

Office of the United Nations

High Commissioner for Human Rights
NGO Liaison Officer
Civil Society Unit
National Institutions Unit
1211 Geneva 10
Switzerland

Department for Politics and Campaigning

Human Rights Desk

Telephone:
0711/2159-743
Fax:
0711/2159-368

E-Mail: m.windfuhr@diakonie-human-rights.org

Stuttgart, 19 November 2007

Submission to the Summary of the “Stakeholders Report”

United Nations Human Rights Council
First Session of the UPR Working Group, 7-18 April 2008

Philippines: Extrajudicial Executions, Impunity and the Role of the Security Services Recent Developments

While the Philippines are state party to most of the important UN human rights conventions and treaties, there are serious deficiencies regarding their implementation. Human rights violations continue to be grave and widespread: Despite the declared willingness of the Philippine Government to resolve these issues, politically motivated killings and enforced disappearances perpetrated by alleged security forces personnel are continuing.

Regarding Extrajudicial Executions and Enforced Disappearances in the Philippines this report will briefly

- a) assess important developments and policy responses between November 2006 and September 2007 regarding extrajudicial executions in the Philippines.
- b) present recommendations to the UN Human Rights Council regarding the Universal Periodic Review of the Philippines with regards to extrajudicial executions and enforced disappearances.
- c) provide case reports of extrajudicial executions and enforced disappearances in 2007 as an attachment to the report.

Due to its scope, this report focuses on the involvement of security forces personnel in recent cases of politically motivated killings. However, perpetrators of political killings in the Philippines also include local politicians, criminal groups and armed guerrilla, such as the armed wing of the Communist Party of the Philippines (CPP), the New People's Army (NPA). However, while an all-out war has been declared against the NPA, there seems to be a lack of political will regarding the final conviction of security forces personnel. Various national and international

fact finding missions have convincingly identified connections between recent spate of political killings and clandestine counter-insurgency tactics or political patronage of security forces.¹

Although the Philippine government has promised a number of measures to prevent extrajudicial executions, it has not yet acknowledged the need to address the two main underlying causes, which UN Special Rapporteur on Extrajudicial Executions, Prof. Philip Alston, in his initial report identified as

- a) “the characterization [by security forces] of most groups on the left of the political spectrum as ‘front organizations’ for armed groups, particularly the New People’s Army (NPA).”
- b) “the extent to which aspects of the Government’s counter-insurgency strategy encourage or facilitate the extrajudicial killings of activists and other ‘enemies’.”²

The number of politically motivated killings is highly contested. *The Philippine Daily Inquirer* reported 296 killings of political activists between January 2001 and 22 June 2007³. According to the Philippine human rights NGO Karapatan, 60 cases of extrajudicial executions occurred between January 2007 and July 2007 as well as 17 cases of disappearances and 12 cases of torture.⁴

Karapatan also documented 836 politically motivated killings between January 2001 and 14 November 2006. Of those, the police unit Task Force Usig, created in 2006 to investigate political killings, discarded all but 116 “valid” cases of killed political activists and journalists by 30 August 2007.⁵ Considering the great number of election-related killings documented by the Philippine National Police (PNP) in 2004 and 2007, 148 and 121 cases respectively, the low figure of cases declared valid by Task Force Usig seems illusive. Moreover, its inquiry lays the blame for most of the killings on the NPA, while identifying only 11 cases with military personnel as suspects or perpetrators⁶: This scenario of a present internal purge within the Philippine Left responsible for the increasing number of extrajudicial executions has been widely dismissed as propaganda by human rights NGOs and investigative missions into the killings.⁷ Furthermore, inconsistency of the Task Force Usig data with other official datasets is apparent: Between January 2005 and December 2006 alone 72 cases of murder involving military personnel as alleged perpetrators were filed with the Commission on Human Rights⁸.

Recent Developments

On the 22 January 2007, an investigative commission launched by President Gloria Macapagal-Arroyo under the guidance of former Supreme Court Justice Jose Melo submitted its report to the President. The report was at first declared “incomplete” and embargoed for publication by Executive Secretary Eduardo Ermita. Both Eneko Landaburu, the European Commission’s Director General for External Relations as well as UN Special Rapporteur Philip Alston were unable to receive a copy of the report until 19 February 2007, when it was finally released to them.

