

PRESS STATEMENT

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I have spent the past ten days in the Philippines at the invitation of the Government in order to inquire into the phenomenon of extrajudicial executions. I am very grateful to the Government for the unqualified cooperation extended to me. During my stay here I have met with virtually all of the relevant senior officials of Government. They include the President, the Executive Secretary, the National Security Adviser, the Secretaries for Defence, Justice, DILG and the Peace Process. I have also met with a significant number of members of Congress on different sides of the political spectrum, the Chief Justice, the Chief of Staff of the Armed Forces of the Philippines (AFP), the Chair of the Human Rights Commission, the Ombudsman, the members of both sides of the Joint Monitoring Committee, and representatives of the MNLF and MILF. Of particular relevance to my specific concerns, I also met with Task Force Usig, and with the Melo Commission, and I have received the complete dossier compiled by TF Usig, as well as the report of the Melo Commission, the and the responses to its findings by the AFP and by retired Maj-Gen Palparan. I have also visited Baguio and Davao and met with the regional Human Rights Commission offices, local PNP and AFP commanders, and the Mayor of Davao, among others.

Equally importantly, roughly half of my time here was devoted to meetings with representatives of civil society, in Manila, Baguio, and Davao. Through their extremely valuable contributions in the form of documentation and detailed testimony I have learned a great deal.

Let me begin by acknowledging several important elements. The *first* is that the Government's invitation to visit reflects a clear recognition of the gravity of the problem, a willingness to permit outside scrutiny, and a very welcome preparedness to engage on this issue. The assurances that I received from the President, in particular, were very encouraging. *Second*, I note that my visit takes place within the context of a counter-insurgency operation which takes place on a range of fronts, and I do not in any way underestimate the resulting challenges facing for the Government and the AFP. *Third*, I wish to clarify that my formal role is to report to the UN Human Rights Council and to the Government on the situation I have found. I consider that the very fact of my visit has already begun the process of acting as a catalyst to deeper reflection on these issues both within the national and international settings. *Finally*, I must emphasise that the present statement is only designed to give a general indication of some, but by no means all, of the issues to be addressed, and the recommendations put forward, in my final report. I expect that will be available sometime within the next three months.

Sources of information

The first major challenge for my mission was to obtain detailed and well supported information. I have been surprised by both the amount and the quality of information provided to me. Most key Government agencies are organized and systematic in much of their data collection and classification. Similarly, Philippines civil society organizations are generally sophisticated and professional. I sought, and obtained, meetings across the entire political spectrum. I leave the Philippines with a wealth of information to be processed in the preparation of my final report.

But the question has still been posed as to whether the information provided to me by either all, or at least certain, local NGO groups can be considered reliable. The word 'propaganda' was used by many of my interlocutors. What I took them to mean was that the overriding goal of the relevant groups in raising EJE questions was to gain political advantage in the context of a broader battle for public opinion and power, and that the HR dimensions were secondary at best. Some went further to suggest that many of the cases were fabricated, or at least trumped up, to look more serious than they are.

I consider it essential to respond to these concerns immediately. First, there is inevitably a propaganda element in such allegations. The aim is to win public sympathy and to discredit other actors. But the existence of a propaganda dimension does not, in itself, destroy the credibility of the information and allegations. I would insist, instead, on the need to apply several tests relating to credibility. *First*, is it only NGOs from one part of the political spectrum who are making these allegations? The answer is clearly 'no'. Human rights groups in the Philippines range across the entire spectrum in terms of their political sympathies, but I met no groups who challenged the basic fact that large numbers of extrajudicial executions are taking place, even if they disagreed on precise figures. *Second*, how compelling is the actual information presented? I found there was considerable variation ranging from submissions which were entirely credible and contextually aware all the way down to some which struck me as superficial and dubious. But the great majority are closer to the top of that spectrum than to the bottom. *Third*, has the information proved credible under 'cross-examination'. My colleagues and I heard a large number of cases in depth and we probed the stories presented to us in order to ascertain their accuracy and the broader context.

As a result, I believe that I have gathered a huge amount of data and certainly much more than has been made available to any one of the major national inquiries.

