



IMPUNITY IN THE AQUINO ADMINISTRATION:
An Initial Assessment Using the U.N. Updated Set of Principles to Combat Impunity
and Case Studies on Extra-Judicial Killings and Enforced Disappearances

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Unless there is a fundamental change of heart on the part of the military or the emergence of civilian resolve to compel the military to change its ways. Then, and only then, will it be possible to make real progress in ending the killings.

- Prof. Philip Alston

U.N. Special Rapporteur on EJKs or Arbitrary Executions
Report After Mission to the Philippines (12-21 February 2007)

Impunity arises from a general failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished ... and to take other necessary steps to prevent a recurrence of violations.

- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

United Nations E/CN.4/2005.COMMISSION ON HUMAN RIGHTS, 61st

INTRODUCTION

“Impunity” means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.¹

There is an atmosphere of hope for substantive change in the arena of human rights in this new administration of President Benigno S. Aquino III. Not only were the people expecting a marked political transition from a government mired in corruption to one committed to transparency, accountability and democratic participation, but also to a governance that firmly and consistently affirms the rule of law and uproots the causes of impunity and sets up the mechanisms for upholding and defending human rights.

While the present Philippine experience in the election of President Aquino is not similar in circumstance to the political upheaval that erupted in the 1986 EDSA Uprising or to the recent assertions of people’s power in the Middle East countries, one can agree with Ms. Diane Orentlicher that “many of the [UN Principles on Combating Impunity] have particular relevance when a government seeks to reaffirm the rule of law and to prevent future abuses at a moment of change following a period in which systemic abuses have occurred.”²

Thus, the human rights community welcomes that a rights-based-approach (RBA) frames the Philippine Development Plan according to the National Economic Development Authority (NEDA), the government body which is the focal entity for overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). There is a marked openness among the national heads of departments under the Chief Executive. Staunch human rights defenders head the Department of Justice and the Commission on Human Rights. The

¹ See *Promotion and Protection of Human Rights. Impunity. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Addendum. Updated Set of principles for the protection and promotion of human rights through action to combat impunity.* E/CN.4/2005/102/Add.1, 8 February 2005. Original: English. Commission on Human Rights, Sixty-first session, Item 17 of the provisional agenda at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/111/03/PDF/G0511103.pdf/OpenElement>

² Orentlicher, Diane. Remarks as member of Panel I: “Are Adequate Legal Frameworks in Place at the Domestic Level?” in a conference with a theme “Challenging Impunity”.

upper echelon of the security forces – the AFP and the PNP - , particularly the national human rights offices, have converged with several civil society’s human rights organizations and institutions on increasing common endeavours to dialogue on human rights and to share reports on particular cases of human rights violations geared towards eventual resolution and obtaining justice for the victims and their families.³ In fairness, though not without irony, part of this direction setting of the government bodies towards human rights was initiated during the second term of Ms. Gloria Macapagal Arroyo, whose administration also logged the highest number of EJKs and Enforced Disappearances since the period of martial law under Marcos.⁴

Nonetheless, PAHRA sees and takes advantage of the opportunities of openness and goodwill by directly engaging the offices under the Chief Executive, who is also the Commander-in-Chief of the AFP, as well as the security forces through their human rights offices to substantiate the pronouncements of a paradigm shift that would ensure the primacy of human rights as preferred values in the institutions and operations of the security forces specifically during the governance of this present administration. PAHRA recognizes the moments of special opportunities which could nudge a shift and that these moments should be seized and make the most of them in order to prevent a recurrence of serious violations of human rights or to gear away from a culture of impunity.

Unfortunately, there is a huge gap between the said above efforts, and the happenings both in the command level and on the ground that enables the continuous perpetration of impunity against the rights of persons and communities.

Assessment Framework and Case Studies

This initial assessment of the human rights situation is framed and elaborated by Diane Orentlicher in her report as independent expert to update the Set of Principles to combat impunity and according to the updated *UN Principles on Combating Impunity*.⁵

While there were originally 42 principles in Mr. Louis Joinet, and 38 principles in the updated version formulated by the independent expert, Ms. Diane Orentlicher, these can be sifted down to four core ideas: (1) the right to truth, (2) the right to justice, (3) the right of victims to have an effective remedy and to receive reparations, and (4) the duty of states more broadly to undertake institutional reforms when necessary in order to prevent a recurrence of systemic abuses.⁶

³ Foremost are the groundbreaking projects the like of “Building Bridges” under the Philippine Coalition for the International Criminal Court (PCICC) initiated by Ms. Loretta Ann P. Rosales after her stint in the House of Representatives as Akbayan Party List representative and before she was appointed to succeed Ms. Leila de Lima as Chairperson of the Commission on Human Rights, as well as the efforts of the Alternative Law Groups (ALG) in Community-Based Dialogues with the Security Forces and Government Bodies on Human Rights Violations, and PAHRA’s projected series of Case Conferences on EJKs/ELKs, Enforced Disappearances and Torture. The latter’s content and method later were recommended by both the AFP and PNP heads of their respective Human Rights Offices to be become an integral part of the about-to-be-set-up National Monitoring Mechanism (NMM) which was suggested by the European Union’s Needs Assessment Team and later coursed through its European Union-Philippines Justice (EPJUST) Program.

