bound thereto, and it is not a statement of customary laws, then it will only bind both parties thereto. But because the Geneva Convention is already a statement of customary norms, we do not have to ratify the treaty for it to have a legal effect in our territory. This is established jurisprudence in the Philippines. They have not been repealed or in any way altered by either the legislature or by our courts. Why is it that so many of them still feel that there is an absolute need for a law to criminalize extralegal killings and enforced disappearances and other violations of IHL where they take place in the context of non-international armed conflict? My first legal basis is jurisprudence, not international law jurisprudence, but Philippine jurisprudence, and a provision in the Civil Code which says that decisions of our courts shall form part of the laws of the land. The only difference is, under *Yamashita*, we also provided for yet another international principle which was codified by other international tribunals and is today recognized as a customary norm of international law. This has to do with the second defense of Yamashita that he did not order these acts to be committed and he was not a principal, accessory or accomplice.
But the Court found General Yamashita responsible, and for the first time the Supreme Court decision set international precedent when it pronounced that General Yamashita, as a commanding officer of the Japanese Armed Forces in the Philippines, had a positive duty to adopt a sound system to ensure that his troops know what the law is and that they are in full compliance with the law 100 percent of the time.

Note that this is not a responsibility for principal, accessory, or accomplice. It is a special type of criminal responsibility which today is referred to as the principle of command responsibility. This, again, sets apart IHL from other legal systems because it is only in the IHL that you have this principle of command responsibility. Under its current formulation, command responsibility states that if one were a commanding officer and he or she knows or should have known about the atrocities, one will incur responsibility if one fails to take steps to prevent, investigate, prosecute, and punish the perpetrators thereof. It is a doctrine enunciated in the Philippines, which is why I do not understand why there is a debate now about whether or not the Melo Commission Report is correct in saying that perhaps the rogue elements of the AFP behind these killings could be held responsible on the basis of command responsibility. They argue that there is a need for a law before we can use command responsibility. But make no mistake about it, command responsibility is not just a principle but has become customary in international law. It is first and foremost a Philippine jurisprudence adopted by the rest of the world. However, it is dangerous because under command responsibility, it is not just the commanding officers who could be liable; even civilians and heads of state can be held responsible under the principle of command responsibility. Just a month ago, the International Criminal Court (ICC) for the first time issued an arrest warrant against the incumbent
President of Sudan. Many of the cases tried by International Tribunals involved criminal prosecutions for command responsibility. The only difference of command responsibility for military officers and liability for superior officers is that they must have actually known of such facts constituting the violations of IHL. The prosecution could not rely merely on the “should have known” postulate. How do you prove that they actually knew? How do you prove that civilian authorities in the Philippines in fact knew or know about the extralegal killings and enforced disappearances? The International Court of Justice, in a recent ruling in the genocide case, used newspaper reports among others. Just because it was reported in the Inquirer, the Philippine Star, or aired by ABS-CBN or GMA-7 it does not mean that it is sufficient information to trigger the obligation to prevent, investigate, prosecute and punish the perpetrators thereof. Another difference between international law and domestic law, under Philippine jurisprudence, is that an incumbent president is absolutely immune from suit.

B. Nuremberg Principles

We have a principle known as the Nuremberg Principle. This is the codification of the principles or jurisprudence developed by the Nuremberg Tribunal, when they prosecuted highest ranking surviving Nazi leaders at the end of World War II. These principles are now recognized as binding on everyone because these are now restatements of customary international law.

Principle I is the principle of international criminal responsibility:

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.
Principle II is applicable in the Philippines because our Congress is still in breach of our obligation to enact a domestic enabling legislation for both the Geneva Convention and Additional Protocol II:

The fact that an internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III states that:

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

In any case, one pending petition that I have personally filed in the Court is questioning the jurisprudence on immunity from suits. Why? Well, I traced the history, it is antiquated. The basis for immunity of sitting presidents in the Philippines is based on jurisprudence involving an American Governor General. This, of course, has undergone major changes in the United States where we borrowed the principle of immunity from suits. The latest decision of the U.S. Supreme Court on this involves President William J. Clinton in the complaint filed against him for sexual harassment. Remember in that case, the U.S. Supreme Court said:

We have gone from a period recognizing absolute sovereign immunity to limited immunity from suits as in fact only official sovereign acts are immune from criminal and civil prosecution.

This is also the same ruling of the UK House of Lords in the case of Augusto Pinochet, the former despot of Chile, who by way of defense said:
You cannot implead me for a criminal case for an act that I have committed when I was a sovereign because even if I am no longer in office, the acts that I have committed while in office are perpetually covered by immunity.

Not so, according to the UK House of Lords because what is only accorded immunities are acts which are official and sovereign in character and the commission of an international crime can never be official or sovereign. That is why he was still liable, although politics intervened, and he was allowed to go back to Chile. This is also why President Ferdinand E. Marcos was held liable in the United States under the Alien Tort Claims Act. Though he was protesting that he had immunity because those acts were allegedly committed when he had presidential immunity, the Court also rejected that defense following the same principle that only official and sovereign acts are actually immune from liability. Now if you look at the statute of the International Criminal Court, it is stated that this immunity cannot be invoked as a defense for prosecution for an international crime.

Principle IV is command responsibility:

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V has to do with the rights of the accused:

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

The remaining Nuremberg Principles are:

**Principle VI.** — The crimes hereinafter set out are punishable as crimes under international law:
(a) Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war include, but are not limited to, murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

**Principle VII.** – Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

Now, we are actually going through different norms or sources of law that can be used in criminalizing extralegal killings and enforced disappearances without domestic legislation. We went through the Nuremberg Principles, and now the Geneva
Conventions which we will discuss. We shall identify some of the provisions that are in fact the legal bases for the criminal nature of these acts.

C. Geneva Conventions

I. Common Article 3 of the Four Geneva Conventions

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the abovementioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Why is it called Common Article 3 of the Geneva Conventions? It is a common article because it is applicable to all types of international or non-international conflicts. There are even writers today who would argue that it is even applicable in times of peace,
although I would say it is still limited to an ongoing armed conflict. And for this reason it is called a mini-treaty because it does not matter whether what type of conflict is ongoing; it just applies. Aside from the rules that persons taking no active part in the hostilities shall be treated humanely or the principles of humanity, Common Article 3 provides for absolute prohibitions—for instance, violence to life and person, taking of hostages, outrages against personal dignity, the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court—according all the judicial guarantees which are recognized as indispensable by civilized people. Is this not what we mean by extralegal killings? The proper term actually is not extrajudicial killings; it should be extralegal because, by using the term extrajudicial, there could be circumstances where it could be legal like extrajudicial settlement of estate. It just means you do not go to the court but it is still perfectly legal, but not so when it comes to killings. We use the term extralegal killings because it is the imposition of capital penalty without a proper trial, without benefit of a competent and partial judge, or without according the person the rights of an accused. That is the strongest legal basis by which we criminalize extralegal killings and enforced disappearances.

2. Article 87, Duty of Commanders

Article 87 of the Geneva Convention provides for the principle of command responsibility.

I. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.
2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

It says that it is the duty of military commanders in fact to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions.

D. Rome Statute

We have talked about instances of killings and enforced disappearances that occur in areas where there are ongoing armed conflicts. The rule is where there is an international armed conflict and non-international armed conflict ongoing, IHL becomes the applicable law in that area. I am not sure if all the judges present are from Cebu. There is no armed conflict in Cebu but there are lots of armed conflict in Samar and Leyte. So when you are in an area where there is an ongoing armed conflict between the Republic and the New People’s Army, you are in the jurisdiction where IHL is part of the applicable law together with the Human Rights Law and the Revised Penal Code. There is, however, a recent development where we have expanded the protection accorded to
civilians and other protected individuals even in times when there is no armed conflict. When there is no armed conflict, these acts which are penalized as war crimes in times of armed conflicts can also be penalized during times of peace; we refer to them as crimes against humanity. Article 7 of the Rome Statute states:

I. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(ii) Enforced disappearance of persons;

2. For the purpose of paragraph 1:

(i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

As defined, it can be any of the enumerated acts, murder etc., provided that you have to prove two qualifying circumstances:
1. It is widespread, and
2. It is systematic.

Now let us talk about extralegal killings and enforced disappearances happening in areas where there is no armed conflict. Widespread is widespread. The government says it is 100, Karapatan says it is in excess of 900 since 2001. Make your own judgment whether or not this is widespread. I am inclined to believe that in times of peace having many victims of extralegal killings is in fact widespread. Systematic means that not only must there be a pattern or some kind of a system in effecting these killings, but that it must form part of a state policy. Karapatan claims that in fact there is a legal written document which provides for this systematic pattern of targeting individuals who are identified either as leftists or as supportive of leftists. If they can prove this, to my mind, that would be sufficient to prove that these killings are in fact systematic. So when you are able to prove that these killings or disappearances are either widespread or systematic, these can also be penalized as crimes against humanity in areas where there are no ongoing armed conflicts. Unfortunately, on my way here, I heard on the radio a live press conference featuring the Secretary of National Defense Gilberto C. Teodoro, Jr. commenting that what is happening recently as a result of the Temporary Restraining Order (TRO) on the Bangsamoro Juridical Entity Memorandum of Agreement (MOA) is a virtual declaration of war because, in fact, the MILF had said there would be dark consequences in the event that the Philippines does not comply with the MOA. So the sad news is, IHL has become even more relevant to the Philippines. Remember the goal is for IHL not to be the applicable law; but while it is the applicable law available let us make sure that it is, in fact, followed by everyone.
Now, other than crimes against humanity, we have enforced disappearances as defined under the Rome Statute, which is now the legal basis for the criminalization of enforced disappearances. Our problem with enforced disappearances is actually more serious than extralegal killings. Extralegal killings after all can be prosecuted as murders. In fact, in one training for the prosecutors, the chief prosecutor of the Cambodia Tribunal whom we invited said: “Why do you want a special law on extralegal killings, you are just adding yet another element to a crime that the prosecution must prove. The rule of thumb is the less elements the prosecution must prove, the better.” So his advice is, forget a special law on murders; forget even getting people liable for genocide because it requires a further element which will make it harder for the prosecution to get a judgment of conviction. But our problem with enforced disappearance is that the closest crime that we can use is kidnapping. The problem is, until we can actually locate where that missing person is, we are not actually sure that all elements of kidnapping are present. Should they reappear, then there is no kidnapping. Should they be found dead, then it ceases to be a case of enforced disappearance and becomes one for extralegal killings. But under international law, there is now a crystallizing if not a crystallized norm criminalizing enforced disappearances which defines it. These are the elements:

1. There must be an abduction of a person;
2. The abduction was done by an agent of the state;
3. It must be followed by a refusal to acknowledge the deprivation of freedom; and
4. The mental element or mens rea, the intention of removing the abductee/s from the protection of the law for a prolonged period of time.
This already exists as a crime recognized by the ICC and my submission is that elements of these crimes are now restatements of the customary norms for the purpose of arguing that, even without a domestic law against enforced disappearances, we can apply the principles of Kuroda and Yamashita to also criminalize this crime of enforced disappearances.

The Rome Statute also says that it is equally prohibited in times of peace and in times of war to pass sentences without previous pronounced judgment by a regularly constituted court.

**Article 8. War Crimes.**

\[\text{x x x x}\]

2.(c)(iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

\[\text{x x x x}\]

**E. International Convention for the Protection of All Persons from Enforced Disappearances**

Aside from the Rome Statute, and this is specifically on our problem with enforced disappearances, we also have what is known as the International Convention for the Protection of All Persons from Enforced Disappearances and we have not yet been a party to it. But take note that this is exactly the issue with Kuroda in 1949. We were not yet party to the Geneva Convention yet President Roxas already issued an executive order authorizing criminal prosecution for grave breaches of the Geneva Convention. What does this international convention provide? Well, first, it is the norm that no one shall be subjected to enforced disappearance.
Second, this prohibition is non-derogable because the Convention says, in no exceptional circumstances whatsoever, whether in a state of war or threat of war, internal political instability or any public emergency may be invoked as a justification for enforced disappearance. Then it provides the definition which is by the way the same definition found in the Rome Statute:

I. Abduction;

2. By a state agent;

3. Refusal to acknowledge the deprivation of liberty; and

4. The mens rea, intention to remove that person from the protection of the law.

The obligations of states anent enforced disappearances state:

I. There is an obligation to take appropriate measures to investigate;

2. There is an obligation to take measures to ensure that enforced disappearances constitute an offense under its criminal law; and

3. Where it is committed in a widespread or systematic manner, it may also be a form of a crime against humanity.

The expressed obligations are:

I. To hold individuals liable where they ordered this enforced disappearance, and

2. That they adopt the doctrine of command responsibility.

So one can be accused of the crime of enforced disappearance not only as a principal, accomplice or accessory but also on the basis of command responsibility. Under this circumstance, a
superior officer exercises control over his or her subordinates and there is a failure to prevent or repress the commission of the enforced disappearance under the three obligations.

**F. Martens Clause**

If one is still in doubt whether or not there is a sufficient legal basis specifically to criminalize enforced disappearance, we have what is known as the Martens Clause which states that:

> Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.

The Martens Clause was originally found in the Hague Regulations, which governs the means and methods of warfare, specifically, the methods of warfare. The problem is if one were to rely all the time on the specific international treaties to prohibit different types of weapons it will be difficult to catch up with the scientific developments. As a way of a catch-up provision, the Martens clause could cover this gap with the understanding that at all times human beings remain under the protection and empire under the principles of international law.

So it is a default provision, to ensure continuing protection of the individual in times of armed conflict or otherwise. That is why for adherence to humanitarian law, humanitarian workers would always invoke the law of humanity, for example, in insisting that they be allowed to deliver food and water supplies even to belligerents who have already been surrounded and cornered in
some isolated areas. The legal basis for allowing the delivery of such humanitarian supplies is still public international law, the law of humanity and the dictates of public conscience. Furthermore, there is one pronouncement of the Human Rights Committee, which is the monitoring body created under the International Covenant on Civil and Political Rights, to ensure state parties’ compliance on the obligations under the said treaty. The Committee recognized that enforced disappearance is actually a form of torture because of the mental pain and suffering that it causes to loved ones of the persons who have disappeared. This was emphasized in the case of *Elena Quinteros Almeida v. Uruguay*,\(^9\) where the Human Rights Committee said,

> Enforced disappearances inflict severe mental pain and suffering on the families of the victims in violation of Article 7 of ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment.

### IV. Conclusion

Now, after having discussed all the possible legal basis on criminalizing these killings and enforced disappearances, let me end, perhaps by saying that, yes, it is still preferred that Congress should legislate on this matter not only because it is part of our treaty obligations. Meanwhile, the protection of human beings, of Filipinos who are in fact victims of these international crimes, cannot be made to depend on Congress alone. That is why the Philippine Supreme Court has already rightfully invoked its rule making power to deal with this matter.

Thank you very much.

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How do you characterize a killing? How do you qualify it as an extralegal killing? And how do you qualify it as an enforced disappearance, at least from the perspective of international law?

Let me begin by saying that the Supreme Court itself has made its own characterization when under Administrative Order (AO) No. 25-2007 it defined extralegal killings and enforced disappearances to the killing of political activists and media practitioners. However, AO has been revoked and all of you now have the jurisdiction to hear cases involving extralegal killings and enforced disappearances and not just especially designated branches, but the characterization remains.

The characterization of the court is actually very narrow and what I would like to discuss is why the court had limited the killings to political activists and media practitioners. Is there really a reason for the court to ask the first level judges to give importance to killings or murder cases involving political activists and media practitioners? The reason is not because the Supreme Court gives special preference to these activists and journalists; it has to do with the fact that under our constitutional tradition, we

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*Delivered at the Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues: Extralegal Killings and Enforced Disappearances (Seventh Judicial Region, Batch 1) held on August 7–8, 2008, at the Marco Polo Plaza Cebu, Cebu City. Transcribed.*
recognize a hierarchy of rights, where the freedom of thought, freedom of expression, and freedom of the press are high up there in the hierarchy.

Why do you think we recognize this hierarchy of rights which has been the ruling of the Supreme Court as demonstrated in the fairly recent case of *David v. Arroyo*¹ and *Bayan v. Executive Secretary*² on calibrated preemptive response (CPR). Why do you think the Court has recognized historically that freedom of thought, freedom of expression, and freedom of the press enjoy a preference in the hierarchy of rights? There are, in fact, express rulings saying that property rights are inferior to rights such as freedom of thought, freedom of expression, and freedom of the press. It has to do with the fact that, under our constitutional tradition, freedom of thought, freedom of expression, and freedom of the press facilitate the free exchange of ideas.

Why is this free exchange of ideas important? There are at least three schools of thought in this regard. First, it is only through a marketplace of ideas that we can find out what the truth is. Remember that quote from Justice Oliver Wendell Holmes, Jr.:

> The true test of truth is the power of a thought to be accepted in the marketplace of ideas.

It is a means of finding out what the truth is, which is why even in criminal prosecutions for libel, it is not enough that the plaintiff or the people establish that what was written about is in fact a falsity because the courts, both of the Philippines and the United States, have recognized that in fact, there must be a showing of malice because absent the showing of malice, it is also important

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². G.R. No. 138570, October 10, 2000, 342 SCRA 449.
for the people to hear or read about falsities because unless you are exposed to the falsities, you would not know what the truth is. So that is the most important reason why we have put freedom of thought, freedom of expression, and freedom of the press high up in the hierarchy of ideas.

Secondly, in addition to the fact that it is important to have freedom of ideas in search for truth, it is also important to have a vibrant press because it is through the media that we generate debates, which, in turn, form opinions and public perceptions. The theory is in addition to the established branches and instrumentalities of government; it is ultimately public opinion that is the best defense against a despotic governmental entity.

The third rationale is the fact that many of us here are religious because that is how God wants us to be. That is why we as human beings are different from other biological creatures because we are gifted with the power of thought and communication and therefore the state should not intervene with this exercise. That is substantially the reason why we have constitutional adherence to the freedom of thought, freedom of expression, and freedom of the press.

Who are these political activists in the first place? They are highly opinionated, meaning, they are in the exercise of their freedom of thought and very noisy, and therefore always in the exercise of freedom of expression. Of course, media practitioners are journalists; they are the messengers who facilitate in fact the right of the people to receive information on the basis of which we conduct political discussions. As observed by Prof. Philip Alston, United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, in his report, he says:

you know the numbers on how many have been killed are not important because what is important is they are
happening, and they are hampering a free open debate on different issues affecting the nation which is indispensable if we are to arrive at solutions to our many problems.

There are however, some concerns about this AO that the Supreme Court issued. One issue is that we may have actually resorted to judicial legislation. Did we actually criminalize acts by an administrative order? My view in this regard is very clear. I have had more than an hour of discussion to show that in fact the legal basis to criminalize both these killings and enforced disappearances may not be found in Philippine domestic law but they already exist under customary norms of international law; and unlike treaty law, everyone is bound by customary law, whether we like it or not. This explains why even if we do not have domestic enabling legislation prohibiting and criminalizing torture, no one will ever say that despite the absence of this law, you can torture people in the Philippines. This is why even if until today the proposed International Humanitarian Law (IHL) Bill is gathering dust in Congress, no one can say it is okay for the military or any combatant groups to target civilians and other protected individuals because it is international law itself. It has provided for both the prohibition and the criminal nature of these acts. Furthermore, these crimes of murder and kidnapping are already penalized in the Revised Penal Code so when the court issued this AO, it is not as if they were criminalizing for the first time these acts under Philippine Criminal Law. It is only that they are sending the message and using the rule-making power of the courts to send the message that we must in fact prioritize the prosecution of these crimes because they are so offensive to our democracy, for the reasons that we have just discussed.

And the third point against this criticism is that our 1987 Constitution, which is a result of our painful experiences under the Marcos years, expressly now provides that the Supreme Court
shall have the prompt power to promulgate rules concerning the protection and enforcement of constitutional rights.

Earlier though, I did say that the Court’s characterization is rather narrow. In fact, outside the AO issued by the Court, there are already existing guidelines on when a murder should be qualified as an extralegal killing, and this is provided already by the United Nations in the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary, and Summary Executions from where I borrowed the term extralegal killings. This is the internationally accepted phrase to be used for what we refer to as extrajudicial killings which was referred to in the Minnesota Protocol. Under this are crimes recognized as cases of extralegal, arbitrary, and summary prosecutions which would then trigger the state’s observance of this protocol which even includes steps to be taken in gathering physical evidence.

So all these problems with extralegal killings and enforced disappearances are not new, they have been around for quite sometime now. In fact, the Latin American experience is instructive. There are also solutions provided by the United Nations system. It is just new as far as we are concerned because this is the first time that the Supreme Court and the Commission on Human Rights (CHR) have decided to address these problems more aggressively. The following are characterized as extralegal killings under the Minnesota Protocol:

a. political assassinations;

b. deaths resulting from torture or ill treatment in prison or detention;

c. deaths resulting from enforced “disappearances”;

d. deaths resulting from the excessive use of force by law enforcement personnel;
e. executions without due process; and

f. acts of genocide.

Later on, Dr. Raquel Fortun will give you a short discussion on Forensic Evidence. Believe it or not, there are now established physical evidence for torture and summary killings. This is why, in at least two cases, the CHR has taken a different position from even the courts on whether or not the killings should be classified as extralegal. Remember the Ortigas shooting incident and the Bicutan Siege? Some courts are saying that these should not be considered as extralegal killings because, in the first place, they are not politically motivated. But under the Minnesota Protocol, where there is excessive use of force, it should already be classified as extralegal killing, executions without due process and acts of genocide.

What is the implication of the Minnesota Protocol vis-à-vis the Supreme Court’s own characterization of extralegal killings? My submission is, as a bare minimum, we should recognize the characterization made by the Court in the AO, but as a matter of state obligation, we should expand the coverage of extralegal killings to include these instances as enumerated in the Minnesota Protocol. Now, torture of course has a legal definition under Customary International Law—it is the intentional infliction of mental or physical pain for the purpose of extraction of information or a form of collective punishment. Take note that I said this is the definition under Customary International Law. Why? Because under the Rome Statute of the International Criminal Court, the definition has been modified. Under the Convention against Torture, only state agents may be held liable for the crime of torture; but under the Rome Statute of the International Criminal Court (ICC), even private persons such as the New Peoples’ Army (NPA), Moro Islamic Liberation Front
(MILF), or Moro National Liberation Front (MNLF) may be held liable for torture, if in fact they have also inflicted mental or physical pain. Now, take note that the Minnesota Protocol nonetheless, also includes enforced disappearances as a form of extralegal killing. Here you have the same elements of the crime of enforced disappearance that are provided in the Rome Statute as well as in the International Convention on Enforced Disappearances i.e., abduction by state agents and concealment of the fate which place such a person outside the protection of the law. On the other hand, genocide is an intent in whole or in part to exterminate a nationality, race, religious or ethnic groups of people.

Coincidentally, the relevant constitutional provisions in support of the characterization that what is prohibited in fact is the deprivation of life without due process of law under Article III, Section I of the 1987 Constitution:

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Under the Minnesota Protocol, these are factors that will trigger investigation on the part of the investigators and other agencies of the government with the end view of establishing whether or not a person in fact is dealing with a case involving extralegal killing. In other words, this should prompt one to consider this not just as an ordinary murder but as a case of extralegal killings. What are these specific factors?

Consider the following factors where the political views, religious or ethnic affiliation, or social status of the victim give rise to a suspicion of government involvement or complicity on the death of the victim:
I. Where the victim was last seen alive in police custody or detention;\(^3\)

The most famous example is Jonas Burgos. The problem actually with the new rules is what happens when the military refuses to comply with orders of the Court of Appeals, which is in fact what happened in the \textit{Jonas Burgos} case. And if they will dare ignore the Court of Appeals, how about the Regional Trial Court (RTC) judges especially in far-flung areas? My theory is because of the \textit{Jonas Burgos} case, the Court of Appeals in fact has not been granting these writs of amparo pending before it for fear that they could be ignored. And I am coming up with statistics. It is a perfect record as far as the Supreme Court is concerned. They will issue, so that lawyers will claim a victory because the writ of amparo was issued in almost all, except for one; all of them issued by the Supreme Court but referred to the Court of Appeals for hearing. In the Court of Appeals, there has only been one case, involving the two farmers who escaped from detention. In fact, outside of that case, the only other case I have in my research is one in Agusan in Mindanao by an RTC that caused the reappearance of the missing person. In all other cases, the Court of Appeals will subsequently dismiss it after the writ has been issued or denied outright. All this happened shortly after. We also have the military just disregarding the Court of Appeals’ order to produce the provost marshal’s report. What will happen now to our judiciary when the obvious is known by everyone—that you have no power to compel compliance on the part of the military. But in any case, going back, that is only one factor that will make you think that this must be extralegal killing.

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2. Where the modus operandi is recognizably attributable to government-sponsored death squads;⁴

Where victims are disappearing and being killed in exactly identical circumstances—killed by motorcycle-riding and bonnet-wearing gunmen shooting at a very close range—then more or less that should trigger your belief that this must be an extralegal killing.

3. Where persons in the Government or associated with the Government have attempted to obstruct or delay the investigation of the execution;⁵

One example is refusing to come up with the provost marshal’s report. And the last is:

4. Where the physical and testimonial evidence essential to the investigation becomes unavailable.⁶

Now, there are avenues to investigations which are really more appropriate for fiscals; these are the kinds of evidence you should be looking for:

a. What evidence is there, if any, that the death was premeditated and intentional, rather than accidental? Is there any evidence of torture?

b. What weapon or means were used and in what manner?

⁴ Id.
⁵ Id.
⁶ Id.
Obviously, shooting someone from behind is different from being shot in the stomach.

c. How many persons were involved in the death?

You can find this out by the number of wounds, the number of shots.

d. What other crime, if any, and the exact details thereof, was committed during or associated with the death?

There may be a history of the victim being an activist and the suspected killer is somehow identified with the State.

e. What was the relationship between the suspected perpetrator(s) and the victim prior to the death?

The issue of a possible relationship between the suspected perpetrator and the victim prior to the death may be obvious.

f. Was the victim a member of any political, religious, ethnic or social group(s) which could have been a motive for the death?

According to Karapatan, the killings showed a pattern of their members being killed. Karapatan has the statistics to support this conclusion.
Determination of Crimes Involving Extralegal Killings and Enforced Disappearances*

Prosecutor Lilian Doris S. Alejo**

This session deals with how prosecutors determine, theoretically, extrajudicial or extralegal killings. According to Hon. Justice Lucas P. Bersamin, political killings are characterized by the political affiliation of the victims, the method of attack, or involvement or acquiescence of state agents in their commission.

The definition is more or less focused on the identity of the victims. But as described by Prof. Cristina J. Montiel of the Department of Psychology of the Ateneo de Manila University, extralegal killings are:

a. **physical punishments** without the permission of a court or legal authority;

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* Delivered at the *Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues: Extralegal Killings and Enforced Disappearances (Seventh Judicial Region, Batch 1)* held on August 7–8, 2008, at the Marco Polo Plaza Cebu, Cebu City. *Transcribed.*

** Pros. Lilian Doris A. Alejo was appointed Senior State Prosecutor at the Department of Justice (DOJ) on April 6, 2004. Ten years prior to this, she was State Prosecutor from March 16, 1994, to November 1998; and State Prosecutor II from December 1998 to April 2000.

Before her stint as a Prosecutor, she served as a Public Attorney in the Special and Appealed Cases Division of the Public
b. politically motivated, i.e., the victims are usually punished for their political beliefs and behaviors; and

c. carried out in the context of protracted war, with the more powerful group (State) hitting the less powerful group or threat to the State. (Emphasis supplied)

The definition of enforced disappearances by the International Convention for the Protection of All Persons as defined in Article 2 is:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or a group of persons acting with authorization, support, or acquiescence of the State, followed by a refusal to acknowledge a deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

Attorney’s Office (PAO) and as a Legal Officer in the Legal and Evaluation Division (LED) of the National Bureau of Investigation (NBI).

As an active child advocate, Pros. Alejo has organized several seminars on child protection for the Special Committee for the Protection of Children. She has also served as facilitator, reactor, resource person and lecturer in seminars and workshops on women and children, and as participant in various seminars here and abroad.

Pros. Alejo earned her Bachelor of Arts in Philosophy and Bachelor of Laws degrees at the University of Santo Tomas. She passed the bar exams in 1985.

Pros. Alejo is, at present, Vice Chairperson of the Department of Justice Task Force on Extrajudicial Killings.
Now, these are international instruments but the prosecutor works within the framework of our local laws, specifically, the Revised Penal Code (RPC).

The Department of Justice (DOJ) in its Department Order No. 841, dated October 10, 2007, states that:

extrajudicial killings shall refer to cases where the suspects or perpetrators are members of the military, police, and other law enforcement agencies.

By this definition, the DOJ focuses on the perpetrators only. What we are saying is this—technically, if the offender is not a law enforcer the DOJ will not label it as an extrajudicial killing (EJK) or extralegal killing (ELK). In the absence of a special law to that effect, we have to work within this parameter. Earlier, Department Order No. 257, dated March 27, 2007, created a Task Force on Human Rights and Extrajudicial Killings. The Department of Justice Central Office issued Office Order No. 63, dated March 27, 2007, addressed to all regional state prosecutors to create a group of state prosecutors to handle cases of human rights violations and extrajudicial killings. Later on, Department Order No. 451, dated June 18, 2007, created a Task Force Against Media Harassment which covers all victims who are media practitioners.

At this juncture, in the absence of a special law on extralegal killings, we are left with no choice but to apply the provisions of the Revised Penal Code that classify such crime as murder. We simply file cases of murder and kidnapping because we usually do not go to courts invoking violations of international instruments. We have to work within the parameters of the Revised Penal Code. Recently, the Office of the President (OP) gave us a list submitted by Task Force Usig and by non-governmental organizations (NGOs) like the Karapatan, and the Asian Federation Against Involuntary Disappearances (AFAD). Allegedly, these are cases of extralegal killings.
In my capacity as Vice Chair of the Task Force on Extrajudicial Killings, I was surprised to see that some of the cases were robbery with homicide and robbery per se, which is highly amazing. Usually one gets cases of kidnapping and murder. I wish to point out that murder, under the RPC, more or less covers extralegal killings already. Article 248 of the RPC states:

**ARTICLE 248. Murder.** – Any person, who, not falling within the provisions of Article 246 shall kill another shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means or inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by RA No. 7659).

Murder under Article 248 of the RPC is an unlawful killing of another with any of the attendant circumstances enumerated
therein. Treachery, of course is when somebody kills another, taking into account that the perpetrator can escape, and then in consideration of a prize, reward or promise. One will never know why these people are killed by means of inundation, fire, shipwreck, stranding of a vessel, derailment or assault upon a railroad, falling off an airship or off any motor vehicles; or under circumstances bringing about great waste and ruin caused by any of the calamities enumerated; or by an earthquake, the eruption of a volcano, man-made destructive cyclone, an epidemic or any other public calamity, sometimes with evident premeditation and with deliberate cruelty by inhumanely augmenting the suffering of the victim or outraging or scoffing at his person or corpse. That is already amended by Republic Act No. 7659, the Law on Heinous Crimes.

As to Kidnapping, Article 267 of the Revised Penal Code also more or less covers enforced disappearances. It states:

**ARTICLE 267. Kidnapping and serious illegal detention.** – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

x x x x
The elements of course include the offender being a private individual, because if the offender is a public officer, the crime is arbitrary detention where the officer detains another or in any other manner deprives the victim of his liberty. The act of detention must be illegal if the kidnapping or detention lasts for more than three days; or committed simulating public authority; or inflicting serious physical injuries; or threats to kill are made, or the person kidnapped or detained is a minor, female, or a public officer. So more or less looking at the provisions of the Revised Penal Code, we can see that the elements of the ELK under the various international instruments are already there.

Here, as in reports given to us by the Office of the President, the offenses are murder, attempted and frustrated; robbery with homicide, is questionable, robbery, kidnapping, and physical injuries. There is appropriate punishment, of course, provided for by the Revised Penal Code and by special laws especially Republic Act No. 7659, the Law on Heinous Crimes.

The challenges to prosecution include forensic capability and technology which is not yet sufficiently developed or utilized so that the prosecution depends so much on witnesses. In my more than 13 years of being a prosecutor, I have not seen any scene of the crime investigation report. I have seen police reports, transmittal letters to the prosecutor, post-mortem examination reports, autopsy reports. I have only seen a description of a dead person inside a morgue as stated in the report of the police, but never a report of the scene of the crime, for example, where bullets were found on the scene of the crime. I am sure none of the prosecutors have seen a specific SOCO report either; I mean, the technical one. So that is why we depend so much on witnesses. We have deoxyribonucleic acid (DNA) testing, here in the Philippines but no specific DNA report made by the police or the investigator.
And because we depend so much on witnesses, we have difficulty when the witnesses refuse to come forward or are unwilling to cooperate for fear of reprisal. We also have difficulty because of ineffective investigations. I do not know why sometimes the investigations are so inefficient or lacking. Of course, the element of corruption is also another factor; allegedly, the perpetrators are from the military or police personnel. How will they fairly investigate their comrades or their colleagues? That is a problem for the prosecutor. Then there is the serious intimidation of witnesses and apparent lack of an effective witness protection program. Other difficulties are offers of financial compensation to victim’s family which lead to settlement of the case and eventually to desistance; and lack of positive identification of the perpetrator by the witnesses, which in effect results to lack of having someone to indict.

The absence of a special law aggravates the problem of prosecutors. Law enforcers have different definitions of the concept of ELK from the NGOs, that is why we do not have the same statistics.

**Percentage of EJK/ELK Cases Per Region**
Region VII – ELK Cases

<table>
<thead>
<tr>
<th>NO</th>
<th>I.S.NO./ CRIMINAL CASE NO</th>
<th>VICTIM</th>
<th>RESPONDENTS/ ACCUSED</th>
<th>OFFENSES</th>
<th>STATUS/ UPDATES</th>
<th>PROSECUTOR’S OFFICE/RTC/ MTC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IS# 2007-793</td>
<td>Marlene Esperat rep by Valmie Garcia Mariveles</td>
<td>Osmeña Montañer &amp; Estrella Sabay</td>
<td>Murder</td>
<td>Petition for Certiorari to nullify issuance of W/A was filed by the accused granted last 03/25/08. TRO was received by RTC Br. 7 Cebu City last 03/26/08 effective for 60 days (Judge Simeon Dumdum, RTC Br. 7 Cebu City).</td>
<td>RTC Br. 7 Cebu City</td>
</tr>
<tr>
<td>2</td>
<td>IS# 06-2860</td>
<td>Victor Olayvar</td>
<td>Marilou Betasa, et al.</td>
<td>Murder</td>
<td>Case was dismissed last 12/04/06 by Pros. Eric Ucat due to insufficient evidence presented. MR denied last 02/05/07.</td>
<td>OPP-Bohol</td>
</tr>
<tr>
<td>3</td>
<td>CC# 6662-2002</td>
<td>Edgar Damalerio</td>
<td>PO1 Guillermo Wapili</td>
<td>Murder</td>
<td>Accused Wapili was found guilty for murder and sentenced by Judge Romeo Cidilla, Jr. of RTC Br. 19 Cebu City, suffered the penalty of reclusion perpetua; paid damages for the family of the victim amounting to ₱135,000.</td>
<td>RTC Br. 19 Cebu City</td>
</tr>
<tr>
<td>4</td>
<td>CC# 2568</td>
<td>Marlene Esperat</td>
<td>Estanislao Bismanos, Gerry Cabayag &amp; Randy Grecia</td>
<td>Murder</td>
<td>Case was transferred from RTC Br. 20 Tacurong City to RTC Br. 21 Cebu City; Accused were convicted last 10/06/06.</td>
<td>RTC Br. 21 Cebu City</td>
</tr>
<tr>
<td>5</td>
<td>CC# 71886</td>
<td>Allan Dizon</td>
<td>Edgar Belandres</td>
<td>Murder</td>
<td>Accused Edgar Belandres was found guilty of murder last 2006 by Judge Ireneo Gako, Jr. of RTC Br. 5 Cebu City.</td>
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Thus, the absence of a special law, has made the concept of ELK dependent on the application by individual prosecutors concerned. The norm is to consider it as murder, arbitrary detention, or kidnapping.
Forensic Evidence Involving Extralegal Killings and Enforced Disappearances: The Philippine Perspective*

Dr. Raquel B. del Rosario-Fortun**

Science applied to matters pertaining to law would be Forensic Science. It has been mentioned time and again that it is one tool which could actually help you in these cases that you are arguing about. What I am going to show you are some actual cases to illustrate that we do have a big problem. This should not be an issue if we have a basic system of investigation in place, and, as mentioned earlier, if our methods in forensic are actually at par

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with first world countries. So I will present to you the way investigation is being done in the Philippines. A word of warning, the pictures can be graphic; however, I like them that way because it is reality so you will understand how we deal with these cases.

Figure 1

If one chances upon a body like this, dumped face down on the ground, or recently killed with restraint, with injuries to the head, and that he had no less than four bullet holes, what would you call this case? One may argue that it is either extrajudicial killing (EJK) or extralegal killing (ELK). In our case, we do not use murder either, so I will discuss to you how it is from our point of view. This is an obvious case of a violent death, and definitely occurred under suspicious circumstances. This is a basic line to define deaths that should be investigated, and it presupposes that this particular case should undergo an investigation. If death is sudden, unexplained, under suspicious circumstances – investigate.

In forensic investigation, the questions that should be asked are the following:

1. Who is the victim?
2. What are the injuries?
3. How were the injuries sustained?
4. Where and when were the injuries inflicted, and by whom?

As far as we are concerned, this death is homicide. One may argue that it is murder, but again there is a difference in terminology in forensic science and medicine; they do not have murder as a category. That has a legal definition, so we stop at homicide, which we define as death that is due to the action or actions of another person or other people. That is how we begin our case investigation. In reality, we keep arguing about the specific definition for extrajudicial or extralegal killings. We also keep arguing about numbers. In one article, the police force tasked to review these cases insists that it is only this much or this many, but the non-governmental organizations (NGOs) are saying that the numbers were trimmed down when actually it is a lot more than that. Again, one may go back to your definition or to different parties’ definition of these killings. In the article below, to cite as an example, the police probably or actually were thinking that those deaths which were induced by private motives not based on work or political affiliations or ideologies should not be classified as EJK or ELK.
Going back to the case of that poor unidentified man dead from gunshot wounds to the head, of course, one is clueless as to what happened or who killed him, in the absence of an investigation. This is where forensic science comes in. How many gunshots? One might think that there is a particular injury that would make it an ELK case; or think that 20 gunshot wounds in the body are too much. This is too subjective. Nineteen shots are too many; all you need is one to kill. Is that it? If the victim was shot from the back or on the back of the head, one will jump to the conclusion that it seems to be an execution. Is that it? If he was restrained, there would be signs of torture, body being dumped or attempts to conceal the remains. Is that it? Again the identity of both the victim and the perpetrators would not be known. The bottom line is investigation is necessary to be able to know what happened, and that is our problem. We do not really have a legitimate death investigation system the way other countries have. What we have right now is a body full of gunshot wounds. Unfortunately, perpetrators get away with murder in the Philippines.

We are hardly science-based in our methods. The lack of procedures and tests that we use in the Philippines are actually embarrassing because it means we have not kept up to date with the developments abroad. In the Philippines, if nobody complains, files a case and sees the case through, requiring money, or the one filing the case may not be an aggressive moneyed complainant, there is not going to be a case. There is even interference by media or even local politicians.
I say we do not have a death investigation system because if a dead body is found, a system kicks in automatically; procedures begin, but it is not so in our case. So if death is sudden, unexpected, suspicious, violent, or, on the other hand, simply a natural death, some of these cases are mixed up. Some would end up with just any plain doctor and some end up with some sort of “medico-legal” referral whether to the National Bureau of Investigation (NBI), Philippine National Police (PNP) or the Municipal Health Officer (MHO). Sometimes the required death certificate is not even produced. It gets registered but then the body gets buried and worse cremated ahead. We do not even have laws regulating destruction of the body because the remains are gone once it is cremated. We also have an outdated reference book. It is good though for historical anecdotes. It mentions a coroner, a
medical examiner, and a medico-legal officer, which are simply called doctors examining these bodies. It is not a system, moreover. In other countries when coroner system or a medical examiner system is mentioned, those who do the work are called coroner and medical examiner and they are part of a system. In the Philippines, you can really have violent, suspicious, unnatural deaths without even the benefit of a death certificate. The bodies are disposed of even registered.

