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مجلس حقوق الإنسان  
الدورة الثامنة  
البند ٣ من جدول الأعمال

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

مذكرة شفوية مؤرخة ٣٠ أيار/مايو ٢٠٠٨ موجهة من الممثل الدائم للفلبين إلى رئيس مجلس حقوق الإنسان

يشرفني أن أرفق الرد الموحد\* المقدم من حكومة الفلبين بتقرير المقرر الخاص المعني بحالات الإعدام خارج نطاق القضاء أو بإجراءات موجزة أو تعسفاً، المقرر تقديمه في ٢ حزيران/يونيه ٢٠٠٨.

وسأغدو ممتناً لو تكرمت الأمانة بتعميم الوثيقة المرفقة بوصفها وثيقة من وثائق المجلس.

\* استُنسخت في المرفق كما وردت وباللغة التي قُدمت بها فقط.

**Annex**

**CONSOLIDATED REPLY OF THE GOVERNMENT OF THE PHILIPPINES  
TO THE ALSTON REPORT**

1. At the outset, we wish to reiterate that there is no Philippine Government policy to suppress political dissent or any other fundamental freedom. The Government neither supports nor condones political violence of any kind, including extrajudicial killings and enforced disappearances. H.E. President Gloria Macapagal Arroyo and top officials of her Administration have unequivocally and repeatedly condemned such human rights violations.

2. As a founding member of the United Nations and a member of the Human Rights Council, the Philippines reiterates its deep commitment to actively support, protect and promote human rights as enshrined in the Universal Declaration of Human Rights, the core human rights treaties and other international instruments to which it is a State Party.

3. In 2006, the President established the independent Melo Commission to investigate the killings of activist and media professionals. The President also personally met with the members of the media and human rights activists to share their outrage. To address this most pressing concern, the Government, has followed the recommendations of the Melo Commission's initial report submitted in January 2007 to expedite prosecutions, to strengthen the investigative capability of the PNP, to enhance victim assistance and witness protection, and to increase funding for more investigators.

4. It is in this light that we welcomed the visit of Prof. Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, to the Philippines from 10 to 21 February 2007. As he acknowledged in his Report, the Special Rapporteur's visit benefited greatly from the openness of the Philippine Government and civil society:

***"The success of my visit owes much to the full cooperation shown me by the Government and to the active and energetic efforts made by civil society to inform me."***

5. The Philippine Government notes with appreciation the attempts of the Special Rapporteur to achieve balance in his Report by specifically noting that insurgency groups are culpable for some of the incidents. This is in keeping with the evolving recognition in the field of Human Rights to determine the attendant responsibility of Non-State Actors for human rights violations.

6. In this respect, the independent Melo Commission categorically stated that *"(it) 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 our way of life. To be sure, those slain by rebels and insurgents far outnumber the killings attributed by the leftist to the government."*

7. The Government has noted that the recommendations made by the Special Rapporteur were made in the spirit of constructive interaction adopted by the international community in keeping with General Assembly Resolution 60/251 in 2006, and specifically embedded in the work of the Human Rights Council in that resolution.

8. However, while the Government has noted these recommendations as sincere attempts to contribute in the shared mission to protect and promote human rights in the Philippines, we consider a number of important sections and statements contained in the Report as unfounded, unbalanced, incomplete, or at best, premature.

9. In the interest of objectivity and the truth, the Government must comment on these allegations. To remain indifferent to the allegations contained in the Report would lead to an inaccurate and unfair estimate of the Philippine situation as a whole.

10. The comments of independent institutions, namely the Supreme Court of the Philippines, the Philippine Commission on Human Rights and the Office of the Ombudsman, are appended to this document to preserve their independence.

***"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."***

11. The measures to end political killings implemented by the Philippine Government conform fully with the rule of law. The Government will not force quick convictions simply for the sake of announcing achievements. These killings are being addressed within this framework, which accords primacy to the fundamental rights of the accused, witnesses, and complainants, as enshrined in the Philippine Constitution, statutory laws and jurisprudence.

12. The Chief Justice of the Supreme Court has issued instructions for expedited procedures for criminal cases involving political killings. Prosecution will be pursued with all vigor and proper respect should be accorded to the judicial process in conformity with the rule of law.

13. The Government would like to underscore the key efforts it has taken to address the killings:

- **Creation of the Melo Commission** - On 21 August 2006, President Gloria Macapagal-Arroyo issued Administrative Order No. 157 creating an independent commission to address media and activists killings.

- **Creation of "Task Force Usig" ("Task Force Prosecution")** - On 13 May 2006, the DILG created Task Force USIG to investigate alleged killings of media personalities and political activists. Task Force USIG has also excluded 669 incidents recorded by *KARAPATAN* from the police list after the victims were verified to be either alive, non-existent or killed for non-political motives.

- **Strengthening of the Presidential Human Rights Committee** - Last 08 December 2006, President Gloria Macapagal-Arroyo signed Administrative Order No. 163, entitled, *"Strengthening and Increasing the Membership of the Presidential Human Rights Committee, and Expanding further the Functions of Said Committee."*

The strengthening of the PHRC, the primary advisory body to the President in addressing human rights issues, is a manifestation of the Government's firm commitment to human rights. Essentially, A.O. 163 directly placed the Committee under the Office of the President. Chairmanship of the PHRC was transferred from the Department of Justice to the Executive Secretary.

- **Creation of Technical Working Group (TWG) to validate lists of killings** - The Philippine Government Panel for the Peace Talks formed a TWG to validate data contained in various lists of non-government organizations, such as "*KARAPATAN*" ("Rights"), of alleged killings. The TWG was able to verify, *inter alia*, that at least six (6) persons<sup>[1]</sup> allegedly killed by state agents and included in the *KARAPATAN* list turned out to be alive.

· **Establishment of the AFP Human Rights Office** – On 12 January 2007, the AFP established the Human Rights Office as a special staff office of the AFP Chief of Staff to further strengthen existing internal mechanisms on human rights and international humanitarian law concerns. The AFP HRO is engaged in advocacy and training, investigation and research, monitoring and linking with the CHRP and other concerned agencies. The said office also integrates all policies and regulations related to human rights and international humanitarian law.

· **Issuance of Administrative Order No. 181** - On 03 July 2007, President Gloria Macapagal-Arroyo issued Administrative Order No. 181 directing the coordination between the National Prosecution Service and other concerned agencies of the Government for the successful investigation and prosecution of political and media killings.

· **Presidential instructions to the AFP and PNP** - The President has instructed the PNP and AFP, in no uncertain terms to investigate internal cases of killings, cooperate with the criminal justice system to bring rogue elements through the system, apply internal disciplinary mechanisms when appropriate, and to take active steps to prevent any such human rights violations by men in uniform. This includes the instruction to ensure through specific orders, instructions and trainings that all men and women in uniform should be aware and understand that these killings are not and will never form part of the State's policy and that human rights violations will on no account be tolerated.

· **Strengthened monitoring** - Upon the instructions of the President, the Presidential Human Rights Committee (PHRC) has created and maintains a consolidated database of cases, with information from the Philippine National Police (PNP), Department of Justice (DOJ), and the Judiciary.

This is a tool for the Administration to monitor the progress of individual cases as well as systemic functions. While the Executive branch is obligated to respect the independence of the Judiciary and constitutional bodies such as the Commission on Human Rights and the Office of the Ombudsman, it takes the lead in coordinating country-wide efforts.

Thus, the Executive Secretary has communicated with the Chief Justice on the pace of progress of hearings in criminal cases. Six persons have already been convicted. (More in following sections)

· **Leadership in key agencies**- The Secretary of National Defense Gilberto C. Teodoro, Jr., PNP Chief Director General Avelino Razon, Jr., Secretary of Justice Raul M. Gonzales and the newly appointed AFP Chief of Staff General Alexander Yano have taken on their mandates with vigor and a keen understanding of their vital roles in resolving this problem.

The Secretary of National Defense is a civilian, a former congressman and a member of the Philippine Bar with a master's degree in defense strategy.

As the former head of Task Force Usig, who set it up on the President's directive, the PNP Chief fully understands the policy priority placed on this issue as well as the operating procedures required to accomplish this mission.

The Secretary of Justice has also made the prosecution of these cases a top priority.

The AFP Chief of Staff in his valedictory address during the Change of Command ceremony on 12 May 2008 has been very emphatic in foreseeing the Armed Forces of the Philippines not only

as the guardian of state security, but, more importantly, as a pillar of the rule of law. Recently, AFP Chief Yano committed to extend full cooperation to the Commission on Human Rights of the Philippines (CHRP) in the investigation of human rights violations, particularly those committed by men in uniform. In this respect, he committed to turn-over all military personnel involved in human rights violations to the CHRP for proper investigation.

- **Strengthened coordination** - The President has instructed the creation of a special working group to coordinate policies and actions towards the resolution of cases of Alleged/Suspected Extrajudicial Killings, Enforced Disappearances and Torture, including accurate data on cases, effective and timely investigation and prosecution, training and other capability building, relationship management among stakeholders, and any procedural, systemic or institutional that may be deemed necessary.

This working group collaborates with the Presidential Human Rights Committee. Members of the group include the Department of Justice (DOJ), Department of Interior and Local Government (DILG), Department of National Defense (DND), Armed Forces of the Philippines (AFP), Philippine National Police (PNP), and the National Bureau of Investigation (NBI). Organizations such as the Judiciary, Commission on Human Rights of the Philippines (CHRP), Ombudsman, and the Integrated Bar of the Philippines as well as civil society organizations participate as observers.

This group continues the work on the strategic plan drafted by the inter-agency committee and sets into motion the President's directives based on inter-agency cooperation and coordination. It is organized according to 6 thematic areas: investigation, witness protection, prosecution, judicial process, capacity-building, and monitoring.

- **Creation of Task Force Against Political Violence** - On 26 November 2007, President Gloria Macapagal Arroyo issued Administrative Order No. 211 creating a multi-agency Task Force against Political Violence, otherwise referred to as "*Task Force 211*," to increase coordination between the Department of Justice, the Department of National Defense, the Presidential Human Rights Committee, investigative and national security agencies, and civil society for speedier solutions to such violence.

- **Creation of the Judiciary, Executive and Legislative Advisory and Consultative Council (JELAC)** - On 13 May 2008, a Memorandum of Agreement (MOA) creating a Consultative Council among the three (3) branches of government was signed as a firm manifestation of the collective will of the Republic of the Philippines to undertake measures to safeguard the primacy of the rule of law as the bedrock of the State's stability and economic progress.