⁴ The Study conducted by the Integrated Bar of the Philippines (IBP) covered the period from 2001-2010, the two terms of President Gloria M. Arroyo.

⁵ See *Promotion and Protection of Human Rights. Impunity. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Addendum. Updated Set of principles for the protection and promotion of human rights through action to combat impunity.* E/CN.4/2005/102/Add.1, 8 February 2005. Original: English. Commission on Human Rights, Sixty-first session, Item 17 of the provisional agenda.

⁶ Orentlicher, Diane. Remarks as member of Panel I: “Are Adequate Legal Frameworks in Place at the Domestic Level?” in a conference with a theme “Challenging Impunity”.

The few cases, gleaned from several sources⁷, which will be used as studies will also be sorted out in relation to the four core ideas of the updated UN Principles on Combating Impunity. Each case, whether as a whole or in its aspects, will be presented in their relation to the core idea being discussed. At times, references will be made to other cases again in relation to a core idea and show that it is not just an isolated case. At the end of the presentation of the four core ideas along with case studies, hopefully we would be able to discern the direction to which Benigno S. Aquino, as Chief Executive and as Commander-in-Chief of the Armed Forces of the Philippines, is headed regarding the important and urgent issue of impunity: for progressive elimination or for unstoppable perpetuation.

The Right to Truth⁸

According to UN Special Rapporteur, Louis Joinet and others, the inalienable right of all peoples to the “right to the truth” or “the right to know” has both an individual and social dimension⁹. At the individual level, “the right to truth” is the right of victims or their families and relatives to know the basic facts that surrounded the violations or abuses they suffered personally. At the collective level, the right to truth means the States must take effective measures to preserve records concerning past violations and to facilitate public knowledge of the circumstances from which ensued the perpetration of serious crimes.

The State Obligation to ensure that the victims would know the details of their case and would have access to the documents related to their case is passed on from one administration to the next. Pursuing determinedly the breaking through of impunity by the present administration is not to be taken as a form of partisan politics¹⁰, but as an imperative to assert our common human dignity and human rights. This administration should thus publicly affirm this core principle – the right to truth – and make appropriate concomitant actions, such as executive and/or administrative orders, or certifying as urgent the bill on the right to information, to combat impunity. In concrete, the present administration of President Benigno Aquino, III, should reach out into the past, beginning with, but not limited to, the immediate preceding administration¹¹ and retrieve to review many cases that may have been clothed impunity with a veneer of judicial immunity. The violations with impunity of the past has continuing adverse repercussions in the present in the persons of victim-survivors and/or their families and, sometimes, even in communities.

⁷ Sources were Case Files from the Task Force Detainees of the Philippines (TFDP), the Families of the Involuntarily Disappeared (FIND), Medical Action Group (MAG) and BALAY Rehabilitation Center, Inc. See also cases presented in EPJUST sponsored Case Conference of PAHRA, March 29, 2011, as well as those submitted in the publication *article 2 of the International Covenant on Civil and Political Rights, Vol.10, No.1, March 2011. 'special report: torture in the Philippines & the unfulfilled promise of the 1987 Constitution, including articles on the cases of the Abadilla 5, GenSan 3, Morong 43, Sasa 5 & Maguindanao massacre'*.

⁸ UNCHR, Sixty-first session. Item 17 of the provisional agenda. *The right to know (principles 2-18) in the Promotion and Protection of Human Rights. Impunity*. Paragraphs 17-35, p. 7.

⁹ Orentlicher, Diane, op.cit. See also Impunity Principles, p.7; Open Society Foundations. Justice Initiative. *Recent Developments at the Extraordinary Chambers in the Courts of Cambodia (ECCC), June 2011 Update, at http://www.soros.org/initiatives/justice/focus/international_justice/articles_publications/sub_listing*.

¹⁰ Ibid.

¹¹ Atty. Al Parreño, Report on the Philippine Extrajudicial Killings: 2001-August 2010, study made possible through the support of USAID (US Agency for International Development) and TAF (The Asia Foundation). The study did not include victims of vigilante killings, particularly in Davao City.

Case Study: PICOP 6.¹²

In October 14, 2000, six contract workers of the Paper Industries Corporation of the Philippines (PICOP) were forcibly disappeared at Barangay Sta. Maria, Trento, Agusan del Sur. They come from families who live below or within the poverty line.

The 6 workers - Joseph Belar, Jovencio Lagare, Romualdo Orcullo, Diosdado Oliver, Artemio Ayala and Arnold Dangkiasan - were herded by Corporal Rodrigo Billones from the 62nd Infantry Battalion, 8th Infantry Division of the Philippine Army. Billones spread the word around that these six people were NPAs who were responsible for the ambush of their colleague, Col. Velasco.

A friend of the missing workers, Crispin Barot, was able to evade the abduction by concealing himself in the crowd. He saw the six workers being held at gunpoint from the *peryahan* (village carnival) and brought inside the army camp gate.