The report highlighted a systematic pattern behind some of the killings, claiming that “there is certainly evidence pointing the finger of suspicion at some elements and personalities in the

¹ See Reports and fact-finding missions by Amnesty International, Citizen’s Council for Human Rights (CCHR), Dutch Lawyers for Lawyers Foundation, Hong Kong Mission for Human Rights and Peace in the Philippines, Human Rights Watch, Melo Commission, Kilusan para sa Pambansang Demokrasya (KPD), National Council of Churches in the Philippines (NCCP), Supreme Court of the Philippines: National Consultative Summit on Extrajudicial Executions and Enforced Disappearances, UN Special Rapporteur on Extrajudicial Executions.

² Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February 2007) A/HRC/4/20/Add.3.

³ *Philippine Daily Inquirer*: “Arroyo to media: Gov’t to end killings, libel suits”, 22 June 2007.

⁴ Oral Intervention on Item 4 of the Human Rights Council, Submission of the World Council of Churches to the UNHRC, 24 September 2007.

⁵ Task Force Usig Accomplishment Report, 30 August 2007.

⁶ *Ibid.*

⁷ See Reports by Amnesty International, Human Rights Watch (June 2007) or Prof. Philip Alston (February 2007).

⁸ Masterlist of Cases filed with the CHR Where Military Personnel are the Alleged Perpetrators, Commission on Human Rights Computer Databank.

armed forces, in particular General Palparan, as responsible for an undetermined number of killings, by allowing, tolerating, and even encouraging the killings.”⁹

In early February 2007 Prof. Rodolfo Stavenhagen, the UN Special Rapporteur on Indigenous Peoples, visited the Philippines. He reported, that compared to his visit in 2002, he was "sorry to learn that the pattern (of human rights violations) continues, and that there is an increase of these incidents.”¹⁰

The report of United Nations’ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, who visited the Philippines from 12 - 21 February 2007, stated that “the Armed Forces of the Philippines remains in a state of almost total denial (...) of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them.” Regarding the government, Alston reported, “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.”¹¹

In June 2007, three anonymous Generals reported about a top-level military conference in Luzon in 2005, during which extrajudicial executions were openly discussed as a response to the communist insurgency. Press Secretary Ignacio Bunye as well as Secretary Norberto Gonzales dismissed the reports as “unverifiable” and chose not to comment on anonymous information.¹²

In August 2007, the farmers Raymond and Reynaldo Manalo surfaced and alleged that they were forcibly abducted by unidentified armed men on 14 February, 2006 in San Ildefonso, Bulacan and tortured and subjected to inhuman treatment during their 18-month of captivity. They also alleged, that General Jovito Palparan had questioned them during their captivity. They sought the protection of the Supreme Court, who issued a temporary restraining order (TRO) enjoining the Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) from causing the arrest or enforced disappearance of two farmer brothers. There are no reports regarding official, government initiated or impartial investigations into both matters yet.¹³ This is but one example amongst others of continued enforced disappearance and related prevailing impunity (see also attachments).

Policy Responses

On a normative level, the Government responded to the report of the Melo Commission with a six-point action plan. In her instructions, the President directed

- a) “the Melo Commission to continue its work and submit supplemental reports.” No additional report has been published yet.
- b) “the DND and the AFP to come up as soon as possible with an updated document on command responsibility.”

On 4 February 2007, AFP Chief of Staff Hermogenes Esperon Jr issued a directive with updated and strict guidelines on command responsibility. However, this directive is not very well known and was only recently reported in the media.¹⁴ There is no legal test case of the new directive yet. Also, as Human Rights Watch points out, the central issue is the failure of the Philippine National Police (PNP) and the AFP to enforce existing regulations, that has led to the failure to prosecute superior officers. A more accurate measure of commitment to end extrajudicial killings would be the degree to which existing laws are used to prosecute culpable superior officers.¹⁵

⁹ Report, Independent Commission to Address Media and Activist Millings Created under Administrative Order No. 157 (Melo Report).

¹⁰ Bulatlat.com: “UN Rep Says Killings Hurting Arroyo’s Credibility Abroad”, Vol. VII, No. 2, 11-17 February 2007.

¹¹ Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February 2007) A/HRC/4/20/Add.3.

¹² Philippine Daily Inquirer, Palace rejects ‘unverifiable information’ on killings, 25 June 2007.

¹³ SC Issues TRO against Arrest of Two Farmers by DND, AFP, Supreme Court Press Release, 24 August 2007.