The MOA was signed by the highest State officials, with H.E. President Gloria Macapagal Arroyo as chairperson and the following as members: Vice President Noli L. de Castro, Senate President Manuel B. Villar, Speaker of the House of Representatives Prospero C. Nograles, Supreme Court Chief Justice Reynato S. Puno and four (4) other members from the Cabinet, Senate, House of Representatives and the Supreme Court.

- **Legislative measures** - The House of Representatives and the Senate are currently considering key human rights legislation. The President has also urged Congress to pass bills to impose the highest penalty on rogue elements in the military that commit killings of activists and media and to strengthen the witness protection program.

· **Humanitarian assistance to families of victims** - A multi-agency task force on humanitarian assistance to victim's families has been created, led by the Presidential Adviser on the Peace Process. Immediate assistance such as medical and funeral costs is extended, as well as longer-term assistance such as scholarships for children.

*“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.”*

*“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 instill 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’s counterinsurgency strategy against the CPP/NPA/NDF increasingly focuses on dismantling civil society organizations that are purported to be CPP front groups.”*

14. These statements in the Special Rapporteur’s Report present an inaccurate depiction of what is happening in the Philippines.

15. First, the use of the term “extrajudicial executions” creates the impression, intended or otherwise, that the Government is deeply and directly implicated in these political killings.

16. Second, even a cursory review of the Philippine media, print and broadcast, and those with even a passing acquaintance with the workings of Philippine civil society, can easily disprove any suggestion that political discourse has been narrowed in any way in the Philippines. All political processes remain open and free. In fact, leftist activists have remained vocal and even militantly strident in their advocacy. Human Rights defenders are routinely consulted in government decision-making, proposed legislation and programs, including training for the military, police and the judiciary. Political activists of all shades of opinion, as well as human rights defenders and other rights advocates, are free to run for public office and many sit as Sectoral/Party List Representatives in the Philippine Congress.

17. Finally, it must be stressed that in no part of the Philippines are leftists or other individuals “hunted down by interrogating and torturing those who may know their whereabouts.” Such a sweeping accusation against the authorities does not aid in the search for the truth.

18. The Government’s overall peace policy framework aims to end internal armed conflicts (including in Southern Philippines) that have lasted for decades and at the same time address the root causes of armed struggle and social unrest with due respect for the protection and promotion of all human rights. The Office of the Presidential Adviser for the Peace Process (OPAPP) oversees the implementation and coordination of the government’s comprehensive peace agenda which includes initiatives for the rehabilitation and economic development of conflict-affected areas, community empowerment, and

cooperative programs with non-government organizations, civil society groups, the private sector, and other sectors.

19. The Philippines is working to overcome the consequences of decades-long internal conflicts that impede stability, development, poverty-alleviation and the protection of all human rights in conflict areas. In doing so, the Government pursues a policy of utmost respect, protection and support for all human rights, both as integral to the national Peace Process as a whole, and to all internal security and defense operations.

20. Respect for the protection of human rights is crucial for a just and lasting peace. This is recognized in the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHIHL), which the Government signed with the leftist National Democratic Front (NDF). OPAPP, through the Government Negotiating Panel for Peace Talks, has been strengthening the human rights monitoring work of the Government's monitoring committee.

21. The Government, thus, takes serious exception to the claim that its counterinsurgency program is premised on the targeting and execution of individuals and representatives of civil society organizations.

22. This part of the Report lacks sufficient basis for linking the military wholesale as the primary perpetrators of political killings. There are no direct, positive and verified links that have been presented to conclusively connect the military or police to these alleged killings. By overemphasizing the purported role of security forces, the Report obscures the multiple causes of many killings perpetrated for a broad range of reasons, ranging from criminal activity to local political rivalries, but not including the involvement of military or police personnel.

23. There is also a glaring misunderstanding of the AFP counter-insurgency strategy, which the Report alluded to as focused solely on "dismantling civil society." The Report simply assumed that all casualties of legitimate military operations are automatically considered as victims of extrajudicial killings. There is no attempt, whatsoever, on the part of the Government or any of its instrumentalities to dismantle Philippine civil society nor would any such attempt ever be successful.

24. The overall National Defense Strategy, which includes counter-insurgency approaches, also considerably involves the use of soft approaches that remain painfully unreported and undervalued. This includes the institutionalization of the AFP National Development Support Command to pursue grassroots upliftment in the interest of expanding the AFP's solidarity with the people in conflict areas.

25. The Report also failed to recognize the AFP's efforts to foster confidence building measures grounded on strong interfaith dialogue and cultural awareness as well as economic and basic infrastructure developments, *inter alia*, as initiatives to maintain the peace in the country particularly in the Southern part of the Philippines.

- The AFP has engaged faith-based groups and has sponsored an ongoing program known as the AFP-PNP Bishop Ulama Conference Forum for Peace, which is regularly held. This forum brings together the highest religious leaders of the Christian Faith and Islam and AFP-PNP Commanders a means to foster peace in the country, particularly in Mindanao.

- The AFP also sponsored the 1<sup>st</sup> AFP-PNP-Church Summit with the theme, "Promoting a Culture of Peace and Respect for Human Rights."

26. The Armed Forces of the Philippines (AFP) is committed to its mandate to "protect the people, secure sovereignty of the state and integrity of the national territory." The AFP leadership has made

substantial efforts to educate all military units on human rights (HR) and international humanitarian law. The AFP does not condone human rights violations and does not protect personnel who commit them. Specific AFP policies that directly impact on human rights include the following:

- All AFP personnel must be cleared by the Commission on Human Rights before they may be promoted.
- The AFP extended full support to the CHRP, the Philippine National Red Cross and the International Committee of the Red Cross and even allowed them to visit and inspect AFP Custodial Centers.
- Training programs within the AFP include human rights modules.
- Standing Rules of Engagement for Internal Security Operations (SROE) call for proportionality in the use of force and the protection of non-combatants. The SROE was reviewed in 2005 by the Office of the Judge Advocate General to align its provisions with universally accepted principles that include respect for human life and adherence to international law.
- The AFP is investigating and has recommended for court martial proceedings a number of AFP personnel who are suspected of committing human rights violations or other pertinent military and civilian laws.
- The AFP is exerting all efforts to gather evidence on alleged enforced disappearances and extrajudicial executions and other human rights violations committed by the insurgent groups for purposes of holding their past and present leaders and members accountable for the crimes that they have committed in accordance with the due process of law.
- The enforcement of Command Responsibility of Commanders has been strengthened. In this respect, all Commanders must ensure that all directives relative to human rights, international humanitarian law, conduct of Internal Security Operations and existing laws are disseminated, clearly understood, and strictly adhered to by all military personnel. Relative to this, all Commanders of the major services, unified commands, and the AFP-wide Service Support Units were directed to submit periodic Comprehensive Reports on the specific steps and measures taken to ensure that all AFP personnel under their respective commands continue to value the dignity of every person and guarantee full respect for human rights, including steps undertaken to maintain a high level of discipline within the ranks.
- The AFP Indigenous Peoples Affairs Desk (IPAD) had been strengthened to carry out the provisions of Republic Act 8371, otherwise known as the Indigenous Peoples Rights Act of 1997.

27. On 14 September 2007, the AFP Chief of Staff issued a Memorandum regarding the Conduct of Pre-Trial Investigation Against Personnel Involved in Alleged Extrajudicial Killings. This Memorandum specifically directs the filing of the appropriate charges for violations of the Articles of War 97 (i.e., Conduct Prejudicial to Good Order and Military Discipline) to all military personnel “reported” or “charged in court” for purported involvement in extrajudicial killings.

28. An objective assessment of available evidence shows that only a minority of cases of alleged extrajudicial killings involve members of the military or the police as suspects. Of the 114 such cases being investigated by Task Force USIG (TF USIG), 14 cases have military elements as suspects while 28 cases involve members of the Communist Party of the Philippines/New People’s Army/National

Democratic Front (CPP/NPA/NDF). In none of the cases involving security personnel is there any evidence that these violations took place pursuant to orders from superior authority.

29. In the meantime, the categorization of certain political or social groups as front organizations of the CPP/NPA/NDF, is based on intelligence reports and investigations conducted by the appropriate arm of the AFP and PNP. These groups are **real, not purported**, CPP/NPA/NDF front organizations. No less than Jose Ma. Sison, the founder of the CPP, and who remains the overall leader of the CPP/NPA/NDF rebellion, volunteered this information on television for the entire world to witness. Mr. Sison named Bayan, among others leftist groups, as a CPP/NPA/NDF front organization.

30. It must also be pointed out that these front organizations with interchangeable members have been in existence and actively engaged in anti-government demonstrations and other actions for many years through successive administrations. Yet, not one of them had been dismantled through Government action. This is clear evidence that political freedoms are protected and respected.

31. On the whole, there is a need to come up with a clearer understanding of the term “extrajudicial killings.” The present concept of extrajudicial killings is almost indistinguishable from common crimes. An example is the Ramento case which is characterized as an extrajudicial killing. However, the victim in this particular case was killed by common criminals. The fact that he was an activist was not a factor in the commission of the crime.

*“Second x x x the criminal justice system has failed to arrest, convict and imprison those responsible for extrajudicial executions.”*

32. The Special Rapporteur’s findings that the criminal justice system has failed imply, whether deliberately or not, a lack of willingness on the part of the State to bring the perpetrators of these killings to justice. It thus undermines existing judicial institutions in the Philippines and belittles the Government’s genuine efforts to effectively prosecute those who are guilty.

33. The Philippines is neither unmindful of its responsibility nor insensitive to the plight of the victims and their families.

34. By virtue of Department No. 257 dated March 27, 2007, the DOJ created a Task Force on Human Rights and Extrajudicial Killings designating a team of prosecutors for every DOJ regional office to handle human rights violations and extrajudicial killings.

35. Human Rights and extrajudicial killings being top priority cases, the DOJ issued Department Circular No. 48 on 21 September 2007 providing for a period of sixty (60) days to conduct and resolve these cases pending under preliminary investigation.

36. On 10 October 2007, the Department of Justice (DOJ) issued Department Order (DO) No. 841, directing all prosecutors to expedite and prioritize cases of human rights and extrajudicial killings.

37. Further, DO 841 directs all handling prosecutors to give utmost priority to said cases by conducting marathon preliminary investigation that all cases must be resolved within the prescribed period of sixty (60) days from the date of filing with any prosecution office and that any extension of said prescribed period shall be considered only in meritorious cases, but in no case to exceed thirty (30) days. In cases which are undergoing trial in court, the handling prosecutors are directed to prioritize prosecution thereof by ensuring that successive dates of trial are requested from the court and that any and all forms of postponement are avoided.