Parents and relatives looked for their loved ones but the military blatantly denied that the 6 PICOP workers were in their custody. In the meantime, the search for their loved ones and for justice continued and were sustained by human rights defenders of the organization Families of the Involuntarily Disappeared (FIND).

Had not another witness come forward four years later, the case would have been dismissed as none of the six could be found in the camp or could be accounted elsewhere. The witness was an insider. He was a soldier of the 62nd IB. Sgt. Exequias Duyogan came forward because he was bothered by his conscience due to the brutal murders he witnessed that ended the lives of the six.

PICOP 6 was a landmark case as Duyogan's testimony as a fellow soldier convicted Corporal Rodrigo Billones not as a principal but as an accomplice to the kidnapping and serious illegal detention of the six PICOP workers. The sentence was handed down by Executive Judge Dante Luz N. Viacrusis on July 11, 2008.

The families of victims later filed charges of multiple-murder against 13 soldiers including the Camp Commander at that time. The Camp Commander in a counter-affidavit even went to the extent of putting into an official report that the accused soldiers could not be in the alleged place where the six were killed but these same soldiers were actually in another camp as there was a red alert status. In effect, it was saying that the incident of killings never took place and that it must be just some sort of a hallucination of the witness, Sgt. Duyogan¹³.

The PICOP case was later personally presented to President Aquino in a face-to-face during the first 100 days after his election by PAHRA and FIND. He was also requested that the President as Commander-in-Chief to take special attention or even an intervention to ensure that the truth

¹² Families of the Involuntarily Disappeared (FIND) files on the PICOP 6; PAHRA Bulletin, December 10, 2010, PAHRA Urgent Appeal: PICOP 6 key witness to 10 year enforced disappearance case under threat.

¹³ Sgt. Duyogan and family were forced to seek protection from the Department of Justice (DOJ) and applied for its Witness Protection Program (WPP) due to intense harassment and high risk to his own and his family's lives. On May 9, 2011, Sgt. Duyogan died from multiple-organ failure after a major operation. In the meantime, the DOJ finished its Preliminary Investigation. The information has already been filed in the Regional Trial Court in Agusan del Sur and warrants are expected to be soon served. But the Regional Prosecutor has already privately sounded out to this effect that "Duyogan may have died because he lied. And God does not want us to lie. And that the case will just be thrown out now that the key witness is dead. It would have been better that the families earlier accepted the monetary settlement offered by the accused."

will out. Sadly, there had been no response or action regarding the PICOP 6. It has not been taken as a unique case which could help breakthrough impunity in extrajudicial killings.

The PICOP 6 case and the status of the soldier witness at risk were also shared with the AFP Human Rights Office (HRO). It seems that the whole case was ignored or by-passed for reasons we do not know.¹⁴ The AFP HRO should have known, if they diligently reviewed the case and monitored the implementation of the sentence, that for one thing Billones was given special treatment by living in a separate house outside a regular prison.¹⁵

The PICOP 6 case could have been a lost case had not a soldier-witness come forward to testify as to what really happened. There was no willingness from any of the involved soldiers or from one who held command responsibility. In fact, there seems to be a tacit consent to conspire to be silent regarding what befell the heads of the PICOP 6.

The right to truth, the first core principle to combat impunity, has been blocked by the duty bearers themselves at the very start and later at every step towards obtaining justice. There has been no concrete cooperation from the military command before and after the putting up of the AFP Human Rights Office. The truth does not consist only of the data documented by human rights defenders in civil society. It is also the data from the part of the military to which only the military has access. State obligations also are not demarcated by the periods covered by each administration, rather these obligations transcend every political regime. The impunity of the past must be resolved and measures done to prevent recurrence.¹⁶

Usually, civil society's data could not stand alone. The decisive part often is within the ambit of the military. Post-operational reports is an example. It is only the military who would have access to their own records, immediately if desired and solely, most of the time, as civil society need to go through the proper, tedious legal processes to see or to obtain copies of the pertinent documents of their cases.

¹⁴ PAHRA letter to AFP HRO head, Col. Domingo Tutaan, Jr., April 25, 2011. Till the time of this writing no response has been given, much less the formalization of the said recommendations to the Chief of Staff that has already changed since the time of first meeting.

¹⁵ PAHRA Statement "PAHRA reiterates urgency for Benigno S. Aquino, Chief Executive and Commander-in-Chief: Order Fair and Speedy Resolution of Landmark PICOP 6 Case" *Friday, 11 February 2011*; PAHRA Press Release, May 25, 2011. "Special treatment: A Bonus for Impunity / Ex. Gov. Leviste in the NBP, Cpl. Billones in Agusan del Sur"