Part of the problem is the need for new legislation. The fact is that we still follow and are guided by the Sanitation Code of the Philippines, Presidential Decree No. 856, the Implementing Rules and Regulations of Chapter XXI on Disposal of Dead Persons. Anything one needs to know about dead bodies, is there, but if one resorts to the Sanitation Code, it is hopeless. The loopholes of the law are as follows:

- No distinction between hospital and forensic autopsy;
- Any doctor is authorized to perform an autopsy; and
- No consent, no autopsy.

Forensic autopsy is applied to a legal issue. In cases where people die of natural death in the hospital, there is no legal issue here. It is very dangerous that the law states, “any doctor once licensed, can perform an autopsy.” Performing an autopsy is a skill that one learns and experience is crucial to do it correctly. Practically, if there is no consent, one cannot do an autopsy. If the family refuses, the police cannot do anything and will not push it. This is where the problem of EJKs or ELKs would be more glaring. What if one has an unidentified body dumped on the ground? Who is going to consent? Who is going to push for an investigation, if that is required? In this case, a standard procedure should kick in, the State should take over and do its work.
Now, going back to the case, the only piece of paper that could be produced pertaining to the examination are vague drawings of a human form done by an MHO somewhere in Bataan. You cannot blame the MHO, who has a lot of other duties, for the alien-like drawings. Examining dead bodies is not the main function of the MHO. In some cases, the MHO is even expected to be the embalmer. Anyway, the only document we could come up with regarding this body is this piece of paper with the doctor’s notations.

Figure 4
It is even wrong to presume it was an accident. The MHO was saying it was a shooting incident, identifying a bullet hole in the right temporal area at the back of the right head and a ligature mark around the neck, some abrasions, and restrained marks on the wrist. As a lawyer or prosecutor, are you willing to go to court with this piece of paper? Obviously no. One could not tell with two bullet holes in the head if there were two and three shots. It did not say here which one is the entry point and which one is the exit. Was the body even opened up? No, the MHO simply did an external examination. But she could not be blamed because the procedure was not taught in medical school. Also, when she did the examination, the local government did not give her a decent place to do it. This particular case was brought to the attention of the Commission of Human Rights (CHR) at some point, but nothing happened. So what happens to a typical, unidentified body? First, the body is brought to the local funeral parlor and wait for someone to claim it; that is our way of establishing identity, tried and tested. When no one goes to the funeral parlor to claim the body, according to the Sanitation Code, within 72 hours, the body has to be buried. The body is embalmed but they do not want to hold on to it anymore so they find a spot at the periphery of the cemetery by the fence and dig somewhere there. No marker, no record in the cemetery that here lies an unidentified male cadaver found on this date, etc.
But if one moves closer to the wall, and push away the vines, the sepultureros—the workers in the cemetery—will point to a marker there, which seems to be a black cross. If these sepultureros eventually die or move away then nobody would know that there was a body there. With the absence of a complainant and a witness, there is not going to be a case and, therefore, someone will get away with murder.
This is the setting that we have that is so ripe for these EJKs or ELKs but, ideally, any suspicious death or injury should be investigated and the main sources of information should be tapped. One does not stop asking people what they saw or what they witnessed. There is need to find hard physical evidence that would come from a scene investigation. The body is the evidence and it should be studied well.

Figure 7

This is a picture of a basic crime scene—there is a body and some objects, all of these are evidence. Police should set up a parameter to contain the scene and it should even expand it and make sure it is respected. People who are not needed in the area should stay out.
Only in the Philippines does one see media as friends of the police. I say that because I do not really understand how they can take footages of the scene itself right there. In other countries, they have to rely on long telephoto lenses; they are like vultures hovering around in choppers because that is about all they are able to shoot. But in the Philippines, no problem, they let you in, and even lift the tape for you. These images are in the papers and in the news. There is even a show called SOCO which reveals findings in the show. This is not good police work. We are not supposed to be releasing our findings especially if it is still ongoing. I am sure the killers are watching.

I will tell you about this particular case as well, just to show you how important the operations in the crime scene can be.
Have you heard about this nine-year old child who was allegedly shot somewhere in Davao, in a Military-NPA encounter in 2007? It was alleged that she was a child soldier because she was allegedly found with an M-16 rifle. Then the community protested that it could not be because she was just a child. The Commission on Human Rights was consulted at some point but I think, disappointingly, CHR did not investigate it. Yes, CHR said she died in a crossfire and she was not really a guerilla. But there was
something missing and people were not happy because one needs an investigation done here. I came in because I was asked by the NGOs to look into the case. As with any typical case, I asked for investigation findings. Earlier, Prosecutor Lilian Doris S. Alejo mentioned her frustration that when she asks for findings, SOCO reports tell nothing much, and I share the same frustration. Something as basic as a scene sketch cannot even be produced. The only document I got from SOCO was what they called the physical identification report which indicates among the list of evidence submitted the house and some trees which do not make sense. In that report they were describing trajectory as to the front of the tree or the left side of the tree. Does the tree have front or back or sides? It does not make sense. So I had to ask some of the NGO members to go ahead and come up with a sketch which turned out very informative.

Figure 10
This was the house. A child’s body was found here and allegedly the military were here. There was a very nice stream here; and allegedly, NPAs ran away from here trying to escape, but a body of one alleged NPA was found there, near the child’s body. It was also artistically done, showing the position of the body of the child with injury to the head and the left elbow, and marks that apparently represented a lot of spent cartridge casings. So I asked, what happened to the cartridges? People who were there, not knowing what to do or not to do, gathered these, and since nobody came to do an investigation, there was nobody to tell them what to do with the casings. Eventually, I think, they ended up being sold by the kilo. So that is what happens to evidence in the Philippines.
When we exhumed her, she was in very bad shape because of the delay, more so because of the injuries to the head. She was in such terrible shape, that for me to check the gunshot wounds in the head, I had to glue the skull pieces together like a jigsaw puzzle. So I looked at the front and the back, and saw a large gaping hole. I could not tell anymore whether this was the bullet exit or the entry. I tell you, if you put me on the stand, could I commit which is entry, which is the exit? It would be very difficult.
Going back to the sketch, I said this is very telling unlike the autopsy that could not tell you much, as to how she died. The gunshot wound on the head was a cause of death, but what really happened? I think an important fact was that right next to the body were may be a hundred spent shells that probably came from the weapon of a lone NPA guerilla shooting right next to a child who unfortunately got caught in the crossfire. Maybe she was on her way home but walked right into the place where the military was shooting back. One problem here, and I look at it objectively, it is also unfair to people in uniform because we get their side but the other side would simply refuse to give a statement, although in the first place, they had no business mingling with the local residents. They are eventually to blame for the death of the child even if the bullet that killed her came from the military.
What then constitutes useful evidence? These are the body; objects on or with the body; injuries; tissues/fluid samples; and other medical findings.

The evidence is important in trying to understand what happened. The body is just as important as the scene because the body is evidence especially if one considers the injuries. In trying to reconstruct, basically, evidence properly discovered, preserved, documented, and analyzed can help even in the absence of those seemingly all-important witnesses. This is a way to reconstruct the events. Remember the picture of a man on the ground? We managed to investigate that case only because of the still missing Jonas Burgos. I am relating this because in our system, with a body on the ground, there would be worried relatives looking for missing people themselves. So what do they do? They go around and check on found bodies.

Figure 14
THE SEARCH FOR JONAS BURGOS goes on after his relieved mother Edita Burgos, Rep. Etta Rosales and other human rights groups visit a site where a man found dead in Abucay, Bataan, turned out not to be the missing activist-agriculturist.

Figure 15

Figure 16
Mrs. Edita Burgos was doing just that and I think she continues to do so. She heard news of two bodies in Abucay, Bataan, and promptly went there to look at them. She checked on the bodies but based on one of four pictures, she said, “No, no, it is not him.” CHR was there and then I had a meeting with then CHR Chair Purificacion V. Quisumbing, and my challenge and question to her was, “Ok, so that was not Burgos, but that is still someone, killed and unidentified. So what do you do with that body?” We came up with a team this time around, a full complement of SOCO people came with us, so it was a CHR-SOCO adventure. We went back, bagged him up, and this was the rest of the story. He was dug up by the original sepultureros which helped because they were telling us what they did and did not do to the body and that helps in the absence of any record. So they told us, “Do not worry, he is still intact, we simply changed his shirt but everything else that we got from him is still there in the coffin including the bullets.” They took pity on him. So I said, “What bullets? I never heard of any bullets mentioned in the report.” I asked the doctor who did the examination but he did not know anything about the bullets. The sepultureros could not tell either how they ended up with the bullets so these are very mysterious bullets. Everything was placed in bags so we took these with us to examine.
Eventually, when we took the items out of the bags, inside was a mishmash of trash and relevant evidence. In the first place, what were the school writing notebooks, gloves, rags doing with a body? It was trash from the funeraria or the sepulturero’s son or daughter. We know from the picture that he was wearing the pair of shoes, the bandana or handkerchief was sticking out of a backpocket, and the torn shirt came from him. Just to drive home the point, these funeral parlor people could be partners in dealing with dead bodies, but they are loose cannons, as they are left on their own. What kind of death investigation system is that, those dealing with evidence, are not trained. In fact, they should not be touching evidence at all.
Anyway, this is the funeral parlor procedure before embalming attached to the wall of a funeral parlor. It gives you goose pimples because what if this is a forensic case. They freely disinfect, relieve the rigor mortis, wash the body, shave the facial hair, cut the fingernails, and then they proceed with the embalming even before the medical examination. So they are on their own. This is critical because there could be some evidence there like DNA.

Going back to the case, apparently they were dumping things here and there, so it is very difficult now which is significant and which is not. I was wondering, what is the ball cap doing beside the man, and he was not wearing the slipper with him. They said that this was his but nowhere is there a record of an investigator finding this cap on the body or at the scene. The rosary is from the funeral parlor, they placed it on his hand, assuming that he was Catholic. The belt was on him, so were the keys and deodorant, which may be his, but this all-important bag, which was a piece of trash, contained apparently the mysterious spent bullets and shells. Why would you have a bullet shell on a body? When you fire a gun, the bullet shell is discharged or ejected. But nobody could tell, not even the investigators, where these came from. Nothing, no report, no scene investigation, so one comes to a
conclusion, they buried the body and the evidence. They were about to forget all about him. He was on his way to oblivion if not for Jonas Burgos.

Another point I would like to make is that, if one wants to do a good investigation, one needs equipment. The doctor had nothing. She simply did an external examination because she did not have a morgue. When we exhumed the body, CHR doctors were telling me, “Ma’am, we have to do the examination here in the cemetery because there is no place.” I said, “No way.”

But, it was good that the municipality had a new x-ray machine and they accommodated us because x-rays are needed for gunshot wounds; otherwise, you would not be able to tell if there were still bullets left in the body. At the back portion of the Municipal Clinic, we used clothespins for drying our plates. There was a frame used for hanging trash bags to segregate trash and I thought that would be suitable as a table. So, improvise under the circumstances. That is the name of the game in a third world country because nobody sees it fit to invest in equipment for this. So we put the gurney on top of the improvised table and proceeded
with the examination. This was much better than the cemetery. The body was still fresh when he was found; that would have been the ideal time to do the examination. Months after he died when we did the exhumation, he looked actually still decent because he still had some flesh but in time you are going to lose that too. Embalming helped but you do see artifacts from embalming.

Documentation is also very important in an investigation. A lot of photographs should be taken of the body the first time around but we still took pictures when it was our turn to examine.

These are post mortem changes, the slipping of the skin.

Figure 22
The forensic autopsy procedures:

- External examination (injuries, distinguishing marks, tattoos, scars; iatrogenic marks);
- Internal examination (injuries, natural disease process);
- Microscopy; and
- Others (postmortem x-ray; samples for toxicology).

Ideally, the forensic autopsy should be a very detailed external examination carefully documenting the injuries.
Remember, this is an unidentified individual so we take pains to document all distinguishing marks, tattoos, scars, iatrogenic that would mean doctors’ punctures, incisions, etc. but this is not applicable to this case. Only after doing a detailed external exam do we proceed with a Y-shaped incision. We open and take a look inside, again document the internal injuries and then go from organ to organ checking for any signs of natural disease. This is the way a pathologist should perform an autopsy. We take sections, and we look under a microscope. Postmortem x-rays for this case was a must and that we did. He had no bullets anymore inside the head. That was good.

In other countries, toxicology is done by taking samples of blood and urine for screening quantitative tests for substance abuse
or alcohol. In the Philippines, we cannot do that because no one is going to pay for the tests. Our laboratories are inherently weak when it comes to toxicology so I even have to send some of my cases to Singapore. In this particular case, is it necessary to do toxicology? Remember he has been embalmed. In some cases I have done so. I would aspirate. Our eyes have vitreous fluid that is still suitable for examination. In my own examination, I found not just two bullet holes but two more. The doctors who saw him first completely missed a bullet hole through the ear and another one under the chin. No bullets have been found inside so we are dealing with two perforating or through-and-through gunshot wounds. Now to be able to determine which is the entry or exit of the bullet, this is something where I will have to bank on my years of experience.

It is not easy, but my best bet is this is the entry, and the bullet exited at the chin. I think the one in the right ear was another entry which exited on the opposite side near the tab of the head. He also had a ligature mark, and a pathologist would now look at the skin and eyes for small hemorrhages because this implies asphyxia, another element as to the cause of death—the gunshot wounds.
wounds on the head, which can really be fatal, and or asphyxia. It gets more and more complicated.

Figure 26

I had to take out the brain and again, I had to bank on my skills as a pathologist to be able to assess the trajectory. Again, does this support my contention that this is entry or exit? It is complicated, it is hard but we keep trying. And then the findings were reduced in what we call a forensic autopsy report. The forensic autopsy report should contain the following:

- Pathologic diagnosis;
- Opinion (summary, cause and manner of death);
- Date, time and place of autopsy;
- Identification;
- Evidence of medical intervention;
- External and internal injuries;
• Organ systems; and
• Microscopic findings.

We do not submit the messy form but we come up with a formal forensic autopsy report which would have all the details such as when the autopsy was done and what the basis was for the identification. In this case, the body remains unidentified but the marks should be detailed in the report. There will be no need for another examination because these marks will disappear but documentation had been done and the next person reviewing would simply have to rely on what had earlier been seen.

The examination of external and internal injuries makes the report long because we go by organ to organ to be able to determine whether the person died of a natural disease, or any other factor which could have altered the effects of the injuries, etc. The front sheet containing the summary of the findings under what we call a pathologic diagnosis, one will find the opinion which carries a short summary of the incident and our determination of why and how the person died—two perforating gunshot wounds to the head and asphyxia due to ligature strangulation. As to manner of death, remember we do not have murder, so that would be homicide for us.

Looking at it in totality, remember that the body does not stand alone; meaning we do not just come in concentrating on the body, but we are also getting bits of information as to how it was found. So, the scene investigation is important. These are the basic forensic autopsy concerns:

• Death scene investigation;
• Identification of the body;
• Time, cause, and manner of death;
• Complete external and internal exam;
• Documentation of findings;
• Toxicology; and
• Other tests

It is crucial to establish identity of the body and postmortem interval. How long had that body been dead? What is the cause and manner of death? A complete external-internal examination should be done. Everything is documented.

Figure 27

Again, if this is the only piece of paper existing what case do we have? Nothing, because it does not actually tell much.

This is our reality check. As a prosecutor or judge, where does one fit in the scheme of things?
You are way up there when the case is already in court but where and when did it start? Of course, at the scene where it happened. So if the evidence is not recognized, it is missed. What is going to be collected, analyzed, and interpreted for the court to appreciate? Nothing. But as Prosecutor Alejo said, our prosecutors are now expected to be there at the scene during the investigation. It is not feasible especially in our situation, although in first world countries they have already started that. So we rely on investigators here and they must do their job right. And that is scary considering the thinking, training, and competence level of some investigators out there. I liberally borrowed this material from the powerpoint presentation of a controversial Metro Manila homicide investigator and it raised goose pimples. He said the following were his strategic objectives one to six, and look, there seems to be something wrong.
“Strategic Objectives” according to a Metro Manila homicide investigator:

1. Identify Suspects
2. Locate Suspects
3. Identify witnesses
4. Identify victim
5. Establish facts
6. Gather Evidence

Look at the sequence. The last thing he is going to do is to gather evidence to establish the facts. The first thing he is going to do is to identify the suspects. What does that mean? That means you first pick up your culprit and then you build a case against that person. Scary, but this is the Philippines. Does it take the EU or any foreign body to tell us, “Look, go back to basic police work, that is your problem.”

Figure 29

ONE YEAR AFTER
US rights group finds not one case solved

By Katz Pedroso
Inquirer Research

A YEAR AFTER STARTING AN INQUIRY into extrajudicial killings and disappearances in the Philippines, the US-based group Human Rights Watch (HRW) has returned to find that not one of the cases it investigated had been resolved.

“The problem is, of all the cases we investigated when we were here in September last year—17 extrajudicial killings and two disappearances—there has not been a single conviction,” HRW member Beda Sheppard told Inquirer editors yesterday. Sheppard is the author of the recently released HRW report, “Scared Silent: Impunity for Extrajudicial Killings in the Philippines.”

The 84-page report details how members of left-wing political parties and nongovernment organizations, political journalists, outspoken clergy, anti-mining activists and agricultural reform advocates had been gunned down or abducted, and how these
These cases are not really special, they are homicides. Then do a good homicide investigation, as simple as that.

Another controversial case is about two missing female UP students. What is happening? Same thing, their parents are still looking for them hoping they are still alive. In an interview with the parents for anti-mortem, they frankly told me, “We are hoping neither is hurt in case they are found.” That means they could still be alive somewhere, but maybe deep inside, they are longing for the case closure.
Again a body was found on a grassy lot somewhere, in worse shape than the other guy found earlier. The body was burned so there was an attempt to destroy evidence. Would that now make it more favorable for either EJK or ELK? Would this fall under the list of the PNP or Karapatan? Again, as far as forensic science is concerned, this is a violent death, a homicide. There was an attempt to destroy the body. The challenge is to find out what is the cause of death, to look for evidence, and to identify the person. At some point, that body was exhumed months after, which was worse because there was no doctor to examine the body, not even that piece of paper. Eventually, I had to tell the parents, “No, it is neither of the two girls.” You can imagine they were relieved but, at the same time, fearful that the next dead girl could be their daughter. This was how the body on the ground looked upon discovery, but by the time I saw it, I think a year after, it was unrecognizable. Remember there was burning and decomposition, so the scars were not there anymore; the identifying features are
gone. She had four gunshot wounds to the head, but the twist is, those gunshot wounds did not kill her, because the bullets did not penetrate. So it is very difficult and complicated. As doctors, we contribute in part to a puzzle pertaining particularly to the body that contains the evidence, but where is the rest of the puzzle? If we do not have team players with us, i.e., competent professionals with training, how far can we go?

We do have some expertise in the Philippines but I think the first step is to recognize that if one has problems, because one is not trained to recover skeletal remains, then by all means, ask for help.
These pictures from the powerpoint presentation of Morris Stidbolbins, a doctor and anthropologist, show the wrong way to exhume. When he presented this in our course in forensic genetics at the University of the Philippines just recently, I cringed in shame because he cited the Philippines as setting a bad example of “visual recognition” of the missing. In one of the mass graves dug up in August 2006, we simply relied on visual recognition, so there was no accurate identification. Let me ask you, can you recognize these skulls as that of your relatives? This is not even the way to handle skeletal remains, but what is happening is we do this for show. When you hold up the evidence for the cameras, that is so unprofessional. These are pieces of evidence. We do not use these as props, and doing so does not accomplish anything.

We have cases, allegations of rubout versus shootout. Prosecutor Alejo already pointed out that there is a basic defect.
in our system, that is, the lack of an objective way by which an investigation is done, in the sense that authorities do the killing and then they end up investigating themselves. So you have a questionable situation.
Anyway, in this case, it would have turned out to be just another simple shootout but it turned out that a part of it was shot by a media crew; some footages were taken and additional shots were done. Questions now arise about planting of evidence and so on.

In the 2002 Cavite kidnap for ransom shootout or alleged rubout case, I was able to examine one body out of the three men found dead because of the Volunteers Against Crime and Corruption (VACC). They asked me to investigate a report that there was a suspicious gunshot wound in one of the victims, and true enough, this was something very odd. If it was a shootout, one can explain the two gunshot wounds to the trunk caused his death. What was very odd is the shot right smack in the middle of the lower lip.

If one examines the mouth closer, the bullet hit the teeth here in the mandible, the lower teeth and an upper tooth. How can that be? There were indications that the bullet hole was actually fired
at contact range so that means the muscle was right next. That is the only way to explain this. When I testify at CHR, of course, I expect a long and hard cross-examination by the defense. Anyway, what if the victim was smiling when he was shot in the mouth? If there are two gunshot wounds on the trunk, there is no reason actually for one to smile. We read the papers of a shootout happening here and there. Are we sure it was a shootout? It is really unfair to our people in the military and the PNP because, for all we know, it could have been a legitimate shootout. But there is always a cloud of doubt and I think the basic problem is we do not have a system.

Actually, this is the reason why EJK or ELK is such a big deal in the Philippines because we do not have a check and balance in place that would automatically pick up rogues in uniform and check abuses in human rights. So, to end my lecture, this is what we need: competence, impartiality, and diligence to investigate.

To summarize, we do not have a death investigation system and right equipment. Neither do we have enough competent and trained investigators, especially doctors, to examine the dead. Basic questions also need to be addressed: What happens to information we get from bodies found? Where do families go to look for a missing loved one? Presently, they do it on their own. We do not have a database center. Some information is with the National Bureau of Investigation (NBI), Philippine National Police (PNP), CHR, and some with me. I do not even have an idea what to do with my findings. To whom do I give them? The work should not stop to improve the system.

Ladies and gentlemen, we have a big problem, but forensic science can help us, if we only make use of it. Thank you very much.
The Doctrine of Command Responsibility*

Prof. Carlos P. Medina, Jr.

I. INTRODUCTION

Our task, at least for this session, is to find out whether the Doctrine of Command Responsibility can be applied in our country particularly within the context of a phenomenon we call extralegal killings and enforced disappearances.

Let me start by saying that this is a doctrine of international law, particularly of international criminal law. From the very start, the task of international law has always been to address atrocities, massive human rights violations especially arising out of World War II. International criminal law developed because of what actually happened in World War II. The question is how do you hold the states responsible for atrocities? Until now, that is the biggest question. In international human rights law, the focus is not so much on accountability but on protection of victims. Thus, in international human rights law cases are not intended to bring people to prison but to hold the state responsible. But you cannot bring a state to prison, that is the problem why until now there is no state criminal responsibility. The purpose of international human rights law has always been to protect

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victims such that even when the perpetrators are not known in a human rights law case, there can still be a human rights violation. But in a criminal law case, the perpetrators have to be known in order to hold a person liable and send him to jail.

One of the principles developed to hold individuals criminally responsible for atrocities for criminal acts and human rights violations is the Doctrine of Command Responsibility. There are so many questions under international criminal law, much of it is based on customary international law. The procedures are even foreign to many of those who are held accountable for the atrocities. Because the procedures are foreign, it then poses a problem in international criminal law. Our focus is the Doctrine of Command Responsibility. We will look at the context of this doctrine and provide an overview. We will examine how the doctrine developed internationally and proceed to define the elements of the Doctrine of Command Responsibility. Finally, we shall apply this doctrine in the Philippine context of extralegal killings and enforced disappearances with some recommendations being considered by interest groups and human rights advocates.

II. CONTEXT AND OVERVIEW

Context and overview of the doctrine of command responsibility are important because we want to hold not just military commanders but also civilian leaders individually responsible for the criminal acts of their subordinates. This is the basic premise of the doctrine. Simply put, the superior is being held responsible directly and criminally for the acts of subordinates, not for the lesser offense of dereliction of duty but for the principal crime—the same crime committed by the subordinate.
Basically, the doctrine encompasses two types of liability. The first type is where the commander himself orders the commission of a crime by his subordinate. This is the direct type where there is active involvement by the commander himself. Another type of command responsibility liability is the indirect or the passive type. The commander does not issue an order but he does not do anything to prevent the commission of the crime or to punish the offender. When people talk about command responsibility, in general, they are referring to the second type. Our common understanding of command responsibility is that of the second type mainly because it is not easy to get evidence of a direct order by a commander. But when there are lots of atrocities, much of it will fall under the second type which we will focus on.

### III. Historical Background and Development

The origin of this doctrine arose from the context of the development of the laws of war or armed conflict which is the international humanitarian law. The occurrence of World War II, particularly what happened in Nazi Germany, further accelerated the development of the international humanitarian law. Meanwhile, the Doctrine of Criminal Responsibility, which is part of international criminal law, also developed. In fact, international criminal law also evolved from the development of the international humanitarian law. We are talking here of international human rights law, international humanitarian law, and international criminal law, which are related developments in international law especially arising from the atrocities in World War II and basically, from the jurisprudence that developed in relation to the Nuremberg trials and the Yamashita case. The International Military Tribunal was created to try war criminals in Europe after World War II. Those trials under the International
Military Tribunal Charter were also known as the Nuremberg trials. One of the cases tried by the Nuremberg Court involved a German High Command where 14 of its officers were tried for atrocities committed by their subordinates. One of the Generals, in his defense, claimed that he was not aware of the atrocities committed by his subordinates. In fact, he said, he did everything that he could possibly do in order to circumvent the illegal orders of Hitler, although he did not go to the extent of disobeying him because he could have also been killed. His repeated defense was, “I did not know.” The prosecution said that even if he did not know, as the commander he should be held liable under the Doctrine of Command Responsibility. The International Military Tribunal, however, rejected the argument of the prosecution. The Nuremberg Court said that his being the superior did not make him responsible for the crimes of his subordinates. The mere fact that he was the commander did not automatically make him criminally responsible for his subordinates’ actions. It must only be considered as some form of dereliction of duty on his part because he either ordered his subordinates to commit the crime or he did not do anything to prevent them from doing it or to punish them after they committed the crime. This was the ruling of the Nuremberg Court in this particular case.

The Yamashita case, on the other hand, is closer to us because Yamashita was first tried in the Philippines. General Yamashita was sentenced to death by a military commission formed by the Americans, and later he appealed his case to the U.S. Supreme Court. We are aware of what happened during his leadership particularly in Luzon. In Batangas alone where 25,000 people were killed, Yamashita tried to escape liability by saying, “I did not know, I was not aware of what my people were doing having lost contact with them because of what happened during the war.” The Court said, “Well, 25,000 people were killed, systematically
as these were not isolated instances. We could not believe that you did not know because if all these killings took place, you should have known. How could you miss not knowing that 25,000 people were killed in Batangas alone?” The victims were not just killed, many were raped, both women and children. Although the extent of Yamashita’s knowledge about the crimes committed by his soldiers was not clearly established, he was convicted based on the Doctrine of Command Responsibility. The Yamashita decision led to a lot of debates on the extent of knowledge a commander/superior should have. This eventually led to the further development of the Doctrine of Command Responsibility.

Based on what happened in the Nuremberg and the Yamashita cases, the doctrine was further codified after World War II in the Geneva Convention of 1949 particularly in the Additional Protocol I. We have heard that the purpose of the Geneva Conventions, the main laws under the international humanitarian law, is to limit the means and the methods of waging war. There are basically four Geneva Conventions applying to:

1. the soldiers at sea;
2. the army;
3. prisoners of war; and
4. civilians.

These were considered not enough because they mainly applied to international armed conflict; so, the Additional Protocol I was developed due to the many wars of national liberation happening in post World War II. They did not know how to classify wars of national liberation because these were not inter-country wars nor international armed conflicts. Additional Protocol I was made to apply also to wars against apartheid, and wars against national racist regimes. These types of wars were considered as similar to
international armed conflict and the principles of IHL applied accordingly. In the new formulation of additional Protocol I, the Doctrine of Command Responsibility was included, again based on the rulings of the Nuremberg and Yamashita cases.

The next ad hoc International Criminal Court Tribunal tried cases arising from the former Yugoslavia. This was created in 1993. Thereafter, the International Criminal Tribunal for Rwanda was also created. The work for the former Yugoslavia is actually not yet finished because, two or three weeks ago, Radovan Karadzic, the former president of Serbia, was arrested. Of course, the most famous criminal here is Slobodan Milosevic who is still undergoing trial in this court. The court was created primarily to address the atrocities committed during the ethnic conflicts in the former Yugoslavia. One of the newest forms of criminal acts committed was the use of rape as a weapon of war in the ethnic conflicts in the former Yugoslavia, particularly in the war between the Serbs and the Croats, where Serb soldiers were ordered to rape Croat women in order to forever taint the bloodline of a family. If rape is committed, the woman may get pregnant. The mother would have to either kill the child or raise the child. How can a mother kill her child? She cannot; so she will have to raise her child although her child’s blood is tainted. That was how rape was used as a weapon of war to destroy the race.

In the case of Rwanda, we are also aware of what happened between the Tutsis and the Hutus where 800,000 were believed to be killed. The Tutsis used bullets and when they ran out of bullets, they used machetes. Government troops just watched and did not prevent the conflict. The Court created in 1994, came up with significant judgments. First, because the Court supported the developing customary international law of command responsibility, they further confirmed this doctrine. Second, they
said this Doctrine of Command Responsibility would apply not only to military commanders but also to civilian superiors. In the Nuremberg and Yamashita cases, the doctrine was only made applicable to military commanders. The Yugoslavia and Rwanda Courts made the doctrine also applicable to civilian superiors. Thus, the language changed from commander to superior, so it can be military superiors and it can also be civilian superiors. Third, the judgments also made the doctrine applicable not only to international armed conflict but also to internal armed conflict. Remember that the Nuremberg and Yamashita cases were in the context of international armed conflict, while the judgments in Yugoslavia and Rwanda applied the doctrine in an internal armed conflict. So when we apply this doctrine it can be in the context of international armed conflict, in the context of a state war, or in the context of an internal armed conflict, which will be discussed later.

After that, the Doctrine of Command Responsibility was further developed in the Rome Statute which created the International Criminal Court in 2002. This is a treaty which we have signed but have not yet ratified. One of the few last acts of President Joseph Estrada before he was forced out of office was to sign the Rome Statute which provides for the creation of the International Criminal Court. Of course at that time he thought that was the popular thing to do in an attempt to address his situation. Then he left office and a new president came in who until now refuses to forward the signed document to the Senate for ratification. That led to the Pimentel case before the Supreme Court. The High Court said, “You cannot force the President to submit the document; ratification is still an executive act.” The job of the Senate is to concur to the ratification so one cannot compel the Executive Department to submit it because the
President still has the power to ratify. The authority of the Senate is simply to concur. If the Senate does not concur, of course, the ratification is without effect. But until the President ratifies, the Senate cannot do anything.

(Audience interaction)

Judge-Participant: The President has her reasons.

Prof. Medina: Yes, she has her reasons, Judge.

Judge-Participant: Yes, because to simply ratify that is to ratify the penalty contained in the Rome Statute holding incumbent leaders responsible for criminal acts committed by their soldiers.

Prof. Medina: The U.S. also has reasons, Your Honors.

Usecc. Linda Malenab-Hornilla: The U.S. has reasons for not signing the doctrine and that is why the Philippines will not sign because the U.S. did not wish its soldiers to be within the jurisdiction of the International Criminal Court. It will hold them and several of its presidents liable. Because we have close ties with the U.S., we would also not sign it. In return, U.S. gave us several aids.

Prof. Medina: I think that is really a problem, Your Honor. Actually, President Bush signed the Rome Statute but he withdrew his signature because of the anti-terrorism war that has caused the U.S. to send its soldiers all over the world.

Judge-Participant: That is the problem because the U.S. is going to be liable under ICC for what they are doing in Guantanamo Bay. The withdrawal of President George W. Bush and our forward voluntary alliance with Bush
caused President Gloria Macapagal-Arroyo to follow suit and she refused to transfer that document to the Senate for ratification.

**Prof. Medina:** I agree with you, Your Honor. That is our problem. The U.S. does not want this document effective because it could possibly bring American soldiers to trial for commission of crimes covered by the International Criminal Court in those countries where they are stationed and where those countries are party to this document. If we had signed, we too would become a party to this document. By virtue of that membership the American soldiers assigned in Mindanao who might commit crimes—crimes against humanity—can be brought before the International Criminal Court even if the U.S. is not a party to the document. The U.S. does not want that because it poses a problem as many of its soldiers will be tried before the International Criminal Court even if U.S. is not a party to the instrument. That is the primary reason why the U.S. withdrew its signature and threatened the countries who signed this treaty that they would not be given military aid. So, while President Joseph Estrada signed it, President Arroyo refuses to ratify it because the Philippines is part of the coalition of the willing in the anti-terrorism war. Even if the U.S. has withdrawn its signature, the Rome Statute is still in effect. In fact, it is already bringing into trial the President of Sudan for the Darfur massacre.

**Judge-Participant:** There were situations in Africa, the Ivory Coast and Darfur in Sudan, with one or two prosecutions. But Ivory Coast still remains to be a situation as well as Sudan. Only the crimes between the Hutus and the Tutsis, I think—no that is ICTR. But there are already investigations being done by the Prosecution Office.

**Prof. Medina:** In fact what the U.S. has done is to enter into bilateral agreements with many of those who have
signed the treaty stipulating, among others, that those countries would not allow a U.S. soldier to be brought before the International Criminal Court even if they are a party to the instrument. But we have Article 28 of the Rome Statute, which is right now, the most developed codification of the Doctrine of Command Responsibility. Many countries around the world who have signed the Rome Statute have come up with their own International Criminal Court Law implementing the principles of the statute in their own domestic jurisdictions. These countries have, of course, varied interpretations and implementation of the doctrine. In other countries, for example, the Doctrine of Command Responsibility is a crime separate and distinct from the crime committed by its subordinate. In other countries, the superior or the commander is made a principal to the crime committed by the subordinates. There are different interpretations here but as I have said those countries have come up with laws implementing the Rome Statute.

**IV. Elements of the Doctrine of Command Responsibility**

The doctrine of command responsibility is applicable in the context of armed conflict which can either be an international armed conflict, or an inter-state war, or a non-international armed conflict or an internal armed conflict. The Geneva Conventions define internal armed conflict as a conflict between a government and a private armed group. This private armed group is under a responsible command and has territorial control such that it is able to apply the Geneva Conventions in their territory. That definition, under the Geneva Conventions, refers to a serious internal armed conflict. There is also an ordinary internal armed conflict where the conflict is between the government and a private
armed group, or a private armed group against another private armed group. Thus, a conflict between the Moro Islamic Liberation Front (MILF) and the New People’s Army (NPA) would be covered by the Geneva Conventions. A conflict between the government and the NPA will also be covered by the Geneva Conventions but the conflict must not simply be an isolated conflict, it must be protracted. It must not be an internal disturbance which is distinct from an armed conflict. For example, if there is a riot in Basilan, it is simply a riot. It is not really a protracted conflict and therefore will not be covered by the doctrine because only an internal armed conflict falls under the definitions provided by the international humanitarian law.

The three main elements of the Doctrine of Command Responsibility are as follows:

1. Existence of a superior-subordinate relationship, or the effective control of the superior over the subordinates.

2. Existence of criminal intent or mens rea. How is this showed? How is this determined? When the superior knew or should have known or had reason to know that the criminal act was about to be committed or had been committed or was being committed by the subordinate.

3. Superior failed to take necessary and reasonable measures to prevent the criminal act or to punish the offender.

The first two elements are controversial especially in international criminal law. How do you determine superior-subordinate relationship? How do you determine the existence of mens rea or criminal intent? The third element usually follows if one is able to establish the first two elements. This means one has to establish that the crime has already been committed and
the superior did not do anything to prevent the crime or to punish
t heir subordinates who have committed the crime.

The first element is existence of a superior-subordinate
relationship of effective control. The relationship, may be de jure
or de facto. One need not be the real commander of the unit.
For as long as that person is considered the superior of the unit,
then that person is a de facto commander. The superior can either
be a military officer or a civilian as long as they are both in a
position of authority. Furthermore, the superior or commander
must have effective control. One might be the commander, either
a de jure or a de facto, but does not have effective control over
the subordinates, then there is no first element. The test of an
effective control is when the superior has the power and ability to
prevent the commission of a crime, including the power to punish
the offender.

The second element is the existence of mens rea or criminal
intent. That means the superior knew or should have known or
had reason to know that the criminal act is about to be committed
or has been committed or is being committed. There must be
actual knowledge and knowledge cannot be presumed. Actual
knowledge can be shown by direct or circumstantial evidence. But
one cannot presume actual knowledge simply because the acts are
taking place. If the commander is completely ignorant, he cannot
be punished. However, he incurs responsibility if he is in possession
of information either in the form of reports whether oral or
written. If he knows, for example, that his troops are trigger-happy,
that in the slightest incident they are willing to massacre people,
then that information is material and can lead to his accountability
or liability. At a minimum, he has to conduct an investigation as
a measure to deter his troops from such inclination.
The third element is that the superior failed to take necessary and reasonable measures to prevent the criminal act or to punish the offender. This includes reporting incidents to the proper authorities for investigation and prosecution. Such measures which are within his power also depend on the circumstances of each case. In fact, the courts are unable to come up with a guideline. They said it will depend on the facts and circumstances of each case.

The applicability of these principles in the Philippines will depend on the characterization of the situation as an internal armed conflict. The military may not necessarily agree but may consider the situation as a mere internal disturbance or isolated cases of conflicts. This issue is debatable, but let us assume for the sake of discussion that we are in a situation of an internal armed conflict. While we are not yet party to the Rome Statute, much of what is in it is already part of the customary international law. These generally accepted principles of international law are made part of the law of the land under Article 2, Section 2 of our Constitution through the “incorporation clause.” Therefore, it could be argued that because the doctrine of command responsibility is part of the customary international law then it is part of Philippine laws by virtue of the doctrine of incorporation. There are various applications of this concept in our laws like the principle of vicarious liability in our Civil Code and even in our Revised Penal Code where the employer or parent is held responsible for the wrongful acts of people under their responsibility. The Administrative Code of 1997, for example, also provides for the liability of superior officers for the acts of their subordinates. Then in 1995, President Fidel V. Ramos issued an executive order institutionalizing the doctrine of command responsibility in government offices particularly in the Philippine National Police (PNP), law enforcement agencies, and the Armed
Forces of the Philippines (AFP). But it only provides for administrative liability. The doctrine of command responsibility on the other hand provides for criminal responsibility. In that light, we still do not have any law which provides for criminal responsibility, applying fully this doctrine of command responsibility.

For purposes of criminal prosecution, the defense can argue that the doctrine poses two problems. One, it violates the right of the people to be informed. It may be inquired what this doctrine is and whether this doctrine is part of our laws. Second, there is the problem of legality. We know that there can be no crime if there is no law providing for the crime and there can be no punishment if there is no law providing for the punishment. That is the principle of legality, *nullum crimen sine lege*. In order to address these problems, we go back to the argument that the doctrine of command responsibility is part of customary international law and therefore considered part of Philippine laws. Since ignorance of the law is not an excuse for noncompliance, people are presumed to know what the law is. That is how these objections are addressed.

Let us turn to the concept of liability which may either be an act of omission or negligence. Article 356 of the Revised Penal Code provides for criminal negligence, which may be the basis of the doctrine of command responsibility. Who can be held liable? The superior or the commander contemplated in the doctrine can either be the commander, or the direct superior of the commander, who in turn is the commander of the subordinates. In that case, there can be multiple defendants, many superiors and many commanders. Theoretically, can the President be held accountable? Yes, because the President is the commander-in-chief. The problem, however, is that the farther the commander is from
the subordinate or from the chain of command, the more difficult it is to prosecute this commander or superior because it is very difficult to get evidence.

On the *mens rea* requirement, how is criminal intent determined? Aside from actual knowledge, constructive knowledge can also be used. To establish constructive knowledge, the International Criminal Tribunal suggests to consider looking at the nature, date, place, and scope of illegal acts committed, among others. One can also look at the type and number of troops, location of the superior and headquarters, logistics involved, and equipment used.

Now, how can command responsibility be implemented in the Philippines? Many countries, like Canada, United Kingdom, Spain, Iran, Italy, and Greece, among others, have passed a legislation applying the doctrine of command responsibility because they have also ratified the Rome Statute. We can follow suit so we can also impose the principle with the corresponding liability in the Philippines. We can come up with a law or ratify the Rome Statute because it provides for the doctrine of command responsibility. But even if we do not have the necessary legislation, even if we do not ratify the Rome Statute, the doctrine can be applied in the Philippines because arguably, again, the doctrine is part of customary international law and, therefore, part of the law of the land. Judges, however, may be reluctant to apply it in the absence of a definitive set of guidelines either through a law or jurisprudence.