Extent of my focus

My focus goes well beyond that adopted by either TF Usig or the Melo Commission, both of which are concerned essentially with political and media killings. Those specific killings are, in many ways, a symptom of a much more extensive problem and we should not permit our focus to be limited artificially. The TF Usig/Melo scope of inquiry is inappropriate for me for several reasons:

(a) The approach is essentially reactive. It is not based on an original assessment of what is going on in the country at large, but rather on what a limited range of CSOs report. As a result, the focus then is often shifted (unhelpfully) to the orientation of the CSO, the quality of the documentation in particular cases, etc.;

(b) Many killings are not reported, or not pursued, and for good reason; and

(c) A significant proportion of acknowledged cases of 'disappearances' involve individuals who have been killed but who are not reflected in the figures.

How many have been killed?

The numbers game is especially unproductive, although a source of endless fascination. Is it 25, 100, or 800? I don't have a figure. But I am certain that the number is high enough to be distressing. Even more importantly, numbers are not what count. The impact of even a limited number of killings of the type alleged is corrosive in many ways. It intimidates vast numbers of civil society actors, it sends a message of vulnerability to all but the most well connected, and it severely undermines the political discourse which is central to a resolution of the problems confronting this country.

Permit me to make a brief comment on the term 'unexplained killings', which is used by officials and which I consider to be inapt and misleading. It may be appropriate in the context of a judicial process but human rights inquiries are more broad-ranging and one does not have to wait for a court to secure a conviction before one can conclude that human rights violations are occurring. The term 'extrajudicial killings' which has a long pedigree is far more accurate and should be used.

Typology

It may help to specify the types of killing which are of particular concern in the Philippines:

- Killings by military and police, and by the NPA or other groups, in course of counter-insurgency. To the extent that such killings take place in conformity with the rules of international humanitarian law they fall outside my mandate.
- Killings not in the course of any armed engagement but in pursuit of a specific counter-insurgency operation in the field.
- Killings, whether attributed to the military, the police, or private actors, of activists associated with leftist groups and usually deemed or assumed to be covertly assisting CPP-NPA-NDF. Private actors include hired thugs in the pay of politicians, landowners, corporate interests, and others.
- Vigilante, or death squad, killings
- Killings of journalists and other media persons.
- 'Ordinary' murders facilitated by the sense of impunity that exists.

Response by the Government

The response of Government to the crisis of extrajudicial executions varies dramatically. There has been a welcome acknowledgement of the seriousness of the problem at the very top. At the executive level the messages have been very mixed and often unsatisfactory. And at the operational level, the allegations have too often been met with a response of incredulity, mixed with offence.

Explanations proffered

When I have sought explanations of the killings I have received a range of answers.

(i) The allegations are essentially propaganda. I have addressed this dimension already.

(ii) The allegations are fabricated. Much importance was attached to two persons who had been listed as killed, but who were presented to me alive. Two errors, in circumstances which might partly explain the mistakes, do very little to discredit the vast number of remaining allegations.

(iii) The theory that the 'correct, accurate, and truthful' reason for the recent rise in killings lies in purges committed by the CPP/NPA. This theory was relentlessly pushed by the AFP and many of my Government interlocutors. But we must distinguish the number of 1,227 cited by the military from the limited number of cases in which the CPP/NPA have acknowledged, indeed boasted, of killings. While such cases have certainly occurred, even those most concerned about them, such as members of Akbayan, have suggested to me that they could not amount to even 10% of the total killings.

The evidence offered by the military in support of this theory is especially unconvincing. Human rights organizations have documented very few such cases. The AFP relies instead on figures and trends relating to the purges of the late 1980s, and on an alleged CPP/NPA document captured in May 2006 describing Operation Bushfire. In the absence of much stronger supporting evidence this particular document bears all the hallmarks of a fabrication and cannot be taken as evidence of anything other than disinformation.

(iv) Some killings may have been attributable to the AFP, but they were committed by rogue elements. There is little doubt that some such killings have been committed. The AFP needs to give us precise details and to indicate what investigations and prosecutions have been undertaken in response. But, in any event, the rogue elephant theory does not explain or even address the central questions with which we are concerned.