¹⁶ The persistence and even at times the intensity of impunity can be observed, for example, that after the visit of the UN Special Rapporteur, Philip Alston, in February 2007, he "noted in 2009 no change in the government's counter-insurgency strategies and tactics that lump leftist activists with violent insurgents or terrorists. Indeed, extensive documentations have shown that security forces and government authorities have often failed to distinguish between peaceful activists and armed insurgents or terrorists, resulting in the vilification, unlawful arrest, detention, and killings or disappearances of human rights activists, union leaders, farmers and other individuals belonging to leftist organisations. Such violations are occurring in a context of persistent and entrenched impunity within state security forces and government-backed paramilitary units." (excerpt taken from 'Human Rights and the Philippine Campaigns Against Insurgencies and Terrorism Under the Aquino Administration: Transiting from a Culture of Fear and Impunity to an Atmosphere of Hope'. A briefing paper for the FIDH-PAHRA Mission to the U.S., November 17-24, 2010. This paper also serves as a follow-up of the results of the Fact-Finding and Follow-up Missions conducted by FIDH and PAHRA and IRCT. Note also that there are more cases of EJK's and Enforced Disappearances in the IBP Study that covers the two periods of President Gloria M. Arroyo which is cited in footnote no.3.

Even if one had obtained the proper legal process such as the Writ of Habeas Corpus in a case of abduction, kidnapping or enforced disappearance, outright denial usually is made, such as what happened in the PICOP 6. It was so in the case of the two Manalo brothers.¹⁷ The military consistently denied they had the brothers in custody until the two were able to escape after 18 months in captivity and narrate their ordeal of torture in the hands of their military captors and identified the military official who had command responsibility – then Gen. Jovito Palparan, Jr..¹⁸ The military, in both cases of the PICOP 6 and of the Manalo brothers, stonewalled the truth and tried to insulate themselves with legal technicalities until determined pursuit of justice with the help of unexpected actions breached the wall to some extent – the appearance of a soldier-witness and the courageous escape of the Manalo brothers.

The PICOP 6 case is at its crossroads. The respondents to the multiple-murder charge are most probably waiting for a legal victory, but certainly justice would not be served and impunity could be further entrenched, unless unexpected turn of events would again happen. Unless the military through its now established Human Rights Office and appropriate processes pro-actively investigate first the human rights violations as distinguished from its administrative and criminal implications, the announced paradigm shift may have been stuck.

The Right to Justice¹⁹ and the Right to Reparation / Guarantees of non-recurrence²⁰

While victim-survivors and families of victims always demand for justice, most of the time the attempt to start the judicial process is already either blocked or had to be hastily abandoned either due to severe harassment and intimidation or out of fear of reprisal.²¹ If earlier significant portions of the truth have not been released by the security forces, then it would be very difficult if not impossible to file charges, e.g. perpetrators were wearing civilian clothes, wearing ski bonnets or uniforms with covered or no name plates. There is also the refusal to reveal data on

¹⁷ On December 26, 2007, under the new rule of the *writ of amparo*, the second division of the Court of Appeals gave a decision penned by Justice Lucas Bersamin which unequivocally stated that “General Palparan’s participation in the abduction was also established”, “saying that he at least knew about the arrest and detention by his men of the Manalo brothers.” This knowledge, according to the Court, showed Palparan’s “indubitable command policy that unavoidably encouraged and not merely tolerated the abduction of civilians without due process of law and without probable cause.”

¹⁸ The Manalo brothers also narrated how they met the two students from the University of the Philippines during their captivity and learned of the girls’ ordeal of torture and sexual abuse in the hands of their military custodians. The search for the missing girls has been renewed. Please see: Palparan can’t comply with SC order to release activists - Yahoo! News. <http://ph.news.yahoo.com/palparan-cant-comply-sc-order-release-activists-123754618.html> This case is another example of a human rights violation that demands resolution beyond a regime. In this case, an incident of enforced disappearance perpetrated during the incumbency of Ms. Gloria M. Arroyo is now expected to be resolved in the administration of President Noy-Noy Aquino.

¹⁹ UNCHR, Sixty-first session. Item 17 of the provisional agenda. *The right to justice (principles 19-30) in the Promotion and Protection of Human Rights. Impunity*. Paragraphs 36-57, p. 12.

²⁰ Ibid. *The right to reparation / guarantees of non-recurrence (principles 31-38)*. Paragraphs 58-69, p. 16

²¹ In rare cases where pursuit of justice by poor people is supported by civil society organizations and reach the supreme court, the example of the struggle of peasants to obtain just claim of the Teves landholdings does not augur well for the faint-hearted. Even when there is already a final and executor decision made by the Supreme Court, armed intimidation and violence is the response. (PAHRA Fact-Finding Mission Initial Report. September 24-25, 2010.) A lawyer of the peasants has been a victim of EJK showed that impunity of civil and political rights is often rooted in earlier impunity of economic, social and cultural rights. This is also a case wherein both armed and non-armed non-state actors are involved in impunity with the acquiescence of state authorities.

There are also cases where in other armed non-state actors are suspected to be involved in connivance with the Hacienda goons as in the Masbate cases in Hacienda Batuan in July 6, 2008. Two farmers were extra-judicially killed.

personnel or troop composition due to “national security” reason. Manipulation of the truth, such as the planting of evidence, turning in false reports or making use of false witnesses are also forms of refusal to one’s right to truth. The burden to prove the truth is unevenly placed often on the shoulders of the poor and the intimidated. Denial of the right to the truth or the right to know leads often to the disabling a person’s pursuit of justice or to an outright rejection of a person’s right to justice.