Finally, the Supreme Court in the exercise of its rule-making power may consider coming up with a rule applying the doctrine of command responsibility. In doing so, the Supreme Court is not coming up with a special law on extralegal killings and enforced disappearances, because it cannot legislate, but a special rule laying
down the conditions or procedures under which the doctrine of command responsibility can be applied to military or civilian superiors, considering too that the rule would have to be protective also of the rights of the accused.
New Rules Promulgated by the Supreme Court in Relation to Extralegal Killings and Enforced Disappearances (Writs of Amparo and Habeas Data)*

Justice Adolfo S. Azcuna**

We are all eager to go to the bottom of two new writs that the Supreme Court has fashioned out in the exercise of its constitutional power to protect and enforce rights under the Constitution, the writ of amparo and its companion writ of habeas data.

* Delivered at the Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues: Extralegal Killings and Enforced Disappearances (Seventh Judicial Region, Batch 1) held on August 7–8, 2008, at the Marco Polo Plaza Cebu, Cebu City. Transcribed.

** Justice Adolfo S. Azcuna was born in Katipunan, Zamboanga del Norte, on February 16, 1939, the son of Felipe B. Azcuna and Carmen S. Sevilla. He received his Bachelor of Arts degree, with academic honors, from the Ateneo de Manila in 1959, and his Bachelor of Laws degree, cum laude, from the same institution in 1962. He was admitted to the Philippine Bar in 1963, placing fourth in the 1962 bar examinations. He was the Assistant Private Secretary of then Presiding Justice Jose P. Bengzon of the Court of Appeals in 1963 and, upon the appointment of the latter to the Supreme Court in 1964, became his Private Secretary.

Justice Azcuna taught International Law at his alma mater, Ateneo de Manila, from 1967 to 1986. In 1982, he completed
What is the writ of amparo? Amparo comes from the Spanish word, *amparar* which means “to protect.” That is why the writ of

post-graduate studies in International Law and Jurisprudence at the Salzburg University in Austria.

Representing Zamboanga del Norte, he was elected as member of the 1971 Constitutional Convention. Subsequently, he was appointed as a member of the 1986 Constitutional Commission. He held several government posts during the term of President Corazon C. Aquino, first as Presidential Legal Counsel, then as Press Secretary and subsequently as Presidential Spokesman. In 1991, he was appointed Chairman of the Philippine National Bank. On October 17, 2002, he was appointed Associate Justice of the Supreme Court by President Gloria Macapagal-Arroyo.


Justice Azcuna is married to Maria Asuncion Aunario, Dean of Arts and Sciences of St. Scholastica’s College. They have four children: Anna Maria, Ma. Beatriz, Ma. Margarita and Miguel Enrique.

Justice Azcuna presently chairs the Committee on Computerization and Library and the subcommittee on the Revision of Rules on Civil Procedure. He also co-chairs the Committee on Gender Responsiveness in the Judiciary with Justice Conchita Carpio Morales.
protection is called the writ of amparo or *juicio de amparo* in Latin America. The writ of amparo started in 1857 in Mexico. It was incorporated in the Constitution of the State of Yucatan, one of the federal states in Mexico, and was later incorporated in the Federal Constitution, which in itself has a constitutional right to protection. The idea of *amparo* is that it is not enough to provide in the Constitution guarantees for the protection of our people’s fundamental and substantive rights to life, liberty, freedom of expression, and security. The procedural right to enforce these substantive rights must also be guaranteed in the Constitution. An enforcement mechanism must be provided for in the Constitution. This is the right of *amparo*. It is the constitutional right for the enforcement of other rights guaranteed by the Constitution. Why do we have to provide for in the Constitution the right to enforce the other constitutional rights? So that it will not be within the power of Congress to remove it. Because the power to enforce can kill any right. Any right that cannot be enforced is a dead right. The enforcement of fundamental rights cannot be left in the hands of the temporary majority in Congress, thus the right to enforcement must be provided for in the Constitution so that no legislation is necessary and no legislation has the power to dilute or defeat these fundamental rights. This is the philosophy behind the writ of amparo and the very reason why constitutions of South American countries contain the writ of amparo.

One can also find this in other countries although it is not called *amparo*. For example, India has a very long Constitution, longer than ours. India’s Constitution is like a Civil Code in length, yet it is considered one of the best constitutions in the world today. Why is their Constitution long? Precisely because they want to be sure that certain fundamental policies are not left to Congress’ prerogatives so they put these in their fundamental law.
Thus, a right to a constitutional remedy is found in the Indian Constitution, aside from the fundamental rights of liberty and expression, among others. That is amparo although bearing a different name in India.

In the Philippines, amparo is provided for in our 1987 Constitution under Article 8, Section 5 stating that:

The Supreme Court shall have the following powers:

(5) 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 underprivileged.

The power to adopt amparo was given to the Supreme Court. It is up to the Supreme Court whether to adopt it or not, but it has the power to adopt rules concerning the protection and enforcement of constitutional rights. This power was not found in the 1935 and 1973 Constitutions. The provision in the 1935 Constitution, Article 8, Section 13 and in the 1973 Constitution, Article 10, Section 5(5) simply says:

promulgate rules concerning pleading, practice, and proceeding in all courts, the admission to the practice of law.

We added the phrase “protection and enforcement of constitutional rights” as a new provision in the 1987 Constitution, which is now the basis of the writ of amparo. In 1991, when I was then chairperson of the Philippine National Bank, Justice Hilario G. Davide, Jr., who was then the chair of the Bar Exams, asked me to be the examiner for Political Law. If my memory serves me right, our conversation ran:
Davide: *Gusto mo bang mag-examiner?* (Do you want to be an examiner?)

Azcuna: Why?

Davide: I am the Bar Exams Chair and I am forming my examiners.

Azcuna: Okay, what subject?

Davide: You choose, you are the first one I have asked.

Azcuna: If that is the case, then I choose Political Law.

Davide: Okay, go ahead. Prepare 50 questions.

Azcuna: Fifty questions? *Kadaghan ba.* (Too many.)

Davide: Yes, because I will choose 10. Prepare 50 questions in your own handwriting. Do not show it to anyone. Give them to me personally.

And I did. It is not easy to prepare 50 questions even on a subject you have taught for many years. After 49 questions, I could not think of one more? Then *amparo* entered my mind because I was its author in the 1987 Constitution, so my 50th question was:

50. What is the writ of amparo? And what, if any, is the basis for it under the Philippine Constitution?

He made it the number one question in the first subject of the first Sunday of the Bar Exams. Imagine, Political Law and the first subject during the exams. Not even the deans knew what *amparo* was, although Chief Justice Marcelo B. Fernan, another Cebuano, mentioned it in a speech not too long before that Bar Exams. Some academic writers have also mentioned it in their books. Some examinees got it but most of the examinees just said, “Sir, I honestly do not know the answer to this question but I dedicate this number to the suffering Filipinos.” Very creative.
The others just wrote, “Our Father who art in heaven x x x” just to avoid blank spaces. I knew it was really difficult but I just wanted to raise awareness on that subject. I gave full credit to anything written on that number since it was a subdivision, item Ia. I could not do anything if they left it blank. It is good advice to bar examinees to write something even if it is the Our Father. That was in 1991.

After we adopted _amparo_ in our present Constitution, the Supreme Court, however, did not adopt rules to implement it in the next 20 years.

But in 2007, because of the spate of extralegal killings and enforced disappearances in our country that attracted international attention, Chief Justice Reynato S. Puno saw it fit to call a national summit in order to consult all the stakeholders—left, right and center—whether the Supreme Court should finally exercise its rule-making power, that is to promulgate rules concerning the protection and enforcement of constitutional rights in order to better enforce the right to life, liberty, and security in the Philippines. The overwhelming consensus of that summit was a resounding Yes, a signal to go ahead and exercise that power. For the first time, the Supreme Court adopted and exercised this latent power under Article 8, Section 5(1) of the Constitution to adopt rules concerning the protection and enforcement of constitutional rights. This is now the rule on Writ of Amparo, A.M. No. 07-9-12-SC, adopted on September 25, 2007, and became effective on October 24, 2007, United Nations Day.

The Rule on the Writ of Amparo is a very simple rule, very simple to understand and implement. The Rule, now part of the Rules of the Court, contains only 27 sections. Basically, it provides for a mechanism to a petition that is summary in nature but actually unique in character. It is neither a civil, a criminal, or a special proceeding; it is _sui generis_. It does not end when someone is held
liable for a crime or just fined. It simply gives certain protective
orders or reliefs to the petitioner. So what is this writ of amparo?
It is a special writ available to any person whose right to life,
liberty, and security is violated or threatened with violation by an
unlawful act or omission of a public official or employee, or of a
private individual or entity. It covers also cases of extralegal killings
and enforced disappearances or threats thereof. What is the factual
situation? There are extralegal killings or enforced disappearances
or threats thereof. There is an aggrieved person or a person has
been killed or has been abducted or there were threats to do so.
Should the aggrieved person or the authorized parties file a petition
for writ of amparo to protect this person and/or to redress the
wrong? Yes. Who may file the petition? The aggrieved person
himself or the authorized parties. The authorized parties are the
immediate family, other relatives or even concerned citizens or
associations, respectively. To be more specific the order of priority
that should be followed is:

1. the authorized immediate family (the spouse, children
   and parents);
2. the other relatives within the fourth civil degree of
   consanguinity or affinity;
3. concerned citizens, associations, organizations, institutions,
   groups; in the absence of the above authorized persons.

The petition must be in writing and under oath. It must be
supported by affidavits stating the particulars of the acts or
omissions complained of. If an investigation has been made, the
investigation must be mentioned in detail and supported by a
report, if a report has been made. The name of the respondent,
the alleged official or private individual who is responsible for
the act or omission must be stated. If one does not know the
name of the alleged responsible person, there must be enough
NEW RULES PROMULGATED BY THE SUPREME COURT IN RELATION TO EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES (WRITS OF AMPARO AND HABEAS DATA)

particulars to describe that person. The address of the person must also be stated so that person can be served with the summons or a copy of the writ. This is the procedure. No docket fee is required, it is free. I wanted to impose docket fees because I am afraid that if it is free, we will be deluged with a lot of petitions. But the Chief Justice and the other members of the Court decided to forego with the fees because this is an enforcement of fundamental rights.

To forego docket fees is not a simple matter because the whole Philippine Judiciary, not the Supreme Court alone, gets only less than 1 percent of the entire national budget. How then do we sustain the operations of the Judiciary? Through docket fees. This is called the JDF or Judicial Development Fund. From this JDF, the Court gets the money to build whatever structures that have to be built and maintained and to pay for our salaries every year. That is the reason why we cannot really forego the docket fees. In Venezuela, they have abolished filing fees. They have a lot of oil so they can afford to waive the fees. For us, we do not collect filing fees for the writs of amparo and habeas data.

Once the petition is filed, what is the judge to do? The duty of the judge is to docket the petition and immediately act on it. Section 4 of the Rule says the judge should docket the petition and act immediately. The petition may be filed at any time of the day, during the week. It can be filed in the dead of night with the Regional Trial Court or any judge thereof, with the Sandiganbayan, the Court of Appeals, the Supreme Court or any justice thereof at anytime. It can be filed in the house of a judge, without fees, remember. How does a judge docket the petition? He makes a temporary docket and acts on it immediately. How does he act on it? Look at the petition. Is it in writing? Is it under oath? Is it supported by affidavits? If then, it is sufficient in form and in substance, then the judge should issue a writ. The Rule says,
the judge of a court shall issue the writ if on its face it ought to issue. It simply means that if it is in writing, under oath, supported by affidavits, contains all the particulars required, you should issue the writ. There are two writs to be issued under the Rule. The first is the writ of amparo. The second writ is issued after all the hearings and the judge has rendered a judgment. If it is sustained by substantial evidence, the judge grants the petition and that is called granting the privilege of the writ. The first writ, the writ of amparo, is simply a notice to the respondent to file a return or an answer and to set the petition for hearing within seven days from the issuance of the writ. Remember, a judge has only seven days and he cannot go beyond that. Therefore, a judge has to count, from the date the writ is issued; the hearing has to be set within seven days. The judge has to put the date of the hearing in the writ. It is actually a notice of hearing and a requirement to file a return. The return must be made within three days from the day of the issuance of the writ and the hearing is within seven days. No extension is allowed for the return except for extreme justifiable cases. If the judge extends the hearing beyond the required seven days, an alias writ has to be issued to change the date of hearing because the judge might give another five days for the return. Before the seven days or the hearing, the judge can hold a preliminary conference to determine simplification of issues or possibility of admissions and stipulations. A preliminary conference is allowed at the judge’s discretion to thresh out preliminary matters. If not, then the judge goes straight to the hearing, summary hearings, on the petition and the return. The respondent has to file his or her return, verified answer in writing under oath, also supported by an affidavit stating all of his or her available defenses because defenses not stated in the return are deemed waived. The petition, therefore, has to assert whether or not the responsible person really committed or threatened to commit the acts or omissions complained of. But does the
respondent know about the alleged acts or omissions? Was an investigation made? If so, what happened? Was there a report? If so, attach the report.

What if it is a matter of national security or privileged communication? Then that is the defense that should be raised by the respondent. If that is raised, the Rule says the judge must hear that ground and that opposition immediately in chambers be made to determine its merits because that is the threshold question. If it is really a matter covered by national security or it is a privileged communication, the judge should not intervene. But if it is just a pretext, then the judge can go ahead. Otherwise, the decision is up to the judge whether to sustain or not the defense of national security or privileged nature of the communication. The Rule says it is the Judiciary that decides whether or not that is a tenable defense through a preliminary hearing on the matter in chambers. The hearing is done in chambers because if it is secret, then it should not be divulged, and only the judge should know. During the hearing, the petitioner has to prove by substantial evidence. If substantial evidence is presented to prove the allegations of the petitioner, then the judge grants the privilege of the writ. If not, the judge dismisses it. If witnesses are not available, the judge archives the petition. There is also a mechanism in reviving archived cases. If they are not revived in two years, they are to be dismissed, the Rule stipulates.

The important thing to remember also are the reliefs. The Rule says that, the moment the petition has been filed and even before the final judgment, the court report can grant four possible reliefs: a temporary protection order, an inspection order, a production order, and a witness temporary protection order.

The temporary protection order can be granted motu proprio even without motion on the court’s own accord, without the need
of a hearing. The court can grant this if the court is of the belief that there is great danger to life or liberty of the petitioner so there is an order to protect. The protection is with the government agency or a private agency that is designated to protect and provide security to the person in question. Sanctuaries are supposed to be accredited under a system of sanctuaries set up by the Supreme Court. This is still being done. Meantime, judges will have to provide for their own determination of how best to protect a person seeking temporary protection. The judge can order the fiscal, a very respected person in our provinces, to protect the person or the judge can ask the parish priest to protect the person.

The next relief is an inspection order issued upon verified motion and after due hearing. This grants an inspection order to inspect any property or place in order to allow the petitioner or movant to inspect, measure, or survey. The inspection order is similar to a search warrant. It allows not only inspection but survey, measurement, and photographing of any object or operation found within the property which must be specified. The inspection order has a lifetime of five days unless extended. There have been problems with the Commission on Human Rights (CHR) and the police in carrying this out. Sometimes these agencies do not coordinate to arrive at the same time causing delay in the search. Because of the five days lifetime of the order, coordination between those who will do the search is needed. The order should also specify who is going to do the search, which, very often, is the CHR, because it is a neutral institution authorized to conduct the search.

There is also a production order similar to an inspection order. It has to be by motion and with prior hearing. This is issued to produce any document or object in the possession or control of the respondent for the purpose of photocopying, verification and identification of any relevant object for the control of a person.
not necessarily the respondent. Any person in control of that object would be the addressee of this production order.

Last is the temporary witness protection order which is to secure a witness under the existing witness protection program pursuant to Republic Act No. 6981 or any other arrangement that the court may deem proper to protect a witness. Again this can be done *motu proprio* or without a need for a motion.

The respondent can also be granted two reliefs—the inspection order and the production order. The respondent might ask why the Supreme Court provides for these reliefs. The reliefs are provided because sometimes the respondent, a public official, may want to cooperate but the solution lies above him, and he cannot order his superior to produce a document. So he asks help from the court with the inspection order or production order so that the truth regarding the matter can be brought before the court.

The judge has this mechanism and conducts the hearing. The judge has to decide the case within 10 days from the submission of the case for decision. The judge cannot postpone it for one month. The Rule says the judge has to hear it from day to day. There are also prohibited pleadings—motion to dismiss; motion for intervention, memoranda, bill of particulars, and all the dilatory tactics. All these dilatory tactics are prohibited because the life, liberty and security of a person are at stake.

After the judge decides the case, can a party appeal from the final judgment or order? Yes, there is a provision for appeal from the final judgments or orders to the Supreme Court under Rule 45. But this is a modified Rule 45 because questions of facts can be raised. Normally, as you know, Rule 45 allows only questions of law to be raised. But in an *amparo* proceeding, we now allow appeal raising questions of law or of fact or of both under Rule 45. What will the Supreme Court do if a question of fact is
raised? The Supreme Court will refer it to the Court of Appeals for a report and investigation. That is the mechanism under the writ of amparo.

What happens if a criminal case related to the same matter is filed? Then it is joined. If there is a criminal case pending or later on filed, the writ of amparo is consolidated with the criminal case. The same procedures on the disposition of reliefs for amparo apply. It is treated as an incident in the criminal case but following the same procedures. It is done so that no two different judges will issue different rulings. But if it is just a civil case, the consolidation is not mandatory. All the existing Rules of Court shall apply suppletorily insofar as these are not inconsistent with the Rule on Amparo. Among those rules are the rules on joinder, on consolidation of cases, etc. It is up to the judge whether or not the judge wants it joined with the civil case or with an administrative case, but there is no prohibition from filing civil, criminal, or administrative cases in addition to an amparo proceeding. They can coexist. If it is a criminal case, as earlier mentioned, the cases are consolidated.

There is no presumption of regularity that can be invoked by the respondent. The respondent has to show that the respondent exercises either ordinary diligence if the respondent is a private person, or extraordinary diligence if the respondent is a public official.

Also, general denial is not allowed. The respondent has to reveal all evidence relevant to the resolution of the petition. The respondent has to give the facts, as detailed as possible, on what really happened. This is the mechanism on the writ of amparo. As earlier mentioned, a petition can be filed in our courts at any time.
There is a case in Pampanga showing the dynamics of this new remedy as a work in progress. Pampanga judges aver that it is very difficult for their security if an aggrieved person can go to their houses to file a petition for an amparo even in the dead of the night. It is not easy and very dangerous. So I then suggested that they provide a “freedom window,” perhaps that is open 24 hours, somewhere in the court house, where an amparo petition may be filed any time. Personnel must always be present there to receive the petition. That person who receives the amparo petition filed beyond office hours should have a mechanism of bringing to the attention of the judge that a petition was filed and writ has to be urgently issued. It is the duty of the person assigned at the freedom window to wake up the judge, if necessary. We, too, are concerned with the security of judges because otherwise the judges will also need the amparo.

II. WRIT OF HABEAS DATA

On another note, the writ of habeas data is a similar writ but it is an independent remedy to protect the right of privacy of a person. The idea of the writ of habeas data is that if there is any person, public or private, who is gathering information or a database on any person, like, for example, name, family members, girlfriends or other information in violation of that person’s right to personal privacy or the right to self-information or self-determination of said information, that person has the right to access that database. That person has the right to have the information corrected if it is wrong, update it if it is out of date, or even suppress it if its purported use is unlawful. Thus, the writ of habeas data is a procedure for enforcing the right to privacy, the right to personality which is threatened to be violated through the gathering of a database. In other words, any person who is in the process of gathering a database or collecting data about any person is
responsible to see to it that that data must be gathered for a lawful purpose, that it must not contain erroneous or outdated facts and figures and that it must be accessible to the person.

If there is a violation of this writ of habeas data, the aggrieved person can file the appropriate petition for writ of habeas data and the procedure is similar to the writ of amparo although the periods are different.

What is the reason for adopting the Rule on the Writ of Habeas Data aside from the fact that we should really protect the person’s privacy in this age of computers and internet? In Europe, they are very engrossed with the writ of habeas data and they have adopted it since the 1980s, particularly the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 1981. This provides that every country in the European Union is obliged to see to it that no personal data is transported or transmitted outside of any European country or any other country that does not possess a similar legislation or system of protecting personal data. That means, if the Philippines does not have this legislation, we cannot receive our needed information, credit information, for example. To receive any electronic data from any European country, the Philippines has to have the system of protecting personal data. The Supreme Court saw it fit to adopt one. Now, we are qualified to receive data transfer from European countries under the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

III. Conclusion

We have three writs to protect our fundamental rights that are enforced through special rules adopted by the Supreme Court.
These are the traditional standards—writ of habeas corpus, writ of amparo, and writ of habeas data. These three fundamental writs protect the right to life, liberty, and security of persons. That is the duty of the Court’s enforcement mechanism. Whether it would work or not, is up to all of us.

So far, the Court has already succeeded in the release of at least eight persons from Zamboanga del Sur, my home province. Apparently the military, instead of allowing their camps to be searched, would rather release the persons allegedly being hidden there. Anyway, perhaps, they had already interrogated them so they were released. Sometimes, the detained persons might opt to be voluntarily detained in the camp because they felt safer there. Some of these are runaway members of the New People’s Army who are really wanted by the NPAs so they would rather stay in the camps. A judge recounted such an experience when a person told him he wanted to go back to the camp. The judge ordered the person to go home first, and if he decided to go back to the camp the following day, he could do so. That was a very good order from the judge because that person might just be forced to say “I want to go back to the camp.” But if that person went home first, most likely the parents would keep him and would not allow him to go back to the camp. As earlier mentioned, these rules, being new, are still a work in progress. Judges have to adopt their own innovations to make these remedies even more effective.
The Rules on the Writ of Amparo and Writ of Habeas Data in Relation to Extralegal Killings and Enforced Disappearances*

Justice Lucas P. Bersamin**

I. Introduction

The growing number of extralegal killings and enforced disappearances in the country where the victims were mostly activists and mediapersons invited much attention domestically and internationally. The President constituted the Melo Commission to look into the incidents. Although the Melo Commission came up with its report, which was not released to

* Delivered at the Multi-Sectoral and Skills-Building Seminar-Workshop on Human Rights Issues: Extralegal Killings and Enforced Disappearances (Third Judicial Region, Batch 2) held on March 6–7, 2008 at the Oasis Hotel, Clarkville Compound, Clark Perimeter Road, Angeles City, Pampanga.

** Justice Lucas P. Bersamin has been serving as Court of Appeals (CA) Associate Justice since March 2003.

Prior to his CA post, he was a Presiding Judge of the Quezon City Regional Trial Court (RTC), Branch 96. He was engaged in private legal practice before he was appointed as RTC judge in November 1986.

He was recipient of the Chief Justice Jose Abad Santos Award (Outstanding RTC Judge for 2002) during the 11th Judicial Excellence Awards (JEA). In the 2000 JEA, he bagged the Best
the public, the clamor for concrete action and responses to the incidents did not subside.

In mid-July of last year, the two-day Summit on Extrajudicial Killings and Enforced Disappearances was convened in Manila Hotel, upon the initiative of Chief Justice Reynato S. Puno and the Philippine Supreme Court, to address the pressing issues of the increasing numbers of extralegal killings and enforced disappearances.

Extralegal killings are killings committed without due process of law, i.e. without legal safeguards or judicial proceedings; they include the illegal taking of life regardless of the motive, summary and arbitrary executions, salvaging even of suspected criminals, and threats to take the life of persons who are openly critical of

Decision in Civil Law and Best Decision in Criminal Law awards, an unprecedented achievement that has yet to be duplicated.

He finished his law studies at the University of the East (UE) in 1973. He placed ninth in the bar examinations given that same year with an average of 86.3 percent. He is a fellow at the Commonwealth Judicial Education Institute in Dalhousie University in Halifax, Canada.

In 2006, he was among the recipients of UE’s The 60 Most Outstanding Alumni Award during UE’s Diamond Jubilee Awards. He was UE’s Outstanding Alumnus in the Judiciary in 2001. In 1991, he was cited as Outstanding Alumnus in Government Service, Judiciary and Outstanding Alumnus in the Field of Law by the UE Alumni Association, Inc.

He was a professor at the Ateneo School of Law, the UE College of Law, and the University of Santo Tomas (UST) Faculty of Civil Law. He was special lecturer at the College of Law, University of Cebu in 2006.
erring government officials and the like. The usual victims are political activists and mediapersons.

Enforced disappearances are attended by an arrest, detention, or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned; or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

The summit brought together international and local personalities involved in human rights protection. Towards the end of the summit, the various working groups suggested or proposed solutions. In expected unanimity, the groups recommended the adoption of new rules that would authorize the courts to grant reliefs independently of the existing rule on the writ of habeas corpus, which was regarded as ineffective once the respondent government agents claimed in the proceedings that they did not hold in their custody the person for which the petition for habeas corpus was filed. The summit participants also recommended, among others, that the courts should extend protection to persons threatened by government agents in the form of interim preventive measure; that, in the case of disappearances, the courts should be empowered to authorize the ocular inspection of suspected premises of detention of victims of enforced disappearances, even if the premises were inside military or police camps; and that, in general, the ultimate prosecution of the persons guilty of committing the extralegal killings and enforced disappearances should be enabled beyond the ineffectual existing remedies.
II. WRIT OF AMPARO

A. Nature and Basis of Amparo

The paramountcy of the rights to life, liberty, and security engrafted in the Philippine Constitution was not to be denied. In the aftermath of the summit, therefore, the Supreme Court Committee on the Revision of the Rules of Court, chaired by the Chief Justice himself, studied the proposed solutions and drafted new rules to address the problems brought to the fore in the summit. The Committee members were Associate Justice Ma. Alicia Austria-Martinez as co-chairperson; and Associate Justices Leonardo A. Quisumbing, Adolfo S. Azcuna, Dante O. Tinga, Minita V. Chico-Nazario, and Antonio Eduardo B. Nachura, as members. In its task, the Committee was aided by former members of the Supreme Court and the Court of Appeals as consultants, all well-recognized for their knowledge and experience in law, human rights and jurisprudence.¹

On September 25, 2007, the Supreme Court en banc approved the proposed Rule on the Writ of Amparo, to take effect on October 24, 2007, following its publication in three newspapers of general circulation.

The word amparo is taken from the Spanish word amparar, which means literally “to protect.” The remedy of amparo originated in Mexico and spread almost throughout Latin America, except Cuba, as a protection against acts or omissions of public authorities in violation of constitutional rights. It gradually evolved into various forms (that is, amparo contra leyes, amparo

¹ The consultants were: Sr. Justice Flerida Ruth P. Romero (Ret.), Sr. Justice Josue N. Bellosillo (Ret.), Justice Jose C. Vitug (Ret.), Justice Bernardo P. Pardo (Ret.), Justice Romeo J. Callejo, Sr., (Ret.), and CA Justice Oscar M. Herrera (Ret.).
casacion and amparo administrativo), depending on the particular needs of each country. In time, it came to be recognized as an effective and inexpensive instrument for the protection of constitutional rights, particularly human rights that were constantly abused in countries governed by military juntas.

The need for a remedy broader in scope and more adequate in the protection of human rights in cases of extralegal killings and enforced disappearances than habeas corpus is filled in by amparo. Although not explicitly providing for the writ of amparo, the Philippine Constitution allows several of the amparo protections. Section I, Article VIII, of the Constitution, expanded the definition of judicial power to include:

the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has

2. According to the Annotation to the Writ of Amparo (issued by the Supreme Court), at p. 47, amparo contra leyes involves the judicial review of the constitutionality of statutes; amparo casacion is the judicial review of the constitutionality and legality of a judicial decision; and amparo administrativo refers to the judicial review of administrative actions. Another form of the remedy is the amparo libertad, i.e., the protection of personal freedom, which is equivalent to the writ of habeas corpus.

3. See Article 107 of the Constitution of Mexico; Article 28 (15) of the Constitution of Ecuador; Article 77 of the Constitution of Paraguay; Article 43 of the Constitution of Argentina; Article 49 of the Constitution of Venezuela; Article 48(3) of the Constitution of Costa Rica; and Article 19 of the Constitution of Bolivia.

been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The second clause, also known as the Grave Abuse Clause, accords the same general protection to human rights given by the well-known remedies of amparo contra leyes, amparo casacion, and amparo administrativo. Section 5, Article VIII, empowers the Supreme Court to review all cases in which the constitutionality or validity of any treaty, international, or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. Section 5(5), Article VIII, grants the Supreme Court the power to promulgate rules concerning the protection and enforcement of constitutional rights.

Pursuant to the power to promulgate rules for the protection and enforcement of constitutional rights, therefore, the Supreme Court has promulgated the Rule on Amparo.

B. Highlights of the Rule on Amparo

1. To Whom Available; Scope of the Remedy – The writ of amparo is a remedy available to any person whose right to life, liberty, and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. It extends to extralegal killings and enforced disappearances or threats of extralegal killings and enforced disappearances. The reason for limiting the coverage of amparo only to the right to life, liberty and security is that other constitutional rights of our people are already enforced through different remedies.

5. Annotation to the Writ of Amparo, p. 46.
6. THE RULE ON THE WRIT OF AMPARO, Sec. 1.
Also, the writ of amparo covers similar violations of the right to life, liberty, and security committed by private individuals or entities.\(^7\)

2. **Who May File the Petition** — The Rule restricts the filing of the petition to the **aggrieved party** or, in default of the aggrieved party (e.g., in cases where the whereabouts of the aggrieved party is unknown), by any **qualified person or entity** in the following order:

   a. any member of the immediate family, namely:
      
      i. spouse,
      
      ii. children, and
      
      iii. parents of the aggrieved party;

   b. any ascendant, descendant, or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or

   c. any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.\(^8\)

   The filing of the petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions; and, likewise, the filing of the petition by an authorized party on behalf of the aggrieved party suspends the right of all

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7. Entities refer to artificial persons, as they are also capable of perpetrating the acts or omissions affecting life, liberty, and security.

others, observing the order established herein.\textsuperscript{9} The specification of the party or parties who may file the petition derives from the need of preventing indiscriminate and groundless filing of petitions for amparo that may even prejudice the rights to life, liberty, or security of the aggrieved party. It may happen that the immediate family may be nearing the point of successfully negotiating with the respondent for the release of the aggrieved party. An untimely resort to the writ by a non-member of the family may endanger the life of the aggrieved party.

3. **When and Where Filed** – The petition may be filed on any day (including Saturdays, Sundays and holidays) and at any time (from morning until evening) with the Regional Trial Court of the place where the threat, act, or omission was committed or any of its elements occurred (to prevent the filing of the petition in some far-flung area to harass the respondent), or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts.\textsuperscript{10}

4. **Where Enforceable and Returnable** – The writ shall be enforceable anywhere in the Philippines. When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge. When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act, or omission was committed or any of its elements occurred. When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals.

\textsuperscript{9} Id.

\textsuperscript{10} Id. Sec. 3.
or any of their justices, or to any Regional Trial Court of the place where the threat, act, or omission was committed or any of its elements occurred.11

5. **Exemption from Docket and Other Legal Fees** — The petitioner is exempt from the payment of the docket and other lawful fees when filing the petition. The court, justice or judge shall docket the petition and act upon it immediately.12

6. **Form and Contents of Petition** — The petition shall be signed and verified13 and shall allege the following:
   a. The personal circumstances of the petitioner;
   b. The name and personal circumstances of the respondent responsible for the threat, act, or omission or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;
   c. The right to life, liberty, and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
   d. The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating

   11. *Id.*

   12. *Id.* Sec. 4.

   13. The verification ensures that there be no groundless or vexatious petitions.
authority or individuals, as well as the manner and conduct of the investigation, together with any report;¹⁴
e. The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act, or omission;¹⁵ and

f. The relief prayed for (which may include a general prayer for other just and equitable reliefs).¹⁶

The identification of the parties is necessary to prevent groundless and vexatious petitions, except that if the respondent is unknown he may be given an assumed appellation such as John Doe, but must be particularly described (description personae). The cause of action must be alleged as completely as possible. The requirement of supporting affidavits was added, to be used as the direct testimony of the affiant, in order to facilitate the resolution of the case consistent with the summary nature of the proceedings.

7. Action of the Court, Justice or Judge – The court, justice or judge is required upon the filing of the petition to immediately order the issuance of the writ if on its face it ought to issue.¹⁷

¹⁴. This requirement is necessary to determine whether the act or omission of the respondent satisfies the standard of conduct set by the Rule on Amparo.

¹⁵. This requirement is intended to prevent the premature use, if not misuse, of the writ for a fishing expedition.

¹⁶. THE RULE ON THE WRIT OF AMPARO, Sec. 5.

¹⁷. Id. Sec. 6.
8. **Issuance of the Writ** – The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ in his or her own hand, and may deputize any officer or person to serve it. The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven days from the date of its issuance.\(^{18}\)

A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.\(^{19}\)

9. **How the Writ is Served** – The writ is served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who retains a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.\(^{20}\) Substituted service avoids the situation where the respondent is conveniently assigned on a “secret mission” to frustrate personal service.

10. **Form and Contents of the Return** – The return, which serves as the answer or comment of the respondent, is required to be filed within five working days after service of the writ,\(^{21}\) must be verified and written, and supported with affidavits. The return must be detailed, containing the following:

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\(^{18}\) *Id.*

\(^{19}\) *Id.* Sec. 7.

\(^{20}\) *Id.* Sec. 8.

\(^{21}\) *Id.* Sec. 9, as amended on October 16, 2007.
a. The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty, and security of the aggrieved party, through any act or omission;

b. The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

c. All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

d. If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

i. to verify the identity of the aggrieved party;

ii. to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

iii. to identify witnesses and obtain statements from them concerning the death or disappearance;

iv. to determine the cause, manner, location, and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;

v. to identify and apprehend the person or persons involved in the death or disappearance; and
vi. to bring the suspected offenders before a competent court.22

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case. A general denial of the allegations in the petition shall not be allowed.23 If a general denial is made, the averment of the petition is deemed admitted. This requirement of specific denial avoids the ineffectiveness experienced in relation to the writ of habeas corpus, where the respondent often makes a simple denial in the return, to the effect that he or she has no custody over the missing person, causing the petition to be dismissed.

Defenses not raised in the return shall be deemed waived.24

11. Prohibited Pleadings and Motions – In keeping with the objective of avoiding delays in the proceedings, the Rule on Amparo prohibits certain pleadings and motions.25 The grounds of a motion to dismiss, including any objection based on jurisdiction, should be included in the return and resolved by the court, using its reasonable discretion as to the time and merit of the objection.

12. Hearing of the Petition – The petition may be heard either ex parte or adversarially:

22. THE RULE ON THE WRIT OF AMPARO, Sec. 9.
23. Id.
24. Id. Sec. 10.
25. Id. Sec. 11.
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THE RULES ON THE WRIT OF AMPARO AND
WRIT OF HABEAS DATA IN RELATION TO EXTRALEGAL KILLINGS
AND ENFORCED DISAPPEARANCES

2008

13. Interim Reliefs — Immediately upon filing of the petition
or at any time before final judgment, the court, justice or
d judge may grant any of the following reliefs:

a. Temporary Protection Order — May be issued motu
proprio or ex parte to protect the petitioner or the
aggrieved party and any member of the immediate family
in a government agency or by an accredited person or
private institution capable of keeping and securing their
safety.

If the petitioner is an organization, association, or
institution referred to in Section 2(c), Rule on Amparo,
the protection may be extended to the officers concerned.

The accredited persons and private institutions shall
comply with the rules and conditions imposed by the
court, justice or judge.

26. Id. Sec. 12.

27. Id. Sec. 13.

b. **Inspection Order** — May be issued upon verified motion and after due hearing, to compel any person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

**Specificity and Supporting Affidavits, Required** — The motion shall state in detail the place or places to be inspected and shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.

**In Camera Hearing** — If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition. The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.

**Conditions for Inspection** — The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place, and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

**Lifetime of Inspection Order** — The order expires five days after the date of its issuance, unless extended for justifiable reasons.

c. **Protection Order** — May be issued upon verified motion and after due hearing, to order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible
things, or objects in digitized or electronic form,\textsuperscript{29} which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

\textbf{In Camera Hearing} – The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

\textbf{Conditions for Inspection} – The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.

d. \textbf{Witness Protection Order} – May be issued upon motion or \textit{motu proprio}, to refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981.

The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

\textbf{Respondent’s Right to Interim Orders} – The inspection and production orders as interim reliefs are also available to the respondent upon verified motion and after due hearing. A motion for inspection order shall be supported by affidavits or testimonies of witnesses having personal knowledge of the defenses of the

\textsuperscript{29} The phrase “objects in digitized or electronic form” was added to cover electronic evidence, considering that the documents involved may be stored in digital files.
Such availability to the respondent is to ensure fairness in the proceedings, in instances in which the respondent may need to avail himself of these reliefs to protect his rights or to prove his defenses, i.e., when he has alleged that the aggrieved party is located elsewhere, or when vital documents proving his defenses are in the possession of other person.

14. **Burden of Proof and Standard of Diligence Required of Respondent in Performance of Duty** – The parties shall establish their claims by substantial evidence.\(^{31}\)

However, the Rule on Amparo distinguishes the standard of diligence required of the respondent depending on whether the respondent is a private individual entity or a public official or employee, as follows:

a. Private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.\(^{32}\)

b. Public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.\(^{33}\)

c. Public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.\(^{34}\)

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30. **The Rule on the Writ of Amparo**, Sec. 15.

31. *Id.* Sec. 17.

32. *Id.*

33. *Id.*

34. *Id.*
15. **Judgment**—The judgment is to be rendered within 10 days from the time the case is submitted for decision. If the allegations are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.\(^{35}\)

16. **Appeal**—Any party may appeal the final judgment or order to the Supreme Court under Rule 45 (petition for review on certiorari), in which he may raise questions of fact or law or both, within five working days from the date of notice of the adverse judgment. The appeal shall be given the same priority as habeas corpus cases.\(^{36}\)

The Supreme Court has allowed the Rule 45 appeal to include questions of fact due to the realization that the amparo proceeding essentially involves a determination of facts related to extralegal killings or enforced disappearances.

17. The Rule does not preclude the filing of separate criminal, civil or administrative actions.\(^{37}\) When a criminal action has been commenced, no separate petition for the writ of amparo shall be filed and the reliefs under the writ of amparo shall be available by motion in the criminal case; the procedure under the Rule on Amparo shall govern the disposition of the relief available under the writ of amparo.\(^{38}\) Should a criminal action be filed subsequent to the filing of a petition for amparo, the latter shall be consolidated with the criminal action.\(^{39}\)

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35. *Id.* Sec. 18.


37. *Id.* Sec. 21.

38. *Id.* Sec. 22.

39. *Id.* Sec. 23.
a criminal action and a separate civil action are filed subsequent to a petition for a writ of amparo, the latter shall be consolidated with the criminal action. After consolidation, the procedure under the Rule on Amparo continues to apply to the disposition of the reliefs in the petition.40

III. WRIT OF HABEAS DATA

On January 22, 2008, the Supreme Court en banc approved the Rule on Habeas Data upon the recommendation of the Committee on the Revision of the Rules of Court, 41 to take effect on February 2, 200842 following its publication in three newspapers of general circulation.

A. What is the Writ of Habeas Data?

The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.43

Although it may complement the writ of amparo and the writ of habeas corpus, the writ of habeas data is an independent remedy to protect the right to privacy, particularly informational privacy. The privacy of one’s person, family and home is a sanctified

40. Id.

41. The Committee members and consultants were the same members in the drafting of the Rule on Amparo.

42. To coincide with Constitution Day.

43. RULE ON THE WRIT OF HABEAS DATA, Sec. I.
right in the history of constitutional law. It has been said that a man’s home is his kingdom—which even the king has to respect.\textsuperscript{44} Indeed, the right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection.\textsuperscript{45}

The writ of habeas data is also a remedy to protect the right to life, liberty, or security of a person from violation or threatened violation by an unlawful act or omission of a public official or employee or of a private individual or entity. It complements the remedies of the writ of amparo and writ of habeas corpus.

\textbf{B. Bases of the Writ of Habeas Data}

1. \textbf{Right to the Truth} – The right to the truth is a component of the right to life, liberty, and security. It is the bedrock of the rule of law, which the State is bound to protect under the national and international laws.\textsuperscript{46}

   In cases of extralegal killings and enforced disappearances, the victims and their families have the now well-recognized right to access the records of the military or the police agencies of the state to discover or learn the totality of the circumstances surrounding the fates of the victims.

2. \textbf{The Right to Privacy} – The individual has the right to insist upon his or her individuality and to control information, the dissemination of which would render the individual’s

\textsuperscript{44} Irene Cortes, \textit{The Constitutional Foundations of Privacy}, in \textit{EMERGING TRENDS IN LAW}, UP Press, 1983.