38. Likewise, the Government strengthened the task force in the National Bureau of Investigation (NBI) created to handle alleged cases of extrajudicial killings. The task force now includes DNA analyst and forensic chemists, scene of the crime operatives, enforcers, and expert interviewers. The NBI has been tasked to coordinate with the National Prosecution Service of the DOJ and the Philippine National Police, if needed, in the case build up and prosecution of these cases.

39. Lawyers from the Public Attorney's Office (PAO) received special training on the handling of these cases.

40. These efforts fall under the DOJ's "*Bantay Katarungan*" Program ("*Safeguard Justice Program*") that aims to comprehensively address the issue. The four (4) components of the program are – *Investigation*: National Bureau of Investigation Task Force; *Prosecution*: National Prosecution Service Task Force; *Legal Assistance/Public Assistance*: Public Attorney's Office; and *Witness Protection Program*.

41. Based on existing data, Task Force 211 handled a total of 222 cases. Of this figure, 71 were archived/accused at large; 45 were considered cold cases; 51 were dismissed; 40 are on trial; 11 are under police investigation; 18 are under preliminary investigation; and 12 have been terminated after trial on the merits.

42. Scarcely six (6) months from its inception, Task Force 211 was able to achieve the following, *inter alia*:

It located the whereabouts of Police First Class Roderick dela Cruz, accused in the killing of Ricardo Ramos;

It caused the arrest of Nanding Bitino, suspect in the killing of Enrico Cabanit;

Seven (7) cases that were pending at the Prosecutor's level were finally filed for prosecution at the Court level, including that of Reagan Ibabao, who died in detention;

Three (3) cases had been adjudicated by the Courts;

One (1) case previously under police investigation has now been filed with the Prosecutor's Office for preliminary investigation;

A "cold case" was revived and finally filed with the Prosecutor's Office;

Ten (10) cases had been filed for preliminary investigation, but were dismissed;

Mayor Alfredo Arsenio, suspect in the murder of Herson Hinolan, a local radio broadcaster, voluntarily surrendered.

43. Based on the Witness Protection Program database, there are forty (40) active witnesses in twenty-three (23) murder cases of media personnel availing themselves of the program despite its limited resources.

44. Evidently, eleven (11) witnesses were utilized by the Prosecution that resulted in the conviction of five (5) accused, including the murder case of Marilyn Esperat.

45. The Government also welcomes the promulgation by the Supreme Court of the Rule on the Writ of Amparo on 24 October 2008 and the subsequent promulgation of the complementary Rule on the Writ of Habeas Data in January this year, respectively. (*A more comprehensive discussion on the rules is provided for in the submission of the Supreme Court, which is quoted in detail below.*)

46. The Writ of Amparo is an extraordinary and peremptory writ to safeguard the constitutional rights of the people to life, liberty and security, and is available against public and private individuals or entities.

47. The Rule on the Writ of Habeas Data is both an independent remedy to enforce the right to informational privacy and the complementary “right to truth” as well as an additional remedy to protect the right to life, liberty, or security of a person. The writ makes 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.” Reliefs include the deletion, destruction, or rectification of the erroneous data or information.

48. The Government believes that not only will the rules on the Writ of Amparo and the Writ of Habeas Data provide mechanisms for the protection of the constitutional rights of all victims of killings and enforced disappearances and their families, but will also provide the formal mechanism for the Government to prove to all that it is neither involved in such human rights offenses, nor does it condone the action of any of its personnel who may be involved in such offenses.

49. Difficulties in efforts to arrest, convict and imprison those responsible for alleged extrajudicial cases and enforced disappearances are largely due to the refusal of witnesses, including family members of the victims and members of CPP/NPA/NDF front organizations, to testify against the suspects. It may be mentioned that a prominent member of an organization identified with the CPP/NPA/NDF organization assured the Melo Commission that he would testify before the investigative body, only to decide later on against testifying.

50. The independent Melo Commission in its report lamented that, *“(it is regrettable that the militant groups which should be most interested in seeing justice done X X X 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.”*

***“These pieces of evidence do not begin to support the contention that the CPP/NPA/NDF is engaged in a large-scale purge.”***

51. The aforementioned statement is contradicted by the hard, incontrovertible evidence of the mass graves of NPA purge victims and the execution of former CPP/NPA/NDF leaders like Popoy Lagman, Romulo Kintanar and Tabara who had deserted the rebel organizations' ranks.

52. It cannot be denied, and the Special Rapporteur's Report confirms, that CPP/NPA/NDF itself figured in extrajudicial killings way back in the past against its very own members. Mass graves of the victims have been uncovered and high-profile assassinations are well known. Furthermore there is no guarantee that such purges have ceased. What is incontrovertible is that the CPP/NPA continues to perpetrate terrorism, intimidation and extortion against those who have left its ranks, Government officials, security forces, businesses, ordinary citizens and whole communities.

53. From 27 November 2007 to 10 March 2008, there were at least forty-one (41) incidents reported by various media sources involving NPA assaults on civilians.

54. Last 15 December 2007, the CPP/NPA claimed responsibility for the killing of Expedito Ribaya in Ligao City, calling it “revolutionary justice.” Florante Orobias, spokesperson of the NPA in Albay said Ribaya was one of those behind the murder of Bayan Muna provincial coordinator Rodolfo Alvarado last year. He said that Ribaya was killed in an “arrest” operation conducted by NPA guerillas last 12 December 2007 on the basis of a “deep investigation” conducted by the NPA-Santos Binamera

Command. Orobia claimed that Ribaya directly conspired with the military in killing Alvarado, who was a Bayan Muna Party-List nominee.

55. Last 24 December 2007, NPA guerillas raided and overpowered the police station in the town of Hinabangan, Western Samar, hogtied four (4) police officers on duty and divested them of their firearms and ammunitions. Lamentably, the NPA killed in the process Pedro Abadiano, a militiaman and father of Senior Police Office II Rufino Abdiano, a police officer assigned in that station. One (1) police officer was reportedly missing and might have been abducted by the guerillas. The foray was evidently well-planned as the rebels planted land mines, which is contrary to international law, along the national highway four (4) kilometers away from the raided police station to prevent the immediate arrival of reinforcements.

56. The foregoing incident was part of the series of offensives mounted by the NPA since the Government unilaterally declared a Christmas ceasefire last December 2007, which the NPA rejected. The first attack happened in the town of San Vicente, Palawan, where three (3) unarmed marines were killed on their way to the town market.

57. The Samar and Palawan incidents clearly manifest the NPA's lack of sincere intention to forge peace in the country. In fact the CPP/NPA itself admitted having directed NPA fighters after the Palawan ambush to intensify its offensive against government troops.

58. Rigoberto Sanchez, spokesman of the NPA Merardo Arce Command-Southern Mindanao Regional Operations Command, also admitted that the CPP/NPA committed a mistake in imposing the maximum penalty of death on one of its victim, i.e., Vicente Ferrazini. The Ka Paking Guimbaolibot Red Partisan Brigade of the NPA claimed responsibility for the 04 February 2008 killing of Ferrazini. Sanchez, on behalf of the CPP/NPA, said that *"as a matter of self-criticism, we apologize to the family of Mr. Ferrazini as well as to the people in general for this highly regrettable occurrence."* Unfortunately, and much to the chagrin of the loved ones of the victim, the NPA apology could not bring Mr. Ferrazini back to life.

59. Many killings being perpetrated by the CPP/NPA all over the country remain unreported by the victim's families for fear of reprisals.

60. While the Government remains committed to find durable solutions to address this concern, the CPP/NPA is out to dispense with their own brand of justice, which is not only "deeply flawed and a sham," in the words of the Report, but a gross violation of human rights.

***"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."***

61. The killings attributed to agrarian reform disputes are exemplified by the situation in Bondoc Peninsula (an area in the Cordillera region) where NPA members are inhibiting the Government from awarding agrarian lands to farmers. The Bondoc Peninsula is among the priority areas where the Government is currently supporting community-based peace initiatives to address the issue and to bring about lasting peace and sustainable development.

***"The current system so discourages cooperation between prosecutors and police that each is tempted to simply blame the other for failing to achieve convictions."***

62. To ensure proper coordination and cooperation between the prosecutors and the police, President Gloria Macapagal-Arroyo issued Administrative Order No. 181, series of 2007, which provides, in part,

**“Sec. 1. Cooperation and Coordination**

a. In order to ensure prompt, efficient and successful investigation and prosecution of cases involving political and media killings, the National Prosecution Service of the Department of Justice is hereby directed to work closely with the Philippine National Police and the National Bureau of Investigation from the beginning of a criminal investigation until the termination of cases in court.

b. The Philippine National Police and the National Bureau of Investigation are hereby directed to cooperate with the National Prosecution Service of the Department of Justice by, among other things, consulting with public prosecutors at all stages of the criminal investigation.

c. They are further directed to cooperate with the National Prosecution Service of the Department of Justice at all stages of the investigation and prosecution by ensuring among other things, that their personnel are available to testify, gather or submit additional evidence when required by the public prosecutor.

**“Sec. 2. Continuity**

a. The National Prosecution of the Department of Justice shall assign, to the fullest extent possible, a public prosecutor at the start of a criminal investigation who shall assist or handle a case involving a political or media killing throughout the criminal proceeding, except in the conduct of preliminary investigation thereof.

The preliminary investigation shall be conducted by a separate and different prosecutor from the prosecutor who, pursuant to the proceeding paragraph, is assigned to assist or handle the case through most of the criminal proceedings.”

***“The witness protection program is inadequate.”***

63. The Special Rapporteur, in his Report, said that the Government’s Witness Protection Program is inadequate.

64. The Witness Protection Program, which was created under Republic Act No. 6981, is currently implementing the following efforts and reforms aimed at addressing the needs of prospective witnesses in media and political killings, human rights violations, among others.

**Proactive Implementation**

65. Regional State Prosecutors, who are the Program’s implementers in the regions, have been directed to adopt a proactive stance in seeking out witnesses in cases involving political killings, media murders, and human rights violations.

66. Although application for admission for witness protection coverage necessarily requires strict compliance with statutory requirements, stringent vetting procedures and the identification and evaluation of threats, program personnel have been directed to liberalize admission requirements, particularly when threat level on *bona fide* witnesses in media and political killings is high.

67. While economic constraints hinder expansion of Program operations to an ideal level, the Government is committed to finding the means to do so despite tight budgets.