The PICOP 6 case and the Manalo brothers are examples also of the breach to the right to justice which leads to the loss of the right to reparation. Impunity then entrenches itself further signalling once again that similar violations will recur. And recur they did.

Case Study: The Miraflores Brothers²²

In the morning of June 2, 2010, the Miraflores brothers Raymond, Rosemel and Erik were ordered by their mother to follow their father in their homestead and to assist him in getting charcoal. Clothed with just their shorts and old t-shirt, they brought with them uncooked rice and sauté tomato and upo for their breakfast and lunch. The brothers rode on Raymond’s tricycle and headed for their homestead.

In the meantime, around 7 am of the same day, members of the Philippine National Police (PNP) conducted a patrol operation in Sitio Hobol, Brgy. (village) Candelaria, Zambales (a province north of Manila). They spotted some heavily armed men whom they suspected as members of the *Rebolusyonyong Hukbong Bayan* (RHB). A shootout ensued.

Back in the village, the mother of the three Miraflores and relatives heard the shots. Worried that no answer was made by Erick after a relative sent a text message, a mobile phone call was made. A male voice was heard but it was not that of Erick. The mother, the wife of Raymond and some relatives immediately went to the Municipal Mayor and informed him that the three brothers and their father were in their homestead in the mountains and were gathering charcoal. They were concerned about their family members because of the shots heard.

Leopoldo Miraflores, an uncle of the Miraflores brothers went to the Candelaria municipal hospital when he heard that the bodies of those killed were to be brought there. The St. Luke Funeral staff told him that those who were killed were three brothers, the uncle immediately knew that they were his nephews.

Leopoldo was able to identify them but was surprised to see that Erick and Rosemel were wearing long-sleeved camouflage shirts, while Raymond was still in his home clothes.

All had multiple gunshot wounds but Rosemel had both legs fractured and were dislocated.

The investigation report of the regional office of the Commission on Human Rights submitted its Initial Investigative Report²³ on June 15, 2010 which contained among others possible signs of

²² Fact Sheet on alleged extra-judicial killings of brothers Erick Miraflores, Rosemel Miraflores and Raymond Miraflores on June 2, 2010 in Sitio Hobol Brgy. Malabon, Candelaria, Zambales, Philippines. Submitted by the PAHRA Para-legals of Kilusang para sa Pambansang Demokrasya (KPD) to the Task Force Detainees of the Philippines (TFDP).

²³ Initial Investigation Report, CHR-III-2010-0157, submitted by Special Investigators Elmer L. Maniego and Joel Boaniaras to Atty. Jasmin Navarro-Regino, Regional HR Director.

torture. It also stated: “The **result of the autopsy** conducted by Dr. Eduardo T. Vargas, Jr., Medico-Legal Officer of the National Bureau of Investigation, Regional Office 3 **is vital** in establishing whether Erick Miraflores, Raymond Miraflores and Rosmel Miraflores were victims of extra-judicial killings. **Hence, deeper investigation is needed.**” (emphasis mine) Not only deeper investigation but speedy investigation is imperative. These actions are integral components of due diligence and of the rights to truth and to justice.

To reiterate: extraordinary due diligence is imperative for all duty bearers as well as claimholders if one is to break through in the Miraflores case. At the least, the post-operational reports²⁴ should be reviewed and analyzed for coherence. Missing is the post-operational report of the 24th Infantry Battallion which provided military reinforcement and later “conducted pursuit and mapping [sic] operations”. But at the time of this writing, the investigation as to whether the Miraflores brothers were extra-judicially killed or not has not yet progressed or gain depth.

4th Core Principle - Duty of States : Undertaking Institutional Reforms²⁵

According to the UN Independent Expert, Professor Diane Orentlicher: “A second animating idea behind the updated Principles on Combating Impunity is that governments must take effective action across a range of areas, and that each of these is important – effective action in one area is not a substitute for effective action in others.”²⁶ The Principles do have the characteristics of interdependence and interrelatedness to eliminate impunity. The law that has finally criminalize torture, RA 9745 and its Implementing Rules and Regulations (IRR) are not sufficient. There must be determined actions to prosecute when a violation occurs.²⁷ Jail reforms, such as decongestion, have to be made. Redress and reparations for victims must be ensured, like the passage of the Compensation Bill for Martial Law Victims of Human Rights Violations.

Cognizant of the fact that the State or this Administration alone could not eliminate impunity alone, without the slightest digression from the primary obligation of the State, different stakeholders are now working together to put up a National Monitoring Mechanism (NMM) to prevent and breakthrough the impunity of extra-judicial killings/extra-legal killings, enforced disappearances and, hopefully, also of torture. These stakeholders are the Commission on Human Rights of the Philippines (CHRP) and the Presidential Committee on Human Rights

²⁴ These reports include: The Affidavits of Police Senior Inspector Adriano E. Cansas, Jr. and PINSP Rolando C. Dellezo were sworn on 16 February 2011; A “Spot Report on Armed Encounter”, June 2, 2010 was submitted by Police Inspector , Officer in Charge, Philip John D. Pineda to the Provincial Director, Conrado D. Yap, on June 2, 2010; The National Bureau of Investigation (NBI) Autopsy Report No. CNO-2010-21 submitted by Eduardo T. Vargas, Jr. M.D.; Regional Crime Laboratory Office 3, Chemistry Report No. C-017-2010 ZPCLO, c-018-2010 ZPCLO which established that the Miraflores brothers tested positive with gunpowder nitrates; SOCO Report on June 2, 2010.