¹⁴ No Test Case Despite Strict AFP, PNP Guidelines on Command Responsibility, Newsbreak, 24 October 2007.

¹⁵ See also: Scared Silent: Impunity for Extrajudicial Killings in the Philippines, Human Rights Watch, June 2007, Vol.19, No.9, p. 21.

- c) “the DND and the Department of Justice (DoJ) to link up with the Commission on Human Rights (CHR) in forming a fact-finding body to delve deeper into the matter of involvement of military personnel in unexplained killings, file the corresponding charges against, and prosecute culpable parties.” Moreover, on 3 July 2007, President Arroyo signed Administrative Order 181, requiring the coordination between various government agencies for a prompt, efficient and successful investigation of political and media killings.

The real problem, however, consists of the fact that the police, while already having all necessary powers and responsibilities to investigate and charge perpetrators, choose not to act accordingly.

- d) “the DoJ to broaden and enhance its Witness Protection Program to cover all witnesses to the killings.” The current Witness Protection Program is underused and not sufficiently implemented. Human rights NGOs in the Philippines continue to claim, that victims prefer the protection of church retreats to government protection programmes, due to their greater safety.¹⁶
- e) “her chief legal counsel, Sergio Apostol, to draft a letter to the Supreme Court (SC) seeking the creation of special courts for the trial of cases involving extrajudicial killings.” The SC Chief Justice Puno issued Administrative Order 25-2007, designing 99 special Regional Trial Courts to hear, try and decide on cases of politically motivated killings in March 2007. In the light of the general climate of impunity, it must be monitored, whether the activities of these special courts comply with international trial standards or if justice is being denied to the victims and their families.¹⁷
- f) “the Department of Foreign Affairs to submit a formal proposal to the European Union to send investigators to assist the commission in its work.”¹⁸

A joint needs assessment mission led by the EU Commission has proposed the extension of technical and development aid with regards to the human rights situation in the Philippines in June 2007. Despite an invitation extended to the EU, international observers and human rights activists have been harassed by the military as well as blacklisted from entering the Philippines.¹⁹

Moreover, in her *State of the Nation Address* from 23 July 2007, Arroyo called on the Congress, to

“enact laws to transform state response to political violence: First, laws to protect witnesses from lawbreakers and law enforcers. Second, laws to guarantee swift justice from more empowered special courts. Third, laws to impose harsher penalties for political killings. Fourth, laws reserving the harshest penalties for the rogue elements in the uniformed services who betray public trust and bring shame to the greater number of their colleagues who are patriotic.”

While an improvement of the normative environment in which the political killings are happening is laudable, the real problem - the lack of implementation of existing laws and the climate of impunity - regarding political killings in the Philippines is still not being tackled. It is in this context, that public statements, such as the announcement on 2 August 2007 of Governor Douglas Cagas of Davao del Sur, to revive the anti-communist vigilante death squad Nakasaka in Davao del Sur remain without legal consequences.²⁰

On the normative level, a serious threat to existing human rights legislation is the Human Security Act of 2007, an anti-terrorism law that became effective on 15 July 2007. Criticism over

¹⁶ Action Network Human Rights Philippines Office, Interviews with Karapatan, PAHRA, PhilRights, 1 May - 9 June 2007.

¹⁷ See also Scared Silent: Impunity for Extrajudicial Killings in the Philippines, Human Rights Watch, June 2007, Vol.19, No.9, p. 21-22.

¹⁸ All unacknowledged quotes from: Arroyo to seek Europe's help in probing slays, Philippine Daily Inquirer, 31 January 2007.

¹⁹ Foreign observers denounce military harassment in Cebu, Philippine Daily Inquirer, 15 May 2007; Philippines: Government bans its critics from entering, Human Rights Watch Press Release, 28 September 2007; Philippines deports Irish Columban Priest, Catholic News, 10 January 2007.