\textsuperscript{45} Morfe \textit{v.} Mutuc, G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

\textsuperscript{46} See Universal Declaration of Human Rights, Art. 8.
The right to privacy is the inalienable right of an individual “to be let alone.” The right to privacy includes the right of the person to prevent intrusion upon certain thoughts and activities, including freedom of speech and freedom to form or join associations. It also includes the constitutional freedoms from unreasonable searches and seizures and from self-incrimination.

C. Highlights of the Writ of Habeas Data

I. Who May File — Any aggrieved party may file a petition for the writ of habeas data. However, in cases of extralegal killings and enforced disappearances, the petition may be filed by:

a. any member of the immediate family of the aggrieved party, namely:
   i. spouse,
   ii. children, and
   iii. parents; or

b. any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in (a).

Where the petitioner is a minor or an incapacitated person or one who is not of sound mind, or in any case where a legal

47. Rationale for the Writ of Habeas Data, p. 9.
50. Rule on the Writ of Habeas Data, Sec. 2.
guardian is required, then such legal guardian may file the petition for and on behalf of the ward in accordance with the Rule of Court, which applies suppletorily for the purposes of the Rule on Habeas Data.

In cases involving extralegal killings and disappearances, the same order of preference under the Rule on Amparo applies.

2. **Where to File** – In the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner. The petition may also be filed in the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.\(^\text{51}\)

3. **Where Returnable; Enforceable** – When issued by a Regional Trial Court or any RTC judge, the writ shall be returnable before such court or judge. When issued by the Court of Appeals or the Sandiganbayan or any of its justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored. When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Court of Appeals or the Sandiganbayan or any of its justices, or to any Regional Trial Court of the place where petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored. The writ of habeas data shall be enforceable anywhere in the Philippines.\(^\text{52}\)

51. *Id.* Sec. 3.

52. *Id.* Sec. 4.
Unlike under the Rule on Amparo, the habeas data writ may be made returnable to the RTC with jurisdiction over the place where the data or information is gathered, collected or stored as forum actus—the forum of the place where the act in question was done.

4. **Partial Exemption of Indigents from Docket Fees**—
Indigents are exempt from paying docket and other lawful fees to accord with the policy of widening the poor’s access to justice. Such fees shall be paid by parties with the capacity to pay considering that the petition will entail costs in logistics and documentary production.

The petition of an indigent is docketed and acted upon immediately, without prejudice to the subsequent submission of proof of indigency not later than 15 days from the filing of the petition.53

5. **Contents of the Petition**—The petition shall be verified and shall contain the following:54

   a. The personal circumstances of the petitioner and the respondent;

   b. The manner the right to privacy is violated or threatened and how the violation or threat affects the right to life, liberty, or security of the aggrieved party;

   c. The actions and resources taken by the petitioner to secure the data or information;

   d. The location of the files, registers or databases, the government office, and the person in charge, in possession, or in control of the data or information, if known;

53. *Id.* Sec. 5.

54. *Id.* Sec. 6.
e. The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information kept by the respondent. In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

f. Such other relevant reliefs as are just and equitable.

The requirement for specific and verified allegation in support of the petitioner’s cause of action and for the petitioner to allege the courses of action undertaken to protect the right to privacy or the right to life, liberty or security of the petitioner is intended to prevent the misuse of the writ for “fishing expedition” purposes.

6. Issuance of the Writ – Upon the filing of the petition, the court, justice or judge immediately orders the issuance of the writ if on its face it ought to issue. The clerk of court shall then issue the writ under the seal of the court and cause it to be served within three days from its issuance; or, in case of urgent necessity, the justice or judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it.\(^\text{55}\) The writ will require respondent to file a return, which is the comment or answer to the petition.

The writ shall also set the date and time for summary hearing of the petition which shall not be later than 10 work days from the date of its issuance.\(^\text{56}\)

A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same,

\(^{55}\) Id. Sec. 7.

\(^{56}\) Rule on the Writ of Habeas Data, Sec. 7.
shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.\textsuperscript{57}

7. **Service of the Writ** – The officer or person deputized by the court, justice or judge writ shall serve the writ upon the respondent and retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.\textsuperscript{58}

Like under the Rule on Amparo, the authority to serve by substituted service is designed to avoid the situation in which a public respondent in the military/police service is conveniently assigned to a “secret mission” to frustrate personal service.

8. **Return of the Writ and Contents of the Return** – The respondent shall file a verified written return to answer the allegations of the petition together with supporting affidavits within five work days from service of the writ, which period may be reasonably extended by the issuing court for justifiable reasons. A general denial of the allegations in the petition is not allowed.\textsuperscript{59} The respondent may interpose his or her lawful defense, such as non-disclosure of data or information that involves national security, a state secret, privileged information or other defenses sanctioned by law, the Rules of Court and jurisprudence.

The return shall, among other things, contain the following:\textsuperscript{60}

\textsuperscript{57} Id. Sec. 8.
\textsuperscript{58} Id. Sec. 9.
\textsuperscript{59} Id. Sec. 10.
\textsuperscript{60} Id.
a. The lawful defenses such as national security, state secrets, privileged communication, confidentiality of the source of information of media, and others;

b. In case of the respondent being in charge, in possession or in control of the data or information subject of the petition:
   i. a disclosure of the data or information about the petitioner, the nature of such data or information, and the purposes for its collection;
   ii. the steps or actions taken by the respondent to ensure the security and confidentiality of the data or information; and
   iii. the currency and accuracy of the data or information held; and

c. Other allegations relevant to the resolution of the proceeding.

9. **In Camera Hearing** – A hearing in chambers may be conducted where the respondent invokes the defense that the release of the data or information in question compromises national security or state secrets, or when the data or information cannot be divulged to the public due to its nature or privileged character.61

10. **Prohibited Pleadings and Motions** – The pleadings and motions enumerated in Section 13, Rule on Habeas Data, are prohibited in the interest of expediting the proceedings.

   Even if the Rule on Habeas Data prescribes a petition for certiorari from being filed, the Supreme Court may not be deprived of its certiorari jurisdiction under the

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61. *Id.* Sec. 12.
Constitution in case of manifest grave abuse of the judge’s or justice’s discretion in issuing orders, like when the orders compromise national security, or impinge on privileged matter.

II. Hearing of the Petition – The petition may be heard:

a. **Ex Parte** – Upon failure of the respondent to file a return, the hearing court should hear the petition ex parte and may require the petitioner to present further evidence in support of his or her allegations and, upon that basis, render judgment.62

b. **Summary Hearing** – The adversarial hearing is summary, to be held from day to day until completed, but the court, justice or judge may call a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.63

12. **Judgment** – The judgment is rendered within 10 days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall enjoin the act complained of, or order the deletion, destruction, or rectification of the erroneous data or information and grant other relevant reliefs as may be just and equitable; otherwise, the privilege of the writ shall be denied.64

The relief granted should be relevant. For example, in case of threats, the court shall enjoin the act complained of. In case the data or information have already been gathered,

63. *Id.* Sec. 15.
64. *Id.* Sec. 16.
collected or stored, the court shall order their deletion, destruction, or rectification as prayed for in the petition. It may issue other relevant reliefs as may be just and equitable.

13. Enforcement of the Judgment – Upon its finality, the judgment is enforced by the sheriff or any lawful officer designated by the court, justice or judge within five work days.65

Officer’s Return and Contents of Return – Within three days from his enforcement of the final judgment, the executing officer shall make a verified return to the court containing a full statement of the proceedings under the writ and a complete inventory of the database or information, or documents and articles inspected, updated, rectified, or deleted, with copies served on the petitioner and the respondent. The officer shall further state how the judgment was enforced and complied with by the respondent, as well as all objections of the parties regarding the manner and regularity of the service of the writ.66 The detailed return is to compel the officer to take extra care in enforcing the judgment of the Court.

Hearing on Officer’s Return – The court shall set the return for hearing with due notice to the parties and act accordingly.67 In this hearing, the Court shall determine if there is any objection to the manner of execution of the judgment on the part of any party. This will assure the Court that its decision has been faithfully followed.

65. Id.

66. Id. Sec. 17.

67. Id. Sec. 18.
I4. **Appeal**— An appeal of the judgment or final order is to the Supreme Court under Rule 45 (petition for review on *certiorari*) within five work days from notice of the judgment or final order. Questions of fact or law or both may be raised. The appeal is given the same priority as habeas corpus and amparo cases.68

I5. The Rule on Habeas Data does not preclude the filing of separate criminal, civil or administrative actions.69 When a criminal action has been commenced, no separate petition for *habeas data* shall be filed and the reliefs under Rule on Habeas Data shall be available by motion in the criminal case;70 the procedure under the Rule on Habeas Data shall govern the disposition of the relief available under the writ of amparo.71 Should a criminal action be filed subsequent to the filing of a petition for habeas data, the latter shall be consolidated with the criminal action.72 When a criminal action and a separate civil action are filed subsequent to a petition for a writ of habeas data, the latter shall be consolidated with the criminal action. After consolidation, the procedure under the Rule on Habeas Data shall continue to apply to the disposition of the reliefs in the petition.73

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68. **Rule on the Writ of Habeas Data, Sec. 19.**

69. *Id.* Sec. 20.

70. *Id.* Sec. 22.

71. *Id.* Sec. 21.

72. *Id.*

73. *Id.*
Universal Declaration
of Human Rights

Adopted on December 10, 1948
by the General Assembly of the United Nations

Preamble

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations between nations,

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
WHEREAS Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

NOW, THEREFORE,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3**

Everyone has the right to life, liberty and security of person.

**Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

(1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.
ARTICLE 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 13

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

ARTICLE 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
**Article 16**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
ARTICLE 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

ARTICLE 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right to equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary
education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
International Covenant
on Civil and Political Rights

Adopted and Opened for Signature,
Ratification and Accession by
General Assembly Resolution 2200A (XXI)
of December 16, 1966

Entry into Force March 23, 1976,
in accordance with Article 49

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed
in the Charter of the United Nations, recognition of the inherent
dignity and of the equal and inalienable rights of all members of
the human family is the foundation of freedom, justice and peace
in the world,

Recognizing that these rights derive from the inherent dignity
of the human person,

Recognizing that, in accordance with the Universal
Declaration of Human Rights, the ideal of free human beings
enjoying civil and political freedom and freedom from fear and
want can only be achieved if conditions are created whereby
everyone may enjoy his civil and political rights, as well as his
economic, social and cultural rights,

Considering the obligation of States under the Charter of
the United Nations to promote universal respect for, and
observance of, human rights and freedoms,
Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

**Part I**

**Article I**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

**Part II**

**Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject
to its jurisdiction the rights recognized in the present
Covenant, without distinction of any kind, such as race, color,
sex, language, religion, political or other opinion, national or
social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other
measures, each State Party to the present Covenant undertakes
to take the necessary steps, in accordance with its constitutional
processes and with the provisions of the present Covenant,
to adopt such laws or other measures as may be necessary to
give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as
herein recognized are violated shall have an effective
remedy, notwithstanding that the violation has been
committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall
have his right thereto determined by competent judicial,
administrative or legislative authorities, or by any other
competent authority provided for by the legal system of
the State, and to develop the possibilities of judicial
remedy;

(c) To ensure that the competent authorities shall enforce
such remedies when granted.

**Article 3**

The States Parties to the present Covenant undertake to ensure
the equal right of men and women to the enjoyment of all civil
and political rights set forth in the present Covenant.
ARTICLE 4

I. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

ARTICLE 5

I. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III**

**ARTICLE 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

**Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labor;

   (b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;

   (c) For the purpose of this paragraph the term “forced or compulsory labor” shall not include:

   (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under
detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

**Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**ARTICLE 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**ARTICLE 11**

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.
ARTICLE 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The abovementioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

ARTICLE 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

ARTICLE 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be
entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without
payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.
ARTICLE 15

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

ARTICLE 16

Everyone shall have the right to recognition everywhere as a person before the law.

ARTICLE 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to
have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 20**

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

**Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

**ARTICLE 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

**ARTICLE 24**

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

**Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

**Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied
the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

ARTICLE 28

I. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of 18 members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

ARTICLE 29

I. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.
**Article 30**

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with Article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two-thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

**Article 31**

I. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

**Article 32**

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in Article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding Articles of this part of the present Covenant.

**Article 33**

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.
Article 34

1. When a vacancy is declared in accordance with Article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with Article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that Article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee’s responsibilities.
ARTICLE 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

ARTICLE 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.


ARTICLE 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

ARTICLE 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

   (a) Twelve members shall constitute a quorum;

   (b) Decisions of the Committee shall be made by a majority vote of the members present.
ARTICLE 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

   (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.
I. A State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this Article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this Article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this Article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written
submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this Article shall come into force when 10 States Parties to the present Covenant have made declarations under paragraph I of this Article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this Article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

**Article 42**

1. (a) If a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months
on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under Article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with Article 36 shall also service the commissions appointed under this Article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than 12 months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
(a) If the Commission is unable to complete its consideration of the matter within 12 months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission’s report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission’s report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this Article are without prejudice to the responsibilities of the Committee under Article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States
Parties concerned, in accordance with paragraph 9 of this Article.

**Article 43**

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under Article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

**Article 44**

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

**Article 45**

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.
Part V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

**Article 49**

I. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the 35th instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the 35th instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 50**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 51**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favor a conference of States
Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the States Parties favors such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

**Article 52**

1. Irrespective of the notifications made under Article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same Article of the following particulars:

   (a) Signatures, ratifications and accessions under Article 48;

   (b) The date of the entry into force of the present Covenant under Article 49 and the date of the entry into force of any amendments under Article 51.
ARTICLE 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 48.
International Convention
for the Protection of All Persons
from Enforced Disappearance

Preamble

The States Parties to this Convention,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to the Universal Declaration of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its Resolution 47/133 of December 18, 1992,

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,
Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end, 

Have agreed on the following articles:

**PART I**

**ARTICLE 1**

1. No one shall be subjected to enforced disappearance.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

**ARTICLE 2**

For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

**ARTICLE 3**

Each State Party shall take appropriate measures to investigate acts defined in Article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.
ARTICLE 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offense under its criminal law.

ARTICLE 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

ARTICLE 6

I. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to
submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offense of enforced disappearance.

**ARTICLE 7**

I. Each State Party shall make the offense of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) Without prejudice to other criminal procedures, aggravating circumstances, in particular, in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.
ARTICLE 8

Without prejudice to Article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

   (a) Is of long duration and is proportionate to the extreme seriousness of this offense;

   (b) Commences from the moment when the offense of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

ARTICLE 9

I. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offense of enforced disappearance:

   (a) When the offense is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

   (b) When the alleged offender is one of its nationals;

   (c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offense of enforced disappearance when the alleged
offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

**Article 10**

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offense of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this Article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in Article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this Article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this Article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national,
or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

**Article II**

I. The State Party in the territory under whose jurisdiction a person alleged to have committed an offense of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offense of a serious nature under the law of that State Party. In the cases referred to in Article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in Article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offense of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offense of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

**Article I2**

I. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially
and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defense counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this Article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this Article:

   (a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

   (b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offense of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or
their defense counsel, or at persons participating in the investigation.

**Article 13**

1. For the purposes of extradition between States Parties, the offense of enforced disappearance shall not be regarded as a political offense or as an offense connected with a political offense or as an offense inspired by political motives. Accordingly, a request for extradition based on such an offense may not be refused on these grounds alone.

2. The offense of enforced disappearance shall be deemed to be included as an extraditable offense in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offense of enforced disappearance as an extraditable offense in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offense of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offense of enforced disappearance as an extraditable offense between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State
Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

**Article 14**

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offense of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

**Article 15**

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.
**Article 16**

I. No State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

**Article 17**

I. No one shall be held in secret detention.

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

   (a) Establish the conditions under which orders of deprivation of liberty may be given;

   (b) Indicate those authorities authorized to order the deprivation of liberty;

   (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;

   (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her
consular authorities, in accordance with applicable international law;

e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;

f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person’s release if such deprivation of liberty is not lawful.

3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

(a) The identity of the person deprived of liberty;

(b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

(c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
(d) The authority responsible for supervising the deprivation of liberty;

(e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty, and the authority responsible for the place of deprivation of liberty;

(f) Elements relating to the state of health of the person deprived of liberty;

(g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;

(h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

**Article 18**

I. Subject to Articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

(a) The authority that ordered the deprivation of liberty;

(b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;

(c) The authority responsible for supervising the deprivation of liberty;

(d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of
deprivation of liberty, the destination and the authority responsible for the transfer;

(e) The date, time and place of release;

(f) Elements relating to the state of health of the person deprived of liberty;

(g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this Article, as well as persons participating in the investigation, from any ill treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

**Article 19**

1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offense of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.
Article 20

I. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in Article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in Article 18 that could constitute conduct defined in Article 2 or be in violation of Article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in Article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in Article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

Article 21

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.


**ARTICLE 22**

Without prejudice to Article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

(a) Delaying or obstructing the remedies referred to in Article 17, paragraph 2(f), and Article 20, paragraph 2;

(b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

(c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

**ARTICLE 23**

I. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

(a) Prevent the involvement of such officials in enforced disappearances;

(b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;

(c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.
2. Each State Party shall ensure that orders or instructions prescribing, authorizing, or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this Article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

**Article 24**

1. For the purposes of this Convention, “victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this Article covers material and moral damages and, where appropriate, other forms of reparation such as:
(a) Restitution;
(b) Rehabilitation;
(c) Satisfaction, including restoration of dignity and reputation;
(d) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

**Article 25**

I. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.
2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph I(a) of this Article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph I(a) of this Article.

4. Given the need to protect the best interests of the children referred to in paragraph I(a) of this Article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this Article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

**Part II**

**Article 26**

I. A Committee on Enforced Disappearances (hereinafter referred to as “the Committee”) shall be established to carry out the functions provided for under this Convention.
Committee shall consist of 10 experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after
the first election, the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this Article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this Article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

9. Each State Party shall cooperate with the Committee and assist its members in the fulfillment of their mandate, to the extent of the Committee’s functions that the State Party has accepted.
**Article 27**

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure described in Article 44, paragraph 2, whether it is appropriate to transfer to another body—without excluding any possibility—the monitoring of this Convention, in accordance with the functions defined in Articles 28 to 36.

**Article 28**

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

**Article 29**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the
measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

**Article 30**

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this Article:

   (a) Is not manifestly unfounded;

   (b) Does not constitute an abuse of the right of submission of such requests;

   (c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;
(d) Is not incompatible with the provisions of this Convention; and

(e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this Article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

**Article 31**

I. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this
State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(a) The communication is anonymous;

(b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;

(c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where

(d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this Article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.
5. The Committee shall hold closed meetings when examining communications under the present Article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

**Article 32**

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

**Article 33**

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.

2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.

3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.
4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.

5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

**Article 34**

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practiced on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

**Article 35**

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

**Article 36**

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.
2. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

**PART III**

**ARTICLE 37**

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

**ARTICLE 38**

1. This Convention is open for signature by all Member States of the United Nations.

2. This Convention is subject to ratification by all Member States of the United Nations. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open to accession by all Member States of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

**ARTICLE 39**

1. This Convention shall enter into force on the 30th day after the date of deposit with the Secretary-General of the United Nations of the 20th instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after
the deposit of the 20th instrument of ratification or accession,
this Convention shall enter into force on the 30th day after
the date of the deposit of that State's instrument of ratification
or accession.

**Article 40**

The Secretary-General of the United Nations shall notify all States
Members of the United Nations and all States which have signed
or acceded to this Convention of the following:

(a) Signatures, ratifications and accessions under Article 38;
(b) The date of entry into force of this Convention under
Article 39.

**Article 41**

The provisions of this Convention shall apply to all parts of
federal States without any limitations or exceptions.

**Article 42**

I. Any dispute between two or more States Parties concerning
the interpretation or application of this Convention which
cannot be settled through negotiation or by the procedures
expressly provided for in this Convention shall, at the request
of one of them, be submitted to arbitration. If within six
months from the date of the request for arbitration the Parties
are unable to agree on the organization of the arbitration,
any one of those Parties may refer the dispute to the
International Court of Justice by request in conformity with
the Statute of the Court.
2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this Article. The other States Parties shall not be bound by paragraph I of this Article with respect to any State Party having made such a declaration.

3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this Article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

**Article 43**

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of August 12, 1949, and the two Additional Protocols thereto of June 8, 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

**Article 44**

I. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favor a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one-third of the States Parties favor such a conference,
the Secretary-General shall convene the conference under the auspices of the United Nations.

2. Any amendment adopted by a majority of two-thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.

3. An amendment adopted in accordance with paragraph 1 of this Article shall enter into force when two-thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

**Article 45**

1. This Convention, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in Article 38.


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Introduction

In many countries throughout the world, extralegal, arbitrary and summary executions take place undocumented and undetected. These executions include:

   a. political assassinations;
   b. deaths resulting from torture or ill-treatment in prison or detention;
   c. death resulting from enforced “disappearances”;
   d. deaths resulting from the excessive use of force by law enforcement personnel;
   e. executions without due process; and
   f. acts of genocide.
The failure to detect and disclose these executions to the international community is a major obstacle to the rendering of justice for past executions and the prevention of future executions.

This Manual is the result of several years of analysis, research and drafting undertaken because of extralegal, arbitrary and summary executions throughout the world. Its purpose is to supplement the “Principles on the effective prevention and investigation of extralegal, arbitrary and summary executions,” adopted by the Economic and Social Council in its resolution 1989/65 of May 24, 1989, on the recommendation of the Committee on Crime Prevention and Control, at its tenth session, held in Vienna, from February 5 to 16, 1990.

Concurrent to the elaboration of the Principles, there was concerted action by non-governmental organizations to provide additional guidance in the area of effective prevention and investigation of extralegal, arbitrary and summary executions, by offering technical advice on the meaningful implementation of the Principles.

The preparation of this Manual was greatly facilitated by the Minnesota Lawyers International Human Rights Committee. At its initiative, an international group of experts in forensic science, lawyers, human rights experts, and others volunteered their time and expertise to assist in the preparation of the draft Principles and to provide appropriate follow-up for their implementation, the contents of which constitute the major part of the Manual.

In this connection, special acknowledgement is due to the following:

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I. INTERNATIONAL HUMAN RIGHTS STANDARDS

A number of international standards outlaw arbitrary deprivation of life. The Universal Declaration of Human Rights, adopted by the General Assembly in its Resolution 217 A (III) of December 10, 1948, states that “everyone has the right to life, liberty, and security of person.” The International Covenant on Civil and Political Rights, adopted by the General Assembly in its Resolution 2200 A (XXI) of December 16, 1966, which was promulgated in 1966 and has been ratified by 87 States, provides in Article 6, that “no one shall be arbitrarily deprived of his life.” Prohibitions of extralegal, arbitrary and summary executions are also found in the following instruments the American Convention on Human Rights, Article 4(1) “No one shall be arbitrarily deprived of his life”; the African Charter on Human and People’s Rights, Article 4: “Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”; European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2(1): “No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by laws.”

The international organs and bodies that have been active in implementing the right to be free from arbitrary deprivation of
life include the General Assembly, the Economic and Social Council, the Committee on Crime Prevention and Control, the Commission on Human Rights and its Special Rapporteur on Summary or Arbitrary Executions, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee and the International Labour Organisation; the Inter-American Commission on Human Rights; the African Commission on Human and People’s Rights; and the European Commission on Human Rights. Significant action taken by these international bodies to prevent extralegal, arbitrary and summary executions are discussed below.

A. United Nations

I. General Assembly

The General Assembly of the United Nations, by its Resolution 35/172 of December 15, 1980, adopted for the first time a specific resolution on arbitrary or summary executions in which, concerned at the occurrence of the executions that are widely regarded as being politically motivated, Member States concerned were urged to respect as a minimum standard the content of the relevant provisions of the International Covenant on Civil and Political Rights so as to guarantee the most careful legal procedures and the greatest possible safeguards. In Resolution 36/22 of November 9, 1981, the General Assembly, bearing in mind the results of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (see Section A.7, below), condemned the practice of summary executions and arbitrary execution and invited all Member States, specialized agencies, regional, interregional organizations and relevant non-governmental organizations to answer the Secretary-General’s request for their views and observations concerning the problem.
of arbitrary executions and summary executions to be reported to the Committee on Crime Prevention and Control at its seventh session in 1982 section A.6, below). In Resolutions 37/182 of December 17, 1982, 38/96 of December 16, 1983, 39/110 of December 14, 1984 and 40/143 of December 13, 1985, the Assembly charted a course of action aimed at strengthening the United Nations position against summary or arbitrary executions.

On December 4, 1986, the General Assembly adopted Resolution 41/144, strongly condemning the large number of summary or arbitrary executions that continued to take place in various parts of the world. The Assembly also endorsed the conclusion of the Special Rapporteur on Summary or Arbitrary Executions, appointed by the Economic and Social Council in 1982, that it was necessary to develop international standards designed to ensure that investigations were conducted in all cases of suspicious death including provisions for an adequate autopsy (E/CN.4/1986/21).

In its Resolution 42/141 of December 7, 1987, the Assembly took an additional step towards encouraging the drafting of international standards by inviting the Special Rapporteur to continue to receive information from appropriate United Nations bodies and other international organizations, to examine the elements to be included in such standards and to report to the Commission on Human Rights on progress made in that respect. The Assembly, therefore, not only recognized that a gap existed in international protection against arbitrary or summary executions, but also stimulated its subsidiary bodies to take an active interest in filling that gap. In doing so, the Assembly has been instrumental in advancing the process of promulgating such new standards. In its Resolution 43/151 of December 8, 1988, the Assembly invited Governments, international organizations and non-governmental
organizations to support the efforts made in United Nations forums towards the adoption of international standards for the proper investigation of all deaths in suspicious circumstances, including provision for adequate autopsy. Further, the Assembly endorsed the elements proposed by the Special Rapporteur for inclusion in such international standards. Keeping that in mind, the Assembly, by Resolution 44/162 of December 15, 1989 endorsed the Principles adopted by the Economic and Social Council and, in Resolution 44/159 of the same date, encouraged Governments, international organizations and non-governmental organizations to organize training programmes and support projects with a view to training or educating law enforcement officials in human rights issues connected to their work and appealed to the international community to support endeavours to that end.\(^1\)

In parallel to this work, the Assembly adopted by Resolution 39/46, annex, of December 10, 1984, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which became effective on June 26, 1987. In its preamble, the Convention referred to the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the Assembly in Resolution 3452 (M), annex, of

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That Convention not only specifies that the States Parties will outlaw torture in their national legislation, but also notes explicitly that no order from a superior or exceptional circumstance may be invoked as a justification of torture. The Convention also introduces two new elements of particular significance to efforts by the United Nations to combat torture. The first is that, henceforth a torturer may be prosecuted wherever he is to be found in the territory of any State Party to the Convention, since the Convention specifies that persons alleged to have committed acts of torture may be tried in any State Party or that they may be extradited so that they may be tried in the State Party where they committed their crimes. The second new element is that the Convention contains a provision that allows for an international inquiry if there is reliable information indicating that torture is being systematically practised in the territory of a State Party to the Convention. Such an inquiry may include a visit to the State Party concerned, with its agreement.

The States Parties to the Convention also pledge to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. No exceptional circumstances whatsoever, whether a state of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Under the Convention, no State Party may expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
The States Parties agree to afford one another the greatest measure of assistance in connection with criminal proceedings brought forward in respect of acts of torture, and to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

The States Parties also undertake to ensure in their legal systems that the victims of acts of torture obtain redress and have an enforceable right fair and adequate compensation, including the means for as full a rehabilitation as possible.\(^2\)

2. Economic and Social Council

The Economic and Social Council of the United Nations has repeatedly addressed the question of arbitrary or summary executions. For example, the Council has continuously and consistently appealed to Governments, regional intergovernmental organizations and non-governmental organizations to take effective action to combat and eliminate summary or arbitrary executions, including extralegal executions. The Council has also encouraged and endorsed a number of initiatives to be taken by the human rights and criminal justice bodies of the United Nations.

Nations, which are described below, aimed to eliminate that alarming and deplorable practice.

3. Commission on Human Rights

Sub-Commission on Prevention of Discrimination and Protection of Minorities under the Commission of Human Rights

In 1987 the Working Group on Detention annexed to its report (E/CN.4/Sub.2/1987/15) to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights an explanatory paper on the elaboration of norms guaranteeing an impartial investigation into arbitrary execution or suspicious violent death, in particular during detention. Creating norms for autopsy procedures was noted as being particularly useful in determining whether or not a death was suspicious. That report contained also draft standards for the investigation of arbitrary execution submitted by the International Commission of Jurists.

In its report for 1988 (E/CNA/1989/3 - E/CN.4/Sub.2/1988/45), the Sub-Commission by Decision 1988/109 requested the Secretary-General to provide with a document describing the work being done in other international forum on international standards for adequate investigations into all cases of suspicious deaths in detention as well as adequate autopsy.

In 1989, the Sub-Commission considered a report of the Secretary-General (E/CN.4/Sub.2/1989/25) summarizing the activities of various United Nations bodies concerning international standards for investigating suspicious deaths, including adequate autopsy.

Two Special Rapporteurs have been appointed at the request of the Commission on Human Rights.
**Special Rapporteur on Summary or Arbitrary Executions**

In March 1982, the Economic and Social Council by its Resolution 1982/35 of May 7, 1982 authorized a Special Rapporteur to study the questions related to summary or arbitrary executions. The Special Rapporteur, Mr. Amos Wako of Kenya, was appointed in 1982 at the request of the Commission on Human Rights, and immediately began the task of collecting information from around the world on summary or arbitrary executions. He has since prepared eight annual reports addressing a wide range of issues concerning summary or arbitrary executions and informing the Commission of his activities, including urgent appeals to Governments.

In 1986, the Special Rapporteur included in his report (E/CN.4/1986/21) to the Commission on Human Rights, consideration of the measures to be taken when a death occurs in custody.

One of the ways in which Governments can show that they want this abhorrent phenomenon of arbitrary or summary executions eliminated is by investigating, holding inquests, prosecuting and punishing those found guilty. There is therefore a need to develop international standards designed to ensure that investigations are conducted into all cases of suspicious death and in particular those at the hands of the law enforcement agencies in all situations. Such standards should include adequate autopsy. A death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution, and appropriate investigation should immediately be made to confirm or rebut the
presumption. The results of investigations should be made public (para. 209).

Referring to the Principles adopted by the Economic and Social Council in its Resolution 1989/65 of May 24, 1989, the Special Rapporteur stated that:

his position with regard to the implementation of his mandate is strongly supported by this resolution.

He will now refer to the Principles in his annual examination of alleged incidents of summary or arbitrary executions. The Special Rapporteur stated further that:

any Government’s practice that fails to reach the standards set out in the Principles may be regarded as an indication of the Government’s responsibility, even if no government officials are found to be directly involved in the acts.

He recommended that Governments review national laws and regulations, as well as the practice of judicial and law enforcement authorities, with a view to securing effective implementation of the standards set by Council Resolution 1989/65.

This report focused on “the absence of investigation, prosecution and/or punishment in cases of death in suspicious circumstances” (E/CN.4/1986/21). The Special Rapporteur noted that Governments were extremely reluctant to investigate deaths where military or law enforcement agencies were involved. Often, in those cases, as noted by other writers, autopsies or inquest proceedings either did not take place or crucial information, such as evidence of torture, was omitted.³

³ See D. O’Donnell, Proteccion internacional de los derechos humanos, 2. ed. (Lima, Comision Andina de Juristas, 1989);
In response to the Special Rapporteur’s report of 1987 (E/CN.4/1987/20), the Commission on Human Rights welcomed his recommendation that Governments should review the machinery for investigation of deaths under suspicious circumstances in order to secure an impartial, independent investigation on such deaths, including an adequate autopsy. The Commission also welcomed the Special Rapporteur’s recommendation that international organizations should make a concerted effort to draft international standards designed to ensure proper investigation by appropriate authorities into all cases of suspicious death, including provisions for adequate autopsy.

In his 1988 report (E/CN.4/1988/22) to the Commission, the Special Rapporteur devoted an entire section to a discussion on the importance of standards for proper investigation into all cases of suspicious deaths. In particular, he outlined seven elements that should be included as a minimum in such standards: promptness, impartiality, thoroughness, protection, representation of the family of the victim, publication of the findings and an independent commission of inquiry. The Commission endorsed these recommendations.

By its Resolution 1989/64 of March 8, 1989, the Commission took note with appreciation of the subsequent report of the Special Rapporteur (E/CN.4/1989/25) and again welcomed his recommendations with a view to

eliminating summary or arbitrary executions. Following that with a further report (E/CN.4/1990/22), the Special Rapporteur reviewed new developments in summary or arbitrary executions. He took note of a particularly alarming trend, which was rapidly spreading, of death threats directed, in particular, against persons who played key roles in defending human rights and achieving social and criminal justice. At the same time, however, he noted considerable achievements made by the General Assembly and the Economic and Social Council in areas directly or indirectly related to his mandate.

**Special Rapporteur on Torture**

The Commission on Human Rights decided, in its Resolution 1985/33, to appoint a Special Rapporteur to examine questions relevant to torture, requesting him to seek and receive credible and reliable information on such questions and to respond to that information without delay. This decision was subsequently approved by the Council in its Decision 1985/144 of May 30, 1985.

The mandate of the Special Rapporteur on questions relevant to torture requests him to report to the Commission, which is composed of government representatives, on the phenomenon of torture in general. To this end, he establishes contact with Governments and asks them for information on the legislative and administrative measures taken to prevent torture and to remedy its consequences whenever it occurs.

The Special Rapporteur is also expected to respond effectively to the credible and reliable information that comes before him. This provision of the Special Rapporteur’s mandate has led to the urgent action procedure, which considerably increases the effectiveness of his activities.
The Special Rapporteur’s task extends to all States Members of the United Nations and to all States with observer status. He corresponds with Governments, requesting them to inform him of the measures they have taken or plan to take to prevent or combat torture. He also receives requests for urgent action, which he brings to the attention of the Governments concerned in order to ensure protection of the individual’s right to physical and mental integrity. In addition, he holds consultations with government representatives who wish to meet with him and, in accordance with his mandate, makes consultation visits to some parts of the world.

For his future activities, the Special Rapporteur recommended to the Commission on Human Rights that:

- Detention incommunicado should be declared illegal;
- Any person who is arrested should be brought without delay before a competent judge, who should rule immediately on the lawfulness of his arrest and authorize him to see a lawyer;
- Any person arrested should undergo a medical examination;
- Any detainee who dies should be autopsied in the presence of a representative of his family;
- External experts should regularly inspect places of detention.

4. Human Rights Committee

The Human Rights Committee, established under the International Covenant on Civil and Political Rights, Article 28, has created a body of jurisprudence in individual cases of arbitrary executions in custody, particularly in connection with the
implementation of the relevant provisions of the Optional Protocol to that Convention. In the case of Eduardo Bleier, for example, the Committee considered the allegations by Bleier’s mother and wife that he had been held *incommunicado* and tortured to death by the Uruguayan military. The Committee refused to accept the Uruguayan Government’s denial at face value. Instead, upon receiving evidence from fellow prisoners who had witnessed Bleier’s torture, the Committee concluded that he had been tortured in violation of Article 7 of the International Covenant on Civil and Political Rights, and that there were serious reasons to believe that the Uruguayan authorities had killed Bleier in violation of Article 6 of the International Covenant. The Committee urged the Uruguayan Government to bring to justice any persons responsible for Bleier’s death, disappearance and ill-treatment, and to pay compensation to his family for his death.

A further example was that, in April 1985, the Human Rights Committee found the arbitrary executions of 15 opponents to the military ruler of Suriname in December 1982 to constitute an intentional violation of Article 6(1) of the Covenant. The Committee urged the Government to take effective steps to investigate the executions, to bring the responsible persons to

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justice, to pay compensation to the families and to ensure future protection of the right to life.  

5. Committee against Torture

The implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is monitored by the Committee against Torture, which consists of 10 experts of high moral standing and recognized competence in the field of human rights. Under Article 19 of the Convention, the States parties submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have taken under the Convention. Each report is considered by the Committee, which may make general comments and include such information in its annual report to the States parties and to the General Assembly.

Under Article 20 of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee invites that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned. The Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently. In agreement with that State Party, such an inquiry may include a visit to its territory.

After examining the findings of its member or members submitted to it, the Committee transmits these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

All the proceedings of the Committee under Article 20 are confidential and, at all stages of the proceedings, the co-operation of the State Party is sought. After such proceedings have been completed, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report to the other States Parties and to the General Assembly.

6. Committee on Crime Prevention and Control

The General Assembly in its Resolution 35/172 of December 15, 1980 requested the Secretary-General to report to the Committee on Crime Prevention and Control at its seventh session, held at Vienna, from March 15 to 24, 1982, on the question of arbitrary or summary executions. By Resolution 36/22 of November 9, 1981, the Assembly requested the Committee to examine that question with a view to making recommendations. Having reviewed the report submitted by the Secretary-General (E/AC.57/1982/4 and Corr.1 and Add.1), the Committee recommended to the Economic and Social Council the adoption of a resolution on arbitrary or summary executions.

The Council, in its Resolution 1983/24 of May 26, 1983, strongly condemned and deplored the brutal practice of summary executions and decided that the Committee should further study the question of death penalties that do not meet the acknowledged minimum legal guarantees and safeguards, as contained in the International Covenant on Civil and Political Rights and other international instruments.
The Committee at its eighth session, held at Vienna, from March 21 to 30, 1984, elaborated a number of safeguards guaranteeing protection of the rights of those facing the death penalty. The Council adopted the safeguards recommended by the Committee in Resolution 1984/50, Annex, of May 25, 1984.

The Council, in its Resolution 1986/10 of May 21, 1986, Section VI, requested that the Secretary-General should submit a report on extralegal, arbitrary and summary executions to the Committee on Crime Prevention and Control at its Tenth Session in 1988, held at Vienna, from August 22 to 31, 1988. The Secretary-General submitted a report entitled “Extralegal, arbitrary and summary executions and measures for their prevention and investigation” (E/AC.57/1988/5). On the basis of discussion at the Committee, including statements made by non-governmental organizations, the Committee recommend to the Council the adoption of a draft containing the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions. The Committee has been entrusted with the function of periodically reviewing the implementation of these Principles.


In 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in its Caracas Declaration\(^7\) stressed, inter alia, that:

> criminal policy and the administration of justice should be based on principles that will guarantee the equality of everyone before the law without any discrimination, as well as the effective right of defence and the existence of judicial organs that are equal to the task of providing speedy and fair justice and of ensuring greater security and protection of the rights and freedoms of all people.

In Resolution 5 on extralegal executions, the Congress called upon all Governments to take effective measures to prevent extralegal executions and urged all organs of the United Nations dealing with questions of crime prevention and human rights to take all possible action to bring such acts to an end.

In 1985, the Seventh United Nations Congress also adopted a resolution on extralegal, arbitrary and summary executions calling upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty and to take all other measures necessary to prevent those practices.\(^8\)

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B. **International Labour Organisation**

The Committee on Freedom of Association of the Governing Body of the International Labour Organisation (ILO) reviews complaints alleging the executions of trade unionists around the world. Regarding the deaths of Rudolf Vierra, Mark Pearlman, and Michael Hammer in El Salvador, the ILO Committee requested that the Government of El Salvador transmit the results of the judicial inquiry underway and pursue actively its investigations into these murders.9

C. **Regional Organizations**

I. **Inter-American Commission on Human Rights**

The Inter-American Commission on Human Rights has taken an approach similar to the Human Rights Committee of the United Nations in cases involving arbitrary executions. For example, in Case No. 7481 of March 8, 1982, regarding executions by a military regiment in Bolivia in 1980, the Inter-American Commission found violations of common Article 3 of the Geneva Conventions, which had been ratified by the Bolivian Government. The Commission recommended, among other remedies, that the Bolivian Government “order a fuller and impartial investigation to determine responsibility for the excess and abuses.”10

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In two landmark decisions, the Inter-American Court of Human Rights found the Government of Honduras in violation of Articles 4 (right to life); 5 (right to humane treatment); and 7 (right to personal liberty) of the American Convention on Human Rights. The Court in the Velasquez Rodriguez Case and the Godinez Cruz Case, ruled that in cases of “disappearances” the duty [on the part of the Government of Honduras] to investigate facts of this type continues as long as there is uncertainty about the fate of the person disappeared and ordered Honduras to pay damages to the families of the victims. Furthermore, the Inter-American Court adopted measures, taken in response to the assassination of two important witnesses, insisting upon the protection of witnesses appearing as part of the investigation.