#### **Enhancement of Witness Benefits**

68. Witnesses often decline to testify for the prosecution, not only because of fear of physical harm, but more often because of a drastic change in their way of life upon admission into the Program.

69. Psychological counseling, which is presently undertaken in coordination with the Department of Health and the Department of Social Services and Development, shall be extended logistical support with approval of the increased budget that has been requested from Congress.

#### **Witness-Client Skills Training and Education**

70. To prepare witnesses to re-join mainstream society after their discharge from the Program as protected witnesses, and to lessen their dependence on the Program consistent with security requirements, a wide ranging vocational orientation-training program shall be undertaken to prepare them for suitable employment.

#### **Conversion of Certain Areas of Penal Farms (Bureau of Corrections) for Use as Witness Relocation Sites**

71. To encourage former witnesses to continue to be productive and to make good use of the idle land of penal farms under the Bureau of Corrections, the possibility of establishing interim Witness Protection Program relocation sites therein is being closely studied.

#### **Institutionalization of Coordination with Judiciary and Other Pillars of Criminal Justice System**

72. The speedy disposition of cases is a key feature in the maintenance of a reliable and credible Witness Protection Program. Prolonged pendency of cases, particularly before the high courts, can lead to apathy and indifference of witnesses, which will affect the prospects for success. Loss of opportunity, isolation and boredom associated with extended confinement in relocation sites and safe houses, away from native community and relatives, also dampens the resolve of witnesses to testify. A team of prosecutors was organized to monitor and coordinate and, if circumstances so warrant, take over cases where protected witnesses are inhibited by such difficulties.

*“... the Witness protection program should be proactively administered by an office independent of the National Prosecution Service”*

73. The Secretary of Justice has authorized Regional State Prosecutors to provisionally extend coverage to witnesses under threat so that they could be given benefits even if all the required documents for application have not yet been completed.

74. To date, the Witness Protection Program has some forty (40) witnesses in twenty-three (23) active media cases undergoing trial in various courts.

75. The Program likewise intends to increase witness financial assistance. In this regard, there are currently several proposed legislations both in the House of Representatives and the Philippine Senate to amend Republic Act 6981.

76. It bears emphasis that the Witness Protection Program in the Philippines has been made possible principally because of the Justice Department's existing organization and facilities for its administrative functions. Establishing a separate Witness Protection commission entails the formation of an entirely new bureaucracy and the allocation of separate funds for the attendant nationwide infrastructures, *inter alia*. This drastic change requires an equally large financial outlay, which entails careful consideration and budgetary re-alignment.

***"... witness protection should be unstintingly provided to all those who will be put at risk by an individual's testimony."***

77. The Witness Protection law of the Philippines provides that "any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the program, provided that X X X he/she or any member of his/her family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he/she will be killed, forced, intimidated, harassed, or corrupted to prevent him/her from testifying, to testify falsely or evasively, because or on account of his/her testimony."

78. In line with the provisions of the law, the Program is often compelled to relocate not only an endangered witness, but often his/her entire family as well.

79. As of 31 December 2007, the total admission to the Program has been placed at 734. Thus far, 449 witnesses had been utilized resulting to 635 convictions. As earlier indicated around forty (40) active witnesses to various media cases. Currently, there are about 2,400 individuals relying upon the Program for various services aside from protection and security.

80. Witness protection in the Philippines, as in most, if not all, developing countries, is closely associated with providing the witness basic social services while providing physical security and protection. The Program is not designed to provide a witness with economic benefits as a means of persuading or encouraging him/her to give evidence. This principle is premised mainly on the need to ensure that the constitutional rights of the accused are not violated.

81. It bears emphasis that admission to the program is a purely voluntary act on the part of the witness. The necessity of vetting and screening procedures for the admission of an applicant is essential to protect the integrity of the Program.

***". . . individuals should be permitted to remain in the Witness Protection Program for as long as they are at risk, even if the case stalls."***

82. It is the standing policy of the Program to continue coverage to endangered witnesses even in the event that the case is stalled. The level of threat on the witness is the principal factor that determines the form and kind of assistance, support or protection accorded to witnesses. Consequently, a number of witnesses have been under the Program for ten (10) years, although the average stay of witnesses is three (3) years.

***". . . housing and other benefits provided under the Program should ensure the security and comfort of those protected."***

83. Although far from being opulent, the Program strives to provide the witnesses under its care and supervision with safe refuge. Shelters and safehouses have, as standard facilities, the following: cable televisions, electric fans, video/CD players, refrigerators, telephones, and in some cases, physical fitness

and recreation equipment. Water and electricity are on the account of the program. Moreover, safehouses for high risk witnesses are located in gated communities with round-the-clock security apart from program protective personnel. Stand-by vehicles are also a standard feature of these security arrangements.

84. The imposition of stringent regulations in safehouses are essential to uphold the integrity of the Program. It is only through the strict observance of these regulations that witnesses and their families could be properly protected. Relocating high risk witnesses and their families from the danger area to another part of the country and the subsequent need to find secure housing, schools for children and other facilities required by a witness not only requires much cost, but also entails enormous covert operations.

*"I was pleased to learn that in March the Government provided the CHRP significant additional funding."*

85. The Government acknowledges the important role that the Commission on Human Rights of the Philippines (CHRP) plays in the promotion and protection of human rights and fundamental freedoms in the country. Its mandate, as specified in the Philippine Constitution, makes it the premier monitoring body for Government compliance to obligations under international treaty organizations. Its powers and function to investigate human rights violations provide the people of the Philippines with an additional mechanism for redress and remedy, complementing the role and functions of the Judiciary, the Ombudsman and other institutions.

86. However, the Commission itself has noted the need to strengthen its capacities in investigation, monitoring, and human rights education and training - all of which need additional resources. To address this gap, the President instructed the release of supplementary funds to the CHRP from her own budget - without any attendant conditionalities or instructions, in keeping with the independent character of the national human rights institution. As such, additional funding of 25 Million Pesos was released to the CHRP by the president for capacity building.

*"I am encouraged by the many measures taken by the Government, and I have found instructive the many recommendations made in other reports. Based on my own observations, I believe the following measures are essential x x x x"*

*"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 x x x x"*

*"Transparency must be introduced to the "orders of battle," "watch lists," and similar lists 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 exit, their purposes, the criteria for inclusion, and the number of names on each should be made public x x x x"*

*"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 x x x x"*

*"Members of the public should be able to submit cases to be overseen by Task Force USIG x x x x"*

*‘Task Force USIG should issue a monthly report on the status of all cases it is attempting to solve x x x x*

*‘IALAG should be abolished x x x x*

*‘Human rights should be safeguarded within the peace process x x x x’*

87. The AFP has issued a Letter Directive entitled, *Subject: Strict Adherence to the Doctrine of Command Responsibility*. Under the said directive, any Commander shall be accountable for neglect of duty under this doctrine if he has knowledge that a crime or offense has been committed, is being committed by his subordinates within his area of responsibility and despite such knowledge, he did not take preventive or corrective action either before, during or immediately after its commission. Commanders of erring military personnel found in violation of the said directive shall be accountable either for violation of Articles of War 96 (Conduct Unbecoming of an Officer and a Gentleman) or as an accessory after the fact of deliberate refusal or failure or neglect to act accordingly and decisively. The Office of the Provost Marshal General is empowered to conduct an investigation of such offense, and if the evidence warrants, a pre-trial investigation is conducted prior to referral to the appropriate General Court Martial if there is probable cause for such prosecution.

88. Also, the principle of command responsibility has long been instituted at all levels of command in the PNP pursuant to Executive Order No. 226 dated 17 February 1995. For the PNP, failure to assume command responsibility is taken in the context of “neglect of duty,” wherein the officer must have knowledge that a crime, is being committed, or has been committed by his subordinates and despite such knowledge, the officer did not take preventive or corrective action either before, during or immediately after its commission.

89. As regards the recommendation on transparency in the “order of battle,” it must be mentioned that an “order of battle” is a compilation of data on various threat groups to a State. It is an organizational tool which aims to better understand the strengths and weaknesses of these threat groups and to anticipate their future actions. The “order of battle” is classified information. Based on their very nature and content, “orders of battle,” “watch lists,” and similar documents could not simply be the subject of public scrutiny. In the realm of intelligence work, the classification of national security documents is used by military organizations, law enforcement agencies and other security forces around the world. The PNP, in particular, have the so-called “watch list” containing information on persons who have standing warrants of arrests issued by various courts nationwide.

90. Concerning the recommendation on the death squad, actions of state agents are always based on provisions of existing laws. In the case of the Davao City Mayor as alleged in the Report, National Police Commission (NAPOLCOM) cannot just withdraw the Mayor’s power of supervision and control over the PNP until and unless it is proven in a court of law that he had a direct hand in the existence and utilization of a “death squad”.

91. The *Sangguniang Panglungsod* (City Council) of Davao had in fact passed Resolution No. 0573-07 categorically denying the existence of a death squad in their city contrary to the allegations of the Special Rapporteur.

92. The existence of this vigilante group is a mere allegation without any supporting evidence - testimonial, documentary or otherwise. At present, there has been no report on any person or group, who has been charged, much less, convicted of murder or any crime for engaging in such barbaric acts. As such, it is considered hearsay evidence, which is inadmissible in a court of law.

93. The PNP has, time and again, encouraged the public to report any incident, not only through TF USIG, but through several venues, such as the Complaints and Referral Action Center, SMS/Text 2920, and the OCPNP Complaint Center. It has repeatedly requested human rights groups critical of the Government, such as KARAPATAN and party list representatives, to submit their own “list of victims” for proper investigation and validation by TF USIG. TF USIG has a website where regular updates on the cases being handled can be viewed or downloaded by the public.

94. The reluctance of such groups and individuals to come forward is unfortunate and may be motivated by anti-Government politics rather than a sincere desire to put an end to these human rights violations in cooperation with the Government.

95. The Special Rapporteur failed to appreciate the historical antecedent, which paved the way for the establishment of the Inter-Agency Legal Action Group (IALAG).

96. Terrorism constitutes one of the most serious threats to security, peace, stability, democracy and fundamental rights - - values upon which the Philippines is founded. Terrorism poses not only a direct threat to all Filipinos, but also extends to citizens of neighboring countries in South East Asia with the reported linkages of extremist groups associated with Jemaah Islamiya (JI).