²⁵ UNCHR, Sixty-first session. Item 17 of the provisional agenda. *Reform of laws and institutions contributing to impunity (principle 38) in the Promotion and Protection of Human Rights. Impunity*. This Principle is included under ‘Guarantees of non-recurrence of violations’ (Paragraphs 37-42) .

²⁶ Orentlicher, Diane. Remarks as member of Panel I: “Are Adequate Legal Frameworks in Place at the Domestic Level?” in a conference with a theme “Challenging Impunity”.

²⁷ Examples are separate torture cases allegedly perpetrated by: PNP Senior Inspector Joselito Binayug and Superintendent Madzgani Mukaram. See “Eleven recent cases of torture in the Philippines”. *Article 2, Vol.10, No.1, March 2011*. Hong Kong: Asian Legal Resource Centre, 2011, pp. 31-55; Fact sheets on Lenin Salas et al. torture case by *Kilusan para sa Pambansang Demokrasya (KPD)*.

(PCHR), who serve as co-convenors, together with the representatives of different government departments and agencies, the Security Forces / Uniformed Services and Civil Society Organizations and People's Organizations.

This work in progress has received a boost and a snag. This is the next case study.

Case Study: A National Monitoring Mechanism

The Miraflores case and other cases of human rights violations committed in Central Luzon or Region III seem stuck due to some institutional resistance within our security forces to the emerging resolve, particularly, of victim-survivors, of families and relatives of victims and, generally, of civil society to break through and eventually end impunity. This phenomenon seem to exemplify what has earlier been referred to as the gap between the pronouncements at the top, e.g. AFP's paradigm shift: 'primacy of human rights in all military operations', and the actualities on the ground, e.g. Pampanga PNP Supt. Madzgani Mukaram's "There are no human rights for us".

Allow me to give you a background to the earlier statement.

Last March 29, 2011, together with CHR, PAHRA has conducted an EPJUST-sponsored Case Conference on EJK/ELK, Enforced Disappearance and Torture with the concerned Regional Command officers and personnel of both the AFP and the PNP in San Fernando, Pampanga. This was a follow through activity to a November 5, 2010 Conference-Dialogue with the same stakeholders. The earlier Conference was more of leveling off on the two new laws: the Anti-Torture Law and the law on the International Humanitarian Law. And a dialogue on the laws application to the situations of the participants was the other part of the activity.

The Case Conference was a continuous plenary session to determine the status of the cases prepared by PAHRA and DEFEND CL. Sent a week earlier to the headquarters of the participating parties – the HRO's of the AFP and the PNP, the cases were discussed one by one.

The exchange of reports and notes among the CSO, the CHR and the uniformed services – AFP and the PNP – revealed there were some variances in each one's report and some gaps in due diligence and lapses in due process. More encouraging was the establishing of possible witnesses and leads to some of the cases. At the end, an agreement was reached that all reports and notes regarding the said cases would be turned over to or copies made for the CHR. Then, the CHR would pass on common status reports to the concerned CSO and the uniformed services.

The process and content of the said March 29 Conference had enthused all parties concerned that the same were unanimously recommended to become an integral part of the about-to-be-set-up National Monitoring Mechanism. It was certainly reinforcing goodwill and transparency to become an institutional structure to prevent and/or to break impunity. This is the boost.

In April 4, PAHRA wrote a letter to Chairperson Etta Rosales to follow up on the agreed upon action of all parties sending copies of their own institutional report regarding the cases taken up in the March 18 Conference to the National Legal Department of the CHR. Copies were furnished both heads of the AFP and the PNP HR Offices. Not a single report from either the AFP or the PNP had yet been submitted on that date. This was the beginning of the snag.

Up to the last NMM meeting and even up to this present date, no single report has been submitted to the Legal Department of the CHR. Promises of submission to CHR have been made. We are running on the third month of non-submission of already-written reports that are just to be photocopied and sent to CHR.

At the end of the last NMM meeting, the PHRC offered to meet the PNP and AFP heads of their respective HR Offices and see if any resolution could be done. It was reported at the end of the week that when PAHRA asked whether the reports would be given by the involved institutions, the answer was “NO.”

This is to share with you another case pertinent to the point PAHRA is stressing. It is a very recent joint effort of PAHRA and the AFP HRO in monitoring actions made after a report from a PAHRA member organization, *Aniban ng mga Manggagawang Agrikultural (AMA)*, stating that from June 1-3 the Army and CAFGU armed personnel were making a ‘census’ in several barangays in Malolos, Bulacan, which was also a vilification campaign against legal organizations, AMA, SANLAKAS and PM, as well as naming some persons, some of whom are PAHRA’s HRD Para-legals, being linked with the New People’s Army (NPA). This ‘census’ and vilification campaign by both uniformed and non-uniformed Army and CAFGU personnel was capped last June 6 by “inviting” several individuals to go to the Niugan detachment and talk with a certain “Sgt. Mendoza”.