2. African Commission on Human and People’s Rights

The recently established African Commission on Human and People’s Rights a subsidiary body of the Organization of African Unity, has not yet considered any cases involving the arbitrary deprivation of life. The Commission’s mandate stems from the African Charter of Human and People’s Rights, which provides inter alia that the Commission may enter into written communication with a State Party of the Charter when it is alleged by another State party that the former has violated the provisions of the Charter.


3. European Commission on Human Rights

The European Commission on Human Rights has reviewed fewer cases involving the right to life than the Inter-American Commission. In one case, *Cyprus v. Turkey*, the European Commission considered whether the Turkish army had engaged in mass executions of civilians at the time of the invasion of Cyprus. The Commission found sufficient eyewitnesses and second-hand testimony from refugees to conclude that there were "strong indications of executions committed on a substantial scale." The Committee of Ministers took note of the Commission’s report and urged talks between the Greek and Turkish communities on Cyprus, but took no further action on the matter.

II. The Elaboration of International Standards for Effective Prevention of Extralegal, Arbitrary and Summary Executions

The need for an international scientific protocol for the investigation of deaths has been recognized for several years. In 1979, the Danish Medical Group of Amnesty International expressed a desire for established international rules for the completion of death certificates. In 1984, J. L. Thomsen observed that forensic medicine was being practised in different ways, and

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that common guidelines and definitions would facilitate communications.\textsuperscript{14}

Non-governmental organizations emphasized the need for developing and adopting international standards as a practical outcome of their missions to countries where extralegal, arbitrary and summary executions were alleged to take place. For example, an Amnesty International mission to one country found in 1983 that the procedures of the authorities for recording and investigating violent deaths were totally inadequate for determining the causes of more than 40,000 deaths that had occurred between 1979 and 1984, or for identifying the parties responsible. The procedures were even inadequate to determine the precise number of these deaths.

Similarly, a delegation from the American Association for the Advancement of Science sent to another country to assist in the identification of thousands of persons abducted or killed between 1976 and 1983 concluded that the identification of the remains was beyond the capabilities of local institutions, and recommended the establishment of a national investigative centre with well-trained forensic scientists and a director with independent investigative powers. The delegation, however, was optimistic that even the identification of the remains of a small number of the “disappeared” and a determination of the causes of their deaths could be a significant deterrent if those responsible for the deaths could be identified and brought to justice.

Even when Governments order inquests, investigators often find it difficult to ascertain the facts surrounding arbitrary

executions. Eyewitness accounts may be hard to obtain because witnesses fear reprisals or because the only witnesses were those conducting executions themselves. Assassins often conceal their crimes by making their victims “disappear.” As a result, bodies of victims are usually found months or years later, buried in shallow, unmarked graves. Disposal in this manner often complicates identification of the body and determination of the cause and manner of death. In some cases, the natural decomposition of the body’s soft tissue erases evidence of trauma such as bruising, stab wounds or gunpowder burns. In others, the perpetrators deliberately mutilate the person, either before or after death, in an attempt to thwart identification or to intimidate others.

Most countries have a system for investigating the cause of death in cases with unusual or suspicious circumstances. Such a procedure provides some reassurance that unexplained deaths do not remain unexplained and that the perpetrator is tried by a competent court established by law. In some countries, however, these procedures have broken down or have been abused, particularly where the death may have been caused by the police, the army or other government agents. In these cases, a thorough and independent investigation is rarely done. Evidence that could be used to prosecute the offender is ignored or covered up, and those involved in the executions go unpunished.

To address the need for developing uniform standards, the international community began to formulate a set of principles and medicolegal standards for the investigation and prevention of extralegal, arbitrary and summary executions. That work, which dates back to the beginning of the 1980s, made considerable advances with the preparation of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions recommended by the Committee on Crime

It is hoped that observance of the provisions of the Principles will lead to a decrease of extralegal, arbitrary and summary executions in two ways. First, use of the adopted procedures during death investigations should produce the evidence necessary for increased detection and disclosure of other executions. The persons responsible for such executions can then be held accountable through judicial or political sanctions. Secondly, adoption of the standards will also provide international observers with guidelines to evaluate investigations of suspicious deaths. Non-compliance with the standards can be publicized and pressure brought against non-complying Governments, especially where extralegal, arbitrary and summary executions are believed to have occurred. If a Government refuses to establish impartial inquest procedures in such cases, it might be inferred that the Government is hiding such executions. The fear of condemnation by the international community may encourage government compliance with the inquest standards, which, in turn, should reduce extralegal, arbitrary and summary executions.

An additional benefit of compliance with these standards is that a Government suspected of involvement in an extralegal, arbitrary and summary execution would have an opportunity of satisfying the international community, as well as its own people, that it was not responsible for the death of a particular person or persons. A Government’s compliance with these standards, regardless of the outcome of an inquiry, may increase confidence in the rule of law, including the commitment of Governments to human rights.

A. Introduction

Suspected extralegal, arbitrary and summary executions can be investigated under established national or local laws and can lead to criminal proceedings. In some cases, however, investigative procedures may be inadequate because of the lack of resources and expertise or because the agency assigned to conduct the investigation may be partial. Hence, such criminal proceedings are less likely to be brought to a successful outcome.

The following comments may enable those conducting investigations and other parties, as appropriate, to obtain some in-depth guidance for conducting investigations. Such guidance in a general way, has been set out in the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (see Annex I, below, paragraphs 9–17). The guidelines set forth in this proposed model protocol for a legal investigation of extralegal, arbitrary and summary executions are not binding. Instead, the model protocol is meant to be illustrative of methods for carrying out the standards enumerated in the Principles.

By definition, this model protocol cannot be exhaustive as the variety of legal and political arrangements escapes its application. Also, investigative techniques vary from country to country and these cannot be standardized in the form of internationally adopted principles. Consequently, additional comments may be relevant for the practical implementation of the Principles.
Sections B and C of this model protocol contain guidelines for the investigation of all violent, sudden, unexpected or suspicious deaths, including suspected extralegal, arbitrary and summary executions. These guidelines apply to investigations conducted by law enforcement personnel and by members of an independent commission of inquiry.

Section D provides guidelines for establishing a special independent commission of inquiry. These guidelines are based on the experiences of several countries that have established independent commissions to investigate alleged arbitrary executions.

Several considerations should be taken into account when a Government decides to establish an independent commission of inquiry. First, persons subject to an inquiry should be guaranteed the minimum procedural safeguards protected by international law* at all stages of the investigation. Secondly, investigators should have the support of adequate technical and administrative personnel, as well as access to objective, impartial legal advice to ensure that the investigation will produce admissible evidence for later criminal proceedings. Thirdly, investigators should receive the full scope of the Government’s resources and powers. Finally, investigators should have the power to seek help from the international community of experts in law, medicine and forensic sciences.

The fundamental principles of any viable investigation into the causes of death are competence, thoroughness, promptness and impartiality of the investigation, which flow from paragraphs

* Note: In particular, all persons must be guaranteed the due process rights set forth in Article 14 of the International Covenant on Civil and Political Rights.
9 and I I of the Principles. These elements can be adapted to any legal system and should guide all investigations of alleged extralegal, arbitrary and summary executions.

### B. Purposes of an Inquiry

As set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfil this purpose, those conducting the inquiry shall, at a minimum, seek:

a. To identify the victim;

b. To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;

c. To identify possible witnesses and obtain statements from them concerning the death;

d. To determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;

e. To distinguish between natural death, accidental death, suicide and homicide;

f. To identify and apprehend the person(s) involved in the death;

g. To bring the suspected perpetrator(s) before a competent court established by law.

### C. Procedures of an Inquiry

One of the most important aspects of a thorough and impartial investigation of an extralegal, arbitrary and summary execution is the collection and analysis of evidence. It is essential to recover
and preserve physical evidence, and to interview potential witnesses so that the circumstances surrounding a suspicious death can be clarified.

**I. Processing of the crime scene**

Law enforcement personnel and other non-medical investigators should coordinate their efforts in processing the scene with those of medical personnel. Persons conducting an investigation should have access to the scene where the body was discovered and to the scene where the death may have occurred:

a. The area around the body should be closed off. Only investigator and their staff should be allowed entry into the area;

b. Color photographs of the victim should be taken as these, in comparison with black and white photographs, may reveal in more detail the nature and circumstances of the victim's death;

c. Photographs should be taken of the scene (interior and exterior) of any other physical evidence;

d. A record should be made of the body position and condition of the clothing;

e. The following factors may be helpful in estimating the time of death:

   i. Temperature of the body (warm, cool, cold);

   ii. Location and degree of fixation of lividity;

   iii. Rigidity of the body;

   iv. Stage of its decomposition;
f. Examination of the scene for blood should take place. Any samples of blood, hair, fibres and threads should be collected and preserved;

g. If the victim appears to have been sexually assaulted, this fact should be recorded;

h. A record should be made of any vehicles found in the area;

i. Castings should be made and preserved of pry marks, tyre or shoe impressions, or any other impressions of an evidentiary nature;

j. Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed;

k. Any fingerprints should be located, developed, lifted and preserved;

l. A sketch of the crime scene to scale should be made showing all relevant details of the crime, such as the location of weapons, furniture, vehicles, surrounding terrain, including the position, height and width of items, and their relationship to each other;

m. A record of the identity of all persons at the scene should be made, including complete names, addresses and telephone numbers;

n. Information should be obtained from scene witnesses, including those who last saw the decedent alive, when, where and under what circumstances;

o. Any relevant papers, records or documents should be saved for evidentiary use and handwriting analysis.
2. Processing of the evidence
   a. The body must be identified by reliable witnesses and other objective methods;
   b. A report should be made detailing any observations at the scene, actions of investigators and disposition of all evidence recovered;
   c. Property forms listing all evidence should be completed;
   d. Evidence must be properly collected, handled, packaged, labelled and placed in safekeeping to prevent contamination and loss of evidence.

3. Avenues to investigation
   a. What evidence is there, if any, that the death was premeditated and intentional, rather than accidental? Is there any evidence of torture?
   b. What weapon or means was used and in what manner?
   c. How many persons were involved in the death?
   d. What other crime, if any, and the exact details thereof, was committed during or associated with the death?
   e. What was the relationship between the suspected perpetrator(s) and the victim prior to the death?
   f. Was the victim a member of any political, religious, ethnic or social group(s), and could this have been a motive for the death?

4. Personal testimony
   a. Investigators should identify and interview all potential witnesses to the crime, including:
i. Suspects;

ii. Relatives and friends of the victim;

iii. Persons who knew the victim;

iv. Individuals residing or located in the area of the crime;

v. Persons who knew or had knowledge of the suspects;

vi. Persons who may have observed either the crime, the scene, the victim or the suspects in the week prior to the execution;

vii. Persons having knowledge of possible motives;

b. Interviews should take place as soon as possible and should be written and/or taped. All tapes should be transcribed and maintained;

c. Witnesses should be interviewed individually, and assurance should be given that any possible means of protecting their safety before, during and after the proceedings will be used, if necessary.

D. Commission of Inquiry

In cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established. A commission of inquiry may also be necessary where the expertise of the investigators is called into question. This section sets out factors that give rise to a presumption of government complicity, partiality or insufficient expertise on the part of those conducting the investigation. Any one of these presumptions should trigger the creation of a special commission of inquiry. It then sets out procedures that can be used as a model for the creation and function of commissions of inquiry. The procedures were derived from the experience of major
establishing a commission of inquiry entails defining the scope of the inquiry, appointing commission members and staff, determining the type of proceedings to be followed and selecting procedures governing those proceedings, and authorizing the commission to report on its findings and make recommendations. each of these areas will be covered separately.

1. factors triggering a special investigation

factors that support a belief that the government was involved in the execution, and that should trigger the creation of a special impartial investigation commission include:

a. where the political views, religious or ethnic affiliation, or social status of the victim give rise to a suspicion of government involvement or complicity in the death because of any one or combination of the following factors:

i. where the victim was last seen alive in police custody or detention;

ii. where the modus operandi is recognizably attributable to government-sponsored death squads;

iii. where persons in the government or associated with the government have attempted to obstruct or delay the investigation of the execution;

iv. where the physical or testimonial evidence essential to the investigation becomes unavailable.

b. as set out in paragraph 11 of the principles, an independent commission of inquiry or similar procedure
should also be established where a routine investigation is inadequate for the following reasons:

i. The lack of expertise; or

ii. The lack of impartiality; or

iii. The importance of the matter; or

iv. The apparent existence of a pattern of abuse; or

v. Complaints from the family of the victim about the above inadequacies or other substantial reasons.

2. Defining the scope of the inquiry

Governments and organizations establishing commissions of inquiry need to define the scope of the inquiry by including terms of reference in their authorization. Defining the commission’s terms of reference can greatly increase its success by giving legitimacy to the proceedings, assisting commission members in reaching a consensus on the scope of inquiry and providing a measure by which the commission’s final report can be judged. Recommendations for defining terms of reference are as follows:

a. They should be neutrally framed so that they do not suggest a predetermined outcome. To be neutral, terms of reference must not limit investigations in areas that might uncover government responsibility for extralegal, arbitrary and summary executions;

b. They should state precisely which events and issues are to be investigated and addressed in the commission’s final report;

c. They should provide flexibility in the scope of inquiry to ensure that thorough investigation by the commission is not hampered by overly restrictive or overly broad terms
of reference. The necessary flexibility may be accomplished, for example by permitting the commission to amend its terms of reference as necessary. It is important, however, that the commission keep the public informed of any amendments to its charge.

3. **Power of the commission**

The principles set out in a general manner the powers of the commission. More specifically such a commission would need the following:

a. To have the authority to obtain all information necessary to the inquiry, for example, for determining the cause, manner and time of death, including the authority to compel testimony under legal sanction, to order the production of documents including government and medical records, and to protect witnesses, families of the victim and other sources;

b. To have the authority to issue a public report;

c. To have the authority to prevent the burial or other disposal of the body until an adequate postmortem examination has been performed;

d. To have the authority to conduct on-site visits, both at the scene where the body was discovered and at the scene where the death may have occurred;

e. To have the authority to receive evidence from witnesses and organizations located outside the country.

4. **Membership qualifications**

Commission members should be chosen for their recognized impartiality, competence and independence as individuals:
Impartiality. Commission members should not be closely associated with any individual, government entity, political party or other organization potentially implicated in the execution or disappearance, or an organization or group associated with the victim, as this may damage the commission's credibility.

Competence. Commission members must be capable of evaluating and weighing evidence, and exercising sound judgement. If possible, commissions of inquiry should include individuals with expertise in law, medicine, forensic science and other specialized fields, as appropriate.

Independence. Members of the commission should have a reputation in their community for honesty and fairness.

5. Number of commissioners

The Principles do not contain a provision on the number of members of the commission, but it would not be unreasonable to note that objectivity of the investigation and commission's findings may, among other things, depend on whether it has three or more members rather than one or two. Investigations into extralegal, arbitrary and summary executions should, in general, not be conducted by a single commissioner. A single, isolated commissioner will generally be limited in the depth of investigation he or she can conduct alone. In addition, a single commissioner will have to make controversial and important decisions without debate, and will be particularly vulnerable to governmental and other outside pressure.

6. Choosing a commission counsel

Commissions of inquiry should have impartial, expert counsel. Where the commission is investigating allegations of governmental misconduct, it would be advisable to appoint
The chief counsel to the commission should be insulated from political influence, as through civil service tenure, or status as a wholly independent member of the bar.

7. Choosing expert advisors

The investigation will often require expert advisors. Technical expertise in such areas as pathology, forensic science and ballistics should be available to the commission.

8. Choosing investigators

To conduct a completely impartial and thorough investigation, the commission will almost always need its own investigators to pursue leads and to develop evidence. The credibility of an inquiry will be significantly enhanced to the extent that the commission can rely on its own investigators.

9. Protection of witnesses

a. The Government shall protect complainants, witnesses, those conducting the investigation, and their families from violence, threats of violence or any other form of intimidation;

b. If the commission concludes that there is a reasonable fear of persecution, harassment, or harm to any witness or prospective witness, the commission may find it advisable:

i. To hear the evidence in camera;

ii. To keep the identity of the informant or witness confidential;
iii. To use only such evidence as will not present a risk of identifying the witness;

iv. To take any other appropriate measures.

10. Proceedings

It follows from general principles of criminal procedure that hearings should be conducted in public, unless in camera proceedings are necessary to protect the safety of a witness. In camera proceedings should be recorded and the closed, unpublished record kept in a known location.

Occasionally, complete secrecy may be required to encourage testimony, and the commission will want to hear witnesses privately, informally and without recording testimony.

11. Notice of inquiry

Wide notice of the establishment of a commission and the subject of the inquiry should be given. The notice should also include an invitation to submit relevant information and/or written statements to the commission, and instructions to persons wishing to testify. Notice can be disseminated through newspapers, magazines, radio, television, leaflets and posters.

12. Receipt of evidence

Power to compel evidence. As emphasized in Principle 10 (see Annex I), commissions of inquiry should have the power to compel testimony and production of documents: in this context, Principle 10 refers to “the authority to oblige officials” allegedly involved in extralegal, arbitrary and summary executions. Practically, this authority may involve the power to impose fines or sentences if the Government or individuals refuse to comply.
Use of witness statements. Commissions of inquiry should invite persons to testify or submit written statements as a first step in gathering evidence. Written statements may become an important source of evidence if their author become afraid to testify, cannot travel to proceedings, or are otherwise unavailable.

Use of evidence from other proceedings. Commissions of inquiry should review other proceedings that could provide relevant information. For example the commission should obtain the findings from an inquest into cause of death conducted by a coroner or medical examiner. Such inquests generally rely on postmortem or autopsy examinations. A commission of inquiry should review the inquest and the results of the autopsy presented to the inquest to determine if they were conducted thoroughly and impartially. If the inquest and autopsy were so conducted, the coroner’s findings are entitled to be given great weight.

13. Rights of parties

As mentioned in Principle 16, families of the deceased and their legal representatives shall be informed of, and have access to, any hearing and to all information relevant to the investigation, and shall be entitled to present evidence. This particular emphasis on the role of the family as a party to the proceedings implies the specially important role the family’s interests play in the conduct of the investigation. However, all other interested parties should also have the opportunity at being heard. As mentioned in Principle 10, the investigative body shall be entitled to issue summons to witnesses, including the officials allegedly involved and to demand the production of evidence. All these witnesses should be permitted legal counsel if they are likely to be harmed by the inquiry, for example, when their testimony could expose them to criminal charges or civil liability. Witnesses may not be
compelled to testify against themselves regarding matter unrelated to the scope of inquiry.

There should be an opportunity for the effective questioning of witnesses by the commission. Parties to the inquiry should be allowed to submit written questions to the commission.

**14. Evaluation of evidence**

The commission shall assess all information and evidence it receives to determine its relevance, veracity, reliability and probity. The commission should evaluate oral testimony based upon the demeanour and overall credibility of the witness. Corroboration of evidence from several sources will increase the probative value of such evidence. The reliability of hearsay evidence from several sources will increase the probative value of such evidence. The reliability of hearsay evidence from several sources will increase the probative value of such evidence. The reliability of hearsay evidence must be considered carefully before the commission should accept it as fact. Testimony not tested by cross-examination must also be viewed with caution. In camera testimony preserved in a closed record or not recorded at all is often not subjected to cross-examination and therefore may be given less weight.

**15. The report of the commission**

As stated in Principle 17, the commission should issue a public report within a reasonable period of time. It may be added that where the commission is not unanimous in its findings, the minority commissioner(s) should file a dissenting opinion.

From the practical experience gathered, commission of inquiry reports should contain the following information:

a. The scope of inquiry and terms of reference;

b. The procedures and methods of evaluating evidence;
c. A list of all witnesses who have testified, except for those whose identities are withheld for protection and who have testified in camera, and exhibits received in evidence;

d. The time and place of each sitting (this might be annexed to the report);

e. The background to the inquiry such as relevant social, political and economic conditions;

f. The specific events that occurred and the evidence upon which such findings are based;

g. The law upon which the commission relied;

h. The commission’s conclusions based upon applicable law and findings of fact;

i. Recommendations based upon the findings of the commission.

16. Response of the Government

The Government should either reply publicly to the commission’s report or should indicate what steps it intends to take in response to the report.

IV. Model Autopsy Protocol

A. Introduction

Difficult or sensitive cases should ideally be the responsibility of an objective, experienced, well-equipped and well-trained prosector (the person performing the autopsy and preparing the written report) who is separate from any potentially involved political organization or entity. Unfortunately, this ideal is often unattainable. This proposed model autopsy protocol includes a comprehensive checklist of the steps in a basic forensic
postmortem examination that should be followed to the extent possible given the resources available. Use of this autopsy protocol will permit early and final resolution of potentially controversial cases and will thwart the speculation and innuendo that are fueled by unanswered, partially answered or poorly answered questions in the investigation of an apparently suspicious death.

This model autopsy protocol is intended to have several applications and may be of value to the following categories of individuals:

a. Experienced forensic pathologists may follow this model autopsy protocol to ensure a systematic examination and to facilitate meaningful positive or negative criticism by later observers. While trained pathologists may justifiably abridge certain aspects of the postmortem examination or written descriptions of their findings in routine cases, abridged examinations or reports are never appropriate in potentially controversial cases. Rather, a systematic and comprehensive examination and report are required to prevent the omission or loss of important details;

b. General pathologists or other physicians who have not been trained in forensic pathology but are familiar with basic postmortem examination techniques may supplement their customary autopsy procedures with this model autopsy protocol. It may also alert them to situations in which they should seek consultation, as written material cannot replace the knowledge gained through experience;

c. Independent consultants whose expertise has been requested in observing, performing or reviewing an autopsy may cite this model autopsy protocol and its
proposed minimum criteria as a basis for their actions or opinions;

d. Governmental authorities, international political organizations, law enforcement agencies, families or friends of decedents, or representatives of potential defendants charged with responsibility for a death may use this model autopsy protocol to establish appropriate procedures for the postmortem examination prior to its performance;

e. Historians, journalists, attorneys, judges, other physicians and representatives of the public may also use this model autopsy protocol as a benchmark for evaluating an autopsy and its findings;

f. Governments or individuals who are attempting either to establish or upgrade their medicolegal system for investigating deaths may use this model autopsy protocol as a guideline, representing the procedures and goals to be incorporated into an ideal medicolegal system.

While performing any medicolegal death investigation, the prosector should collect information that will establish the identity of the deceased, the time and place of death, the cause of death, and the manner or mode of death (homicide, suicide, accident or natural).

It is of the utmost importance that an autopsy performed following a controversial death be thorough in scope. The documentation and recording of the autopsy findings should be equally thorough so as to permit meaningful use of the autopsy results (see Annex II). It is important to have as few omissions or discrepancies as possible, as proponents of different interpretations of a case may take advantage of any perceived shortcomings in the investigation. An autopsy performed in a controversial death
should meet certain minimum criteria if the autopsy report is to be proffered as meaningful or conclusive by the prosector, the autopsy’s sponsoring agency or governmental unit, or anyone else attempting to make use of such an autopsy’s findings or conclusions.

This model autopsy protocol is designed to be used in diverse situations. Resources such as autopsy rooms, X-ray equipment or adequately trained personnel are not available everywhere. Forensic pathologists must operate under widely divergent political systems. In addition, social and religious customs vary widely throughout the world; an autopsy is an expected and routine procedure in some areas, while it is abhorred in others. A prosector, therefore, may not always be able to follow all of the steps in this protocol when performing autopsies. Variation from this protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted.

It is important that the body should be made available to the prosector for a minimum of 12 hours in order to assure an adequate and unhurried examination. Unrealistic limits or conditions are occasionally placed upon the prosector with respect to the length of time permitted for the examination or the circumstances under which an examination is allowed. When conditions are imposed, the prosector should be able to refuse to perform a compromised examination and should prepare a report explaining this position. Such a refusal should not be interpreted as indicating that an examination was unnecessary or inappropriate. If the prosector decides to proceed with the examination notwithstanding difficult conditions or circumstances, he or she should include in the autopsy report an explanation of the limitations or impediments.
Certain steps in this model autopsy protocol have been emphasized by the use of *boldface type*. These represent the most essential elements of the protocol.

**B. Proposed Model Autopsy Protocol**

**I. Scene investigation**

The prosector(s) and medical investigators should have the right of access to the scene where the body is found. The medical personnel should be notified immediately to assure that no alteration of the body has occurred. If access to the scene was denied, if the body was altered or if information was withheld, this should be stated in the prosector’s report.

A system for coordination between the medical and non-medical investigators (e.g., law enforcement agencies) should be established. This should address such issues as how the prosector will be notified and who will be in charge of the scene. Obtaining certain types of evidence is often the role of the non-medical investigators, but the medical investigators who have access to the body at the scene of death should perform the following steps:

- a. Photograph the body as it is found and after it has been moved;
- b. Record the body position and condition, including body warmth or coolness, lividity and rigidity;
- c. Protect the deceased’s hands, e.g. with paper bags;
- d. Note the ambient temperature. In cases where the time of death is an issue, rectal temperature should be recorded and any insects present should be collected for forensic entomological study. Which procedure is applicable will depend on the length of the apparent postmortem interval;
e. Examine the scene for blood, as this may be useful in identifying suspects;

f. Record the identities of all persons at the scene;

g. Obtain information from scene witnesses, including those who last saw the decedent alive, and when, where and under what circumstances. Interview any emergency medical personnel who may have had contact with the body;

h. Obtain identification of the body and other pertinent information from friends or relatives. Obtain the deceased’s medical history from his or her physician(s) and hospital charts, including any previous surgery, alcohol or drug use, suicide attempts and habits;

i. Place the body in a body pouch or its equivalent. Save this pouch after the body has been removed from it;

j. Store the body in a secure refrigerated location so that tampering with the body and its evidence cannot occur;

k. Make sure that projectiles, guns, knives and other weapons are available for examination by the responsible medical personnel;

l. If the decedent was hospitalized prior to death, obtain admission or blood specimens and any X-rays, and review and summarize hospital records;

m. Before beginning the autopsy, become familiar with the types of torture or violence that are prevalent in that country or locale (see Annex II).
2. Autopsy

The following Protocol should be followed during the autopsy:

a. Record the date, starting and finishing times, and place of the autopsy (a complex autopsy may take as long as an entire working day);

b. Record the name(s) of the prosector(s), the participating assistant(s), and all other persons present during the autopsy, including the medical and/or scientific degrees and professional, political or administrative affiliation(s) of each. Each person’s role in the autopsy should be indicated, and one person should be designated as the principal prosector who will have the authority to direct the performance of the autopsy. Observers and other team members are subject to direction by, and should not interfere with, the principal prosector. The time(s) during the autopsy when each person is present should be included. The use of a “sign-in” sheet is recommended;

c. Adequate photographs are crucial for thorough documentation of autopsy findings:

i. Photographs should be in colour (transparency or negative/print), in focus, adequately illuminated, and taken by a professional or good quality camera. Each photograph should contain a ruled reference scale, an identifying case name or number, and a sample of standard grey. A description of the camera (including the lens “f-number” and focal length), film and the lighting system must be included in the autopsy report. If more than one camera is utilized, the identifying information should be recorded for each. Photographs should also include information
indicating which camera took each picture, if more than one camera is used. The identity of the person taking the photographs should be recorded;

ii. Serial photographs reflecting the course of the external examination must be included. Photograph the body prior to and following undressing, washing or cleaning and shaving;

iii. Supplement close-up photographs with distant and/or immediate range photographs to permit orientation and identification of the close-up photographs;

iv. Photographs should be comprehensive in scope and must confirm the presence of all demonstrable signs of injury or disease commented upon in the autopsy report;

v. Identifying facial features should be portrayed (after washing or cleaning the body), with photographs of a full frontal aspect of the face, and right and left profiles of the face with hair in normal position and with hair retracted, if necessary, to reveal the ears;

d. Radiograph the body before it is removed from its pouch or wrappings. X-rays should be repeated both before and after undressing the body. Fluoroscopy may also be performed. Photograph all X-ray films;

i. Obtain dental X-rays, even if identification has been established in other ways;

ii. Document any skeletal system injury by X-ray. Skeletal X-rays may also record anatomic defects or surgical procedures. Check especially for fractures of the fingers, toes and other bones in the hands and feet. Skeletal X-rays may also aid in the identification
of the deceased, by detecting identifying characteristics, estimating age and height, and determining sex and race. Frontal sinus films should also be taken, as these can be particularly useful for identification purposes;

iii. Take X-rays in gunshot cases to aid in locating the projectile(s). Recover, photograph and save any projectile or major projectile fragment that is seen on an X-ray. Other radio-opaque objects (pacemakers, artificial joints or valves, knife fragments etc.) documented with X-rays should also be removed, photographed and saved;

iv. Skeletal X-rays are essential in children to assist in determining age and developmental status;

e. Before the clothing is removed, examine the body and the clothing. Photograph the clothed body. Record any jewellery present;

f. The clothing should be carefully removed over a clean sheet or body pouch. Let the clothing dry if it is bloody or wet. Describe the clothing that is removed and label it in a permanent fashion. Either place the clothes in the custody of a responsible person or keep them, as they may be useful as evidence or for identification;

g. The external examination, focusing on a search for external evidence of injury is, in most cases, the most important portion of the autopsy;

i. Photograph all surfaces – 100 percent of the body area. Take good quality, well-focused, colour photographs with adequate illumination;
ii. Describe and document the means used to make the identification. Examine the body and record the deceased’s apparent age, length, weight, sex, head hair style and length, nutritional status, muscular development and colour of skin, eyes and hair (head, facial and body);

iii. In children, measure also the head circumference, crown-rump length and crown-heel length;

iv. Record the degree, location and fixation of rigor and livor mortis;

v. Note body warmth or coolness and state of preservation; note any decomposition changes, such as skin slippage. Evaluate the general condition of the body and note adipocere formation, maggots, eggs or anything else that suggests the time or place of death;

vi. With all injuries, record the size, shape, pattern, location (related to obvious anatomic landmarks), colour, course, direction, depth and structure involved. Attempt to distinguish injuries resulting from therapeutic measures from those unrelated to medical treatment. In the description of projectile wounds, note the presence or absence of soot, gunpowder, or singeing. If gunshot residue is present, document it photographically and save it for analysis. Attempt to determine whether the gunshot wound is an entry or exit wound. If an entry wound is present and no exit wound is seen, the projectile must be found and saved or accounted for. Excise wound tract tissue samples for microscopic examination. Tape together
the edges of knife wounds to assess the blade size and characteristics;

vii. Photograph all injuries, taking two colour pictures of each, labelled with the autopsy identification number on a scale that is oriented parallel or perpendicular to the injury. Shave hair where necessary to clarify an injury, and take photographs before and after shaving. Save all hair removed from the site of the injury. Take photographs before and after washing the site of any injury. Wash the body only after any blood or material that may have come from an assailant has been collected and saved;

viii. Examine the skin. Note and photograph any scars, areas of keloid formation, tattoos, prominent moles, areas of increased or decreased pigmentation, and anything distinctive or unique such as birthmarks. Note any bruises and incise them for delineation of their extent. Excise them for microscopic examination. The head and genital area should be checked with special care. Note any injection sites or puncture wounds and excise them to use for toxicological evaluation. Note any abrasions and excise them; microscopic sections may be useful for attempting to date the time of injury. Note any bite marks; these should be photographed to record the dental pattern, swabbed for saliva testing (before the body is washed) and excised for microscopic examination. Bite marks should also be analysed by a forensic odontologist, if possible. Note any burn marks and attempt to determine the cause (burning rubber, a cigarette, electricity, a blowtorch, acid, hot oil etc.). Excise any
suspicious areas for microscopic examination, as it may be possible to distinguish microscopically between burns caused by electricity and those caused by heat;

ix. Identify and label any foreign object that is recovered, including its relation to specific injuries. Do not scratch the sides or tip of any projectiles. Photograph each projectile and large projectile fragment with an identifying label, and then place each in a sealed, padded and labelled container in order to maintain the chain of custody;

x. Collect a blood specimen of at least 50 cc from a subclavian or femoral vessel;

xi. Examine the head and external scalp, bearing in mind that injuries may be hidden by the hair. Shave hair where necessary. Check for fleas and lice, as these may indicate unsanitary conditions prior to death. Note any alopecia as this may be caused by malnutrition, heavy metals (e.g. thallium), drugs or traction. Pull, do not cut, 20 representative head hairs and save them, as hair may also be useful for detecting some drugs and poisons;

xii. Examine the teeth and note their condition. Record any that are absent, loose or damaged, and record all dental work (restorations, fillings etc.), using a dental identification system to identify each tooth. Check the gums for periodontal disease. Photograph dentures, if any, and save them if the decedent’s identity is unknown. Remove the mandible and maxilla if necessary for identification. Check the inside of the mouth and note any evidence of trauma, injection sites, needle marks or biting of the lips, cheeks or
tongue. Note any articles or substances in the mouth. In cases of suspected sexual assault, save oral fluid or get a swab for spermatozoa and acid phosphatase evaluation. (Swabs taken at the tooth-gum junction and samples from between the teeth provide the best specimens for identifying spermatozoa.) Also take swabs from the oral cavity for seminal fluid typing. Dry the swabs quickly with cool, blown air if possible, and preserve them in clean plain paper envelopes. If rigor mortis prevents an adequate examination, the masseter muscles may be cut to permit better exposure;

xiii. Examine the face and note if it is cyanotic or if petechiae are present;

a. Examine the eyes and view the conjunctiva of both the globes and the eyelids. Note any petechiae in the upper on lower eyelids. Note any scleral icterus. Save contact lenses, if any are present. Collect at least 1 ml of vitreous humor from each eye;

b. Examine the nose and ears and note any evidence of trauma, haemorrhage or other abnormalities. Examine the tympanic membranes;

xiv. Examine the neck externally on all aspects and note any contusions, abrasions or petechia. Describe and document injury patterns to differentiate manual, ligature and hanging strangulation. Examine the neck at the conclusion of the autopsy, when the blood has drained out of the area and the tissues are dry;

xv. Examine all surfaces of the extremities: arms, forearms, wrists, hands, legs and feet, and note any “defence”
wounds. Dissect and describe any injuries. Note any bruises about the wrists or ankles that may suggest restraints such as handcuffs or suspension. Examine the medial and lateral surfaces of the fingers, the anterior forearms and the backs of the knees for bruises;

xvi. Note any broken or missing fingernails. Note any gunpowder residue on the hands, document photographically and save it for analysis. Take fingerprints in all cases. If the decedent’s identity is unknown and fingerprints cannot be obtained, remove the “glove” of the skin, if present. Save the fingers if no other means of obtaining fingerprints is possible. Save finger nail clippings and any under-nail tissue (nail scrapings). Examine the fingernail and toenail beds for evidence of object having been pushed beneath the nails. Nails can be removed by dissecting the lateral margins and proximal base, and then the undersurface of the nails can be inspected. If this is done, the hands must be photographed before and after the nails are removed. Carefully examine the soles of the feet, noting any evidence of beating. Incise the soles to delineate the extent of any injuries. Examine the palms and knees, looking especially for glass shards or lacerations;

xvii. Examine the external genitalia and note the presence of any foreign material or semen. Note the size, location and number of any abrasions or contusions. Note any injury to the inner thighs or peri-anal area. Look for peri-anal burns;
xviii. In cases of suspected sexual assault, examine all potentially involved orifices. A speculum should be used to examine the vaginal walls. Collect foreign hair by combing the pubic hair. Pull and save at least 20 of the deceased's own pubic hairs, including roots. Aspirate fluid from the vagina and/or rest, for acid phosphatase, blood group and spermatozoa evaluation. Take swabs from the same areas for seminal fluid typing. Dry the swabs quickly with cool, blown air if possible, and preserve them in clean plain paper envelopes;

xix. The length of the back, the buttocks and extremities including wrists and ankles must be systematically incised to look for deep injuries. The shoulders, elbows, hips and knee joints must also be incised to look for ligamentous injury;

h. The internal examination for internal evidence of injury should clarify and augment the external examination;

i. Be systematic in the internal examination. Perform the examination either by body regions or by systems, including the cardiovascular, respiratory, biliary, gastrointestinal, reticuloendothelial, genitourinary, endocrine, musculoskeletal, and central nervous systems. Record the weight, size, shape, color and consistency of each organ, and note any neoplasia, inflammation, anomalies, haemorrhage, ischemia, infarcts, surgical procedures or injuries. Take sections of normal and any abnormal areas of each organ for microscopic examination. Take samples of any fractured bones
for radiographic and microscopic estimation of the age of the fracture;

ii. Examine the chest. Note any abnormalities of the breasts. Record any rib fractures, noting whether cardiopulmonary resuscitation was attempted. Before opening, check for pneumothoraces. Record the thickness of subcutaneous fat. Immediately after opening the chest, evaluate the pleural cavities and the pericardial sac for the presence of blood or other fluid, and describe and quantify any fluid present. Save any fluid present until foreign objects are accounted for. Note the presence of air embolism, characterized by frothy blood within the right atrium and right ventricle. Trace any injuries before removing the organs. If blood is not available at other sites, collect a sample directly from the heart. Examine the heart, noting degree and location of coronary artery disease or other abnormalities. Examine the lungs, noting any abnormalities;

iii. Examine the abdomen and record the amount of subcutaneous fat. Retain 50 grams of adipose tissue for toxicological evaluation. Note the interrelationships of the organs. Trace any injuries before removing the organs. Note any fluid or blood present in the peritoneal cavity, and save it until foreign objects are accounted for. Save all urine and bile for toxicologic examination;

iv. Remove, examine and record the quantitative information on the liver, spleen, pancreas, kidneys and adrenal glands. Save at least 150 grams each of kidney and liver for toxicological evaluation.
Remove the gastrointestinal tract and examine the contents. Note any food present and its degree of digestion. Save the contents of the stomach. If a more detailed toxicological evaluation is desired, the contents of other regions of the gastrointestinal tract may be saved. Examine the rectum and anus for burns, lacerations or other injuries. Locate and retain any foreign bodies present. Examine the aorta, inferior vena cava and iliac vessels;

v. Examine the organs in the pelvis, including ovaries, fallopian tubes, uterus, vagina, testes, prostate gland, seminal vesicles, urethra and urinary bladder. Trace any injuries before removing the organs. Remove these organs carefully so as not to injure them artifactually. Note any evidence of previous or current pregnancy, miscarriage or delivery. Save any foreign objects within the cervix, uterus, vagina, urethra or rectum;

vi. Palpate the head and examine the external and internal surfaces of the scalp, noting any trauma or haemorrhage. Note any skull fractures. Remove the calvarium carefully and note epidural and subdural haematomas. Quantify, date and save any haematomas that are present. Remove the dura to examine the internal surface of the skull for fractures. Remove the brain and note any abnormalities. Dissect and describe any injuries. Cerebral cortical atrophy, whether focal or generalized, should be specifically commented upon;
vii. Evaluate the cerebral vessels. Save at least 150 grams of cerebral tissue for toxicological evaluation. Submerge the brain in fixative prior to examination, if this is indicated;

viii. Examine the neck after the heart and brain have been removed and the neck vessels have been drained. Remove the neck organs, taking care not to fracture the hyoid bone. Dissect and describe any injuries. Check the mucosa of the larynx, pyriform sinuses and esophagus, and note any petechiae, edema or burns caused by corrosive substances. Note any articles or substances within the lumina of these structures. Examine the thyroid gland. Separate and examine the parathyroid glands, they are readily identifiable;

ix. Dissect the neck muscles, noting any haemorrhage. Remove all organs, including the tongue. Dissect the muscles from the bones and note any fractures of the hyoid bone or thyroid or cricoid cartilages;

x. Examine the cervical, thoracic and lumbar spine. Examine the vertebrae from their anterior aspects and note any fractures, dislocations, compressions or haemorrhages. Examine the vertebral bodies. Cerebrospinal fluid may be obtained if additional toxicological evaluation is indicated;

xi. In cases in which spinal injury is suspected, dissect and describe the spinal cord. Examine the cervical spine anteriorly and note any haemorrhage in the paravertebral muscles. The posterior approach is best for evaluating high cervical injuries. Open the spinal canal and remove the spinal cord. Make
transverse sections every 0.5 cm and note any abnormalities;

i. After the autopsy has been completed, record which specimens have been saved. Label all specimens with the name of the deceased, the autopsy identification number, the date and time of collection, the name of the prosector and the contents. Carefully preserve all evidence and record the chain of custody with appropriate release forms;

i. Perform appropriate toxicologic tests and retain portions of the tested samples to permit retesting:

a. Tissues: 150 grams of liver and kidney should be saved routinely. Brain, hair and adipose tissue may be saved for additional studies in cases where drugs, poisons or other toxic substances are suspected;

b. Fluids: 50 cc (if possible) of blood (spin and save serum in all or some of the tubes), all available urine, vitreous humor and stomach contents should be saved routinely. Bile, regional gastrointestinal tract contents and cerebrospinal fluid should be saved in cases where drugs, poisons or toxic substances are suspected. Oral, vaginal and rectal fluid should be saved in cases of suspected sexual assault;

ii. Representative samples of all major organs, including areas of normal and any abnormal tissue, should be processed histologically and stained with hematoxylin and eosin (and other
stains as indicated). The slides, wet tissue and paraffin blocks should be kept indefinitely;

iii. Evidence that must be saved includes:

a. All foreign objects, including projectiles, projectile fragments, pellets, knives and fibres. Projectiles must be subjected to ballistic analysis;

b. All clothes and personal effects of the deceased, worn by or in the possession of the deceased at the time of death;

c. Fingernails and under nail scrapings;

d. Hair, foreign and pubic, in cases of suspected sexual assault;

e. Head hair, in cases where the place of death or location of the body prior to its discovery may be an issue;

j. After the autopsy, all unretained organs should be replaced in the body, and the body should be well embalmed to facilitate a second autopsy in case one is desired at some future point;

k. The written autopsy report should address those items that are emphasized in boldface type in the protocol. At the end of the autopsy report should be a summary of the findings and the cause of death. This should include the prosector's comments attributing any injuries to external trauma, therapeutic efforts, postmortem change, or other causes. A full report should be given to the appropriate authorities and to the deceased's family.
V. Model Protocol for Disinterment and Analysis of Skeletal Remains

A. Introduction

This proposed model protocol for the disinterment and analysis of skeletal remains includes a comprehensive checklist of the steps in a basic forensic examination. The objectives of an anthropological investigation are the same as those of a medicolegal investigation of a recently deceased person. The anthropologist must collect information that will establish the identity of the deceased, the time and place of death, the cause of death and the manner or mode of death (homicide, suicide, accident or natural). The approach of the anthropologist differs, however, because of the nature of the material to be examined. Typically, a prosector is required to examine a body, whereas an anthropologist is required to examine a skeleton. The prosector focuses on information obtained from soft tissues, whereas the anthropologist focuses on information from hard tissues. Since decomposition is a continuous process, the work of both specialists can overlap. An anthropologist may examine a fresh body when bone is exposed or when bone trauma is a factor. An experienced prosector may be required when mummified tissues are present. In some circumstances, use of both this protocol and the model autopsy protocol may be necessary to yield the maximum information. The degree of decomposition of the body will dictate the type of investigation and, therefore, the protocol(s) to be followed.