97. It is equally clear that the internal and external aspects of the fight against terrorism are closely interlinked. The Philippine Government, which has had to contend with armed uprisings/separatism in many parts of the country, has adopted a total, integrated and collaborative approach to bring development and internal stability to the country. This holistic approach is implemented by the Government through its various departments that undertake economic, social, cultural and political reforms and development while countering the illegal activities of the armed components and support structures of terrorist groups.

98. The legal offensive is a vital factor in the Government’s holistic approach. Since the activities of terrorist groups and their support structures are deceptively crafted to take advantage of the legal system, it is imperative that they be countered and defeated utilizing the corresponding legal tools, structures and resources available to the Government. This legal initiative involves not only monitoring existing or archived cases against identified rebels/terrorist leaders, but also the evaluation of the need to file new or additional cases.

99. In the course of pursuing the legal offensive, it became apparent that the investigation and prosecution of cases involving terrorist groups such as the Abu Sayyaf Group (ASG), JI, the Break-Away Group of the Moro National Liberation Front and the Rajah Solaiman Movement (RSM), were not properly coordinated and effectively managed. Evidence and witnesses were not fully harnessed. Consequently, their value dissipated as they were presented in different courts where cases were filed and prosecuted separately. This resulted in the dismissal of the cases. Equally disconcerting was the impression created that when these cases were filed separately, the acts of these terrorist groups were not part of a grand conspiracy to commit widespread terrorism in the country, which is far from the truth.

100. The Peace Process has also been a key component of the Government’s holistic approach. Negotiations have been pursued not just with the CPP/NPA/NDF, but also with the Muslim separatist groups.

101. As part of the confidence building measures for the Peace Process with the CPP/NPA/NDF, all cases against their leaders, including court processes (i.e., issuance of or serving of warrants of arrests) were suspended by the Government in 1992.

102. Unfortunately, the CPP/NPA/NDF panel walked out of the Peace Process on 25 November 2005, and declared that it will only return to the negotiating table to discuss peace only with a new Government. The Government had no choice at this juncture but to suspend the Joint Agreement on Security and Immunity Guarantees (JASIG). This paved the way for the revival of existing cases against CPP/NPA leaders and members and the filing of new cases not just by the Government, but also a growing number of civilian complainants, who decried the atrocities committed by the rebels.

103. To ensure that the rule of law will be upheld and to address the issues confronting the Government's legal offensive, President Gloria Macapagal-Arroyo decided to have a distinct entity to coordinate the necessary legal actions involving the collaboration of different agencies to ensure that offenses relating to national security and public order were effectively investigated and prosecuted.

104. IALAG was established under Executive Order (E.O.) No. 493 of 2006, to provide effective and efficient handling and coordination of the investigative and prosecutorial aspects of the fight against threats to national security.

105. E.O. 493 mandates IALAG to address specific offenses that constitute threats to national security, including but not limited to cases of rebellion, sedition and related offenses. In the discharge of its duties, IALAG is guided by the policy that all of its initiatives and tasks shall at times be conducted with utmost respect for the fundamental human rights of due process, equal protection, and the rule of law.

106. The Special Rapporteur contended that IALAG was created to sue leftists as a form of harassment even if they have not violated any law. He said that this was the Government's way of circumventing the legalization of the CPP with the repeal in 1992 of Republic Act 1700, otherwise known as the Anti-Subversion Act. The Special Rapporteur criticized IALAG for prosecuting CPP/NPA members and fronts "whenever there is legal basis for doing so." What is wrong with prosecuting violators of the law? Surely, the Government will be remiss in its obligations if it did not prosecute those who violate the laws of the land. The penal laws of the Philippines apply equally to all citizens and aliens who are within Philippine territory and who are responsible for the commission of crimes.

107. Even more glaring is the fact that the Special Rapporteur did not list any case where IALAG prosecuted CPP members or its fronts on the mere basis of association with the CPP. The truth of the matter is there is no such law allowing the prosecution of any individual on the strength of mere association with the CPP/NPA. The individuals alluded to by the Special Rapporteur have been charged with the commission of ordinary crimes, such as murder, but not for mere affiliation with the CPP/NPA, even if, in the meantime, the NPA had been internationally identified as a terrorist organization.

108. It must be remembered that the CPP/NPA, which has remained most persistent in toppling the democratic institutions in the Philippines, has not only been responsible for murdering and injuring Government personnel, but also innocent civilians. The recent unearthing of mass graves attests to the senseless violence that the CPP/NPA has resorted to in order to attain their objectives.

109. The Special Rapporteur failed to realize that most of the cases that he alluded to were actually filed by the family or relatives of their innocent victims and not by the Government. A specific example is the multiple murder case filed against Jose Maria Sison and 45 others before the Regional Trial Court, Branch 18, 8<sup>th</sup> Judicial Region, Hilongos, Leyte, docketed as Criminal Case No. H-1581 filed by the widows and relatives of the victims, whose remains were found in a mass grave in Sitio Sapang Dako, Barangay Kaulinisan, Inopacan, Leyte on 26 August 2006. When the victims' families sought the help of the police authorities to seek justice, they were naturally assisted in the preparation of their complaints and in the filing of the cases.

110. Another similar case occurred in Bongabon, Nueva Ecija where three (3) leaders of the Party List Akbayan were killed in separate incidents prior to the elections by suspects identified with the Sison faction. Following these incidents, the widows of the slain Akbayan leaders (i.e., Madeleine Felipe, Cleotilde Aguilar and Isabelita Bayudang) filed triple murder cases against Satur Ocampo, Teodoro Casiño, Rafael Mariano, Liza Maza et al. on 14 December 2006. The families of the slain Party List leaders were crying for justice, and thus sought police assistance in filing these cases.

111. The Special Rapporteur admitted in his report that he lacks hard evidence for his contention that IALAG was designed to plan extrajudicial executions. He simply inferred that “*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.*” There is a clear contradiction in this inference. If IALAG’s strategy is legal, why then should it bother with individuals who cannot be reached by the legal process? By parity of reasoning, if the aim is to eliminate individuals extrajudicially, then why bother with a “proactive legal strategy” at all?

112. Overall, the Report of the Special Rapporteur is replete with conclusions that are unsubstantiated by evidence.

113. The Philippines recognizes the importance of constant monitoring and regular and timely reporting. As mentioned earlier, the Presidential Human Rights Committee gathers information from the Philippine National Police, Department of Justice, Armed Forces of the Philippines and Commission on Human Rights into a consolidated database.

114. H.E. President Gloria Macapagal Arroyo had instructed the Chief of the Philippine National Police, Director General Avelino Razon Jr., to submit to her an update on arrests, convictions and imprisonment of those responsible for the killings of political activists and journalists.

### **National Peace Agenda**

115. The Government continues to advocate for and promote human rights as an integral part of our national quest for just and lasting peace in the Philippines.

116. Human rights is an integral part of the government’s peace agenda, as articulated in the comprehensive peace process framework provided for in Executive Order No. 3 (series of 2001), particularly in achieving a principled and negotiated settlement of the armed conflicts with different rebel groups in the country. These armed conflicts have various roots, including social justice and human rights issues, poverty, inequity, local abuses of political power, and the marginalization of indigenous cultural communities.

117. Executive Order No. 3 promulgated on 28 February 2001, states that the Government shall primarily aim toward the attainment of a just, comprehensive and enduring peace under the rule of law and in accordance with constitutional processes. In particular, it shall seek to prevent and resolve internal armed conflicts and social unrests as well as their root causes through the pursuit of a comprehensive peace process.

118. Agenda No. 9 of the President’s Ten-Point Legacy Agenda specifically calls for the completion of the peace process particularly with the Communist Party of the Philippines-New Peoples Army-National Democratic Front (CPP-NPA-NDF) and the Moro Islamic Liberation Front (MILF).

119. All the Six Paths to Peace which the Government is undertaking under the supervisory, coordinative and monitoring functions of the Office of the Presidential Adviser on the Peace Process are rooted on

respect for human rights. The path of social, economic and political reforms calls for the resolution of the root causes of internal armed conflicts.

120. The path of peace negotiations (Path No. 3) between the Government and different rebel groups, i.e., CPP/NPA/NDF, *Rebolusyonaryo Partidong Manggagawa ng Pilipinas* (“Revolutionary Proletarian Army/Alex Boncayao Brigade”), *Rebolusyonaryong Partidong Manggagawa ng Mindanao* (Revolutionary Party of Workers in Mindanao), and the MILF calls for a discussion and resolution of human rights and international humanitarian law issues as key components of the substantive agenda for the talks.

121. The other paths to peace (consensus-building and empowerment for peace; programs for reconciliation/reintegration into mainstream society and rehabilitation of former rebels; addressing concerns arising from continuing armed hostilities; and building and nurturing a climate conducive to peace) likewise provide avenues and opportunities for addressing human rights and international humanitarian law issues and concerns.

**Negotiations with the Communist Party of the Philippines-New Peoples Army-National Democratic Front (CPP-NPA-NDF)**

122. The Government was looking forward to the convening of the Joint Monitoring Committee (JMC) in order to fulfill its mandate under the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIHL). However, this may not be possible at this juncture in the light of the continuing impasse in the talks, which also suspended the implementation of the Joint Agreement on Safety and Immunity Guarantee (JASIG). With the signing of CARHRIHL in 1998, three substantive agenda remains to be discussed, namely: (i) social and economic reforms; (ii) political and constitutional reforms; and, (iii) end of hostilities and disposition of forces. However, Government remains open to negotiate with said group and continues to fulfill its obligations under the CARHRIHL. At the same time, government is pursuing other paths of peaceful engagement to bring to a close the mainstream insurgency.

123. While the Government fully agrees that "human rights should be safeguarded within the peace process," and has always been in favor of pursuing negotiations in this respect, the CPP/NPA/NDF should, however, agree to a ceasefire.

**Negotiations with the Rebolusyonaryo Partidong Manggagawa ng Pilipinas (“Revolutionary Proletarian Army”) - Alex Boncayao Brigade (RPMP-ABB)**

124. The GRP-RPMP/RPA/ABB interim peace agreement was signed on 06 December 2000. Mechanisms such as the Joint Enforcement and Monitoring Committee (JEMC), with the support of the National Technical Working Groups (NTWGs) and the Local Monitoring Teams (LMTs), are in place to monitor the implementation of the following components: cessation of hostilities, development, reintegration, and civil and political rights.

**Negotiations with the Rebolusyonaryong Partidong Manggagawa ng Mindanao (RPMM)**

125. Under the Joint Commitment to Pursue Peace and Development signed on 22 September 2003, the Philippine government and the RPMM committed to undertake formal negotiations, formulation and implementation of community-based peace and development agenda, confidence-building measures and general cessation of hostilities.