These incidences along with the initial data gathered were shared with Col. Domingo Tutaan, head of the AFP HRO, to hasten proper responses to the ensuing fear both to the communities/*barangays* which were subjected to the “census”, in general, and to the named individuals, in particular. It is not unknown to the community that these actions could be the start or basis for later possible arrests, torture, enforced disappearances and extra-judicial killings – a continuing climate of fear and impunity left in Central Luzon by then Gen. Jovito Palparan, Jr.²⁸

Col. Tutaan immediately made his own inquiries. He has shared this finding in a text message:

*THIS IS THE INITIAL INFO I GOT: [Sir gud pm. Request be informed that 70ib (cadre) is maintaining a cafgu det at brgy panasahan, malolos, Bulacan composed of -caa. det comdr is not surnamed mendoza. **there is also no det in brgy niugan.** further be informed that alleged sgt. Mendoza is neither assigned nor connected to the unit sir. for info.] COMMENT: PLS TRY TO GET ADDTL INFO ON THE MATTER AND THIS ‘SGT MENDOZA’ ESPECIALLY FM THE SOURCE OF REPORT. ADDTL INFO WILL HELP US CHECK VERACITY OF REPORT. I’M CHECKING W/ OTHER UNITS IF THERE IS A ‘SGT. MENDOZA’ IN THEIR ROSTER. (emphasis ours -PAHRA)*

²⁸ To wit, Gen. Palparan was known to have made the chilling statement during his Central Luzon assignment, with words to this effect, to military-convened community meetings: (*Translated*) “Remember this – IDD. This does not mean ‘International Direct Dialing’. ‘I’ means ‘Invite’. We will invite some of you to our camp because there are some things we would like you to clarify. We will then give you some advice or reminders. If you do not do what we advised or reminded you to do, we will Detain you. Finally, if you really insist on not doing what we advised, then we will make you Disappear. It is strange that Police logbooks had never had a single entry regarding these actions unbecoming of an officer and a gentleman nor of the uttered grave threat. But then, it may be indicative of the extent of the effect of the climate of fear and impunity.

This was a conflicting fact with what has been reported by our PAHRA HRD-Para-legal, Alex Caparas, that he has personal knowledge of the existence of a detachment in Brgy. Niugan. Last June 7, the PAHRA Chairperson and AMA HRD-Paralegal, Alex Caparas, went to the area to resolve these seeming contradictory reports.

The two PAHRA HRD-Paralegals saw that there was indeed a detachment. They met and talked with not-in-uniform 'Sgt. Espinosa' and guard on duty, ISF Jayron Ray U. Martin. They have explained the reason for their coming, including some reminders of the IHL Law provisions. And handed them a PAHRA calling card as well for security reasons, according to 'Sgt. Espinosa'. The military have denied conducting the 'census' and vilification campaign. After a cellphone call, the HRD-Paralegals were quickly referred by 'Sgt. Espinosa' to go to the 70 IB headquarters in Hagonoy to get the answers to our further questions besides giving his incomplete name. Before the PAHRA HRDs left, one of them took a picture of the signage which indeed recorded the veracity of the existence of a detachment in Brgy. Niugan.

On the same day, the military contacted Mr. Caparas first inviting him to the detachment. Mr. Alex Caparas was joined by two Barangay Captains.

Mr. Caparas reported that as a whole the dialogue was good because according to the military the reason why they wanted to talk with people in the list was just to tell them that the listed people need not worry because the military wanted to change the bad image that Gen. Palparan left behind.

Later during the day, Alex called and added that the military said: "***Kahapon pagkaalis nyo tumawag ang opisina ng head ng H.R.O. ng AFP pInagalitan kami ...sana naman hindi na tayo umabot sa kaso kasi kahit sinomang tao kapag napagbintangan magagalit at pag nangyari yon babalikan ko kung sinuman ang may kagagawan.***" [Yesterday, right after you left, the office of the head of the H.R.O. of the AFP called and scolded us...we hope that this would not become a case because anyone who is wrongly accused will surely get angry and if that happens, you can be sure that I will get back on anyone who is responsible.] Alex then asked if the filing of cases against the military could be deferred. We then understood that fear got a grip on him for he then left his home, made himself scare and very difficult to contact. If this, proverbially, happens to the green, what more to the dry.

As we have stated in our previous communications to the CHR, if these actions are precedents of what are to be our common endeavors towards the prevention and/or the breaking of impunity of EJK/ELK and Enforced Disappearances, we in PAHRA are afraid that the present spent efforts and resources for establishing the National Monitoring Mechanism may be an exercise in futility. The NMM may become a mechanism monitoring incidences of violations not towards their effective prevention of or breaking through or resolution of impunity of EJKs / ELKs, enforced disappearances and torture but rather may devolve into a mere mechanism of documenting events leading to or just plainly perpetrating violations with impunity. It may become another bureaucratic layer and an archive for impunity. Further, in establishing NMM there is urgent need to move from complaint-led approach to program-led approach. In this important instance, the two institutions of the security forces / uniformed services decisive for the success of the NMM are, in the least, seem to be having serious internal difficulties in implementing their obligation of due diligence. The resolution of these difficulties, hopefully, could later contribute enormously to the effective operations of the NMM.