The questions addressed by the anthropologist differ from those pursued in a typical autopsy. The anthropological investigation invests more time and attention to basic questions such as the following:

a. Are the remains human?
b. Do they represent a single individual or several?

c. What was the decedent’s sex, race, stature, body weight, handedness and physique?

d. Are there any skeletal traits or anomalies that could serve to positively identify the decedent?

The time, cause and manner of death are also addressed by the anthropologist, but the margin of error is usually greater than that which can be achieved by an autopsy shortly after death.

This model protocol may be of use in many diverse situations. Its application may be affected, however, by poor conditions, inadequate financial resources or lack of time. Variation from the protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted in the final report.

**B. Proposed Model Skeletal Analysis Protocol**

**I. Scene investigation**

A burial recovery should be handled with the same exacting care given to a crime-scene search. Efforts should be coordinated between the principal investigator and the consulting physical anthropologist or archaeologist. Human remains are frequently exhumed by law enforcement officers or cemetery workers unskilled in the techniques of forensic anthropology. Valuable information may be lost in this manner and false information is sometimes [—Page 35 of original—] generated. Disinterment by untrained persons should be prohibited. The consulting anthropologist should be present to conduct or supervise the disinterment. Specific problems and procedures accompany the excavation of each type of burial. The amount of information obtained from the excavation depends on knowledge of the burial
situation and judgment based on experience. The final report should include a rationale for the excavation procedure.

The following procedure should be followed during disinterment:

a. Record the date, location, starting and finishing times of the disinterment, and the names of all workers;
b. Record the information in narrative form, supplemented by sketches and photographs;
c. Photograph the work area from the same perspective before work begins and after it ends every day to document any disturbance not related to the official procedure;
d. In some cases, it is necessary to first locate the grave within a given area. There are numerous methods of locating graves, depending on the age of the grave:
   i. An experienced archaeologist may recognize clues such as changes in surface contour and variation in local vegetation;
   ii. A metal probe can be used to locate the less compact soil characteristics of grave fill;
   iii. The area to be explored can be cleared and the top soil scraped away with a flat shovel. Graves appear darker than the surrounding ground because the darker topsoil has mixed with the lighter subsoil in the grave fill. Sometimes a light spraying of the surface with water may enhance a grave’s outline;
e. Classify the burial as follows:
   i. Individual or commingled. A grave may contain the remains of one person buried alone, or it may contain
the commingled remains of two or more persons buried either at the same time or over a period of time;

ii. Isolated or adjacent. An isolated grave is separate from other graves and can be excavated without concern about encroaching upon another grave. Adjacent graves, such as in a crowded cemetery, require a different excavation technique because the wall of one grave is also the wall of another grave;

iii. Primary or secondary. A primary grave is the grave in which the deceased is first placed. If the remains are then removed and reburied, the grave is considered to be secondary;

iv. Undisturbed or disturbed. An undisturbed burial is unchanged (except by natural processes) since the time of primary burial. A disturbed burial is one that has been altered by human intervention after the time of primary burial. All secondary burials are considered to be disturbed; archaeological methods can be used to detect a disturbance in a primary burial;

f. Assign an unambiguous number to the burial. If an adequate numbering system is not already in effect, the anthropologist should devise a system;

g. Establish a datum point, then block and map the burial site using an appropriate-sized grid and standard archaeological techniques. In some cases, it may be adequate simply to measure the depth of the grave from the surface to the skull and from the surface to the feet. Associated material can then be recorded in terms of their position relative to the skeleton;
h. Remove the overburden of earth, screening the dirt for associated materials. Record the level (depth) and relative coordinates of any such findings. The type of burial, especially whether primary or secondary, influences the care and attention that needs to be given to this step. Associated materials located at a secondary burial site are unlikely to reveal the circumstances of the primary burial but may provide information on events that have occurred after that burial;

i. Search for items such as bullets or jewellery, for which a metal detector can be useful, particularly in the levels immediately above and below the level of the remains;

j. Circumscribe the body, when the level of the burial is located, and, when possible, open the burial pit to a minimum of 30 cm on all sides of the body;

k. Pedestal the burial by digging on all sides to the lowest level of the body (approximately 30 cm). Also pedestal any associated artifacts;

l. Expose the remains with the use of a soft brush or whisk broom. Do not use a brush on fabric, as it may destroy fibre evidence. Examine the soil found around the skull for hair. Place this soil in a bag for laboratory study. Patience is invaluable at this time. The remains may be fragile, and interrelationships of elements are important and may be easily disrupted. Damage can seriously reduce the amount of information available for analysis;

m. Photograph and map the remains *in situ*. All photographs should include an identification number, the date, a scale and an indication of magnetic north;
i. First photograph the entire burial, then focus on significant details so that their relation to the whole can be easily visualized;

ii. Anything that seems unusual or remarkable should be photographed at close range. Careful attention should be given to evidence of trauma or pathological change, either recent or healed;

iii. Photograph and map all associated materials (clothes, hair, coffin, artifacts, bullets, casings etc.). The map should include a rough sketch of the skeleton as well as any associated materials;

n. Before displacing anything, measure the individual:
   i. Measure the total length of the remains and record the terminal points of the measurement, e.g. apex to plantar surface of calcaneus (note: This is not a stature measurement);
   ii. If the skeleton is so fragile that it may break when lifted, measure as much as possible before removing it from the ground;

o. Remove all elements and place them in bags or boxes, taking care to avoid damage. Number, date and initial every container;

p. Excavate and screen the level of soil immediately under the burial. A level of “sterile” (artifact-free) soil should be located before ceasing excavation and beginning to backfill.
2. Laboratory analysis of skeletal remains

The following protocol should be followed during the laboratory analysis of the skeletal remains:

a. Record the date, location, starting and finishing times of the skeletal analysis, and the names of all workers;

b. Radiograph all skeletal elements before any further cleaning:
   i. Obtain bite-wing, apical and panoramic dental X-rays, if possible;
   ii. The entire skeleton should be X-rayed. Special attention should be directed to fractures, developmental anomalies and the effects of surgical procedures. Frontal sinus films should be included for identification purposes;

c. Retain some bones in their original state; two lumbar vertebrae should be adequate. Rinse the rest of the bones clean but do not soak or scrub them. Allow the bones to dry;

d. Lay out the entire skeleton in a systematic way:
   i. Distinguish left from right;
   ii. Inventory every bone and record on a skeletal chart;
   iii. Inventory the teeth and record on a dental chart. Note broken, carious, restored and missing teeth;
   iv. Photograph the entire skeleton in one frame. All photographs should contain an identification number and scale;
e. If more than one individual is to be analysed, and especially if there is any chance that comparisons will be made between individuals, number every element with indelible ink before any other work is begun;

f. Record the condition of the remains, e.g., fully intact and solid, eroding and friable, charred or cremated;

g. Preliminary identification:
   i. Determine age, sex, race and stature;
   ii. Record the reasons for each conclusion (e.g., sex identity based on skull and femoral head);
   iii. Photograph all evidence supporting these conclusions;

h. Individual identification:
   i. Search for evidence of handedness, pathological change, trauma and developmental anomalies;
   ii. Record the reasons for each conclusion;
   iii. Photograph all evidence supporting these conclusions;

i. Attempt to distinguish injuries resulting from therapeutic measures from those unrelated to medical treatment. Photograph all injuries:
   i. Examine the hyoid bone for cracks or breaks;
   ii. Examine the thyroid cartilage for damage;
   iii. Each bone should be examined for evidence of contact with metal. The superior or inferior edges of the ribs require particular scrutiny. A dissecting microscope is useful;
j. If the remains are to be reburied before obtaining an identification, retain the following samples for further analysis:

i. A mid-shaft cross-section from either femur, 2 cm or more in height;

ii. A mid-shaft cross-section from either fibula, 2 cm or more in height;

iii. A 4-cm section from the sternal end of a rib (sixth, if possible);

iv. A tooth (preferably a mandibular incisor) that was vital at the time of death;

v. Several molar teeth for possible later deoxyribonucleic acid fingerprinting for identification;

vi. A cast of the skull for possible facial reconstruction;

vii. Record what samples have been saved, and label all samples with the identification number, date and name of the person who removed the sample.

3. Final report

The following steps should be taken in the preparation of a final report:

a. Prepare a full report of all procedures and results;

b. Include a short summary of the conclusions;

c. Sign and date the report.

4. Repository for evidence

In cases where the body cannot be identified, the exhumed remains or other evidence should be preserved for a reasonable time. A
Annex I

Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions

Effective prevention and investigation of extralegal, arbitrary and summary executions

The Economic and Social Council,*

Recalling that Article 3 of the Universal Declaration of Human Rights\[^{108}\] proclaims that everyone has the right to, life, liberty and security of person,

Bearing in mind that paragraph 1 of Article 6 of the International Covenant on Civil and Political Rights\[^{114}\] states that every human being has an inherent right to life, that that right shall be protected by law and that no one shall be arbitrarily deprived of his or her life,

Also bearing in mind the general comments of the Human Rights Committee on the right to life as enunciated in Article 6 of the International Covenant on Civil and Political Rights,

Stressing that extralegal, arbitrary and summary executions contravene the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights,

Note: References are numbered a/, b/ etc., with the original numbering from the resolution given in square brackets immediately following the footnote indicators.

Mindful that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Resolution II on extralegal, arbitrary and summary executions, called upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty and to take all other measures necessary to prevent those practices,

Mindful also that the Economic and Social Council, in section VI of its Resolution 1986/10 of May 21, 1986, requested the Committee on Crime Prevention and Control to consider at its tenth session the question of extralegal, arbitrary and summary executions with a view to elaborating principles on the effective prevention and investigation of such practices,

Recalling that the General Assembly in its Resolution 33/173 of December 20, 1978 expressed its deep concern at reports from various parts of the world relating to enforced or involuntary disappearances and called upon Governments, in the event of such reports, to take appropriate measures to searching for such persons and to undertake speedy and impartial investigations,

Noting with appreciation the efforts of non-governmental organizations to develop standards for investigations,

Emphasizing that the General Assembly in its Resolution 42/141 of December 7, 1987 strongly condemned once again the large number of summary or arbitrary executions, including extralegal executions, that continued to take place in various parts of the world,

Noting that in the same resolution the General Assembly recognized the need for closer cooperation between the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian
Affairs and the Committee on Crime Prevention and Control in an effort to bring to an end summary or arbitrary executions,

Aware that effective prevention and investigation of extralegal, arbitrary and summary executions requires the provision of adequate financial and technical resources,

1. Recommends that the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions annexed to the present resolution shall be taken into account and respected by Governments within the framework of their national legislation and practices, and shall be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Government and the public in general;

2. Requests the Committee on Crime Prevention and Control to keep the above recommendations under constant review, including implementation of the Principles, taking into account the various socioeconomic, political and, cultural circumstances in which extralegal, arbitrary and summary executions occur;

3. Invites Member States that have not yet ratified or acceded to international instruments that prohibit extralegal, arbitrary and summary executions, including the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to become parties to these instruments;
4. **Requests** the Secretary-General to include the Principles in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*;

5. **Requests** the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to give special attention in their research and training programmes to the Principles, and to the International Covenant on Civil and Political Rights,\(^{114}\) the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,\(^{116}\) the Code of Conduct for Law Enforcement Officials,\(^{104}\) the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power\(^ {102}\) and other international instruments relevant to the question of extralegal, arbitrary and summary executions.
Annex to the Economic and Social Council
Resolution 1989/65

Principles on the Effective Prevention and
Investigation of Extralegal, Arbitrary and Summary Execution

Prevention

1. Governments shall prohibit by law all extralegal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extralegal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest; detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty, to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extralegal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extralegal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extralegal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public
denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extralegal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

**Investigation**

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extralegal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause manner and time of death, the person responsible, and any adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.
II. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of
death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extralegal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The
The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

**Legal proceedings**

18. Governments shall ensure that persons identified by the investigation as having participated in extralegal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extralegal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity
from prosecution be granted to any person allegedly involved in extralegal, arbitrary or summary executions.

20. The families and dependents of victims of extralegal, arbitrary and summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

Notes

a/ General Assembly Resolution 217 A (III).

b/ See General Assembly Resolution 2200 A (XXI), annex.


e/ General Assembly Resolution 39/46, annex.

f/ General Assembly Resolution 34/169, annex.

g/ General Assembly Resolution 40/34, annex.
## Postmortem Determination of Torture

<table>
<thead>
<tr>
<th>Torture technique</th>
<th>Physical findings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beating</strong></td>
<td></td>
</tr>
<tr>
<td>1. General</td>
<td>Scars. Bruises. Lacerations. Multiple fractures at different stages of healing, especially in unusual locations, which have not been medically treated.</td>
</tr>
<tr>
<td>2. To the soles of the feet</td>
<td>Haemorrhage in the soft tissues of the soles of the feet and ankles. Aseptic necrosis.</td>
</tr>
<tr>
<td>(“falanga”, “falaka”, “bastinado”), or fractures of the bones of the feet.</td>
<td></td>
</tr>
<tr>
<td>3. With the palms on both ears simultaneously (“el telefone”).</td>
<td>Ruptured or scarred tympanic membranes. Injuries to external ear.</td>
</tr>
<tr>
<td>4. On the abdomen, while lying on a table with the upper half of the body unsupported (“operating table”, “el quirofano”).</td>
<td>Bruises on the abdomen. Back injuries. Ruptured abdominal viscera.</td>
</tr>
<tr>
<td><strong>Suspension</strong></td>
<td></td>
</tr>
<tr>
<td>6. By the wrists (“la bandera”).</td>
<td>Bruises or scars about the wrists. Joint injuries.</td>
</tr>
</tbody>
</table>
7. By the arms or neck. Bruises or scars at the site of binding. Prominent lividity in the lower extremities.

8. By the ankles (“murcielago”). Bruises or scars about the ankles. Joint injuries.

9. Head down, from a horizontal pole placed under the knees with the wrists bound to the ankles (“parrot’s perch”, “Jack”, “pau de arara”). Bruises or scars on the anterior forearms and backs of the knees. Marks on the wrists and ankles.

Near suffocation


11. Tying of a plastic bag over the head (“dry submarine”).

Sexual abuse


Forced posture


Electric shock

15. Cattle prod (‘‘la picana’’). Burns: appearance depends on the age of the injury. Immediately: red spots, vesicles, and/or black exudate. Within a few weeks: circular, reddish, macular scars. At several months: small, white, reddish or brown spots resembling telangiectasias.

16. Wires connected to a source of electricity. Peri-anal or rectal burns.

17. Heated metal skewer inserted into the anus (‘‘black slave’’). Vitreous humor electrolyte abnormalities.

Miscellaneous

Annex III

Drawings of Parts of Human Body for Identification of Torture

MARK ALL EXISTING RESTORATIONS AND MISSING TEETH ON THIS CHART

<table>
<thead>
<tr>
<th>Estimated</th>
<th>Age</th>
<th>Sex</th>
<th>Race</th>
</tr>
</thead>
</table>

Circle descriptive term
Prosthetic Appliances Present
Maxilla
- Full Denture
- Partial Denture
- Fixed Bridge

Mandible
- Full Denture
- Partial Denture
- Fixed Bridge

Describe completely all Prosthetic Appliances or Fixed Bridges

Scans on teeth
- Slight
- Moderate
- Severe

MARK ALL CARIES ON THIS CHART

Outline all caries and 'X' out all missing teeth

Circle descriptive term
Relationship
- Normal
- Undershot
- Overbite

Periodontal Condition
- Excellent
- Average
- Poor

Calculus
- Slight
- Moderate
- Severe
## V. COMPARISON OF BODY WITH POSSIBLE DECEDENTS

<table>
<thead>
<tr>
<th>TRAITS</th>
<th>NAMES OF DECEDENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEX</td>
<td></td>
</tr>
<tr>
<td>AGE</td>
<td></td>
</tr>
<tr>
<td>RACE</td>
<td></td>
</tr>
<tr>
<td>STATURE</td>
<td></td>
</tr>
<tr>
<td>WEIGHT</td>
<td></td>
</tr>
<tr>
<td>CLOTHING</td>
<td></td>
</tr>
<tr>
<td>JEWELLERY</td>
<td></td>
</tr>
<tr>
<td>DOCUMENT</td>
<td></td>
</tr>
<tr>
<td>SCARS, TATTOOS</td>
<td></td>
</tr>
<tr>
<td>OLD SURGERY</td>
<td></td>
</tr>
<tr>
<td>ANOMALIES/DEFORM</td>
<td></td>
</tr>
<tr>
<td>DENTITION</td>
<td></td>
</tr>
<tr>
<td>FINGERPRINTS</td>
<td></td>
</tr>
<tr>
<td>OTHER</td>
<td></td>
</tr>
<tr>
<td><strong>RULE OUT</strong></td>
<td></td>
</tr>
<tr>
<td><strong>POSSIBLE BY EXCLUSION</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PROBABLE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>POSITIVE</strong></td>
<td></td>
</tr>
</tbody>
</table>

## VI. NOTES

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
FULL BODY, FEMALE – LATERAL VIEW

Name ____________________ Case No. ________
Date ______________
FULL BODY, FEMALE – ANTERIOR AND POSTERIOR VIEWS

Name ___________________________  Case No. _____________
Date ____________________________
THORACIC ABDOMINAL, FEMALE – ANTERIOR AND POSTERIOR VIEWS

Name ___________________________ Case No. ___________
Date ________________
FULL BODY, MALE – LATERAL VIEW

Name ______________________________  Case No. __________
Date ______________
FULL BODY, MALE – ANTERIOR AND POSTERIOR VIEWS
(VENTRAL AND DORSAL)

Name _______________________________ Case No. ________
Date ________________
THORACIC ABDOMINAL, MALE – ANTERIOR AND POSTERIOR VIEWS
RIGHT HAND - PALMAR AND DORSAL
LEFT HAND - PALMAR AND DORSAL

Name ___________________________ Case No. ___________
Date ________________
Name ___________________________ Case No. __________
Date ________________
INFANT – VENTRAL, DORSAL, AND LEFT AND
RIGHT LATERAL VIEWS

Name ___________________________ Case No. ________
Date _______________
SKELETON – ANTERIOR AND POSTERIOR VIEWS

Name ___________________________ Case No. ___________
Date ________________
HEAD – SURFACE AND SKELETAL ANATOMY, ANTERIOR AND POSTERIOR VIEWS

Name ___________________________ Case No. ___________
Date ________________
HEAD – SURFACE AND SKELETAL ANATOMY,
LATERAL VIEW

Name ___________________________ Case No. __________
Date ___________________________
HEAD – SURFACE AND SKELETAL ANATOMY,
SUPERIOR VIEW – INFERIOR VIEW OF NECK

Name ___________________________ Case No. ______
Date ______________
Name __________________________ Case No. ________________

Date ________________
BRAIN – SUPERIOR, INFERIOR, AND LATERAL VIEWS

Name ___________________________  Case No. ____________

Date ________________
### STAB WOUND CHART

<table>
<thead>
<tr>
<th>WOUND NO.</th>
<th></th>
<th></th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Location of wound:</td>
<td>Head</td>
<td>Neck</td>
<td>Chest</td>
<td>Abdomen</td>
<td>Back</td>
<td>Right</td>
<td>Left</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arm</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Leg</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. The skin wound is:</td>
<td>Horiz.</td>
<td>Vert.</td>
<td>Oblique</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Centimetres from wound to:</td>
<td>Top of head</td>
<td>Right of midline</td>
<td>Left of midline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Wound size in millimetres</td>
<td>Width</td>
<td>Length</td>
<td>Diam.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Direction of wound:</td>
<td>Backward</td>
<td>Forward</td>
<td>Upward</td>
<td>Downward</td>
<td>Medially</td>
<td>Laterally</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Photographs made: Yes [ ] No [ ]

REMARKS:

Examined by: ___________________________ Date: ________________
# FIREARM WOUND CHART

<table>
<thead>
<tr>
<th>NAME</th>
<th>City or County</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Location of wound:</th>
<th>WOUND NO.</th>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
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<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Neck</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abdomen</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Back</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Left</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Arm</td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Leg</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Size of wound: (Centimetres)</th>
<th>Width</th>
<th>Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diam.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Centimetres from wound to:</th>
<th>Top of head</th>
<th>Right of midline</th>
<th>Left of midline</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Firearm Residue:</th>
<th>On skin</th>
<th>Clothing</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Direction of missile through body:</th>
<th>Backward</th>
<th>Forward</th>
<th>Downward</th>
<th>Upward</th>
<th>To right</th>
<th>To left</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Missile Recovered:</th>
<th>Probable Calibre</th>
<th>Shotgun</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Photographs:** ________________  **X-rays:** ________________

**REMARKS:**

**Examined by:** ____________________  **Date:** ________________
Administrative Matter No. 07-9-12-SC

THE RULE ON THE WRIT OF AMPARO
(As amended by the Resolution
of the Court En Banc dated October 16, 2007)
Effective October 24, 2007

SECTION I. Petition. – The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

SEC. 2. Who May File. – The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

a. Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;

b. Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or

c. Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

The filing of a petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions. Likewise, the filing of the petition by an authorized party on
behalf of the aggrieved party suspends the right of all others, observing the order established herein.

**Sec. 3. Where to File.** – The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.

When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.

When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

**Sec. 4. No Docket Fees.** – The petitioner shall be exempted from the payment of the docket and other lawful fees when filing the petition. The court, justice or judge shall docket the petition and act upon it immediately.

**Sec. 5. Contents of Petition.** – The petition shall be signed and verified and shall allege the following:

a. The personal circumstances of the petitioner;
b. The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

c. The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

d. The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

e. The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

f. The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs.

Sec. 6. Issuance of the Writ. – Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it.
The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven days from the date of its issuance.

**SEC. 7. Penalty for Refusing to Issue or Serve the Writ.** — A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.

**SEC. 8. How the Writ is Served.** — The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.

**SEC. 9. Return Contents.** — Within five working days after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:

a. The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

b. The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;
c. All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

d. If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

i. to verify the identity of the aggrieved party;

ii. to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

iii. to identify witnesses and obtain statements from them concerning the death or disappearance;

iv. to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;

v. to identify and apprehend the person or persons involved in the death or disappearance; and

vi. to bring the suspected offenders before a competent court.

The period to file a return cannot be extended except on highly meritorious ground.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed (as amended by the Resolution of the Court En Banc dated October 16, 2007).
Sec. 10. **Defenses not Plead ed Deemed Waived.** – All defenses shall be raised in the return, otherwise, they shall be deemed waived.

Sec. 11. **Prohibited Pleadings and Motions.** – The following pleadings and motions are prohibited:

a. Motion to dismiss;

b. Motion for extension of time to file opposition, affidavit, position paper and other pleadings;

c. Dilatory motion for postponement;

d. Motion for a bill of particulars;

e. Counterclaim or cross-claim;

f. Third-party complaint;

g. Reply;

h. Motion to declare respondent in default;

i. Intervention;

j. Memorandum;

k. Motion for reconsideration of interlocutory orders or interim relief orders; and

l. Petition for *certiorari, mandamus* or prohibition against any interlocutory order (as amended by the Resolution of the Court En Banc dated October 16, 2007).

Sec. 12. **Effect of Failure to File Return.** – In case the respondent fails to file a return, the court, justice or judge shall proceed to hear the petition *ex parte.*
**Sec. 13. Summary Hearing.** – The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

The hearing shall be from day to day until completed and given the same priority as petitions for habeas corpus.

**Sec. 14. Interim Reliefs.** – Upon filing of the petition or at anytime before final judgment, the court, justice or judge may grant any of the following reliefs:

a. *Temporary Protection Order.* – The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 2(c) of this Rule, the protection may be extended to the officers involved.

The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.

The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.

b. *Inspection Order.* – The court, justice or judge, upon verified motion and after due hearing, may order any
person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

The motion shall state in detail the place or places to be inspected. It shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.

If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.

The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties. The order shall expire five days after the date of its issuance, unless extended for justifiable reasons.

c. Production Order. – The court, justice or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and
permit their inspection, copying or photographing by or on behalf of the movant.

The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.

d. **Witness Protection Order.** – The court, justice or judge, upon motion or *motu proprio*, may refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981.

The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

**Sec. 15. Availability of Interim Reliefs to Respondent.**

– Upon verified motion of the respondent and after due hearing, the court, justice or judge may issue an inspection order or production order under paragraphs (b) and (c) of the preceding section.

A motion for inspection order under this section shall be supported by affidavits or testimonies of witnesses having personal knowledge of the defenses of the respondent.
Sec. 16. Contempt. – The court, justice or judge may order the respondent who refuses to make a return, or who makes a false return, or any person who otherwise disobeys or resists a lawful process or order of the court to be punished for contempt. The contemnor may be imprisoned or imposed a fine.

Sec. 17. Burden of Proof and Standard of Diligence Required. – The parties shall establish their claims by substantial evidence.

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

Sec. 18. Judgment. – The court shall render judgment within 10 days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

Sec. 19. Appeal. – Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.
The period of appeal shall be five working days from the date of notice of the adverse judgment.

The appeal shall be given the same priority as in *habeas corpus* cases.

**Sec. 20. Archiving and Revival of Cases.** – The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the *amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two years from notice to the petitioner of the order archiving the case.

The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year.

**Sec. 21. Institution of Separate Actions.** – This Rule shall not preclude the filing of separate criminal, civil or administrative actions.

**Sec. 22. Effect of Filing of a Criminal Action.** – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of amparo.
**Sec. 23. Consolidation.** – When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of amparo, the latter shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

**Sec. 24. Substantive Rights.** – This Rule shall not diminish, increase or modify substantive rights recognized and protected by the Constitution.

**Sec. 25. Suppletory Application of the Rules of Court.**
– The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.

**Sec. 26. Applicability to Pending Cases.** – This Rule shall govern cases involving extralegal killings and enforced disappearances or threats thereof pending in the trial and appellate courts.

**Sec. 27. Effectivity.** – This Rule shall take effect on October 24, 2007, following its publication in three newspapers of general circulation.
Administrative Matter No. 08-1-16-SC

Rule on the Writ of Habeas Data
Effective February 2, 2008

Section 1. Habeas Data. – The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

Sec. 2. Who May File. – Any aggrieved party may file a petition for the writ of habeas data. However, in cases of extralegal killings and enforced disappearances, the petition may be filed by:

a. Any member of the immediate family of the aggrieved party, namely: the spouse, children and parents; or

b. Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph.

Sec. 3. Where to File. – The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.
Sec. 4. Where Returnable; Enforceable. — When the writ is issued by a Regional Trial Court or any judge thereof, it shall be returnable before such court or judge.

When issued by the Court of Appeals or the Sandiganbayan or any of its justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored.

When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Court of Appeals or the Sandiganbayan or any of its justices, or to any Regional Trial Court of the place where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored.

The writ of habeas data shall be enforceable anywhere in the Philippines.

Sec. 5. Docket Fees. — No docket and other lawful fees shall be required from an indigent petitioner. The petition of the indigent shall be docketed and acted upon immediately, without prejudice to subsequent submission of proof of indigency not later than 15 days from the filing of the petition.

Sec. 6. Petition. — A verified written petition for a writ of habeas data should contain:

a. The personal circumstances of the petitioner and the respondent;
b. The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;

c. The actions and recourses taken by the petitioner to secure the data or information;

d. The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;

e. The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.

    In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

f. Such other relevant reliefs as are just and equitable.

Sec. 7. Issuance of the Writ. — Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court and cause it to be served within three days from its issuance; or, in case of urgent necessity, the justice or judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it.

    The writ shall also set the date and time for summary hearing of the petition which shall not be later than 10 work days from the date of its issuance.

Sec. 8. Penalty for Refusing to Issue or Serve the Writ. — A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be
punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.

**Sec. 9. How the Writ Is Served.** – The writ shall be served upon the respondent by the officer or person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.

**Sec. 10. Return; Contents.** – The respondent shall file a verified written return together with supporting affidavits within five work days from service of the writ, which period may be reasonably extended by the Court for justifiable reasons. The return shall, among other things, contain the following:

a. The lawful defenses such as national security, state secrets, privileged communication, confidentiality of the source of information of media and others;

b. In case of respondent in charge, in possession or in control of the data or information subject of the petition:

i. a disclosure of the data or information about the petitioner, the nature of such data or information, and the purpose for its collection;

ii. the steps or actions taken by the respondent to ensure the security and confidentiality of the data or information; and

iii. the currency and accuracy of the data or information held; and

c. Other allegations relevant to the resolution of the proceeding.
A general denial of the allegations in the petition shall not be allowed.

**Sec. 11. Contempt.** — The court, justice or judge may punish with imprisonment or fine a respondent who commits contempt by making a false return, or refusing to make a return; or any person who otherwise disobeys or resists a lawful process or order of the court.

**Sec. 12. When Defenses May Be Heard in Chambers.** — A hearing in chambers may be conducted where the respondent invokes the defense that the release of the data or information in question shall compromise national security or state secrets, or when the data or information cannot be divulged to the public due to its nature or privileged character.

**Sec. 13. Prohibited Pleadings and Motions.** — The following pleadings and motions are prohibited:

   a. Motion to dismiss;
   b. Motion for extension of time to file opposition, affidavit, position paper and other pleadings;
   c. Dilatory motion for postponement;
   d. Motion for a bill of particulars;
   e. Counterclaim or cross-claim;
   f. Third-party complaint;
   g. Reply;
   h. Motion to declare respondent in default;
   i. Intervention;
j. Memorandum;
k. Motion for reconsideration of interlocutory orders or interim relief orders; and
l. Petition for certiorari, mandamus or prohibition against any interlocutory order.

Sec. 14. Return; Filing. — In case the respondent fails to file a return, the court, justice or judge shall proceed to hear the petition ex parte, granting the petitioner such relief as the petition may warrant unless the court in its discretion requires the petitioner to submit evidence.

Sec. 15. Summary Hearing. — The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

Sec. 16. Judgment. — The court shall render judgment within 10 days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall enjoin the act complained of, or order the deletion, destruction, or rectification of the erroneous data or information and grant other relevant reliefs as may be just and equitable; otherwise, the privilege of the writ shall be denied.

Upon its finality, the judgment shall be enforced by the sheriff or any lawful officer as may be designated by the court, justice or judge within five work days.

Sec. 17. Return of Service. — The officer who executed the final judgment shall, within three days from its enforcement, make
a verified return to the court. The return shall contain a full statement of the proceedings under the writ and a complete inventory of the database or information, or documents and articles inspected, updated, rectified, or deleted, with copies served on the petitioner and the respondent.

The officer shall state in the return how the judgment was enforced and complied with by the respondent, as well as all objections of the parties regarding the manner and regularity of the service of the writ.

**Sec. 18. Hearing on Officer’s Return.** – The court shall set the return for hearing with due notice to the parties and act accordingly.

**Sec. 19. Appeal.** – Any party may appeal from the judgment or final order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five work days from the date of notice of the judgment or final order.

The appeal shall be given the same priority as *habeas corpus* and *amparo* cases.

**Sec. 20. Institution of Separate Actions.** – The filing of a petition for the writ of habeas data shall not preclude the filing of separate criminal, civil or administrative actions.

**Sec. 21. Consolidation.** – When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.
When a criminal action and a separate civil action are filed subsequent to a petition for a writ of habeas data, the petition shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to govern the disposition of the reliefs in the petition.

**Sec. 22. Effect of Filing of a Criminal Action.** – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available to an aggrieved party by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of habeas data.

**Sec. 23. Substantive Rights.** – This Rule shall not diminish, increase or modify substantive rights.

**Sec. 24. Suppletory Application of the Rules of Court.** – The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.

**Sec. 25. Effectivity.** – This Rule shall take effect on February 2, 2008 following its publication in three newspapers of general circulation.
There is no shirking the fact that people, almost all of them activists or militants, have been killed. There is no denying the reality that militant citizens have been liquidated. The numbers vary. Task Force Usig of the Philippine National Police listed down 111 killings, which has since increased to 136. Amnesty International, in its official website, mentions 244 victims. The group Karapatan is said to have counted at least 724 killings. Unfortunately, none of the so-called activist/militant groups, be they outright communist or satellite groups, came forward if only to inform the Commission of the numbers of their members who have become victims of extrajudicial killings. Be this as it may, the number, whether at a low of 111 according to Task Force Usig, or a high of 724 of Karapatan, is one too many.

It is said by those who would justify these killings that the victims are enemies of the State. Verily, one’s attention may be called to the screams in death of the victims of the Communist Party of the Philippines, its armed group the New People’s Army (NPA), and its front organizations. Surely, ever present is the only too human feeling of wanting to see one’s enemies and oppressors bite the dust, so to speak, struck down on the quick based on one’s own personal concept of justice or on the military’s unilateral assessment that they are enemies of the State.
This may well be so, but it should be carefully noted that the victims, of which this Commission is concerned, were all non-combatants. They were not killed in armed clashes or engagements with the military. They were killed, it is said, by motorcycle-riding hooded killers in assassination manner.

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

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

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

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

**A. Factual Backdrop**

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

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

**B. Procedure**

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

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

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

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

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

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

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

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

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

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

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

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

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

It is also undisputed that the PNP has not made much headway in solving these killings. Out of the 111 killings of activists acknowledged by the PNP, only 37 had been forwarded to the proper prosecutor’s office for preliminary investigation or filed in court. Obviously, the reason for this poor score was the refusal of Karapatan and its allied groups to come forward and cooperate. Lastly, it is clear that the rise in killings of such activists whom the military brands as enemies of the state was to such an extent that it could not possibly be attributed to a simple increase in the crime rate. In fact, the circumstances clearly show that such killings of activists and media personnel is pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims, invariably activists and media personnel. The military establishment itself acknowledges this, by attributing the rise in killings to a “purge” of ranks by the CPP-NPA.

II. Presentation of Witnesses/Resource Persons

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

I. Introduction

Task Force Usig (TFU) was created, upon instructions of President Gloria Macapagal-Arroyo, by Secretary Ronaldo V. Puno of the Department of the Interior and Local Government, to investigate the media and political killings.
2. **Statistics on killed activists and newsmen/media men.**

TFU reported that from 2001 to 2006, the total number of slain/party list members reached 111 while the total number of media men killed for the same period reached 26. TFU’s statistics are much lower than the figures reported by Karapatan and Amnesty International for the same period. According to Karapatan, there was a total of 724 killings while Amnesty International claims that there was a total of 244 killings. Gen. Razon could not explain the difference in the figures because according to him, Karapatan and Amnesty International have refused to meet with TFU. An updated report of TFU as of November 23, 2006, shows an increased total of 115 cases of killings of activists or militants. Out of this total, 46 cases are already “filed in court” and the remaining 69 are still under “extensive investigation and case buildup.”

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

2.2 Of the total of 26 media persons killed, 21 cases have been filed while 5 are still under investigation. When

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I. See also *Update on Task Force Usig* as of September 12, 2006, p. 8, submitted by Gen. Razon to the Commission on September 12, 2006.
asked to explain the substantial difference in the efficiency of the investigation on media men killings vis-à-vis militant persons, Gen. Razon said that in the case of media personnel, there are more witnesses and the police have received more cooperation from the media.

3. Cases solved

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

In truth, the “solution efficiency” of 29 percent is even deceptive or misleading. As stated in TFU’s updated report “Out of the total 45 cases filed in court, the PNP has filed 5 cases with 8 arrested suspects who are all in jail; filed 25 cases under preliminary investigation, filed 1 case with surrendered suspect; while the suspects for the remaining 15 incidents are still at large and are subject of manhunt operations.” It is not, therefore, entirely accurate that 45 cases have already been filed in court since “25 cases [are] under preliminary investigation.” Thus, only 20 cases have actually been filed in court; 25 cases are only under preliminary investigation. These cases may yet be dismissed for lack of probable cause. Of the 20 cases filed in court, the accused or suspects have been arrested in only 6 cases. It cannot then be accurately said that the accused in the 27 cases have been brought to justice. Indeed, with respect to the 78 cases still under “extensive investigation,” it is doubtful whether the perpetrators can even be identified.
When asked for the meaning of the term of “under extensive investigation,” Gen. Razon said in each case, regular case conferences are held, more men are assigned to investigate, and special teams such as TFU are organized. Upon inquiry, he replied that TFU receives a monthly budget of P300,000. As an incentive, each member of the unit receives P5,000 for every suspect captured or case solved.

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

4. **Reason for political killings.**

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

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

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

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

2. *Id.* on p. 18.
However, when asked by Chairman Melo whether TFU has data on who among those killed were finance officers, Gen. Razon could point to only two victims who were allegedly involved in financial operations.

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

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

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

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

6. **Command responsibility**

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

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

7. Personal opinion

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

8. Recommendations of TFU

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

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

B. AFP Chief of Staff Gen. Hermogenes Esperon:

1. Opening Statement: AFP Policy and Practice

Gen. Esperon sternly declared that the AFP does not condone or employ summary executions as a matter of policy and practice.

Neither does it tolerate abuses, crimes, or summary executions. The AFP is a professional institution, which does not engage in summary executions. The AFP, in fact, operates on the basis of the Constitution and thus holds the value of human life to the highest degree. Several publications\(^4\) have been made to educate AFP’s soldiers:

a. AFP Standing Rules of Engagement

b. Protection of Non-Combatants in the Philippines

c. The Philippine Army Soldiers’ Handbook on Human Rights and International Humanitarian Law

d. Primer on the Comprehensive Agreement on the Restrict for Human Rights and International Humanitarian Law

e. Rules of Behavior on Combat

f. Love of Country/Pagmamahal sa Bayan

g. Code of Ethics

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

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

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5. TSN, September 14, 2006, pp. 6–7.

6. TSN, September 18, 2006, p. 3.
2. Reaction to Gen. Jovito Palparan’s Statement “Bayan, Karapatan, Anak ng Bayan are all front organizations of the CPP-NPA with Bayan Muna as the umbrella organization.”

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

3. Presentation entitled “Knowing the Enemy”

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

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

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

7. TSN, September 14, 2006, p. 11.
However, Gen. Esperon was quick to clarify that it does not follow that the AFP similarly treat some left-wing organizations (which are considered front organizations of the CPP-NPA) as enemies of the state because these are legal organizations and serve a function in a democratic way of life. He added that Gen. Palparan’s statement that Congressmen Satur Ocampo and Teddy Casiño are “enemies of the state” might have been prompted by the fact that the former was a known member of the CPP.