Some major challenges for the future

(a) Acknowledgement by the AFP

The AFP remains in a state of almost total denial (as its official response to the Melo Report amply demonstrates) of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them. The President needs to persuade the military that its reputation and effectiveness will be considerably enhanced, rather than

undermined, by acknowledging the facts and taking genuine steps to investigate. When the Chief of the AFP contents himself with telephoning Maj-Gen Palparan three times in order to satisfy himself that the persistent and extensive allegations against the General were entirely unfounded, rather than launching a thorough internal investigation, it is clear that there is still a very long way to go.

(b) Moving beyond the Melo Commission

It is not for me to evaluate the Melo Report. That is for the people of the Philippines to do. The President showed good faith in responding to allegations by setting up an independent commission. But the political and other capital that should have followed is being slowly but surely drained away by the refusal to publish the report. The justifications given are unconvincing. The report was never intended to be preliminary or interim. The need to get 'leftists' to testify is no reason to withhold a report which in some ways at least vindicates their claims. And extending a Commission whose composition has never succeeded in winning full cooperation seems unlikely to cure the problems still perceived by those groups. Immediate release of the report is an essential first step.

(c) The need to restore accountability

The focus on TF Usig and Melo is insufficient. The enduring and much larger challenge is to restore the various accountability mechanisms that the Philippines Constitution and Congress have put in place over the years, too many of which have been systematically drained of their force in recent years. I will go into detail in my final report, but suffice it to note for present purposes that Executive Order 464, and its replacement, Memorandum Circular 108, undermine significantly the capacity of Congress to hold the executive to account in any meaningful way.

(d) Witness protection

The vital flaw which undermines the utility of much of the judicial system is the problem of virtual impunity that prevails. This, in turn, is built upon the rampant problem of witness vulnerability. The present message is that if you want to preserve your life expectancy, don't act as a witness in a criminal prosecution for killing. Witnesses are systematically intimidated and harassed. In a relatively poor society, in which there is heavy dependence on community and very limited real geographical mobility, witnesses are uniquely vulnerable when the forces accused of killings are all too often those, or are linked to those, who are charged with ensuring their security. The WPP is impressive – on paper. In practice, however, it is deeply flawed and would seem only to be truly effective in a very limited number of cases. The result, as one expert suggested to me, is that 8 out of 10 strong cases, or 80% fail to move from the initial investigation to the actual prosecution stage.

(e) Acceptance of the need to provide legitimate political space for leftist groups

At the national level, there has been a definitive abandonment of President Ramos' strategy of reconciliation. This might be termed the Sinn Fein strategy. It involves the creation of an opening — the party-list system — for leftist groups to enter the democratic political system, while at the same time acknowledging that some of those groups remain very sympathetic to the armed struggle being waged by illegal groups (the IRA in the Irish case, or the NPA in the Philippines case). The goal is to provide an incentive for such groups to enter mainstream politics and to see that path as their best option.

Neither the party-list system nor the repeal of the Anti-Subversion Act has been reversed by Congress. But, the executive branch, openly and enthusiastically aided by the military, has worked resolutely to circumvent the spirit of these legislative decisions by trying to impede the work of the party-list groups and to put in question their right to operate freely. The idea is not to destroy the NPA but to eliminate organizations that support many of its goals and do not actively disown its means. While non-violent in conception, there are cases in which it has, certainly at the local level, spilled over into decisions to extrajudicially execute those who cannot be reached by legal process.

(f) Re-evaluate problematic aspects of counter-insurgency strategy

The increase in extrajudicial executions in recent years is attributable, at least in part, to a shift in counterinsurgency strategy that occurred in some areas, reflecting the considerable regional variation in the strategies employed, especially with respect to the civilian population. In some areas, an appeal to hearts-and-minds is combined with an attempt to vilify left-leaning organizations and to intimidate leaders of such organizations. In some instances, such intimidation escalates into extrajudicial execution. This is a grave and serious problem and one which I intend to examine in detail in my final report.

Conclusion

The Philippines remains an example to all of us in terms of the peaceful ending of martial law by the People's Revolution, and the adoption of a Constitution reflecting a powerful commitment to ensure respect for human rights. The various measures ordered by the President in response to Melo constitute important first steps, but there is a huge amount that remains to be done.