This is the reason why we made this stand:

- **Suspend the process of putting together the NMM and its Technical Working Group** until said reports have been satisfactorily submitted, so as to show collective seriousness that compliance with due diligence is an integral factor for the success of the NMM beginning with the efforts to resolve the HR cases presented in the March 18 Case Conference.

In the meantime, all could still make use of the bilateral or multilateral relations each organization or institution has with CHR and/or PHRC as well as the HR offices of the security forces and of the involved government bodies and agencies. The NMM should cultivate and deepen the working relationship with a variety of organs of civil society, especially non-governmental organizations. This period will certainly help in consolidating, strengthening and broadening our own internal mechanisms as preparation for our convergence in an effective national monitoring mechanism.

At this point of our collective experience, PAHRA acknowledges there are good women and men in government and in the security forces/uniformed services who act to ensure the implementation of the avowed paradigm shift to ensure the primacy of human rights in their institutions and operations. But there are also unyielding structures and inflexible procedures that block and/or resist this shift. Such a situation yields to the circumstances and factors that, unless radically changed, will perpetuate and further entrench a culture of impunity.

“Unless there is a change of heart”, recalling the words of Prof. Alston. In jest, we can continue and say, “there may be a hardening of the heart, or an impending sclerosis.” But in all seriousness, what we can discern is a certain slowness in a change of heart, a timidity in pro-actively combating impunity – in ensuring the people of their right to the truth, right to justice, right to redress / to reparations to ensure non-recurrence and upholding the obligations of the state for institutional reforms.

Thus, in the Aquino administration, impunity will continue...unless we work for the rise of civilian resolve to stop the impunity.

Today, I would like to think, we are gathered or have been gathered here to prove that with our converged and synergized forces and efforts, we can break through this “impossibility” .

RECOMMENDATIONS TO CONCRETIZE THE 4 CORE IDEAS OF THE UPDATED UN PRINCIPLES ON COMBATING IMPUNITY – The Right to Truth, The Right to Justice, The Right to Redress and Reparation, and The Duties of States to Ensure Institutional Reforms.

FOR GOVERNMENT and the SECURITY SECTOR / UNIFORMED SERVICES:

1. Set up and operationalize Human Rights Committees at all Government departmental and territorial levels;
2. Review with civil society the human rights education and training manuals of the security forces;
3. Conduct a systematic education and training of the security forces, judges, prosecutors;
4. Implement assiduously the law against torture and its IRR, and the IHL law;
5. Adopt one national standard for monitoring, investigation and documentation by government agencies (Minnesota and Istanbul Protocols);

6. Pass the Bill against enforced disappearances;
7. Ratify the Convention Against Enforced or Involuntary Disappearance;
8. Certify as urgent the Freedom of Information Bill;
9. Review and Strengthen with civil society the Witness Protection Program;
10. Abolish private armies and revoke Executive Order 546 (including Barangay Defense Units, CVOs, SCAA used in anti-insurgency operations);
11. Stop vilification campaigns and abolish the use of “Order of Battles”;
12. Invite soonest the UN Independent Expert on Combating Impunity, Special Rapporteurs on the promotion and defense of human rights in the fight against terrorism, against Torture, and against Enforced Disappearance, and on Human Rights Defenders.

FOR HUMAN RIGHTS DEFENDERS IN CIVIL SOCIETY

1. Broaden HRD Formations and professionalize para-legal training of Human Rights Defenders so as to assist in realizing progressively the 4 core ideas of the updated UN Principles on Combating Impunity;

FOR THE INTERNATIONAL COMMUNITY

1. Encourage the proper European Union bodies to help financially sustain the momentum that the EPJUST program has initiated in capacitating the various duty bearers and claimholders, separately and jointly, to combat impunity against EJK's, enforced disappearances and torture;
2. Monitor the progress of priority cases and court proceedings on cases of EJK's, Enforced Disappearances and torture;
3. Assist in setting-up an independent expert Forensic Training and Laboratory Center that ensures participation of civil society ;
4. Persuade and support the Philippine government to use and implement the Rights-Based Approach (RBA) in governance and in its Philippine Development Plan while ensuring the participation of civil society towards the resolution of impunity in economic, social and cultural rights;
5. Strengthen civilian resolve to stop impunity by assisting civil society to broaden its formations of Human Rights Defenders and professionalize its Para-legals;
6. Call upon the Aquino administration to invite the Special Rapporteurs on the promotion and defense of human rights in the fight against terrorism, against Torture, and against Enforced Disappearance, and on Human Rights Defenders to also enhance capacity to ensure non-recurrence of gross hr violations.

Maraming salamat po. Thank you for the opportunity to share.