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

Gen. Esperon said he has not been given a manuscript that contained the said statement. He added that there could be truth to the matter in the light of a narration made by a certain Mr. Piedad, a former NPA Commander and a witness to the mass graves in Inupakan, Leyte. According to Mr. Piedad, the orders for the mass killings came from NPA personalities which are known in the field as Ka Gres, Joma Sison, Ka Louie, and Ka Satur. In another incident at Aurora, a letter was uncovered which mentions the name “Ka Satur” as responsible for the purchase of Five Million Pesos (P5,000,000) worth of explosives. Though the real identity of “Ka Satur” is unknown, it seems to be a popular name in the underground. Thus, this could be the basis for Gen. Palparan’s statements.

8. Id. at p. 12.

9. Id. at p. 13.
6. Local Communist Movement (LCM)-Influenced versus LCM-Infiltrated (as based on an AFP lecture)

Indicators of an LCM-Influenced organization:

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

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

1. Not categorized as LCM-influenced but is actively involved in party-list activities;
2. Under the influence of a national democratic underground mass organization of the CPP or its counterpart in the reactionist faction;
3. its aims, objectives, policies and/or pronouncements are similar to the political lines expounded by the LCM;
4. Activities are similar or complimentary to those of the LCM;
5. Maintains a close relationship with suspected LCM personalities and/or organizations.
Gen. Esperon denied knowing the source of the lecture. However, he said that those are ways that could be used in classifying organizations. The structure of the CPP-NPA-NDF is as follows: The CPP is the brain; the NPA is the armed group; and the NDF is the shield. The NDF is composed of legal organizations that may have been infiltrated by the CPP and NPA.

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

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

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

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

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

\textsuperscript{10} Id. at pp. 30–31.
9. **Foreign Support for CPP-NPA**

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

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

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

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

11. **Procedure for complaints filed**

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

¹¹ *Id.* at p. 31.
the report of the investigation will be submitted to the General Headquarters.\textsuperscript{12}

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

\textbf{I2. List of NPA victims}\textsuperscript{13}

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

\textbf{I3. Report of Task Force Usig}

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

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

\textsuperscript{12} Id. at pp. 34–35.

\textsuperscript{13} A list of the victims was furnished the Commission.

\textsuperscript{14} TSN, September 14, 2006, pp. 36–37.

\textsuperscript{15} The Commission formally referred the cases to the AFP for investigation. TSN, September 18, 2006, pp. 5–6.
I4. “Ang Tala”

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

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

I5. AFP Investigation of Gen. Jovito Palparan

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

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

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

Additionally, Gen. Esperon said that to investigate Gen. Palparan during the time when he was neutralizing the NPA would

16. Id. at p. 12.
17. Id. at pp. 14, 17 and 19.
18. Id. at p. 17.
have been counter-productive. Although Gen. Esperon admitted that the AFP has the power and authority to investigate if any of its officers has violated certain rules and regulations, such investigation may, however, muddle or obstruct any ongoing operation. Gen. Esperon added that the AFP has confidence in the duly constituted investigative body.

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

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

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

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

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

I encourage people victimized by communist rebels to get even.

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

19. Id. at p. 20.

20. Id. at pp. 21–22.
Their (three students doing research work outside Manila) disappearance is good for us but as to who abducted them we don’t know.

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

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

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

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

17. Command Responsibility

When asked about his concept of command responsibility, Gen. Esperon stated that it means that a commander is responsible for what his men do or fail to do in terms of accomplishing the mission. It does not include criminal liability of the superior if

his men or subordinates commit an illegal act that is criminal in nature. Only the subordinate should be liable for the criminal act and not the superior commander. The commander is responsible only for acts he authorized. 23

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

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

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

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

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

- “Breaking Through” by Joel Rocamora – Exhibit “J”
- “Suffer Thy Comrades” by Robert Francis Garcia – Exhibit “K”

23. Id. at pp. 28–29.
19. Coordination with Task Force Usig

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

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

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

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

21. Summary/Notable Matters:

a. The AFP did not conduct any formal investigation of suspects, but admits a rise in reported killings.

24. Id. at p. 43.
b. Gen. Esperon is convinced that the recent activist and journalist killings were carried out by the CPP-NPA as part of a “purge.” Captured documents supposedly prove this. The full contents or a copy of the documents, however, were not presented to the Commission.

c. Likewise, Gen. Esperon was firm in his position that the victims were members of the CPP/NPA and that the activist organizations, while legal, are infiltrated by the CPP-NPA. He stated that these organizations are being manipulated by the NPA.

d. Gen. Esperon admitted receiving reports about Palparan being suspected of conducting extrajudicial killings, being called Berdugo, etc. but he attributed this to propaganda of CPP/NPA.

e. Gen. Esperon admitted that no formal investigation was conducted by the AFP on Gen. Palparan, simply because no complaint was filed. He mentioned that he merely called Gen. Palparan on his cellphone and did not go beyond the latter’s denials.

C. Maj. Gen. Jovito S. Palparan:

I. Introduction

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

Commanding General  –  7th Infantry Division, Central Luzon  
Commanding General – 8th Infantry Division, Eastern Visayas
February 2005–August 2006

Brigade Commander – 2nd Infantry Division, Mindoro
May 2001–April 2003

2. Propaganda War

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

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

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

Gen. Palparan stated that certain organizations and party list representatives act as support systems providing materials and shelter for the CPP-NPA. However, when asked to name these organizations, Gen. Palparan declined to mention them publicly.

but only agreed to disclose the names of these organizations in a closed-door session.26

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

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

In an interview by Pia Hontiveros and Tony Velasquez on the TV Program “Top Story,” Gen. Palparan was asked why he considered organizations like Bayan Muna as fronts for the NPA. In response thereto, Gen. Palparan said “x x x a lot of the members are actually involved in atrocities and crimes x x x” When asked what evidence he had to support this allegation, he said that he had no evidence, but that “he could feel it.” At the Commission

26. Id. at p. 8.
27. Id. at p. 10.
28. Id. at p. 9.
29. Id. at pp. 8–9.
hearing, however, Gen. Palparan said that there are witnesses who are former members of these organizations that have severed their membership who can attest to this. These witnesses or their statements were not presented to the Commission. Gen. Palparan also stressed that “a lot of members” and not all members are involved in atrocities and crimes.

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

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

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

“The party list members of Congress are doing things to further the revolution, the communist movement. I wish they were not there.” (Interview with Pia Hontiveros and Tony Velasquez – Top Story)

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

30. Id.
31. Id. at p. 11.
32. Id. at p. 14.
33. Id.
34. Id. at pp. 14–15.
When asked to confirm during the Commission hearing whether or not he made these statements before the media, Gen. Palparan only confirmed the statement given in “Top Story.” With respect to the others, he simply evaded the issue by saying that he was not sure or that he could not recall making the statements.\(^{35}\) When asked to name which organizations he was referring to as enemies of the state, Gen. Palparan responded “\textit{x x x I just want to be general, I just do not want to specify x x x.}”\(^{36}\)

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

\textit{x x x in the course of our operation, there were some reports that that BAYAN MUNA headquarters at the time in Mindoro was used as a hideout of the armed group. And as I said, a recruitment agency because they recruit young people there as members of some organizations then eventually go up in the mountain. And then, there were those who surrendered to us confirming this x x x.}\(^{37}\)

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

Gen. Palparan reiterated his view that the repeal of the Republic Act No. 1700 (the Anti Subversion Act) was a mistake and called for the reintroduction of legislation that would criminalize membership in the CPP and sympathetic organizations.\(^{38}\) The

\(^{35}\) Id. at pp. 13–15.

\(^{36}\) Id. at p. 13.

\(^{37}\) Id. at p. 61.

\(^{38}\) Id. at p. 17.
following statements of Gen. Palparan were reported in connection therewith:

I want communism totally erased. (May 21, 2006, Philippine Star)\(^\text{39}\)

x x x to wage the ongoing counterinsurgency x x x—by “neutralizing” not just armed rebels but also a web of alleged front organizations that include leftist political parties, human-rights and women’s organizations, even lawyers and members of the clergy. (“Wagging the Buffalo,” September 25, 2006, Newsweek)\(^\text{40}\)

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

6. Internal Territorial Defense System

In the Newsweek article entitled “Wagging the Buffalo,” the following was also mentioned:

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

39. Id.

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

41. Id. at p. 19.
“silent majority.” To that end, the military is creating village-level militia to keep rebels and activists out after soldiers depart.

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

6.1 Empowering the Silent Majority

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

6.2 Village-Level Militia

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

6.3 Correlation between Defense System and escalated killings

In an article entitled “Palparan: I Encouraged Civilians to Fight Back” published in the August 22, 2006 issue of Manila Standard Today, Gen. Palparan was reported to have admitted

42. Id. at p. 20.

43. Id. at p. 21.

44. Id. at p. 22.
that wherever he was assigned, the killings escalated. When initially asked about the veracity of the article, Gen. Palparan denied the accuracy of the statement. After further questioning, however, he qualified the statement by saying that the killings were already rampant before his arrival. Thereafter, the incidence of killings would increase during the start of his campaign for a period of about five to six weeks and then afterwards, there is a drastic reduction in the number of killings.\(^{45}\)

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

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

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

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

8.I **Civilians Killed in Crossfire**

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

\(^{45}\) *Id.* at pp. 25–26.
the process. We are sorry if you are killed in the crossfire.46

9.2 Collateral Damage

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

8.3 Death of Civilians and Local Officials

Sorry nalang kung may madamay na civilian; x x x. The death of civilians and local officials were ‘small sacrifices’ brought about by the military’s anti-insurgency campaign. – Philippine Daily Inquirer September 12, 200648

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

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

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

46. Id. at p. 30.
47. Id.
48. Id. at p. 33.
49. Id. at p. 34.
8.5 *I encourage people victimized to get even.*50 (Gen. Palparan said that he merely encouraged the people to defend themselves and to fight if necessary.)

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

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

9. **Responsibility of soldiers under Gen. Palparan’s command**

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

\[\text{x x x perhaps maybe, if there are, and if they do that, that’s their own responsibility, it’s not mine}\]

Gen. Palparan, however, admitted uttering the phrase:

\[\text{x x x some soldiers are emotional when their comrades are hurt or killed. There could be soldiers who decide to take the law into their own hands. But that is illegal.}\]

From the tenor of Gen. Palparan’s answers, he *entertained the possibility that some of his soldiers may have been*

50. Id. at p. 35.
51. Id. at p. 32.
52. Id.
responsible for the killings although they were not directed by their commander. However, he stated there is still no proven incident linking any of his soldiers in any of the killings.53

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

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

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

Gen. Palparan said he was unaware of the police report of the incident stating that military personnel were involved in the abduction and killing of Ms. Marcellana and that there was a witness that identified one of the suspects as a sergeant working as an Intelligence Officer with the 204th Infantry Brigade under

53. Id. at p. 33.
54. Id. at p. 42.
55. Id. at p. 43.
56. Id. at p. 44.
Gen. Palparan’s command. When questioned further, however, Gen. Palparan contradicted himself and admitted that he had knowledge of the incident because he accompanied the Sergeant to the DOJ to file his counter-affidavit.\(^5^7\)

Despite knowledge of the involvement of military personnel in the killing of Eden Marcellana, Gen. Palparan did not order the investigation of the military personnel allegedly involved because “\textit{x x x there were already a number of investigators doing such and I don’t have authority at that time x x x}”\(^5^8\)

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

Gen. Palparan refused to comment on the findings and conclusions of the investigation by the Committee on Civil, Political, and Human Rights of the House of Representatives with respect to the human rights violations in the Southern Tagalog Region, particularly in Mindoro, primarily because the said committee includes Representatives Satur Ocampo, Etang Rosales, and Liza Masa who are allegedly biased considering that they had earlier declared Gen. Palparan as their enemy.\(^5^9\) Gen. Palparan also refused to confirm the fact that the AFP’s defense was that the killings were done by the group called “Alsa Masa.”\(^6^0\)


Gen. Palparan said that he was not investigated by the AFP despite the recommendations of the Committee on Civil, Political, and

\(^{57}\) Id. at p. 47.

\(^{58}\) Id.

\(^{59}\) Id. at p. 51.

\(^{60}\) Id. at p. 52.
Human Rights of the House of Representatives. He said that he was only investigated by a Presidential Task Force regarding the killings of Mr. Eddie Gumanoy and Ms. Eden Marcellana.61 Apparently, the said task force did not hold Gen. Palparan responsible for the killings.

I3. Command Responsibility

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

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

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

Gen. Palparan agreed with the concept under the Doctrine of Command Responsibility that “responsibility for summary executions or disappearance extends beyond the person or persons who actually committed those acts. Anyone with higher authority, who authorized, tolerated or ignored these acts are liable for them.” In connection therewith, however, he said that his failure to

61. Id. at p. 53–54.
62. Id. at p. 54.
63. Id. at p. 55.
investigate his soldiers allegedly responsible for some of the killings does not constitute tolerance of these acts because none of his soldiers (except in two cases) were identified.

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

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

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

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

I4. CPP-NPA Purge Theory

Significantly, however, when asked about CPP/NPA’s participation in the political killings, he testified that the killings

64. Id. at p. 57.

65. Id. at p. 58.
are not attributable to the alleged CPP/NPA purge. “I don’t charge it to NPA purge.” He also mentioned that he had “to be skeptical on these report[s].”66

D. Information from the Commission on Human Rights

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

E. Task Force Mapalad: Farmers-beneficiaries in Negros Occidental

On November 27, 2006 in Bacolod City, the Commission conducted a probe of killings involving members of Task Force Mapalad (TFM), a group or organization of farmers-beneficiaries in Negros Occidental. TFM President Rodito Angeles presented several witnesses and documents relative to the killings and wounding of TFM members, who are beneficiaries of the agrarian reform programs and redistribution of landholdings in various

66. Id. at p. 72.
parts of Negros Occidental. Some 250 TFM allied farmer-beneficiaries (FBs) attended the hearing and brought with them posters and pictures of family members who died in separate incidents. They claimed that landowners and their goons are responsible for the killings and there is lack of support from authorities to arrest suspects and expedite action on the cases they filed which are pending before the courts or prosecution offices.

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

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

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

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

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

The other cases presented to the Commission included the following, viz: a) shooting on December 7, 2002, of Jimmy Mameng and Jonathan Pronete, both of Hacienda Conchita Villanueva, La Castellana. A case for frustrated homicide is pending before the Regional Trial Court, Branch 63, La Carlota City; b) wounding of Ronito Boltron on January 5, 2004, in Hacienda Mulawin-Lanatan, Sagay City. A case for frustrated murder is pending before Regional Trial Court, Branch 60, Sagay City; and c) shooting of Edgardo Cauntoy on December 29, 2004, in Hacienda Nelia-Minakalaw in Barangay Rizal and Lopez Jaena by security guards of landowners. Cases for attempted and frustrated murder are pending before the Office of the City Prosecution of Sagay City.
Chairman Melo explained that the Commission is focusing its attention on agrarian-related killings because it is within its mandate to look into any case of violence involving media people, militants and activists and to fast-track the investigation thereof. Since the victims in these cases are farmer activists, they are within the scope of the Commission’s mandate.

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

F. *Probe in Davao City*

On December 11, 2006, the Commission held a whole-day hearing in Davao City to probe the killing of George and Maricel Vigo, Enrico Cabanit, and Hernando Baria, who were likewise involved in agrarian reform efforts and the organization of peasant farmers.

1. **George and Maricel Vigo**

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

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

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

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

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

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

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

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

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

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

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

2. Enrico Cabanit

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

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

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

– The body of Cabanit was not autopsied before burial, in violation of standard procedure, and despite requests for autopsy by Cabanit’s family;

– The supposed eyewitness, Mr. Ryan Catalan, never stated in his affidavit that he saw the face of the assailant. Hence, his identification of Solon’s body as the gunman is unreliable.

– Solon’s body and face at the time the supposed witnesses identified it were severely swollen (as shown in the submitted picture), that it was virtually impossible to identify him based on his alleged fleeting appearance at the crime scene.

– The police reported that Cabanit was shot with a 9mm handgun three times, and that they recovered 9mm cartridges at the scene of the crime. However, the NBI expert witness stated that, upon his examination, Cabanit sustained only two gunshot wounds and that, due to their diameter, they could not have been caused by a 9mm slug, but only by no less than .45 caliber pistol slugs.
– The police did not bother to bring Daffodil Cabanit to see and identify Solon as the gunman. Daffodil Cabanit is in the best position to see, describe and identify her father’s assailant.

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

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

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

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

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

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

G. Presentation of Media Groups

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

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

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

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

a. Philip Agustin in Dingalan, Aurora, where the suspect is Mayor Ilarde;

b. Alberto Ursalino in Malabon City, where the suspect is a certain Jimenez;

c. Jonathan Abayon in General Santos City, where the suspect is an army technical sergeant;

d. Pablo Hernandez who received several threats and was stabbed several times but managed to survive. The suspect is a member of the maritime police force.

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

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

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

III. Case Studies

A. Profile of Victims

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

The Commission was given by Task Force Usig the files relating to 14 cases of extrajudicial killing of activists or militants which are supposed to be typical or representative of the cases under investigation by Task Force Usig.

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

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

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

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

The investigation in many of the cases has met a blank wall (Ruben Apolinar, Expedito Albarillo, Rafael Bangit, Noel
Capulong, Victorina Gomez, Paquito Diaz). With respect to the cases pending preliminary investigation, the suspects are still at large (Annaliza Abanador, Sotero Llamas, Tito Macabitas, Elena Mendiola). It is only in one case (Jose Doton) where the accused has been arrested but there is no indication in the police file as to the status of the case.

I. Ruben Apolinar

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

2. Annaliza S. Abanador

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

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

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

3. **Expedito Albarillo**

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

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

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

4. **Sotero Llamas**

Sotero Llamas joined the CPP-NPA during the martial law regime of President Marcos; he was forced to go underground because he was an active member of the Kabataang Makabayan. After he was captured in May 1995, he was granted amnesty under the Joint Agreement on Security and Immunity Guarantee. He thereafter served as political consultant for the NDF in the peace negotiations between the NDF and the GRP from 1997 to 2004. He also served as political affairs director of the party list Bayan Muna. In the 2004 elections, he ran for in Albay but lost.
On May 29, 2006, at about 8:30 a.m., while on board a multi-cab which was maneuvering to make a u-turn, three men on board a motorcycle approached the right side of the multi-cab and at close range fired several shots, hitting Llamas once on the head and thrice on the body while the driver sustained one gunshot wound on the right arm. Llamas was pronounced dead upon arrival in the hospital.

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

5. Jose Doton

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

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

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

6. **Rafael Bangit**

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

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

There has been no progress whatsoever in the investigation of the case.
7. Noel “Noli” Capulong

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

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

8. Victorina Gomez

Victorina Gomez, 63 years old, a widow, was the barangay captain of Barangay Parian, Mexico, Pampanga. The shooting occurred at about 5:30 p.m. on December 16, 2005, while Ms. Gomez, together with Barangay Kagawad Romeo Atienza, Barangay Kagawad Reynaldo Macabali, and other persons were walking towards her house after attending a meeting hosted by the 69th Infantry Batallion, Philippine Army held at the Mexico Gymnasium in Mexico, Pampanga. Two unidentified male suspects wearing helmets and riding a motorcycle were responsible for the killing. While one of the suspects kept the engine of the motorcycle running, the other walked towards Ms. Gomez and her companion and shot to death Ms. Gomez and Kagawad Romeo Atienza; Barangay Kagawad Reynaldo Macabali was seriously wounded. Afterwards, the gunman immediately boarded the motorcycle and the assailants sped away.
The gunman apparently used a caliber 9mm machine pistol with a silencer. Recovered from the crime scene were empty shells and deformed slugs from a suspected 9mm caliber pistol.

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

9. Tito Macabitas

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

On October 20, 2005, at about 10:10 p.m. while Tito Macabitas and his wife, Eva D. Macabitas, were in their residence at Barangay Manicla, San Jose City. They were already in bed when they were awakened by a knock on their bedroom door. Evelyn, a niece of Tito Macabitas, informed the latter that somebody was looking for him. Tito Macabitas decided to go out to check, followed by his wife. Upon reaching the side of the house of Evelyn, the man looking for Tito Macabitas apparently asked the latter his name because his wife heard her husband saying that he was Tito Macabitas. At that juncture, the stranger shot Tito Macabitas and also his wife who was hit in the palm of her right hand. The assailant fled in a waiting vehicle (It is not clear whether it was a motorcycle, a car or a jeep; according to the wife “Mayroon pong maingay na motor na nakaparada sa malapit lang sa bahay ni Evelyn.” (Affidavit of Eva D. Macabitas).

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

10. Paquito “Pax” Diaz

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

At the time of his death, Paquito “Pax” Diaz was the Chairperson of the Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE-Eastern Visayas), a militant organization fighting for equal rights, better benefits and opportunities in government work places, and was allied with other progressive groups such as Alliance of Water Concessionaires (ALWAGON), Bayan Muna, Anakpawis, Gabriela, Anak ng Bayan, Bagong Alyansang Makabayan, and others. The COURAGE under the leadership of Mr. Diaz was then engaged in a legal battle between the Leyte Metro Water District Employees Association (LMWDEA), an affiliate of
COURAGE, and the previous LMWD management under then General Manager Engineer Ranulfo C. Feliciano that was triggered by the alleged dismissal of 26 LMWD employees.

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

II. Elena Mendiola

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

A witness, Bayani Villanueva, gave a supplemental statement dated June 1, 2006, that on May 10, 2006, at around 8 p.m., while on board his motorcycle going to the house of Ruby Corpuz in Barangay Garet Sur, Echague, Isabela, to meet with Ricardo Balauag he heard several bursts of gun fire prompting him to seek cover and at that juncture he saw two armed men in black sweaters riding in tandem on a sports-type motorcycle removing their bonnet masks while fleeing towards his direction. As the light of his motorcycle was still on, he was able to identify Renato Busania and Timoteo Corpuz whom he supposedly met on March 2, 2006, after he was told by Ricardo Balauag about the two persons frequenting his house and threatening him with harm if he failed to produce something.
I2. Juanito Mesias, Jr.

Juanito Mesias, 28 years old, married and a member of Bayan Muna Kananga Chapter was killed on May 13, 2001 at about 11:30 p.m. at Barangay San Isidro, Kananga, Leyte. The victim, together with Danilo Gusando and other companions, while riding on their respective motorcycles and campaigning for their candidate, incumbent Mayor Giovanni Ed M. Nepari, was ambushed by the alleged suspects, Omar Sumodlayon, said to be a former NPA member, and Melquiades Sumodlayon. Mesias died on the spot while his companion Danilo Guisando was wounded.

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

I3. Enrico Cabanit

Enrico Cabanit, married and secretary-general of the Pambansang Ugnayan ng mga Nagsasariling Local na Organisasyon sa Kanayunan (UNORCA), an organization that is a staunch advocate of agrarian reform and social justice, was killed on April 24, 2006, at about 6–6:30 p.m. near the unloading area of fishcarts at the Panabo Premium Market in Panabo City, Davao del Norte. Two unidentified persons riding in tandem on a motorcycle with no plate number were responsible. The backrider wearing a white upper basketball garment with his face partially covered with a piece of cloth alighted and shot Enrico Cabanit who, with his daughter Daffodil, was waiting for transportation. Enrico Cabanit died on the spot but Daffodil was only wounded and she survived.
A certain Enrique Solon who was killed in Gen. Santos on May 26, 2006 was identified by two alleged eyewitnesses—Ryan Catalan and Romeo Cabillo—as the gunman who shot and killed Enrico Cabanit.

The identification of Enrique Solon as the gunman and killer of Enrico Cabanit is highly questionable and not credible. The two eyewitnesses, based on their statements, did not really get a good look at the gunman and could not have positively identified him by looking at the cadaver of Enrique Solon whose swollen face, based on the photograph looked markedly different from the face of the latter when he was alive. (This case is more extensively discussed in connection with the hearing held in Davao City by the Commission).

### 14. Teresa Mameng

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

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

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

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

The efficiency and confident manner with which the attacks were undertaken clearly suggest that the killers were well-trained professionals who knew their business well. Many of the attacks were carried out during daytime and consummated with a limited number of shots hitting their intended target. The families of the victims in many of the cases reported previous death threats or surveillance by suspected military or police personnel.

IV. Findings

From the evidence and presentations received by the Commission, it became apparent early on that the Commission must differentiate its inquiry into the killings of activists from those of media personnel and agrarian reform movement. It appeared that the killings of media personnel are more or less attributable to reprisals for the victims’ exposés or other media practices. In the media killings, local politicians, warlords, or big business interests are viewed as the parties responsible for the killings, while in agrarian reform related killings, it is suspected that landowners and those opposed to the implementation of land reform are behind the killings. On the other hand, the killings of activists were invariably laid at the doorstep of the military.
The investigation of killings of media personnel by the PNP was notably more successful than that of activist killings. For the media killings, formal complaints have been filed in a great majority of cases. Suspects in the media killings have been named and identified. In activist killings, there have been a measly number of complaints filed with the authorities.

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

Media Killings

It appears that the killing of media personnel has been characterized by the lack of a central or homogenous theory for the motives therefor. Most of the killings have been plausibly attributed to either personal vengeance, local politics, or commercial concerns. While the media killings are by no means less abhorrent than the activist killings, the fact is that no central theory accusing agents of the government of the systematic assassination of media personnel has been forwarded, not to mention substantiated.

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

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

**Agrarian Reform-Related Killings**

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

**Activists Killings**

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

A. *There is some circumstantial evidence to support the proposition that some elements within or connected to the military are responsible for the killings:*

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

Quite deplorable is the refusal of the activist groups such as Karapatan, Bayan Muna, etc., to present their evidence before the Commission. *If these activist groups were indeed legitimate and not merely NPA fronts, as they have been scornfully tagged, it would have been to their best interest to display the evidence upon which they rely for their conclusion that the military is behind the killings.* In fact, this refusal irresistibly lends itself to the interpretation that they do not have the necessary evidence to prove their allegations against the military. It would not even be unreasonable to say that their recalcitrance only benefits the military’s position that they are indeed mere fronts for the CPP-NPA and thus, enemies of the state.
Nevertheless, despite the refusal of the activist groups to cooperate, and regardless of the question of their legitimacy, certain facts, taken together with admissions and statements by the witnesses, lead the Commission to conclude that there is some circumstantial evidence that a certain group in the military, certainly not the whole military organization, is responsible for the killings. To maintain otherwise would be closing one’s eyes to reality.

I. Motive

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

As admitted by Gen. Esperon and Gen. Palparan themselves, the armed forces considers the so-called left wing and some party list organizations, and their members, “enemies of the state,” who should be “neutralized.” They qualify their statement by stating that the word “neutralize” does not necessarily mean killing, but should be taken in the context of their holistic approach to the war on communism—that is, to include socio-civic and other works designed to bring communist rebels back to the fold of the law and thus “neutralize” their threat. Nonetheless, the fact that certain elements in the military would take the more direct approach to “neutralizing” the enemy cannot be discounted. Gen. Palparan, for one, stated that he cannot categorically deny the possibility that some of his men may have been behind some of the killings.
No plausible explanation has been given for the rise in extrajudicial killings, except that the killings were perpetrated by the CPP-NPA pursuant to a purge of its ranks. It is argued that documents have been “captured” detailing this plan of the CPP-NPA, and that there are witnesses to testify to this fact. The documents and witnesses, however, despite request by the Commission, were not presented.

While the PNP stated that some of the victims may have been targeted by the CPP-NPA for alleged “financial opportunism,” no clear basis or evidence was presented in that regard. In fact, none of the victims was positively identified as a financial officer of the CPP-NPA. In any case, the overwhelming majority of the victims were mere students, peasants or laborers, and thus, were highly unlikely to have committed any financial opportunism. Then too, it is surprising if there indeed is an ongoing purge among the ranks of the CPP-NPA, why the military has done nothing to promote or encourage such rift. Verily, if your enemies begin to fight among themselves, the result could only be to your benefit.

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

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

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

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

2. Capacity and Opportunity

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

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

3. Reaction

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

4. Gen. Palparan

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

Gen. Palparan, clearly the man in the center of the maelstrom, admits to having uttered statements openly encouraging persons to perform extrajudicial killings against those suspected of being communists, albeit unarmed civilians. Worse, he was reported to have “expressed delight” at the disappearance of at least two persons, mere students, but who were suspected of being communist or activists. Among these inculpatory items are the following:

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

- Interviewed by Pia Hontiveros and Tony Velasquez on the TV Program “Top Story,” Gen. Palparan, when asked why he considered organizations like Bayan Muna as fronts for the


68. TSN, September 26, 2006, p. 8.
NPA, responded, saying “x x x a lot of the members are actually involved in atrocities and crimes x x x” When asked what evidence he had to support this allegation, he said that he had no evidence, but that “he could feel it.”

Referring to certain activist organizations, Gen. Palparan mentioned:

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

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

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

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

69. Id. at p. 14.
70. Id.
71. Id. at pp. 14–15, TSN.
72. Id. at p. 61.
In connection with the repeal of the anti-subversion law, he stated:

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

“x x x to wage the ongoing counterinsurgency x x x — by “neutralizing” not just armed rebels but also a web of alleged front organizations that include leftist political parties, human rights and women’s organizations, even lawyers and members of the clergy.” (Wagging the Buffalo – September 25, 2006, Newsweek)\textsuperscript{74}


Other statements:

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

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

\textsuperscript{73} Id.

\textsuperscript{74} Id. at p. 18.

\textsuperscript{75} Id. at p. 30.

\textsuperscript{76} Id.
“Sorry nalang kung may madamay na civilian”; “The death of civilians and local officials were ‘small sacrifices’ brought about by the military’s anti-insurgency campaign.” (Philippine Daily Inquirer, September 12, 2006)77

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

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

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

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

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

77. Id. at p. 33.

78. Id. at p. 34.

79. Id. at p. 32.

80. Id.

81. Id. at p. 42.
“I am responsible (referring to extrajudicial killings), relatively perhaps,” Gen. Palparan said that his actions could have encouraged people to take the law into their own hands. He, however, qualified this by saying it was not really intentional on his part.82

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

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

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

Gen. Palparan’s statements and cavalier attitude towards the killings inevitably reveals that he has no qualms about the killing

82. Id. at p. 57.
83. Id. at p. 58.
of those whom he considers his enemies, whether by his order or done by his men independently. He mentions that if his men kill civilians suspected of NPA connections, “it is their call,” obviously meaning that it is up to them to do so. This gives the impression that he may not order the killings, but neither will he order his men to desist from doing so. Under the doctrine of command responsibility, Gen. Palparan admitted his guilt of the said crimes when he made this statement. Worse, he admittedly offers encouragement and “inspiration” to those who may have been responsible for the killings.

He also admits to having helped in the creation of so-called “barangay defense forces,” which may or may not be armed, to prevent the entry of CPP-NPA in such barangays. Such defense forces are equivalent to an unofficial civilian militia. It is well-known that such militia can easily degenerate into a mindless armed mob, where the majority simply lord it over the minority. This is a fertile situation for extrajudicial killings. In this way, Gen. Palparan contributed to the extrajudicial killings by creating ideal situations for their commission and by indirectly encouraging them.

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

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

“Mr. Palparan: Your Honor, I cannot categorically deny that and also admit that, but our operations x x x”
“The Chairman: You do have teams that operate that way?”

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

The lack of a categorical denial on the part of Gen. Palparan in respect of whether the units under his command “have special teams not properly identified [and] in bonnets or masks operating in the middle of the night” is, as a matter of law, an admission of the existence of such special teams.84 Obviously, such special teams operating in the middle of the night wearing masks or in bonnets have only one sinister and devious purpose or objective: the extrajudicial elimination of the enemies of whoever formed these teams.

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

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

84. RULES OF COURT, Rule 130, Section 32.
The circumstantial evidence presented before the Commission and the inferences it draws therefrom are probably grossly inadequate to support a criminal conviction, considering the requirement that conviction before a court requires proof beyond reasonable doubt. However, the Commission is not a court of law bridled with the strict rules on admissibility and weight of evidence. Thus, it can proceed with a certain degree of certitude in stating that, in all probability, some elements in the military, among whom is suspected to be Gen. Palparan, are responsible for the recent killings of activists. In any case, further in-depth investigation into the numerous killings, including extensive evidence gathering, is necessary for the successful prosecution of those directly responsible. In this, the testimony of witnesses and the presentation of evidence from the victims and their families and colleagues would be indispensable.

B. Gen. Palparan and perhaps some of his superior officers, may be held responsible for failing to prevent, punish or condemn the killings under the principle of command responsibility.

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

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

I. Command Responsibility Defined

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

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

The 1946 Yamashita case is a decision of the U.S. Supreme Court which was appealed from the Philippine Supreme Court, when the Philippines was still a colony of the United States. The U.S. Supreme Court convicted Yamashita as the superior of the Japanese forces which committed unspeakable atrocities throughout the Philippines, acts of violence, cruelty, and murder upon the civilian population and prisoners of war, particularly a large-scale massacre of civilians in Batangas, as well as wholesale pillage and wanton destruction of religious monuments in the

85. 327 U.S. I (1946).
country. The U.S. Supreme Court determined that Yamashita possessed the duty as an army commander to control the operations of his troops, and was criminally liable for permitting them to commit such despicable acts. Various laws of warfare were cited as basis of such superior responsibility: Articles I and 43 of the Regulations annexed to the Fourth Hague Convention of 1907, Article 19 of the Tenth Hague Convention of 1907, and Article 26 of the 1926 Geneva Convention on the wounded and sick. The Court concluded that Yamashita possessed:

\[86. \text{Antonio Cassese, \textit{International Criminal Law} 203–204 (2003).}\]

\[87. \text{Id., citing the \textit{Yamashita} case.}\]

\[88. \text{U.S. v. Medina, 32 C.M.R. 1182 (A.C.M.R. 1973).}\]

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

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

After the Hague Convention, the first international treaty to comprehensively codify the doctrine of command responsibility is the Additional Protocol I (AP I) of 1977 to the Geneva Conventions of 1949, Article 86(2) of which states that:
x x x the fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from x x x responsibility x x x if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or about to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

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

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

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

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elaborated a threefold requirement for the existence of command responsibility, which has been confirmed by subsequent jurisprudence.  

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

The applicable standards of knowledge defined in the second requirement can further be classified as:

(a) “Actual knowledge” — which may be established by either direct or indirect evidence; and

(b) “Had reason to know” wherein absence of knowledge is not a defense where the accused did not take reasonable steps to acquire such knowledge. Notably, in the case of *Prosecutor v. Timohir [Tihomir] Blaskic*, (“the Blaskic case”), it was held that ignorance is not a defense where the absence of knowledge is the result of negligence in the discharge of duties.

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

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

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated,
that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

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

Interpreted literally, Article 28(a) adopts the stricter “should have known” standard. Notably, the Trial Chamber in Celebici strongly suggested that the language of Article 28(a) may reasonably be interpreted to impose an affirmative duty to remain informed of the activities of subordinates. However, given the example afforded by the ICTY’s conflicting interpretations of the knowledge requirement in Article 86(2) of AP I, it cannot be assumed that a literal interpretation of Article 28(a) will be adopted by the ICC. In fact, the meaning of the phrase ‘owing to the circumstances at the time, should have known’ in Article 28(a) has already become a point of contention within international law literature. AP I and the Rome Statute, however, have not been ratified by the Philippines, but clearly the international trend is towards their application.

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

2. Command Responsibility as Binding Customary International Law

As early as 1949, the Philippine Supreme Court had the occasion to rule that the Hague Convention, including the doctrine of command responsibility, was adopted as a generally accepted principle of international law by the Philippines. In this case, shortly after the end of World War II, Shigenori Kuroda, a Lieutenant General in the Japanese Imperial Army, questioned before the Supreme Court the creation of a military tribunal
that tried him for his “command responsibility” in failing to prevent his troops from committing abuses and atrocities against the Filipino populace during World War II. He claimed that the Hague Convention on Rules and Regulations covering Land Warfare, of which he was accused of violating, among others, was inapplicable since the Philippines was not yet a signatory or party to it when the alleged violations took place.

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

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


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

Rule 153. Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.93

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


94. *Id.* at 559, fn. 45.
provision that a commander must maintain discipline within his ranks. Thus, Article 97 of the Articles of War states:

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

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

Hence, it is clear that the doctrine of command responsibility in general has been adopted by the Philippines, as a generally accepted principle of international law, and hence, as part of the law of the land. The doctrine’s refinements and restatements—AP I and the Rome Statute, while signed by but as of yet lacking ratification by the Philippines, may be considered similarly applicable and binding. This was probably put best by Justice Perfecto in his separate opinion in Yamashita v. Styer, where he stated:

95. Under the pronouncement in Kuroda.
96. 75 Phil. 563, G.R. No. L-129, December 19, 1945.
The treaties entered into between members of the family of nations are but specific definitions and reinforcements of the general common law of nations, the “unwritten” rules of warfare, which for centuries have limited the method and manner of conducting wars. The common law of nations, by which all states are and must be bound, dictates that warfare shall be carried on only in accordance with basic considerations of humanity and chivalry.

3. International and State Responsibility

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

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

172. […] An illegal act which violates human rights and which is initially not directly imputable to a State

(for example, because it is the act of private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

173. […] What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court’s task is to determine whether the violation is the result of a State’s failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention.

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

175. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages […]
177. In certain circumstances, it may be difficult to investigate acts that violate an individual’s rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.98

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

The same offenses may also give rise to liability for the commanders for damages under the municipal law of other States. In another case relevant to the Philippine setting, Maximo Hilao v. Estate of Ferdinand Marcos99 decided by the Ninth Circuit of U.S. Court of Appeals, victims and families of victims of human rights violations during the administration of Pres.

98. Id. emphasis supplied.
99. 103 F.2d 767.
Ferdinand Marcos filed a class suit against the estate of the late President seeking damages for human rights abuses committed against them or their decedents. The principal defense of the Marcos Estate was that the Estate would only be held liable for “acts actually committed by Ferdinand Marcos.” The U.S. Circuit Court of Appeals rejected this defense under the doctrine of command responsibility, holding that “[A] higher official need not have personally performed or ordered the abuses in order to be held liable” and that “[R]esponsibility for torture, summary execution, or disappearances extends beyond the person who actually committed those acts—anyone with higher authority who authorized, tolerated or knowingly ignored those acts is liable for them.”100 This shows that responsibility for acts committed in violation of customary international law may be recognized outside the state where they were committed by the international community.

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

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

In any case, command responsibility should always be coupled with a culpable act or omission. Hence, if it is shown that the officer concerned took the appropriate steps to address the violations of his subordinates, then

100. Emphasis and underscoring supplied.
he cannot be held liable for them under the doctrine of command responsibility. In all, command responsibility simply requires a measure of diligence and integrity on the part of the commander. He cannot simply let his men run amuck without his control or discipline in the same way that he cannot turn a blind eye to atrocities committed by them. If diligence in the performance of duty is shown, then the commander cannot be held responsible.

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

Fortunately, the President was, as usual, on top of the situation. She promptly recognized the need for official state action to address what she felt was a disturbing rise in the number of killings of media men and activists. She recognized that she had the duty to address the situation appropriately. She created Task Force Usig to prioritize the investigation of the killings. While Task Force Usig was plagued with difficulties, this at least showed that the government was seriously going to do its duty to address these killings.
In the same vein, the President’s creation of this independent Commission is testimony to her commitment to unearth the etiology of these killings and hopefully to prevent further killings, as well as to bring the perpetrators thereof to justice. Sadly, her gesture has been largely misinterpreted by her political opponents as a “whitewash,” which, as this report itself will show, is not the case.

V. Recommendations

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

A. Political Will

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

In the field of extrajudicial killings, it is urged that the President reiterate in the strongest possible manner her expressions or pronouncements of determination and firm resolve to stop the same. If extrajudicial executions are to be stopped, the political will to do what is right however great the cost must pervade all levels of government so that our beloved country can move towards the greater ideals of democracy and justice; it must start with the President who must pursue the prevention and prosecution of extrajudicial killings with urgency and fervor.
As recommended by Amnesty International, the Government must consistently and at all levels condemn political killings. The President and all the departments of the Government should make clear to all members of the police and military forces that extrajudicial executions will not be countenanced under any circumstances.