**Negotiations with the Moro Islamic Liberation Front (MILF)**

126. The mechanism for monitoring human rights abuses within the framework of the GRP-MILF peace process is already in place. During the August 2007 round of exploratory talks held in Malaysia, the parties signed the Terms of Reference (TOR) of the International Monitoring Team (IMT), which is tasked to monitor the implementation of the 22 June 2001 Agreement on Peace between the GRP and the MILF and its Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of 2 May 2002.

127. According to the TOR, the IMT shall observe and monitor the implementation of the humanitarian, rehabilitation and development aspects of the agreements signed between the GRP and the MILF; monitor the observance of international humanitarian laws and respect for human rights; and encourage other third parties and/or civil society groups to assist, under a system of accreditation by the Panels, in the monitoring process.

128. As agreed upon during the 12<sup>th</sup> round of exploratory talks, the IMT's composition and mandate has been expanded to include other countries to monitor the humanitarian, rehabilitation and development work related to the peace process.

129. The 14<sup>th</sup> GRP-MILF Exploratory Talks, conducted on 16 November 2007 successfully broke the 14-month impasse on the territorial strand of the ancestral domain aspect between the Government and the Moro Islamic Liberation Front. The said impasse fell through shortly after the 13<sup>th</sup> Exploratory Talks held on 06-07 September 2006 over disagreements on the issue of territory, which comprises the last chapter of substantive discussions on the ancestral domain agenda.

130. Unfortunately, the 15<sup>th</sup> GRP-MILF Exploratory Talks scheduled on 15-17 December 2007 had been deferred upon the release of the official statement by the MILF Panel Chair Iqbal on 15 December 2007 on the MILF Panel's rejection of the draft on the Memorandum of Agreement on Ancestral Domain from their Philippine Government counterpart.

131. Meanwhile, the ceasefire agreement being implemented through various joint GRP-MILF mechanisms<sup>[2]</sup> on the ground and monitored by an International Monitoring Team continues to provide an atmosphere of relative peace in the conflict-affected communities in Mindanao. Various confidence-building measures have been initiated by the Joint Ceasefire Committees and IMT mechanisms, including the conduct of medical missions and advocacy drives. An unprecedented roundtable discussion involving junior local military commanders of the AFP and MILF-BIAF was conducted on Cotabato City last 09 June 2007 to discuss issues on the implementation of the ceasefire agreement.

132. The extension of the mandate of the GRP-MILF Ad Hoc Joint Action Group (AHJAG) for another year has also been sought by both Panels marking the effective coordination of AFP/PNP and MILF forces in running after criminal and lawless elements in areas of Mindanao. The latest successful joint GRP-MILF effort resulted to the rescue of foreigners kidnapped by bandits in Pikit, North Cotabato. This incident highlights the close coordination established among security mechanisms in the area linking with local authorities.

133. The Government remains hopeful that a durable solution to the problem will be reached in the future.

**Collaboration with international partners**

***Days of Peace***

134. The United Nations Children's Fund (UNICEF), in cooperation with OPAPP, the Government of the Republic of the Philippines-MILF Panel and the Bangsamoro Development Agency (BDA), launched the "Days of Peace" campaign on 16 April 2007. The campaign is primarily aimed at bringing together parties in conflict to work together in the delivery of basic and humanitarian services, especially for women and children in conflict-affected communities in Mindanao.

***Mindanao Trust Fund (MTF) for Reconstruction and Development.***

135. Subprojects for six (6) pilot communities of the Community Driven Development (CDD) Project were completed with the cooperation of international partners. As of September 2007, the total fund provided to the MTF amounted to US\$6,150,184.00 from New Zealand, Canada, Australia, Sweden, USAID, the European Commission and the World Bank. Other OIC countries like Brunei and Libya remain committed to assisting the peace process with a parallel commitment from the Islamic Development Bank (IDB) to assist in reconstruction efforts in the conflict afflicted areas.

***Japan-Bangsamoro initiatives for Reconstruction and Development (J-BIRD)***

136. Under the Grant Assistance for Grassroots Human Security Projects (GGP), a total of 12 projects have been implemented. These projects worth PHP 31.2 Million, which include construction of classrooms, water systems, training centers and provision of post-harvest facilities and equipments, are part of the initiatives for the Mindanao Peace Process.

137. Study for Socio-Economic Reconstruction and Development of Conflict-Affected Areas in Mindanao (SERD-CAAM). For 2007, area assessment was undertaken on 20-27 February 2007 by a 10-man team of Japanese experts/consultants followed by a 3-day study group discussion which culminated with the signing of the implementing arrangement for the SERD-CAAM. Regional, provincial and municipal profiling to determine the existing physical and socio-economic conditions in Mindanao covering 6 Regions, 27 Provinces and 449 municipalities and a survey of existing basic social infrastructure conditions covering 30 municipalities were undertaken.

138. The Philippines appreciates the human rights and investigative cooperation that has been extended by foreign partners. This includes a training program for Philippine investigators and prosecutors conducted by the Embassy of the United States in the Philippines on 11 May 2007, a new mechanism for dialogue between the Philippines and New Zealand national human rights commissions, and new human rights cooperation projects with Australian assistance of AUS\$250,000. The United States has also endeavored to provide the Philippines with development assistance for 2008 to assist the Government in its human rights initiatives, notably in international military education and training.

139. In June 2007, the Government welcomed the visit of the EU Needs Assessment Mission. On 4 April 2008 a basic agreement on Philippines-EU technical cooperation on human rights had been reached.

140. The Government wishes to reiterate that under the leadership of President Arroyo, the Philippine Government has been taking key steps to address the issue of political violence and killings. Government efforts have started to bear fruit with convictions in the following cases –

- On 19 January 2006, Judge Ireneo Gako Jr. of RTC Br. 5, Cebu City found Mr. Edgar Belandres guilty of murder for killing Mr. Allan Dizon, a photojournalist for the publication *The Freeman*, who was killed on 27 November 2004.
- On 6 October 2006, the Regional Trial Court of Tacurong City convicted the accused Estanislao Bismaons, Jerry Cabayag and Randy Grecia of murder for killing Ms. Marlene Esperat, an employee of the Department of Agriculture and a columnist for the local publication *Mid-Land Review*, who was killed inside her home on 24 March 2005.
- On 29 November 2005, Police Officer 1 Guillermo Wapile was found guilty of the crime of murder for killing Mr. Edgar Damalerio, a radio commentator at DXKP, who was killed on 13 May 2002. Police Officer 1 Wapile was sentenced to suffer the penalty of *reclusion perpetua* by Br. 19 Regional Trial Court, Cebu City.
- For the killing of Frank Palma, a reporter of *Bombo Radyo*, Gerardo Tocana was sentenced to suffer the penalty of imprisonment by Br. 50, Regional Trial Court of Bacolod City.

141. The comments of the Supreme Court of the Philippines, the Philippine Commission on Human Rights and the Office of the Ombudsman, being independent from the Government, are quoted below –

#### **A. Supreme Court of the Philippines**

##### ***“On the numerous delays in court proceedings vis-à-vis cases on extrajudicial killings***

Prior to the promulgation of the Rule on the Writ of Amparo, the Philippine Supreme Court in order to ensure that the fundamental right of all persons to the speedy disposition of their cases would be upheld, issued Administrative Order No. 25-2007 on 01 March 2007 designating special courts to hear, try, and decide cases involving killings of political activists and members of the media. These special courts undertook mandatory continuous trial, which should be terminated within sixty (60) days from its commencement. Judgment is rendered within thirty (30) days from submission for decision unless a shorter period was provided by law or otherwise directed by the Supreme Court. The administrative order clearly proscribed motions for postponement or continuance except for clearly meritorious reasons. Pleadings or motions found to have been filed for dilatory purposes shall constitute direct contempt with corresponding punitive sanctions.

On 25 September this year, the Supreme Court unanimously approved the Rule on the Writ of Amparo, a remedy which places the constitutional right to life, liberty, and security above violation and threats of violation, thus, providing the victims of extralegal killings and enforced disappearances the protection they need and the promise of vindication for their rights. The rule also empowers the courts to issue reliefs that may be granted through judicial orders of protection, production, inspection, and other reliefs to safeguard a person’s life and liberty. The writ shall hold public authorities, who took their oath to defend the Constitution and enforce laws, to a high standard of official conduct and hold them accountable to the people.

Under the Rule, the petition for the writ of *amparo* may be filed nationwide or on any day and at any time with the Regional Trial Court of the place where the threat, act, or omission was committed, or with the Sandiganbayan, the Court of Appeals, and the Supreme Court. The filing is free of charge.

With the nationwide effectivity of the Rule of Amparo on 24 October 2007, the Supreme Court revoked Administrative Order No. 25-2007, thus enabling the cases to be decided immediately. Moreover, the

Office of the Court Administrator of the Philippine Supreme Court has the ordered prioritization of extralegal and enforced disappearance cases in court calendars, which is being strictly implemented.

In January 2008, the Philippine Supreme Court issued the Rule on the Writ of Habeas Data to complement the Rule of Amparo. The Rule, which took effect on 02 February 2008, was drafted by the Committee on the Revision of the Rules of Court of the Philippine Supreme court pursuant to its constitutional power to promulgate Rules for the protection and enforcement of constitutional rights.

The rule was issued in recognition of the right to privacy as a personal right. It 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.

The Regional Trial Courts all over the country are the primary venues for the filing of a writ of habeas data. The Petition under this rule usually involves the determination of facts, which trial courts can better resolve. However, the Supreme Court, Court of Appeals or the Sandiganbayan may also entertain petitions under this rule especially where it involves public data files of government offices.

In view of the Court's policy of increasing the poor's access to justice, indigents are exempted from paying docket fees.

Through the Office of the Court Administrator of the Supreme Court, the Court continues to regularly monitor applications for the issuance of the Writ of Amparo and the fast tracking of these cases before the courts. As of March 2008, thirty three (33) applications have been filed before various courts in the country.

Through the Philippine Judicial Academy (PHILJA), the Supreme Court also regularly conducts seminars for judges as well as court personnel on the concept, nature of and implementation measures for the Writ of Amparo and the Writ of Habeas Data, for which corresponding training programs likewise are being done.

***“On the claim that Judges seldom grant a change of venue based on witness relocation”***

Under Section 5(4) of Article VIII of the 1987 Philippine Constitution, the Supreme Court has the authority to order a change of venue or place of trial to avoid a miscarriage of justice.