²⁰ Revival of anti-NPA group sought, Philippine Daily Inquirer, 4 August 2007.

the broad definition of terrorism is at the heart of all the five petitions so far filed against the law at the Supreme Court. According to the NGO Free Legal Assistance Group (FLAG), “the Human Security Act (HSA) is one of the most incoherent, disorganized and disjointed laws our Congress has ever passed. (...) The law has no discernible structure, no headings or subheadings, and no groupings of sections. Provisions follow one another without logical connection (...).”²¹ Regarding prosecution of security forces involved in human rights violations, NGOs fear the law will serve as a pretext to justify the criminalization of political dissent. While the CHR is given “concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights” in Section 55 of the law, it must also be given the prosecutory powers to actually fulfil this provision.²²

The SC has taken a leading role in searching for solutions regarding extrajudicial killings. Apart from the creation of the special trial courts, the Supreme Court invited all sectors to a National Consultative Summit on Extrajudicial Killings and Enforced Disappearances on 16 - 17 July 2007. Most speakers on the summit were convinced that parts of the security forces are responsible for many of the killings. However, the presentations by Chief of Staff of the AFP General Hermogenes C. Esperon, Jr. as well as General Oscar C. Calderon, Director General of the Philippine National Police (PNP) clearly focussed on the responsibilities of the CPP and NPA, while remaining silent regarding the culpabilities of the security forces.²³

In August 2007, the SC issued the rule of the Writ of Amparo, according to which orders for protection, inspection and production and referral to witness protection can be provided, after a verified petition is granted. While the new rule has been lauded by civil society groups, the adherence to this new legal mechanism on the part of courts, security forces and other relevant bodies must be closely monitored in order to assess its impact on extrajudicial executions in the Philippines.

Recommendations

The Action Network Human Rights – Philippines recommends to the UNHRC, to

- assess commitment no. 19 of the Permanent Mission of the Philippines to the UN, given to the UNHRC on 18 April 2007, that it “condemns extrajudicial killings in the strongest terms and (...) shall continue to strongly address the issue”²⁴, particularly with regards to the involvement of military personnel in cases of extrajudicial killings. Only six cases involving military personnel as suspects have been filed in court until this day. Yet none of these have been completed and the suspects have been released on bail or are at large.²⁵
- assess commitment no. 20, whereas, “the Philippine Government has strengthened its witness protection programme,”²⁶ particularly with regards to the claims of Human Rights NGOs in the Philippines, according to which victims prefer the protection of church retreats to Government protection programmes, due to their greater safety.²⁷
- ask the Philippine Government to present an accomplishment report regarding the 99 special courts installed to hear and decide cases of extrajudicial killings, with regards to commitment no. 20, that such courts shall “preferentially hear and expeditiously decide on such cases.”²⁸

²¹ Philippine Daily Inquirer, FQA on the Human Security Act, 15 July 2007.

²² Supreme Court of the Philippines, National Consultative Summit on Extrajudicial Killings and Enforced Disappearances 16 - 17 July 2007, Summary of Recommendations.

²³ See Supreme Court of the Philippines, National Consultative Summit on Extrajudicial Killings and Enforced Disappearances 16-17 July 2007, <http://www.supremecourt.gov.ph/publications/summit/> (25 October 2007).

²⁴ Annex to the Note Verbale Dated 18 April 2007 from the Permanent Mission of the Philippines to the UN Addressed to the President of the General Assembly, UN General Assembly, A/61/882.

²⁵ Status of Cases (Alleged Extrajudicial Killing) against AFP Personnel, CAFGUs and Military Assets (as of 4 July 2007), AFP Human Rights Office.

²⁶ Annex to the Note Verbale Dated 18 April 2007 from the Permanent Mission of the Philippines to the UN Addressed to the President of the General Assembly, UN General Assembly, A/61/882.

²⁷ Action Network Human Rights Philippines Office, Interviews with Karapatan, PAHRA, PhilRights, 1 May - 9 June 2007.

²⁸ Annex to the Note Verbale Dated 18 April 2007 from the Permanent Mission of the Philippines to the UN Addressed to the President of the General Assembly, UN General Assembly, A/61/882.

- independently investigate serious discrepancies in the number of military personnel charged by Task Force Usig compared to cases filed with the Commission on Human Rights and other bodies, and thus establish whether the police and army have obstructed justice by blocking efforts to uncover abuse by security forces, in order to take account of commitment no. 20, “to uphold justice and strengthen efforts to address impunity.”²⁹
- establish a mechanism which allows for a continuous human rights monitoring including international civil society observers.

Co-authored by:

Action Network Human Rights – Philippines

c/o philippinenbüro e.V. im Asienhaus

Bullmannau 11, 45327 Essen, Germany, philippinenbuero@asienhaus.de



²⁹ Ibid.