B. Investigation

To ensure that all reports and complaints of extrajudicial killings against the military are investigated promptly, impartially, and effectively, the investigation must be conducted by a body or agency independent from the armed forces. This civilian investigative agency should be independent of, and not under the command, control, or influence of the Armed Forces, and it must have control of its own budget. The personnel must be civilian agents well trained in law enforcement and investigative work and equipped with the necessary array of technical devices to enhance their investigative capabilities. They must be authorized to execute warrants and make arrests. They must be provided with an adequate forensic laboratory and other technical services. In the United States, the Army’s professional investigative agency is called the Criminal Investigation Division; the Air Force’s is called the Office of Special Investigation; the Navy and Marines are serviced by the Naval Criminal Investigation Service; and for the Coast Guard, the organization is called the Coast Guard Investigation Service. Our armed forces is not so big as to require separate agencies for its services. A single investigating body will be enough. The President should recommend legislation to Congress for the creation of a similar investigation agency to look into and prosecute complaints against military personnel.
On the part of the PNP, the law that created the National Police Commission (RA No. 6995) [RA No. 6975] should be amended and strengthened to ensure the thorough and impartial investigation of erring police officers by personnel not under the control of the PNP command.

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

The office of the public prosecutor in each province or city must assign prosecutors to review all complaints filed by the police to evaluate the sufficiency of evidence not only to determine the existence of probable cause but also for conviction. If the reviewing prosecutor is of the opinion that the evidence is insufficient, then he must reject the complaint and return it to the police, indicating what additional evidence is needed. Once a complaint is accepted after such review, it means that there is enough evidence for a successful prosecution. This will avoid finger pointing on who is to blame for the dismissal of a case or acquittal of the accused and, more importantly, compel the police to do a thorough job in the investigation of every case.
If after the lapse of six months from the commission of the extrajudicial killing of an activist or media personality the investigation by PNP has not yielded any positive result, the police personnel in charge must request the NBI to take over the investigation. For this purpose, the NBI must be provided with the necessary funds and allowed to hire additional personnel if necessary.

C. Prosecution

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

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

As regards killings in areas where witnesses are afraid to testify because of fear of reprisal, steps should be taken to transfer the venue to Manila.
D. Protection of Witnesses
As part of the need to ensure the successful prosecution of those responsible for extrajudicial killings, the present Witness Protection Program created under Republic Act. No. 6981 should be enhanced and made more effective so as to guarantee the safety of witnesses to the killings. The existing program is suffering from lack of funds and necessary manpower. The Government must give the highest priority to the improvement, strengthening, and funding of said program, preferably patterned after the U.S. federal witness protection program.101

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

E. Special Law for Strict Chain-of-command Responsibility
The President should propose legislation to require police and military forces and other government officials to maintain strict chain-of-command responsibility with respect to extrajudicial killings and other offenses committed by personnel under their command, control or authority. Such legislation must deal specifically with extralegal, arbitrary, and summary executions and forced “disappearances” and provide appropriate penalties which take into account the gravity of the offense. It should penalize a superior government official, military or otherwise, who encourages, incites, tolerates or ignores, any extrajudicial killing committed by a subordinate. The failure of such a government official to prevent an extrajudicial killing if he had a reasonable opportunity to do so, or his failure to investigate and punish his subordinate, or to otherwise take appropriate action to deter or

prevent its commission or punish his erring subordinate should be criminalized. Even “general information”—e.g., media reports—which would place the superior on notice of possible unlawful acts by his subordinate should be sufficient to hold him criminally liable if he failed to investigate and punish his subordinate.

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

F. Enhancement of Investigative Capabilities of the PNP and NBI.

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

(a) improvement of the forensic laboratories and equipment of the PNP and NBI and further training of forensic technicians;

(b) establishment of a national automated ballistic information system;

(c) procurement of a software program for composite sketches of suspects;

(d) adoption of crime mapping in all police stations and NBI offices; and

(e) strengthening of the information reward system.
**G. Proper Orientation and Training of Security Forces.**

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

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

As suggested in Amnesty International’s 14-point Program for the prevention of extralegal executions: “The prohibition of extrajudicial executions should be reflected in the training of all officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force and in the instructions issued to them. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in an extrajudicial execution. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extrajudicial execution.”

**VI. Conclusion**

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

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

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

In modern times, the importance of the armed forces cannot be taken lightly. In the Philippines, the lack of a cohesive and disciplined armed force allowed the colonization of the country by Spain. The same reason led the Americans to simply take the country away from Spain, and quell the Filipino resistance. In the early stages of World War II in the Pacific, Japan’s military might overwhelmed its enemies, including the Philippines, though bolstered by American troops and ordnance. Indeed, one of the main reasons for the colonizers is that the Philippines occupies a strategic military location in this part of the globe.
Today, the importance of the military is not lost upon this Commission. It is absolutely necessary because of the threat to the nation posed by communist insurgency. The Constitution provides that “[t]he Armed Forces of the Philippines is the protector of the people and the State.” The Armed Forces of the Philippines, as protector of the people, is mandated to rid the country of such insurgency. Verily, the AFP as a whole remains loyal to the Constitution.

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

The rule of law is supposed to pervade our legal system

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

In the Philippines, just like in any rule-abiding society, there exists a hierarchy of human positive laws, the highest of which is

102. See Section 3, Article II of the Constitution.
the Constitution, “being the highest expression of the sovereign will of the Filipino people.” The principle of Constitutional supremacy was explained by an eminent authority in Constitutional law in this wise:

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

“The Philippines,” declares the Constitution, “is a democratic and republican State.” An essential characteristic of such State is the rule of law, which principle is expressly mentioned in the Constitution’s Preamble. According to the previously cited authority, the rule of law “expresses the concept that government officials have only the authority given them by law and defined by law, and that such authority continues only with the consent

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

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


106. CONSTITUTION, Article II, Section 1.
of the people.”107 Thus, without any hesitation, the Supreme Court in Callanta v. Office of the Ombudsman108 declared that “[i]n our jurisdiction, the rule of law, and not of men, governs,” while in Villavicencio v. Lukban,109 it upheld the primacy of law by declaring that “[n]o official, no matter how high, is above the law.”

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

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

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

109. 39 Phil. 778 (1919).
Its message is clear; no man may seek to violate those sacred rights with impunity. In times of great upheaval or of social and political stress, when the temptation is strongest to yield—borrowing the words of Chief Justice Claudio Teehankee—to the law of force rather than the force of law, it is necessary to remind ourselves that certain basic rights and liberties are immutable and cannot be sacrificed to the transient needs or imperious demands of the ruling power. The rule of law must prevail, or else liberty will perish. Our commitment to democratic principles and to the rule of law compels us to reject the view which reduces law to nothing but the expression of the will of the predominant power in the community. “Democracy cannot be a reign of progress, of liberty, of justice, unless the law is respected by him who makes it and by him for whom it is made. Now this respect implies a maximum of faith, a minimum of idealism. On going to the bottom of the matter, we discover that life demands of us a certain residuum of sentiment which is not derived from reason, but which reason nevertheless controls.

x x x x

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

x x x x

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

By this provision, the principle of accountability of public officials under the Constitution acquires added meaning and assumes a larger dimension. No longer may a superior official relax his vigilance or abdicate his duty to supervise his subordinates, secure in the thought that he does not have to answer for the transgressions committed by the latter against the constitutionally protected rights and liberties of the citizen. Part of the factors that propelled people power in February 1986 was the widely held perception that the government was callous or indifferent to, if not actually responsible for, the rampant violations of human rights. While it would certainly be too naive to expect that violators of human rights would easily be deterred by the prospect of facing damage suits, it should nonetheless be made clear in no uncertain terms that Article 32 of the Civil Code makes the persons who are directly, as well as indirectly, responsible for the transgression joint tortfeasors.112

112. *Id.* at 601–606; emphasis supplied.
Even assuming that these victims and these “enemies of the state” are indeed guilty of crimes against the nation, they have not been convicted of the said offenses. If some military elements indeed had reason to believe that these persons were NPA agents or operatives, then they could have simply instituted the proper criminal actions against them and had them arrested. By declaring persons enemies of the state, and in effect, adjudging them guilty of crimes, these persons have arrogated unto themselves the power of the courts and of the executive branch of government. It is as if their judgment is: These people, as enemies of the state, deserve to be slain on sight. This, they cannot do. Such an abuse of power strikes at the very heart of freedom and democracy, which are, ironically, the very bylines and principles these rogue elements invoke in seeking the “neutralization” of these so-called enemies of state.

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

The military and police authorities are laudable and necessary institutions, whose smooth operation according to the Constitution is absolutely essential to the country’s security.
The words of the Supreme Court in *Aberca v. Ver*\(^{113}\) are apropos:

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

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

Nay, we say. The military must match its strength with restraint, and the only special treatment the military will receive

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113 *Id.* at 604; emphasis supplied.
from this Commission, and before any inquiry for that matter, is that it will be judged with more stringent standards. As Gen. Esperon said in regard to the court-martial of some army and marine officers, military justice is harsh and strict. Truly, justice must be stern and exacting on the military because the military has great power, and with great power comes greater responsibility. As the Book of Wisdom states:

THE MIGHTY SHALL BE MIGHTILY PUT TO THE TEST.

RESPECTFULLY SUBMITTED.


JOSE A. R. MELO
Associate Justice (Ret.), Supreme Court
Chairman

NESTOR M. MANTARING
Director
National Bureau of Investigation
Commissioner

JOVENCITO R. ZUNO
Chief State Prosecutor
Commissioner

NELIA T. GONZALEZ
Regent
University of the Philippines
Commissioner

REV. JUAN DE DIOS M. PUEBLOS, D.D.
Bishop of Butuan
Commissioner

Attested:

ATTY. ROGELIO A. VINLUAN
General Counsel
Over the past six years, there have been many extrajudicial executions of leftist activists in the Philippines. These killings have eliminated civil society leaders, including human rights defenders, trade unionists and land reform advocates; intimidated a vast number of civil society actors; and narrowed the country’s political discourse. Depending on who is counting and how, the total number of such executions ranges from 100 to over 800. Counter-insurgency strategy and recent changes in the priorities of the criminal justice system are of special importance to understanding why the killings continue.

* Only the summary of the present report is being edited and circulated in all official languages. The report itself, contained in the annex to the summary, and the appendices are circulated as received.
Many in the Government have concluded that numerous civil society organizations are “fronts” for the Communist Party of the Philippines (CPP) and its armed group, the New People’s Army (NPA). One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas, the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instil fear into the community. The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers.

The military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated. Military officers argue that many or all of the extrajudicial executions have actually been committed by the communist insurgents as part of an internal purge. The NPA does commit extrajudicial executions, sometimes dressing them up as “revolutionary justice,” but the evidence that it is currently engaged in a large-scale purge is strikingly unconvincing. The military’s insistence that the “purge theory” is correct can only be viewed as a cynical attempt to displace responsibility.

Some of the other situations in which extrajudicial executions occur in the Philippines were also studied during the visit. Journalists are killed with increasing frequency as a result of the prevailing impunity as well as the structure of the media industry. Disputes between peasants and landowners, as well as armed groups, lead to killings in the context of agrarian reform efforts, and the police often provide inadequate protection to the peasants involved. A death squad operates in Davao City, with men routinely killing street children and others in broad daylight.
human rights abuses related to conflicts in western Mindanao and the Sulu archipelago have received less attention that those related to the conflict with the communist insurgency, serious abuses clearly do occur, and improved monitoring mechanisms are necessary.

This report studies all of these problems and the institutional arrangements that have permitted them to continue. It concludes with a series of recommendations for reform. The Government has shown that it is capable of responding to human rights problems with clarity and decisiveness. This was on display when, in 2006, the Government abolished the death penalty, sparing the more than 1,000 convicts on death row. Any possibility of the death penalty being imposed without conformity to international human rights law was ended with the stroke of a pen.

The many measures that have been promulgated by the Government to respond to the problem of extrajudicial executions are encouraging. However, they have yet to succeed, and the extrajudicial executions continue.
Annex

Report of the Special Rappoteur on Extrajudicial Summary or Arbitrary Executions, Philip Alston, on His Mission to Philippines (February 12–21, 2007)

I. INTRODUCTION

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.

I visited the Philippines from February 12 to 21, 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.

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 Philippine 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. 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

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.

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.3 Within this legal framework, both state and non-state actors can commit extrajudicial executions.

**III. Historical Background**

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.

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).4 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.5 While the peace process has resulted in several agreements, it is largely inactive today.

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.⁶ 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.⁷ 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.⁸

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.⁹

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.¹⁰ 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

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.¹¹ 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. 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. 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. 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.

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.
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. 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 naive to assume that the CPP is as powerful as it would like to present itself as being.

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). What is controversial is the thesis of many officials that the organizations associated with Bayan are overt counterparts to covert NDF organizations. When officials claim that “Christians for National Liberation (CNL) x x x 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. Assertions that the CPP “fielded” such party-list groups as Bayan Muna, Anakpawis, and GABRIELA are similarly vague and speculative. 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.

Membership in the CPP is legal, and has been since 1992 when Congress repealed the Anti-Subversion Act. 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. Characterizing such elected Congressional representatives and much of civil society as “enemies” is thus completely inappropriate. Unsurprisingly, it has encouraged abuses.
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.

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 x x x 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.\textsuperscript{23}

\textbf{C. Case Studies}

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.\textsuperscript{24} 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.

\textbf{I. Counterinsurgency Strategy in the Cagayan Valley Region (with a focus on Cagayan province)}\textsuperscript{25}

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.\textsuperscript{26} 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.
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.

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.” A CAFGU is a paramilitary organization that works closely with the AFP and is subordinate to its command-and-control structure. 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)

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.”
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.

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. 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. (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. 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. 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.)

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.  

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. 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.  

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.
The military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated. 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.
(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. 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.

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.

V. Killings by the New People’s Army

The Government provided a list of 1,335 individuals, two-thirds of them civilians, allegedly killed by the NPA. 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.

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. Killing such individuals violates international law.

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. 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 x x x prior to trial,” the CPP/NPA/NDF lacks anything that could reasonably be characterized as a penal code. 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.45

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.46 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

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.47

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 CHRP 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.

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.48

VII. Killings Related to Agrarian Reform Disputes

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.49 The Government established the Comprehensive Agrarian Reform Program (CARP) in 1988 to redistribute land to peasants.50 The CPP/NPA/NDF views CARP as a “divide and rule scheme” to prevent the “genuine land reform of the revolutionary
movement.” 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

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. 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. 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.\textsuperscript{54} 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.

\textbf{IX. Davao: Vigilantism or Death Squad?}

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.\textsuperscript{55} 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.

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.

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.”

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. 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 three survivors. These interviews gave some insights into how these killings take place and the enormous emotional damage they inflict on family and friends. 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.

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. 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. Insofar as prison officials and barangay councils help the death squad function, they can be reformed. 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.

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

There is impunity for extrajudicial executions. No one has been convicted in the cases involving leftist activists, and only six cases involving journalists have resulted in convictions. The criminal justice system’s failure to obtain convictions and deter future killings should be understood in the 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. 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. 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. Cases against senior Government officials should be prosecuted by the Ombudsman before the Sandiganbayan 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

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. 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. 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.

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. 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.

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. 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.

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. 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

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, and the solidarity fostered by current cooperation in counterinsurgency operations.

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

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. 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 ensuring the proper investigation of criminal cases.

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

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.

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). That office would then be free to take a proactive role in providing witness protection.

Implementation of the statute establishing the witness protection program is deeply flawed. 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. 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.\(^79\) A more fundamental problem is that, even when a witness is available, cases seldom move quickly through the justice system,\(^80\) 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**

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**

The Office of the Ombudsman is responsible for investigating and prosecuting crimes and other misconduct committed by public officials.\(^81\) 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.

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.” As a practical matter, these arrangements serve to all but completely subordinate the Ombudsman to the DOJ.

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

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. Second, witnesses often relocate to avoid retaliation, but judges seldom grant a change of venue on that basis. The judiciary should ensure that docket management and venue decisions facilitate witness participation and protection.

XI. Congress and the Executive

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.” 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.

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.86 (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.87 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

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.

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.88

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.89 With this in mind, I was pleased to learn that in March the Government provided the CHRP significant additional funding.90

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

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

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.

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.

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.

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

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.

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.

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.

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.

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

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.

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.

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.

Endnotes

I. 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 Mascarinas. My understanding is that that number has since risen to five. [Letter from the Philippine Mission to the United Nations, dated May 23, 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.


3. On July 5, 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 I, paragraph 4, of Protocol I against the persistent factors and elements of colonial domination and against national oppression. x x x” 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” [August 15, 1991]).

The Government and the NDF signed the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) on March 16, 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 June 22, 2001, agreed to “[t]he observance of international humanitarian law and respect for internationally recognized human rights instruments. x x x” This commitment was further elaborated in Article IV of the “Implementing Guidelines on

4. 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 x x x 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 Party 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 (March 29, 1969) and approved by the Central Committee of the CPP (May 13, 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.))

5. 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 percent of the casualties: Bicol, CALABARZON, Caraga, Central Luzon, Davao, and Eastern Visayas. (“Reference Materials on Unexplained Killings [January 2007].”)

6. The “Peace Agreement” (signed September 2, 1996) was designed to provide for the “final implementation” of the “Tripoli Agreement” (signed December 23, 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/REP2) (issued June 2006).

7. The “Agreement for General Cessation of Hostilities” (signed July 18, 1997) broke down in late 2002, but the parties revived the cessation of hostilities on July 19, 2003, and have subsequently made significant progress toward operationalizing the “Agreement on Peace” (signed June 22, 2001).
8. 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.


10. In a joint communiqué signed May 6, 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.”

11. 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.

I2. The list of extrajudicial victims maintained by Karapatan (as of June 30, 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 percent of the victims with known affiliations belonged to alleged front groups.

<table>
<thead>
<tr>
<th>AFFILIATION (*)</th>
<th>CHARACTERIZATION IN TRINITY OF WAR (**)</th>
<th>LINKED TO CPP IN “KNOWING THE ENEMY”? (***)</th>
<th>NUMBER OF VICTIMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>BAYAN MEMBER ORGANIZATIONS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANAKBAYAN (youths)</td>
<td>KM-controlled (****)</td>
<td>X</td>
<td>13</td>
</tr>
<tr>
<td>COURAGE (public sector unions)</td>
<td>MKP-controlled</td>
<td>X</td>
<td>3</td>
</tr>
<tr>
<td>KMP (peasants)</td>
<td>PKM-controlled</td>
<td>X</td>
<td>102</td>
</tr>
<tr>
<td>KMU (workers)</td>
<td>RCTU-controlled</td>
<td>X</td>
<td>22</td>
</tr>
<tr>
<td>LFS (students)</td>
<td>KM-controlled</td>
<td>X</td>
<td>5</td>
</tr>
<tr>
<td>PAMALAKAYA (fisherfolk)</td>
<td>PKM-controlled</td>
<td>X</td>
<td>7</td>
</tr>
<tr>
<td>PCPR (church people’s)</td>
<td>CNL-controlled</td>
<td>X</td>
<td>2</td>
</tr>
<tr>
<td>SCMP (student Christians)</td>
<td>KM-controlled</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>BAYAN (unspecified organization)</td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>PARTY LIST GROUPS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANAKPAWIS</td>
<td>Directly handled by CPP Central Committee</td>
<td>X</td>
<td>48</td>
</tr>
<tr>
<td>BAYAN MUNA (same)</td>
<td></td>
<td>X</td>
<td>129</td>
</tr>
<tr>
<td>GABRIELA (same)</td>
<td></td>
<td>X</td>
<td>2</td>
</tr>
<tr>
<td>KABATAAN (was Anak ng Bayan) (same)</td>
<td></td>
<td>X</td>
<td>2</td>
</tr>
<tr>
<td>SUARA (same)</td>
<td></td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>OTHER ORGANIZATIONS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KADAMAY (urban poor)</td>
<td>KASAMA-controlled</td>
<td>X</td>
<td>6</td>
</tr>
<tr>
<td>KAMASS (local peasant organization)</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>KARAPATAN (human rights)</td>
<td>Staffed by members of the CNL-controlled PCPR</td>
<td>X</td>
<td>21</td>
</tr>
<tr>
<td>KASIMBAYAN (church workers)</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>SELDA (former political prisoners)</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Others (unspecified)</td>
<td></td>
<td></td>
<td>20</td>
</tr>
</tbody>
</table>
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.


“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.)

I3. Number from list current as of June 30, 2007. Some comparisons in the report are based on earlier versions of Karapatan’s list, as noted.

I4. According to a Government analysis of the various lists of “alleged political killings” that was current as of December 20, 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 February 1, 2001–October 31, 2006] as of December 20, 2006”).

I5. 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 April 2, 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 May 23, 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 November 14, 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.

16. 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 (December 26, 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 x x x. 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)

17. See, e.g., Declaration of Undertaking, pages 10, 77.

18. 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).
19. *Trinity of War, Book III*, pages 122, 124. Similar assertions were made routinely in my conversations with Government officials.


21. 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 September 22, 1992.

22. The Party-List System Act (Republic Act No. 7941) was signed into law on March 3, 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.

23. 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 of 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, 4:30 pm.)

24. 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.
627 REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS PHILIP ALSTON

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

[^1^] Southern Tagalog comprises the recently created regions of CALABARZON and MIMAROPA.


25. 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. I–16.

26. 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.

27. 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.
28. 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.

29. 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), 1 frustrated killing, and 3 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.

30. 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.

31. 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.

32. 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.

33. 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 Joson, Villa Marina, Cunlay, San Agustin, Kaliwanagan, Kita-Kita, Tailo, Malasin, Manicla, and Villa Floresta), Lupao Town (in 23 of its barangays: San Isidro, Balbalungao, Parista, Cordero, Namuldanyam, Bagong Flores, San Pedro, San Roque, Apalalo Este, Apalalo Weste, Mapangpang, Alalay Chico, Alalay Grande, Talugtug, 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, Triala, 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, Camu, Ayos Loboy, 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 set up 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 four 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, nine 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.)

34. 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.)

35. 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.)

36. According to a Government analysis, of the 184 incidents reported to the Joint Monitoring Committee established by CARHRIHL between February 1, 2001 and October 31, 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 February 1, 2001–October 31, 2006] as of December 20, 2006”.

37. 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, Expidito (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, Irenio 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 December 12, 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 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, February 19, 2007]).

38. 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 April 7, 2006, and translated excerpts were also provided to me during two PowerPoint presentations. The first of these, given by the Executive Secretary on February 12, 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 February 13, 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 x x x.

39. 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.

40. 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.”

41. In my February 21, 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 January 1, 2000 to January 31, 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.

<table>
<thead>
<tr>
<th>Alleged NPA killings by victim</th>
<th>Number (percent of total victims)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military or law enforcement personnel</td>
<td>415 (31%)</td>
</tr>
<tr>
<td>Armed Forces of the Philippines (AFP)</td>
<td>97</td>
</tr>
<tr>
<td>Philippine National Police (PNP)</td>
<td>139</td>
</tr>
<tr>
<td>Citizens Armed Forces Geographical Unit (CAFGU)</td>
<td>179</td>
</tr>
<tr>
<td>Barangay Tanod</td>
<td>34</td>
</tr>
<tr>
<td>Retired Military or law enforcement personnel</td>
<td>84 (6%)</td>
</tr>
<tr>
<td>Government Officials</td>
<td>111 (8%)</td>
</tr>
<tr>
<td>National level</td>
<td>2</td>
</tr>
<tr>
<td>Provincial level</td>
<td>2</td>
</tr>
<tr>
<td>Municipal level</td>
<td>14</td>
</tr>
<tr>
<td>Barangay level</td>
<td>93</td>
</tr>
<tr>
<td>Current or former NPA cadres</td>
<td>75 (6%)</td>
</tr>
<tr>
<td>Rebel “returnees” or current rebels</td>
<td>66</td>
</tr>
<tr>
<td>Members of Rejectionist groups</td>
<td>7</td>
</tr>
<tr>
<td>Rebolsyonaryong Gerilya ng Arayat (RGA) members</td>
<td>2</td>
</tr>
<tr>
<td>Pastors, ministers, and priests</td>
<td>2 (&lt;1%)</td>
</tr>
<tr>
<td>Businessmen and landlords</td>
<td>10 (1%)</td>
</tr>
<tr>
<td>Journalists</td>
<td>1 (&lt;1%)</td>
</tr>
<tr>
<td>“Ordinary civilians”</td>
<td>603 (45%)</td>
</tr>
<tr>
<td>Total</td>
<td>1,335 (100%)</td>
</tr>
</tbody>
</table>

For roughly one quarter of the total cases, the AFP was able to impute a motive for the killing.
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 [March 5, 2003], paras. 44–53.)

42. 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.

43. 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 March 16, 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 x x x.”

44. 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.


46. 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, December 27, 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.

47. 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.

48. 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 September 6, 2004], Art. 5.) Earlier attempts to implement the agreement on monitoring made in the “Agreement on Peace” (signed June 22, 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 May 7, 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.

49. It is not always empirically clear whether a particular extrajudicial execution was related to the victim’s participation if 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.

50. Comprehensive Agrarian Reform Law of 1988, Republic Act No. 6657 (signed into law June 10, 1988); see also Republic Act No. 8532 (signed into law February 23, 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, Sec. 4).

51. 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” (March 31, 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 x x x. 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.)

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Journalists Killed, by Year</th>
<th>Center for Media Freedom and Responsibility (CMFR)</th>
<th>National Union of Journalists of the Philippines (NUJP)</th>
<th>Committee to Protect Journalists (CPJ) (confirmed cases)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1987</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1988</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1989</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td></td>
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<tr>
<td>1991</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td></td>
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<tr>
<td>1993</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td></td>
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<tr>
<td>1994</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>1995</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>1996</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td></td>
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<tr>
<td>1997</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td></td>
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<tr>
<td>1998</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td></td>
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<tr>
<td>1999</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td></td>
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<tr>
<td>2000</td>
<td>2</td>
<td>2</td>
<td>2</td>
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<tr>
<td>2001</td>
<td>3</td>
<td>4</td>
<td>2</td>
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<tr>
<td>2002</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td></td>
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<tr>
<td>2003</td>
<td>7</td>
<td>7</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>6</td>
<td>13</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>7</td>
<td>10</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>6</td>
<td>9</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>3</td>
<td>4</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

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.”

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

54. 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 (August 15, 2005); Rachel E. Khan and Nathan J. Lee, “The Danger of Impunity,” CMFR (September 5, 2005).

55. In the Philippines, what is often referred to elsewhere as a “ski mask” is called a “bonnet.”

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Victims</th>
<th>Method of Execution</th>
<th>Percent victims killed by stabbing (of cases with known method)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Gunshot</td>
<td>Stabbing</td>
</tr>
<tr>
<td>1998 (from August 19)</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>16</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>11</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>29</td>
<td>26</td>
<td>3</td>
</tr>
<tr>
<td>2002</td>
<td>59</td>
<td>36</td>
<td>13</td>
</tr>
<tr>
<td>2003</td>
<td>98</td>
<td>91</td>
<td>7</td>
</tr>
<tr>
<td>2004</td>
<td>107</td>
<td>76</td>
<td>1</td>
</tr>
<tr>
<td>2005</td>
<td>153</td>
<td>117</td>
<td>9</td>
</tr>
<tr>
<td>2006</td>
<td>65</td>
<td>38</td>
<td>26</td>
</tr>
<tr>
<td>2007 (to February)</td>
<td>12</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>553</td>
<td>420</td>
<td>65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drugs</td>
<td>110</td>
<td>20%</td>
</tr>
<tr>
<td>Theft</td>
<td>85</td>
<td>15%</td>
</tr>
<tr>
<td>Drugs and Theft</td>
<td>27</td>
<td>5%</td>
</tr>
<tr>
<td>Gang</td>
<td>52</td>
<td>9%</td>
</tr>
<tr>
<td>Mistaken identity</td>
<td>13</td>
<td>2%</td>
</tr>
<tr>
<td>Other reasons</td>
<td>72</td>
<td>13%</td>
</tr>
<tr>
<td>No reason given</td>
<td>194</td>
<td>35%</td>
</tr>
<tr>
<td>Total</td>
<td>553</td>
<td>100%</td>
</tr>
</tbody>
</table>
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   |
| Number of incidents     | 180        | 225    | 264    | 344    |
| Number of persons killed| 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 percent for 2003, 44 percent for 2004, 56 percent for 2005, and 18 percent for 2006).

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

| Number of homicides, by weapons used, by year |
|-----------------|------------|--------|--------|--------|
|                 | 2003       | 2004   | 2005   | 2006   |
| Shooting incidents| 123        | 133    | 159    | 126    |
| Stabbing incidents| 57         | 92     | 105    | 218    |
| Total incidents  | 180        | 225    | 264    | 344    |
| Percent stabbing | 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:

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Shooting incidents</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases solved (number)</td>
<td>123</td>
<td>133</td>
<td>159</td>
<td>126</td>
</tr>
<tr>
<td>Cases solved (percent)</td>
<td>33%</td>
<td>24%</td>
<td>23%</td>
<td>47%</td>
</tr>
<tr>
<td><strong>Stabbing incidents</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases solved (number)</td>
<td>57</td>
<td>92</td>
<td>105</td>
<td>218</td>
</tr>
<tr>
<td>Cases solved (percent)</td>
<td>27%</td>
<td>18%</td>
<td>14%</td>
<td>37%</td>
</tr>
<tr>
<td>Total incidents</td>
<td>180</td>
<td>225</td>
<td>264</td>
<td>344</td>
</tr>
<tr>
<td>Cases solved (number)</td>
<td>75</td>
<td>97</td>
<td>90</td>
<td>145</td>
</tr>
<tr>
<td>Cases solved (percent)</td>
<td>42%</td>
<td>43%</td>
<td>34%</td>
<td>42%</td>
</tr>
</tbody>
</table>

The overall resolution rate for homicide cases has consistently been around 40 percent. (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 percent rise in stabbings and a 21 percent fall in shootings) along with a sharp decrease in the proportion of stabbing homicides solved by the police (a 30 percent fall).

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

58. 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 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.
59. In accord with DILG Memorandum Circular No. 98-227 (December 2, 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.

60. 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, Sec. 18[4]), and civil society organizations should consider whether to take the mayor up on his offer.

61. 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.
62. 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:

<table>
<thead>
<tr>
<th>Status</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under investigation</td>
<td>66</td>
</tr>
<tr>
<td>Case filed — Preliminary investigation</td>
<td>25</td>
</tr>
<tr>
<td>Case filed — Suspect(s) arrested or surrendered</td>
<td>6</td>
</tr>
<tr>
<td>Case filed — Suspect(s) remain at large</td>
<td>19</td>
</tr>
<tr>
<td>Case resulted in acquittal(s)</td>
<td>0</td>
</tr>
<tr>
<td>Case resulted in conviction(s)</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>116</td>
</tr>
</tbody>
</table>

The information in this table was accurate as of April 2, 2007. (Letter from the Philippine Mission to the United Nations, dated May 23, 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 14 alleged EJK cases” and provided a list thereof. (Letter from the Philippine Mission to the United Nations, dated October 18, 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:

<table>
<thead>
<tr>
<th>Status of Case</th>
<th>Status of suspects</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Regular AFP Members</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AFP Units</td>
<td>Suspected CAFGUs</td>
</tr>
<tr>
<td>“Implicated in media”</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Under investigation</td>
<td>2 (*)</td>
<td>2</td>
</tr>
<tr>
<td>Case filed in court</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Dismissed by DOJ</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Settled</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Acquitted</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Convicted</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>11</td>
<td>2</td>
</tr>
</tbody>
</table>

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

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


63. 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:

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under investigation</td>
<td>5</td>
</tr>
<tr>
<td>Case filed – Preliminary investigation</td>
<td>1</td>
</tr>
<tr>
<td>Case filed – Suspect(s) arrested or surrendered</td>
<td>12</td>
</tr>
<tr>
<td>Case filed – Suspect(s) remain at large</td>
<td>6</td>
</tr>
<tr>
<td>Case resulted in acquittal(s)</td>
<td>0</td>
</tr>
<tr>
<td>Case resulted in conviction(s)</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
</tr>
</tbody>
</table>

The information in this table was accurate as of April 2, 2007, (Letter from the Philippine Mission to the United Nations, dated May 23, 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 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 [September 5, 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 October 18, 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.

64. 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, Sec. 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 December 13, 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, Secs. 13–14 [as amended by Republic Act No. 8551].) The NAPOLCOM comprises a Chairperson, four regular Commissioners, and the Chief of the 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, Sec. 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, Sec. 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 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, Secs. 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 June 19, 1947] [as amended].)

65. 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” (April 11, 1978).


67. 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, Secs. 4(a)(1)(d)–(e), 4(b) [as amended by Republic Act No. 8249 and previously]).

68. 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” (January 17, 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” (Sec. 1).

69. 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” (Sec. 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” (Sec. 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” (Sec. 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 provision of this Executive Order” (Sec. 6).
70. Some activists and politicians with whom I spoke feared that the Human Security Act of 2007, which was signed into law on March 6, 2007, would be used by the Government to proscribe the CPP. That piece of legislation defines crimes of terrorism (Sec. 3) and conspiracy to commit terrorism (Sec. 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 x x x.” (Sec. 17).

71. 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, P11.445 billion (USD 241.302 million), or approximately 1 percent of the budget, was allocated to the PDAF.

72. See, e.g., the case of Alice Omengan-Claver and Constancio Claver in Appendix A, paras. 28–54.

73. 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.
74. 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 December 13, 1990], Sec. 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 February 25, 1998], Sec. 3). Most recently, Executive Order No. 546 (July 14, 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” (Sec. 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” (Sec. 2). In practice, the PNP typically conducts counterinsurgency operations in urban areas while the AFP does so in rural areas.

75. See Constitution of the Republic of the Philippines (1987), Art. VIII, Sec. 5:

The Supreme Court shall have the following powers: x x x 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 October 18, 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 [July 3, 2007].)

76. 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 April 24, 1991), but it would not require any legislative amendment.

77. 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 P3,000 (USD $65) or imprisonment of not less than six months but not more than one year. (Republic Act No. 6981, Sec. 17[e].)

78. 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 benefits provided were inadequate. (For the rights and benefits provided under the witness protection program, see Republic Act No. 6981, Sec. 8.) Most of the witnesses in that case ultimately left the program and recanted their testimony.

79. Republic Act No. 6981, Sec. 3(c).

80. 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 months from the filing of the case.

81. 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, Sec. 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.

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

83. 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 30 days from the commencement of trial. Judgment thereon shall be rendered within 30 days from submission for decision unless a shorter period is provided by law or otherwise directed by this Court x x x. 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 x x x. No postponement or continuation of trial shall be allowed except for clearly meritorious reasons. Pleadings or motion 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” [March 1, 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).

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

85. “Guidelines on Appearances of Department Heads and Other Officials of the Executive Department Before Congress” (Memorandum Circular No. 108) (adopted July 27, 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 September 26, 2005). Portions of that executive order were invalidated by the Supreme Court in Senate of the Philippines, et al. v. Eduardo Ermita, et al., G.R. No. 169777 (April 20, 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 x x x. [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.

86. Constitution of the Republic of the Philippines (1987), Art. 6, Sec. 18; Art. 7, Sec. 16.

87. 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, April 4, 1991.


89. 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.


91. 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” [August 21, 2006]), the establishment of a Presidential Human Rights Committee (Administrative Order No. 29 [January 27, 2007]; Administrative Order No. 163 [December 8, 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 January 31, 2007; Memorandum from Executive Secretary Eduardo R. Ermita, dated January 31, 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, February 19, 2007), and the Supreme Court Chief Justice’s convening of a National Consultative Summit on Extrajudicial Killings and Forced Disappearances in July 2007.

APPENDIX A

INDIVIDUAL CASE STUDIES

Nelson Asucena

This case illustrates an approach to counterinsurgency used in the Cagayan Valley Region.

Nelson Asucena was killed on December 13, 2006, in Barangay San Juan, Rizal, Cagayan, Cagayan Valley region. At roughly 10 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.

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 gunshots. His father and mother went outside and saw their son on the ground. The six men were nowhere to be seen.

The witness with whom I spoke was uncertain as to the reason for the killing, but other information shared is suggestive.
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.”

Nelson was chairman of the barangay’s Youth Council (Sangguniang 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.

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.)
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.)

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.)

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 May 1, 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.

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.)

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

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 [December 15, 2006 at 11:00 am] 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–March 8, 2007),” AFP Human Rights Office, enclosed in letter from Philippine Mission to the United Nations, dated May 23, 2007].)

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.

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.

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

On January 20, 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 January 20–21, 2007.

On 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 was observed that most of the
members of the group were the usual militant persons in
the province of Cagayan.

On February 19 and 20, 2007, the Philippine Daily
Inquirer published articles alleging that the group of 2LT
MARCELO PASCUA PA was responsible for the killing
of Mr. Asucena x x x.

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–March 8, 2007],)
AFP Human Rights Office, enclosed in letter from
Philippine Mission to the United Nations, dated May 23,
2007.

**James Ayunga**

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

James Ayunga was a leader in the Alyansa ng Magbubukid sa
Gitnang 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 May 1, 2000, Barangay
Culong had a population of 1,447 in 322 households.)
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.

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.

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 August 16, 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 August, three 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 [January 2007]” provided by the AFP]).

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 August 29, 2006. This was interpreted as a means of demonstrating the consequences of evading interrogation.

On November 4, 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.)

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, Muñoz 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.]

A Barangay Defense System has been set up 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 set up. 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.

Given that he has survived, Task Force Usig has not investigated the case of James Ayungia. 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**

The following table analyzes some key elements of seven 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.
<table>
<thead>
<tr>
<th>Case</th>
<th>Apparent reason for killing</th>
<th>Prior warnings</th>
<th>Conduct of the hit men</th>
<th>Time and location of the killing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mistaken identity</td>
<td>The mother had been warned that one of her sons' friends should not come over, because he was &quot;on the list.&quot;</td>
<td>Two men on motorcycle, got off and entered house, and shot them (no bonnets).</td>
<td>In house, in the morning</td>
</tr>
<tr>
<td>2</td>
<td>Petty theft</td>
<td>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.</td>
<td>Three men ran after the victim on the street, and shot him (no bonnets).</td>
<td>On the street, in the morning</td>
</tr>
<tr>
<td>3</td>
<td>A murder case against him had been dismissed, but the police still thought he was responsible</td>
<td>The victim's brother was told by a police officer that he (the victim) would be taken.</td>
<td>While outside, someone put an arm around him and stabbed him (no bonnet).</td>
<td>On the street, in the afternoon</td>
</tr>
<tr>
<td>4</td>
<td>Not apparent.</td>
<td>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.</td>
<td>Two men on motorcycle followed him, got off and stabbed him (no bonnets).</td>
<td>On the street, in front of a police station, at night</td>
</tr>
<tr>
<td>Case</td>
<td>Apparent reason for killing</td>
<td>Prior warnings</td>
<td>Conduct of the hit men</td>
<td>Time and location of the killing</td>
</tr>
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</tr>
<tr>
<td>5</td>
<td>Accused of petty theft (cellphone)</td>
<td>Police officer had told mother that he would be killed.</td>
<td>A man stabbed him to death. (I did not clarify whether it is known whether the perpetrator was wearing a bonnet.)</td>
<td>In a public market, in the evening</td>
</tr>
<tr>
<td>6</td>
<td>Car washing</td>
<td>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.</td>
<td>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)</td>
<td>On the street, in the afternoon</td>
</tr>
<tr>
<td>7</td>
<td>Various petty thefts</td>
<td>Barangay police have warned mother that he will be the next. Police officer warned him that he was on the “order of battle.”</td>
<td>N/A: At the time of my visit, he had not been killed.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Alice Omengan-Claver and Constancio Clever

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

On July 31, 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.

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.

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.

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.
On June 8, 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.)

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.

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.

At around 6:45 in the morning of July 31, 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.

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 8:06 a.m., 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 8:15 a.m., Gonzales was quoted as telling the media
that, “Claver is a suspected member of the National Democratic Front.”

The van fled in the direction of the Kalinga–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.

Task Force Usig formed Task Force Bulanao to investigate the incident. The lead unit was the Criminal Investigation and Detection Group (CIDG).

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.

On September 22, 2006, Task Force Bulanao filed a case with prosecutor against Police Officer Jessie Caranto, who had been Ramos’s bodyguard and driver.

On September 28, 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 nine hours. Later, Ramos arrived and ordered the checkpoints be setup to recapture them, though this failed.

The witnesses subsequently retracted their statements.

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.)
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 January 10, 2007, the case was dismissed for insufficient evidence.

Threats against Constancio continued after the incident.

On August 2, 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.)

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.)

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 diyan 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.)

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.
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.)

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) I, 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 August 24, 2006. (Annex PRO2 of “Task Force ‘Usig’ Synopsis” document provided by Government.)

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 x x x. 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 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, February 19, 2007]).

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.
I visited the Philippines upon the invitation of the Government from February 12 to 21, 2007. Most of my visit was spent in Manila, Baguio, and Davao.

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.

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.

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.

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.

I met with numerous members of the diplomatic community.

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.

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.

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.