It is well established that a Petition for Change of Venue is an administrative matter that should be filed not with the regular courts, but with the Office of the Court Administrator, the office tasked to assist the Supreme Court in the exercise of its administrative functions.

The Supreme Court has, in a number of cases notably the *Manila Railroad vs. Attorney General* [20 Phil. 523, 562] case, ruled that a change of the place of trial should not be granted for whimsical or flimsy reasons that will lead to a miscarriage of justice.

The Court always grants petitions for change of venues for extralegal killings and enforced disappearances when petitions of such nature are filed with the Office of the Court Administrator and are found to be meritorious.

***“On the need to achieve convictions in a significant number of cases on extrajudicial killing”***

‘The fundamental right of a person to due process is well entrenched in all jurisdictions and should never be compromised. There can only be conviction in criminal cases if the guilt of the accused is established by proof beyond reasonable doubt or if the combination of all circumstantial evidence produces a conviction beyond reasonable doubt.

Thus, it remains incumbent upon the prosecutor to establish the guilt of the accused in accordance with the aforementioned legal principle.

***“On the need for monthly status reports on the cases being heard by the special courts on extrajudicial killings”***

The Office of the Court Administrator (OCA) of the Supreme Court had already issued Administrative Memorandum No. 07-19-12-SC directing all lower court judges to submit every 10<sup>th</sup> day of the succeeding month to the Statistical Reports Division, Court Management Office, status reports on extrajudicial cases that are filed in their respective courts.

Failure to submit the monthly status report is a ground for withholding of the salaries and allowances of judges and clerks of court without prejudice to whatever administrative sanctions the Supreme Court may impose on them.

The Supreme Court makes these monthly reports available as public records. The Office of the Court Administrator has issued the appropriate administrative orders and circulars to all courts handling extralegal killings cases to fast track court proceedings. The Supreme court also issued a directive to all courts to post the status of these cases in a prominent place in their courtrooms and Halls of Justice.

***“On the need for the Supreme Court to 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.”***

The Judiciary is fully committed to use its constitutional powers over the practice of law to uphold the preservation and protection of human rights.

From July 16 to 17, 2007, Supreme Court Chief Justice Reynato S. Puno led the Judiciary in conducting the National Summit on Extrajudicial Killings and Enforced Disappearances (Summit), gathering around 400 delegates and observers from the Executive and Legislative Departments, Commission on Human Rights, religious groups, the academe, non-government and people’s organizations, media and the international community.

The Summit proffered several recommendations on the matter of extrajudicial killings and enforced disappearances, notably:

- (a) Strengthening the Witness Protection Program;
- (b) Enactment of legislation defining and criminalizing extrajudicial killings;
- (c) Reviving the peace process and calling for a bilateral ceasefire;
- (d) Investigation and forensic capability building;
- (d) Creation of an independent, credible, and impartial body to investigate cases of extrajudicial killings and enforced disappearances.

As a result of the Summit, the Supreme Court approved the proposed Rule on the Writ of Amparo (*Administrative Matter No. 07-9-12-SC*) on 25 September 2007, which will take effect on October 24,

2007. The complementary rule on the writ of habeas data was issued in January this year and took effect on 02 February 2008.

The Court, in coordination with the Philippine Judicial Academy (PHILJA), also organized lecture-seminars that will orient all judges on the salient points of the Rules on the Writ of Amparo and Writ of Habeas Data.

## **B. Office of the Ombudsman**

### *“On the issue of inaction of the Office of the Ombudsman “*

The visit of the Special Rapporteur to the Office of the Ombudsman was conducted in less than one hour. In that brief period, he was able to conclude that the Office “has done almost nothing in recent years to investigate the involvement of Government officials in extrajudicial executions” which in the view of the Office is not a fair assessment.

First, there is no solid basis presented to conclude that the Office has not acted on alleged cases filed. There was no basis provided for the allegation that forty-four cases were filed covering the period 2002-2006 that were not acted upon. The Office questions the source of the statistic. Second, insofar as the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices is concerned, cases are classified only on the basis of the offense committed as defined under the Revised Penal Code and other related graft laws. As a matter of procedure, cases received, if any, are not classified as “extrajudicial killing” or “enforced disappearance”.

To set the record straight, under Republic Act 6770, the Office of the Ombudsman is mandated to investigate and prosecute all types of malfeasance, misfeasance and non-feasance of any public official or employee. The Office of the Ombudsman concerns itself more with the elements determinative of the existence of the probable cause of offenses as defined under the revised Penal Code. In the plethora of complaints filed with the Office, it can be observed that these cases refer to either murder, homicide, physical injuries and other offenses punishable under pertinent anti-graft laws, the revised Penal Code and other special laws.

The term extrajudicial killing is a political one. As defined, the term focuses on the personalities of the victims and delves into the motive of the crime. The role of Office of the Ombudsman prosecutors should not be seen as merely passive. The prosecutor exercises his/her discretion on whether or not to file a case. He/She may opt to dismiss a case outright due to technicalities such as insufficiency in form and substance or choose to take it a step further and go beyond the technical limitations especially when there is a human rights aspect to the case.

### *“On the issue of jurisdiction”*

The Special Rapporteur faults the Office of the Ombudsman in “narrowly interpreting” its jurisdiction and further observes that:

“(I)t 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.”

The Ombudsman is the guardian of the bureaucracy. For cases filed before this Office, it is imperative that at least one of the named respondents is a public official or employee. This rule is clear in the charter creating the Office:

*Section 15. Powers, functions and duties.* – the Office of the Ombudsman shall have the following powers, functions and duties:

1. Investigate and prosecute on its own or on complaint by any person, any act or omission of any ***public officer or employee***, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

The key factor is that one of the respondents to a case is a public officer is reiterated under Section 21 of the same statute:

*Section 21. Officials Subject to Disciplinary Authority; Exceptions.* – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over members of Congress, and the Judiciary.

This interpretation of jurisdiction in manner or measure should be taken as an abdication of the Office's constitutionally mandated independence. Through the years, the Office has proven that it strictly adheres to the time-honored principle that the Office maintains its integrity and independence in the disposition of its functions as protectors of the people.

***“On the issue of de facto subsidiary of the DOJ”***

The Office of the Ombudsman takes exception to the observation of the Special Rapporteur that it is the National Bureau of Investigation that conducts most its investigations. The Office of the Ombudsman has a Field Investigation Office that specifically handles the fact-finding and build-up of cases pending before the Office. Moreover, the various sectoral offices have their respective Fact-finding Bureaus that target the fact-finding investigation of cases. Instances that the Office of the Ombudsman delegated the investigation of cases to an equally competent agency are few and far between.

On a more important point, the Office of the Ombudsman takes serious exception to its being considered a *de facto* subsidiary of the Department of Justice. This conclusion needs to be justified as it undermines the reputation and stature of the pillars of the institutions of prosecution, the Office of the Ombudsman and the Department of Justice.

The Office of the Ombudsman recognizes that the apparent errors in the observations made by the Special Rapporteur may be brought about by his misunderstanding of the concept of concurrent jurisdiction shared by the two departments. To begin with, in *“Doloso vs. Domingo”*, the Supreme Court illuminated that:

“The reason for the creation of the Ombudsman in the 1987 Constitution and for the grant to it of broad investigative authority, is to insulate said office from long tentacles of officialdom that are able to penetrate judges’ and fiscals’ offices, and others involved in the prosecution of erring

public officials, and through the exertion of official pressure or influence, quash, delay or dismiss investigations into malfeasances and misfeasances committed by public officers.”

In its broadest sense, jurisdiction has been defined as the power and authority to decide a case. From this definition flow the various types of jurisdiction, one which is the concept of concurrent jurisdiction, the same being defined as

*“confluent or coordinate jurisdiction, which is the power conferred upon different courts, whether of the same or different ranks, to take cognizance at the same stage of the case in the same or different judicial territories.”*

The investigators and prosecutors of both the Department of Justice and the Office of the Ombudsman have concurrent jurisdiction to investigate any criminal complaint against public officers or employees, irrespective of its nature or penalty prescribed for the offense charged. The peculiar situation of having to share this jurisdiction paved the way for the two institutions to recognize that in cases involving public officers and employees, it is the Office of the ombudsman that exercises primary jurisdiction. Previously, concerns were expressed on unnecessary delays that could be caused by discussions on jurisdiction between the Office of the Ombudsman and the Department of Justice, any by procedural conflicts in the filing of complaints against public officers and employees, the conduct of preliminary investigations, the preparation of resolutions and information, and the prosecution of cases by provincial and city prosecutors as Deputized Prosecutors of the Ombudsman.

Recognizing the concerns, the Office of the Ombudsman and the Department of Justice, in a series of consultations, agreed on the guidelines to be observed in the investigation and prosecution of cases against public officers and employees. This was embodied in a Joint Circular issued on 5 October 2005 by the DOJ and the OMB:

Preliminary investigation and prosecution of offenses committed by public officers and employees in relation to office whether cognizable by the Sandiganbayan or the regular courts, and whether filed with the Office of the Ombudsman or with the Office of the Provincial/City (DOJ) prosecutor shall be under the control and supervision of the Office of the Ombudsman.

On the concern raised by the Special Rapporteur as to how the Office would be aware of actions taken by the Department of Justice as – “it is unclear how the Ombudsman would even be aware that such a measure was necessary given her Office’s lack of involvement”. Safeguards have already been provided for this measure:

Considering that the Office of the Ombudsman has jurisdiction over public officers and employees and for effective monitoring of all investigations and prosecutions of cases involving public officers and employees, the Office of the Provincial/City Prosecutor shall submit to the Office of the Ombudsman a monthly list of complaints filed with their respective offices against public officers and employees.

Over nineteen years from the time of its establishment, the Office of the Ombudsman has continuously affirmed its crucial place in the forefront of our nation’s war against graft and corruption. From small yet significant steps in its early existence, it has come to march in full cadence. The Office has consistently assessed itself in light of its available resources and ever-increasing demands for immediate and relevant discharge of its mandate. The Office of the Ombudsman is determined to search for holistic solutions and providing inputs towards achieving the objective of enhancing existing rules, promulgating adjudicative and non-adjudicative rules, enforcement of constitutional rights, including the protection of witnesses in light of the concept of extra-judicial killings.

Indeed the task is deep and profound. Nevertheless, a unified approach is the key. There is logic in the premise that the cooperation areas of field investigation, preliminary investigation and prosecution be treated as one continent of deterrence instead of being isolated islands within the pacific of crime prevention. It is beyond dispute that the issue of extra-judicial killing is also a matter of public perception. It is within the sphere of our institution's objectives that this perception be swayed to our favor. That these cases are being effectively, immediately and efficiently being resolved by the Office of the Ombudsman in partnership with the various governmental institutions. As representatives of the sovereign, the Office of the Ombudsman staunchly adheres to and pursues declared government policies, one of which is respect for human rights as part of its commitment to public service."

### **C. Commission on Human Rights**

***"The CHRP has done excellent report work in the Sulu archipelago, and it should improve its capacity to deploy personnel for monitoring and protection as soon as military operations commence."***

The CHRP has institutionalized an Integrated Capability Building Programme for its personnel complement. Hence, in 2007, there were six (6) series of capability building/trainings implemented, aimed at enhancing the knowledge and skills of CHRP Investigators, lawyers, Security Officers and other staff in the handling and investigations of human rights cases, particularly extrajudicial killings and enforced disappearances.

In relation to the issue on enforced disappearance in the country, the CHRP held a 3-day National Forum on the Convention for the Protection of All Persons From Enforced Disappearance in 2007, in Manila. This was participated by CHRP key officers, investigators, lawyers, and other stakeholders from both government and non-government organizations. This national forum was preceded by a one-day forum held in Davao City, Tacloban City and Legazpi City.

Taking into account the difficulties/hindrances encountered in the investigations of extrajudicial killings and enforced disappearances, the CHRP also developed a 3-day Training course on "The Intelligence Process in the Realm of Human Rights Investigations," which was implemented in three batches in March and April 2008.

There were also orientation seminars on the new rules on the Writ of Amparo and the Writ of Habeas Data – new legal remedies adopted by the Supreme Court, which can be availed of in extrajudicial killings and disappearances cases.

CHRP also developed a Primer on the Right of All Persons to Protection from Enforced Disappearances. It is now for publication.

CHRP Regional Offices have been given additional financial resources out of the PHP25,000,000.00 special fund granted by the Office of the President, for the speedy/exhaustive investigation/reinvestigation of cases involving extrajudicial killings and enforced disappearances. CHRP Regional Offices have already identified the list of such cases and have deployed investigators/lawyers to pursue further investigations.

CHRP Regional Offices have investigating/monitoring teams, ready to be deployed anytime for the purpose of monitoring situations in areas where military operations are to take place/taking place/have taken place. The duty of the teams include linkages and coordination with stakeholders concerned.

***"The resources must be devoted to ensure the effectiveness of the investigations."***

It is a matter of policy and practice that, the CHRP shall give highest priority in the use of its resources in the delivery of human rights protection services, particularly investigation and investigating monitoring.

***“Prosecutorial powers of the CHRP - the proposal’s risks outweigh its benefits. First, there are already other organs responsible for prosecuting cases. To give the CHRP prosecutorial powers would not only be redundant but would compromise a responsibility held 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.”***

The Third Commission did not favor the grant of prosecutorial power to the Commission of Human Rights. Primarily, because the prosecution of criminal cases (to include those resulting from acts of human rights violations), under the law, is under the direct control of the Prosecution. Should the CHRP be vested with prosecutorial power, it will compromise its independence as a national human rights institution as the Department of Justice, which is under the Executive Branch, will now exercise control in the prosecution of cases by the CHRP. This will also affect the CHRP’s independence and effectiveness in monitoring Government’s compliance with international human rights treaty obligations.

This is subject, however, to the authority vested on the CHRP under the new law – the Human Security Act, wherein CHRP has the power to investigate as well as prosecute cases involving civil and political rights violations in relations to the implementation of said law.

***“That the CHRP should issue a monthly report listing allegations of extrajudicial executions that it has received together with the current status of its investigation.”***

The CHRP records on cases that it has investigated/is investigating are public records and open to the public. It regularly provides/ shares updated data to its partner-agencies in this particular area.

Moreover, a policy/system is in place as to official monthly reports on human rights cases for investigation/being investigated/ completed investigation/for resolution/resolved by the CHRP at the regional level, to include monitoring of status of these resolved cases which were indorsed/filed before, i.e., courts, the Ombudsman, other administrative bodies.

The CHRP, in line with the Martus Project, is now developing/ upgrading its current databanking system using modern technology, with the primary objectives: (a) to fast-track the development in the investigation process as well as trace the actions / stages / status of human rights cases endorsed / filed / referred to the prosecution service, the judiciary, and/or other administrative bodies which have jurisdiction over the criminal and/or civil and administrative aspects resulting from the act/s of human rights violations; (b) to keep the public informed on the actions of the CHRP and the developments of the cases; (c) to make human rights information immediately accessible to the parties and public.

***“The Commission on Human Rights should safeguard its independence and increase its effectiveness.”***

The independence of the Commission on Human Rights as a national human rights institution is guaranteed under the 1987 Constitution of the Philippines. Hence, under no situation will it allow its independence to be compromised.

***“On the recommendation that the CHRP should train more investigators and provide them with the resources necessary for effective investigation.”***

All CHRP investigators have undergone basic and/or advanced courses in investigation, with particular focus on human rights investigation. Taking into account that continuing capability building of every worker of the CHR is indispensable to further improve their knowledge and skills in human rights work, and thereby ensure more competent, effective and independent protection and promotion services, the CHRP has developed an Integrated Capability Building Program (ICBP) for its entire human resource component. For the year 2007 it has already implemented six series of training under the ICBP which focused on the investigation of extrajudicial executions and enforced disappearance cases. All CHRP Investigators underwent said training, including Medico Legal Officers, Security Officers, Process Servers, Information Officers, Records Officers, and other personnel.

Enhancing the capacity and skills of CHRP Investigators and other personnel component of the CHRP will make them more competent and effective in, among others, gathering of information / evidence, interview of witnesses and suspects; documentation and tracking of human rights incidents / situations; to come up with and ensure prosecution ready investigation outputs that can stand and pass the rigors of the judicial / legal processes.

The ICBP Trainings are also aimed to enhance the capacity of Investigators and other personnel to be more effective human rights advocates.

**“On the recommendation that CHRP hire more investigators.”**

It is within the Constitutional mandate of the Commission on Human Rights to appoint its officers and personnel. But it should be noted that, the creation of new / additional plantilla positions for Investigators, or other positions for that matter, as well as the corresponding budgetary allocation require the approval of the executive branch of Government -- the Department of Budget and Management. While doable, the process takes time.

Thus, the trainings of other CHRP personnel in the area of human rights investigations to answer the demands of investigation services, particularly to help fast-tracking the independent investigations of extrajudicial killings and enforced disappearance cases in the country.

Further, to ensure the independent investigation of human rights cases, the CHRP has upgraded / transformed its current forensic division into a Forensic Center and is now in the process of pooling and generating the necessary resources for its expanded operations.

***“On the recommendation that CHRP should increase its resources for victims’ assistance to ensure that witnesses are sufficiently secure as to enable the non-judicial clarification of their cases.”***

The CHRP has the authority to prepare and recommend the necessary budgetary requirements, to include that for assistance to victims of human rights violations, their families, and witnesses. However, like any other agencies of the government, it has to go through the process, i.e., submission of its Annual Budget Proposals to the Department of Budget and Management, which is under the Office of the President, which, thereafter, is deliberated and passed upon by the Congress of the Philippines. for consideration of the budget appropriation for the purpose.

Be that as it may, the CHRP has an Assistance Program in place for victims of human rights violations and their families. This is consistent with its line mandate on assistance and visitorial services, pursuant to the 1987 Constitution. Further, the CHRP is exercising all necessary measures to ensure the safety of witnesses.

***“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.”***

There is a CHRP policy on the issuance of CHR Clearance to officers / members of the Armed Forces of the Philippines, officers/members of the Philippine National Police and other law enforcement bodies / units; officers and employees of other government agencies (national / local), for purposes of promotion, confirmation of appointment, among others.

The CHRP, however, has no control as to the process and decision of the Commission on Appointments in the confirmation of the appointment of military officers, or in the selection and promotion under the current military system. The Commission on Appointments is an independent body.

***“The CHRP should consider measures to more effectively protect as well as monitor human rights during military operations throughout the country.”***

The CHRP has fifteen (15) regional offices throughout the country whose functions include the tracking/monitoring of human rights situations in the country, to include human rights situation in times of military operations.

In this regard, the CHRP has a continuing program on research and human rights education covering all sectors of society. Priority targets of this program are the military and law enforcement sectors in view of the nature of their work and the number of human rights cases where members of these sectors were implicated.

In coordination with the Armed Forces of the Philippines and the Philippine National Police, human rights education as well the teaching of international humanitarian law have been integrated in the training courses for the military and members of the law enforcement agencies, particularly, the police sector. This program has been implemented jointly by the CHRP and the AFP/PNP since 1988.

The CHRP is now developing an updated edition of its human rights-international humanitarian law training courses for the military, to include training course modules for members of the military intelligence service.

***“Improved monitoring mechanisms are necessary”***

CHRP is now developing the Martus Executive Information System, with Modules on Investigation, Jail Visitations and Human Rights Education. This is aimed at improving current monitoring mechanisms. Thus, the development of the standard monitoring system, standard classification of human rights cases pursuant to human rights treaties to which the Philippines is a State Party. Further this will ensure easy public access to information on human rights cases handled by the CHRP.

The target implementation of the system is on or before December 2008. The target pilot test of this system is on the third quarter of 2008. As of today, the second batch of CHRP officers/personnel is now undergoing training on the application/use of the Martus Executive Information System.

[\[1\]](#) Six alleged victims, who were later verified to be alive are Edwin Mascariñas from Mindoro, Renato Bugtong from Batangas, Hilario Paraon and Danilo Flores from San Miguel, Bulacan, Maritess dela Cruz from Isabela and Wilbert G Antaran from Sariaya, Quezon.

[\[2\]](#) These include the: (i) Joint GRP-MILF Committees on the Cessation of Hostilities (CCCH); (ii) Local Monitoring Teams (LMTs) operating in 13 conflict-affected provinces to support the CCCH; (iii) Joint Ceasefire Monitoring Posts (JCMP) which is jointly manned by GRP and MILF, with active participation of an NGO, “Bantay Ceasefire”; (iv) Joint Monitoring Assistance Center (JMAC) to coordinate disposition and movements of both AFP and MILF forces in connection with efforts to pursue the Abu Sayyaf Group and other high value targets, as well as to avoid incidents of misencounters; and (v) Ad-Hoc Joint Action Group (AHJAG) which was formed to assist in the interdiction and isolation of criminal elements situated, within, or near, MILF communities.

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